

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): May 30, 2023

**Knife River Corporation**

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation)  
Delaware

(Commission File Number)  
1-41642

(I.R.S. Employer Identification No.)  
92-1008893

1150 West Century Avenue  
Bismarck, North Dakota 58503  
(Address of principal executive offices)  
(Zip Code)

Registrant's telephone number, including area code (701) 530-1400

**Knife River Holding Company**

(Former name or former address, if changed since last report)

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 240.13(c))

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

(Title of each class)  
Common Stock, par value \$0.01 per share

(Trading Symbol(s))  
KNF

(Name of each exchange on which registered)  
NYSE

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

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.

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

### *Separation-Related Agreements*

On May 30, 2023, Knife River Corporation (formerly known as Knife River Holding Company) (the “Company” or “Knife River”) entered into a Separation and Distribution Agreement (the “Separation and Distribution Agreement”) with MDU Resources Group, Inc. (“MDU Resources”), pursuant to which MDU Resources agreed to transfer its wholly owned subsidiary KRC Materials, Inc. (formerly known as Knife River Corporation) to the Company (the “Separation”) and distribute approximately 90% of the outstanding common stock of the Company to MDU Resources’ stockholders of record as of the close of business on May 22, 2023 (the “Distribution”). The Distribution became effective at 11:59 p.m., Eastern time, on May 31, 2023 (the “Effective Time”).

As a result of the Distribution, MDU Resources’ stockholders now own approximately 90% of the outstanding shares of the Company’s common stock and Knife River is now an independent public company, with its common stock listed under the symbol “KNF” on the New York Stock Exchange. Following the Distribution, MDU Resources retained approximately 10% of the outstanding shares of the Company’s common stock. The Company understands that MDU Resources intends to dispose of all such retained shares, which MDU Resources expects will include dispositions through one or more exchanges of such retained shares for debt, and may include dispositions through additional distributions to MDU Resources’ stockholders, exchanges for shares of MDU Resources’ common stock or one or more sales of such retained shares of the Company for cash.

In connection with the Separation and Distribution, the Company entered into several other Separation-related agreements with MDU Resources that govern the relationship of the parties following the Distribution, including a Transition Services Agreement, a Tax Matters Agreement, an Employee Matters Agreement and a Stockholder and Registration Rights Agreement (each entered into on May 30, 2023).

Following the Distribution, the Company changed its name from “Knife River Holding Company” to “Knife River Corporation.”

A summary of the Separation and Distribution Agreement and the other Separation-related agreements can be found in the Company’s information statement, dated as of and filed with the Securities and Exchange Commission (“SEC”) on May 12, 2023 (the “Information Statement”), which is included as Exhibit 99.1 to this Form 8-K, under the section entitled “Certain Relationships and Related Party Transactions.” These summaries are incorporated by reference into this Item 1.01. The description of the agreements set forth under this Item 1.01 is qualified in its entirety by reference to the complete terms of those agreements, which are included as Exhibits 2.1, 4.1, 10.1, 10.2, and 10.3 to this Current Report on Form 8-K and incorporated by reference into this Item 1.01.

### *Debt Arrangements*

#### **Credit Agreement**

On May 31, 2023 (the “Closing Date”), the Company entered into a new credit agreement (the “Credit Agreement”), as borrower, together with JPMorgan Chase Bank, N.A., as administrative agent and collateral agent, and the other financial institutions from time to time party thereto.

The Company’s obligations under the Credit Agreement are guaranteed by the Company’s existing and subsequently acquired wholly owned domestic subsidiaries, subject to a number of exceptions.

The Credit Agreement provides for (a) a senior secured first lien revolving credit facility in an initial aggregate principal amount of up to \$350.0 million (the “Revolving Credit Facility”) and (b) a senior secured first lien term loan facility in an initial aggregate principal amount of up to \$275.0 million (the “Term Loan Facility,” and together with the Revolving Credit Facility the “Senior Secured Credit Facilities”). Letters of credit are available under the Credit Agreement in an aggregate amount of up to \$75.0 million.

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On the Closing Date, the Company borrowed the full Term Loan Facility and \$190.0 million under the Revolving Credit Facility.

On the Closing Date, the Company used the proceeds of borrowings under the Term Loan Facility, together with the proceeds of the Company's previously disclosed offering of Notes (as defined below), and the proceeds from borrowings under the Revolving Credit Facility permitted to be funded on the Closing Date, to fund Knife River Corporation's repayment of intercompany obligations owing to certain subsidiaries of MDU Resources, for general corporate purposes, to pay fees, costs and expenses associated with the Distribution and related transactions (the "Transaction Costs") and to fund certain upfront fees.

The proceeds of the Revolving Credit Facility borrowed after the Closing Date are expected to be used by the Company and its restricted subsidiaries for working capital and other general corporate purposes, including the financing of restricted payments, permitted acquisitions and other permitted investments, and for any other purpose not prohibited by the Credit Agreement.

The Senior Secured Credit Facilities will mature on May 31, 2028. The Term Loan Facility requires quarterly amortization payments of 2.50% per annum for the first two years, 5.00% per annum for the next two years and 7.50% per annum for the final year, in each case of the original principal amount thereof. The Credit Agreement also requires mandatory prepayments in connection with certain asset sales, subject to certain exceptions.

Borrowings under the Senior Secured Credit Facilities bear interest, at the Company's option, at an annual rate equal to (a) adjusted term SOFR, defined in a customary manner ("Term SOFR") *plus* an applicable rate or (b) the base rate (determined by reference to the highest of (x) the prime rate, (y) the greater of (i) the federal funds effective rate and (ii) the overnight bank funding rate, in each case, *plus* ½ of 1.00% and (z) the one-month adjusted Term SOFR rate *plus* 1.00% per annum, subject to customary floors (clauses (x) through (z), the "Base Rate")) *plus* an applicable rate.

The applicable rate under the Credit Agreement ranges from 1.75% to 2.50% for Term SOFR loans and 0.75% to 1.50% for Base Rate loans, in each case based on the Company's consolidated total net leverage ratio. Undrawn commitment fees under the Revolving Credit Facility range from 0.25% to 0.50% based on the Company's consolidated total net leverage ratio.

The Credit Agreement provides for incremental revolving and term facilities at the Company's request and at the discretion of the lenders or other persons providing such incremental facilities, and also permits the Company to incur other secured or unsecured debt, in all cases subject to conditions and limitations on the amount of such incremental facility or other debt as specified in the Credit Agreement.

The Credit Agreement contains customary affirmative and negative covenants for agreements of this type, including: delivery of financial and other information; compliance with laws, including environmental law; maintenance of property, existence, insurance, books and records and public ratings; use of proceeds; inspection rights; obligation to provide collateral for newly acquired property and guarantees by certain new subsidiaries; and limitations with respect to indebtedness, liens, acquisitions and other investments, fundamental changes, restrictive agreements, dividends and redemptions or repurchases of stock, prepayments of certain subordinated indebtedness, dispositions of assets and transactions with affiliates, in each case subject to certain exceptions.

The Credit Agreement contains financial covenants requiring the Company to maintain a maximum consolidated total net leverage ratio of 4.75:1.00 and a minimum interest coverage ratio of 2.25:1.00, in each case measured as of the last day of each fiscal quarter, with measurement to commence on the last day of the first full fiscal quarter after the Closing Date. The consolidated total net leverage ratio may be increased at the Company's option to 5.00:1.00 in connection with certain qualifying material acquisitions.

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The Credit Agreement provides for customary events of default, including material breach of representations and warranties, failure to make required payments, failure to comply with certain agreements or covenants, failure to pay or default under certain other indebtedness in excess of a threshold amount, certain events of bankruptcy and insolvency, inability to pay debts, the occurrence of one or more unstayed or undischarged judgments in excess of a threshold amount, attachments issued against all or any material part of the Company's and its subsidiaries' property, certain events under ERISA, a change of control (as defined in the Credit Agreement), the invalidity of any loan document and the failure of the collateral documents to create a valid and perfected lien (subject to certain permitted liens). Upon the occurrence and during the continuance of an event of default, the maturity of the loans under the Credit Agreement may accelerate and the agent and lenders under the Credit Agreement may exercise other rights and remedies available at law or under the loan documents, including with respect to the collateral and guarantees of the Company's obligations under the Credit Agreement.

The foregoing description of the Credit Agreement is qualified in its entirety by reference to the Credit Agreement, which is included as Exhibit 10.4 to this Current Report on Form 8-K and is hereby incorporated by reference into this Item 1.01.

#### **Supplemental Indenture**

On May 31, 2023 the Company, certain subsidiary guarantors party thereto and U.S. Bank Trust Company, as trustee (the "Trustee") entered into a supplemental indenture (the "Supplemental Indenture") to the Indenture, dated as of April 25, 2023 (the "Indenture"), by and among the Company, the subsidiary guarantors from time to time party thereto and the Trustee. Pursuant to the terms of the Supplemental Indenture, the subsidiaries of the Company party thereto became guarantors of the Company's 7.750% Senior Notes due 2031 (the "Notes"), as required by the Indenture. The Supplemental Indenture is attached as Exhibit 4.2 to this Current Report on Form 8-K and is hereby incorporated by reference herein.

#### **Item 2.03. Creation of Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The disclosure set forth above under Item 1.01 under the heading "Debt Arrangements" is hereby incorporated by reference into this Item 2.03.

#### **Item 3.03. Modification to Rights of Security Holders.**

The disclosure set forth below under Item 5.05 is hereby incorporated by reference into this Item 3.03.

#### **Item 5.01. Changes in Control of Registrant.**

The disclosure set forth above under Item 1.01 under the heading "Separation-Related Agreements" is hereby incorporated by reference into this Item 5.01.

#### **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*

Effective immediately prior to the Effective Time, the board of directors of the Company (the "Board") expanded its size from five directors to six directors. Each of Karen B. Fagg, German Carmona Alvarez, Thomas Everist and William Sandbrook was elected as a director of the Company as of immediately prior to the Effective Time. Effective immediately prior to the Effective Time, David L. Goodin, Karl A. Liepitz and Jason L. Vollmer, who had been serving as members of the Board, ceased to be directors of the Company. Brian R. Gray and Patricia L. Moss, both of whom had been serving as members of the Board, will remain on the Board.

Biographical and compensation information for each of the directors appointed to the board can be found in the Company's Information Statement under the sections entitled "Directors" and "Director Compensation," which are hereby incorporated by reference into this Item 5.02.

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As of the effective time of their election to the Board:

- Each of Patricia L. Moss, German Carmona Alvarez and William Sandbrook were appointed to serve as members of the Audit Committee, and Patricia L. Moss was appointed chair of the Audit Committee;
- Each of Karen B. Fagg, William Sandbrook, and Thomas Everist were appointed to serve as members of the Nominating and Governance Committee, and Thomas Everist was appointed chair of the Nominating and Governance Committee;
- Each of Patricia L. Moss, Thomas Everist, and German Carmona Alvarez were appointed to serve as members of the Compensation Committee, and German Carmona Alvarez was appointed chair of the Compensation Committee; and
- Karen B. Fagg was appointed chair of the Board.

*Resignation and Appointment of Officers*

In connection with the Separation and Distribution, as of the Effective Time, the following individuals became executive officers of the company as set forth in the table below:

Karl A. Liepitz	Vice President, Chief Legal Officer and Secretary
Trevor J. Hastings	Vice President and Chief Operating Officer
Nancy K. Christenson	Vice President of Administration
Glenn R. Pladsen	Vice President of Support Services
John F. Quade	Vice President of Business Development
Marney L. Kadrmas	Chief Accounting Officer

Executive officers Brian R. Gray and Nathan W. Ring, previously appointed as the President and Chief Executive Officer and Vice President and Chief Financial Officer of the Company, respectively, are continuing in these positions following the Distribution.

Biographical information for each of the Company's executive officers can be found in the Company's Information Statement under the section entitled "Management." Compensation information for the Company's named executive officers can be found in the Company's Information Statement under the section entitled "Executive Compensation." These sections are hereby incorporated by reference into this Item 5.02.

*Adoption of Compensation Plans*

In connection with the Separation and the Distribution, the Company adopted the following compensation plans effective as of May 31, 2023, except as otherwise indicated. The named executive officers of the Company are or may become eligible to participate in these compensation plans.

- Knife River Corporation Long Term Performance-Based Incentive Plan;
  - Knife River Corporation Executive Incentive Compensation Plan, including Rules and Regulations;
  - Knife River Corporation Deferred Compensation Plan—Plan Document and Adoption Agreement, effective May 22, 2023;
  - Knife River Corporation Supplemental Income Security Plan, effective May 22, 2023; and
  - Knife River Corporation Nonqualified Defined Contribution Plan, effective May 22, 2023.
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Nonemployee directors are or may become eligible to participate in these programs:

- Knife River Corporation Long Term Performance-Based Incentive Plan;
- Knife River Corporation Director Compensation Policy; and
- Knife River Corporation Deferred Compensation Plan for Directors.

Summaries of certain material features of the Knife River Corporation Long Term Performance-Based Incentive Plan can be found in the Company's Information Statement under the sections entitled "Executive Compensation" and "Knife Holding Company Long Term Performance-Based Incentive Plan." This summary is incorporated by reference herein. The full text of each of these plans, which are attached hereto as Exhibits 10.5, 10.6, 10.7, 10.8, 10.9, 10.10 and 10.11, is hereby incorporated by reference into this Item 5.02.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

The Company amended and restated its Certificate of Incorporation (the "Amended and Restated Certificate of Incorporation") and its Bylaws (the "Amended and Restated Bylaws"), in each case, effective as of June 1, 2023. A description of the material provisions of the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws can be found in the Company's Information Statement under the section entitled "Description of Knife River Holding Company's Capital Stock," which is hereby incorporated by reference into this Item 5.03.

The description set forth under this Item 5.03 is qualified in its entirety by reference to the full text of the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws, which are attached hereto as Exhibits 3.1 and 3.2, respectively, and are hereby incorporated by reference into this Item 5.03.

**Item 5.05. Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics.**

In connection with the Distribution, the Board adopted certain Corporate Governance Guidelines and a Code of Conduct (Leading with Integrity Policy and Guide), in each case, effective as of immediately prior to the Effective Time. A copy of the Company's Corporate Governance Guidelines and Leading with Integrity Policy and Guide are available on the Company's website at [www.kniferiver.com](http://www.kniferiver.com). The information on the Company's website does not constitute part of this Current Report on Form 8-K and is not incorporated by reference herein.

**Item 7.01. Regulation FD Disclosure.**

On June 1, 2023, the Company issued a press release announcing the completion of the Separation and Distribution and the start of the Company's operations as an independent company, as well as the start of regular way trading on the New York Stock Exchange. A copy of the press release is attached hereto as Exhibit 99.2.

Exhibit 99.2 is being furnished and shall not be deemed "filed" for purposes of Section 18 of the U.S. Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, nor shall it be deemed to be incorporated by reference in any registration statement or other document filed under the U.S. Securities Act of 1933, as amended, except as otherwise expressly stated in such filing.

**Item 8.01. Other Events.**

On May 31, 2023, the proceeds from the offering of the Notes were released from escrow in accordance with that certain Escrow Agreement, dated April 25, 2023, among the Company and U.S. Bank National Association, as escrow agent. Also on May 31, 2023, the Company contributed such escrow proceeds to KRC Materials, Inc. and otherwise used them to pay the Company's and its subsidiaries' fees, costs and expenses related to the Separation, the Distribution and related transactions. Also on May 31, 2023, KRC Materials, Inc. used such proceeds, along with net proceeds from the Closing Date borrowings under the Senior Secured Credit Facilities, as described above, to repay intercompany obligations owing to certain subsidiaries of MDU Resources, and in particular, to repay notes payable to Centennial Energy Holdings, Inc. ("Centennial"), for the Company's prior usage of Centennial's central cash management and financing program, which program is funded by Centennial's commercial paper and revolving credit facility borrowings. From and after the separation, the Company will no longer rely on Centennial's central cash management and financing program and will instead rely on its own credit.

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

(d) Exhibits.

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<b>Exhibit No.</b>	<b>Description</b>
<a href="#">2.1</a>	Separation and Distribution Agreement, dated as of May 30, 2023, by and between Knife River Corporation and MDU Resources Group, Inc.†
<a href="#">3.1</a>	Amended and Restated Certificate of Incorporation of Knife River Corporation.
<a href="#">3.2</a>	Amended and Restated Bylaws of Knife River Corporation.
<a href="#">4.1</a>	Stockholder and Registration Rights Agreement, dated as of May 30, 2023, by and between Knife River Corporation and MDU Resources Group, Inc.†
<a href="#">4.2</a>	Supplemental Indenture, dated as of May 31, 2023, by and among the parties that are signatories thereto as Guarantors, Knife River Corporation and U.S. Bank Trust Company, National Association.
<a href="#">10.1</a>	Transition Services Agreement, dated as of May 30, 2023, by and between Knife River Corporation and MDU Resources Group, Inc.†
<a href="#">10.2</a>	Tax Matters Agreement, dated as of May 30, 2023, by and between Knife River Corporation and MDU Resources Group, Inc.
<a href="#">10.3</a>	Employee Matters Agreement, dated as of May 30, 2023, by and between Knife River Corporation and MDU Resources Group, Inc.
<a href="#">10.4</a>	Credit Agreement, dated as of May 31, 2023, by and among Knife River Corporation, JPMorgan Chase Bank, N.A. and Lenders and L/C Issuers party thereto.†
<a href="#">10.5</a>	Knife River Corporation Long Term Performance-Based Incentive Plan.
<a href="#">10.6</a>	Knife River Corporation Executive Incentive Compensation Plan, including Rules and Regulations.
<a href="#">10.7</a>	Knife River Corporation Deferred Compensation Plan—Plan Document and Adoption Agreement.
<a href="#">10.8</a>	Knife River Corporation Supplemental Income Security Plan.†
<a href="#">10.9</a>	Knife River Corporation Nonqualified Defined Contribution Plan.†
<a href="#">10.10</a>	Knife River Corporation Director Compensation Policy.
<a href="#">10.11</a>	Knife River Corporation Deferred Compensation Plan for Directors.
<a href="#">99.1</a>	Information Statement of Knife River Corporation, dated May 12, 2023 (incorporated herein by reference to Exhibit 99.1 to Knife River Corporation’s Current Report on Form 8-K, filed with the SEC on May 12, 2023).
<a href="#">99.2</a>	Press Release of Knife River Corporation, dated June 1, 2023.
104.1	Cover Page Interactive Data File (embedded within the Inline XBRL document)

† Certain schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon its request.

**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: June 1, 2023

KNIFE RIVER CORPORATION

By: /s/ Brian R. Gray

Name: Brian R. Gray

Title: President and Chief Executive Officer

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SEPARATION AND DISTRIBUTION AGREEMENT

BY AND BETWEEN

MDU RESOURCES GROUP, INC.

AND

KNIFE RIVER HOLDING COMPANY

DATED AS OF MAY 30, 2023

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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	2
1.1 Definitions	2
ARTICLE II THE SEPARATION	14
2.1 Transfer of Assets and Assumption of Liabilities	14
2.2 SpinCo Assets; Parent Assets	16
2.3 SpinCo Liabilities; Parent Liabilities	18
2.4 Approvals and Notifications	19
2.5 Novation of Liabilities	22
2.6 Release of Guarantees	24
2.7 Termination of Agreements	25
2.8 Treatment of Shared Contracts	26
2.9 Bank Accounts; Cash Balances	27
2.10 Ancillary Agreements	28
2.11 Disclaimer of Representations and Warranties	28
2.12 SpinCo Financing Arrangements; SpinCo Debt Incurrence.	28
2.13 Financial Information Certifications	29
ARTICLE III THE DISTRIBUTION	29
3.1 Sole and Absolute Discretion; Cooperation	29
3.2 Actions Prior to the Distribution	30
3.3 Conditions to the Distribution	31
3.4 The Distribution	32
ARTICLE IV MUTUAL RELEASES; INDEMNIFICATION	34
4.1 Release of Pre-Distribution Claims	34
4.2 Indemnification by SpinCo	36
4.3 Indemnification by Parent	36
4.4 Indemnification Obligations Net of Insurance Proceeds and Other Amounts	37
4.5 Procedures for Indemnification of Third-Party Claims	38
4.6 Additional Matters	40
4.7 Right of Contribution	41
4.8 Covenant Not to Sue	42
4.9 Remedies Cumulative	42
4.10 Survival of Indemnities	42
4.11 Tax Matters Agreement Coordination	42
ARTICLE V CERTAIN OTHER MATTERS	43
5.1 Insurance Matters	43
5.2 Late Payments	46
5.3 Inducement	46

5.4	Post-Effective Time Conduct	46
ARTICLE VI EXCHANGE OF INFORMATION; CONFIDENTIALITY		46
6.1	Agreement for Exchange of Information	46
6.2	Ownership of Information	47
6.3	Compensation for Providing Information	47
6.4	Record Retention	47
6.5	Limitations of Liability	47
6.6	Other Agreements Providing for Exchange of Information	48
6.7	Production of Witnesses; Records; Cooperation	48
6.8	Privileged Matters	49
6.9	Confidentiality	51
6.10	Protective Arrangements	52
ARTICLE VII DISPUTE RESOLUTION		53
7.1	Good Faith Officer Negotiation	53
7.2	Mediation	53
7.3	Arbitration	54
7.4	Litigation and Unilateral Commencement of Arbitration	55
7.5	Conduct During Dispute Resolution Process	55
ARTICLE VIII FURTHER ASSURANCES AND ADDITIONAL COVENANTS		55
8.1	Further Assurances	55
8.2	Use of the MDU Name and MDU Marks	56
ARTICLE IX TERMINATION		57
9.1	Termination	57
9.2	Effect of Termination	57
ARTICLE X MISCELLANEOUS		57
10.1	Counterparts; Entire Agreement; Corporate Power	57
10.2	Governing Law	58
10.3	Assignability	58
10.4	Third-Party Beneficiaries	58
10.5	Notices	59
10.6	Severability	60
10.7	Force Majeure	60
10.8	No Set-Off	61
10.9	Expenses	61
10.10	Headings	61
10.11	Survival of Covenants	61
10.12	Waivers of Default	61
10.13	Specific Performance	61
10.14	Amendments	62
10.15	Interpretation	62
10.16	Limitations of Liability	62
10.17	Performance	62
10.18	Mutual Drafting	63

## SCHEDULES

Schedule 1.1	Parent Contracts
Schedule 1.2	SpinCo Contracts
Schedule 1.3	SpinCo Intellectual Property
Schedule 1.4	SpinCo Software
Schedule 1.5	Parent Software
Schedule 1.6	SpinCo Technology
Schedule 1.7	Parent Technology
Schedule 1.8	Transferred Entities
Schedule 2.1(a)	Plan of Reorganization
Schedule 2.2(a)(x)	SpinCo Assets
Schedule 2.2(b)(iii)	Parent Intellectual Property
Schedule 2.2(b)(vi)	Parent Assets
Schedule 2.3(a)	SpinCo Liabilities
Schedule 2.3(b)	Parent Liabilities
Schedule 2.5(a)	Novation of SpinCo Liabilities
Schedule 2.7(b)(ii)	Intercompany Agreements
Schedule 4.3(c)	Specified Parent Information
Schedule 5.1(b)	Insurance Policies
Schedule 5.5	Treatment of Tunnel Space
Schedule 10.9	Allocation of Certain Costs and Expenses

## EXHIBITS

Exhibit A	Form of Amended and Restated Certificate of Incorporation of Knife River Holding Company
Exhibit B	Form of Amended and Restated Bylaws of Knife River Holding Company

SEPARATION AND DISTRIBUTION AGREEMENT

This SEPARATION AND DISTRIBUTION AGREEMENT, dated as of May 30, 2023 (this “Agreement”), is by and between MDU Resources Group, Inc., a Delaware corporation (“Parent”), and Knife River Holding Company, a Delaware corporation (“SpinCo”). Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to them in Article I.

RECITALS

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 approximately ninety percent (90%) 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, Parent plans to dispose of the SpinCo Shares that it holds following the Distribution, which Parent expects will include dispositions through one or more exchanges for debt and may include dispositions through one or more pro rata distributions to holders of Parent Shares, exchanges for equity or a sale of shares for cash;

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

WHEREAS, Parent has received a private letter ruling from the IRS in connection with the transactions contemplated by this Agreement (the “IRS Ruling”);

WHEREAS, Parent expects to receive one or more U.S. federal income tax opinions of its tax advisors in connection with the transactions contemplated by this Agreement;

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

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

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

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

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

“Ancillary Agreements” shall mean all agreements (other than this Agreement) entered into by the Parties or the members of their respective Groups (but only agreements as to which no Third Party is a party) in connection with the Separation, the Distribution or the other transactions contemplated by this Agreement, including the Transition Services Agreement, the Tax Matters Agreement, the Employee Matters Agreement and the Transfer Documents and any other agreement that by its express terms provides that it shall be an Ancillary Agreement for purposes of this Agreement.

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

“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.

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

“Clean-Up Distribution” shall mean any disposition of SpinCo Shares that Parent holds following the Distribution through one or more pro rata distributions to holders of Parent Shares or exchanges for Parent Shares.

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

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

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

“COVID-19” shall mean SARS-CoV-2 or COVID-19, and any evolutions, variants, mutations or worsening thereof or related or associated epidemics, pandemics or disease outbreaks (including any subsequent waves).

“CPR” shall have the meaning set forth in Section 7.2.

“Customer Information” shall mean, with respect to any business, all information 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).

“Debt-for-Equity Exchange” shall have the meaning set forth in the Tax Matters Agreement.

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

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

“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 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 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 0.25.

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

“Effective Time” shall mean 11:59 p.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 or the 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.

“Environmental Law” shall mean any Law (including common law) relating to the pollution, protection or restoration of or prevention of harm to the environment or natural resources (including air, surface water, groundwater, land surface or subsurface land), or human health or safety (as such matters relate to Hazardous Materials), including Laws relating to the use, handling, presence, transportation, treatment, storage, disposal, Release or discharge of Hazardous Materials or the protection of or prevention of harm to human health and safety.

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



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

“Force Majeure” shall mean, with respect to a Party, an event beyond the reasonable control of such Party (or any Person acting on its behalf), which event (a) does not arise or result from the fault or negligence of such Party (or any Person acting on its behalf) and (b) by its nature would not reasonably have been foreseen by such Party (or such Person), or, if it would reasonably have been foreseen, was unavoidable, and includes acts of God, acts of civil or military authority, acts of terrorism, cyberattacks, embargoes, epidemics, pandemics (including COVID-19 and Pandemic Measures), 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.

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

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

“Hazardous Materials” shall mean (a) those substances listed in, defined in or regulated under any Environmental Law, including the following federal statutes and their state counterparts, as each may be amended from time to time, and all regulations thereunder: the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Clean Water Act, the Safe Drinking Water Act, the Atomic Energy Act and the Clean Air Act, (b) petroleum and petroleum products, including crude oil and any fractions thereof and (c) polychlorinated biphenyls, per- and polyfluoroalkyl substances, mold, methane, asbestos and radon.

“Hook Stock Distribution” shall mean the distribution, at or prior to the time of the Distribution, by Parent of SpinCo Shares in exchange for the Parent Shares held by Knife River Corporation – Northwest, an Oregon corporation, before the Distribution.

“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 Registrable IP.

“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, and which Information Statement shall be an exhibit to the Form 10.

“Insurance Proceeds” shall mean those monies:

- (a) received by an insured from an insurance carrier; or
- (b) paid by an insurance carrier on behalf of the insured;

in any such case net of any premium adjustments (including reserves and retrospectively rated premium adjustments) resulting directly from the applicable claim and net of any costs or expenses incurred in the collection thereof.

“Intellectual Property” shall mean all of the following whether arising under the Laws of the United States or of any foreign or multinational jurisdiction: (a) patents, patent applications (including patents issued thereon) and statutory invention registrations, including reissues, divisions, continuations, continuations in part, substitutions, renewals, extensions and reexaminations of any of the foregoing, and all rights in any of the foregoing provided by international treaties or conventions, (b) trademarks, service marks, trade names, service names, trade dress, logos and other source or business identifiers, including all goodwill associated with any of the foregoing, and any and all common law rights in and to any of the foregoing, registrations and applications for registration of any of the foregoing, all rights in and to any of the foregoing provided by international treaties or conventions, and all reissues, extensions and renewals of any of the foregoing, (c) Internet domain names, accounts or “handles” with Facebook, LinkedIn, Twitter and similar social media platforms, registrations and related rights, (d) copyrightable works, copyrights, moral rights, mask work rights, database rights and design rights, whether or not registered, and all registrations and applications for registration of any of the foregoing, and all rights in and to any of the foregoing provided by international treaties or conventions, (e) confidential and proprietary information, including trade secrets, invention disclosures, processes and know-how, and (f) any other intellectual property rights, in each case other than Software.

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

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

“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, remediation, 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.

“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.

“MDU Name and MDU Marks” means the names, marks, trade dress, logos, monograms, domain names, accounts or “handles” with Facebook, LinkedIn, Twitter and other similar social media platforms, and other source or business identifiers of either Party or any member of its Group using or containing “MDU Resources” or “Building a Strong America,” either alone or in combination with other words or elements, and all names, marks, trade dress, logos, monograms, domain names and other source or business identifiers confusingly similar to or embodying any of the foregoing either alone or in combination with other words or elements, together with the goodwill associated with any of the foregoing.

“Mediation Procedure” shall have the meaning set forth in Section 7.2.

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

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

“NYSE” shall mean the New York Stock Exchange.

“Pandemic Measures” shall mean any quarantine, “shelter in place,” “stay at home,” workforce reduction, social distancing, shut down, closure, sequester, immunization requirement, safety or similar Law, directive, guidelines or recommendations promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to a pandemic, including COVID-19.

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

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

“Parent Shares” shall mean the shares of common stock, par value \$1.00 per share, of Parent.

“Parties” shall mean the parties to this Agreement.

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

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

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

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

“Prime Rate” shall mean the rate as published in *The Wall Street Journal* (or if not reported therein, as reported in another authoritative source reasonably selected by Parent).

“Privileged Information” shall mean any Information, 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.

“Record Date” shall mean the close of business on May 22, 2023, which is 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.

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

“Registrable IP” shall mean means all patents, patent applications, statutory invention registrations, registered trademarks, registered service marks, registered Internet domain names and copyright registrations.

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

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

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

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

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

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

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

“Specified Ancillary Agreement” shall have the meaning set forth in Section 10.18(b).

“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 consolidated balance sheet of Knife River Holding Company, including any notes and subledgers thereto, as of December 31, 2022, as presented in the Information Statement made available to the Record Holders.

“SpinCo Business” shall mean the business, operations and activities of the Knife River Corporation, a Delaware corporation, and its Subsidiaries conducted at any time prior to the Effective Time, excluding the business, operations and activities primarily related to the Parent Assets.

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

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

“SpinCo Contracts” shall mean the following contracts and agreements to which either Party or any member of its Group is a party or by which it or any member of its Group or any of their respective Assets is bound, whether or not in writing (provided that SpinCo Contracts shall not include (x) 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 or (y) any contract or agreement that would constitute SpinCo Software or SpinCo Technology) or (z) any contract or agreement set forth on Schedule 1.1:

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

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

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

(d) 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;

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

(f) 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;

(g) 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;

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

(i) any contracts, agreements or settlements set forth on Schedule 1.2, including the right to recover any amounts under such contracts, agreements or settlements.

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

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

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

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

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

“SpinCo Intellectual Property” shall mean all Intellectual Property owned by, licensed by or to, or sublicensed by or to either Party or any member of its Group as of the Effective Time primarily used or primarily held for use in the SpinCo Business, and all Intellectual Property set forth on Schedule 1.3.

“SpinCo IP/IT” shall have the meaning set forth in Section 2.2(a)(vi).

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

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

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

“SpinCo Software” shall mean all Software owned or licensed by either Party or member of its Group primarily used or primarily held for use in the SpinCo Business as of the Effective Time, including Software set forth on Schedule 1.4, but excluding Software set forth on Schedule 1.5.

“SpinCo Technology” shall mean all Technology owned or licensed by either Party or any member of its Group primarily used or primarily held for use in the SpinCo Business as of the Effective Time, including Technology set forth on Schedule 1.6, but excluding Technology set forth on Schedule 1.7.

“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, fifty percent (50%) or more of (i) the total combined voting power of all classes of voting securities, (ii) the total combined equity interests or (iii) the capital or profit interests, in the case of a partnership, or (b) otherwise has the power to vote, either directly or indirectly, sufficient securities to elect a majority of the board of directors or similar governing body.

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

“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 or any 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.

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



“Technology” shall mean all technology, hardware, computers, servers, workstations, routers, hubs, switches, data communication lines, network and telecommunications equipment, Internet-related information technology infrastructure, and other information technology equipment, in each case, other than Software.

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

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

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

“Transferred Entities” shall mean the entities set forth on Schedule 1.8.

“Transition Period” shall have the meaning set forth in Section 8.2.

“Transition Services Agreement” shall mean the Transition Services Agreement to be entered into by and between Parent and SpinCo or any 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.

“Tunnel” shall have the meaning set forth in Section 5.5.

“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 or a wholly owned Subsidiary of 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. 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, 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 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 prejudice to any actions taken to implement, or documents entered into between or among any of the Parties or members of their respective Groups to implement, or in furtherance of, the Plan of Reorganization prior to the date hereof, (i) each Party shall execute and deliver, and shall cause the applicable members of its Group to execute and deliver, to the other Party, such bills of sale, quitclaim deeds, stock powers, certificates of title, assignments of contracts and other instruments of transfer, conveyance and assignment as and to the extent necessary to evidence the transfer, conveyance and assignment of all of such Party's and the applicable members of its Group's right, title and interest in and to such Assets to the other Party and the applicable members of its Group in accordance with Section 2.1(a), and (ii) each Party shall execute and deliver, and shall cause the applicable members of its Group to execute and deliver, to the other Party, such assumptions of contracts and other instruments of assumption as and to the extent necessary to evidence the valid and effective assumption of the Liabilities by such Party and the applicable members of its Group in accordance with Section 2.1(a). All of the foregoing documents contemplated by this Section 2.1(b) (including any documents entered into between or among any of the Parties or members of their respective Groups to implement or in furtherance of the Plan of Reorganization prior to the date hereof) shall be referred to collectively herein as the "Transfer Documents."

(c) *Misallocations.* In the event that at any time or from time to time (whether prior to, at or after the Effective Time), one Party (or any member of such Party's Group) shall receive or otherwise possess any Asset that is allocated to the other Party (or any member of such Party's Group) pursuant to this Agreement or any Ancillary Agreement, such Party shall promptly transfer, or cause to be transferred, such Asset to the Party so entitled thereto (or to any member of such Party's Group), and such Party (or member of such Party's Group) so entitled thereto shall accept such Asset. Prior to any such transfer, the Person receiving or possessing such Asset shall hold such Asset in trust for such other Person. In the event that at any time or from time to time (whether prior to, at or after the Effective Time), one Party hereto (or any member of such Party's Group) shall receive or otherwise assume any Liability that is allocated to the other Party (or any member of such Party's Group) pursuant to this Agreement or any Ancillary Agreement, such other Party shall promptly transfer, or cause to be transferred, such Liability to the Party responsible therefor (or to any member of such Party's Group), and such Party (or member of such Party's Group) shall accept, assume and agree to faithfully perform such Liability in accordance with this Agreement.

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

## 2.2 SpinCo Assets; Parent Assets.

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

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

(ii) 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) 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 consolidated 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) all SpinCo Intellectual Property, SpinCo Software and SpinCo Technology 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 (collectively, the “SpinCo IP/IT”);

(vii) 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;

(viii) all Assets of either Party or any of the members of its Group as of the Effective Time that are primarily related to the SpinCo Business to the extent not already included in subsections (i)-(vii) and (ix)-(x) of this subsection;

(ix) 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 that is primarily 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 that is related to, but not primarily related to, the SpinCo Assets, the SpinCo Liabilities, the SpinCo Business or the Transferred Entities; and

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

Notwithstanding the foregoing, the SpinCo Assets shall not in any event include any Asset referred to in clauses (i) through (vi) 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 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 MDU Name and MDU Marks and Intellectual Property set forth on Schedule 2.2(b)(iii), and (y) all Intellectual Property, Software and Technology 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 IP/IT);

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

(v) all cash and cash equivalents of either Party or any of the members of its Group as of the Effective Time; and

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

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

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

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

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

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

provided that, notwithstanding the foregoing, the Parties agree that the Liabilities set forth on Schedule 2.3(b) and any Liabilities of any member of the Parent Group pursuant to the Ancillary Agreements shall not be SpinCo Liabilities but instead shall be Parent Liabilities.

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

#### 2.4 Approvals and Notifications.

(a) *Approvals and Notifications for SpinCo Assets and Liabilities.* To the extent that the transfer or assignment of any SpinCo Asset, the assumption of any SpinCo Liability, the Separation, or the Distribution requires any Approvals or Notifications, the Parties shall use their 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 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 (and from any earlier time provided for in a Transfer Document until 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 to the transfer or assignment of any Delayed SpinCo Asset or the assumption of any Delayed SpinCo Liability have been removed, the transfer or assignment of the applicable Delayed SpinCo Asset or the assumption of the applicable Delayed SpinCo Liability, as the case may be, shall be effected in accordance with the terms of this Agreement and/or the applicable Ancillary Agreement.

(e) *Costs for Delayed SpinCo Assets and Delayed SpinCo Liabilities.* Any member of the Parent Group retaining a Delayed SpinCo Asset or Delayed SpinCo Liability due to the deferral of the transfer or assignment of such Delayed SpinCo Asset or the deferral of the assumption of such Delayed SpinCo Liability, as the case may be, shall not be obligated, in connection with the foregoing, to expend any money, unless the necessary funds are advanced (or otherwise made available) by SpinCo or the member of the SpinCo Group entitled to the Delayed SpinCo Asset or Delayed SpinCo Liability, other than reasonable out-of-pocket expenses, attorneys’ fees and recording or similar fees, all of which shall be promptly reimbursed by SpinCo or the member of the SpinCo Group entitled to such Delayed SpinCo Asset or Delayed SpinCo Liability; provided, however, that the Parent Group shall not knowingly allow the loss or diminution of value of any Delayed SpinCo Asset without first providing the SpinCo Group commercially reasonable notice of such potential loss or diminution in value and affording the SpinCo Group a commercially reasonable opportunity to take action to prevent such loss or diminution in value.



(f) Parent and SpinCo shall, and shall cause their Affiliates to, (i) for all U.S. federal (and applicable state, local and foreign) income Tax purposes, treat any SpinCo Asset, SpinCo Liability, Delayed SpinCo Asset, Delayed SpinCo Liability, Delayed Parent Asset or Delayed Parent Liability transferred, assigned or assumed after the Effective Time as having been so transferred, assigned or assumed at the time at which it was intended to have been so transferred, assigned or assumed as reflected in this Agreement (including the Plan of Reorganization); and (ii) file all Tax Returns in a manner consistent with such treatment and not take any Tax position inconsistent therewith, except to the extent otherwise required pursuant to Law, as determined by Parent in its reasonable discretion.

(g) *Approvals and Notifications for Parent Assets.* 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 their 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 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.

(h) *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.

(i) *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(h) 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 as contemplated hereby 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 (and from any earlier time provided for in a Transfer Document until the Effective Time) to the Parent Group.

(j) *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 to 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.

(k) *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; provided, however, that the SpinCo Group shall not knowingly allow the loss or diminution in value of any Delayed Parent Asset without first providing the Parent Group commercially reasonable notice of such potential loss or diminution in value and affording the Parent Group commercially reasonable opportunity to take action to prevent such loss or diminution in value.

#### 2.5 Novation of Liabilities.

(a) *Novation of SpinCo Liabilities.*

(i) Except as set forth in Schedule 2.5(a), each of Parent and SpinCo, at the request of the other, shall use its 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 its 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 its 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 its 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 (or shall cause a member of the SpinCo Group to) execute a guarantee agreement 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 (or any member of the SpinCo Group) would be reasonably unable to comply or (y) which SpinCo (or any member of the SpinCo Group) would not reasonably be able to avoid breaching; and

(ii) any member of the SpinCo Group, Parent shall (or shall cause a member of the Parent Group to) execute a guarantee agreement 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 (or any member of the Parent Group) would be reasonably unable to comply or (y) which Parent (or any member of the Parent Group) would not reasonably be able to avoid breaching.

(c) If Parent or SpinCo is unable to obtain, or to cause to be obtained, any such required removal or release as set forth in clauses (a) and (b) of this Section 2.6, (i) the Party or the relevant member of its Group that has assumed the Liability with respect to such 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 their respective 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; (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); (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 shall be disregarded for purposes of determining whether a Subsidiary is wholly owned); and (vi) any Shared Contracts.

(c) All of the intercompany accounts receivable and accounts payable (except for intercompany accounts arising under the Ancillary Agreements) between any member of the Parent Group, on the one hand, and any member of the SpinCo Group, on the other hand, shall, prior to the Effective Time, be repaid, settled or otherwise eliminated by means of cash payments, a dividend, capital contribution, a combination of the foregoing, or otherwise as determined by Parent in its sole and absolute discretion. Any such intercompany accounts that are settled after the Effective Time, but in connection with the Separation and the Distribution shall be deemed for purposes of this Agreement to have been settled as of immediately prior to 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 or the benefits of any contract, agreement, arrangement, commitment or understanding described in this Section 2.8 are expressly conveyed to the applicable Party pursuant to this Agreement or an Ancillary Agreement, any contract or agreement, a portion of which is a SpinCo Contract, but the remainder of which is a Parent Asset (any such contract or agreement, a “Shared Contract”), shall be assigned in relevant part to the applicable member(s) of the applicable Group, if so assignable, or appropriately amended prior to, on or after the Effective Time, so that each Party or the member of its Group shall, as of the Effective Time, be entitled to the rights and benefits, and shall assume the related portion of any Liabilities, inuring to its respective businesses; provided, however, that (i) 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 which 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 (ii) 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) Except as otherwise required by applicable Law, as determined by Parent in its reasonable discretion, each of Parent and SpinCo shall, and shall cause the members of its Group to, (i) treat for all Tax purposes the portion of each Shared Contract inuring to its respective businesses as an Asset owned by, and/or a Liability of, as applicable, such Party, or the members of its Group, as applicable, not later than the Effective Time (or such earlier time as provided under a Transfer Document), and (ii) neither report nor take any Tax position (on a Tax Return or otherwise) inconsistent with such treatment.

(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) 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, credits, returns or rebates received after the Effective Time by either Party (or member of its Group) that relate to a business, Asset or Liability of the other Party (or member of its Group), shall be held by such Party in trust for the use and benefit of the Party entitled thereto and, promptly following receipt by such Party of any such payment or reimbursement, credit, return or rebate 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, credit, return or rebate without right of set-off.

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 SETOFF OR FREEDOM FROM COUNTERCLAIM WITH RESPECT TO ANY CLAIM OR OTHER ASSET, INCLUDING ANY ACCOUNTS RECEIVABLE, OF ANY PARTY, OR (E) THE LEGAL SUFFICIENCY OF ANY ASSIGNMENT, DOCUMENT OR INSTRUMENT DELIVERED HEREUNDER TO CONVEY TITLE TO ANY ASSET OR THING OF VALUE UPON THE EXECUTION, DELIVERY AND FILING HEREOF OR THEREOF. EXCEPT AS MAY EXPRESSLY BE SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT, ALL SUCH ASSETS ARE BEING TRANSFERRED ON AN “AS IS,” “WHERE IS” BASIS (AND, IN THE CASE OF ANY REAL PROPERTY, BY MEANS OF A QUITCLAIM OR SIMILAR FORM OF DEED OR CONVEYANCE) AND THE RESPECTIVE TRANSFEREES SHALL BEAR THE ECONOMIC AND LEGAL RISKS THAT (I) ANY CONVEYANCE WILL PROVE TO BE INSUFFICIENT TO VEST IN THE TRANSFEREE GOOD AND MARKETABLE TITLE, FREE AND CLEAR OF ANY SECURITY INTEREST, AND (II) ANY NECESSARY APPROVALS OR NOTIFICATIONS ARE NOT OBTAINED OR MADE OR THAT ANY REQUIREMENTS OF LAWS OR JUDGMENTS ARE NOT COMPLIED WITH.

2.12 SpinCo Financing Arrangements: SpinCo Debt Incurrence.

(a) Prior to the Effective Time, and in accordance with the Plan of Reorganization, (i) SpinCo and/or other members of the SpinCo Group will enter into one or more financing arrangements and agreements (the “SpinCo Financing Arrangements”), pursuant to which it shall borrow prior to the Effective Time a principal amount of not less than \$890 million (the “SpinCo Debt”) and (ii) the proceeds of the SpinCo Debt shall be transferred as provided in the Plan of Reorganization (“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 to 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 Subsidiary. 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"), Parent, on or before the date that is ten (10) days prior to the latest date on which SpinCo may file the periodic report pursuant to Section 13 of the Exchange Act for any such Straddle Period (not taking into account any possible extensions), 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 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) 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, other than any such individuals who shall have been determined to remain members of the Parent Board; and (iii) SpinCo shall have such other officers as SpinCo shall appoint.

(d) *NYSE Listing.* SpinCo shall prepare and file, and shall use its reasonable 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 its reasonable best efforts to obtain all necessary approvals from the SEC with respect thereto as soon as practicable. Parent and SpinCo shall take all such action as may be necessary or appropriate under the securities or blue sky Laws of the United States (and any comparable Laws under any foreign jurisdiction) in connection with the Distribution.

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

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

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

(i) *Name Change.* SpinCo shall take all actions necessary such that following the Distribution, SpinCo will change its name to Knife River Corporation.

### 3.3 Conditions to the Distribution.

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

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

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

(iii) Parent shall have received the IRS Ruling, satisfactory to the Parent Board, regarding certain U.S. federal income tax matters, and such IRS Ruling shall not have been revoked or modified in any material respect;

(iv) Parent shall have received one or more opinions from its tax advisors in connection with the transactions contemplated by this Agreement, in each case satisfactory to the Parent Board, regarding certain U.S. federal income tax matters;

(v) 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 prior to the Distribution and of Parent and SpinCo 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;

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

(vii) 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;

(viii) The actions and filings necessary or appropriate with respect to applicable state insurance and residential service contract regulators, shall have been taken or made, and, where applicable, have become effective or been accepted by the applicable Governmental Authority;

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

(x) 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;

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

(xii) One or more members of the Parent Group 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

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

(b) The foregoing conditions are for the sole benefit of Parent and shall not give rise to or create any duty on the part of Parent or the Parent Board to waive or not waive any such condition or in any way limit Parent's right to terminate this Agreement as set forth in Article IX or alter the consequences of any such termination from those specified in Article IX. Any determination made by the Parent Board prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in Section 3.3(a) shall be conclusive and binding on the Parties. If Parent waives any material condition, it shall promptly issue a press release disclosing such fact and file a Current Report on Form 8-K with the SEC describing such waiver.

#### 3.4 The Distribution.

(a) Subject to Section 3.3, on or prior to the Effective Time, SpinCo shall 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 shall 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, rounded down to the nearest whole number.

(c) No fractional shares shall be distributed or credited to book-entry accounts in connection with the Distribution, and any such fractional share interests to which a Record Holder would otherwise be entitled shall not entitle such Record Holder to vote or to any other rights as a stockholder of SpinCo. In lieu of retaining any such fractional shares, each Record Holder who, but for the provisions of this Section 3.4(c), would be entitled to a fractional share interest of a SpinCo Share pursuant to the Distribution, shall be paid cash, without any interest thereon, as hereinafter provided. As soon as practicable after the Effective Time, Parent shall direct the Distribution Agent to determine the number of whole and fractional SpinCo Shares allocable to each Record Holder, to aggregate all such fractional shares into whole shares, and to sell the whole shares obtained thereby in the open market at the then-prevailing prices on behalf of each Record Holder who otherwise would be entitled to fractional share interests (with the Distribution Agent, in its sole and absolute discretion, determining when, how and through which broker-dealer and at what price to make such sales), and to cause to be distributed to each such Record Holder, in lieu of any fractional share, such Record Holder's or owner's ratable share of the total proceeds of such sale, after deducting any Taxes required to be withheld and applicable transfer Taxes, and after deducting the costs and expenses of such sale and distribution, including brokers fees and commissions. None of Parent, SpinCo or the Distribution Agent will be required to guarantee any minimum sale price for the fractional SpinCo Shares sold in accordance with this Section 3.4(c). Neither Parent nor SpinCo will be required to pay any interest on the proceeds from the sale of fractional shares. Neither the Distribution Agent nor the broker-dealers through which the aggregated fractional shares are sold shall be Affiliates of Parent or SpinCo. Solely for purposes of computing fractional share interests pursuant to this Section 3.4(c) and Section 3.4(d), the beneficial owner of Parent Shares held of record in the name of a nominee in any nominee account shall be treated as the Record Holder with respect to such shares.

(d) Any SpinCo Shares or cash in lieu of fractional shares with respect to 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 and cash for the account of such Record Holder, and the Parties agree that all obligations to provide such SpinCo Shares and cash, if any, in lieu of fractional share interests 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 shall 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 shall be entitled, without any action on the part of such holder, to receive evidence of ownership of the SpinCo Shares then held by such holder.

ARTICLE IV  
MUTUAL RELEASES; INDEMNIFICATION

4.1 Release of Pre-Distribution Claims.

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

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

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

(i) any Liability provided in or resulting from any agreement among any members of the Parent Group or any members of the SpinCo Group that is specified in [Section 2.7\(b\)](#) or the applicable Schedules thereto as not to terminate as of the Effective Time, or any other Liability specified in [Section 2.7\(b\)](#) as not to terminate as of the Effective Time;

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

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

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

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

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

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

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

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

(a) any SpinCo Liability;

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

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

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

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

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



(a) any Parent Liability;

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

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

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

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

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

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

(b) The Parties agree that an insurer that would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of any provision contained in this Agreement or any Ancillary Agreement, have any subrogation rights with respect thereto, it being understood that no insurer or any other Third Party shall be entitled to a “windfall” (i.e., a benefit they would not be entitled to receive in the absence of the indemnification provisions) by virtue of the indemnification and contribution provisions hereof. Each Party shall, and shall cause the members of its Group to, use commercially reasonable efforts (taking into account the probability of success on the merits and the cost of expending such efforts, including attorneys’ fees and expenses) to collect or recover any Insurance Proceeds that may be collectible or recoverable respecting the Liabilities for which indemnification or contribution may be available under this Article IV. Notwithstanding the foregoing, an Indemnifying Party may not delay making any indemnification payment required under the terms of this Agreement, or otherwise satisfying any indemnification obligation, pending the outcome of any Action to collect or recover Insurance Proceeds, and an Indemnitee need not attempt to collect any Insurance Proceeds prior to making a claim for indemnification or contribution or receiving any Indemnity Payment otherwise owed to it under this Agreement or any Ancillary Agreement.

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

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

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

(c) *No Settlement.* Neither Party may settle or compromise any Third-Party Claim for which either Party is seeking to be indemnified hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld, unless such settlement or compromise is solely for monetary damages that are fully payable by the settling or compromising Party, does not involve any admission, finding or determination of wrongdoing or violation of Law by the other Party and provides for a full, unconditional and irrevocable release of the other Party from all Liability in connection with the Third-Party Claim. The Parties hereby agree that if a Party delivers the other Party a written notice containing a proposal to settle or compromise a Third-Party Claim for which either Party is seeking to be indemnified hereunder and the Party receiving such proposal does not respond in any manner to the Party presenting such proposal within ten (10) business days (or within any such shorter time period that may be required by applicable Law or court order) of receipt of such proposal, then the Party receiving such proposal shall be deemed to have consented to the terms of such proposal.

#### 4.6 Additional Matters.

(a) *Timing of Payments.* Indemnification or contribution payments in respect of any Liabilities for which an Indemnitee is entitled to indemnification or contribution under this Article IV shall be paid reasonably promptly (but in any event within thirty (30) days of the final determination of the amount that the Indemnitee is entitled to indemnification or contribution under this Article IV) by the Indemnifying Party to the Indemnitee as such Liabilities are incurred upon demand by the Indemnitee, 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 Indemnitee and (ii) the knowledge by the Indemnitee 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 Indemnitee to the applicable Indemnifying Party; provided that the failure by an Indemnitee to so assert any such claim shall not prejudice the ability of the Indemnitee to do so at a later time, except to the extent (if any) that the Indemnifying Party is actually prejudiced thereby. Such Indemnifying Party shall have a period of thirty (30) days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such thirty (30)-day period, such specified claim shall be conclusively deemed a Liability of the Indemnifying Party under this Section 4.6(b) or, in the case of any written notice in which the amount of the claim (or any portion thereof) is estimated, on such later date when the amount of the claim (or such portion thereof) becomes finally determined. If such Indemnifying Party does not respond within such thirty (30)-day period or rejects such claim in whole or in part, such Indemnitee 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 its commercially reasonable efforts to cooperate with the incurring Party, at the incurring Party's expense, to permit the incurring Party to obtain the benefits of such legal or equitable remedy against the Third Party.

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

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

#### 4.7 Right of Contribution.

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

(b) Allocation of Relative Fault. Solely for purposes of determining relative fault pursuant to this Section 4.7: (i) any fault associated with the business conducted with the Delayed SpinCo Assets or Delayed SpinCo Liabilities (except for the gross negligence or intentional misconduct of a member of the Parent Group) or with the ownership, operation or activities of the SpinCo Business prior to the Effective Time shall be deemed to be the fault of SpinCo and the other members of the SpinCo Group, and no such fault shall be deemed to be the fault of Parent or any other member of the Parent Group; (ii) any fault associated with the business conducted with Delayed Parent Assets or Delayed Parent Liabilities (except for the gross negligence or intentional misconduct of a member of the SpinCo Group) shall be deemed to be the fault of Parent and the other members of the Parent Group, and no such fault shall be deemed to be the fault of SpinCo or any other member of the SpinCo Group; and (iii) any fault associated with the ownership, operation or activities of the Parent Business prior to the Effective Time shall be deemed to be the fault of Parent and the other members of the Parent Group, and no such fault shall be deemed to be the fault of SpinCo or any other member of the SpinCo Group.

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

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

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

4.11 Tax Matters Agreement Coordination. The above provisions of Section 4.2 through Section 4.10 shall not apply to Taxes. 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.

ARTICLE V  
CERTAIN OTHER MATTERS

5.1 Insurance Matters.

(a) Parent and SpinCo agree to cooperate in good faith to provide for an orderly transition of insurance coverage from the date hereof through the Effective Time. In no event shall Parent, any other member of the Parent Group or any Parent Indemnitee have Liability or obligation whatsoever to any member of the SpinCo Group in the event that any (i) insurance policy or insurance 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 be cancelled, not renewed or not extended beyond the current expiration date or (ii) any insurer declines, denies, delays or obstructs any claim payment.

(b) Except with respect to the policies provided on Schedule 5.1(b) (collectively, the “Covered Policies”), from and after the Effective Time, SpinCo, any member of the SpinCo Group or any of their respective employees (including former or inactive employees) shall cease to be insured by, shall have no access or availability to or under, shall not be entitled to make claims on or under and shall not be entitled to claim benefits from or seek coverage under, and shall not have any rights to or under, any of Parent’s or any member of the Parent Group’s insurance policies or any of their respective self-insured programs in place immediately prior to the Effective Time. Solely with respect to the Covered Policies, 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, Parent will provide SpinCo with access to, and SpinCo may make claims under, the Covered Policies in place immediately prior to the Effective Time, but solely to the extent that such policies provided coverage for members of the SpinCo Group or the SpinCo Business prior to the Effective Time; provided that such access to, and the right to make claims under, such insurance policies, shall be subject to the terms, conditions and exclusions of such insurance 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 notify Parent, as promptly as practicable, of any incident, circumstance or occurrence that may lead to a claim made by SpinCo pursuant to this Section 5.1(b);

(ii) SpinCo shall reimburse Parent and the members of the Parent Group for all claim-related payments made by Parent or any member of the Parent Group on or after the Effective Time that arise from claims made by SpinCo, any member of the SpinCo Group, any of their respective employees or any Third Party under Parent’s or any member of the Parent Group’s self-insured, large deductible, or fronted insurance programs for occurrences prior to the Effective Time, including reasonable overhead, claim handling and administrative costs, taxes, surcharges, state assessments and other related costs. SpinCo and the members of the SpinCo Group shall indemnify, hold harmless and reimburse Parent and the members of the Parent Group for any deductibles, self-insured retention, retrospective premium payments, fees, indemnity payments, settlements, judgments, legal fees, allocated claims expenses and claim handling fees and other expenses incurred by Parent or any member of the Parent Group to the extent resulting from any access to, or any claims made by SpinCo or any other members of the SpinCo Group under, any of Parent’s or a member of the Parent Group’s insurance policies provided pursuant to this Section 5.1(b), whether such claims are made by SpinCo, its employees or Third Parties;

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

(iv) SpinCo shall exclusively bear (and neither Parent nor any members of the Parent Group shall have any obligation to repay or reimburse SpinCo or any member of the SpinCo Group for) and shall be liable for all excluded, uninsured, uncovered, unavailable or uncollectible amounts (including where any insurer declines, denies, delays or obstructs any claim payment) of all such claims made for the benefit of SpinCo or any member of the SpinCo Group under the policies as provided for in this Section 5.1(b). Where a policy includes a reinstatement of limits, in the event an insurance 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 Parent Group or the SpinCo 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, a Party may elect not to reinstate the policy aggregate even if available. In the event that a Party elects not to reinstate the policy aggregate, it shall provide prompt written notice to the other Party and shall have no rights to claim against or have any benefit from the reinstated limits. A Party which elects to reinstate the policy aggregate shall be responsible for all reinstatement premiums and other costs associated with such reinstatement to the extent such Party has received notice from the other Party that such other Party does not elect to reinstate the limits.

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 SpinCo's third-party insurance policies, the same process pursuant to this Section 5.1(b) shall apply, substituting "Parent" for "SpinCo" and "SpinCo" for "Parent," including for purposes of the first sentence of Section 5.1(e).

(c) At the Effective Time, SpinCo shall have in effect all insurance programs required to comply with SpinCo's contractual obligations and such other Policies required by Law or as reasonably necessary or appropriate for companies operating a business similar to SpinCo's.



(d) Neither SpinCo nor any member of the SpinCo Group, in connection with making a claim under any insurance policy of Parent or any member of the Parent Group pursuant to this Section 5.1, shall take any action that would be reasonably likely to (i) have a materially 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 materially reducing coverage, or materially increasing the amount of any premium owed by Parent or any member of the Parent Group under the applicable insurance policy; or (iii) otherwise compromise, jeopardize or interfere in any material respect with the rights of Parent or any member of the Parent Group under the applicable insurance policy; provided that SpinCo's, any member of the SpinCo Group's, any of their respective employees' or any Third Party's making of a claim pursuant to Section 5.1(b)(ii) shall not be deemed to be an action that triggers the foregoing clauses (i), (ii) or (iii).

(e) Any payments, costs, adjustments or reimbursements to be paid by SpinCo pursuant to this Section 5.1 shall be billed quarterly and payable within thirty (30) days from receipt of an invoice from Parent. Parent shall retain the exclusive right to control its insurance policies and programs, including the right to exhaust, settle, release, commute, buy-back or otherwise resolve disputes with respect to any of its insurance policies and programs and to amend, modify or waive any rights under any such insurance policies and programs, notwithstanding whether any such 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 Parent's insurers with respect to any of Parent's insurance policies and programs, or amend, modify or waive any rights under any such insurance policies and programs. SpinCo shall cooperate with Parent and share such information as is reasonably necessary in order to permit Parent to manage and conduct its insurance matters as Parent deems appropriate. Each Party and any member of its applicable Group has the sole right to settle or otherwise resolve third-party claims made against it or any member of its applicable Group covered under an applicable insurance policy.

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

(g) SpinCo does hereby, for itself and each other member of the SpinCo Group, agree that no member of the Parent Group shall have any Liability whatsoever as a result of the insurance policies and practices of Parent and the members of the Parent Group as in effect at any time, including as a result of the level or scope of any such 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 forty-five (45) days of such bill, invoice or other demand) shall accrue interest at a rate per annum equal to the Prime Rate plus two percent (2%).

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

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

5.5 Treatment of Tunnel Space. Each of Parent and SpinCo, on behalf of itself and each member of its Group, hereby agrees to cooperate with the other Party, and each member of its Group, as applicable, in connection with the maintenance of and access to the underground tunnel (the "Tunnel") located underneath the properties located at 1200 W. Century Avenue and 1150 W. Century Avenue, Bismarck, ND 58503, in each case, in accordance with the principles set forth in Schedule 5.5.

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 which the requesting Party or its Group requests 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 obligation imposed by any Governmental Authority; provided, however, that, in the event that the Party to whom the request has been made determines that any such provision of information could be detrimental to the Party providing the information, violate any Law or agreement, or waive any privilege available under applicable Law, including any attorney-client privilege, then the Parties shall use commercially reasonable efforts to permit compliance with such obligations to the extent and in a manner that avoids any such harm or consequence. The Party providing information pursuant to this Section 6.1 shall only be obligated to provide such information in the form, condition and format in which it then exists, and in no event shall such Party be required to perform any improvement, modification, conversion, updating or reformatting of any such information, and nothing in this Section 6.1 shall expand the obligations of either Party under Section 6.4.

(b) Without limiting the generality of the foregoing, until the end of SpinCo'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 its 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.

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 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. 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 their 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 in substantial 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 that Parent notifies SpinCo in writing of any such change). Notwithstanding the foregoing, the Tax Matters Agreement will exclusively govern the retention of Tax-related records and the exchange of Tax-related information.

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, fraud or willful misconduct by the Party providing such information. Neither Party shall have any Liability to any other Party if any information is destroyed after commercially reasonable efforts by such Party to comply with the provisions of Section 6.4.

6.6 Other Agreements Providing for Exchange of Information.

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

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

6.7 Production of Witnesses; Records; Cooperation.

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

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

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

(d) Without limiting any provision of this Section 6.7, each of the Parties agrees to cooperate, and to cause each member of its respective Group to cooperate, with each other in the defense of any infringement or similar claim with respect to any Intellectual Property 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 of a Third Party in a manner that would hamper or undermine the defense of such infringement or similar claim.

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

#### 6.8 Privileged Matters.

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

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

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

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

(e) In the event of any Dispute between Parent and SpinCo, or any members of their respective Groups, either Party may waive a privilege in which the other Party or member of such other Party's Group has a shared privilege, without obtaining consent pursuant to Section 6.8(c); provided that the Parties intend such waiver of a shared privilege to be effective only as to the use of information with respect to the Action between the Parties and/or the applicable members of their respective Groups, and is not intended to operate as a waiver of the shared privilege with respect to any Third Party.

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

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

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

#### 6.9 Confidentiality.

(a) *Confidentiality*. Subject to [Section 6.10](#), and without prejudice to any longer period that may be provided for in any of the Ancillary Agreements from and after the Effective Time until the three (3)-year anniversary of the Effective Time, each of Parent and SpinCo, on behalf of itself and each member of its respective Group, agrees to hold, and to cause its respective Representatives to hold, in strict confidence, with at least the same degree of care that applies to Parent's confidential and proprietary information pursuant to policies in effect as of the Effective Time, all confidential and proprietary information concerning the other Party or any member of the other Party's Group or their respective businesses that is either in its possession (including confidential and proprietary information in its possession prior to the date hereof) or furnished by any such other Party or any member of such Party's Group or their respective Representatives at any time pursuant to this Agreement, any Ancillary Agreement or otherwise, and shall not use any such confidential and proprietary information other than for such purposes as shall be expressly permitted hereunder or thereunder, except, in each case, to the extent that such confidential and proprietary information has been (i) in the public domain or generally available to the public, other than as a result of a disclosure by such Party or any member of such Party's Group or any of their respective Representatives in violation of this Agreement, (ii) later lawfully acquired from other sources by such Party (or any member of such Party's Group), which sources are not themselves known by such Party (or any member of such Party's Group) to be bound by a confidentiality obligation or other contractual, legal or fiduciary obligation of confidentiality with respect to such confidential and proprietary information or (iii) independently developed or generated without reference to or use of any proprietary or confidential information of the other Party or any member of such Party's Group. Notwithstanding the foregoing three (3)-year period, Parent's and SpinCo's obligations with respect to confidential and proprietary information that constitutes trade secrets shall survive and continue for so long as such confidential and proprietary information retains its status as a trade secret. If any confidential and proprietary information of one Party or any member of its Group is disclosed to the other Party or any member of such other Party's Group in connection with providing services to such first Party or any member of such first Party's Group under this Agreement or any Ancillary Agreement, then such disclosed confidential and proprietary information shall be used only as required to perform such services.

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

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

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



ARTICLE VII  
DISPUTE RESOLUTION

7.1 Good Faith Officer Negotiation. Subject to Section 7.4, either Party seeking resolution of any dispute, controversy or claim arising out of or relating to this Agreement or any Ancillary Agreement (including regarding whether any Assets are SpinCo Assets, any Liabilities are SpinCo Liabilities or the validity, interpretation, breach or termination of this Agreement or any Ancillary Agreement) (a "Dispute"), shall provide written notice thereof to the other Party (the "Negotiation Request"). As soon as reasonably practicable following receipt of a Negotiation Request, 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 Parties are unable for any reason to resolve a Dispute within thirty (30) days of receipt of the Negotiation Request, and such thirty (30)-day period is not extended by mutual written consent of the Parties, the Dispute shall be submitted to mediation in accordance with Section 7.2.

7.2 Mediation. Any Dispute that is not resolved pursuant to Section 7.1 shall, at the written request of a Party (a "Mediation Request"), be submitted to nonbinding mediation in accordance with the then current mediation procedure (the "Mediation Procedure") of the International Institute for Conflict Prevention and Resolution (the "CPR"), except as modified herein. The mediation shall be held in Bismarck, North Dakota or such other place as the Parties may mutually agree in writing. The Parties shall have twenty (20) days from receipt by a Party of a Mediation Request to agree on a mediator. If no mediator has been agreed upon by the Parties within twenty (20) days of receipt by a party of a Mediation Request, then a Party may request (on written notice to the other Party), that CPR appoint a mediator in accordance with the Mediation Procedure. All mediation pursuant to this clause shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence, and no oral or documentary representations made by the Parties during such mediation shall be admissible for any purpose in any subsequent proceedings. No Party shall disclose or permit the disclosure of any information about the evidence adduced or the documents produced by the other Party in the mediation proceedings or about the existence, contents or results of the mediation without the prior written consent of such other Party, except in the course of a judicial or regulatory proceeding or as may be required by Law or requested by a Governmental Authority or securities exchange. Before making any disclosure permitted by the preceding sentence, the Party intending to make such disclosure shall, to the extent reasonably practicable, give the other Party reasonable written notice of the intended disclosure and afford the other Party a reasonable opportunity to protect its interests. If the Dispute has not been resolved within sixty (60) days of the appointment of a mediator, or within ninety (90) days after receipt by a Party of a Mediation Request (whichever occurs sooner), or within such longer period as the Parties may agree to in writing, then the Dispute shall be submitted to binding arbitration in accordance with Section 7.3.

### 7.3 Arbitration.

(a) In the event that a Dispute has not been resolved within thirty (30) days of the appointment of a mediator in accordance with Section 7.2, or within ninety (90) days after receipt by a Party of a Mediation Request (whichever occurs sooner), or within such longer period as the Parties may agree to 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 in accordance with the then current CPR arbitration procedure (the "Arbitration Procedure"), except as modified herein. The arbitration shall be held in (i) Bismarck, North Dakota 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 million; or (y) by a panel of three (3) arbitrators if the amount in dispute, inclusive of all claims and counterclaims, totals \$10 million or more.

(b) The panel of three (3) arbitrators shall be chosen as follows: (i) within fifteen (15) days from the date of the receipt of the Arbitration Request, each Party shall name an arbitrator; and (ii) the two (2) Party-appointed arbitrators shall 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 shall 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 Arbitration Procedure. In the event that the two (2) Party-appointed arbitrators fail to appoint the third (3rd), then the third (3rd) independent arbitrator shall be appointed pursuant to the Arbitration Procedure. If the arbitration shall be before a sole independent arbitrator, then the sole independent arbitrator shall be appointed by agreement of the Parties within fifteen (15) days of 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 shall be appointed pursuant to the Arbitration Procedure.

(c) The arbitrator(s) shall 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) shall not award any relief not specifically requested by the Parties and, in any event, shall not award any indirect, punitive, exemplary, remote, speculative or similar damages in excess of compensatory damages of the other arising in connection with the transactions contemplated hereby (other than any such Liability with respect to a Third-Party Claim). Upon selection of the arbitrator(s) following any grant of interim relief by a special arbitrator or court pursuant to Section 7.4, the arbitrator(s) may affirm or disaffirm that relief, and the Parties shall seek modification or rescission of the order entered by the court as necessary to accord with the decision of the arbitrator(s). The award of the arbitrator(s) shall be final and binding on the Parties, and may be enforced in any court of competent jurisdiction. The initiation of arbitration pursuant to this Article VII shall toll the applicable statute of limitations for the duration of any such proceedings. Notwithstanding applicable state law, the arbitration and this agreement to arbitrate shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*

7.4 Litigation and Unilateral Commencement of Arbitration. Notwithstanding the foregoing provisions of this Article VII, (a) a Party may seek preliminary provisional or injunctive judicial relief with respect to a Dispute without first complying with the procedures set forth in Section 7.1, Section 7.2, and Section 7.3 if such action is reasonably necessary to avoid irreparable damage and (b) either Party may initiate arbitration before the expiration of the periods specified in Section 7.1, Section 7.2, and Section 7.3 if such Party has submitted a Mediation Request or an Arbitration Request, as applicable, and the other Party has failed, within the applicable periods set forth in Section 7.2 to agree upon a date for the first mediation session to take place within thirty (30) days after the appointment of such mediator or such longer period as the Parties may agree to in writing or (b) such Party has failed to comply with Section 7.3 in good faith with respect to the commencement and engagement in arbitration. In such event, the other Party may commence and prosecute such arbitration unilaterally in accordance with the Arbitration Procedure. In such event, the other Party may commence and prosecute such arbitration unilaterally in accordance with the Arbitration Procedure.

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.

ARTICLE VIII  
FURTHER ASSURANCES AND ADDITIONAL COVENANTS

8.1 Further Assurances.

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

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

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

**8.2 Use of the MDU Name and MDU Marks.** SpinCo undertakes to (and to cause the members of the SpinCo Group to) discontinue the use of the names “MDU Resources,” and “Building a Strong America” and the related trademark symbols as soon as reasonably practicable after the Effective Time, but in any case not longer than a two (2)-year period commencing on the Distribution Date; provided that the applicable two (2)-year period shall be extended if required by applicable regulatory requirements, but for no longer than the minimum period required by such regulatory requirements (the “Transition Period”). Notwithstanding the foregoing, effective as of the Effective Time, Parent, on behalf of itself and its Affiliates, hereby grants to the members of the SpinCo Group a non-exclusive, sublicenseable, worldwide and royalty-free license to use and have used the name “MDU Resources” and “Building a Strong America” and the related trademark symbols in legal entity names, for the sale of inventory (including both finished and unfinished inventory) containing such name or trademark applied to such products created and for the related regulatory registrations for such inventory: (a) prior to the Effective Time and (b) during the Transition Period; provided that SpinCo shall (and shall cause the members of the SpinCo Group and its sublicensees to) use such names or trademarks at a level of quality equivalent to that in effect as of the Effective Time.

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 (1) or more counterparts, all of which shall be considered one 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 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 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 of a Party 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:

MDU Resources Group, Inc.  
1200 West Century Avenue  
P.O. Box 5650  
Bismarck, North Dakota 58506  
Attention: Paul R. Sanderson, Vice President, Chief Legal Officer, and Secretary  
E-mail: paul.sanderson@mduresources.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Andrew R. Brownstein  
John L. Robinson  
E-mail: ARBrownstein@wlrk.com  
JLRobinson@wlrk.com

If to SpinCo, to:

Knife River Holding Company  
1150 West Century Avenue  
P.O. Box 5568  
Bismarck, North Dakota 58503  
Attention: Karl A. Liepitz, Vice President, Chief Legal Officer and Secretary  
E-mail: karl.liepitz@kniferiver.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Andrew R. Brownstein  
John L. Robinson  
E-mail: ARBrownstein@wlrk.com  
John L. Robinson

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 Information Statement, the Plan of Reorganization and the consummation of the transactions contemplated hereby and thereby will be borne by the Party or its applicable Subsidiary incurring such fees, costs or expenses. The Parties agree that certain specified costs and expenses shall be allocated between the Parties as set forth on Schedule 10.9.

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

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

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

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

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

10.15 Interpretation. In this Agreement and 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 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) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if”; (h) unless otherwise specified in a particular case, the word “days” refers to calendar days; (i) references to “business day” shall mean any day other than a Saturday, a Sunday or a day on which banking institutions are generally authorized or required by law to close in the United States or Bismarck, North Dakota; (j) 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 (k) 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 May 30, 2023.

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.

(a) 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.

(b) In the event of any conflict or inconsistency between, on the one hand, the terms of this Agreement and, on the other hand, the terms of the Ancillary Agreements (other than the Transfer Documents) (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. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Transfer Documents, the terms of this Agreement shall control to the extent of such conflict or inconsistency. 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.

MDU RESOURCES GROUP, INC.

By:           /s/ David L. Goodin            
Name: David L. Goodin  
Title: President and Chief Executive Officer

*[Signature Page to Separation and Distribution Agreement]*

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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.

KNIFE RIVER HOLDING COMPANY

By: /s/ Brian R. Gray  
Name: Brian R. Gray  
Title: President and Chief Executive Officer

*[Signature Page to Separation and Distribution Agreement]*

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**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
KNIFE RIVER HOLDING COMPANY**

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Knife River Holding Company (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, as it may be amended (the "DGCL"), hereby certifies as follows:

1. The name of this Corporation is Knife River Holding Company. The original Certificate of Incorporation was filed with the office of the Secretary of State of the State of Delaware on November 9, 2022.
2. A Certificate of Amendment to the original Certificate of Incorporation was filed with the office of the Secretary of State of the State of Delaware on May 5, 2023.
3. This Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors of the Corporation (the "Board of Directors") in accordance with the provisions of Sections 242 and 245 of the DGCL and by the written consent of its sole stockholder in accordance with Section 228 of the DGCL, and is to become effective as of 8:16 A.M., Eastern time, on June 1, 2023.
4. This Amended and Restated Certificate of Incorporation restates and amends the original Certificate of Incorporation to read in its entirety as follows:

ARTICLE 1  
NAME OF CORPORATION

The name of the Corporation is Knife River Corporation.

ARTICLE 2  
REGISTERED OFFICE; REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801. The name of the registered agent of the Corporation at such address is The Corporation Trust Company. The Corporation may have such other offices, either inside or outside of the State of Delaware, as the Board of Directors may designate or as the business of the Corporation may from time to time require.

ARTICLE 3  
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL.

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ARTICLE 4  
STOCK

Section 1. Authorized Stock. The total number of authorized shares of capital stock of the Corporation shall be 310 million (310,000,000) shares, consisting of (i) 300 million (300,000,000) shares of common stock, par value \$0.01 per share (the "Common Stock"), and (ii) 10 million (10,000,000) shares of preferred stock, par value \$0.01 per share (the "Preferred Stock").

Section 2. Common Stock. Except as otherwise provided by law, by this Amended and Restated Certificate of Incorporation, or by the resolution or resolutions adopted by the Board of Directors designating the rights, powers and preferences of any series of Preferred Stock, the holders of outstanding shares of Common Stock shall have the right to vote on all matters on which stockholders are entitled to vote, including the election of directors, to the exclusion of all other stockholders. Each holder of record of Common Stock shall be entitled to one (1) vote for each share of Common Stock standing in the name of the stockholder on the books of the Corporation.

Section 3. Preferred Stock. Shares of Preferred Stock may be authorized and issued in one (1) or more series. The Board of Directors (or any committee to which it may duly delegate the authority granted in this ARTICLE 4) is hereby empowered, by resolution or resolutions, to authorize the issuance from time to time of shares of Preferred Stock in one (1) or more series, for such consideration and for such corporate purposes as the Board of Directors (or such committee thereof) may from time to time determine, and by filing a certificate pursuant to applicable law of the State of Delaware as it presently exists or may hereafter be amended to establish from time to time for each such series the number of shares to be included in each such series and to fix the designations, powers, rights and preferences of the shares of each such series, and the qualifications, limitations and restrictions thereof to the fullest extent now or hereafter permitted by this Amended and Restated Certificate of Incorporation and the laws of the State of Delaware, including, without limitation, voting rights (if any), dividend rights, dissolution rights, conversion rights, exchange rights and redemption rights thereof, as shall be stated and expressed in a resolution or resolutions adopted by the Board of Directors (or such committee thereof) providing for the issuance of such series of Preferred Stock. Each series of Preferred Stock shall be distinctly designated. The authority of the Board of Directors with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

- (a) the designation of the series, which may be by distinguishing number, letter or title;
- (b) the number of shares of the series, which number the Board of Directors may thereafter (except where otherwise provided in the certificate of designations governing such series) increase or decrease (but not below the number of shares thereof then outstanding);
- (c) the amounts payable on, and the preferences, if any, of shares of the series in respect of dividends, and whether such dividends, if any, shall be cumulative or noncumulative;

- (d) the dates at which dividends, if any, shall be payable;
- (e) the redemption rights and price or prices, if any, for shares of the series;
- (f) the terms and amount of any sinking fund provided for purchase or redemption of shares of the series;
- (g) the amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;
- (h) whether shares of the series shall be convertible into or exchangeable for shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made;
- (i) the restrictions on the issuance of shares of the same series or of any other class or series; and
- (j) the voting rights, if any, of the holders of shares of the series.

ARTICLE 5  
TERM

The term of existence of the Corporation shall be perpetual.

ARTICLE 6  
BOARD OF DIRECTORS

Section 1. Number of Directors. Subject to any rights of the holders of any class or series of Preferred Stock, the number of directors which shall constitute the Board of Directors shall be fixed from time to time exclusively pursuant to a resolution adopted by the affirmative vote of a majority of the total number of directors that the Corporation would have if there were no vacancies (the "Whole Board").

Section 2. Classes of Directors. Subject to the rights of the holders of any series of Preferred Stock provided for or fixed pursuant to this Amended and Restated Certificate of Incorporation (the "Preferred Stock Directors"), the Board of Directors shall be divided, with respect to the time for which they severally hold office, into three (3) classes, designated Class I, Class II and Class III, as nearly equal in number as reasonably possible. The first (1<sup>st</sup>) term of office for the Class I directors shall expire at the 2024 annual meeting of stockholders. The first (1<sup>st</sup>) term of office for the Class II directors shall expire at the 2025 annual meeting of stockholders. The first (1<sup>st</sup>) term of office for the Class III directors shall expire at the 2026 annual meeting of stockholders. At the 2024 annual meeting of stockholders, the Class I directors shall be elected for a term of office to expire at the 2027 annual meeting of stockholders. At the 2025 annual meeting of stockholders, the Class II directors shall be elected for a term of office to expire at the 2027 annual meeting of stockholders. At the 2026 annual meeting of stockholders, the Class III directors shall be elected for a term of office to expire at the 2027 annual meeting of stockholders. Commencing at the 2027 annual meeting of stockholders and at all subsequent annual meetings of stockholders, the Board of Directors will no longer be classified under Section 141(d) of the DGCL, and all directors shall be elected for a term of office to expire at the next succeeding annual meeting of stockholders. Prior to the 2027 annual meeting of stockholders, in case of any increase or decrease, from time to time, in the number of directors (other than the Preferred Stock Directors), the number of directors in each class shall be apportioned as nearly equal in number as reasonably possible. The Board of Directors is authorized to assign members of the Board of Directors already in office to Class I, Class II or Class III, with such assignment becoming effective as of the time at which the initial classification of the Board of Directors becomes effective. Unless and except to the extent that the Amended and Restated Bylaws of the Corporation (as may hereafter be amended, the "Bylaws") shall so require, the election of directors of the Corporation need not be by written ballot. Advance notice of stockholder nominations for the election of directors shall be given in the manner and to the extent provided in the Bylaws.



Section 3. Newly Created Directorships and Vacancies. Subject to applicable law and the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, and unless the Board of Directors otherwise determines, vacancies resulting from death, resignation, retirement, disqualification, removal from office or other cause, and newly created directorships resulting from any increase in the authorized number of directors, may be filled only by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors, or by a sole remaining director, and directors so chosen shall hold office until the next election of the class, if any, for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified or until any such director's earlier death, resignation, removal, retirement or disqualification. Notwithstanding the foregoing, from and after the 2027 annual meeting of stockholders, any director so chosen shall hold office until the next election of directors and until his or her successor shall have been duly elected and qualified or until any such director's earlier death, resignation, removal, retirement or disqualification. No decrease in the number of authorized directors constituting the Whole Board shall shorten the term of any incumbent director.

Section 4. Removal of Directors. Subject to the rights of the holders of any series of Preferred Stock, any director(s) of the Corporation may be removed from office at any time by the affirmative vote of the holders of at least a majority of the voting power of all outstanding shares of Common Stock entitled to vote generally in the election of directors, voting together as a single class (the "Voting Stock") (a) until the 2027 annual meeting of stockholders or such other time as the Board of Directors is no longer classified under Section 141(d) of the DGCL, only for cause by the affirmative vote of the holders of a majority of the Voting Stock and (b) from and including the 2027 annual meeting of stockholders or such other time as the Board of Directors is no longer classified under Section 141(d) of the DGCL, with or without cause, by the affirmative vote of the holders of a majority of the Voting Stock.

Section 5. Rights of Holders of Preferred Stock. Notwithstanding the provisions of this ARTICLE 6, whenever the holders of one (1) or more series of Preferred Stock issued by the Corporation shall have the right, voting separately or together by series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorship shall be governed by the rights of such Preferred Stock as set forth in the certificate of designations governing such series.

Section 6. No Cumulative Voting. Except as may otherwise be set forth in the resolution or resolutions of the Board of Directors providing the issuance of a series of Preferred Stock, and then only with respect to such series of Preferred Stock, cumulative voting in the election of directors is specifically denied.

ARTICLE 7  
STOCKHOLDER ACTION

Section 1. No Stockholder Action by Written Consent. Subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

Section 2. Special Meetings of Stockholders. Subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, special meetings of stockholders may only be called by or at the direction of (1) the Chair of the Board of Directors, (2) the Lead Independent Director (if one has been appointed) or (3) the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board. At any special meeting of stockholders, only such business shall be conducted or considered as shall have been properly brought before the meeting pursuant to the Corporation's notice of meeting.

ARTICLE 8  
DIRECTOR AND OFFICER LIABILITY

To the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended, no director or officer of the Corporation will be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director or officer; provided, however, that the foregoing provisions will not eliminate or limit the liability of (a) a director or officer for any breach of that director's or officer's duty of loyalty to the Corporation or its stockholders, (b) a director or officer for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) a director under Section 174 of the DGCL, as the same exists or as that provision hereafter may be amended, supplemented or replaced, (d) a director or officer for any transactions from which that director or officer derived an improper personal benefit or (e) an officer in any action by or in the right of the Corporation. If the DGCL is amended after the filing of this Amended and Restated Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation, in addition to the limitation on personal liability provided herein, will be limited to the fullest extent permitted by that law, as so amended. Any repeal or modification of this ARTICLE 8 by the stockholders of the Corporation will be prospective only and will not adversely affect any limitation on the personal liability of a director or officer of the Corporation existing at the time of that repeal or modification.

ARTICLE 9  
INDEMNIFICATION

The Corporation shall indemnify its directors and officers against all expense, liability and loss reasonably incurred or suffered by such persons in connection with their service as a director or officer, as applicable, of the Corporation, or their service at the request of the Corporation as a director, officer, employee or agent of another corporation or other enterprise, to the fullest extent authorized or permitted by the DGCL as the same exists or may hereafter be amended or modified from time to time (but, in the case of any such amendment or modification, only to the extent that such amendment or modification permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment or modification), and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board. The right to indemnification conferred by this ARTICLE 9 shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition; provided, however, that if the DGCL requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this ARTICLE 9 or otherwise.

The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to employees, and agents of the Corporation similar to those conferred in this ARTICLE 9 to directors and officers of the Corporation.

The rights to indemnification and to the advancement of expenses conferred in this ARTICLE 9 shall not be exclusive of any other right which any person may have or hereafter acquire under this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation, any statute, agreement, vote of stockholders or disinterested directors or otherwise.

Any repeal of this ARTICLE 9 by the stockholders of the Corporation shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification

ARTICLE 10  
AMENDMENTS

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by the DGCL, and all rights herein are granted subject to this reservation. Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding that a lesser percentage or separate class vote may be specified by applicable law or otherwise, no provision of ARTICLE 6, ARTICLE 7 and this ARTICLE 10 may be amended, altered or repealed in any respect, nor may any provision or bylaw inconsistent therewith be adopted, unless in addition to any other vote required by this Amended and Restated Certificate of Incorporation, any Preferred Stock Certificate of Designation or otherwise required by law, an amendment, alteration or repeal of ARTICLE 6, ARTICLE 7 and this ARTICLE 10 is approved at a meeting of the stockholders called for that purpose by, in addition to any other vote required by law or otherwise, the affirmative vote of the holders of at least two-thirds (66⅔%) of the voting power of all outstanding shares of capital stock then entitled to vote generally in the election of directors, voting together as a single class.

In furtherance and not in limitation of the powers conferred by applicable law, the Board of Directors is expressly authorized to adopt, amend, alter or repeal the Bylaws of the Corporation, without the assent or vote of stockholders of the Corporation. Any amendment, alteration or repeal of the Bylaws of the Corporation by the Board of Directors shall require the affirmative vote of at least a majority of the directors then in office. In addition to any other vote otherwise required by law, the stockholders of the Corporation may amend, alter or repeal the Bylaws of the Corporation, provided that any such action will require the affirmative vote of the holders of at least two-thirds (66 $\frac{2}{3}$ %) of the voting power of all outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class.

IN WITNESS WHEREOF, the undersigned has duly executed this Amended and Restated Certificate of Incorporation, this 1<sup>st</sup> day of June, 2023.

By: /s/ Brian R. Gray

Name: Brian R. Gray

Title: President and Chief Executive Officer

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**AMENDED AND RESTATED  
BYLAWS  
OF  
KNIFE RIVER CORPORATION**

These Amended and Restated Bylaws (these “Bylaws”) of Knife River Corporation, a Delaware corporation (the “Corporation”), are effective as of June 1, 2023 and hereby amend and restate the previous bylaws of the Corporation in its entirety:

ARTICLE 1  
OFFICES AND RECORDS

Section 1. Offices. The address of the registered office of the Corporation in the State of Delaware shall be as stated from time to time in the Amended and Restated Certificate of Incorporation of the Corporation (as the same may be amended from time to time, the “Certificate of Incorporation”). The Corporation may have such other offices, either inside or outside of the State of Delaware, as the Board of Directors may designate or as the business of the Corporation may from time to time require.

Section 2. Books and Records. The books and records of the Corporation may be kept inside or outside the State of Delaware at such place or places as may from time to time be designated by the Board of Directors.

ARTICLE 2  
STOCKHOLDERS

Section 1. Meetings.

(a) Annual Meeting. The annual meeting of the stockholders of the Corporation shall be held on such date and time as may be fixed by resolution of the Board of Directors.

(b) Special Meeting. Special meetings of the stockholders of the Corporation may be called only in the manner set forth in the Certificate of Incorporation.

(c) Place of Meeting / Record Date. The Board of Directors or the Chair of the Board of Directors, as the case may be, may designate the place of meeting for any annual or special meeting of the stockholders or may designate that the meeting be held by means of remote communication. If no designation is so made, the place of meeting shall be the principal office of the Corporation. The record date for, and the date and time of, any special meeting shall be fixed by the Board of Directors.

(d) Notice of Meeting. Written or printed notice, stating (i) the place, if any, date and time of the meeting, (ii) the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and in the case of a special meeting, (iii) in the case of a special meeting, the purpose or purposes for which the meeting is called and (iv) such other information as may be required by law or as may be deemed appropriate by the Chair of the Board, the Secretary or the Board, shall be given by the Corporation not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally, by electronic transmission in the manner provided in General Corporation Law of the State of Delaware (as amended, the “DGCL”) or by mail, to each stockholder of record entitled to vote at such meeting, subject to such exclusions as are then permitted by the DGCL. If mailed, such notice shall be deemed to be given when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at such stockholder’s address as it appears on the records of the Corporation. If notice is given by electronic transmission, such notice shall be deemed to be given at the times provided in the DGCL. Such further notice shall be given as may be required by applicable law. Meetings may be held without notice if all stockholders entitled to vote are present, or if notice is waived by those not present in accordance with Article 8, Section 2 of these Bylaws. Any previously scheduled meeting of the stockholders may be postponed, and unless the Certificate of Incorporation otherwise provides, any special meeting of the stockholders may be cancelled, by resolution of the Board of Directors upon public notice given prior to the date previously scheduled for such meeting of stockholders. If the stockholder list referred to in Article 2, Section 1(h) of these Bylaws is made accessible on an electronic network, the notice of meeting must indicate how the stockholder list can be accessed. If the meeting of stockholders is to be held solely by means of electronic communications, the notice of meeting must provide the information required to access such stockholder list during the meeting.

(e) Quorum and Adjournment. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the outstanding shares of the Corporation entitled to vote generally in the election of directors (the “Voting Stock”), represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. The Chair of the Board of Directors, the Chief Executive Officer or the Lead Independent Director (if one is appointed) may adjourn the meeting from time to time, whether or not there is a quorum. No notice of the time and place, if any, of adjourned meetings need be given except as required by applicable law. The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

(f) Organization. Meetings of stockholders shall be presided over by such person as the Board of Directors may designate as chair of the meeting, or in the absence of such a person, the Chair of the Board of the Directors, or if none or in the Chair of the Board of Directors’ absence or inability to act, the Chief Executive Officer, or if none or in the Chief Executive Officer’s absence or inability to act, the Lead Independent Director, or if none or in the Lead Independent Director’s absence or inability to act, a President, or, if none of the foregoing is present or able to act, by a chair to be chosen by the holders of a majority of the shares entitled to vote who are present in person or by proxy at the meeting. The Secretary, or in the Secretary’s absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the presiding officer of the meeting shall appoint any person present to act as secretary of the meeting. The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chair of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chair, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies and such other persons as the chair shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting and matters which are to be voted on by ballot. Unless and to the extent determined by the Board of Directors or the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(g) Proxies.

(i) Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy. A stockholder may authorize a valid proxy by executing a written instrument signed by such stockholder, or by causing his, her or its signature to be affixed to such writing by any reasonable means, including but not limited to by facsimile signature, or by transmitting or authorizing an electronic transmission setting forth an authorization to act as proxy to the person designated as the holder of the proxy, a proxy solicitation firm or a like authorized agent. Proxies by electronic transmission must either set forth, or be submitted with, information from which it can be determined that the electronic transmission was authorized by the stockholder. Any copy, facsimile telecommunication or other reliable reproduction of a writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used if such copy, facsimile telecommunication or other reproduction is a complete reproduction of the entire original writing or transmission.

(ii) No proxy may be voted or acted upon after the expiration of three years from the date of such proxy, unless such proxy provides for a longer period. Every proxy is revocable at the pleasure of the stockholder executing it unless the proxy states that it is irrevocable and applicable law makes it irrevocable. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing another duly executed proxy bearing a later date with the Secretary.

(h) Voting Lists. The Corporation shall prepare, at least 10 days before every meeting of the stockholders (and before any adjournment thereof for which a new record date has been set), a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder prior to and during the meeting for any purpose germane to the meeting as required by the DGCL or other applicable law. The stock ledger shall be the only evidence as to who are the stockholders entitled by this section to examine the list required by this section or to vote in person or by proxy at any meeting of stockholders.



Section 2. Order of Business.

(a) Annual Meetings of Stockholders. At any annual meeting of the stockholders, only such nominations of individuals for election to the Board of Directors shall be made, and only such other business shall be conducted or considered, as shall have been properly brought before the meeting. For nominations to be properly made at an annual meeting, and proposals of other business to be properly brought before an annual meeting, nominations and proposals of other business must be: (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly made at the annual meeting, by or at the direction of the Board of Directors or (iii) otherwise properly requested to be brought before the annual meeting by a stockholder of the Corporation in accordance with these Bylaws. For nominations of individuals for election to the Board of Directors or proposals of other business to be properly requested by a stockholder to be made at an annual meeting, a stockholder must (A) be a stockholder of record at the time of giving of notice of such annual meeting by or at the direction of the Board of Directors and at the time of the annual meeting, (B) be entitled to vote at such annual meeting and (C) comply with the procedures set forth in these Bylaws as to such nomination or business. Subject to Article 2, Section 8 of these Bylaws, the immediately preceding sentence shall be the exclusive means for a stockholder to make nominations or other business proposals (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's notice of meeting) before an annual meeting of stockholders.

(b) Special Meetings of Stockholders. At any special meeting of the stockholders, only such business shall be conducted or considered as shall have been properly brought before the meeting pursuant to the Corporation's notice of meeting. To be properly brought before a special meeting, proposals of business must be (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or (ii) otherwise properly brought before the special meeting, by or at the direction of the Board of Directors; provided, however, that nothing herein shall prohibit the Board of Directors from submitting additional matters to stockholders at any such special meeting. If the Board of Directors has determined that directors shall be elected at a special meeting of stockholders and the Corporation's notice of meeting specifies that such business shall be conducted at the special meeting, then nominations of individuals for election to the Board of Directors may be made at such special meeting by any stockholder of the Corporation who (A) is a stockholder of record at the time of giving of notice of such special meeting and at the time of the special meeting, (B) is entitled to vote at the meeting, and (C) complies with the procedures set forth in these Bylaws as to such nomination. This Article 2, Section 2(b) shall be the exclusive means for a stockholder to make nominations or other business proposals before a special meeting of stockholders.

(c) General. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the chair of any annual or special meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was properly made or proposed, as the case may be, in accordance with these Bylaws and, if any proposed nomination or other business is not in compliance with these Bylaws, to declare that no action shall be taken on such nomination or other proposal and such nomination or other proposal shall be disregarded.

Section 3. Advance Notice of Nominations and Business.

(a) Annual Meeting of Stockholders. Without qualification or limitation, subject to Article 2, Section 3(c)(v) of these Bylaws, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Article 2, Section 2(a) of these Bylaws, the stockholder must have given timely notice thereof (including, in the case of any nomination of individuals for election to the Board of Directors, the completed and signed questionnaire, representation and agreement and majority voting-related conditional resignation required by Article 2, Section 4 of these Bylaws), and timely updates and supplements thereof, in each case in proper form, in writing to the Secretary, and such other business must otherwise be a proper matter for stockholder action.

To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120<sup>th</sup>) day and not later than the close of business on the ninetieth (90<sup>th</sup>) day prior to the first (1<sup>st</sup>) anniversary of the preceding year's annual meeting; provided, however, that in the event that no annual meeting was held in the previous year or the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120<sup>th</sup>) day prior to the date of such annual meeting and not later than the close of business on the later of (x) the ninetieth (90<sup>th</sup>) day prior to the date of such annual meeting or (y) the tenth (10<sup>th</sup>) day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting, or the public announcement thereof, commence a new time period for the giving of a stockholder's notice as described above. For the avoidance of doubt, a stockholder shall not be entitled to make additional or substitute nominations following the expiration of the time periods set forth in these Bylaws.

Notwithstanding anything in the immediately preceding paragraph to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased by the Board of Directors, and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least seventy (70) days prior to the first (1<sup>st</sup>) anniversary of the preceding year's annual meeting, a stockholder's notice required by this Article 2, Section 3(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10<sup>th</sup>) day following the day on which such public announcement is first made by the Corporation. The number of nominees a stockholder may nominate for election shall not exceed the number of directors to be elected at the annual meeting.

In addition, to be considered timely, a stockholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is ten (10) days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five (5) days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight (8) days prior to the date for the meeting or any adjournment or postponement thereof in the case of the update and supplement required to be made as of ten (10) days prior to the meeting or any adjournment or postponement thereof. The obligation to update and supplement as set forth in this paragraph or any other Section of these Bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business and or resolutions proposed to be brought before a meeting of the stockholders.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting, subject to the provisions of Article 2, Section 2(b) of these Bylaws. Subject to Article 2, Section 3(c)(v) of these Bylaws, if the Corporation calls a special meeting of stockholders for the purpose of electing one (1) or more directors to the Board of Directors, then, subject to the provisions of Article 2, Section 2(b) of these Bylaws, any stockholder may nominate an individual or individuals (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, provided that, the stockholder gives timely notice thereof (including the completed and signed questionnaire, representation and agreement required by Article 2, Section 4 of these Bylaws), and timely updates and supplements thereof in each case in proper form, in writing, to the Secretary.

To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120<sup>th</sup>) day prior to the date of such special meeting and not later than the close of business on the later of (x) the ninetieth (90<sup>th</sup>) day prior to the date of such special meeting or (y) the tenth (10<sup>th</sup>) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting of stockholders, or the public announcement thereof, commence a new time period for the giving of a stockholder's notice as described above. For the avoidance of doubt, a stockholder shall not be entitled to make additional or substitute nominations following the expiration of the time periods set forth in these Bylaws.

In addition, to be considered timely, a stockholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is ten (10) days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five (5) days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight (8) days prior to the date for the meeting, any adjournment or postponement thereof in the case of the update and supplement required to be made as of ten (10) days prior to the meeting or any adjournment or postponement thereof.

(c) Disclosure Requirements.

(i) To be in proper form, a stockholder's notice pursuant to Article 2, Section 2 or this Article 2, Section 3 of these Bylaws must include the following, as applicable:

(A) As to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal, as applicable, is made, a stockholder's notice must set forth: (1) the name and address of such stockholder, as they appear on the Corporation's books, of such beneficial owner, if any, and of their respective affiliates or associates or others acting in concert therewith, if any, (2) a representation that the stockholder giving the notice is a holder of record of Voting Stock entitled to vote at such meeting, will continue to be a stockholder of record of Voting Stock entitled to vote at such meeting through the date of such meeting and intends to appear in person or by proxy at the meeting to make such nomination or to propose such business, (3) (a) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder, such beneficial owner, if any, and their respective affiliates or associates or others acting in concert therewith, if any, together with proof of ownership similar to that required under Rule 14a-8 of the Exchange Act, (b) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, or any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the Corporation, or any contract, future, forward, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, including due to the fact that the value of such contract, future, forward, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of shares of the Corporation, through the delivery of cash or other property, or otherwise, and without regard to whether the stockholder of record, the beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith, if any, may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right, or any other direct or indirect opportunity to profit or share in any profit (including profits interests) derived from any increase or decrease in the value of shares of the Corporation (any of the foregoing, a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder, the beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith, if any, (c) any proxy, contract, agreement, arrangement, understanding, or relationship (whether written or oral) pursuant to which such stockholder, such beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith, if any, has or pursuant to any proxy, contract, understanding or relationship may acquire any right to vote any class or series of shares of the Corporation, (d) any agreement, arrangement, understanding, relationship or otherwise, including any repurchase or similar so-called "stock borrowing" or "stock loaning" agreement or arrangement, involving such stockholder, such beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith, if any, directly or indirectly, the intent, purpose or effect of which may be to mitigate loss to, transfer to or from any such person, in whole or in part, any of the economic consequences of ownership or reduce the economic risk (of ownership or otherwise) of any class or series of the shares of the Corporation by, manage the risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder, such beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith, if any, with respect to any class or series of the shares of the Corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of the shares of the Corporation (any of the foregoing, a "Short Interest"), (e) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder, such beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith, if any, that are separated or separable from the underlying shares of the Corporation, (f) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or similar entity in which such stockholder, such beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith, if any, is a general partner or, directly or indirectly, beneficially owns an interest in a general partner or is the manager or managing member or, directly or indirectly, beneficially owns any interest in the manager or managing member of such general or limited partnership or similar entity, (g) any performance-related fees (other than an asset-based fee) to which such stockholder, such beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith, if any, is entitled based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including without limitation any such interests held by members of the immediate family sharing the same household of such stockholder, such beneficial owner, if any, and their respective affiliates or associates or others acting in concert therewith, if any, (h) any significant equity interests or any Derivative Instruments or Short Interests in any principal competitor of the Corporation held by such stockholder, such beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith, if any, and (i) any direct or indirect interest of such stockholder, such beneficial owner, if any, and their respective affiliates or associates or others acting in concert therewith, if any, in any contract with, or any litigation involving, the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (4) if any such stockholder, such beneficial owner or any of their respective affiliates or associates, or others acting in concert therewith, intends to engage in a solicitation with respect to a nomination or other business pursuant to this Article 2, Section 3 or Article 2, Section 8, a statement disclosing the name of each participant in such solicitation (as defined in Item 4 of Schedule 14A under the Exchange Act) and, if involving a nomination, a representation that such stockholder, such beneficial owner or any of their respective affiliates or associates, or others acting in concert, therewith intends (i) to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee or (ii) otherwise to solicit proxies from stockholders in support of such proposal or nomination, including pursuant to Rule 14a-19 under the Exchange Act; (5) a certification that each such stockholder, such beneficial owner or any of their respective affiliates or associates, or others acting in concert therewith, has complied with all applicable federal, state and other legal requirements in connection with its acquisition of shares or other securities of the Corporation and such person's acts or omissions as a stockholder of the Corporation; (6) the names and addresses of other stockholders (including beneficial owners) known by any such stockholder, such beneficial owner or any of their respective affiliates or associates, or others acting in concert therewith, to financially or otherwise materially support (it being understood, for example, that statement of an intent to vote for, or delivery of a revocable proxy to such proponent, does not require disclosure under this section, but solicitation of other stockholders by such supporting stockholder would require disclosure under this section) such nomination(s) or proposal(s), and to the extent known the class and number of all shares of the Corporation's capital stock owned beneficially or of record by, and any other information contemplated by clause (3) of this Article 2, Section 3(c)(i)(A) with respect to, such other stockholder(s) or other beneficial owner(s); (7) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) or an amendment pursuant to Rule 13d-2(a) if such a statement were required to be filed under the Exchange Act and the rules and regulations promulgated thereunder by such stockholder, such beneficial owner, if any, and their respective affiliates or associates or others acting in concert therewith, if any, and (8) any other information relating to such stockholder, such beneficial owner, if any, or any of their respective affiliates or associates or others acting in concert therewith, if any, that would be required to be disclosed in a proxy statement and form of proxy or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

(B) If the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, a stockholder's notice must, in addition to the matters set forth in paragraph (A) above, also set forth: (1) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder, such beneficial owner, if any, and each of their respective affiliates or associates or others acting in concert therewith, if any, in such business, (2) the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such proposal or business includes a proposal to amend the Bylaws of the Corporation, the text of the proposed amendment), and (3) a description of all agreements, arrangements and understandings (whether written or oral) between such stockholder, such beneficial owner, if any, and any of their respective affiliates or associates or others acting in concert therewith, if any, on the one hand, and any other person or persons (including their names), on the other hand, in connection with the proposal of such business by such stockholder;

(C) As to each individual, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors, a stockholder's notice must, in addition to the matters set forth in paragraph (A) above, also set forth: (1) the name, age, business and residence address of such person, (2) the principal occupation or employment of such person (present and for the past five years), (3) all information relating to such individual that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such individual's written consent to being named in any proxy statement as a nominee) and a written statement of intent to serve as a director for the full term if elected), and (4) a reasonably detailed description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings (whether written or oral), including the amount of any payment or payments received or receivable thereunder, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, if any, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, if any, on the other hand, including, without limitation, all biographical and related party transaction and other information that would be required to be disclosed pursuant to Rule 404 or any successor provision promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, if any, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(D) With respect to each individual, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors, a stockholder's notice must, in addition to the matters set forth in paragraphs (A) and (C) above, also include a completed and signed questionnaire, representation and agreement and majority voting-related conditional resignation required by Article 2, Section 4 of these Bylaws. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee. Notwithstanding anything to the contrary, only persons who are nominated in accordance with the procedures set forth in these Bylaws, including without limitation, Article 2, Sections 2, 3 or 4, shall be eligible for election as directors.

(ii) A stockholder seeking to submit business at a meeting must promptly provide any other information reasonably requested by the Corporation. Unless otherwise required by applicable law, if the stockholder (or a qualified representative of the stockholder) submitting business does not appear at a meeting of stockholders to present such business, the nomination shall be disregarded and the proposed business shall not be transacted, as the case may be, notwithstanding that proxies in favor thereof may have been received by the Corporation.

(iii) For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(iv) Notwithstanding the provisions of these Bylaws, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw; provided, however, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the separate and additional requirements set forth in these Bylaws with respect to nominations or proposals as to any other business to be considered. Notwithstanding anything to the contrary in these Bylaws, unless otherwise required by law, if any stockholder (i) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act with respect to any proposed nominee and (ii) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) promulgated under the Exchange Act (or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such stockholder has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act in accordance with the following sentence), then the nomination of each such proposed nominee shall be disregarded, notwithstanding that proxies or votes in respect of the election of such proposed nominees may have been received by the Corporation (which proxies and votes shall be disregarded). Upon request by the Corporation, if any stockholder provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such stockholder shall deliver to the Company, no later than five (5) business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

(v) Notwithstanding anything to the contrary contained in this Article 2, Section 3, the Board of Directors may waive any of the provisions of this Article 2, Section 3.

(vi) Nothing in these Bylaws shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Certificate of Incorporation or these Bylaws. Subject to Rule 14a-8 under the Exchange Act, nothing in these Bylaws shall be construed to permit any stockholder, or give any stockholder the right, to include or have disseminated or described in the Corporation's proxy statement any nomination of a director or directors or any other business proposal.

Section 4. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation, a person nominated by a stockholder for election or reelection to the Board of Directors must deliver (in accordance with the time periods prescribed for delivery of notice under Article 2, Section 3 or Article 2, Section 8 of these Bylaws, as applicable) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such individual and the background of any other person or entity on whose behalf, directly or indirectly, the nomination is being made (which questionnaire shall be provided by the Secretary upon written request), an irrevocable conditional resignation in accordance with the Corporation's resignation policy in connection with majority voting and Article 2, Section 4 of these By-laws, and a written representation and agreement (in the form provided by the Secretary, which form shall be provided by the Secretary upon written request of any stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or business proposal, as applicable, is made; provided such written request identifies both the stockholder making such request and the beneficial owner(s), if any, on whose behalf such request is being made) that such individual (a) is not and will not become a party to (i) any agreement, arrangement or understanding (whether written or oral) with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation, or (ii) any Voting Commitment that could limit or interfere with such individual's ability to comply, if elected as a director of the Corporation, with such individual's fiduciary duties under applicable law, (b) is not and will not become a party to any agreement, arrangement or understanding (whether written or oral) with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, (c) will comply with the Corporation's corporate governance guidelines and other policies applicable to its directors, and has disclosed therein whether all or any portion of securities of the Corporation were purchased with any financial assistance provided by any other person and whether any other person has any interest in such securities, (d) in such individual's personal capacity and on behalf of any person or entity on whose behalf, directly or indirectly, the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply, with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation publicly disclosed from time to time, (e) consents to being named as a nominee in any proxy statement relating to the next annual meeting or special meeting, as applicable, pursuant to Rule 14a-4(d) under the Exchange Act and any associated proxy card and agrees to serve if elected as a director, and (f) will abide by the requirements of Article 2, Section 5 of these Bylaws.

Section 5. Procedure for Election of Directors: Required Vote.

(a) Except as set forth below, election of directors at all meetings of the stockholders at which directors are to be elected shall be by ballot, and, subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, a majority of the votes cast at any meeting for the election of directors at which a quorum is present shall elect directors. For purposes of this Bylaw, a majority of votes cast shall mean that the number of shares voted "for" a director's election exceeds fifty percent (50%) of the number of votes cast with respect to that director's election. Votes cast shall include votes against in each case and exclude abstentions and broker nonvotes with respect to that director's election. Notwithstanding the foregoing, in the event of a "contested election" of directors, directors shall be elected by the vote of a plurality of the votes cast at any meeting for the election of directors at which a quorum is present. For purposes of this Bylaw, a "contested election" shall mean any election of directors in which the number of candidates for election as directors exceeds the number of directors to be elected, with the determination thereof being made by the Secretary as of the later of (i) the close of the applicable notice of nomination period set forth in Article 2, Section 3 of these Bylaws or under applicable law and (ii) the last day on which a Nomination Notice may be delivered in accordance with the procedures set forth in Article 2, Section 8, based on whether one (1) or more notice(s) of nomination or Nomination Notice(s) were timely filed in accordance with said Article 2, Section 3 and/or Section 8, as applicable; provided, however, that the determination that an election is a "contested election" shall be determinative only as to the timeliness of a notice of nomination and not otherwise as to its validity. If, prior to the time the Corporation mails its initial proxy statement in connection with such election of directors, one (1) or more notices of nomination are withdrawn such that the number of candidates for election as director no longer exceeds the number of directors to be elected, the election shall not be considered a contested election, but in all other cases, once an election is determined to be a contested election, directors shall be elected by the vote of a plurality of the votes cast.



(b) If a nominee for director who is an incumbent director is not elected and no successor has been elected at such meeting, the director shall promptly tender his or her resignation to the Board of Directors in accordance with the agreement contemplated by Article 2, Section 4 of these Bylaws. The Nominating and Governance Committee shall make a recommendation to the Board of Directors as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Board of Directors shall act on the tendered resignation, taking into account the Nominating and Governance Committee's recommendation, and publicly disclose (by a press release, a filing with the Securities and Exchange Commission or other broadly disseminated means of communication) its decision regarding the tendered resignation and the rationale behind the decision within ninety (90) days from the date of the certification of the election results. The Nominating and Governance Committee in making its recommendation, and the Board of Directors in making its decision, may each consider any factors or other information that it considers appropriate and relevant. The director who tenders his or her resignation shall not participate in the recommendation of the Nominating and Governance Committee or the decision of the Board of Directors with respect to his or her resignation. If such incumbent director's resignation is not accepted by the Board of Directors, such director shall continue to serve until the next annual meeting and until his or her successor is duly elected, or his or her earlier resignation or removal. If a director's resignation is accepted by the Board of Directors pursuant to this Bylaw, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors, in its sole discretion, may fill any resulting vacancy pursuant to the provisions of Article 3, Section 8 of these Bylaws or may decrease the size of the Board of Directors pursuant to the provisions of Article 3, Section 2 of these Bylaws.

(c) Except as otherwise provided by law, the Certificate of Incorporation, or these Bylaws, in all matters other than the election of directors, the affirmative vote of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the act of the stockholders.

(d) Any individual who is nominated for election to the Board of Directors and included in the Corporation's proxy materials for an annual meeting, including pursuant to Article 2, Section 8, shall tender an irrevocable resignation effective immediately, upon a determination by the Board of Directors or any committee thereof that (1) the information provided to the Corporation by such individual, or if applicable, by the Eligible Stockholder (or any stockholder, fund that is a Qualifying Fund (as defined in Article 2, Section 8) and/or beneficial owner whose stock ownership is counted for the purposes of qualifying as an Eligible Stockholder) who nominated such individual, was untrue in any material respect or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading or (2) such individual, or if applicable, the Eligible Stockholder (including each stockholder, fund that is a Qualifying Fund and/or beneficial owner whose stock ownership is counted for the purposes of qualifying as an Eligible Stockholder) who nominated such individual, shall have breached any representations or obligations owed to the Corporation under these Bylaws.

(c) At all meetings of stockholders, a stockholder may vote by proxy executed in writing (or in such manner prescribed by the DGCL) by the stockholder, or by such stockholder's duly authorized attorney in fact. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for exclusive use by the Board of Directors.

Section 6. Inspectors of Elections; Opening and Closing the Polls. The Board of Directors by resolution shall appoint one (1) or more inspectors, which inspector or inspectors may, but does not need to, include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at the meetings of stockholders and make a written report thereof. One (1) or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act or is able to act at a meeting of stockholders, the chair of the meeting shall appoint one (1) or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by law.

The chair of the meeting shall fix and announce at the meeting the date and time of the opening and the closing of the polls for the matters upon which the stockholders will vote at a meeting.

Section 7. No Stockholder Action by Written Consent. Subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

Section 8. Inclusion of Stockholder Nominees in Proxy Statement.

(a) Subject to the provisions of this Article 2, Section 8, if expressly requested in the relevant Nomination Notice (as defined below), the Corporation shall include in its proxy statement for any annual meeting of stockholders (but not at any special meeting of stockholders): (i) the names of any person or persons nominated for election (each, a "Stockholder Nominee"), which shall also be included on the Corporation's form of proxy and ballot, by any Eligible Stockholder (as defined below) or group of up to twenty (20) Eligible Stockholders that, as determined by the Board of Directors, has (individually and collectively, in the case of a group) satisfied all applicable conditions and complied with all applicable procedures set forth in this Article 2, Section 8 (such Eligible Stockholder or group of Eligible Stockholders being a "Nominating Stockholder"); (ii) disclosure about each Stockholder Nominee and the Nominating Stockholder required under the rules of the Securities and Exchange Commission or other applicable law to be included in the proxy statement; (iii) any statement included by the Nominating Stockholder in the Nomination Notice for inclusion in the proxy statement in support of each Stockholder Nominee's election to the Board of Directors (subject, without limitation, to Article 2, Section 8(d)(ii); provided that, such statement does not exceed five hundred (500) words and fully complies with Section 14 of the Exchange Act and the rules and regulations thereunder, including Rule 14a-9 (the "Supporting Statement")); and (iv) any other information that the Corporation or the Board of Directors determines, in its discretion, to include in the proxy statement relating to the nomination of each Stockholder Nominee, including, without limitation, any statement in opposition to the nomination, any information relating to the Eligible Stockholder or Stockholder Nominee any of the information provided pursuant to this Article 2, Section 8 and any solicitation materials or related information with respect to a Stockholder Nominee.

For purposes of this Article 2, Section 8, any determination to be made by the Board of Directors may be made by the Board of Directors, a committee of the Board of Directors or any officer designated by the Board of Directors or a committee of the Board of Directors, and any such determination shall be final and binding on the Corporation, any Eligible Stockholder, any Nominating Stockholder, any Stockholder Nominee and any other person so long as it is made in good faith (without any further requirements). The chair of any annual meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether a Stockholder Nominee has been nominated in accordance with the requirements of this Article 2, Section 8 and, if not so nominated, shall direct and declare at the meeting that such Stockholder Nominee shall not be considered.

(b) Maximum Number of Stockholder Nominees.

(i) The Corporation shall not be required to include in the proxy statement for an annual meeting of stockholders more Stockholder Nominees than that number of directors constituting the greater of (A) two (2) and (B) largest whole number that does not exceed twenty percent (20%) of the total number of directors of the Corporation on the last day on which a Nomination Notice may be submitted pursuant to this Article 2, Section 8 (the "Maximum Number").

(ii) The Maximum Number for a particular annual meeting shall be reduced by: (A) Stockholder Nominees whose nominations are withdrawn by the Nominating Stockholder or who become unwilling to serve on the Board of Directors; (B) Stockholder Nominees who the Board of Directors itself decides to nominate for election at such annual meeting; and (C) the number of incumbent directors who had been Stockholder Nominees at any of the preceding two (2) annual meetings of stockholders and whose reelection at the upcoming annual meeting of stockholders is being recommended by the Board of Directors. In the event that one (1) or more vacancies for any reason occurs on the Board of Directors after the deadline for submitting a Nomination Notice as set forth in Article 2, Section 8(c)(vi), but before the date of the annual meeting of stockholders and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced. In no circumstance shall the Maximum Number exceed the number of directors to be elected at the applicable meeting as noticed by the Corporation.

(iii) If the number of Stockholder Nominees pursuant to this Article 2, Section 8 for any annual meeting of stockholders exceeds the Maximum Number, then, promptly upon notice from the Corporation, each Nominating Stockholder will select one (1) Stockholder Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of shares of the Corporation's common stock that each Nominating Stockholder disclosed as owned in its Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Stockholder has selected one (1) Stockholder Nominee. If, after the deadline for submitting a Nomination Notice as set forth in Article 2, Section 8(c)(vi), a Nominating Stockholder or a Stockholder Nominee ceases to satisfy the eligibility requirements in this Article 2, Section 8, as determined by the Board of Directors, or the Maximum Number is reached, a Nominating Stockholder withdraws its nomination or has its nomination withdrawn or a Stockholder Nominee becomes unwilling to serve on the Board of Directors or is thereafter not submitted for director election, whether before or after the mailing or other distribution of the definitive proxy statement, then the Corporation: (A) shall not be required to include in its proxy statement or on any ballot or form of proxy the Stockholder Nominee or any successor or replacement Stockholder Nominee proposed by the Nominating Stockholder or by any other Nominating Stockholder and (B) may otherwise communicate to its stockholders, including, without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Stockholder Nominee will not be included as a Stockholder Nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting of stockholders.

(c) Eligibility of Nominating Stockholder.

(i) An "Eligible Stockholder" is a person who has either (A) been a record holder of the shares of common stock of the Corporation used to satisfy the eligibility requirements in this Article 2, Section 8(c) continuously for the three (3) year period specified in subsection (c)(ii) of this Article 2, Section 8(c) below or (B) provides to the Secretary of the Corporation, within the time period referred to in Article 2, Section 8(c)(vi), evidence of continuous ownership of such shares for such three (3) year period from one (1) or more securities intermediaries in a form that the Board of Directors determines acceptable.

(ii) An Eligible Stockholder or group of up to twenty (20) Eligible Stockholders may submit a nomination in accordance with this [Article 2, Section 8\(c\)](#) only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) (as adjusted for any stock splits, reverse stock splits, stock dividends or similar events) of shares of the Corporation's common stock throughout the three (3) year period preceding and including the date of submission of the Nomination Notice and as of the record date for determining stockholders eligible to vote at the annual meeting, and continues to own at least the Minimum Number of shares through the date of the annual meeting of stockholders. The following shall be treated as one (1) Eligible Stockholder if such Eligible Stockholder shall provide together with the Nomination Notice documentation satisfactory to the Board of Directors that demonstrates compliance with the following criteria (each such fund, a "Qualifying Fund"): (A) funds under common management and investment control; (B) funds under common management and funded primarily by the same employer; or (C) a "group of investment companies" (as defined in the Investment Company Act of 1940, as amended); provided that, each fund otherwise meets the requirements set forth in this [Article 2, Section 8](#). In the event of a nomination by a Nominating Stockholder that includes more than one (1) Eligible Stockholder, any and all requirements and obligations for a given Eligible Stockholder or, except as the context otherwise makes clear, the Nominating Stockholder, that are set forth in this [Article 2, Section 8\(c\)](#), including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the aggregate ownership of the group of Eligible Stockholders constituting the Nominating Stockholder. Should any Eligible Stockholder cease to satisfy the eligibility requirements in this [Article 2, Section 8\(c\)](#), as determined by the Board of Directors, or withdraw from a group of Eligible Stockholders constituting a Nominating Stockholder at any time prior to the annual meeting of stockholders, the Nominating Stockholder shall be deemed to own only the shares held by the remaining Eligible Stockholders. As used in this [Article 2, Section 8\(c\)](#), any reference to a "group" or "group of Eligible Stockholders" refers to any Nominating Stockholder that consists of more than one (1) Eligible Stockholder and to all the Eligible Stockholders that make up such Nominating Stockholder.

(iii) The "Minimum Number" of shares of the Corporation's common stock means three percent (3%) of the number of outstanding shares of common stock of the Corporation as of the most recent date for which such amount is given in any filing by the Corporation with the Securities and Exchange Commission prior to the submission of the Nomination Notice.

(iv) For purposes of this [Article 2, Section 8\(c\)](#), an Eligible Stockholder "owns" only those outstanding shares of the Corporation's common stock as to which such Eligible Stockholder possesses both: (A) the full voting and investment rights pertaining to such shares and (B) the full economic interest in (including the opportunity for profit from and the risk of loss on) such shares; provided that, the number of shares calculated in accordance with clauses (A) and (B) shall not include (and to the extent any of the following arrangements have been entered into by affiliates of the Eligible Stockholder, shall be reduced by) any shares: (1) purchased or sold by such Eligible Stockholder or any of its affiliates in any transaction that has not been settled or closed, (2) sold short by such Eligible Stockholder, (3) borrowed by such Eligible Stockholder or any of its affiliates for any purpose or purchased by such Eligible Stockholder or any of its affiliates pursuant to an agreement to resell or subject to any other obligation to resell to another person, or (4) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding capital stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (x) reducing in any manner, to any extent or at any time in the future, such Eligible Stockholder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree any gain or loss arising from the full economic ownership of such shares by such Eligible Stockholder or any of its affiliates. An Eligible Stockholder "owns" shares held in the name of a nominee or other intermediary so long as the Eligible Stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Stockholder's ownership of shares shall be deemed to continue during any period in which the Eligible Stockholder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Stockholder. An Eligible Stockholder's ownership of shares shall be deemed to continue during any period in which the Eligible Stockholder has loaned such shares; provided that, the Eligible Stockholder has the power to recall such loaned shares on not more than five (5) business days' notice. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the Corporation are "owned" for these purposes shall be determined by the Board of Directors. For purposes of this [Article 2, Section 8\(c\)\(iv\)](#), the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act.

(v) No Eligible Stockholder shall be permitted to be in more than one (1) group constituting a Nominating Stockholder, and if any Eligible Stockholder appears as a member of more than one (1) group, such Eligible Stockholder shall be deemed to be a member of only the group that has the largest ownership position as reflected in the Nomination Notice.

(vi) Nomination Notice. To nominate a Stockholder Nominee pursuant to this Article 2, Section 8(a), the Nominating Stockholder (including each group member in the case of a Nominating Stockholder consisting of a group of Eligible Stockholders) must have delivered to the Secretary of the Corporation, and the Secretary must have received, all of the following information and documents in a form that the Board of Directors determines acceptable (collectively, the "Nomination Notice"), not less than one hundred twenty (120) days nor more than one hundred fifty (150) days prior to the anniversary of the date that the Corporation mailed its proxy statement for the prior year's annual meeting of stockholders (and in no event shall the adjournment or postponement of an annual meeting, or the public announcement thereof, commence a new time period (or extend any time period) for the giving of the Nomination Notice):

(A) one (1) or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite three (3) year holding period) verifying that, as of a date within seven (7) calendar days prior to the date of the Nomination Notice, the Nominating Stockholder owns, and has continuously owned for the preceding three (3) years, the Minimum Number of shares, and the Nominating Stockholder's agreement to provide, within five (5) business days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Nominating Stockholder's continuous ownership of the Minimum Number of shares through the record date, together with any additional information reasonably requested to verify such person's ownership of the Minimum Number of shares;

(B) an agreement to provide immediate notice if the Nominating Stockholder ceases to own the Minimum Number of shares at any time prior to the date of the annual meeting;

(C) a Schedule 14N (or any successor form) relating to each Stockholder Nominee, completed and filed with the Securities and Exchange Commission by the Nominating Stockholder, as applicable, in accordance with Securities and Exchange Commission rules;

(D) the written consent of each Stockholder Nominee to being named as a nominee in any proxy statement, form of proxy and ballot relating to the next annual meeting as a Stockholder Nominee (and stating that such Stockholder Nominee will not agree to be named in any other person's proxy statement, form of proxy or ballot with respect to the Corporation) and to serving as a director if elected;

(E) a written notice, in a form deemed satisfactory by the Board of Directors, of the nomination of each Stockholder Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder: (1) the information that would be required to be set forth in a stockholder's notice of nomination pursuant to Article 2, Sections 3 and 4; (2) the details of any relationship that existed within the past three (3) years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N; (3) a representation and warranty that the Nominating Stockholder acquired the securities of the Corporation in the ordinary course of business and did not acquire, and is not holding, securities of the Corporation for the purpose or with the effect of influencing or changing control of the Corporation; (4) a representation and warranty that the Nominating Stockholder has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than such Nominating Stockholder's Stockholder Nominee(s); (5) a representation and warranty that the Nominating Stockholder has not engaged in and will not engage in a "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act (without reference to the exception in Section 14a-1(l)(2)(iv)) with respect to the annual meeting, other than with respect to such Nominating Stockholder's Stockholder Nominee(s) or any nominee of the Board of Directors; (6) a representation and warranty that each Stockholder Nominee's candidacy or, if elected, membership on the Board of Directors would not violate applicable state or federal law or the rules of any stock exchange on which the Corporation's securities are traded; (7) a representation and warranty that each Stockholder Nominee: (A) does not have any direct or indirect relationship with the Corporation that would cause the Stockholder Nominee to be deemed not independent, and otherwise qualifies as independent, pursuant to the Corporation's Corporate Governance Guidelines (as amended from time to time or any successor policy), the rules of the primary stock exchange on which the Corporation's shares of common stock are traded and any applicable rules of the Securities and Exchange Commission; (B) meets the audit committee and compensation committee independence requirements under the rules of the primary stock exchange on which the Corporation's shares of common stock are traded; is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule); (D) is an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision); (E) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of such Stockholder Nominee; and (F) meets the director qualifications set forth in these Bylaws and the Corporation's Corporate Governance Guidelines, if any; (8) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in Article 2, Section 8(c); (9) a representation and warranty that the Nominating Stockholder intends to continue to satisfy the eligibility requirements described in Article 2, Section 8(c) through the date of the annual meeting; (10) details of any position of a Stockholder Nominee as an officer or director of any competitor (that is, any entity that produces products or provides services that compete with or are alternatives to the principal products produced or services provided by the Corporation or its affiliates) of the Corporation, within the three (3) years preceding the submission of the Nomination Notice; (11) if desired, a Supporting Statement; (12) in the case of a nomination by a Nominating Stockholder comprised of a group, the designation by all Eligible Stockholders in such group of one (1) Eligible Stockholder who is authorized to act on behalf of the Nominating Stockholder with respect to matters relating to the nomination, including withdrawal of the nomination; and (13) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are and will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and will otherwise comply with all applicable laws, rules and regulations in connection with any actions taken pursuant to this Article 2, Section 8;



(F) an executed agreement, in a form deemed satisfactory by the Board of Directors, pursuant to which the Nominating Stockholder (including, in the case of a group, each Eligible Stockholder in that group) agrees: (1) to comply with all applicable laws, rules, regulations and listing standards in connection with the nomination, solicitation and election and to promptly provide the Corporation with such other information as the Corporation may reasonably request; (2) to file any written solicitation or other communication with the Corporation's stockholders relating to one (1) or more of the Corporation's directors or nominees for director or any Stockholder Nominee with the Securities and Exchange Commission, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation; (3) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of or relating to (x) any communication by the Nominating Stockholder or any of its Stockholder Nominees with the Corporation, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice (and any other information provided to the Corporation in connection therewith), (y) the Nominating Stockholder's efforts to elect any of its Stockholder Nominees or (z) a failure or alleged failure of the Nominating Stockholder or any of its Stockholder Nominees to comply with, or any breach or alleged breach of, its or their obligations, agreements or representations under these Bylaws; (4) to indemnify and hold harmless (jointly with all other Eligible Stockholders, in the case of a group of Eligible Stockholders) the Corporation and its affiliates and each of its and their directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its affiliates or its or their directors, officers or employees arising out of or relating to (x) any communication by the Nominating Stockholder or any of its Stockholder Nominees with the Corporation, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice (and any other information provided to the Corporation in connection therewith), (y) the Nominating Stockholder's efforts to elect any of its Stockholder Nominees or (z) a failure or alleged failure of the Nominating Stockholder or any of its Stockholder Nominees to comply with, or any breach or alleged breach of, its or their obligations, agreements or representations under these Bylaws; (5) in the event that any information included in the Nomination Notice or any other communication by the Nominating Stockholder (including with respect to any Eligible Stockholder included in a group) with the Corporation, its stockholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), to promptly (and in any event within forty-eight (48) hours of discovering such misstatement or omission) notify the Corporation and any other recipient of such communication of the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission; it being understood that providing any such notification will not be deemed to cure any defect or limit the remedies (including, without limitation, under these Bylaws) available to the Corporation relating to any such defect; and (6) in the event that the Nominating Stockholder (including any Eligible Stockholder in a group) has failed to continue to satisfy the eligibility requirements described in Article 2, Section 8(c), to promptly notify the Corporation; and

(G) an executed agreement, in a form deemed satisfactory by the Board of Directors, by each Stockholder Nominee: (1) to provide to the Corporation such other information and certifications, including completion of the Corporation's director nominee questionnaire, as the Board of Directors may reasonably request; (2) at the reasonable request of the Board of Directors or any committee, to discuss matters relating to the nomination of such Stockholder Nominee to the Board of Directors or any committee, including the information provided by such Stockholder Nominee to the Corporation in connection with his or her nomination and such Stockholder Nominee's eligibility to serve as a member of the Board of Directors; (3) that such Stockholder Nominee has read and agrees, if elected, to serve as a member of the Board of Directors, to adhere to the Corporation's Corporate Governance Guidelines and any other policies and guidelines of the Corporation applicable to directors; and (4) that such Stockholder Nominee is not and will not become a party to (A) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with his or her nomination, candidacy, service or action as a director of the Corporation that has not been fully disclosed to the Corporation prior to or concurrently with the Nominating Stockholder's submission of the Nomination Notice, (B) any Voting Commitment that has not been fully disclosed to the Corporation prior to or concurrently with the Nominating Stockholder's submission of the Nomination Notice or (C) any Voting Commitment that could limit or interfere with such Stockholder Nominee's ability to comply, if elected as a director of the Corporation, with his or her fiduciary duties under applicable law.

The information and documents required by this Article 2, Section 8(c)(vi) to be provided by the Nominating Stockholder shall be: (i) provided with respect to and executed by each Eligible Stockholder in the group in the case of a Nominating Stockholder comprised of a group of Eligible Stockholders; and (ii) provided with respect to the persons specified in Instructions 1 and 2 to Items 6(c) and (d) of Schedule 14N (or any successor item) (x) in the case of a Nominating Stockholder that is an entity and (y) in the case of a Nominating Stockholder that is a group that includes one (1) or more Eligible Stockholders that are entities. The Nomination Notice shall be deemed submitted on the date on which all of the information and documents referred to in this Article 2, Section 8(c)(vi) (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to and received by the Secretary of the Corporation. In order to be considered timely, any information required by this Article 2, Section 8 to be provided to the Corporation must be supplemented (by delivery to the Secretary of the Corporation) (1) no later than ten (10) days following the record date for the applicable annual meeting, to disclose the foregoing information as of such record date, and (2) no later than the fifth (5<sup>th</sup>) day before the annual meeting, to disclose the foregoing information as of the date that is no earlier than ten (10) days prior to such annual meeting.

(d) Exceptions.

(i) Notwithstanding anything to the contrary contained in this Article 2, Section 8, the Corporation may omit from its proxy statement any Stockholder Nominee and any information concerning such Stockholder Nominee (including a Nominating Stockholder's Supporting Statement) and no vote on such Stockholder Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of such Stockholder Nominee, if: (A) the Corporation receives a notice pursuant to the advance notice requirements set forth in Article 2, Section 3 that a stockholder intends to nominate a candidate for director at the annual meeting, whether or not such notice is subsequently withdrawn or made the subject of a settlement with the Corporation; (B) the Nominating Stockholder (or, in the case of a Nominating Stockholder consisting of a group of Eligible Stockholders, the Eligible Stockholder that is authorized to act on behalf of the Nominating Stockholder), or any qualified representative thereof, does not appear at the annual meeting to present the nomination submitted pursuant to this Article 2, Section 8, the Nominating Stockholder withdraws its nomination or the chair of the annual meeting declares that such nomination was not made in accordance with the procedures prescribed by this Article 2, Section 8 and shall therefore be disregarded; (C) the Board of Directors determines that such Stockholder Nominee's nomination or election to the Board of Directors would result in the Corporation violating or failing to be in compliance with these Bylaws or the Certificate of Incorporation or any applicable law, rule or regulation to which the Corporation is subject, including any rules or regulations of any stock exchange on which the Corporation's securities are traded; (D) such Stockholder Nominee was nominated for election to the Board of Directors pursuant to this Article 2, Section 8 at one (1) of the Corporation's two (2) preceding annual meetings of stockholders and either withdrew from or became ineligible or unavailable for election at such annual meeting or received a vote of less than twenty-five percent (25%) of the shares of common stock entitled to vote for such Stockholder Nominee; (E) such Stockholder Nominee has been, within the past three (3) years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended; (F) the Corporation is notified, or the Board of Directors determines, that the Nominating Stockholder or such Stockholder Nominee has failed to continue to satisfy the eligibility requirements, any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), such Stockholder Nominee becomes unwilling or unable to serve on the Board of Directors or any material violation or breach occurs of any of the obligations, agreements, representations or warranties of the Nominating Stockholder or such Stockholder Nominee under this Article 2, Section 8; (G) such Stockholder Nominee is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years; (H) such Stockholder Nominee is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933; or (I) such Stockholder Nominee is not independent under the listing standards of the principal U.S. exchange upon which the common stock of the Corporation is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board of Directors in determining and disclosing independence of the Corporation's directors, in each case as determined by the Board of Directors.

(ii) Notwithstanding anything to the contrary contained in this Article 2, Section 8, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the Supporting Statement or any other statement in support of a Stockholder Nominee included in the Nomination Notice, if the Board of Directors determines that: (A) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading; (B) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any individual, corporation, partnership, association or other entity, organization or governmental authority; (C) the inclusion of such information in the proxy statement would otherwise violate the Securities and Exchange Commission proxy rules or any other applicable law, rule or regulation; or (D) the inclusion of such information in the proxy statement would impose a material risk of liability upon the Corporation.

The Corporation may solicit against, and include in the proxy statement its own statement relating to, any Stockholder Nominee.

ARTICLE 3  
DIRECTORS

Section 1. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of Directors may exercise all powers of the Corporation and perform all lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or performed by the stockholders.

Section 2. Number and Tenure. Subject to the rights of the holders of any class or series of Preferred Stock, the number of directors which shall constitute the Board of Directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Whole Board. No decrease in the number of authorized directors constituting the Whole Board shall shorten the term of any incumbent director.

Except as otherwise provided in the Certificate of Incorporation, subject to the rights of the holders of any series of Preferred Stock provided for or fixed pursuant to the Certificate of Incorporation (the “Preferred Stock Directors”), the Board of Directors shall be divided, with respect to the time for which they severally hold office, into three (3) classes, designated Class I, Class II and Class III, as nearly equal in number as reasonably possible. The first (1<sup>st</sup>) term of office for the Class I directors shall expire at the 2024 annual meeting of stockholders. The first (1<sup>st</sup>) term of office for the Class II directors shall expire at the 2025 annual meeting of stockholders. The first (1<sup>st</sup>) term of office for the Class III directors shall expire at the 2026 annual meeting of stockholders. At the 2024 annual meeting of stockholders, the Class I directors shall be elected for a term of office to expire at the 2027 annual meeting of stockholders. At the 2025 annual meeting of stockholders, the Class II directors shall be elected for a term of office to expire at the 2027 annual meeting of stockholders. At the 2026 annual meeting of stockholders, the Class III directors shall be elected for a term of office to expire at the 2027 annual meeting of stockholders. Commencing at the 2027 annual meeting of stockholders and at all subsequent annual meetings of stockholders, the Board of Directors will no longer be classified under Section 141(d) of the DGCL, and all directors shall be elected for a term of office to expire at the next succeeding annual meeting of stockholders. Prior to the 2027 annual meeting of stockholders, in case of any increase or decrease, from time to time, in the number of directors (other than Preferred Stock Directors), the number of directors in each class shall be apportioned as nearly equal in number as reasonably possible.

Section 3. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of stockholders, or such other date, time and place as the Board of Directors may determine. The Board of Directors may, by resolution, provide the date, time and place, if any, for the holding of additional regular meetings without other notice than such resolution.

Section 4. Special Meetings. Special meetings of the Board of Directors shall be called at the request of the Chair of the Board of Directors, the Lead Independent Director, the Chief Executive Officer or a majority of the Board of Directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place, if any, date and time of the meetings.

Section 5. Telephone Meetings. Any or all directors may participate in a meeting of the Board of Directors or a committee thereof by means of conference telephone or videoconference or any means of communication by which all persons participating in the meeting are able to hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

Section 6. Notice of Meetings. Notice of any special meeting of directors shall be given to each director at such person’s business or residence in writing by hand delivery, first-class or overnight mail or courier service, email or facsimile transmission, or orally by telephone. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five (5) days before such meeting. If by overnight mail or courier service, such notice shall be deemed adequately delivered when the notice is delivered to the overnight mail or courier service company at least twenty-four (24) hours before such meeting. If by email, facsimile transmission, telephone or by hand, such notice shall be deemed adequately delivered when the notice is transmitted at least twelve (12) hours before such meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting. A meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Article 8, Section 2 of these Bylaws.

Section 7. Quorum. Subject to Article 3, Section 8 of these Bylaws, a whole number of directors equal to at least a majority of the Whole Board shall constitute a quorum for the transaction of business, but if at any meeting of the Board of Directors there shall be less than a quorum present, a majority of the directors present may adjourn the meeting from time to time without further notice. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

Section 8. Vacancies. Subject to applicable law and the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, and unless the Board of Directors otherwise determines, vacancies resulting from death, resignation, retirement, disqualification, removal from office or other cause, and newly created directorships resulting from any increase in the authorized number of directors, may be filled only by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors, or by a sole remaining director, and directors so chosen shall hold office until the next election of the class, if any, for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified or until any such director's earlier death, resignation, removal, retirement or disqualification. Notwithstanding the foregoing, from and after the 2027 annual meeting of stockholders, any director so chosen shall hold office until the next election of directors and until his or her successor shall have been duly elected and qualified or until any such director's earlier death, resignation, removal, retirement or disqualification. No decrease in the number of authorized directors constituting the Whole Board shall shorten the term of any incumbent director.

Section 9. Chair of the Board of Directors. The Chair of the Board of Directors shall be chosen from among the directors and may be the Chief Executive Officer. The Chair shall preside over all meetings of the Board of Directors. In the absence of the Chair of the Board of Directors, the Lead Independent Director or another director chosen by a majority of the directors present shall preside at meetings of the Board of Directors.

Section 10. Lead Independent Director. The Board of Directors may, at its discretion, appoint an independent director to serve as the Lead Independent Director in order to coordinate the activities of the independent directors. The Lead Independent Director shall be appointed annually by a majority vote of the independent directors and shall serve until his or her successor shall have been appointed or until his or her earlier death, resignation, removal or disqualification as an independent director. The Lead Independent Director may be removed, with or without cause, by a majority of the independent directors. The Lead Independent Director shall have such powers and perform such duties as are assigned by these Bylaws and shall have such other powers and perform such other duties, not inconsistent with these Bylaws, as from time to time may be assigned by the Board of Directors. A majority of the independent directors shall fill any vacancy in the position of Lead Independent Director at such time and in such manner as such directors shall determine.

Section 11. Committees. The Board of Directors may designate any such committee as the Board of Directors considers appropriate, which shall consist of one (1) or more directors of the Corporation. The Board of Directors may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee may to the extent permitted by law exercise such powers and shall have such responsibilities as shall be specified in the designating resolution. Each committee shall keep written minutes of its proceedings and shall report such proceedings to the Board of Directors as appropriate.

A majority of any committee may determine its action and fix the time and place of its meetings, unless the Board of Directors shall otherwise provide. Notice of such meetings shall be given to each member of the committee in the manner provided for in Article 3, Section 6 of these Bylaws. The Board of Directors shall have power at any time to fill vacancies in, to change the membership of, or to dissolve, any such committee. Nothing herein shall be deemed to prevent the Board of Directors from appointing one (1) or more committees consisting in whole or in part of persons who are not directors of the Corporation; provided, however, that no such committee shall have or may exercise any authority of the Board of Directors.

Section 12. Removal. Subject to the rights of the holders of any series of Preferred Stock, any director(s) of the Corporation may be removed from office at any time by the affirmative vote of the holders of at least a majority of the Voting Stock (a) until the 2027 annual meeting of stockholders or such other time as the Board of Directors is no longer classified under Section 141(d) of the DGCL, only for cause by the affirmative vote of the holders of a majority of the Voting Stock and (b) from and including the 2027 annual meeting of stockholders or such other time as the Board of Directors is no longer classified under Section 141(d) of the DGCL, with or without cause, by the affirmative vote of the holders of a majority of the Voting Stock.

Section 13. Action Without a Meeting. The Board of Directors or a committee thereof may take any action required or permitted to be taken at any meeting of the Board of Directors or committee, as the case may be, without a meeting if, prior or subsequent to such action, all members of the Board of Directors or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors, or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 14. Compensation of Directors. The Board of Directors may, by the affirmative vote of a majority of the directors then in office, fix fees or compensation of the directors for services to the Corporation, including attendance at meetings of the Board of Directors or committees thereof. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

ARTICLE 4  
OFFICERS

Section 1. Elected Officers. The elected officers of the Corporation shall be a Chief Executive Officer, a President, a Vice President, a Treasurer, a Secretary and such other officers or assistant officers as the Board of Directors from time to time may deem proper. Any number of offices may be held by the same person. All officers and assistant officers elected by the Board of Directors shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article 4. Such officers and assistant officers shall also have such powers and duties as from time to time may be conferred by the Board of Directors or by any committee thereof. The Board of Directors or any committee thereof may from time to time elect such other officers and assistant officers (including one (1) or more Assistant Vice Presidents, Assistant Secretaries, and Assistant Treasurers) and such agents, as may be necessary or desirable for the conduct of the business of the Corporation. Assistant officers and agents also may be appointed by the Chief Executive Officer. Such other officers, assistant officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in these Bylaws or as may be prescribed by the Board of Directors or such committee or by the Chief Executive Officer, as the case may be.

Section 2. Election and Term of Office. The elected officers of the Corporation shall be elected by the Board of Directors. Each officer shall hold office until such officer's successor shall have been duly elected and shall have qualified or until such officer's earlier death, resignation or removal.

Section 3. Chief Executive Officer. The Chief Executive Officer shall be responsible for the general management and supervision over and responsibility for the business and affairs of the Corporation and shall perform all duties incident to the office which may be required by applicable law and all such other duties as are properly required of the Chief Executive Officer by the Board of Directors. The Chief Executive Officer of the Corporation may also serve as President, if so elected by the Board of Directors.

Section 4. President. If the Board of Directors elects a President who is not the Chief Executive Officer, the President shall act in a general executive capacity and shall assist the Chief Executive Officer in the administration and operation of the Corporation's business and general supervision of its policies and affairs.

Section 5. Vice Presidents. Each Vice President, including any Vice President designated as Executive, Senior, or otherwise, shall have such powers and shall perform such duties as shall be assigned to such Vice President by the Board of Directors, the Chief Executive Officer or the President.

Section 6. Treasurer. The Treasurer shall exercise general supervision over the receipt, custody and disbursement of corporate funds. The Treasurer shall, in general, perform all the duties incident to the office of Treasurer and shall have such further powers and duties as shall be prescribed from time to time by the Board of Directors, the Chief Executive Officer or the President.



Section 7. Secretary. The Secretary shall keep or cause to be kept, in one (1) or more books provided for that purpose, the minutes of all meetings of the Board of Directors, the committees of the Board of Directors and the stockholders. The Secretary shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by applicable law. The Secretary shall see that the books, reports, statements, certificates and other documents and records required by applicable law to be kept and filed are properly kept and filed. The Secretary shall, in general, perform all the duties incident to the office of Secretary and such other duties as from time to time may be assigned to such Secretary by the Board of Directors, the Chief Executive Officer, the Lead Independent Director (if any) or the President.

Section 8. Removal. Any officer elected, or agent appointed, by the Board of Directors may be removed from office with or without cause by the affirmative vote of a majority of the Whole Board. Any assistant officer or agent appointed by the Chief Executive Officer may be removed from office by the Chief Executive Officer with or without cause. No elected officer or assistant officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his or her successor, his or her death, or his or her resignation or removal from office, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan.

Section 9. Vacancies. A newly created elected office and a vacancy in any elected office because of death, resignation, or removal may be filled by the Board of Directors. Any vacancy in an office appointed by the Chief Executive Officer or the President because of death, resignation, or removal may be filled by the Chief Executive Officer or the President.

#### ARTICLE 5 STOCK CERTIFICATES AND TRANSFERS

Section 1. Stock; Transfers. Unless otherwise determined by the Board of Directors, the interest of each stockholder of the Corporation will be uncertificated.

The shares of the stock of the Corporation shall be transferred on the books of the Corporation, in the case of certificated shares of stock, if any, by the holder thereof in person or by such person's attorney duly authorized in writing, upon surrender for cancellation of certificates for at least the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require; and, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney duly authorized in writing, and upon compliance with appropriate procedures for transferring shares in uncertificated form. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

The certificates of stock, if any, shall be signed, countersigned and registered in such manner as the Board of Directors may by resolution prescribe, which resolution may permit all or any of the signatures on such certificates to be in facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Notwithstanding anything to the contrary in these Bylaws, at all times that the Corporation's stock is listed on a stock exchange, the shares of the stock of the Corporation shall comply with all direct registration system eligibility requirements established by such exchange, including any requirement that shares of the Corporation's stock be eligible for issue in book-entry form. All issuances and transfers of shares of the Corporation's stock shall be entered on the books of the Corporation with all information necessary to comply with such direct registration system eligibility requirements, including the name and address of the person to whom the shares of stock are issued, the number of shares of stock issued and the date of issue. The Board of Directors shall have the power and authority to make such rules and regulations as it may deem necessary or proper concerning the issue, transfer and registration of shares of stock of the Corporation in both the certificated (if any) and uncertificated form.

Section 2. Lost, Stolen or Destroyed Certificates. As applicable, no certificate for shares of stock in the Corporation shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the Corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board of Directors or any financial officer may in its or such person's discretion require.

Section 3. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by applicable law.

Section 4. Transfer and Registry Agents. The Corporation may from time to time maintain one (1) or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors or by the Chief Executive Officer or the President.

#### ARTICLE 6 CONTRACTS, PROXIES, ETC.

Section 1. Contracts. Except as otherwise required by applicable law, the Certificate of Incorporation or these Bylaws, any contracts or other instruments may be executed and delivered in the name and on behalf of the Corporation by such officer or officers of the Corporation as the Board of Directors may from time to time direct. Such authority may be general or confined to specific instances as the Board of Directors may determine. The Chair of the Board of Directors, the Lead Independent Director (if any), any Vice Chair of the Board of Directors, the Chief Executive Officer, the President, any Vice President, the Secretary, the Treasurer and any other officer of the Corporation elected by the Board of Directors may sign, acknowledge, verify, make, execute and/or deliver on behalf of the Corporation any agreement, application, bond, certificate, consent, guarantee, mortgage, power of attorney, receipt, release, waiver, contract, deed, lease and any other instrument, or any assignment or endorsement thereof. Subject to any restrictions imposed by the Board of Directors or the Chair of the Board of Directors, the Chief Executive Officer, the Lead Independent Director (if any), the President, any Vice President, the Secretary, the Treasurer or any other officer of the Corporation elected by the Board of Directors may delegate contractual powers to others under his or her jurisdiction, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 2. Proxies. Unless otherwise provided by resolution adopted by the Board of Directors, the Chair of the Board of Directors, the Chief Executive Officer, the President, the Lead Independent Director (if any), or any officer of the Corporation elected by the Board of Directors may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other entity, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other entity, or to consent in writing, in the name of the Corporation as such holder, to any action by such other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper in the premises.

ARTICLE 7  
DIVIDENDS

Dividends may be declared and paid at such times and in such amounts as the Board of Directors may in its absolute discretion determine and designate, subject to the restrictions and limitations imposed by law and the Certificate of Incorporation.

ARTICLE 8  
MISCELLANEOUS PROVISIONS

Section 1. Seal. The corporate seal, if the Corporation shall have a corporate seal, shall have inscribed thereon the words "Corporate Seal, Delaware," the name of the Corporation and the year of its organization. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 2. Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or the Board of Directors or committee thereof need be specified in any waiver of notice of such meeting. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 3. Resignations. Any director or any officer, whether elected or appointed, may resign at any time by giving written notice of such resignation to the Chair of the Board of Directors, the Chief Executive Officer, the Lead Independent Director (if any), or the Secretary, and such resignation shall be deemed to be effective as of the close of business on the date said notice is received by the Chair of the Board of Directors, the Chief Executive Officer, the Lead Independent Director (if any), or the Secretary, or at such later time as is specified therein. Except to the extent specified in such notice, no formal action shall be required of the Board of Directors or the stockholders to make any such resignation effective.

ARTICLE 9  
FISCAL YEAR

The fiscal year of the Corporation shall begin on the first (1<sup>st</sup>) day of January in each year and end on the thirty-first ( 31<sup>st</sup>) day of December next succeeding; provided that, the Board of Directors shall have the power, from time to time, to fix a different fiscal year of the Corporation by a duly adopted resolution.

ARTICLE 10  
INDEMNIFICATION & GENERAL PROVISIONS

Section 1. Indemnification. Each person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise (each such director or officer, hereinafter, an "indemnitee"), shall be (and shall be deemed to have a contractual right to be) indemnified and held harmless by the Corporation (and any successor of the Corporation by merger or otherwise) to the fullest extent authorized or permitted by the DGCL as the same exists or may hereafter be amended or modified from time to time (but, in the case of any such amendment or modification, only to the extent that such amendment or modification permits the Corporation to provide greater indemnification rights than the DGCL permitted the Corporation to provide prior to such amendment or modification) against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection therewith if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal proceeding had no reasonable cause to believe such person's conduct was unlawful.

Section 2. Advancement of Expenses. To the fullest extent permitted by the DGCL as the same exists or may hereafter be amended or modified from time to time (but, in the case of any such amendment or modification, only to the extent that such amendment or modification permits the Corporation to provide greater rights to advancement of expenses than said law permitted the Corporation to provide prior to such amendment or modification), each indemnitee shall have (and shall be deemed to have a contractual right to have) the right, without the need for any action by the Board of Directors, to be paid by the Corporation (and any successor of the Corporation by merger or otherwise) the expenses incurred by such indemnitee in connection with a proceeding in advance of the final disposition of such proceeding; such advances to be paid by the Corporation within twenty (20) days after the receipt by the Corporation of a statement or statements from the claimant requesting such advance or advances from time to time; provided, that, if the DGCL requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not, except to the extent specifically required by applicable law, in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right of appeal that such director or officer is not entitled to be indemnified for such expenses under this Bylaw or otherwise.

Section 3. Determination of Indemnification. Any indemnification under this Article 10 (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the indemnitee is proper in the circumstances, because such person has met the applicable standard of conduct set forth in the DGCL. With respect to an indemnitee who is a director or officer of the Corporation at the time of such determination, such determination shall be made (i) by a majority vote of the directors who are not parties to such proceeding, even though less than a quorum, (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion of such independent legal counsel, or (iv) by the stockholders.

Section 4. Non-Exclusivity of Rights. The rights conferred on any person in this Article 10 shall not be exclusive of any other right that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote or consent of stockholders or directors. Additionally, nothing in this Article 10 shall limit the ability of the Corporation, in its discretion, to indemnify or advance expenses to persons whom the Corporation is not obligated to indemnify or advance expenses pursuant to this Article 10. The Board of Directors shall have the power to delegate to such officer or other person as the Board of Directors shall specify the determination of whether indemnification shall be given to any person pursuant to this paragraph.

Section 5. Indemnification Agreements. The Board of Directors is authorized to cause the Corporation to enter into indemnification agreements with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing indemnification rights to such person. Such rights may be greater than those provided in this Article 10.

Section 6. Continuation of Indemnification. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article 10 shall continue notwithstanding that the person has ceased to be an indemnitee and shall inure to the benefit of his or her estate, heirs, executors and administrators; provided, however, that the Corporation shall indemnify any such person seeking indemnity in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors.

Section 7. Effect of Amendment or Repeal. The provisions of this Article 10 shall constitute a contract between the Corporation, on the one hand, and, on the other hand, each individual who serves or has served as an indemnitee (whether before or after the adoption of these Bylaws), in consideration of such person's performance of such services, and pursuant to this Article 10, the Corporation intends to be legally bound to each such current or former indemnitee. With respect to current and former indemnitees, the rights conferred under this Article 10 are present contractual rights and such rights are fully vested, and shall be deemed to have vested fully, immediately upon adoption of these Bylaws. With respect to any indemnitee who commence service following adoption of these Bylaws, the rights conferred under this Article 10 shall be present contractual rights, and such rights shall fully vest, and be deemed to have vested fully, immediately upon such indemnitee's service in the capacity which is subject to the benefits of this Article 10. No elimination of or amendment to this Article 10 shall deprive any person of any rights hereunder arising out of alleged or actual acts or omissions occurring prior to such elimination or amendment.

Section 8. Notice. Any notice, request or other communication required or permitted to be given to the Corporation under this Article 10 shall be in writing and either delivered in person or sent by telecopy, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary of the Corporation and shall be effective only upon receipt by the Secretary.

Section 9. Severability. If any provision or provisions of this Bylaw shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (A) the validity, legality and enforceability of the remaining provisions of this Bylaw (including, without limitation, each portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (B) to the fullest extent possible, the provisions of this Bylaw (including, without limitation, each such portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 10. Forum Selection for Adjudication of Certain Disputes. Unless the Corporation consents in writing to the selection of an alternative forum (an "Alternative Forum Consent"), to the fullest extent permitted by law:

(a) the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, stockholder, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of the Corporation arising out of or relating to any provision of the DGCL or the Corporation's Certificate of Incorporation or Bylaws, or (iv) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of the Corporation governed by the internal affairs doctrine of the State of Delaware; provided, however, that, in the event that the Court of Chancery of the State of Delaware lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware, in each such case, unless the Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) has dismissed a prior action by the same plaintiff asserting the same claims because such court lacked personal jurisdiction over an indispensable party named as a defendant therein.

(b) the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. This exclusive forum provision does not apply to claims arising under the Securities Exchange Act of 1934, as amended.

Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article 10, Section 10. The existence of any prior Alternative Forum Consent shall not act as a waiver of the Corporation's ongoing consent right as set forth above in this Article 10, Section 10 with respect to any current or future actions or claims.

ARTICLE 11  
AMENDMENTS

Section 1. By the Stockholders. Subject to the provisions of the Certificate of Incorporation, these Bylaws may be amended, altered, changed or repealed, or new Bylaws adopted, at any special meeting of the stockholders of the Corporation if duly called for that purpose (provided that, in the notice of such special meeting, notice of such purpose shall be given), or at any annual meeting, in each case, by the affirmative vote of the holders of at least two-thirds (66⅔ percent) of the Voting Stock.

Section 2. By the Board of Directors. Subject to the laws of the State of Delaware, the Certificate of Incorporation and these Bylaws, these Bylaws may also be amended, altered, changed or repealed, or new Bylaws adopted, by the Board of Directors, without the assent or vote of stockholders of the Corporation. Any amendment, alteration or repeal of the Bylaws of the Corporation by the Board of Directors shall require the affirmative vote of at least a majority of the directors then in office

STOCKHOLDER AND REGISTRATION RIGHTS AGREEMENT

BY AND BETWEEN

MDU RESOURCES GROUP, INC.

AND

KNIFE RIVER HOLDING COMPANY

DATED AS OF MAY 30, 2023

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
ARTICLE I DEFINITIONS	1
ARTICLE II REGISTRATION RIGHTS	6
Section 2.01 Registration	6
Section 2.02 Piggyback Registrations	10
Section 2.03 Registration Procedures	12
Section 2.04 Underwritten Offerings or Exchange Offers	18
Section 2.05 Registration Rights Agreement with Participating Banks	19
Section 2.06 Registration Expenses Paid by SpinCo.	19
Section 2.07 Indemnification	20
Section 2.08 Reporting Requirements; Rule 144	22
Section 2.09 Registration Rights Covenant	22
ARTICLE III VOTING RESTRICTIONS	23
Section 3.01 Voting of SpinCo Shares	23
ARTICLE IV MISCELLANEOUS	23
Section 4.01 Further Assurances	23
Section 4.02 Term and Termination	23
Section 4.03 Counterparts; Entire Agreement; Corporate Power	24
Section 4.04 Disputes and Governing Law	24
Section 4.05 Successors, Assigns and Transferees	25
Section 4.06 Third-Party Beneficiaries	26
Section 4.07 Notices	26
Section 4.08 Severability	27
Section 4.09 Headings	27
Section 4.10 Waiver of Default	28
Section 4.11 Amendments	28
Section 4.12 Interpretation	28
Section 4.13 Performance	29
Section 4.14 Registrations, Exchanges, etc.	29
Section 4.15 Mutual Drafting	29
Exhibit A – Form of Agreement to be Bound	A-1

## STOCKHOLDER AND REGISTRATION RIGHTS AGREEMENT

This STOCKHOLDER AND REGISTRATION RIGHTS AGREEMENT, dated as of May 30, 2023 (this “Agreement”), is by and between MDU Resources Group, Inc., a Delaware corporation (“Parent”), and Knife River Holding Company, a Delaware corporation (“SpinCo”). Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to them in Article I.

### RECITALS

WHEREAS, the board of directors of Parent (the “Parent Board”) has determined that it is appropriate and desirable to distribute approximately ninety percent (90%) of the outstanding SpinCo Shares owned by Parent to Parent’s stockholders (the “Distribution”);

WHEREAS, Parent may Transfer those SpinCo Shares that are not distributed in the Distribution (such SpinCo Shares not distributed in the Distribution, the “Remaining Shares”) through one or more transactions, including pursuant to one or more transactions registered under the Securities Act;

WHEREAS, SpinCo desires to grant to the Parent Group the Registration Rights for the Remaining Shares and other Registrable Securities, subject to the terms and conditions of this Agreement; and

WHEREAS, the Parent Group desires to grant SpinCo a proxy to vote the Remaining Shares in proportion to the votes cast by SpinCo’s other stockholders, subject to the terms and conditions of this Agreement.

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

### ARTICLE I DEFINITIONS

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

“Affiliate” shall have the meaning given to such term in the Separation and Distribution Agreement.

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

“Ancillary Agreements” shall have the meaning given to such term in the Separation and Distribution Agreement.

“Ancillary Filings” shall have the meaning set forth in Section 2.03(a)(i).

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“Blackout Notice” shall have the meaning set forth in Section 2.01(d).

“Blackout Period” shall have the meaning set forth in Section 2.01(d).

“Block Trade” shall mean an Underwritten Offering not involving any “road show” which is commonly known as a “block trade.”

“Debt” shall mean any indebtedness of any member of the Parent Group, including debt securities, notes, credit facilities, credit agreements and other debt instruments, including, in each case, any amounts due thereunder.

“Debt Exchanges” shall mean one or more Public Debt Exchanges or Private Debt Exchanges.

“Demand Registration” shall have the meaning set forth in Section 2.01(a).

“Disadvantageous Condition” shall have the meaning set forth in Section 2.01(d).

“Dispute” shall have the meaning set forth in Section 4.04(a).

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

“Distribution Date” shall have the meaning given to such term in the Separation and Distribution Agreement.

“Effective Time” shall have the meaning given to such term in the Separation and Distribution Agreement.

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

“Exchange Offer” shall mean an exchange offer of Registrable Securities for outstanding securities of a Holder.

“Governmental Authority” shall have the meaning given to such term in the Separation and Distribution Agreement.

“Group” shall have the meaning given to such term in the Separation and Distribution Agreement.

“Holder” shall mean any member of the Parent Group, so long as such Person holds any Registrable Securities, and any Permitted Transferee, so long as such Person holds any Registrable Securities.

“Indemnifying Party” shall have the meaning set forth in Section 2.07(c).

“Indemnitee” shall have the meaning set forth in Section 2.07(c).

“Initiating Holder” shall have the meaning set forth in Section 2.01(a).

“Law” shall have the meaning given to such term in the Separation and Distribution Agreement.

“Losses” shall have the meaning set forth in Section 2.07(a).

“Offering Confidential Information” shall mean, with respect to a Piggyback Registration, (i) SpinCo’s plan to file the relevant Registration Statement and engage in the offering so registered, (ii) any information regarding the offering being registered (including the potential timing, price, number of shares, underwriters or other counterparties, selling stockholders or plan of distribution) and (iii) any other information (including information contained in draft supplements or amendments to offering materials) provided to any Holders by SpinCo (or by third parties) in connection with a Piggyback Registration; provided that Offering Confidential Information shall not include information that (x) was or becomes generally available to the public (including as a result of the filing of the relevant Registration Statement) other than as a result of a disclosure by any Holder, (y) was or becomes available to any Holder from a source not bound by any confidentiality agreement with SpinCo or (z) was otherwise in such Holder’s possession prior to it being furnished to such Holder by SpinCo or on SpinCo’s behalf.

“Other Holders” shall have the meaning set forth in Section 2.01(f).

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

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

“Parent Group” shall have the meaning given to such term in the Separation and Distribution Agreement.

“Participating Banks” shall mean such investment banks that engage in any Debt Exchange with one or more members of the Parent Group.

“Parties” shall mean the parties to this Agreement.

“Permitted Transferee” shall mean any Transferee and any Subsequent Transferee.

“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.

“Piggyback Registration” shall have the meaning set forth in Section 2.02(a).

“Private Debt Exchange” shall mean a private exchange pursuant to which one or more members of the Parent Group shall Transfer some or all of their Registrable Securities to one or more Participating Banks in exchange for the satisfaction of Debt, in a transaction or transactions not required to be registered under the Securities Act.

“Prospectus” shall mean the prospectus included in any Registration Statement, all amendments and supplements to such prospectus (including, for the avoidance of doubt, any Takedown Prospectus Supplement), including post-effective amendments, and all other material incorporated by reference in such prospectus.

“Public Debt Exchange” shall mean a public exchange pursuant to which one or more members of the Parent Group shall Transfer some or all of their Registrable Securities to one or more Participating Banks in exchange for the satisfaction of Debt, in a transaction or transactions registered under the Securities Act.

“Registrable Securities” shall mean the Remaining Shares and any SpinCo Shares or other securities issued with respect to, in exchange for, or in replacement of such Remaining Shares; provided, that the term “Registrable Securities” excludes any security (i) the offering and Transfer of which has been effectively registered under the Securities Act and which has been Transferred pursuant to a Registration Statement, (ii) that has been Transferred by a Holder in a transaction or transactions exempt from the registration and prospectus delivery requirements of the Securities Act under Section 4(1) thereof (including transactions pursuant to Rule 144) such that the further Transfer of such securities by the transferee or assignee is not restricted under the Securities Act or (iii) that has been Transferred by a Holder in a transaction in which such Holder’s rights under this Agreement are not, or cannot be, assigned.

“Registration” shall mean a registration with the SEC of the offer and Transfer to the public of any Registrable Securities under a Registration Statement. The terms “Register” and “Registering” shall have correlative meanings.

“Registration Expenses” shall mean all expenses incident to the SpinCo Group’s performance of or compliance with this Agreement, including all (i) registration, qualification and filing fees, (ii) fees and expenses of compliance with securities or blue sky Laws (including reasonable fees and disbursements of counsel in connection with blue sky qualifications within the United States of any Registrable Securities being registered), (iii) printing expenses, messenger, telephone and delivery expenses, (iv) internal expenses of SpinCo Group (including all salaries and expenses of employees of members of SpinCo Group performing legal or accounting duties), (v) fees and disbursements of counsel for SpinCo and customary fees and expenses for independent certified public accountants retained by the SpinCo Group (including the expenses of any comfort letters or costs associated with the delivery by SpinCo Group members’ independent certified public accountants of comfort letters customarily requested by underwriters) and (vi) fees and expenses of listing any Registrable Securities on any securities exchange on which the SpinCo Shares are then listed and Financial Industry Regulatory Authority registration and filing fees; but excluding any fees or disbursements of any Holder, all expenses incurred in connection with the printing, mailing and delivering of copies of any Registration Statement, any Prospectus, any other offering documents and any amendments and supplements thereto to any underwriters and dealers; any underwriting discounts, fees or commissions attributable to the offer and Transfer of any Registrable Securities, any fees and expenses of the underwriters or dealer managers, the cost of preparing, printing or producing any agreements among underwriters, underwriting agreements and blue sky or legal investment memoranda, any selling agreements and any other similar documents in connection with the offering, Transfer, distribution or delivery of the Registrable Securities or other SpinCo Shares to be Transferred, including any fees of counsel for any underwriters in connection with the qualification of the Registrable Securities or other SpinCo Shares to be Transferred for offering and Transfer or distribution under state securities Laws, any stock transfer taxes, out-of-pocket costs and expenses relating to any investor presentations on any “road show” presentations undertaken in connection with marketing of the Registrable Securities and any fees and expenses of any counsel to the Holder or the underwriters or dealer managers.

“Registration Period” shall have the meaning set forth in Section 2.01(c).

“Registration Rights” shall mean the rights of the Holders to cause SpinCo to Register Registrable Securities pursuant to Article II.

“Registration Statement” shall mean any registration statement of SpinCo filed with, or to be filed with, the SEC under the rules and regulations promulgated under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement, including post-effective amendments, and all exhibits and all material incorporated by reference into such registration statement. For the avoidance of doubt, it is acknowledged and agreed that such Registration Statement may be on any applicable form, including Form S-1, Form S-3, Form S-3ASR or Form S-4 and may be a Shelf Registration Statement.

“Remaining Shares” shall have the meaning set forth in the recitals.

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

“Securities Act” shall mean the U.S. Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

“Separation and Distribution Agreement” shall mean the Separation and Distribution Agreement by and between Parent and SpinCo in connection with the Separation and the Distribution, as it may be amended from time to time.

“Shelf Registration” means a registration pursuant to a Shelf Registration Statement.

“Shelf Registration Statement” shall mean a Registration Statement of SpinCo for an offering of Registrable Securities to be made on a delayed or continuous basis pursuant to Rule 415 under the Securities Act (or similar provisions then in effect).

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

“SpinCo Board” shall mean the board of directors of SpinCo.

“SpinCo Group” shall have the meaning given to such term in the Separation and Distribution Agreement.

“SpinCo Public Transfer” shall have the meaning set forth in Section 2.02(a).

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

“Subsequent Transferee” shall have the meaning set forth in Section 4.05(b).

“Subsidiary” shall have the meaning given to such term in the Separation and Distribution Agreement.

“Takedown Prospectus Supplement” shall have the meaning set forth in Section 2.01(g).

“Takedown Request” shall have the meaning set forth in Section 2.01(g).

“Third Party” shall have the meaning given to such term in the Separation and Distribution Agreement.

“Transfer” shall mean the direct or indirect transfer, sale, assignment or other disposition of a security. The term “Transferred” shall have a correlative meaning.

“Transferee” shall have the meaning set forth in Section 4.05(b).

“Underwritten Offering” shall mean a Registration in which Registrable Securities are Transferred to an underwriter or underwriters on a firm commitment basis for reoffering to the public.

## ARTICLE II REGISTRATION RIGHTS

### Section 2.01 Registration.

(a) At any time prior to or on the fifth anniversary of the Distribution Date, any Holder(s) of 10% or more of the then-outstanding Registrable Securities (and any Holders acting together which collectively hold 10% or more of the then outstanding Registrable Securities) (collectively, the “Initiating Holder”; provided, that the 10% ownership threshold shall not apply to any Holder that is a member of the Parent Group) shall have the right to request that SpinCo file a Registration Statement with the SEC on the appropriate registration form for all or part of the Registrable Securities held by such Initiating Holder, by delivering a written request therefor to SpinCo specifying the number of shares of Registrable Securities such Initiating Holder wishes to register (a “Demand Registration”). SpinCo shall (i) within five days of the receipt of a Demand Registration, give written notice of such Demand Registration to all Holders of Registrable Securities, (ii) use its reasonable best efforts to prepare and file the Registration Statement as expeditiously as possible, but in any event within 30 days of such request and (iii) use its reasonable best efforts to cause the Registration Statement to become effective as expeditiously as possible in respect of each Demand Registration in accordance with the intended method of distribution set forth in the written request delivered by the Initiating Holder. SpinCo shall include in such Registration all Registrable Securities with respect to which SpinCo receives, within the 10 days immediately following the receipt by the Holder(s) of such notice from SpinCo, a request for inclusion in the Registration from the Holder(s) thereof. Each such request from a Holder of Registrable Securities for inclusion in the Registration shall also specify the aggregate amount of Registrable Securities proposed to be Registered. The Initiating Holder may request that the Registration Statement be on any appropriate form, including Form S-4 in the case of an Exchange Offer or Form S-3 in the case of a Shelf Registration Statement, and SpinCo shall effect the Registration on the form so requested.

(b) The Holder(s) may collectively make a total of three Demand Registration requests pursuant to Section 2.01(a) (including any exercise of rights to Demand Registration transferred pursuant to Section 4.05 and including any exercise of rights to Demand Registration made pursuant to any registration rights agreement entered into pursuant to Section 2.05). In addition, and notwithstanding anything to the contrary in this Agreement, the Parent Group shall be permitted to engage in up to four Debt Exchanges within any nine-month period following the date hereof, and Demand Registration request(s) made by the Participating Banks in such Debt Exchanges pursuant to one or more registration rights agreements with SpinCo pursuant to Section 2.05 shall collectively count only as one Demand Registration request for purposes of the limitation on the number of Demand Registration requests set forth in the first sentence of this Section 2.01(b) (it being understood that the Parent Group shall be permitted to engage in additional Debt Exchanges outside of such nine-month period, but each Demand Registration request by the Participating Banks for such additional Debt Exchange pursuant to its registration rights agreement with SpinCo pursuant to Section 2.05 shall count as an additional Demand Registration request for purposes of the limitation on the number of Demand Registration requests set forth in the first sentence of this Section 2.01(b)). Furthermore, and notwithstanding anything to the contrary in this Agreement, if, at the time of the third Demand Registration, SpinCo is prohibited under then-existing SEC rules from registering all remaining Registrable Securities pursuant to a Shelf Registration, regardless of whether the Holder or Holders has requested that such third Demand Registration be a Shelf Registration or otherwise, then such Demand Registration shall not count toward the total number of Demand Registration requests made by the Holder(s), and the Holder(s) shall continue to be able to make additional Demand Registration requests until such time as SpinCo is permitted under then-existing SEC rules to register all of the remaining Registrable Securities pursuant to a Shelf Registration.

(c) SpinCo shall be deemed to have effected a Registration for purposes of this Section 2.01 if the Registration Statement is declared effective by the SEC or becomes effective upon filing with the SEC and remains effective until the earlier of (i) the date when all Registrable Securities thereunder have been Transferred and (ii)(x) in the case of a Registration Statement that is not a Shelf Registration Statement, 60 days from the effective date of such Registration Statement, (y) in the case of a Shelf Registration Statement on Form S-1, 12 months from the effective date of such Shelf Registration Statement and (z) in the case of a Shelf Registration Statement on any other form, 24 months from the effective date of such Shelf Registration Statement (such period, as applicable, the "Registration Period"). No Registration shall be deemed to have been effective if the conditions to closing specified in the underwriting agreement or dealer manager agreement, if any, entered into in connection with such Registration are not satisfied by reason of a wrongful act, misrepresentation or breach of such applicable underwriting agreement or dealer manager agreement by any member of the SpinCo Group. If during the Registration Period, such Registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other Governmental Authority or the need to update or supplement the Registration Statement, the Registration Period shall be extended on a day-for-day basis for any period during which the Holder(s) is unable to complete an offering as a result of such stop order, injunction or other order or requirement of the SEC or other Governmental Authority or as a result of such need to update or supplement the Registration Statement.



(d) With respect to any Registration Statement or Takedown Prospectus Supplement, whether filed or to be filed pursuant to this Agreement, if the SpinCo Board, in good faith, shall reasonably determine, upon the advice of legal counsel, that maintaining the effectiveness of such Registration Statement or filing an amendment or supplement thereto (or, if no Registration Statement has yet been filed, filing such a Registration Statement), or filing such Takedown Prospectus Supplement, would (i) require the public disclosure of material nonpublic information concerning any transaction or negotiations involving SpinCo or any of its consolidated Subsidiaries that would materially interfere with such transaction or negotiations or (ii) require the public disclosure of material nonpublic information concerning SpinCo or any of its consolidated Subsidiaries that, if disclosed at such time, would be materially adverse to SpinCo or any of its consolidated Subsidiaries (a “Disadvantageous Condition”), SpinCo may, for the shortest period reasonably practicable, and in any event for not more than 60 consecutive calendar days (a “Blackout Period”), notify the Holders whose offers and Transfers of Registrable Securities are covered (or to be covered) by such Registration Statement or Takedown Prospectus Supplement that such Registration Statement is unavailable for use (or will not be filed as requested) (such notice, a “Blackout Notice”). Upon the receipt of any such Blackout Notice, the Holders shall forthwith discontinue use of the Prospectus or Takedown Prospectus Supplement contained in any effective Registration Statement; provided that, if at the time of receipt of such Blackout Notice any Holder shall have Transferred its Registrable Securities (or have signed a firm commitment underwriting agreement with respect to the purchase of such shares) and the Disadvantageous Condition is not of a nature that would require a post-effective amendment to the Registration Statement or Takedown Prospectus Supplement, then SpinCo shall use its reasonable best efforts to take such action as to eliminate any restriction imposed by federal securities Laws on the timely delivery of such Registrable Securities; provided, further, that, if implementation of such Blackout Period would materially impair the ability of Parent or any member of the Parent Group to Transfer its Registrable Securities in accordance with its or their intended method of distribution, then SpinCo may not impose such Blackout Period (and any Blackout Period then in effect shall automatically expire) and SpinCo shall as soon as reasonably possible revise, amend and/or supplement the Registration Statement, as applicable, so that it does not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. When any Disadvantageous Condition as to which a Blackout Notice has been previously delivered shall cease to exist, SpinCo shall as promptly as reasonably practicable notify the Holders and take such actions in respect of such Registration Statement or Takedown Prospectus Supplement as are otherwise required by this Agreement. The Registration Period for any Registration Statement for which SpinCo has given notice of a Blackout Period shall be increased by the length of time of such Blackout Period. SpinCo shall not impose, in any 365-day period, Blackout Periods lasting, in the aggregate, in excess of 90 calendar days. If the SpinCo Board declares a Blackout Period with respect to a Demand Registration for a Registration Statement that has not yet been declared effective or a Takedown Request for which a Takedown Prospectus Supplement has not yet been filed, (i) the Holders may, by notice to SpinCo, withdraw the related Demand Registration request or Takedown Request, in the case of a Demand Registration request without such Demand Registration request counting against the number of Demand Registration requests permitted to be made under Section 2.01(b), and (ii) the Holders shall not be responsible for any of SpinCo’s related Registration Expenses.

(e) If the Initiating Holder so indicates at the time of its request pursuant to Section 2.01(a) or Section 2.01(g), such offering of Registrable Securities shall be in the form of an Underwritten Offering or an Exchange Offer, and SpinCo shall include such information in the written notice to the Holders required under Section 2.01(a). In the event that the Initiating Holder intends to Transfer the Registrable Securities by means of an Underwritten Offering or Exchange Offer, the right of any Holder to include Registrable Securities in such Registration shall be conditioned upon such Holder's participation in such Underwritten Offering or Exchange Offer and the inclusion of such Holder's Registrable Securities in the Underwritten Offering or the Exchange Offer to the extent provided herein. The Holders of a majority of the outstanding Registrable Securities being included in any Underwritten Offering or Exchange Offer shall select the underwriter(s) in the case of an Underwritten Offering or the dealer manager(s) in the case of an Exchange Offer, provided that such underwriter(s) or dealer manager(s) are reasonably acceptable to SpinCo. SpinCo shall be entitled to designate counsel for such underwriter(s) or dealer manager(s) (subject to their approval), provided that such designated underwriters' counsel shall be a firm of national reputation representing underwriters or dealer managers in capital markets transactions.

(f) If the managing underwriter or underwriters of a proposed Underwritten Offering of Registrable Securities included in a Registration pursuant to this Section 2.01 inform(s), in writing, the Holders participating in such Registration that, in its or their opinion, the number of securities requested to be included in such Registration exceeds the number that can be Transferred in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, the number of Registrable Securities to be included in such Registration shall be reduced to the maximum number recommended by the managing underwriter or underwriters and allocated first to any members of the Parent Group participating in the Registration, and then pro rata among the other Holders, including the Initiating Holder (other than any member of the Parent Group), in proportion to the number of Registrable Securities each Holder has requested to be included in such Registration; provided, that if this sentence would result in a reduction of the Registrable Securities of the Initiating Holder to be included in such Registration, the Initiating Holder may notify SpinCo in writing that the Registration Statement shall be abandoned or withdrawn, in which event SpinCo shall abandon or withdraw such Registration Statement. In the event the Initiating Holder notifies SpinCo that such Registration Statement shall be abandoned or withdrawn, such Holder shall not be deemed to have requested a Demand Registration pursuant to Section 2.01(a), and SpinCo shall not be deemed to have effected a Demand Registration with respect to such abandoned or withdrawn Registration Statement. If the amount of Registrable Securities to be underwritten has not been limited in accordance with the first sentence of this Section 2.01(f), SpinCo and the holders of SpinCo Shares or, if the Registrable Securities include securities other than SpinCo Shares, the holders of securities of the same class of those securities included in the Registrable Securities, in each case, other than the Holders ("Other Holders"), may include such securities for their own account or for the account of Other Holders in such Registration if the underwriter(s) so agree and to the extent that, in the opinion of such underwriter(s), the inclusion of such additional amount will not adversely affect the offering of the Registrable Securities included in such Registration.

(g) With respect to any Demand Registration, the requesting Holders may request that SpinCo effect a Registration of the Registrable Securities under a Shelf Registration, in which event SpinCo shall file, and shall thereafter use its reasonable best efforts to make and keep effective in accordance with Section 2.01(c) (including by filing any post-effective amendments or prospectus supplements as required by law or renewing or refiling upon expiration), a Shelf Registration Statement; provided that SpinCo shall not be required to maintain in effect more than one Shelf Registration at any one time pursuant to this Section 2.01(g). Thereafter, SpinCo shall, as promptly as reasonably practicable following the written request of Holders for a resale of Registrable Securities (a “Takedown Request”), file a prospectus supplement (a “Takedown Prospectus Supplement”) to such Shelf Registration Statement under Rule 424 promulgated under the Securities Act with respect to resales of the Registrable Securities pursuant to Holder’s intended method of distribution thereof (it being understood, for the avoidance of doubt, that a Takedown Request shall not count as a Demand Registration request for purposes of the limit set forth in Section 2.01(b)). Each Takedown Request shall specify the Registrable Securities to be registered, their aggregate amount and the intended method or methods of distribution thereof. If, in the case of an Underwritten Offering pursuant to a Takedown Request, the requesting Holder(s) so elects, such offering shall be in the form of a Block Trade, in which case the requesting Holder(s) shall give at least eight (8) business days’ prior notice in writing of such transaction to SpinCo (which such notice shall identify the potential underwriter(s) and include contact information for such underwriter(s)), and SpinCo shall use reasonable best efforts to cooperate with such requesting Holder(s) and shall not be required to give notice thereof to other Holders of Registrable Securities or permit their participation therein unless SpinCo determines it is reasonably practicable to do so (it being understood, for the avoidance of doubt, that a Takedown Request shall not count as a Demand Registration request for purposes of the limit set forth in Section 2.01(b)).

#### Section 2.02 Piggyback Registrations.

(a) At any time prior to the earlier to occur of the fifth anniversary of the Distribution Date and the date on which the Registrable Securities then held by the Holder(s) represent less than 1% of the then-issued and outstanding SpinCo Shares (or, if the Registrable Securities include securities other than SpinCo Shares, less than 1% of the then-issued and outstanding securities of the same class as the securities included in the Registrable Securities), if SpinCo proposes to file a Registration Statement (other than a Shelf Registration) or a Prospectus supplement filed pursuant to a Shelf Registration Statement under the Securities Act with respect to any offering of such securities for its own account and/or for the account of any Other Holders (other than (i) a Registration or Takedown Prospectus Supplement under Section 2.01, (ii) a Registration pursuant to a Registration Statement on Form S-8 or Form S-4 or similar form that relates to a transaction subject to Rule 145 under the Securities Act, (iii) in connection with any dividend reinvestment or similar plan, (iv) for the purpose of offering securities to another entity or its security holders in connection with the acquisition of assets or securities of such entity or any similar transaction or (v) a Registration in which the only SpinCo Shares being registered are SpinCo Shares issuable upon conversion of debt securities that are also being registered) (a “SpinCo Public Transfer”), then, as soon as practicable, but in any event not less than 15 days prior to the proposed date of filing such Registration Statement, SpinCo shall give written notice of such proposed filing to each Holder, and such notice shall offer such Holders the opportunity to Register under such Registration Statement such number of Registrable Securities as each such Holder may request in writing (a “Piggyback Registration”). Subject to Section 2.02(b) and Section 2.02(c), SpinCo shall use its reasonable best efforts to include in a Registration Statement with respect to a SpinCo Public Transfer all Registrable Securities that are requested to be included therein within five business days after the receipt of any such notice; provided, however, that if, at any time after giving written notice of its intention to Register any securities and prior to the effective date of the Registration Statement filed in connection with such Registration, SpinCo shall determine for any reason not to Register or to delay Registration of the SpinCo Public Transfer, SpinCo may, at its election, give written notice of such determination to each such Holder and, thereupon, (x) in the case of a determination not to Register, shall be relieved of its obligation to Register any Registrable Securities in connection with such Registration, without prejudice, however, to the rights of any Holder to request that such Registration be effected as a Demand Registration under Section 2.01 and (y) in the case of a determination to delay Registration, shall be permitted to delay Registering any Registrable Securities for the same period as the delay in Registering such other SpinCo Shares in the SpinCo Public Transfer. No Registration effected under this Section 2.02 shall relieve SpinCo of its obligation to effect any Demand Registration under Section 2.01. For purposes of clarification, SpinCo’s filing of a Shelf Registration Statement shall not be deemed to be a SpinCo Public Transfer; provided, however, that any prospectus supplement filed pursuant to a Shelf Registration Statement with respect to an offering of SpinCo Shares for its own account and/or for the account of any other Persons will be a SpinCo Public Transfer, unless such offering qualifies for an exemption from the SpinCo Public Transfer definition in this Section 2.02(a).

(b) In the case of any Underwritten Offering, each Holder shall have the right to withdraw such Holder's request for inclusion of its Registrable Securities in such Underwritten Offering pursuant to Section 2.02(a) at any time prior to the execution of an underwriting agreement with respect thereto by giving written notice to SpinCo of such Holder's request to withdraw and, subject to the preceding clause, each Holder shall be permitted to withdraw all or part of such Holder's Registrable Securities from a Piggyback Registration at any time prior to the effective date thereof.

(c) If the managing underwriter or underwriters of any proposed Underwritten Offering of a class of Registrable Securities included in a Piggyback Registration informs SpinCo and each Holder in writing that, in its or their opinion, the number of securities of such class that such Holder and any other Persons intend to include in such offering exceeds the number that can be Transferred in such offering without being likely to have an adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the securities to be included in such Registration shall be (i) first, all securities of SpinCo and any other Persons (other than SpinCo's executive officers and directors) for whom SpinCo is effecting the Registration, as the case may be, that SpinCo and such Persons propose to Transfer, (ii) second, the number, if any, of Registrable Securities of such class that, in the opinion of such managing underwriter or underwriters, can be Transferred without having such adverse effect, with such number to be allocated pro rata among the members of the Parent Group that hold Registrable Securities and have requested to participate in such Registration based on the relative number of Registrable Securities of such class requested by such Person to be included in such Transfer, (iii) third, the number, if any, of Registrable Securities of such class that, in the opinion of such managing underwriter or underwriters, can be Transferred without having such adverse effect, with such number to be allocated pro rata among the Holders (other than members of the Parent Group) that hold Registrable Securities and have requested to participate in such Registration based on the relative number of Registrable Securities of such class requested by such Person to be included in such Transfer, (iv) fourth, the number of securities of executive officers and directors of SpinCo for whom SpinCo is effecting the Registration, as the case may be, with such number to be allocated pro rata among the executive officers and directors and (v) fifth, any other securities eligible for inclusion in such Registration, allocated among the holders of such securities in such proportion as SpinCo and those holders may agree.

(d) After a Holder has been notified of its opportunity to include Registrable Securities in a Piggyback Registration, such Holder (i) shall treat the Offering Confidential Information as confidential information, (ii) shall not use any Offering Confidential Information for any purpose other than to evaluate whether to include its Registrable Securities (or other SpinCo Shares) in such Piggyback Registration and (iii) shall not disclose any Offering Confidential Information to any Person other than such of its agents, employees, advisors and counsel as have a need to know such Offering Confidential Information, and shall cause such agents, employees, advisors and counsel to comply with the requirements of this Section 2.02(d); provided, that any such Holder may disclose Offering Confidential Information if such disclosure is required by legal process, but such Holder shall cooperate with SpinCo to limit the extent of such disclosure through protective order or otherwise, and to seek confidential treatment of the Offering Confidential Information.

Section 2.03 Registration Procedures.

(a) In connection with SpinCo's Registration obligations under Section 2.01 and Section 2.02, SpinCo shall use its reasonable best efforts to effect such Registration to permit the offer and Transfer of such Registrable Securities in accordance with the intended method or methods of distribution thereof as expeditiously as reasonably practicable, and in connection therewith, SpinCo shall, and shall cause the members of the SpinCo Group to:

(i) prepare and file the required Registration Statement or Takedown Prospectus Supplement, including all exhibits and financial statements and, in the case of an Exchange Offer, any document required under Rule 425 or Rule 165 with respect to such Exchange Offer (collectively, the "Ancillary Filings") required under the Securities Act to be filed therewith, and before filing with the SEC a Registration Statement or Prospectus, or any amendments or supplements thereto, (A) furnish to the underwriters or dealer managers, if any, and to the Holders, copies of all documents prepared to be filed, which documents shall be subject to the review and comment of such underwriters or dealer managers and such Holders and their respective counsel, and provide such underwriters or dealer managers, if any, and such Holders and their respective counsel reasonable time to review and comment thereon and (B) not file with the SEC any Registration Statement or Prospectus or amendments or supplements thereto or any Ancillary Filing to which the Holders or the underwriters or dealer managers, if any, shall reasonably object;

(ii) prepare and file with the SEC such amendments and post-effective amendments to such Registration Statement and supplements to the Prospectus and any Ancillary Filing as may be reasonably requested by the participating Holders;

(iii) promptly notify the participating Holders and the managing underwriters or dealer managers, if any, and, if requested, confirm such advice in writing and provide copies of the relevant documents, as soon as reasonably practicable after notice thereof is received by any member of the SpinCo Group (A) when the applicable Registration Statement or any amendment thereto has been filed or becomes effective, the applicable Prospectus or any amendment or supplement to such Prospectus has been filed, or any Ancillary Filing has been filed, (B) of any comments (written or oral) by the SEC or any request (written or oral) by the SEC or any other Governmental Authority for amendments or supplements to such Registration Statement, such Prospectus or any Ancillary Filing, or for any additional information, (C) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement, any order preventing or suspending the use of any preliminary or final Prospectus or any Ancillary Filing, or the initiation or threatening of any proceedings for such purposes, (D) if, at any time, the representations and warranties (written or oral) in any applicable underwriting agreement or dealer manager agreement cease to be true and correct in all material respects and (E) of the receipt by any member of the SpinCo Group of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or Transfer in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(iv) (A) promptly notify each participating Holder and the managing underwriter(s) or dealer manager(s), if any, when SpinCo becomes aware of the occurrence of any event as a result of which the applicable Registration Statement, the Prospectus included in such Registration Statement (as then in effect) or any Ancillary Filing contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of such Prospectus and any preliminary Prospectus, in light of the circumstances under which they were made) not misleading, or if for any other reason it shall be necessary during such time period to amend or supplement such Registration Statement, Prospectus or any Ancillary Filing in order to comply with the Securities Act, and (B) in either case, as promptly as reasonably practicable thereafter, prepare and file with the SEC, and furnish without charge to each participating Holder and the underwriter(s) or dealer manager(s), if any, an amendment or supplement to such Registration Statement, Prospectus or Ancillary Filing that will correct such statement or omission or effect such compliance;

(v) use its reasonable best efforts to prevent or obtain the withdrawal of any stop order or other order suspending the use of any preliminary or final Prospectus;

(vi) promptly (A) incorporate in a Prospectus supplement or post-effective amendment such information as the managing underwriter(s) or dealer manager(s), if any, and the Holders agree should be included therein relating to the plan of distribution with respect to such Registrable Securities and (B) make all required filings of such Prospectus supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment;

(vii) furnish to each participating Holder and each underwriter or dealer manager, if any, without charge, as many conformed copies as such Holder or underwriter or dealer manager may reasonably request of the applicable Registration Statement and any amendment or post-effective amendment thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference);

(viii) deliver to each participating Holder and each underwriter or dealer manager, if any, without charge, as many copies of the applicable Prospectus (including each preliminary Prospectus) and any amendment or supplement thereto as such Holder or underwriter or dealer manager may reasonably request (it being understood that SpinCo consents to the use of such Prospectus or any amendment or supplement thereto by each participating Holder and the underwriter(s) or dealer manager(s), if any, in connection with the offering and Transfer of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto) and such other documents as such participating Holder or underwriter or dealer manager may reasonably request in order to facilitate the Transfer of the Registrable Securities by such Holder or underwriter or dealer manager;

(ix) on or prior to the date on which the applicable Registration Statement is declared effective or becomes effective, use its reasonable best efforts to register or qualify, and cooperate with each participating Holder, the managing underwriter(s) or dealer manager(s), if any, and their respective counsel, in connection with the registration or qualification of, such Registrable Securities for offer and Transfer under the securities or "blue sky" Laws of each state and other jurisdiction of the United States as any participating Holder or managing underwriter(s) or dealer manager(s), if any, or their respective counsel reasonably request, and in any foreign jurisdiction mutually agreeable to SpinCo and the participating Holders, and do any and all other acts or things reasonably necessary or advisable to keep such registration or qualification in effect for so long as such Registration Statement remains in effect and so as to permit the continuance of offers and Transfers and dealings in such jurisdictions for so long as may be necessary to complete the distribution of the Registrable Securities covered by the Registration Statement; provided that SpinCo will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, to take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject or conform its capitalization or the composition of its assets at the time to the securities or blue sky Laws of any such jurisdiction;

(x) in connection with any Transfer of Registrable Securities that will result in such securities no longer being Registrable Securities, cooperate with each participating Holder and the managing underwriter(s) or dealer manager(s), if any, to (A) facilitate the timely preparation and delivery of certificates representing Registrable Securities to be Transferred and not bearing any restrictive Securities Act legends and (B) register such Registrable Securities in such denominations and such names as such participating Holder or the underwriter(s) or dealer manager(s), if any, may request at least two business days prior to such Transfer of Registrable Securities; provided that SpinCo may satisfy its obligations under this clause (x) without issuing physical stock certificates through the use of the Depository Trust Company's Direct Registration System;

(xi) cooperate and assist in any filings required to be made with the Financial Industry Regulatory Authority and each securities exchange, if any, on which any of SpinCo's securities are then listed or quoted and on each inter-dealer quotation system on which any of SpinCo's securities are then quoted, and in the performance of any due diligence investigation by any underwriter or dealer manager (including any "qualified independent underwriter") that is required to be retained in accordance with the rules and regulations of each such exchange, and use its reasonable best efforts to cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other Governmental Authorities as may be necessary to enable the seller or sellers thereof or the underwriter(s) or dealer manager(s), if any, to consummate the Transfer of such Registrable Securities;

(xii) not later than the effective date of the applicable Registration Statement, provide a CUSIP number for all Registrable Securities and provide the applicable transfer agent with printed certificates for the Registrable Securities which are in a form eligible for deposit with the Depository Trust Company; provided, that SpinCo may satisfy its obligations under this clause (xii) without issuing physical stock certificates through the use of the Depository Trust Company's Direct Registration System;

(xiii) obtain for delivery to and addressed to each participating Holder and to the underwriter(s) or dealer manager(s), if any, opinions from counsel for SpinCo, in each case dated the effective date of the Registration Statement or, in the event of an Underwritten Offering, the date of the closing under the underwriting agreement or, in the event of an Exchange Offer, the date of the closing under the dealer manager agreement or similar agreement or otherwise, and in each such case in customary form and content for the type of Underwritten Offering or Exchange Offer, as applicable;



(xiv) in the case of an Underwritten Offering or Exchange Offer, obtain for delivery to and addressed to SpinCo and the managing underwriter(s) or dealer manager(s), if any, and, to the extent requested, each participating Holder, a cold comfort letter from SpinCo's independent registered public accounting firm in customary form and content for the type of Underwritten Offering or Exchange Offer, dated the date of execution of the underwriting agreement or dealer manager agreement or, if none, the date of commencement of the Exchange Offer, and brought down to the closing, whether under the underwriting agreement or dealer manager agreement, if applicable, or otherwise;

(xv) in the case of an Exchange Offer that does not involve a dealer manager, provide to each participating Holder such customary written representations and warranties or other covenants or agreements as may be requested by any participating Holder comparable to those that would be included in an underwriting or dealer manager agreement;

(xvi) use its reasonable best efforts to comply with all applicable rules and regulations of the SEC and make generally available to its security holders, as soon as reasonably practicable, but in any event no later than 90 days, after the end of the 12-month period beginning with the first day of SpinCo's first quarter commencing after the effective date of the applicable Registration Statement, an earnings statement satisfying the provisions of Section 11(a) of the Securities Act and covering the period of at least 12 months, but not more than 18 months, beginning with the first month after the effective date of the Registration Statement;

(xvii) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the applicable Registration Statement from and after a date not later than the effective date of such Registration Statement;

(xviii) cause all Registrable Securities covered by the applicable Registration Statement to be listed on each securities exchange on which any of SpinCo's securities are then listed or quoted and on each inter-dealer quotation system on which any of SpinCo's securities are then quoted;

(xix) provide (A) each Holder participating in the Registration, (B) the underwriters (which term, for purposes of this Agreement, shall include any Person deemed to be an underwriter within the meaning of Section 2(11) of the Securities Act), if any, of the Registrable Securities to be registered, (C) the Transfer or placement agent therefor, if any, (D) the dealer manager therefor, if any, (E) counsel for such Holder, underwriters, agent, or dealer manager and (F) any attorney, accountant or other agent or representative retained by such Holder or any such underwriter or dealer manager, as selected by such Holder, in each case, the opportunity to participate in the preparation of such Registration Statement, each Prospectus included therein or filed with the SEC, and each amendment or supplement thereto; and for a reasonable period prior to the filing of such Registration Statement, upon execution of a customary confidentiality agreement, make available for inspection upon reasonable notice at reasonable times and for reasonable periods, by the parties referred to in clauses (A) through (F) above, all pertinent financial and other records, pertinent corporate and other documents and properties of the SpinCo Group that are available to SpinCo, and cause all of the SpinCo Group's officers, directors and employees and the independent public accountants who have certified its financial statements to make themselves available at reasonable times and for reasonable periods to discuss the business of SpinCo and to supply all information available to SpinCo reasonably requested by any such Person in connection with such Registration Statement as shall be necessary to enable them to exercise their due diligence or other responsibility, subject to the foregoing; provided that in no event shall any member of the SpinCo Group be required to make available any information which the SpinCo Board determines in good faith to be competitively sensitive or confidential. The recipients of such information shall coordinate with one another so that the inspection permitted hereunder will not unnecessarily interfere with the SpinCo Group's conduct of business. Each Holder agrees that information obtained by it as a result of such inspections shall be deemed confidential and shall not be used by it as the basis for any market transactions in the securities of SpinCo or its Affiliates unless and until such information is made generally available to the public by SpinCo or such Affiliate or for any reason not related to the Registration of Registrable Securities;

(xx) cause the senior executive officers of SpinCo to participate at reasonable times and for reasonable periods in the customary “road show” presentations that may be reasonably requested by the managing underwriter(s) or dealer manager(s), if any, and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto;

(xxi) comply with all requirements of the Securities Act, Exchange Act and other applicable Laws, rules and regulations, as well as all applicable stock exchange rules; and

(xxii) take all other customary steps reasonably necessary or advisable to effect the Registration and distribution of the Registrable Securities contemplated hereby.

(b) As a condition precedent to any Registration hereunder, SpinCo may require each Holder as to which any Registration is being effected to furnish to SpinCo such information regarding the distribution of such securities and such other information relating to such Holder, its ownership of Registrable Securities and other matters as SpinCo may from time to time reasonably request in writing. Each such Holder agrees to furnish such information to SpinCo and to cooperate with SpinCo as reasonably necessary to enable SpinCo to comply with the provisions of this Agreement.

(c) Each Holder shall, as promptly as reasonably practicable, notify SpinCo, at any time when a Prospectus is required to be delivered (or deemed delivered) under the Securities Act, of the occurrence of an event, of which such Holder has knowledge, relating to such Holder or its Transfer of Registrable Securities thereunder requiring the preparation of a supplement or amendment to such Prospectus so that, as thereafter delivered (or deemed delivered) to the purchasers of such Registrable Securities, such Prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

(d) Parent agrees (on behalf of itself and each member of the Parent Group), and any other Holder agrees by acquisition of such Registrable Securities, that, upon receipt of any written notice from SpinCo of the occurrence of any event of the kind described in Section 2.03(a)(iv), such Holder will forthwith discontinue Transfers of Registrable Securities pursuant to such Registration Statement until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 2.03(a)(iv), or until such Holder is advised in writing by SpinCo that the use of the Prospectus may be resumed, and if so directed by SpinCo, such Holder will deliver to SpinCo, at SpinCo's expense, all copies of the Prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event SpinCo shall give any such notice, the Registration Period shall be extended by the number of days during the period from and including the date of the giving of such notice through the date when each seller of Registrable Securities covered by such Registration Statement either receives the copies of the supplemented or amended Prospectus contemplated by Section 2.03(a)(iv) or is advised in writing by SpinCo that the use of the Prospectus may be resumed.

#### Section 2.04 Underwritten Offerings or Exchange Offers.

(a) If requested by the managing underwriter(s) for any Underwritten Offering or dealer manager(s) for any Exchange Offer that is requested by Holders pursuant to a Demand Registration or Takedown Request under Section 2.01, SpinCo shall enter into an underwriting agreement or dealer manager agreement, as applicable, with such underwriter(s) or dealer manager(s) for such offering, such agreement to be reasonably satisfactory in substance and form to SpinCo and the underwriter(s) or dealer manager(s) and, if any member of the Parent Group is a participating Holder, to such member of the Parent Group. Such agreement shall contain such representations and warranties by SpinCo and such other terms as are generally prevailing in agreements of that type. Each Holder with Registrable Securities to be included in any Underwritten Offering or Exchange Offer by such underwriter(s) or dealer manager(s) shall enter into such underwriting agreement or dealer manager agreement at the request of SpinCo, which agreement shall contain such reasonable representations and warranties by the Holder and such other reasonable terms as are generally prevailing in agreements of that type.

(b) If requested by the managing underwriter(s) for any Underwritten Offering or dealer manager(s) for any Exchange Offer, (i) the Holders hereby agree, in the event of a SpinCo Public Transfer involving an offering of SpinCo Shares or other equity securities of SpinCo in an Underwritten Offering (whether in a Demand Registration or a Piggyback Registration or pursuant to a Takedown Request, whether or not the Holders participate therein) and (ii) SpinCo hereby agrees, in the event of a SpinCo Public Transfer of SpinCo Shares or other equity securities of SpinCo in an Underwritten Offering or an Exchange Offer, and, except in the case of a Shelf Registration, SpinCo shall cause its executive officers and directors to agree, in each case of clause (i) and (ii), that they shall not effect any Transfer or distribution (including any offer to Transfer, contract to Transfer, short Transfer or any option to purchase) of any securities (except, in each case, as part of the applicable Registration, if permitted hereunder) that are of the same type as those being Registered in connection with such public offering and Transfer, or any securities convertible into or exchangeable or exercisable for such securities, during the period beginning five days before, and ending 90 days (or such lesser period as may be permitted by SpinCo or the participating Holder(s), as applicable, or such managing underwriter or underwriters) after, the effective date of the Registration Statement filed in connection with such Registration (or, if later, the date of the Prospectus), to the extent timely notified in writing by such selling Person or the managing underwriter or underwriters or dealer manager or dealer managers. The participating Holders and SpinCo, as applicable, also agree to execute an agreement evidencing the restrictions in this Section 2.04(b) in customary form, which form is reasonably satisfactory to SpinCo or the participating Holder(s), as applicable, and the underwriter(s) or dealer manager(s), as applicable; provided that such restrictions may be included in the underwriting agreement or dealer manager agreement, if applicable. SpinCo may impose stop-transfer instructions with respect to the securities subject to the foregoing restriction until the end of the required stand-off period.

(c) No Holder may participate in any Underwritten Offering or Exchange Offer hereunder unless such Holder (i) agrees to Transfer such Holder's securities on the basis provided in any underwriting arrangements or dealer manager agreements approved by SpinCo or other Persons entitled to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements, dealer manager agreements and other documents reasonably required under the terms of such underwriting arrangements or dealer manager agreements or this Agreement.

Section 2.05 Registration Rights Agreement with Participating Banks.

If one or more members of the Parent Group decides to engage in a Debt Exchange with one or more Participating Banks, SpinCo shall enter into a registration rights agreement with the Participating Banks in connection with such Debt Exchange on terms and conditions consistent with this Agreement (other than the voting provisions contained in Section 3.01 hereof) and reasonably satisfactory to SpinCo and the Parent Group.

Section 2.06 Registration Expenses Paid by SpinCo.

In the case of any Registration of Registrable Securities required pursuant to this Agreement, SpinCo shall pay all Registration Expenses regardless of whether the Registration Statement becomes effective; provided, however, that SpinCo shall not be required to pay for any expenses of any Registration begun pursuant to Section 2.01 if the Demand Registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be Registered (in which case all participating Holders shall bear such expenses), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one Demand Registration to which they have the right pursuant to Section 2.01(b).

(a) SpinCo agrees to indemnify, defend and hold harmless, to the full extent permitted by applicable Law, each Holder whose shares are included in a Registration Statement, such Holder's Affiliates and their respective officers, directors, agents, advisors, employees and each Person, if any, who controls (within the meaning of the Securities Act or the Exchange Act) such Holder, from and against any and all losses, claims, damages, liabilities (or actions or proceedings in respect thereof, whether or not such indemnified party is a party thereto) and expenses, joint or several (including reasonable costs of investigation and legal expenses) (each, a "Loss" and collectively, "Losses") arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which the offering and Transfer of such Registrable Securities was Registered under the Securities Act (including any final or preliminary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein), or any such statement made in any free writing prospectus (as defined in Rule 405 under the Securities Act) that SpinCo has filed or is required to file pursuant to Rule 433(d) of the Securities Act or any Ancillary Filing, (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus, preliminary Prospectus or free writing prospectus, in light of the circumstances under which they were made) not misleading; provided that with respect to any untrue statement or omission or alleged untrue statement or omission made in any Prospectus, the indemnity agreement contained in this paragraph shall not apply to the extent that any such liability results from or arises out of (A) the fact that a then current copy of the Prospectus was not sent or given to the Person asserting any such liability at or prior to the written confirmation of the Transfer of the Registrable Securities concerned to such Person if it is determined by a court of competent jurisdiction in a final and non-appealable judgment that SpinCo had provided such then current copy of the Prospectus and it was the responsibility of such Holder or its agents to provide such Person with a then current copy of the Prospectus and such then current copy of the Prospectus would have cured the defect giving rise to such liability, (B) the use of any Prospectus by or on behalf of any Holder after SpinCo has notified such Person (x) that such Prospectus contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or (y) that a stop order has been issued by the SEC with respect to a Registration Statement, or (C) any untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to SpinCo by or on behalf of the Indemnitee, in either case expressly for use in such Registration Statement or Prospectus. This indemnity shall be in addition to any liability SpinCo may otherwise have, including under the Separation and Distribution Agreement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Holder or any indemnified party and shall survive the Transfer of such securities by such Holder.

(b) Each participating Holder whose Registrable Securities are included in a Registration Statement agrees (severally and not jointly) to indemnify, defend and hold harmless, to the full extent permitted by applicable Law, SpinCo, its officers, directors, agents, advisors, employees and each Person, if any, who controls (within the meaning of the Securities Act and the Exchange Act) SpinCo from and against any and all Losses (i) arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in such Registration Statement, or the Prospectus included therein, in reliance upon and in conformity with written information furnished to SpinCo by or on behalf of such Holder, in either case expressly for use in such Registration Statement or Prospectus or (ii) resulting from (A) the fact that a then current copy of the Prospectus was not sent or given to the Person asserting any such liability at or prior to the written confirmation of the Transfer of the Registrable Securities concerned to such Person if it is determined by a court of competent jurisdiction in a final and non-appealable judgment that SpinCo had provided such then current copy of the Prospectus to such Holder or the applicable underwriter or dealer manager prior to such confirmation and it was the responsibility of such Holder or its agent to provide such Person with a then current copy of the Prospectus and such then current copy of the Prospectus would have cured the defect giving rise to such liability, or (B) the use of any Prospectus by or on behalf of any Holder after SpinCo has notified such Person (x) that such Prospectus contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or (y) that a stop order has been issued by the SEC with respect to a Registration Statement. This indemnity shall be in addition to any liability the participating Holder may otherwise have, including under the Separation and Distribution Agreement. In no event shall the liability of any participating Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder under the Transfer of the Registrable Securities giving rise to such indemnification obligation. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of SpinCo or any indemnified party.

(c) Any claim or action with respect to which a Party (an “Indemnifying Party”) may be obligated to provide indemnification to any Person entitled to indemnification hereunder (an “Indemnitee”) shall be subject to the procedures for indemnification set forth in Sections 4.5 and 4.6 of the Separation and Distribution Agreement.

(d) If for any reason the indemnification provided for in Section 2.07(a) or Section 2.07(b) is unavailable to an Indemnitee or insufficient to hold it harmless as contemplated by Section 2.07(a) or Section 2.07(b), then the Indemnifying Party shall contribute to the amount paid or payable by the Indemnitee as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnitee on the other hand. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Party or the Indemnitee and the Parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. For the avoidance of doubt, the establishment of such relative fault, and any disagreements or disputes relating thereto, shall be subject to Section 4.04. Notwithstanding anything in this Section 2.07(d) to the contrary, no Indemnifying Party (other than SpinCo) shall be required pursuant to this Section 2.07(d) to contribute any amount in excess of the amount by which the net proceeds received by such Indemnifying Party from the Transfer of Registrable Securities in the offering to which the Losses of the Indemnitees relate (before deducting expenses, if any) exceeds the amount of any damages which such Indemnifying Party has otherwise been required to pay by reason of such untrue statement or omission. The Parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 2.07(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 2.07(d). No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The amount paid or payable by an Indemnitee hereunder shall be deemed to include, for purposes of this Section 2.07(d), any legal or other expenses reasonably incurred by such Indemnitee in connection with investigating, preparing to defend or defending against or appearing as a third party witness in respect of, or otherwise incurred in connection with, any such loss, claim, damage, expense, liability, action, investigation or proceeding. If indemnification is available under this Section 2.07, the Indemnifying Parties shall indemnify each Indemnitee to the full extent provided in Section 2.07(a) and Section 2.07(b) without regard to the relative fault of said Indemnifying Parties or Indemnitee. Any Holders’ obligations to contribute pursuant to this Section 2.07(d) are several and not joint.

Section 2.08 Reporting Requirements: Rule 144.

Until the earlier of (a) the expiration or termination of this Agreement in accordance with its terms and (b) the date upon which there cease to be any Holders of Registrable Securities, SpinCo shall use its reasonable best efforts to be and remain in compliance with the periodic filing requirements imposed under the SEC's rules and regulations, including the Exchange Act, and any other applicable Laws or rules, and thereafter shall timely file such information, documents and reports as the SEC may require or prescribe under Sections 13, 14 and 15(d), as applicable, of the Exchange Act so that SpinCo will qualify for registration on Form S-3 and to enable the Holders to Transfer Registrable Securities without registration under the Securities Act consistent with the exemptions from registration under the Securities Act provided by (i) Rule 144 or Regulation S under the Securities Act, as amended from time to time, or (ii) any similar SEC rule or regulation then in effect. From and after the date hereof through such earlier date, SpinCo shall forthwith upon request furnish any Holder (x) a written statement by SpinCo as to whether it has complied with such requirements and, if not, the specifics thereof, (y) a copy of the most recent annual or quarterly report of SpinCo and (z) such other reports and documents filed by SpinCo with the SEC as such Holder may reasonably request in availing itself of an exemption for the offering and Transfer of Registrable Securities without registration under the Securities Act.

Section 2.09 Registration Rights Covenant.

SpinCo covenants that it will not, and it will cause the members of the SpinCo Group not to, grant any right of registration under the Securities Act relating to the SpinCo Shares or any of its other securities to any Person other than pursuant to this Agreement, unless the rights so granted to another Person do not limit or restrict the rights of the Holder(s) hereunder. If SpinCo enters into any agreement after the date hereof granting any Person registration rights with respect to any security of SpinCo which agreement contains any material provisions more favorable to such Person than those set forth in this Agreement, SpinCo will notify Parent and will agree to such amendments to this Agreement as may be necessary to provide these rights to Parent, at Parent's election.

### ARTICLE III VOTING RESTRICTIONS

#### Section 3.01 Voting of SpinCo Shares.

(a) From the date of this Agreement and until the date that the Parent Group ceases to own any Remaining Shares, Parent shall, and shall cause each other member of the Parent Group to (in each case, to the extent that they then own any Remaining Shares), be present, in person or by proxy, at each and every SpinCo stockholder meeting, and otherwise to cause all Remaining Shares then owned by them to be counted as present for purposes of establishing a quorum at any such meeting, and to vote or consent on any matter (including waivers of contractual or statutory rights), or cause to be voted or consented on any such matter, all such Remaining Shares in proportion to the votes cast by the other holders of SpinCo Shares on such matter.

(b) From the date of this Agreement and until the date that the Parent Group ceases to own any Remaining Shares, Parent hereby grants, and shall cause each other member of the Parent Group (in each case, to the extent that they own any Remaining Shares) to grant, an irrevocable proxy, which shall be deemed coupled with an interest sufficient in Law to support an irrevocable proxy to SpinCo or its designees, to vote, with respect to any matter (including waivers of contractual or statutory rights), all Remaining Shares owned by them in proportion to the votes cast by the other holders of SpinCo Shares on such matter; provided that (i) such proxy shall automatically be revoked as to a particular Remaining Share upon any Transfer of such Remaining Share from a member of the Parent Group to a Person other than a member of the Parent Group and (ii) nothing in this Section 3.01(b) shall limit or prohibit any such Transfer.

(c) Parent acknowledges and agrees (on behalf of itself and each member of the Parent Group) that SpinCo will be irreparably damaged in the event any of the provisions of this Article III are not performed by Parent in accordance with their terms or are otherwise breached. Accordingly, it is agreed that SpinCo shall be entitled to an injunction to prevent breaches of this Article III and to specific enforcement of the provisions of this Article III in any action instituted in any court of the United States or any state having subject matter jurisdiction over such action.

### ARTICLE IV MISCELLANEOUS

#### Section 4.01 Further Assurances.

In addition to the actions specifically provided for elsewhere in this Agreement, each of the Parties shall use its reasonable best efforts, prior to, on and after the date hereof, 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.

#### Section 4.02 Term and Termination.

This Agreement shall terminate upon the earliest of (a) five years after the Distribution Date, (b) the time at which all Registrable Securities are held by Persons other than Holders and (c) the time at which all Registrable Securities have been Transferred pursuant to one or more Registration Statements; provided that the provisions of Section 2.06, Section 2.07, Article III and this Article IV shall survive any such termination.



Section 4.03 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 and the Exhibit hereto contain the entire agreement between the Parties with respect to the subject matter hereof and 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 with respect to such subject matter other than those set forth or referred to herein.

(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 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 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.

Section 4.04 Disputes and Governing Law.

(a) Subject to Section 3.01(c), any dispute, controversy or claim arising out of or relating to this Agreement (including the validity, interpretation, breach or termination of this Agreement) (a "Dispute") shall be resolved in accordance with the procedures set forth in Article VII of the Separation and Distribution Agreement, which shall be the sole and exclusive procedures for the resolution of any such Dispute unless otherwise specified in this Agreement or in Article VII of the Separation and Distribution Agreement.

(b) 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 4.05 Successors, Assigns and Transferees.

(a) Except as set forth herein, this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and permitted assigns; provided, that neither Party 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 herein and therein, as applicable) in whole (*i.e.*, the assignment of a party's rights and obligations under this Agreement, the Separation and Distribution Agreement and all Ancillary Agreements all at the same time) in connection with a change of control of a Party 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. Nothing herein is intended to, or shall be construed to, prohibit either Party or any member of its Group from being party to or undertaking a change of control.

(b) Notwithstanding any other terms of this Section 4.05, in connection with the Transfer of Registrable Securities, Parent may assign its Registration-related rights and obligations under this Agreement relating to such Registrable Securities to the following transferees in such Transfer: (i) a member of the Parent Group to which Registrable Securities are Transferred; (ii) one or more Participating Banks to which Registrable Securities are Transferred; (iii) any transferee to which Registrable Securities are Transferred, if SpinCo provides prior written consent to the transfer of such Registration-related rights and obligations along with the Transfer of Registrable Securities; or (iv) any other transferee to which Registrable Securities are Transferred, unless such Transfer consists of Registrable Securities representing less than 1% of SpinCo's then-issued and outstanding securities of the same class as the Registrable Securities and such Registrable Securities are eligible for Transfer pursuant to an exemption from the registration and prospectus delivery requirements of the Securities Act under Section 4(a) thereof (including transactions pursuant to Rule 144); provided that in the case of clauses (i), (ii), (iii) or (iv), (x) SpinCo is given written notice prior to or at the time of such Transfer stating the name and address of the transferee and identifying the securities with respect to which the Registration-related rights and obligations are being Transferred and (y) the transferee executes a counterpart in the form attached hereto as Exhibit A and delivers the same to SpinCo (any such transferee in such Transfer, a "Transferee"). In connection with the Transfer of Registrable Securities, a Transferee or Subsequent Transferee (as defined below) may assign its Registration-related rights and obligations under this Agreement relating to such Registrable Securities to the following subsequent transferees: (A) an Affiliate of such Transferee to which Registrable Securities are Transferred, (B) any subsequent transferee to which Registrable Securities are Transferred, if SpinCo provides prior written consent to the transfer of such Registration-related rights and obligations along with the Transfer of Registrable Securities or (C) any other subsequent transferee to which Registrable Securities are Transferred, unless such Transfer consists of Registrable Securities representing less than 1% of SpinCo's then-issued and outstanding securities of the same class as the Registrable Securities and such Registrable Securities are eligible for Transfer pursuant to an exemption from the registration and prospectus delivery requirements of the Securities Act under Section 4(a) thereof (including transactions pursuant to Rule 144); provided that in the case of clause (A), (B) or (C), (x) SpinCo is given written notice prior to or at the time of such Transfer stating the name and address of the subsequent transferee and identifying the securities with respect to which the Registration-related rights and obligations are being assigned and (y) the subsequent transferee executes a counterpart in the form attached hereto as Exhibit A and delivers the same to SpinCo (any such subsequent transferee, a "Subsequent Transferee").

Section 4.06 Third-Party Beneficiaries.

Except for any Person expressly entitled to indemnification rights under this Agreement, (a) the provisions of this Agreement are solely for the benefit of the Parties and are not intended to confer upon any Person other than the Parties any rights or remedies hereunder, and (b) there are no third-party beneficiaries of this Agreement and this Agreement shall not provide any third Person with any remedy, claim, liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement.

Section 4.07 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 facsimile or by electronic mail ("e-mail") with receipt confirmed (followed by delivery of an original via overnight courier service), or by registered or certified mail (postage prepaid, return receipt requested) 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 4.07):

If to Parent, to:

MDU Resources Group, Inc.  
1200 West Century Avenue  
P.O. Box 5650  
Bismarck, North Dakota 58506-5650  
Attention: Jason Vollmer, Vice President and Chief Financial Officer  
E-mail: jason.vollmer@mduresources.com

with a copy to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Andrew R. Brownstein  
John L. Robinson  
E-mail: ARBrownstein@wlrk.com  
JLRobinson@wlrk.com

If to SpinCo, to:

Knife River Holding Company  
1150 West Century Avenue  
P.O. Box 5568  
Bismarck, ND 58503  
Attention: Karl A. Liepitz, Vice President, Chief Legal Officer and Secretary  
E-mail: karl.liepitz@kniferiver.com

with a copy to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Andrew R. Brownstein  
John L. Robinson  
E-mail: ARBrownstein@wlrk.com  
JLRobinson@wlrk.com

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

Section 4.08 Severability.

If any provision of this Agreement or the application hereof 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 4.09 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 4.10 Waiver 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 waiving 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 4.11 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, or the Holders of a majority of the Registrable Securities, if such waiver, amendment, supplement or modification is sought to be enforced against a Holder.

Section 4.12 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 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, the Separation and Distribution Agreement and each other Ancillary 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” shall not be exclusive; (g) unless otherwise specified in a particular case, the word “days” refers to calendar days; (h) references to “business day” shall mean any day other than a Saturday, a Sunday or a day on which banking institutions are generally authorized or required by law to close in Bismarck, North Dakota or New York, New York; (i) references herein to this Agreement or any other agreement contemplated herein shall be deemed to refer to this Agreement or such other agreement as of the date on which it is executed and as it may be amended, modified or supplemented thereafter, unless otherwise specified; (j) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if” and (k) unless expressly stated to the contrary in this 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 May 30, 2023.

Section 4.13 Performance.

Parent shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement to be performed by any member of the Parent Group. SpinCo shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement to be performed by any member of the SpinCo Group. Each Party (including its permitted successors and assigns) further agrees that it shall (a) give timely notice of the terms, conditions and continuing obligations contained in this 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 or the transactions contemplated hereby.

Section 4.14 Registrations, Exchanges, etc.

Notwithstanding anything to the contrary that may be contained in this Agreement, the provisions of this Agreement shall apply to the full extent set forth herein with respect to (a) any SpinCo Shares, now or hereafter authorized to be issued, (b) any and all securities of SpinCo into which SpinCo Shares are converted, exchanged or substituted in any recapitalization or other capital reorganization by SpinCo and (c) any and all securities of any kind whatsoever of SpinCo or any successor or permitted assign of SpinCo (whether by merger, consolidation, sale of assets or otherwise) which may be issued on or after the date hereof in respect of, in conversion of, in exchange for or in substitution of, SpinCo Shares, and shall be appropriately adjusted for any stock dividends, or other distributions, stock splits or reverse stock splits, combinations, recapitalizations, mergers, consolidations, exchange offers or other reorganizations occurring after the date hereof.

Section 4.15 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.

*[The remainder of this page has been left blank intentionally.]*

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

MDU RESOURCES GROUP, INC.

By: /s/ David L. Goodin  
Name: David L. Goodin  
Title: President and Chief Executive Officer

*[Signature Page to Stockholder and Registration Rights Agreement]*

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

KNIFE RIVER HOLDING COMPANY

By: /s/ Brian R. Gray  
Name: Brian R. Gray  
Title: President and Chief Executive Officer

*[Signature Page to Stockholder and Registration Rights Agreement]*

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### Supplemental Indenture

SUPPLEMENTAL INDENTURE, dated as of May 31, 2023 (this “Supplemental Indenture”), by and among the parties that are signatories hereto as Guarantors (each, a “Guaranteeing Subsidiary” and together, the “Guaranteeing Subsidiaries”), Knife River Holding Company (to be renamed Knife River Corporation on the Spin-Off Date), a Delaware Corporation (the “Issuer”), and U.S. Bank Trust Company, National Association, as trustee under the Indenture referred to below (the “Trustee”).

#### WITNESSETH:

WHEREAS, the Issuer and the Trustee have heretofore executed and delivered an indenture, dated as of April 25, 2023 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the “Indenture”), providing for the issuance of \$425,000,000 aggregate principal amount of 7.750% Senior Notes due 2031 (the “Notes”);

WHEREAS, the Indenture provides that, under certain circumstances, each Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which such Guaranteeing Subsidiary shall unconditionally guarantee, on a joint and several basis with the other Guaranteeing Subsidiaries and the other Guarantors, all of the Issuer’s Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the “Guarantee”); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Issuer, any Guarantor and the Trustee are authorized to execute and deliver this Supplemental Indenture without the consent of any Holder of the Notes;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary, the Issuer, the other Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

#### ARTICLE I

##### DEFINITIONS

Section 1.1. *Defined Terms.* As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recitals hereto are used herein as therein defined. The words “herein,” “hereof” and “hereby” and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular Section hereof.

#### ARTICLE II

##### AGREEMENT TO BE BOUND; GUARANTEE

Section 2.1. *Agreement to be Bound.* Each Guaranteeing Subsidiary hereby becomes a party to the Indenture as a Guarantor and as such will have all of the rights and be subject to all of the obligations and agreements of a Guarantor under the Indenture.

Section 2.2. *Guarantee.* Each Guaranteeing Subsidiary agrees, on a joint and several basis with all other Guaranteeing Subsidiaries, to fully, unconditionally and irrevocably Guarantee to each Holder of the Notes and the Trustee the Guaranteed Obligations pursuant to Article X of the Indenture on a senior basis.

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ARTICLE III

MISCELLANEOUS

Section 3.1. *Notices.* All notices and other communications to the Issuer and the Guaranteeing Subsidiaries shall be given as provided in the Indenture to such Guaranteeing Subsidiaries, at their addresses set forth below, with a copy to the Issuer as provided in the Indenture for notices to the Issuer.

c/o Knife River Corporation  
1150 West Century Avenue  
Bismarck, North Dakota 58503

Section 3.2. [*Reserved*].

Section 3.3. *Release of Guarantee.* This Guarantee shall be released in accordance with Section 10.02 of the Indenture.

Section 3.4. *Parties.* Nothing expressed or mentioned herein is intended or shall be construed to give any Person, firm or corporation, other than the Holders and the Trustee, any legal or equitable right, remedy or claim under or in respect of this Supplemental Indenture or the Indenture or any provision herein or therein contained.

Section 3.5. *Governing Law.* This Supplemental Indenture and the rights of the parties hereunder shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 3.6. *Severability.* In case any provision in this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

Section 3.7. *Benefits Acknowledged.* Each Guaranteeing Subsidiary's Guarantee is subject to the terms and conditions set forth in the Indenture. Each Guaranteeing Subsidiary acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and this Supplemental Indenture and that the guarantee and waivers made by it pursuant to this Guarantee are knowingly made in contemplation of such benefits.

Section 3.8. *Ratification of Indenture; Supplemental Indentures Part of Indenture.* Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

Section 3.9. *The Trustee.* The Trustee does not make any representation or warranty as to the validity or sufficiency of this Supplemental Indenture or with respect to the recitals contained herein, all of which recitals are made solely by the other parties hereto.

Section 3.10. *Counterparts*. The parties hereto may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This Supplemental Indenture may be executed in multiple counterparts, which, when taken together, shall constitute one instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile, PDF or other electronic format shall be deemed to be their original signatures for all purposes.

Section 3.11. *Execution and Delivery*. Each Guaranteeing Subsidiary agrees that its Guarantee shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of any such Guarantee.

Section 3.12. *Headings*. The headings of the Articles and the Sections in this Supplemental Indenture are for convenience of reference only, are not intended to be considered a part hereof, and shall not be deemed to alter or affect the meaning or interpretation of the terms or provisions hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first above written.

**KNIFE RIVER HOLDING COMPANY,**  
as the Issuer

By: /s/ Brian R. Gray  
Name: Brian R. Gray  
Title: President and Chief Executive Officer

**KNIFE RIVER CORPORATION,**  
as a Guarantor

By: /s/ Brian R. Gray  
Name: Brian R. Gray  
Title: President and Chief Executive Officer

**KNIFE RIVER DAKOTA, INC. KNIFE RIVER HAWAII, INC. KNIFE RIVER MARINE, INC  
KRC HOLDINGS, INC.,**  
as a Guarantor

By: /s/ Brian R. Gray  
Name: Brian R. Gray  
Title: Chair of the Board, President and Chief Executive Officer

*[Signature Page to Supplemental Indenture]*

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ALASKA BASIC INDUSTRIES, INC. AMES SAND & GRAVEL, INC.  
ANCHORAGE SAND AND GRAVEL COMPANY, INC.  
BALDWIN CONTRACTING COMPANY, INC. CONCRETE, INC.  
CONNOLLY-PACIFIC CO.  
D S S COMPANY  
E & E R COMPANY  
ELLIS & EASTERN COMPANY FAIRBANKS MATERIALS, INC. GRANITE CITY READY  
MIX, INC. JEBRO INCORPORATED  
JTL GROUP, INC (MONTANA CORPORATION). JTL GROUP, INC. (WYOMING  
CORPORATION) KENT'S OIL SERVICE  
KNIFE RIVER CORPORATION – MOUNTAIN WEST  
KNIFE RIVER CORPORATION – NORTH CENTRAL  
KNIFE RIVER CORPORATION - NORTHWEST KNIFE RIVER CORPORATION –  
SOUTH KNIFE RIVER MIDWEST, LLC  
LTM, INCORPORATED NORTHSTAR MATERIALS, INC. RAIL TO ROAD, INC.  
SWEETMAN CONST. CO.  
WHC, LTD.,  
as a Guarantor

By: /s/ Brian R. Gray

Name: Brian R. Gray

Title: Chair of the Board and Chief Executive Officer

**HAWAIIAN CEMENT,**

as a Guarantor

By: /s/ Brian R. Gray

Name: Brian R. Gray

Title: Chief Executive Officer

*[Signature Page to Supplemental Indenture]*

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U.S. Bank Trust Company, National Association,  
as Trustee

By: /s/ Wally Jones

Name: Wally Jones

Title: Vice President

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*[Signature Page to Supplemental Indenture]*

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TRANSITION SERVICES AGREEMENT  
BY AND BETWEEN  
MDU RESOURCES GROUP, INC.  
AND  
KNIFE RIVER HOLDING COMPANY  
DATED AS OF MAY 30, 2023

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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	2
Section 1.01. Definitions	2
ARTICLE II SERVICES	7
Section 2.01. Services	7
Section 2.02. Performance of Services	7
Section 2.03. Charges for Services	8
Section 2.04. Reimbursement for Out-of-Pocket Costs and Expenses	9
Section 2.05. Changes in the Performance of Services	9
Section 2.06. Transitional Nature of Services	10
Section 2.07. Subcontracting	10
Section 2.08. Contract Manager	11
Section 2.09. Use of Services	11
ARTICLE III BILLING; TAXES	11
Section 3.01. Procedure	11
Section 3.02. Late Payments	11
Section 3.03. Taxes	12
Section 3.04. No Set-Off	12
ARTICLE IV TERM AND TERMINATION	12
Section 4.01. Term	12
Section 4.02. Early Termination	12
Section 4.03. Extension of Services	13
Section 4.04. Interdependencies	13
Section 4.05. Effect of Termination	14
Section 4.06. Information Transmission	14
ARTICLE V CONFIDENTIALITY; PROTECTIVE ARRANGEMENTS	14
Section 5.01. Parent and SpinCo Obligations	14
Section 5.02. No Release; Return or Destruction	15
Section 5.03. Privacy and Data Protection Laws	15
Section 5.04. Protective Arrangements	15
ARTICLE VI LIMITED LIABILITY AND INDEMNIFICATION	16
Section 6.01. Limitations on Liability	16
Section 6.02. Obligation to Re-Perform; Liabilities	17
Section 6.03. Third-Party Claims	17
Section 6.04. Provider Indemnity	17
Section 6.05. Indemnification Procedures	17



ARTICLE VII MISCELLANEOUS	17
Section 7.01. Mutual Cooperation	17
Section 7.02. Further Assurances	18
Section 7.03. Audit Assistance	18
Section 7.04. Title to Intellectual Property	18
Section 7.05. Independent Contractors	18
Section 7.06. Counterparts; Entire Agreement; Corporate Power	18
Section 7.07. Governing Law	19
Section 7.08. Assignability	19
Section 7.09. Third-Party Beneficiaries	20
Section 7.10. Notices	20
Section 7.11. Severability	21
Section 7.12. Force Majeure	21
Section 7.13. Headings	21
Section 7.14. Survival of Covenants	21
Section 7.15. Waivers of Default	21
Section 7.16. Dispute Resolution	22
Section 7.17. Specific Performance	22
Section 7.18. Amendments	22
Section 7.19. Precedence of Schedules	22
Section 7.20. Interpretation	23
Section 7.21. Mutual Drafting	23

TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (this “Agreement”) is entered into as of May 30, 2023, by and between MDU Resources Group, Inc., a Delaware corporation (“Parent”), and Knife River Holding Company, a Delaware corporation (“SpinCo”).

RECITALS:

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 approximately 90 percent (90%) 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, Parent plans to dispose of the SpinCo Shares that it holds following the Distribution, which Parent expects will include dispositions through one or more exchanges for debt and may include dispositions through one or more *pro rata* distributions to holders of Parent Shares, exchanges for equity or a sale of shares for cash;

WHEREAS, for U.S. federal income tax purposes, the Contribution and the Distribution (and the Clean-Up Distribution and Debt-for-Equity Exchange, if any, and the Hook Stock 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;

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 Distribution;

WHEREAS, in order to effectuate the Separation and the Distribution, Parent and SpinCo have entered into a Separation and Distribution Agreement, dated as of May 30, 2023 (the “Separation and Distribution Agreement”);

WHEREAS, in order 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 shall 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” 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.

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

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

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

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

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

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

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

“COVID-19” shall mean SARS-CoV-2 or COVID-19, and any evolutions, variants, mutations or worsening thereof or related or associated epidemics, pandemics or disease outbreaks (including any subsequent waves).

“Dispute” shall have the meaning set forth in Section 7.16(a).

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

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

“Effective Time” shall mean 11:59 p.m., Eastern time, on the Distribution Date.

“e-mail” shall have the meaning set forth in Section 7.10.

“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, acts of terrorism, cyberattacks, embargoes, epidemics, pandemics (including COVID-19 and Pandemic Measures) 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.

“Governmental Authority” shall mean any nation or government, any state, municipality or other political subdivision thereof, and any entity, body, agency, commission, department, board, bureau, court, tribunal or other instrumentality, whether federal, state, local, domestic, foreign or multinational, exercising executive, legislative, judicial, regulatory, administrative or other similar functions of, or pertaining to, government and any executive official thereof.

“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, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), memos 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 Registrable IP.

“Interest Payment” shall have the meaning set forth in Section 3.02.

“Law” shall mean any national, supranational, federal, state, 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.

“Level of Service” shall have the meaning set forth in Section 2.02(e).

“Liability” shall mean all debts, guarantees, assurances, commitments, liabilities, responsibilities, Losses, remediation, 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.

“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.

“Minimum Service Period” shall mean the period commencing on the Distribution Date and ending ninety (90) days after the Distribution Date, unless otherwise specified with respect to a particular service on the Schedules hereto.

“Pandemic Measures” shall mean any quarantine, “shelter in place,” “stay at home,” workforce reduction, social distancing, shut down, closure, sequester, immunization requirements, safety or similar Law, directive, guidelines or recommendations promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to a pandemic, including COVID-19.

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

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

“Party” or “Parties” shall mean the parties to this Agreement.

“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.

“Provider” shall mean, with respect to any Service, the Party providing such Service.

“Provider Indemnitees” shall have the meaning set forth in Section 6.03.

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

“Recipient Indemnitees” shall have the meaning set forth in Section 6.04.

“Record Date” shall mean 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.

“Registrable IP” shall mean all patents, patent applications, statutory invention registrations, registered trademarks, registered service marks, registered Internet domain names and copyright registrations.

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

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

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

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

“Service Extension” shall have the meaning set forth in Section 4.03.

“Service Suspension Period” shall have the meaning set forth in Section 4.03.

“Service Period” shall mean, with respect to any Service, the period commencing on the Distribution Date and ending on the earliest of (a) the date that a Party terminates the provision of such Service pursuant to Section 4.02, (b) the date that is the two (2)-year anniversary of the Distribution Date and (c) the date specified for termination of such Service on the Schedules hereto.

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

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

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

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

(i) the acquisition by any person, entity or “group” (as defined in Section 13(d) of the Exchange Act) of beneficial ownership of fifty percent (50%) or more of the combined voting power of SpinCo’s then-outstanding voting securities, other than any such acquisition by SpinCo, any of its Subsidiaries, any employee benefit plan of SpinCo or any of its Subsidiaries, or any Affiliates of any of the foregoing;

(ii) the merger, consolidation or other similar transaction involving SpinCo, as a result of which persons who were stockholders of SpinCo immediately prior to such merger, consolidation, or other similar transaction do not, immediately thereafter, own, directly or indirectly, more than fifty percent (50%) of the combined voting power entitled to vote generally in the election of directors of the merged or consolidated company; or

(iii) the sale, transfer or other disposition of all or substantially all of the assets of SpinCo and its Subsidiaries.

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

“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, fifty percent (50%) or more 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.

“Tax” shall mean any and all forms of taxation, whenever created or imposed by a Taxing Authority, and, without limiting the generality of the foregoing, shall include net income, alternative or add-on minimum, estimated, gross income, sales, use, ad valorem, gross receipts, value-added, franchise, profits, license, transfer, recording, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profit, custom duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any related interest, penalties or other additions to tax, or additional amounts imposed by any such Taxing Authority.

“Taxing Authority” shall mean a national, foreign, municipal, state, federal or other Governmental Authority responsible for the administration of any Tax.

“Term” shall have the meaning set forth in Section 4.01.

“Termination Charges” shall mean, with respect to the termination of any Service pursuant to Section 4.02(a)(i), any and all costs, fees and expenses unless otherwise specified with respect to a particular Service on the Schedules hereto, or in the other Ancillary Agreements, payable by Provider or its Subsidiaries to a Third Party to the extent resulting from the early termination of such Service.

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

“Third-Party Claim” shall mean 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 (1) 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) If, after the date of this Agreement, Recipient identifies a service that Provider provided to Recipient within twelve (12) months prior to the Distribution Date that Recipient reasonably needs in order for the SpinCo Business or the Parent Business, as applicable, to continue to operate in substantially the same manner in which the SpinCo Business or the Parent Business, as applicable operated 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) and Recipient provides written notice to Provider within ninety (90) days after the Distribution Date requesting such additional services, then Provider shall use its commercially reasonable efforts to provide such requested additional services (such requested additional services, the “Additional Services”); provided, however, that Provider shall not be obligated to provide any Additional Service (A) if Provider does not, in its commercially reasonable judgment, have adequate resources to provide such Additional Service, (B) if the provision of such Additional Service would significantly disrupt the operation of Provider’s or its Subsidiaries’ businesses, (C) if the Parties, acting reasonably and in good faith, are unable to reach agreement on the terms thereof (including with respect to Charges therefor) or (D) if Recipient is reasonably in a position to provide such Additional Services to itself or obtain such Additional Services from a Third Party on the same time frame as such services would be available from Provider. In connection with any request for Additional Services in accordance with this Section 2.01(b), the Parties shall, in good faith, negotiate the terms of a supplement to the applicable Schedule, which terms shall be consistent with the terms of, and the pricing methodology used for, similar Services provided under this Agreement. Upon the mutual written agreement of the Parties, the supplement to the applicable Schedule shall describe in reasonable detail the nature, scope, Service Period(s), termination provisions and other terms applicable to such Additional Services in a manner similar to that in which the Services are described in the existing Schedules. Each supplement to the applicable Schedule, as agreed to in writing by the Parties, shall be deemed part of this Agreement as of the date of such agreement and the Additional Services set forth therein shall be deemed “Services” provided under this Agreement, in each case subject to the terms and conditions of this Agreement.

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, 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 prior to the Effective Time.

(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 of the potential for any such violation, Provider shall promptly advise Recipient of such potential violation, and the Parties 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, licenses or approvals required under any existing contract or agreement with a Third Party to allow Provider to perform, or cause to be performed, all Services to be provided hereunder in accordance with the standards set forth in this Section 2.02. Recipient shall reimburse Provider for all documented and reasonable out-of-pocket costs and expenses (if any) incurred by Provider or any of its Subsidiaries in connection with obtaining any such Third-Party consent that is required to allow Provider to perform or cause to be performed such Services. If, with respect to a Service, the Parties, despite the use of such commercially reasonable efforts, are unable to obtain a required Third-Party consent, license or approval, 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 materially more burdensome (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 one (1)-year period ending on the last day of Provider’s last fiscal quarter completed on or prior to the date of the Distribution (the “Service Baseline Period”).

(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 SET FORTH HEREIN, RECIPIENT ACKNOWLEDGES AND AGREES THAT ALL SERVICES ARE PROVIDED ON AN “AS-IS” BASIS, THAT RECIPIENT ASSUMES ALL RISK AND LIABILITY ARISING FROM OR RELATING TO ITS USE OF AND RELIANCE UPON THE SERVICES, AND THAT PROVIDER MAKES NO OTHER REPRESENTATIONS, STATEMENTS, COVENANTS, 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 OTHER 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 constituting a “Charge” and, collectively, “Charges”), which Charges shall be set forth on the applicable Schedules hereto, or if not so set forth, then, unless otherwise provided with respect to a specific Service on the Schedule hereto, based upon the cost of providing such Services as shall be agreed to by the Parties from time to time. 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 to by the Parties, (b) any adjustments due to a change in Level of Service requested by Recipient and agreed upon by Provider, and (c) any adjustment in the rates or charges imposed by any Third-Party provider that is providing Services; provided that Provider will notify Recipient in writing of any such change in rates at least thirty (30) days prior to the effective date of such rate change. 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 2.03, Recipient shall reimburse Provider for reasonable and documented 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 one thousand dollars (\$1,000) individually, or ten thousand dollars (\$10,000) in the aggregate, 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) Subject to the performance standards for Services set forth in Sections 2.02(a), 2.02(b) and 2.02(c), Provider may from time to time, in its good faith determination, modify, change or enhance the manner, nature, quality and/or standard of care of any Service provided to Recipient to the extent Provider is making similar changes in performing analogous services for itself or its Affiliates or to the extent that such change is in connection with the relocation of the Provider's employees 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. Without limiting the generality of the foregoing, Recipient acknowledges and agrees that the provision of the Services is subject to any upgrades, changes and modifications that Provider may implement to its information technology services in the ordinary course or otherwise in connection with the relocation of its employees. Notwithstanding the foregoing, if as a result of requirements of applicable Law (including any changes under the requirements of applicable Law) or guidance by any Governmental Authority, Provider must, in its good faith determination, modify, change or enhance the manner, nature, quality and/or standard of care of any Service provided to Recipient, Provider shall provide reasonably prompt notice to such Recipient and shall have the right to make such modifications, changes or enhancements, in each case solely to the extent necessary to comply with such applicable Law or guidance and, to the extent legally permissible, provide the Recipient with advance notice, as promptly as practicable, setting forth in reasonable detail the modifications contemplated and the reasons therefor. Any incremental cost or expense incurred by Provider in making any such good faith modification, change or enhancement to the Services performed hereunder or in providing such Services on an ongoing basis shall be paid by Recipient to the Provider in accordance with Article III in addition to the charges for the Services included on the applicable Schedule.

(b) Subject to the limitations on Additional Services set forth in Section 2.01(b), Recipient may request a change to a Service by submitting a request in writing to Provider describing the proposed change in reasonable detail. Provider shall respond to the request as soon as reasonably practicable, and the Parties shall use commercially reasonable efforts to agree to such request, unless the change requested would adversely impact the cost, liability, or risk associated with providing or receiving the applicable Service, or cause any other disruption or adverse impact on the business or operations of Recipient or its Affiliates. Each agreed upon change shall be documented by an amendment in writing to the applicable Schedule.

Section 2.06. Transitional Nature of Services. The Parties acknowledge the transitional nature of the Services and that Recipient shall be responsible with respect to transitioning off of the provision of Services. Provider agrees to reasonably cooperate with Recipient, upon Recipient's written request, 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. Recipient shall transition responsibility for the performance of Services from Provider to Recipient in a manner that minimizes, to the extent reasonably possible, disruption to the Parent Business or the SpinCo Business, as applicable, and the continuing operations of Provider and its relevant Affiliates. Provider shall have no obligation to perform any Services following the Term. The Parties acknowledge and agree that time is of the essence with respect to the foregoing in this Section 2.06.

Section 2.07. Subcontracting. Provider may, upon such Recipient's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, hire or engage one (1) or more Third Parties to perform any or all of its obligations under this Agreement; provided, however, that (a) Provider shall use the same degree of care (but at least reasonable care) in selecting each such Third Party as it would if such Third Party was being retained to provide similar services to Provider and (b) Provider shall in all cases remain responsible (as primary obligor) for all of its obligations under this Agreement with respect to the scope of the Services, the performance standard for Services set forth in Sections 2.02(a), 2.02(b) and 2.02(c) and the content of the Services provided to Recipient. Provider shall be liable for any breach of its obligations under this Agreement by any Third-Party service provider engaged by Provider. Subject to the confidentiality provisions set forth in Article V, Provider shall, and shall cause its Affiliates to, provide, upon fifteen (15) business days' prior written notice, any Information within Provider's or its Affiliates' control that Recipient reasonably requests in connection with any Services being provided to Recipient by a Third Party, including any applicable invoices, agreements documenting the arrangements between such Third Party and Provider and other supporting documentation; provided, further, that Recipient shall make no more than one (1) such request per Third Party during any calendar quarter.

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

Section 2.09. Use of Services. Provider shall not be required to provide Services to any Person other than Recipient and its Subsidiaries. Recipient shall not, and shall not permit its or any of its Subsidiaries’ Representatives to, resell any Services to any Third Party or permit the use of any Services by any Third Party.

ARTICLE III  
BILLING; TAXES

Section 3.01. Procedure. Charges for the Services shall be charged to and payable by Recipient. 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). An invoice detailing all recurring fees, one time charges, approved Additional Services and out-of-pocket expenses shall be prepared by Provider and sent to Recipient by the 15<sup>th</sup> of each month. All amounts due shall be payable within thirty (30) days of Recipient’s receipt of the monthly invoice. Provider shall include reasonable documentation pursuant to Section 2.03. All amounts due and payable hereunder shall be paid in U.S. dollars. In the event of any billing dispute, Recipient shall promptly pay any undisputed amount.

Section 3.02. Late Payments. Charges not paid when due pursuant to this Agreement and which are not disputed in good faith (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”). Failure to pay such Charges due hereunder within ten (10) days from receipt of a non-payment notice from Provider pursuant to the terms of this Agreement shall constitute Recipient’s failure to perform a material obligation under Section 4.02(b) and Service Provider may terminate this Agreement with respect to the applicable Service for which such payment failure applies under Section 4.02(b) (after the applicable cure period set forth therein).

Section 3.03. Taxes. Without limiting any provisions of this Agreement, Recipient shall bear any and all Taxes and other similar charges (and any related interest and penalties) imposed on, or payable with respect to, any fees or charges, including any Charges, payable by it pursuant to this Agreement, including all sales, use, value-added, and similar Taxes, but excluding any Taxes on Provider's income. Notwithstanding anything to the contrary in the previous sentence or elsewhere in this Agreement, Recipient shall be entitled to withhold from any payments to Provider any such Taxes that Recipient is required by applicable Law to withhold and shall pay such Taxes to the applicable Taxing Authority.

Section 3.04. No Set-Off. Except as mutually agreed to in writing by Provider and Recipient, neither Recipient nor any of its Affiliates shall have any right of set-off or other similar rights with respect to any amounts owed to Provider or any of its Subsidiaries pursuant to this Agreement on account of any obligation owed by Provider or any of its Subsidiaries to Recipient or any of its Subsidiaries.

#### ARTICLE IV TERM AND TERMINATION

Section 4.01. Term. This Agreement shall commence at the Effective Time and shall terminate upon the earliest to occur of (a) the last date on which Provider is obligated to provide any Service to Recipient in accordance with the terms of this Agreement; (b) the mutual written agreement of the Parties to terminate this Agreement in its entirety; and (c) the date that is the two (2)-year anniversary of the Distribution Date (the "Term"). Unless otherwise terminated pursuant to Section 4.02, this Agreement shall terminate with respect to each Service as of the close of business on the last day of the Service Period for such Service.

#### Section 4.02. Early Termination.

(a) Without prejudice to Recipient's rights with respect to Force Majeure, Recipient may terminate any Service set forth on any part of the Schedules hereto without terminating all or any other Services set forth on the same Schedule as such terminated Service; provided, however, that Recipient must terminate the entirety of any Service, and not just a portion thereof:

(i) for any reason or no reason, upon the giving of at least forty-five (45) days' prior written notice (or such other number of days specified in the Schedules hereto) to Provider, unless prohibited by the applicable Schedule hereto); provided, however, that any such termination (x) may not be effective prior to the end of the Minimum Service Period, (y) may only be effective as of the last day of a month and (z) shall be subject to the obligation to pay any applicable Termination Charges pursuant to Section 4.04; or

(ii) if Provider has failed to perform any of its material obligations under this Agreement with respect to such Service, and such failure to perform materially and adversely affects the provision of such Service or Recipient or an Affiliate thereof or the SpinCo Business or the Parent Business, as applicable, and such failure shall continue to be uncured by Provider for a period of at least ninety (90) days after receipt by Provider of written notice of such failure from Recipient; provided, however, that Recipient shall not be entitled to terminate this Agreement with respect to the applicable Service if, as of the end of such period, there remains a good-faith Dispute between the Parties (undertaken in accordance with the terms of Section 7.16) as to whether Provider has cured the applicable breach.

(b) Provider may terminate this Agreement with respect to the entirety or portion of any Service at any time upon prior written notice to Recipient if Recipient has failed to perform any of its material obligations under this Agreement with respect to such Service, including making payment of Charges, which are not disputed in good faith, for such Service when due, and such failure shall continue to be uncured by Recipient for a period of at least ninety (90) days (or thirty (30) days in the event of a failure to make payment of Charges which are not disputed in good faith for such Service when due) after receipt by Recipient of a written notice of such failure from Provider; provided, however, that Provider shall not be entitled to terminate this Agreement with respect to the applicable Service if, as of the end of such period, there remains a good-faith Dispute between the Parties (undertaken in accordance with the terms of Section 7.16) as to whether Recipient has cured the applicable breach.

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

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

Section 4.03. Extension of Services. Upon written notice by Recipient to Provider at least sixty (60) days prior to the end of the applicable Service Period for any Service (unless the Schedules hereto specify that such Service is not eligible for extension), Recipient shall have the right to request that Provider extend the Service Period of any Service so that such Service ends on the earlier of (a) ninety (90) days following the last date on which Service Provider is obligated to provide such Service in accordance with the terms of this Agreement and (b) the Term (each such extension, a "Service Extension"). If Provider agrees to provide such Service during the requested Service Extension period, then (i) the Parties shall in good faith negotiate the terms of an amendment to the Schedules hereto, which amendment shall be consistent with the terms of the applicable Service; and (ii) the Charge for such Service during the Service Extension period shall be equal to one hundred percent (100%) of the Charge for such Service. Notwithstanding the foregoing, the Service Period of any particular Service may not be extended more than once. Each amendment of the Schedules hereto, as agreed to in writing by the Parties, shall be deemed part of this Agreement as of the date of such agreement and any Services provided pursuant to such Service Extensions shall be deemed "Services" provided under this Agreement, in each case subject to the terms and conditions of this Agreement.

Section 4.04. 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 4.02, 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 4.05. 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, in the case of clause (b), shall not be payable in the event that Recipient terminates any Service pursuant to Section 4.02(a)(ii)). 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 IV, Article VI and Article VII, all confidentiality obligations under this Agreement and Liability for all due and unpaid Charges and Termination Charges shall continue to survive indefinitely.

Section 4.06. 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, any Information received or computed by Provider for the benefit of Recipient concerning the relevant Service during the Service Period; provided, however, that, except as otherwise agreed to 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 V  
CONFIDENTIALITY; PROTECTIVE ARRANGEMENTS

Section 5.01. Parent and SpinCo Obligations. Subject to Section 5.04, until the six (6)-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, (c) is independently developed or generated without reference to or use of the Confidential Information of the other Party or any of its Subsidiaries or (d) was in such Party's or its Subsidiaries' possession on a non-confidential basis prior to the time of disclosure to such Party and at the time of such disclosure was not known by such Party or any of its Subsidiaries to be prohibited from being disclosed by a confidentiality obligation or other contractual, legal or fiduciary obligation of confidentiality with respect to such Confidential Information. 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 5.02. 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 that was disclosed pursuant to Section 5.01 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 5.04, 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 5.03. Privacy and Data Protection Laws. Each Party shall comply with all applicable state, federal and foreign privacy and data protection Laws that are or that may in the future be applicable to the provision of the Services under this Agreement.

Section 5.04. 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 will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information, 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 VI  
LIMITED LIABILITY AND INDEMNIFICATION

Section 6.01. Limitations on Liability.

(a) SUBJECT TO SECTION 6.02, THE LIABILITIES OF PROVIDER 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 THE AGGREGATE CHARGES PAID OR PAYABLE TO SUCH PROVIDER BY RECIPIENT UNDER THIS AGREEMENT OVER THE PREVIOUS TWELVE (12) MONTHS OR SINCE THE DATE OF THIS AGREEMENT (IF PRIOR TO THE FIRST ANNIVERSARY OF THIS AGREEMENT) WITH RESPECT TO THE SERVICES GIVING RISE TO SUCH LIABILITY.

(b) IN NO EVENT SHALL EITHER PARTY, ITS SUBSIDIARIES OR THEIR RESPECTIVE REPRESENTATIVES BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, REMOTE, SPECULATIVE OR SIMILAR DAMAGES IN EXCESS OF COMPENSATORY DAMAGES OF THE OTHER PARTY IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT REGARDLESS OF WHETHER SUCH PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF, OR THE FORESEEABILITY OF, SUCH DAMAGES (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 6.01(a) and Section 6.01(b) shall not apply in respect of any Liability arising out of or in connection with (i) either Party's Liability for breaches of confidentiality under Article V, (ii) the Parties' respective obligations under Section 6.03 or (iii) the willful misconduct or fraud of or by the Party to be charged.

Section 6.02. 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. The remedy set forth in this Section 6.02 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 4.02(a)(ii) or seeking specific performance in accordance with Section 7.17. Any request for re-performance in accordance with this Section 6.02 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 (1) month from the later of (x) the date on which such breach occurred and (y) the date on which such breach was reasonably discovered by Recipient.

Section 6.03. 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 arising out of the gross negligence, willful misconduct or fraud of any Provider Indemnitee.

Section 6.04. Provider Indemnity. 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, its Subsidiaries and each of their respective Representatives, and each of the successors and assigns of any of the foregoing (collectively, the "Recipient Indemnitees"), from and against any and all Liabilities 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, willful misconduct or fraud.

Section 6.05. Indemnification Procedures. The procedures for indemnification set forth in Article IV of the Separation and Distribution Agreement shall govern claims for indemnification under this Agreement.

ARTICLE VII  
MISCELLANEOUS

Section 7.01. 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 7.01 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 to in writing by the Parties.

Section 7.02. 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 7.03. 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 7.04. Title to Intellectual Property. Except as expressly provided for under the terms of this Agreement or the Separation and Distribution Agreement, Recipient acknowledges that it shall acquire no right, title or interest (including any license rights or rights of use) in any intellectual property that is owned or licensed by Provider, by reason of the provision of the Services hereunder. Recipient shall not remove or alter any copyright, trademark, confidentiality or other proprietary notices that appear on any intellectual property owned or licensed by Provider, and Recipient shall reproduce any such notices on any and all copies thereof. Recipient shall not attempt to decompile, translate, reverse engineer or make excessive copies of any intellectual property owned or licensed by Provider, and Recipient shall promptly notify Provider of any such attempt, regardless of whether by Recipient or any Third Party, of which Recipient becomes aware.

Section 7.05. Independent Contractors. The Parties each acknowledge and agree that they are separate entities, each of which has entered into this Agreement for independent business reasons. The relationships of the Parties hereunder are those of independent contractors and nothing contained herein shall be deemed to create a joint venture, partnership or any other relationship between the Parties. Employees performing Services hereunder do so on behalf of, under the direction of, and as employees of, Provider, and Recipient shall have no right, power or authority to direct such employees, unless otherwise specified with respect to a particular Service on the Schedules hereto.

Section 7.06. Counterparts; Entire Agreement; Corporate Power.

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

(b) This Agreement, the Separation and Distribution Agreement and the other Ancillary Agreements and the Exhibits, Schedules and appendices hereto and thereto contain the entire agreement between the Parties with respect to the subject matter hereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings between the Parties other than those set forth or referred to herein or therein. This Agreement, the Separation and Distribution Agreement, and the other Ancillary Agreements govern the arrangements in connection with the Separation and Distribution and would not have been entered into 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 7.07. Governing Law. This Agreement (and any claims or disputes arising out of or related hereto or to the transactions contemplated hereby or to the inducement of any Party to enter herein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall be governed by and construed and interpreted in accordance with the Laws of the State of Delaware, irrespective of the choice of Laws principles of the State of Delaware, including all matters of validity, construction, effect, enforceability, performance and remedies.

Section 7.08. Assignability. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, however, that neither Party may assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other Party. Notwithstanding the foregoing, Provider may assign this Agreement or all of its rights or obligations hereunder to any Affiliate without Recipient's prior written consent (but with notice to the Recipient) solely to the extent such Affiliate can continue to deliver the Services hereunder without interruption.

Section 7.09. Third-Party Beneficiaries. Except as provided in Article VI 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 in excess of those existing without reference to this Agreement.

Section 7.10. 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 7.10):

If to Parent, to:

MDU Resources Group, Inc.  
1200 West Century Avenue  
P.O. Box 5650  
Bismarck, North Dakota 58506  
Attention: Jason Vollmer, Vice President and Chief Financial Officer  
E-mail: jason.vollmer@mduresources.com

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

Attention: Stephanie Barth  
E-mail: stephanie.barth@mduresources.com

If to SpinCo, to:

Knife River Holding Company  
1150 West Century Avenue  
Bismarck, North Dakota 58503  
Attention: Karl A. Liepitz, Vice President, Chief Legal Officer and Secretary  
E-mail: karl.liepitz@kniferiver.com

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

Attention: John Quade  
E-mail: john.quade@kniferiver.com

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

Section 7.11. 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 7.12. Force Majeure. No Party shall be deemed in default of this Agreement for any delay or failure to fulfill any obligation hereunder (other than a payment obligation) 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. Without limiting the termination rights contained in this Agreement, in the event of any such excused delay, the time for performance of such obligation (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 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 IV or this Section 7.12.

Section 7.13. 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 7.14. 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 7.15. Waivers of Default. Waiver by any Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of the waiving Party. No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof prejudice any other right or further exercise thereof or the exercise of any other right, power or privilege.

Section 7.16. 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 in accordance with the dispute resolution process referred to in Article VII of the Separation and Distribution Agreement.

(b) 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 Sections 7.16(a) 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 7.17. Specific Performance. Subject to Section 7.16, 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 rights or their rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The Parties agree that the remedies at law for any breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any Action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are hereby waived by each of the Parties. Unless otherwise agreed in writing, Provider shall continue to provide Services and the Parties shall honor all other commitments under this Agreement during the course of dispute resolution pursuant to the provisions of Section 7.16 and this Section 7.17 with respect to all matters not subject to such Dispute; provided, however, that this obligation shall only exist during the term of this Agreement.

Section 7.18. 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 enforcement of such waiver, amendment, supplement or modification is sought.

Section 7.19. 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 7.20. 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” shall not be exclusive; (g) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if”; (h) unless otherwise specified in a particular case, the word “days” refers to calendar days; (i) references to “business day” shall mean any day other than a Saturday, a Sunday or a day on which banking institutions are generally authorized or required by Law to close in the United States or Bismarck, North Dakota; (j) 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 (k) unless expressly stated to the contrary in this Agreement, all references to “the date hereof,” “the date of this Agreement,” “hereby,” “hereupon” and words of similar import shall all be references to May 30, 2023.

Section 7.21. 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.

MDU RESOURCES GROUP, INC.

By: /s/ David L. Goodin  
Name: David L. Goodin  
Title: President and Chief Executive Officer

*[Signature Page to Transition Services Agreement]*

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

KNIFE RIVER HOLDING COMPANY

By: /s/ Brian R. Gray  
Name: Brian R. Gray  
Title: President and Chief Executive Officer

*[Signature Page to Transition Services Agreement]*

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TAX MATTERS AGREEMENT

DATED AS OF MAY 30, 2023

BY AND BETWEEN

MDU RESOURCES GROUP, INC.

AND

KNIFE RIVER HOLDING COMPANY

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## TABLE OF CONTENTS

	<u>Page</u>
Section 1. Definition of Terms	2
Section 2. Allocation of Tax Liabilities	12
Section 2.01 General Rule	12
Section 2.02 Allocation of United States Federal Income Tax and Federal Other Tax	13
Section 2.03 Allocation of State Income Tax and State Other Taxes	16
Section 2.04 Certain Transaction and Other Taxes	18
Section 2.05 Special Rules	18
Section 3. Proration of Taxes for Straddle Periods	19
Section 3.01 General Method of Proration	19
Section 3.02 Transactions Treated as Extraordinary Item	19
Section 4. Preparation and Filing of Tax Returns	19
Section 4.01 General	19
Section 4.02 Parent's Responsibility	19
Section 4.03 SpinCo's Responsibility	20
Section 4.04 Tax Accounting Practices	20
Section 4.05 Consolidated or Combined Tax Returns	20
Section 4.06 Right to Review Tax Returns	21
Section 4.07 SpinCo Carrybacks and Claims for Refund	21
Section 4.08 Apportionment of Earnings and Profits and Tax Attributes	22
Section 5. Tax Payments	23
Section 5.01 Payment of Income Taxes with Respect to Joint Returns	23
Section 5.02 Indemnification Payments	24

Section 6. Tax Benefits	25
Section 6.01 Tax Benefits	25
Section 6.02 Parent and SpinCo Income Tax Deductions in Respect of Certain Equity Awards and Incentive Compensation	26
Section 7. Tax-Free Status	26
Section 7.01 Tax Opinions/Rulings and Representation Letters	26
Section 7.02 Restrictions on SpinCo	27
Section 7.03 Restrictions on Parent	29
Section 7.04 Procedures Regarding Opinions and Rulings	30
Section 7.05 Liability for Tax-Related Losses	31
Section 7.06 Section 336(e) Election	33
Section 8. Assistance and Cooperation	33
Section 8.01 Assistance and Cooperation	33
Section 8.02 Income Tax Return Information	34
Section 8.03 Reliance by Parent	34
Section 8.04 Reliance by SpinCo	34
Section 9. Tax Records	34
Section 10. Tax Contests	35
Section 10.01 Notice	35
Section 10.02 Control of Tax Contests	35
Section 11. Effective Date; Termination of Prior Intercompany Tax Allocation Agreements	38
Section 12. Survival of Obligations	38
Section 13. Covenant Not to Sue	38
Section 14. Survival of Indemnities	38
Section 15. Treatment of Payments; Tax Gross Up	38
Section 15.01 Treatment of Tax Indemnity and Tax Benefit Payments	38

Section 15.02 Tax Gross Up	39
Section 15.03 Interest Under this Agreement	39
Section 16. Disagreements	39
Section 16.01 Interaction with Article VII of the Separation and Distribution Agreement	39
Section 16.02 Dispute Resolution	40
Section 17. Late Payments	40
Section 18. Expenses	40
Section 19. General Provisions	40
Section 19.01 Addresses and Notices	40
Section 19.02 Binding Effect	42
Section 19.03 Waiver	42
Section 19.04 Severability	42
Section 19.05 Authority	42
Section 19.06 Further Action	42
Section 19.07 Integration	43
Section 19.08 Construction	43
Section 19.09 No Double Recovery	43
Section 19.10 Counterparts	43
Section 19.11 Governing Law	43
Section 19.12 Jurisdiction	44
Section 19.13 Amendment	44
Section 19.14 SpinCo Subsidiaries	44
Section 19.15 Successors	44
Section 19.16 Injunctions	44

## TAX MATTERS AGREEMENT

This TAX MATTERS AGREEMENT (this “**Agreement**”) is entered into as of May 30, 2023, by and between MDU Resources Group, Inc., a Delaware corporation (“**Parent**”) and Knife River Holding Company, a Delaware corporation and a wholly owned subsidiary of Parent (“**SpinCo**”) (Parent and SpinCo sometimes collectively referred to herein as the “**Companies**” and, as the context requires, individually referred to herein as a “**Company**”).

### RECITALS

WHEREAS, the board of directors of Parent 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 board of directors of Parent 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 approximately 90 percent (90%) of the outstanding SpinCo Shares (the “**Distribution**”);

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

WHEREAS, for U.S. federal income tax purposes, the Contribution and the Distribution (and the Clean-Up Distribution and Debt-for-Equity Exchange, if any, and the Hook Stock 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;

WHEREAS, in connection with the Separation, and in accordance with the Plan of Reorganization, Centennial Energy Holdings, Inc. (a Delaware corporation and a wholly owned subsidiary of Parent, “**Centennial**”) has merged or will merge, prior to the Contribution and Distribution, with and into CEHI, LLC (a Delaware limited liability company disregarded as separate from Parent for U.S. federal income tax purposes) (“**New Centennial**”) with New Centennial surviving (the “**Merger**”), and New Centennial has distributed or will distribute, prior to the Contribution and Distribution, the stock of Knife River Corporation (a Delaware corporation and a wholly owned subsidiary of Centennial, “**Knife River**”) and any other assets related to the SpinCo Business to Parent;

WHEREAS, in order to effectuate the Separation and the Distribution, Parent and SpinCo have entered into that certain Separation and Distribution Agreement, dated as of May 30, 2023 (together with the Schedules, Exhibits and Appendices thereto, the “**Separation and Distribution Agreement**”);

WHEREAS, as of the date hereof, Parent is the common parent of an affiliated group of corporations, including SpinCo, which affiliated group has elected to file consolidated U.S. federal income tax returns;

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WHEREAS, pursuant to the Separation and Distribution Agreement, Parent and SpinCo have agreed to separate the SpinCo Business from Parent by means of, among other actions, (i) the Contribution and (ii) the Distribution;

WHEREAS, following the Distribution, Parent expects to undertake the Debt-for-Equity Exchange;

WHEREAS, as a result of the Distribution, SpinCo and its subsidiaries will cease to be members of the affiliated group (as that term is defined in Section 1504 of the Code) of which Parent is the common parent;

WHEREAS, the parties desire to provide for and agree upon the allocation between the Companies 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; and

WHEREAS, the Companies 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 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:

“**1993 Tax Allocation Agreement**” means the Consolidated Return and Income Tax Allocation Agreement, first effective as of January 1, 1993 (or such other date as is stated therein), between Parent and its Subsidiaries, and as amended effective as of June 1, 2007.

“**2019 Tax Allocation Agreement**” means the Consolidated Return and Tax Allocation Agreement, effective for the consolidated Return taxable year ending December 31, 2019 and subsequent years, between Parent and its Subsidiaries.

“**Accounting Cutoff Date**” means, with respect to SpinCo and any member of the SpinCo Group the Tax Items of which are included in the Parent Federal Consolidated Income Tax Return, any date as of the end of which there is a closing of the financial accounting records for such entity.

“**Active Trade or Business**” means the active conduct (as defined in Section 355(b)(2) of the Code and the regulations thereunder) by SpinCo and its “separate affiliated group” (as defined in Section 355(b)(3)(B) of the Code) of the Construction Materials and Contracting Business.

“**Adjustment Request**” means 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.



“**Affiliate**” means any entity that is directly or indirectly “controlled” by either the person in question or an Affiliate of such person. “Control,” for purposes of the definition of Affiliate, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise. The term Affiliate shall refer to Affiliates of a person as determined immediately after the Distribution.

“**Agreement**” means this Tax Matters Agreement.

“**Board Certificate**” shall have the meaning set forth in Section 7.02(e).

“**Business Day**” means 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 Bismarck, North Dakota.

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

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

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

“**Consolidated State Income Tax Benefit**” shall have the meaning set forth in Section 2.03(a)(iii).

“**Construction Materials and Contracting Business**” means the business, operations and activities of mining, processing, and selling construction aggregates and the production and sale of asphalt and ready-mix concrete, as conducted by Knife River and its subsidiaries.

“**Contribution**” means the transfer by Parent (or an entity disregarded as separate from Parent for U.S. federal income tax purposes) directly to SpinCo, pursuant to the Separation and Distribution Agreement, of certain SpinCo Assets in actual or constructive exchange for (i) the issuance by SpinCo to Parent (or such disregarded entity) of SpinCo Shares and (ii) the assumption by SpinCo of certain SpinCo Liabilities.

“**Controlling Party**” shall have the meaning set forth in Section 10.02(e)(i).

“**Debt-for-Equity Exchange**” means the transfer within 12 months of the Distribution of all or a portion of the Remaining Shares by Parent or an entity disregarded as separate from Parent for U.S. federal income tax purposes to its creditors in exchange for outstanding debt obligations of Parent or an entity disregarded as separate from Parent for U.S. federal income tax purposes.

“**Deconsolidation Date**” means the last date on which SpinCo qualifies as a member of the affiliated group (as defined in Section 1504 of the Code) of which Parent is the common parent.

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

“**Due Date**” means with respect to a Tax Return, the date (taking into account all valid extensions) on which such Tax Return is required to be filed under applicable Law.

“**Effective Time**” has the meaning set forth in the Separation and Distribution Agreement.

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

“**Estimated SpinCo Allocated Federal Income Tax Benefit**” means, with respect to any required installment of estimated Taxes relating to a Parent Federal Consolidated Income Tax Return for any Pre-Deconsolidation Period, the absolute value of the sum of the estimated amounts allocable to the members of the SpinCo Group under Section 2.02(a)(ii) and Section 2.02(a)(iv) if such sum is zero or a negative number; otherwise zero.

“**Estimated SpinCo Allocated Federal Income Tax Liability**” means, with respect to any required installment of estimated Taxes relating to a Parent Federal Consolidated Income Tax Return for any Pre-Deconsolidation Period, the sum of the estimated amounts allocable to the members of the SpinCo Group under Section 2.02(a)(ii) and Section 2.02(a)(iv) if such sum is zero or a positive number; otherwise zero.

“**Estimated SpinCo Allocated Income Tax Benefit**” means the Estimated SpinCo Allocated Federal Income Tax Benefit or the Estimated SpinCo Allocated State Combined Income Tax Benefit, as applicable.

“**Estimated SpinCo Allocated Income Tax Liability**” means the Estimated SpinCo Allocated Federal Income Tax Liability or the Estimated SpinCo Allocated State Combined Income Tax Liability, as applicable.

“**Estimated SpinCo Allocated State Combined Income Tax Benefit**” means, with respect to any required installment of estimated Taxes relating to a Parent State Combined Income Tax Return for any Pre-Deconsolidation Period, the absolute value of the sum of the estimated amounts allocable to the members of the SpinCo Group under Section 2.03(a)(ii) and Section 2.03(a)(iii) if such sum is zero or a negative number; otherwise zero.

“**Estimated SpinCo Allocated State Combined Income Tax Liability**” means, with respect to any required installment of estimated Taxes relating to a Parent State Combined Income Tax Return for any Pre-Deconsolidation Period, the sum of the estimated amounts allocable to the members of the SpinCo Group under Section 2.03(a)(ii) and Section 2.03(a)(iii) if such sum is zero or a positive number; otherwise zero.

“**Federal Income Tax**” means 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**” means any Tax imposed by the federal government of the United States of America (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.

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

“**Final Determination**” means 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 Tax, but only after the expiration of all periods during which such refund may be recovered (including by way of offset) by the jurisdiction imposing such Tax; (e) by a final settlement resulting from a treaty-based competent authority determination; or (f) by any other final disposition, including by reason of the expiration of the applicable statute of limitations or by mutual agreement of the parties.

“**Group**” means the Parent Group or the SpinCo Group, or both, as the context requires.

“**Income Tax**” means any Federal Income Tax or State Income Tax.

“**Indemnitee**” shall have the meaning set forth in Section 15.03.

“**Indemnitor**” shall have the meaning set forth in Section 15.03.

“**Internal Restructuring**” means (i) any internal restructuring (including by making or revoking any election under Treasury Regulations Section 301.7701-3) involving SpinCo or any of its subsidiaries or (ii) any direct or indirect contribution, sale or other transfer by SpinCo to any of its Subsidiaries of any of the assets contributed or transferred to SpinCo as part of the Contribution or pursuant to the Separation and Distribution Agreement.

“**IRS**” means the United States Internal Revenue Service.

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

“**Knife River**” shall have the meaning set forth in the Recitals.

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

“**New Centennial**” shall have the meaning set forth in the Recitals.

“**Non-Controlling Party**” shall have the meaning set forth in Section 10.02(c)(i).

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

“**Other Tax**” means any Federal Other Tax or State Other Tax.

“**Parent**” shall have the meaning provided in the first sentence of this Agreement.

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

“**Parent Affiliated Group**” shall have the meaning provided in the definition of “Parent Federal Consolidated Income Tax Return.”

“**Parent Federal Consolidated Income Tax Return**” means any United States Federal Income Tax Return for the affiliated group (as that term is defined in Section 1504 of the Code and the regulations thereunder) of which Parent (or Montana-Dakota Utilities Co. or another member of the Parent Group) is or was the common parent (the “**Parent Affiliated Group**”).

“**Parent Final Determination Adjustment**” shall have the meaning set forth in Section 6.01(b).

“**Parent Group**” means Parent and its Affiliates, excluding any entity that is a member of the SpinCo Group.

“**Parent Group Transaction Returns**” shall have the meaning set forth in Section 4.04(b).

“**Parent Separate Return**” means any Separate Return of Parent or any member of the Parent Group.

“**Parent State Combined Income Tax Return**” means a consolidated, combined or unitary State Income Tax Return that includes, by election or otherwise, one or more members of the Parent Group and one or more members of the SpinCo Group.

“**Past Practices**” shall have the meaning set forth in Section 4.04(a).

“**Payment Date**” means (i) with respect to any Parent 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 (ii) with respect to any other Tax Return, the corresponding dates determined under the applicable Tax Law.

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

“**Person**” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof, without regard to whether any such entity is treated as disregarded for U.S. federal income tax purposes.

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

“**Pre-Deconsolidation Parent Group**” means the Parent Affiliated Group, as determined on or prior to the Deconsolidation Date.

“**Pre-Deconsolidation Period**” means any Tax Period ending on or before the Deconsolidation Date, and, in the case of any Straddle Period, the portion of such Straddle Period ending on the Deconsolidation Date.

“**Privilege**” means 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**” means a transaction or series of transactions (or any “agreement,” “understanding” or “arrangement,” within the meaning of Section 355(e) of the Code and Treasury Regulation Section 1.355-7, or any other regulations promulgated thereunder, to enter into a transaction or series of transactions), whether such transaction is supported by SpinCo management or shareholders, 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 any group of Persons would (directly or indirectly) acquire, or have the right to acquire, from SpinCo and/or one or more holders of outstanding shares of SpinCo Capital Stock, a number of shares of SpinCo Capital Stock that would, when combined with any other changes in ownership of SpinCo Capital Stock pertinent for purposes of Section 355(e) of the Code, comprise 35% or more of (a) the value of all outstanding shares of 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 (A) the adoption by SpinCo of a shareholder rights plan or (B) 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 regulations promulgated under Section 355(e) of the Code shall be incorporated in this definition and its interpretation.

“**Remaining Shares**” means the SpinCo Shares not distributed by Parent to its shareholders in the Distribution or the Hook Stock Distribution.

“**Representation Letters**” means the representation letters and any other materials (including, without limitation, a Ruling Request and any related supplemental submissions to the IRS) delivered or deliverable by, or on behalf of, Parent, SpinCo and others in connection with the rendering by Tax Advisors and/or the issuance by the IRS of the Tax Opinions/Rulings.

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

“**Responsible Company**” means, with respect to any Tax Return, the Company having responsibility for preparing and filing such Tax Return under this Agreement.

“**Retention Date**” shall have the meaning set forth in Section 9.

“**Ruling**” means a private letter ruling (including a supplemental private letter ruling) issued by the IRS to Parent pertaining to or in connection with the Contribution, the Distribution, the Clean-Up Distribution and/or the Debt-for-Equity Exchange.

“**Ruling Request**” means any letter filed by Parent with the IRS requesting a ruling regarding certain tax consequences of the Transactions (including all attachments, exhibits, and other materials submitted with such ruling request letter) and any amendment or supplement to such ruling request letter.

“**Section 336(e) Election**” has the meaning set forth in Section 7.06.

“**Section 7.02(e) Acquisition Transaction**” means 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 25% instead of 35%.

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

“**Separate Tax Return Liability**” shall have the meaning set forth in Section 2.02(a)(iii).

“**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 Tax-Free Status of any of the Contribution, Distribution, Clean-up Distribution or the Debt-for-Equity Exchange.

“**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 Adjustment**” means 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 Allocated Federal Income Tax Benefit**” means, with respect to any Parent Federal Consolidated Income Tax Return for any Pre-Deconsolidation Period, the absolute value of the sum of the amounts allocated to the members of the SpinCo Group for such taxable period (or portion thereof) under Section 2.02(a)(ii) and Section 2.02(a)(iv) if such sum is zero or a negative number; otherwise zero.

“**SpinCo Allocated Federal Income Tax Liability**” means, with respect to any Parent Federal Consolidated Income Tax Return for any Pre-Deconsolidation Period, the sum of the amounts allocated to the members of the SpinCo Group for such taxable period (or portion thereof) under Section 2.02(a)(ii) and Section 2.02(a)(iv) if such sum is zero or a positive number; otherwise zero.

“**SpinCo Allocated Income Tax Benefit**” means the SpinCo Allocated Federal Income Tax Benefit or the SpinCo Allocated State Combined Income Tax Benefit, as applicable.

“**SpinCo Allocated Income Tax Liability**” means the SpinCo Allocated Federal Income Tax Liability or the SpinCo Allocated State Combined Income Tax Liability, as applicable.

“**SpinCo Allocated State Combined Income Tax Benefit**” means, with respect to the relevant Parent State Combined Income Tax Returns for any Pre-Deconsolidation Period, the absolute value of the sum of the amounts allocated to the members of the SpinCo Group for such taxable period (or portion thereof) under Section 2.03(a)(ii) and Section 2.03(a)(iii) if such sum is zero or a negative number; otherwise zero.

“**SpinCo Allocated State Combined Income Tax Liability**” means, with respect to the relevant Parent State Combined Income Tax Returns for any Pre-Deconsolidation Period, the sum of the amounts allocated to the members of the SpinCo Group for such taxable period (or portion thereof) under Section 2.03(a)(ii) and Section 2.03(a)(iii) if such sum is zero or a positive number; otherwise zero.

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

“**SpinCo Capital Stock**” means (i) all classes or series of capital stock of SpinCo, including the shares of common stock of SpinCo, (ii) all options, warrants and other rights to acquire such stock and (iii) all instruments properly treated as stock in SpinCo for U.S. federal income tax purposes.

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

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

“**SpinCo Group**” means SpinCo and its Affiliates, as determined immediately after the Distribution.

“**SpinCo Separate Return**” means any Separate Return of SpinCo or any member of the SpinCo Group.

“**State Income Tax**” means any Tax imposed by any State of the United States (or by any political subdivision of any such State) or the District of Columbia, in each case, 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**” means any Tax imposed by any State of the United States (or by any political subdivision of any such State) or the District of Columbia, in each case, other than any State Income Taxes, and any interest, penalties, additions to tax, or additional amounts in respect of the foregoing.

“**State Tax**” means any State Income Taxes or State Other Taxes.

“**Straddle Period**” means any Tax Period that begins on or before and ends after the Deconsolidation Date.

“**Tax**” or “**Taxes**” means any income, gross income, gross receipts, profits, capital stock, franchise, withholding, payroll, social security, workers compensation, unemployment, disability, property, *ad valorem*, stamp, excise, escheat, severance, occupation, service, sales, use, license, lease, transfer, import, 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 entity or political subdivision thereof, and any interest, penalties, additions to tax, or additional amounts in respect of the foregoing.

“**Tax Advisor**” means a United States tax counsel or accountant of recognized national standing.

“**Tax Department Dispute**” shall have the meaning set forth in Section 16.02.



“**Tax Attribute**” or “**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**” means, with respect to any Tax, the governmental entity 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**” or “**Benefit**” means any refund, credit, or other reduction in otherwise required Tax payments.

“**Tax Contest**” means an audit, review, examination, 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 Control**” means the definition of “control” set forth in Section 368(c) of the Code (or in any successor statute or provision), as such definition may be amended from time to time.

“**Tax-Free Status**” means the qualification of the Contribution and Distribution (and the Clean-Up Distribution and Debt-for-Equity Exchange, if any), taken together, (a) as a reorganization described in Sections 355(a) and 368(a)(1)(D) of the Code, (b) as a transaction in which the stock distributed thereby is “qualified property” for purposes of Sections 355(d), 355(e) and 361(c) of the Code, and (c) as a transaction in which the holders of Parent Shares recognize no income or gain for U.S. federal income tax purposes pursuant to Section 355 of the Code.

“**Tax Item**” means, with respect to any Income Tax, any item of income, gain, loss, deduction, credit, recapture of credit or any other item which increases or decreases Taxes paid or payable.

“**Tax Law**” means the law of any governmental entity or political subdivision thereof relating to any Tax.

“**Tax Opinions/Rulings**” means (i) the opinions of Wachtell, Lipton, Rosen & Katz and of other tax advisors of recognized national standing deliverable to Parent pertaining to or in connection with, and regarding the Federal Income Tax treatment of the Contribution, the Merger and/or the Distribution and (ii) any Rulings.

“**Tax Period**” means, 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**” means (i) all federal, state, local and foreign Taxes (including interest and penalties thereon) imposed (or that would be imposed) pursuant to any settlement, Final Determination, judgment or otherwise, (ii) all accounting, legal and other professional fees, and court costs incurred in connection therewith, and (iii) all costs, expenses and damages associated with stockholder litigation or controversies and any amount paid by Parent (or any Parent 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 the case of each of clauses (i) through (iii), resulting from the failure of the Contribution or the Distribution (or the Clean-Up Distribution or Debt-for-Equity Exchange, if any) to have Tax-Free Status.

“**Tax Return**” or “**Return**” means 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, questionnaire, 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**” means the Contribution, the Distribution, the Hook Stock Distribution (and the Clean-Up Distribution and Debt-for-Equity Exchange, if any) and the other transactions contemplated by the Separation and Distribution Agreement.

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

“**Unqualified Tax Opinion**” means an unqualified “will” opinion of a Tax Advisor, which Tax Advisor is acceptable to Parent, on which Parent may rely to the effect that a transaction will not affect the Tax-Free Status of the Contribution and the Distribution (and the Clean-Up Distribution and Debt-for-Equity Exchange, if any) (taken together); *provided* that any tax opinion obtained in connection with a proposed acquisition of SpinCo Capital Stock entered into on or before the two-year anniversary of the Distribution Date shall not qualify as an Unqualified Tax Opinion unless such tax opinion also 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. Any such opinion must assume that the Contribution and Distribution (and the Clean-Up Distribution and Debt-for-Equity Exchange, if any) (taken together) would have qualified for Tax-Free Status if the transaction in question did not occur.

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

### Section 2.01 *General Rule.*

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

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

Section 2.02 *Allocation of United States Federal Income Tax and Federal Other Tax.* Except as otherwise provided in Section 2.04, Federal Income Tax, Federal Income Tax Benefit and Federal Other Tax shall be allocated as follows:

(a) *Allocation with Respect to Parent Federal Consolidated Income Tax Returns for Pre-Deconsolidation Periods.* With respect to any Parent Federal Consolidated Income Tax Return for any Pre-Deconsolidation Period:

(i) (I) Parent 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) reduced by any SpinCo Allocated Federal Income Tax Liability (including any increase thereof as a result of a Final Determination), (II) SpinCo shall be responsible for any and all SpinCo Allocated Federal Income Tax Liability (including any increase thereof as a result of a Final Determination), (III) Parent shall be entitled to any Tax Benefit (including any increase in such Tax Benefit as a result of a Final Determination) reduced by any SpinCo Allocated Federal Income Tax Benefit (including any increase in such Tax Benefit as a result of a Final Determination), and (IV) SpinCo shall be entitled to any SpinCo Allocated Federal Income Tax Benefit (including any increase in such Tax Benefit as a result of a Final Determination) (but, in the case of clauses (II) and (IV), for the absence of doubt, not in duplication of net amounts paid or received, respectively, in the aggregate by the members of the SpinCo Group pursuant to the 2019 Tax Allocation Agreement or the 1993 Tax Allocation Agreement).

(ii) The consolidated Federal Income Tax of the Pre-Deconsolidation Parent Group shall be allocated to the members of the Pre-Deconsolidation Parent Group based on the members' Separate Tax Return Liability in accordance with Section 1552(a)(2) of the Code and Treasury Regulations Section 1.1552-1(a)(2). An additional amount (positive or negative) shall be allocated to each member, which amount (I) for members having a Separate Tax Return Liability that is greater than zero, shall be a positive amount equal to 100% of the excess, if any, of (A) the Separate Return Tax Liability of such member (computed in accordance with Treasury Regulations Section 1.1552-1(a)(2)(ii)), over (B) the tax liability allocated to such member in accordance with Treasury Regulations Section 1.1552-1(a)(2), and (II) for members having a Separate Tax Return Liability of zero, shall be a negative amount equal to each such member's proportionate share of the aggregate amount described in the foregoing clause (I), allocated among such members based on the absolute value of the separate taxable loss of each such member for the period, determined in accordance with the principles of Section 2.02(a)(iii).

(iii) The term "**Separate Tax Return Liability**," as applied to each member of the Pre-Deconsolidation Parent Group, means the amount of Tax such member would owe for any Pre-Deconsolidation Period, computed as if it had filed a separate Tax Return for each such period, adjusted as follows:

(A) (i) Gains and losses on intercompany transactions, as well as any transactions with respect to stock or obligations of any member shall be taken into account as provided in Treasury Regulation Section 1.1502-13, (ii) gains and losses relating to inventory adjustments shall be taken into account as provided in Treasury Regulations Section 1.1502-18, (iii) a dividend distributed by a member shall not be taken into account in computing any deductions for dividends paid under the Code, (iv) excess losses shall be included in income as provided in Treasury Regulations Section 1.1502-19, (v) except as may be required under Treasury Regulations Section 1.1502-13, in the computations of depreciation, property shall not lose its character as new property as a result of a transfer from one member to another member, (vi) in the computations of tax credits and recapture, Treasury Regulations Section 1.1502-3(f)(2) shall apply, and (vii) basis shall be determined under Treasury Regulations Section 1.1502-31 and 1.1502-32, and earnings and profits shall be determined under Treasury Regulations Section 1.1502-33.

(B) In the event that a member's standalone net operating loss in a taxable period has been taken into account in determining the amount of payments due pursuant to the 2019 Tax Allocation Agreement, the 1993 Tax Allocation Agreement or this Agreement, such loss shall not reduce such member's taxable income for any other taxable period.

(C) Subject to clause (B) above, net operating losses, tax credits, and other items which, under the Code, could have been carried forward or back by a member of the Pre-Deconsolidation Parent Group if it were filing a separate return (and which did not result in a current year consolidated tax benefit) shall be taken into account in allocating tax liability in the carryforward or carryback year, after taking into account any applicable limitations on the use of such losses, credits or other items (whether under Sections 382 or 383 of the Code, the "separate return limitation year" provisions of Treasury Regulations Section 1.1502-21, or otherwise).

(D) For the absence of doubt, any expense of a member of the Pre-Deconsolidation Parent Group arising from an expense of Parent or Centennial (or New Centennial) that is reported on a Parent Federal Consolidated Income Tax Return and charged out to such member on the basis of a corporate overhead factor or a shared services overhead factor shall be taken into account (but not in duplication) in determining such member's Separate Tax Return Liability.

(E) Any adjustment or limitation related to interest deductions of Centennial (or New Centennial) that are reported on a Parent Federal Consolidated Income Tax Return shall be taken into account (i) if the limitation or adjustment specifically relates to a particular debt instrument, then (I) by the relevant member of the SpinCo Group insofar as such member of the SpinCo Group owed an intercompany obligation to Centennial (or New Centennial) corresponding to, and allocable to, the relevant debt instrument of Centennial (or New Centennial) or (II) by the relevant member of the Parent Group insofar as such member of the Parent Group owed an intercompany obligation to Centennial (or New Centennial) corresponding to, and allocable to, the relevant debt instrument of Centennial (or New Centennial) and (ii) insofar as the relevant debt instrument of Centennial (or New Centennial) does not correspond to or is not allocable to an intercompany obligation of any member of the Pre-Deconsolidation Parent Group (or if the limitation or adjustment does not specifically relate to a particular debt instrument), by the members of the Pre-Deconsolidation Parent Group that paid interest to Centennial (or New Centennial) pursuant to intercompany debt obligations owed to Centennial (or New Centennial) for the taxable period to which such Tax Return relates in proportion to the amount of interest each such member paid to Centennial (or New Centennial) for such period.

(iv) Notwithstanding anything to the contrary in this Section 2.02(a), the allocation to each member of the Pre-Deconsolidation Parent Group shall be determined by taking into account the following adjustments (without duplication):

(A) An allocation to each member reflecting the portion of the Federal Income Tax of the Pre-Deconsolidation Parent Group applicable to capital gains (increased by the period's consolidated benefit resulting from the reduction of the members' net capital gains by other members' net capital losses) based upon the proportion of the net capital gains of each member having net capital gains to the consolidated amount of net capital gains of members having net capital gains. Each period's consolidated benefit resulting from the reduction of another member's net capital gains shall be allocated proportionately to the members having net capital losses in proportion to the absolute value of such members' respective net capital losses. In the event of a carry-forward or carry-back of capital losses, each member's capital losses shall be taken into account for purposes of this allocation in the Pre-Deconsolidation Period, if any, in which such capital losses are used to reduce, and to the extent they reduce, the consolidated Federal Income Tax of the Pre-Deconsolidation Parent Group.

(B) An allocation to each member reflecting the amount of available tax credits generated by such member for a taxable period; *provided, however*, that in the event that not all available tax credits are used to reduce the consolidated Federal Income Tax of the Pre-Deconsolidation Parent Group in a taxable period due to statutory limitations, each member that generated tax credits for such taxable period shall be allocated a portion of the credits that were used to reduce the consolidated Federal Income Tax of the Pre-Deconsolidation Parent Group in proportion to the amount of credits such member generated for such taxable period. In the event of a carry forward or carry back of tax credits, each member's respective tax credits shall be taken into account for purposes of this allocation in the Pre-Deconsolidation Period, if any, in which such tax credits are used to reduce, and to the extent they reduce, the consolidated Federal Income Tax of the Pre-Deconsolidation Parent Group.

(b) *Allocation with Respect to Federal Separate Income Tax Returns.* (i) Parent shall be responsible for any and all Federal Income Taxes due with respect to or required to be reported on any Parent Separate Return (including any increase in such Tax as a result of a Final Determination); (ii) SpinCo shall be responsible for any and all Federal Income Taxes due with respect to or required to be reported on any SpinCo Separate Return (including any increase in such Tax as a result of a Final Determination); (iii) with respect to any Parent Separate Return relating to Federal Income Taxes, Parent shall be entitled to any Tax Benefit; and (iv) with respect to any SpinCo Separate Return relating to Federal Income Taxes, SpinCo shall be entitled to any Tax Benefit.

(c) *Allocation of Federal Other Tax.* (i) Parent shall be responsible for any and all Federal Other Taxes due with respect to or required to be reported on any Parent Separate Return or otherwise imposed on any member of the Parent Group; (ii) SpinCo shall be responsible for any and all Federal Other Taxes due with respect to or required to be reported on any SpinCo Separate Return or otherwise imposed on any member of the SpinCo Group; in each case, including any increase in such Tax as a result of a Final Determination.

Section 2.03 *Allocation of State Income Tax and State Other Taxes.* Except as otherwise provided in Section 2.04, State Income Tax, State Income Tax Benefit and State Other Tax shall be allocated as follows:

(a) *Allocation with Respect to Parent State Combined Income Tax Returns for Pre-Deconsolidation Periods.* With respect to any Parent State Combined Income Tax Return for any Pre-Deconsolidation Periods:

(i) (I) Parent shall be responsible for any and all State 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) reduced by any SpinCo Allocated State Combined Income Tax Liability (including any increase in such Tax as a result of a Final Determination), (II) SpinCo shall be responsible for any and all SpinCo Allocated State Combined Income Tax Liability (including any increase in such Tax as a result of a Final Determination), (III) Parent shall be entitled to any Tax Benefit (including any increase in such Tax Benefit as a result of a Final Determination) reduced by any SpinCo Allocated State Income Tax Benefit (including any increase in such Tax Benefit as a result of a Final Determination), and (IV) SpinCo shall be entitled to any SpinCo Allocated State Income Tax Benefit (including any increase in such Tax Benefit as a result of a Final Determination) (but, in the case of clauses (II) and (IV), for the absence of doubt, not in duplication of net amounts paid or received, respectively, in the aggregate by the members of the SpinCo Group pursuant to the 2019 Tax Allocation Agreement or the 1993 Tax Allocation Agreement).

(ii) State Income Taxes due or required to be reported on any Parent State Combined Income Tax Return for Pre-Deconsolidation Periods shall be allocated among the members of the Pre-Deconsolidation Parent Group based upon the amount of State Income Taxes each such member would have been liable for on a hypothetical stand-alone basis in each state. Such allocation shall be reduced (for the absence of doubt, to a positive or negative number or zero, and without duplication) by (I) the amount of Consolidated State Income Tax Benefit allocated to such member and (II) the amount of available tax credits generated by such member for a taxable period; *provided, however,* that in the event that not all available tax credits are used to reduce the consolidated, combined or unitary State Income Tax of the Pre-Deconsolidation Parent Group in a taxable period due to statutory limitations, the amount taken into account under this clause (II) for each member that generated tax credits for such taxable period shall be a portion of the credits that were used to reduce the consolidated, combined or unitary State Income Tax of the Pre-Deconsolidation Parent Group proportionate to the amount of credits such member generated for such taxable period. In the event of a carry-forward or carry-back of tax credits, each member's respective tax credits shall be taken into account for purposes of this allocation in the Pre-Deconsolidation Period, if any, in which such tax credits are used to reduce, and to the extent they reduce, the consolidated, combined or unitary State Income Tax of the Pre-Deconsolidation Parent Group.

(iii) **“Consolidated State Income Tax Benefit”** resulting from the filing of any Parent State Combined Income Tax Returns for a Pre-Deconsolidation Period means the excess of (I) the aggregate of all State Income Taxes for the members of the Pre-Deconsolidation Parent Group as would be computed for such members if each member were filing separately in each state where such member would be required to file on a separate basis for such taxable period, over (II) the aggregate of all State Income Taxes due or required to be reported on any Parent State Combined Income Tax Return filed for such taxable period, determined, in each case, without regard to tax credits generated by members of the Pre-Deconsolidation Parent Group for such taxable period taken into account pursuant to Section 2.03(a)(ii). The Consolidated State Income Tax Benefit for a taxable period shall be allocated among the members of the Pre-Deconsolidation Parent Group in a manner consistent with Parent’s past practice in interpreting and implementing the 2019 Tax Allocation Agreement, as determined by Parent in its reasonable discretion.

(b) *Allocation of State Income Tax with Respect to Separate Returns.* (i) Parent shall be responsible for any and all State Income Taxes due with respect to or required to be reported on any Parent Separate Return (including any increase in such Tax as a result of a Final Determination); (ii) SpinCo shall be responsible for any and all State Income Taxes due with respect to or required to be reported on any SpinCo Separate Return (including any increase in such Tax as a result of a Final Determination); (iii) with respect to any Parent Separate Return relating to State Income Taxes, Parent shall be entitled to any State Income Tax Benefit; and (iv) with respect to any SpinCo Separate Return relating to State Income Taxes, SpinCo shall be entitled to any State Income Tax Benefit.

(c) *Allocation of State Other Tax.* (i) Parent shall be responsible for any and all State Other Taxes due with respect to or required to be reported on any Parent Separate Return; (ii) SpinCo shall be responsible for any and all State Other Taxes due with respect to or required to be reported on any SpinCo Separate Return; (iii) SpinCo shall be responsible for any and all State Other Taxes due with respect to or required to be reported on any Joint Return for any Pre-Deconsolidation Period attributable to the SpinCo Business or the SpinCo Group (or any assets or activities thereof or relating thereto) or for which any member of the SpinCo Group would have been liable on a hypothetical stand-alone basis; and (iv) other than State Other Taxes for which SpinCo is responsible pursuant to the preceding clause (iii), Parent shall be responsible for any and all State Other Taxes due with respect to or required to be reported on any Joint Return for any Pre-Deconsolidation Period, in each case, including any increase in such Tax as a result of a Final Determination.

Section 2.04 *Certain Transaction and Other Taxes.*

- (a) *SpinCo Liability.* SpinCo shall be liable for, and shall indemnify and hold harmless the Parent Group from and against any liability for:
- (i) any stamp, sales and use, gross receipts, value-added 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 Tax resulting from a breach by SpinCo of any representation or covenant in this Agreement, the Separation and Distribution Agreement, any Ancillary Agreement, any Representation Letter or any Tax Opinion/Ruling; and
  - (iii) any Tax-Related Losses for which SpinCo is responsible pursuant to Section 7.05 of this Agreement.
- (b) *Parent Liability.* Parent 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, value-added or other transfer Taxes imposed by any Tax Authority on any member of the Parent Group (if such member is primarily liable for such Tax) on the transfers occurring pursuant to the Transactions;
  - (ii) any Tax resulting from a breach by Parent of any representation or covenant in this Agreement, the Separation and Distribution Agreement, any Ancillary Agreement, any Representation Letter or any Tax Opinion/Ruling; and
  - (iii) any Tax-Related Losses for which Parent is responsible pursuant to Section 7.05 of this Agreement.

Section 2.05 *Special Rules.* The allocations pursuant to Section 2.02(a) and Section 2.03(a) are intended to be made in a manner consistent with Parent's past practice in interpreting and implementing the 2019 Tax Allocation Agreement, as determined by Parent in its reasonable discretion. Parent shall determine the allocations of Tax and Tax Benefits described in Section 2.02(a) and Section 2.03(a) and the extent to which any amount has previously been paid, for purposes of Section 5.01(b)(i) and Section 5.01(c)(i), pursuant to the 2019 Tax Allocation Agreement or the 1993 Tax Allocation Agreement, in each case, in its reasonable discretion. Such determinations by Parent shall, in the absence of bad faith and mathematical error, be conclusive, final and binding on SpinCo and each member of the SpinCo Group. In connection with any relevant demand for payment by Parent under Section 5, Parent shall provide SpinCo with written notice containing a reasonably detailed summary of any such relevant determinations and timely respond to any reasonable requests from SpinCo for additional information with respect to any such determinations.



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

Section 3.01 *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 Parent. With respect to the Parent Federal Consolidated Income Tax Return for the taxable year that includes the Distribution, Parent may determine in its sole discretion whether to make an election under Treasury Regulations Section 1.1502-76(b)(2)(ii) (relating to ratable allocation of a year's items). SpinCo shall, and shall cause each member of the SpinCo Group to, take all actions necessary to give effect to any such election. If the Deconsolidation Date is not an Accounting Cutoff Date, the provisions of Treasury Regulations Section 1.1502-76(b)(2)(iii) will be applied to ratably allocate the items (other than extraordinary items) for the month which includes the Deconsolidation Date.

Section 3.02 *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 occurring on or prior to the Deconsolidation Date) be allocated to Pre-Deconsolidation Periods, 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 items and shall (to the extent occurring on or prior to the Deconsolidation Date) be allocated to Pre-Deconsolidation Periods.

**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 on or before their Due Date by the Person obligated to file such Tax Returns under the Code or applicable Tax Law. The Companies shall provide, and shall cause their 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 *Parent's Responsibility.* Parent has the exclusive obligation and right to prepare and file, or to cause to be prepared and filed:

- (a) Parent Federal Consolidated Income Tax Returns for any Tax Periods ending on, before or after the Deconsolidation Date;
- (b) Parent State Combined Income Tax Returns and any other Joint Returns which Parent reasonably determines are required to be filed (or which Parent chooses to be filed) by the Companies or any of their Affiliates for Tax Periods ending on, before or after the Deconsolidation Date; and
- (c) Parent Separate Returns and SpinCo Separate Returns which Parent reasonably determines are required to be filed by the Companies or any of their Affiliates for Tax Periods ending on, before or after the Deconsolidation Date (limited, in the case of SpinCo Separate Returns, to such Returns for which the Due Date is 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 which Parent 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 for which the Due Date is after the Deconsolidation Date.

Section 4.04 *Tax Accounting Practices.*

(a) *General Rule.* Except as otherwise provided in Section 4.04(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 taxable 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 Parent has the obligation or right to prepare and file for any Pre-Deconsolidation Period or any Straddle Period), such Tax Return shall be prepared in accordance with past practices, accounting methods, elections or conventions ("**Past Practices**") used with respect to the Tax Returns in question (unless there is no reasonable basis for the use of such Past Practices or unless there is no adverse effect to Parent), and to the extent any items are not covered by Past Practices (or in the event that there is no reasonable basis for the use of such Past Practices or there is no adverse effect to Parent), in accordance with reasonable Tax accounting practices selected by SpinCo. Except as otherwise provided in Section 4.04(b), Parent shall prepare any Tax Return which 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 Parent.

(b) *Reporting of Transactions.* The Tax treatment reported on any Tax Return of the Transactions shall be consistent with the treatment thereof in the Ruling Requests and the Tax Opinions/Rulings, unless there is no reasonable basis for such Tax treatment. The Tax treatment of the Transactions reported on any Tax Return for which SpinCo is the Responsible Company shall be consistent with that on any Tax Return filed or to be filed by Parent or any member of the Parent Group or caused or to be caused to be filed by Parent, in each case with respect to Pre-Deconsolidation Periods or with respect to Straddle Periods ("**Parent Group Transaction Returns**"), unless there is no reasonable basis for such Tax treatment. To the extent the Tax treatment relating to any aspect of the Transactions is not covered by the Ruling Requests, the Tax Opinions/Rulings or Parent Group Transaction Returns, the Companies shall report such Tax treatment on any and all Tax Returns as determined by Parent in its reasonable discretion.

Section 4.05 *Consolidated or Combined Tax Returns.* SpinCo will elect and join, and will cause its respective Affiliates to elect and join, in filing any Parent State Combined Income Tax Returns and any Joint Returns that Parent determines are required to be filed or that Parent chooses to file pursuant to Section 4.02(b). With respect to any SpinCo Separate Returns relating to any Tax Period (or portion thereof) ending on or prior to the Distribution Date, SpinCo will elect and join, and will cause its respective 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, if Parent reasonably determines that the filing of such Tax Returns is consistent with past reporting practices or otherwise so requests.

(a) *General.* The Responsible Company with respect to any Tax Return 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 (i) such Tax Return relates to Taxes for which the requesting party is or could reasonably be expected to be liable, (ii) the requesting party would reasonably be expected to be liable in whole or in part for any additional Taxes owing as a result of material adjustments to the amount of Taxes reported on such Tax Return, (iii) such Tax Return relates to Taxes for which the requesting party would reasonably be expected to have a claim for material Tax Benefits under this Agreement, (iv) reasonably necessary for the requesting party to confirm compliance with the terms of this Agreement or (v) such Tax Return is required by the requesting party to comply with its reporting obligations to the Securities and Exchange Commission; *provided, however*, that notwithstanding anything in this Agreement or any other agreement to the contrary, Parent shall not be required to make any Parent Federal Consolidated Income Tax Return or Parent State Combined Income Tax Return (or related workpapers) available for review by SpinCo; *provided, further, however*, that if any Parent Federal Consolidated Income Tax Return or Parent State Combined Income Tax Return (or related workpapers) would otherwise be required to be made available for review by SpinCo, Parent shall use commercially reasonable efforts to make pro formas of such Tax Returns (or workpapers) reflecting solely Tax Items of the SpinCo Group available for review by SpinCo. The Responsible Company shall use commercially reasonable efforts to make such Tax Return (or the relevant portions thereof or pro formas with respect thereto) available for review as required under this paragraph sufficiently in advance of the Due Date of such Tax Return to provide the requesting party with a meaningful opportunity to analyze and comment on such Tax Return and shall use commercially reasonable efforts to have such Tax Return modified before filing, taking into account the person responsible for payment of the Tax (if any) reported on such Tax Return and whether the amount of Tax liability with respect to such Tax Return is material. The Companies shall attempt in good faith to resolve any disagreement arising out of the review of such Tax Return; *provided, however*, that, notwithstanding any other provision of this Agreement or any other agreement, Parent shall be entitled to determine in its reasonable discretion the positions taken on any Parent Federal Consolidated Income Tax Return or Parent State Combined Income Tax Return.

(b) *Execution of Returns Prepared by Other Party.* In the case of any Tax Return which is required to be prepared and filed by one Company under this Agreement and which is required by law to be signed by the other Company (or by its authorized representative), the Company which is legally required to sign such Tax Return shall not be required to sign such Tax Return under this Agreement if there is no reasonable basis for the Tax treatment of any item reported on the Tax Return.

Section 4.07 *SpinCo Carrybacks and Claims for Refund.* SpinCo hereby agrees that, unless Parent consents in writing, (i) no Adjustment Request with respect to any Joint Return shall be filed and (ii) any available elections to waive the right to claim in any Pre-Deconsolidation Period with respect to any Joint Return any SpinCo Carryback arising in a 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 U.S. federal or State Taxes, upon the reasonable request of SpinCo, if (a) such SpinCo Carryback is necessary to prevent the loss of the federal and/or State Tax Benefit of such SpinCo Carryback, (b) such Adjustment Request, based on Parent's sole determination, will cause no Tax detriment to any member of the Parent Group and (c) such Adjustment Request, based on Parent's sole determination, will not result in any unreimbursed expense for any member of the Parent Group. Any Adjustment Request which Parent consents to make under this Section 4.07 shall be prepared and filed by the Responsible Company for the Tax Return to be adjusted.

Section 4.08 *Apportionment of Earnings and Profits and Tax Attributes.*

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

(b) No Tax Attribute with respect to any consolidated Federal Income Tax of the Parent Affiliated Group, other than those described in Section 4.08(a), and no Tax Attribute with respect to any consolidated, combined or unitary State Income Tax, in each case, arising in respect of a Joint Return, shall be apportioned to SpinCo or any member of the SpinCo Group, except as Parent (or such member of the Parent Group as Parent shall designate) determines is required under applicable Tax Law.

(c) To the extent required by applicable Tax Law or at SpinCo's reasonable request, Parent shall, or shall cause its designee to determine, in its reasonable discretion, the portion, if any, of any Tax Attribute that must (absent a Final Determination to the contrary) be apportioned to SpinCo or any member of the SpinCo Group in accordance with this Section 4.08 and applicable law and the amount of Tax basis and earnings and profits to be apportioned to SpinCo or any member of the SpinCo Group in accordance with this Section 4.08 and applicable Tax Law, and shall provide written notice of a proposed calculation thereof to SpinCo as soon as reasonably practicable after Parent or its designee prepares such calculation. As soon as reasonably practicable following the delivery of such calculation, SpinCo shall provide written comments on such calculation to Parent, which comments Parent shall consider in good faith in its reasonable discretion. For the absence of doubt, Parent shall not be liable to SpinCo or any member of the SpinCo Group for any failure of any determination under this Section 4.08 to be accurate or sustained under applicable Tax Law, including as the result of any Final Determination. The costs of any earnings and profits, Tax basis or similar study necessary or appropriate to determine the apportionment of Tax Attributes hereunder shall be borne equally by Parent and SpinCo.

(d) Any written notice delivered by Parent pursuant to Section 4.08(c) shall, in the absence of bad faith and mathematical error, be conclusive, final and binding on SpinCo and each member of the SpinCo Group. Except to the extent otherwise required by a change in applicable Tax 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 5. Tax Payments.**

Section 5.01 *Payment of Income Taxes with Respect to Joint Returns.* In the case of any Joint Return with respect to Income Taxes:

(a) *Computation and Payment of Tax Due.* At least three Business Days prior to any Payment Date for any Tax Return, the Responsible Company shall compute the amount of Tax required to be paid to the applicable Tax Authority with respect to such Tax Return on such Payment Date. The Responsible Company shall pay such amount to such Tax Authority on or before such Payment Date (and provide notice and proof of payment to the other Company).

(b) *Computation and Payment of Liability with Respect To Estimated Tax Due.* Within 30 days following the earlier of (i) the Payment Date for paying any required installment of estimated Taxes with respect to any such Tax Return or Taxes due with a request for extension of time to file or (ii) the date on which a required installment of estimated Taxes with respect to any such Tax Return is paid by the relevant Responsible Party or Taxes due with a request for extension of time to file are paid by the relevant Responsible Party:

(i) if Parent is the Responsible Company, then SpinCo shall pay to Parent an amount equal to (I) the Estimated SpinCo Allocated Income Tax Liability relating to such installment or extension payment, plus (II) any amounts previously paid to any member of the SpinCo Group by any member of the Parent Group relating to such installment or extension payment under the 2019 Tax Allocation Agreement or the 1993 Tax Allocation Agreement, less (III) any amounts previously paid to any member of the Parent Group by any member of the SpinCo Group relating to such installment or extension payment under the 2019 Tax Allocation Agreement or the 1993 Tax Allocation Agreement, and less (IV) any Estimated SpinCo Allocated Income Tax Benefit related to such installment or extension payment; *provided* that if the amount otherwise payable by SpinCo to Parent under this clause (i) is negative, then SpinCo shall not pay any amount to Parent under this clause (i) and instead Parent shall pay to SpinCo the absolute value of such amount.

(ii) The amounts payable under Section 5.01(b)(i) shall be increased by interest computed at the Prime Rate on the amount of the payment based on the number of days from the earlier of (I) the due date of such required installment of estimated Taxes or payment due with a request for extension of time to file or (II) the date on which such required installment of estimated Taxes or payment due with a request for extension to file is paid, to the date of payment.

(c) *Computation and Payment of Liability With Respect To Tax Due.* Within 30 days following the earlier of (i) the Due Date for filing any such Tax Return (excluding any Tax Return with respect to payment of estimated Taxes or Taxes due with a request for extension of time to file) or (ii) the date on which such Tax Return is filed (excluding any Tax Return with respect to payment of estimated Taxes or Taxes due with a request for extension of time to file):

(i) if Parent is the Responsible Company, then SpinCo shall pay to Parent an amount equal to (I) the SpinCo Allocated Income Tax Liability relating to such Tax Return, plus (II) any amounts previously paid to any member of the SpinCo Group by any member of the Parent Group relating to such Tax Return under the 2019 Tax Allocation Agreement or the 1993 Tax Allocation Agreement, less (III) any amounts previously paid to any member of the Parent Group by any member of the SpinCo Group relating to such Tax Return under the 2019 Tax Allocation Agreement or the 1993 Tax Allocation Agreement, less (IV) any SpinCo Allocated Income Tax Benefit related to such Tax Return, less (V) any amounts previously paid by SpinCo to Parent relating to such Tax Return pursuant to Section 5.01(b)(i) (for the absence of doubt, disregarding any interest paid pursuant to Section 5.01(b)(ii)), and plus (VI) any amounts previously paid by Parent to SpinCo relating to such Tax Return pursuant to Section 5.01(b)(i) (for the absence of doubt, disregarding any interest paid pursuant to Section 5.01(b)(ii)); *provided* that if the amount otherwise payable by SpinCo to Parent under this clause (i) is negative, then SpinCo shall not pay any amount to Parent under this clause (i) and instead Parent shall pay to SpinCo the absolute value of such amount.

(ii) The amounts payable under Section 5.01(c)(i) shall be increased by interest computed at the Prime Rate on the amount of the payment based on the number of days from the earlier of (I) the Due Date of the Tax Return or (II) the date on which such Tax Return is filed, to the date of payment.

(d) *Adjustments Resulting in Underpayments.* In the case of any adjustment pursuant to a Final Determination with respect to any such Tax Return, the Responsible Company shall pay to the applicable Tax Authority when due any additional Tax due with respect to such Return required to be paid as a result of such adjustment pursuant to a Final Determination. The amount of such additional Tax attributable to the SpinCo Group and the Parent Group, respectively, shall be computed in accordance with Section 2. If the Responsible Company is Parent, SpinCo shall pay to Parent any amount for which SpinCo is responsible under Section 2 within 30 days following the later of (i) the date the additional Tax was paid by the Responsible Company or (ii) the date of receipt of a written notice and demand from the Responsible Company for payment of the amount due, accompanied by evidence of payment and a statement detailing the Taxes paid and describing in reasonable detail the particulars relating thereto. Any payments required under this Section 5.01(d) shall include interest computed at the Prime Rate based on the number of days from the date the additional Tax was paid by the Responsible Company to the date of the payment under this Section 5.01(d).

Section 5.02 *Indemnification Payments.*

(a) Subject to Section 7.05(d) and 7.05(e), if any Company (the “**Payor**”) is required under applicable Tax Law to pay to a Tax Authority a Tax that another Company (the “**Required Party**”) is liable for under this Agreement, the Required Party shall reimburse the Payor within 30 days of delivery by the Payor to the Required Party of an invoice for the amount due, accompanied by evidence of payment and a statement detailing the Taxes paid and describing in reasonable detail the particulars relating thereto; *provided* that the reimbursement shall include interest on the Tax payment computed at the Prime Rate based on the number of days from the date of the payment to the Tax Authority to the date of reimbursement under this Section 5.02.

(b) All indemnification payments under this Agreement shall be made by Parent directly to SpinCo and by SpinCo directly to Parent, as applicable; *provided, however*, that if the Companies mutually agree with respect to any such indemnification payment, any member of the Parent Group, on the one hand, may make such indemnification payment to any member of the SpinCo Group, on the other hand, and vice versa.

**Section 6. Tax Benefits.**

Section 6.01 *Tax Benefits.*

(a) Except as otherwise provided in Section 2 or Section 5 or below in this Section 6, Parent shall be entitled to any refund (and any interest thereon received from the applicable Tax Authority) of Income Taxes and Other Taxes for which Parent is liable hereunder, SpinCo shall be entitled to any refund (and any interest thereon received from the applicable Tax Authority) of Income Taxes and Other Taxes for which SpinCo is liable hereunder (*provided, however*, that SpinCo shall not be entitled to any refund (or interest thereon received from the applicable Tax Authority) in duplication of amounts previously taken into account for purposes of payments pursuant to the 2019 Tax Allocation Agreement, the 1993 Tax Allocation Agreement or Section 2 or Section 5, any such refund (and interest thereon received from the applicable Tax Authority) to be for the account of Parent hereunder). A Company (the first Company) receiving a refund or other Tax Benefit to which another Company (the second Company) is entitled hereunder shall pay over such refund or Tax Benefit to the second Company within 30 days after such refund or Tax Benefit is received (without duplication, together with interest computed at the Prime Rate based on the number of days from the date the refund was received to the date the refund was paid over). The second Company, upon the request of the first Company, shall promptly repay the first Company the amount paid over pursuant to the preceding sentence (together with any penalties, interest or other charges imposed by the relevant Tax Authority) in the event that the first Company is required to repay such refund or Tax Benefit to such Tax Authority.

(b) Notwithstanding Sections 2.02(a) and (b) and Sections 2.03(a) and (b): (i) if a member of the SpinCo Group actually realizes in cash any Tax Benefit as a result of an adjustment pursuant to a Final Determination to any Taxes for which a member of the Parent Group is liable hereunder (or to the tax basis or any Tax Attribute of a member of the Parent Group) (a "**Parent Final Determination Adjustment**") and such Tax Benefit would not have arisen but for such adjustment (determined on a "with and without" basis), or if a member of the Parent Group actually realizes in cash any Tax Benefit as a result of an adjustment pursuant to a Final Determination to any Taxes for which a member of the SpinCo Group is liable hereunder (or to the tax basis or any Tax Attribute of a member of the SpinCo Group) and such Tax Benefit would not have arisen but for such adjustment (determined on a "with and without" basis), SpinCo or Parent, as the case may be, shall make a payment to either Parent 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), plus interest on such amount computed at the Prime Rate based on the number of days from the date of such actual realization of the Tax Benefit to the date of payment of such amount under this Section 6.01(b) and (ii) in the case of a Parent Final Determination Adjustment, then, upon the written request of and at the expense of Parent, SpinCo shall (and, if applicable, shall cause the relevant member of the SpinCo Group to) amend any Tax Return thereof to the extent such amendment would result in a corresponding or correlative Tax Benefit (which shall include, without limitation, any step-up in tax basis).

(c) No later than 30 days after a Tax Benefit described in Section 6.01(b) is actually realized in cash by a member of the Parent Group or a member of the SpinCo Group, Parent (if a member of the Parent 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 Parent or SpinCo pursuant to this Section 6. In the event that SpinCo or Parent disagrees with any such calculation described in this Section 6.01(c), Parent or SpinCo shall so notify the other Company in writing within 30 days of receiving the written calculation set forth above in this Section 6.01(c). Parent and SpinCo shall endeavor in good faith to resolve such disagreement, and, failing that, the amount payable under this Section 6 shall be determined by Parent in its reasonable discretion.

(d) Notwithstanding Sections 2.02(a) and 2.03(a): (i) SpinCo shall be entitled to any refund that is attributable to, and would not have arisen but for, a SpinCo Carryback pursuant to, and in accordance with, the proviso set forth in Section 4.07, as determined by Parent in its reasonable discretion, and (ii) any such payment of such refund made by Parent to SpinCo pursuant to this Section 6.01(d) shall be recalculated in light of any Final Determination (or any other facts that may arise or come to light after such payment is made, such as a carryback of a Parent 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 Parent such that the aggregate amounts paid pursuant to this Section 6.01(d) equals such recalculated amount (with interest computed at the Prime Rate), as determined by Parent in its reasonable discretion.

Section 6.02 *Parent and SpinCo Income Tax Deductions in Respect of Certain Equity Awards and Incentive Compensation.* To the extent permitted by applicable law, solely the member of the Group for which the relevant individual is employed at the time of the vesting, exercise, disqualifying disposition, payment or other relevant taxable event, as appropriate, in respect of the equity awards and other incentive compensation described in Article IV of the Employee Matters Agreement (or, if such individual is not then employed by a member of any Group, the Group member at which such individual was most recently employed) shall be entitled to claim any Income Tax deduction in respect of such equity awards and other incentive compensation on its respective Tax Return associated with such event.

**Section 7. Tax-Free Status.**

Section 7.01 *Tax Opinions/Rulings and Representation Letters.*

(a) Each of SpinCo and Parent hereby represents and agrees that (A) it has carefully reviewed or will carefully review the Representation Letters prior to the date submitted and (B) subject to any qualifications therein, all information, representations and covenants contained in such Representation Letters that concern or relate to such Company or any member of its Group are and will be true, correct and complete.



(b) If any Representation Letters have not yet been submitted, SpinCo and Parent shall use their commercially reasonable efforts and shall cooperate in good faith to finalize (or cause to be finalized) the same as soon as possible and to cause the same to be submitted to the Tax Advisors, the IRS or such other governmental authorities as Parent shall deem necessary or desirable. SpinCo and Parent shall take such other commercially reasonable actions as may be necessary or desirable to obtain any Tax Opinions/Rulings that have not yet been obtained.

(c) SpinCo hereby represents and warrants that it has no plan or intention to take any action or to fail to take any action (or to cause or permit any member of its Group to take or fail to take any action), in each case, from and after the date hereof, that could reasonably be expected to cause any representation or statement made in this Agreement, the Separation and Distribution Agreement, the Representation Letters, or any of the Ancillary Agreements to be untrue.

(d) SpinCo hereby represents and warrants that, during the period beginning two years before the Distribution Date and ending on the Distribution Date, there was no “agreement,” “understanding,” “arrangement,” “substantial negotiations” or “discussions” (as such terms are defined in Treasury Regulations Section 1.355-7(h)) by any one or more officers or directors of any member of the SpinCo Group or by any other person or persons with the implicit or explicit permission of one or more of such officers or directors regarding an acquisition, directly or indirectly, of all or a significant portion of the SpinCo Capital Stock (or any predecessor); *provided, however*, that no representation is made regarding 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 Parent.

Section 7.02 *Restrictions on SpinCo.*

(a) SpinCo agrees that it will not take or fail to take, or cause or permit any SpinCo Affiliate 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, statement, covenant or representation in this Agreement, the Separation and Distribution Agreement, any of the Ancillary Agreements, any Representation Letters or any Tax Opinions/Rulings. SpinCo agrees that it will not take or fail to take, or permit any SpinCo Affiliate to take or fail to take, any action which prevents or could reasonably be expected to prevent (A) the Tax-Free Status (including the issuance of any SpinCo Capital Stock that would prevent the Distribution from qualifying as a tax-free distribution under Section 355 of the Code), (B) the Merger from qualifying as a tax-free liquidation under Section 332 of the Code or (C) any transaction contemplated by the Separation and Distribution Agreement, to the extent such transaction is intended by Parent to be tax-free or tax-advantaged, from so qualifying (it being agreed and understood that SpinCo shall not agree, and shall prevent any SpinCo Affiliate from agreeing, in any Tax Contest to any position that is inconsistent with the Tax treatment, as intended or determined by Parent, of the Transactions).

(b) *Pre-Distribution Period.* During the period from the date hereof until the completion of the Distribution, SpinCo shall not take any action (including the issuance of SpinCo Capital Stock) or permit any SpinCo Affiliate to take any action if, as a result of taking such action, SpinCo could have a number of shares of SpinCo Capital Stock (computed on a fully diluted basis or otherwise) issued and outstanding, including by way of the exercise of stock options (whether or not such stock options are currently exercisable) or the issuance of restricted stock, that could cause Parent to cease to have Tax Control of SpinCo.

(c) SpinCo agrees that, from the date hereof until the first day after the two-year anniversary of the Distribution Date, it will (i) maintain its status as a company engaged in the Active Trade or Business for purposes of Section 355(b)(2) of the Code and (ii) not engage in any transaction that would result in SpinCo ceasing to be a company engaged in the Active Trade or Business for purposes of Section 355(b)(2) of the Code, in the case of each of clauses (i) and (ii), taking into account Section 355(b)(3) of the Code.

(d) SpinCo agrees that, from the date hereof until the first day after the two-year anniversary of the Distribution Date, it will not (i) enter into any Proposed Acquisition Transaction or, to the extent SpinCo has the right to prohibit (or cause to be prohibited) any Proposed Acquisition Transaction, permit any Proposed Acquisition Transaction to occur (whether by (I) redeeming rights under a shareholder rights plan, (II) 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 (III) approving any Proposed Acquisition Transaction, whether for purposes of Section 203 of the Delaware General Corporation Law or any similar corporate statute, any "fair price" or other provision of SpinCo's charter or bylaws or otherwise), (ii) merge or consolidate with any other Person or liquidate or partially liquidate, (iii) in a single transaction or series of transactions, 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, directly or indirectly, to SpinCo pursuant to the Separation and Distribution Agreement or pursuant to the Contribution, or sell or transfer 30% or more of the gross assets of the Active Trade or Business or 30% or more of the consolidated gross assets of SpinCo and its Affiliates (such percentages to be measured based on fair market value as of the date of the Distribution, as applicable), (iv) redeem or otherwise repurchase (directly or through an Affiliate) any SpinCo stock, or rights to acquire stock, except (in the case of repurchases of SpinCo stock) to the extent such repurchases satisfy Section 4.05(1)(b) of Revenue Procedure 96-30 (as in effect prior to the amendment of such Revenue Procedure by Revenue Procedure 2003-48), (v) 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 stock into another class of stock) or (vi) 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 the Representation Letters or the Tax Opinions/Rulings) which in the aggregate (and taking into account any other transactions described in this clause (d)) would be reasonably likely to have the effect of causing or permitting one or more persons (whether or not acting in concert) to acquire directly or indirectly stock representing a Fifty-Percent or Greater Interest in SpinCo or otherwise jeopardize the Tax-Free Status, unless, in each case, prior to taking any such action set forth in the foregoing clauses (i) through (vi), (A) SpinCo shall have requested that Parent obtain a Ruling in accordance with Section 7.04(b) and (d) of this Agreement to the effect that such transaction will not affect the Tax-Free Status and Parent shall have received such a Ruling in form and substance satisfactory to Parent in its sole and absolute discretion, which discretion shall be exercised in good faith solely to preserve the Tax-Free Status (and in determining whether a Ruling is satisfactory, Parent may consider, among other factors, the appropriateness of any underlying assumptions and management's representations made in connection with such Ruling), or (B) SpinCo shall provide Parent with an Unqualified Tax Opinion in form and substance satisfactory to Parent in its sole and absolute discretion, which discretion shall be exercised in good faith solely to preserve the Tax-Free Status (and in determining whether an opinion is satisfactory, Parent may consider, among other factors, the appropriateness of any underlying assumptions and management's representations if used as a basis for the opinion, and Parent may determine that no opinion would be acceptable to Parent) or (C) Parent shall have waived the requirement to obtain such Ruling or Unqualified Tax Opinion.

(e) *Certain Issuances of SpinCo Capital Stock.* If SpinCo proposes to enter into any Section 7.02(e) Acquisition Transaction or if SpinCo, to the extent SpinCo has the right to prohibit (or cause to be prohibited) 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 two-year anniversary of the Distribution Date, SpinCo shall provide Parent, no later than 10 days following the signing of any written agreement (by SpinCo or any SpinCo Affiliate) 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, as the case may be, to be issued in such transaction) and a certificate of the Board of Directors 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 “**Board Certificate**”).

(f) *SpinCo Internal Restructuring.* SpinCo shall not engage in, cause or permit any Internal Restructuring during or with respect to any Tax Period (or portion thereof) ending on or prior to the Distribution Date without obtaining the prior written consent of Parent (such prior written consent not to be unreasonably withheld), other than pursuant to the Plan of Reorganization. SpinCo shall provide written notice to Parent describing any Internal Restructuring proposed to be taken during or with respect to any Tax Period (or portion thereof) beginning after the Distribution Date and ending on or prior to the two-year anniversary of the Distribution Date and shall consult with Parent regarding any such proposed actions reasonably in advance of taking any such proposed actions and shall consider in good faith any comments from Parent relating thereto. SpinCo shall not engage in, cause or permit any Internal Restructurings that prevent or could reasonably be expected to prevent the Merger from qualifying as a tax-free liquidation under Section 332 of the Code.

Section 7.03 *Restrictions on Parent.* Parent agrees that it will not take or fail to take, or cause or permit any member of the Parent 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, statement, covenant or representation in this Agreement, the Separation and Distribution Agreement, any of the Ancillary Agreements, any Representation Letters or any Tax Opinions/Rulings. Parent agrees that it will not take or fail to take, or cause or permit any member of the Parent Group to take or fail to take, any action which prevents or could reasonably be expected to prevent (A) the Tax-Free Status or (B) any transaction contemplated by the Separation and Distribution Agreement, to the extent such transaction is intended by Parent as of the date hereof to be tax-free or tax-advantaged, from so qualifying; *provided, however*, that this Section 7.03 shall not be construed as obligating Parent to consummate the Distribution without the satisfaction or waiver of all conditions set forth in Section 3.3 of the Separation and Distribution Agreement nor shall it be construed as preventing Parent from terminating the Separation and Distribution Agreement pursuant to Section 9.1 thereof nor shall it be construed as obligating Parent to consummate the Clean-Up Distribution or the Debt-for-Equity Exchange.

Section 7.04 *Procedures Regarding Opinions and Rulings.*

(a) If SpinCo notifies Parent that it desires to take one of the actions described in clauses (i) through (vi) of Section 7.02(d) (a “**Notified Action**”), Parent and SpinCo shall reasonably cooperate to attempt to obtain the Ruling or Unqualified Tax Opinion referred to in Section 7.02(d), unless Parent shall have waived the requirement to obtain such Ruling or Unqualified Tax Opinion.

(b) *Rulings or Unqualified Tax Opinions at SpinCo’s Request.* Parent agrees that, at the reasonable request of SpinCo pursuant to Section 7.02(d), Parent shall cooperate with SpinCo and use reasonable efforts to seek to obtain, as expeditiously as possible, a 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 Parent be required to file a request for any such Ruling under this Section 7.04(b), unless SpinCo represents that (A) it has read such request, and (B) all information and representations, if any, relating to any member of the SpinCo Group, contained in such request (or in any documents relating thereto) are (subject to any qualifications therein) true, correct and complete. SpinCo shall reimburse Parent for all reasonable costs and expenses incurred by the Parent Group in preparing and filing any such request and in obtaining a Ruling or an Unqualified Tax Opinion requested by SpinCo within 10 Business Days after receiving an invoice from Parent therefor.

(c) *Rulings or Unqualified Tax Opinions at Parent’s Request.* Parent shall have the right to obtain a Ruling or an Unqualified Tax Opinion at any time in its sole and absolute discretion. If Parent determines to obtain a Ruling or an Unqualified Tax Opinion, SpinCo shall (and shall cause each Affiliate of SpinCo to) cooperate with Parent and take any and all actions reasonably requested by Parent in connection with obtaining the Ruling or Unqualified Tax Opinion (including, without limitation, by making any representation or covenant or providing any materials or information requested by the IRS or Tax Advisor; *provided* that SpinCo shall not be required to make (or cause any Affiliate of SpinCo 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). Parent and SpinCo shall each bear its own costs and expenses in obtaining a Ruling or an Unqualified Tax Opinion requested by Parent.

(d) SpinCo hereby agrees that Parent shall have sole and exclusive control over the process of obtaining any Ruling, and that only Parent shall apply for a Ruling. In connection with obtaining a Ruling pursuant to Section 7.04(b), (A) Parent shall keep SpinCo informed in a timely manner of all material actions taken or proposed to be taken by Parent in connection therewith; (B) Parent shall (1) reasonably in advance of the submission of any documents relating to the request for such Ruling, provide SpinCo with a draft copy thereof, (2) reasonably consider SpinCo’s comments on such draft copy, and (3) provide SpinCo with a final copy; and (C) Parent shall 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 Ruling. Neither SpinCo nor any SpinCo Affiliate directly or indirectly controlled by SpinCo shall seek any guidance from the IRS or any other Tax Authority (whether written, verbal or otherwise) at any time concerning the Contribution or the Distribution (including the impact of any transaction on the Contribution or the Distribution) or the Transactions.

(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 Parent and its Affiliates and each of their respective officers, directors and employees from and against, one hundred percent (100%) of any Tax-Related Losses that are attributable to or result (for the absence of doubt, in whole or in part) from any one or more of the following: (A) the acquisition (other than pursuant to the Contribution, the Distribution, the Clean-Up Distribution, the Debt-for-Equity Exchange or the Hook Stock Distribution), by any means whatsoever or by any Person, of all or a portion of (i) SpinCo Capital Stock, and/or (ii) SpinCo's assets or any of its subsidiaries' assets, (B) 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 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 transactions or events that cause the Distribution to be treated as part of a plan pursuant to which one or more Persons acquire, directly or indirectly, stock of SpinCo or stock of any Subsidiary of SpinCo, in each case, representing a Fifty-Percent or Greater Interest therein, (C) 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 stock (including, without limitation, through the conversion of one class of SpinCo Capital Stock into another class of SpinCo Capital Stock), (D) any act or failure to act by SpinCo, any member of the SpinCo Group described in Section 7.02 (regardless of whether such act or failure to act is covered by a Ruling, Unqualified Tax Opinion or waiver, as applicable, described in Section 7.02(d) or by a Board Certificate described in Section 7.02(e) or a consent described in Section 7.02(f)), or (E) any breach by SpinCo of its agreement and representations set forth in Section 7.01.

(b) Notwithstanding anything in this Agreement or the Separation and Distribution Agreement to the contrary, subject to Section 7.05(c), Parent shall be responsible for, and shall indemnify and hold harmless SpinCo and its Affiliates and each of their respective officers, directors and employees from and against, one hundred percent (100%) of any Tax-Related Losses that are attributable to, or result (for the absence of doubt, in whole or in part) from any one or more of the following: (A) the acquisition (other than pursuant to the Transactions) of all or a portion of Parent's stock and/or its or its subsidiaries' assets by any means whatsoever by any Person, (B) 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 any member of the Parent Group or by any other person or persons with the implicit or explicit permission of one or more of such officers or directors regarding transactions or events that cause the Distribution to be treated as part of a plan pursuant to which one or more Persons acquire, directly or indirectly, stock of Parent representing a Fifty-Percent or Greater Interest therein, (C) any act or failure to act by Parent or a member of the Parent Group described in Section 7.03 or (D) any breach by Parent of its agreements and representations set forth in Section 7.01(a).

(c) Notwithstanding anything in Section 7.05(b) or any other provision of this Agreement or the Separation and Distribution Agreement to the contrary:

(i) SpinCo shall be responsible for, and shall indemnify and hold harmless Parent and its Affiliates and each of their respective officers, directors and employees from and against, one hundred percent (100%) of (I) any Tax-Related Losses 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 Parent or any member of the Parent Group) and (II) any other Tax-Related Losses resulting (for the absence of doubt, in whole or in part) from an acquisition after the Distribution (other than pursuant to the Clean-Up Distribution or the Debt-for-Equity Exchange) of any 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 stock or the stock of any SpinCo Affiliate; and

(ii) for purposes of calculating the amount and timing of any Tax-Related Losses for which SpinCo is responsible under this Section 7.05, Tax-Related Losses shall be calculated by assuming that Parent, the Parent Affiliated Group and each member of the Parent Group (I) pay Tax at the highest marginal corporate Tax rates in effect in each relevant taxable year and (II) have no Tax Attributes in any relevant taxable year.

(d) SpinCo shall pay Parent the amount of any Tax-Related Losses for which SpinCo is responsible under this Section 7.05: (A) in the case of Tax-Related Losses described in clause (i) of the definition of Tax-Related Losses, no later than 10 Business Days prior to the Due Date of the Tax Return that Parent files, or causes to be filed, for the year of the Contribution, Distribution, Clean-Up Distribution or Debt-for-Equity Exchange, as applicable (the "**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 Parent no later than two Business Days after the date of such Final Determination with interest calculated at the Prime Rate plus two percent (2%), compounded semiannually, from the date that is 10 Business Days prior to the Filing Date through the date of such Final Determination (but not in duplication of interest charged by the applicable Tax Authority)) and (B) in the case of Tax-Related Losses described in clause (ii) or (iii) of the definition of Tax-Related Losses, no later than the later of (x) the date that is two Business Days after the date Parent pays such Tax-Related Losses and (y) the date that is five Business Days after SpinCo receives notification from Parent of the amount of such Tax-Related Losses due.

(e) Parent shall calculate in good faith and notify SpinCo of the amount of any Tax-Related Losses for which SpinCo is responsible under this Section 7.05. Such calculation shall be binding on SpinCo absent manifest error. At SpinCo's reasonable request, Parent shall make available to SpinCo the portion of any Tax Return or other documentation and related workpapers that are relevant to the determination of the Tax-Related Losses attributable to SpinCo pursuant to this Section 7.05.

Section 7.06 *Section 336(e) Election.* If Parent determines, in its sole discretion, that a protective election under Section 336(e) of the Code (a “**Section 336(e) Election**”) shall be made with respect to the Distribution, SpinCo shall (and shall cause any relevant member of the SpinCo Group to) join with Parent (or any relevant member of the Parent Group) in the making of such election and shall take any action reasonably requested by Parent or that is otherwise necessary to give effect to such election (including making any other related election). If a Section 336(e) Election is made with respect to the Distribution, then (a) in the event the Contribution or the Distribution fails to have Tax-Free Status and Parent is not entitled to indemnification for the Tax-Related Losses arising from such failure, SpinCo shall pay over to Parent any Tax Benefit arising from the step-up in Tax basis resulting from the Section 336(e) Election within 30 days of SpinCo (or any member of the SpinCo Group) realizing such Tax Benefit in cash and (b) this Agreement shall be amended in such a manner as is determined by Parent in good faith to take into account such Section 336(e) Election.

**Section 8. Assistance and Cooperation.**

Section 8.01 *Assistance and Cooperation.*

(a) The Companies shall cooperate (and cause their respective Affiliates to cooperate) with each other and with each other’s agents, including accounting firms and legal counsel, in connection with Tax matters relating to the Companies and their Affiliates, including (i) preparation and filing of 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. Each of the Companies shall also make available to the other, as reasonably requested and available, personnel (including officers, directors, employees and agents of the Companies or their respective Affiliates) responsible for preparing, maintaining, and interpreting information and documents relevant to Taxes, and personnel reasonably required as witnesses or for purposes of providing information or documents in connection with any administrative or judicial proceedings relating to Taxes.

(b) Any information or documents provided under this Section 8 shall be kept confidential by the Company receiving such information or documents, except as may otherwise be necessary in connection with the filing of Tax Returns or in connection with any Tax Contest. Notwithstanding any other provision of this Agreement or any other agreement, (i) neither Parent nor any Parent Affiliate shall be required to provide SpinCo or any SpinCo Affiliate or any other Person access to or copies of any information or procedures (including the proceedings of any Tax Contest) other than information or procedures that relate solely to SpinCo, the business or assets of SpinCo or any SpinCo Affiliate, and (ii) in no event shall Parent or any Parent Affiliate be required to provide SpinCo, any SpinCo Affiliate 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 Parent determines that the provision of any information to SpinCo or any SpinCo Affiliate could be commercially detrimental, violate any law or agreement or waive any Privilege, the parties shall use reasonable best efforts to permit compliance with its obligations under this Section 8 in a manner that avoids any such harm or consequence.

Section 8.02 *Income Tax Return Information.* SpinCo and Parent acknowledge that time is of the essence in relation to any request for information, assistance or cooperation made by Parent or SpinCo pursuant to Section 8.01 or this Section 8.02. SpinCo and Parent acknowledge that failure to conform to the deadlines set forth herein or reasonable deadlines otherwise set by Parent or SpinCo could cause irreparable harm. Each Company, at its sole expense, shall provide to the other Company information and documents relating to its Group required by the other Company to prepare Tax Returns. Any information or documents the Responsible Company requires to prepare such Tax Returns shall be provided in such form as the Responsible Company reasonably requests and in sufficient time for the Responsible Company to file such Tax Returns on a timely basis.

Section 8.03 *Reliance by Parent.* If any member of the SpinCo Group supplies information to a member of the Parent Group in connection with Taxes and an officer of a member of the Parent 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 such member of the Parent Group 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 Parent 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 Parent Group with inaccurate or incomplete information in connection with Taxes.

Section 8.04 *Reliance by SpinCo.* If any member of the Parent Group supplies information to a member of the SpinCo Group in connection with Taxes 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 such member of the SpinCo Group identifying the information being so relied upon, the chief financial officer of Parent (or any officer of Parent as designated by the chief financial officer of Parent) shall certify in writing that to his or her knowledge (based upon consultation with appropriate employees) the information so supplied is accurate and complete. Parent 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 Parent Group having supplied, pursuant to this Section 8, a member of the SpinCo Group with inaccurate or incomplete information in connection with Taxes.

**Section 9. Tax Records.** Each party shall preserve and keep all Tax Records exclusively relating to the assets and activities of its Group for Pre-Deconsolidation Periods, and Parent shall preserve and keep all other Tax Records relating to Taxes of the Groups for Pre-Deconsolidation Tax 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 (i) the expiration of any applicable statutes of limitations, or (ii) three years after the Deconsolidation Date (such later date, the “**Retention Date**”). After the Retention Date, Parent may dispose of Tax Records pertaining to the assets or activities of the SpinCo Group only upon 90 days’ prior written notice to the SpinCo Group, and SpinCo may dispose of Tax Records pertaining to a Joint Return only upon 90 days’ prior written notice to the Parent Group. If, prior to the Retention Date, a party reasonably determines that any Tax Records which 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, it may dispose of such Tax Records; *provided* that if such Tax Records pertain to the assets or activities of the other Group (or, in the case of SpinCo, to a Joint Return), the party shall provide such other Group with 90 days’ prior written notice. Any notice of an intent to dispose given pursuant to this Section 9 shall include a list of the Tax Records to be disposed of described in reasonable detail. The notified party 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. If, at any time prior to the Retention Date, SpinCo determines to decommission or otherwise discontinue any computer program or information technology system used to access or store any Tax Records, then SpinCo may decommission or discontinue such program or system upon 90 days’ prior notice to Parent and Parent shall have the opportunity, at SpinCo’s cost and expense, to copy, within such 90-day period, all or any part of the underlying data relating to the Tax Records accessed by or stored on such program or system.



**Section 10. Tax Contests.**

Section 10.01 *Notice.* Each of the Companies shall provide prompt notice to the other Company of any written communication from a Tax Authority regarding any pending or threatened Tax Contest or assessment related to Taxes of which it becomes aware related to Taxes for which it could reasonably expect to be indemnified by the other Company hereunder. Such notice shall attach 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 and shall be accompanied by copies of any notice and other documents received from any Tax Authority in respect of any such matters. If an indemnified party has knowledge of an asserted Tax liability with respect to a matter for which it is to be indemnified hereunder and such party fails to give the indemnifying party prompt notice of such asserted Tax liability, then such failure shall not relieve the indemnifying party of any obligation which it may have to the indemnified party under this Agreement, except to the extent that the indemnifying party is actually prejudiced by such failure.

Section 10.02 *Control of Tax Contests.*

(a) *Separate Returns.* In the case of any Tax Contest with respect to any Separate Return, the Company having liability for the Tax shall have exclusive control over the Tax Contest, including exclusive authority with respect to any settlement of such Tax liability, subject to Section 10.02(e).

(b) *Parent Federal Consolidated Income Tax Returns.* In the case of any Tax Contest with respect to any Parent Federal Consolidated Income Tax Return, Parent shall have exclusive control over the Tax Contest, including exclusive authority with respect to any settlement of such Tax liability, subject to Section 10.02(e).

(c) *Parent State Combined Income Tax Returns.* In the case of any Tax Contest with respect to any Parent State Combined Income Tax Return, Parent shall have exclusive control over the Tax Contest, including exclusive authority with respect to any settlement of such Tax liability, subject to Section 10.02(e).

(d) *Other Joint Returns.* In the case of any Tax Contest with respect to any Joint Return (other than any Parent Federal Consolidated Income Tax Return or any Parent State Combined Income Tax Return), Parent shall have exclusive control over the Tax Contest, including exclusive authority with respect to any settlement of such Tax liability, subject to Section 10.02(e).

(e) *Settlement Rights.*

(i) The Controlling Party shall have the sole right to contest, litigate, compromise and settle any Tax Contest without obtaining the prior consent of the Non-Controlling Party. Unless waived by the parties in writing, in connection with any potential adjustment in a Tax Contest as a result of which adjustment the Non-Controlling Party may reasonably be expected to become liable to make any indemnification payment (or any payment under Section 6) to the Controlling Party under this Agreement: (A) the Controlling Party shall keep the Non-Controlling Party informed in a timely manner of all actions taken or proposed to be taken by the Controlling Party with respect to such potential adjustment in such Tax Contest; (B) the Controlling Party shall provide the Non-Controlling Party copies of any written materials relating to such potential adjustment in such Tax Contest received from any Tax Authority; (C) the Controlling Party shall timely provide the Non-Controlling Party with copies of any correspondence or filings submitted to any Tax Authority or judicial authority in connection with such potential adjustment in such Tax Contest; and (D) the Controlling Party shall consult with the Non-Controlling Party and offer the Non-Controlling Party a reasonable opportunity to comment before submitting any written materials prepared or furnished in connection with such potential adjustment in such Tax Contest. The failure of the Controlling Party to take any action specified in the preceding sentence with respect to the Non-Controlling Party shall not relieve the Non-Controlling Party of any liability or obligation which it may have to the Controlling Party under this Agreement in respect of such adjustment, except to the extent that the Non-Controlling Party was actually harmed by such failure, and in no event shall such failure relieve the Non-Controlling Party from any other liability or obligation which it may have to the Controlling Party under this Agreement. In the case of any Tax Contest described in this Section 10.02, “**Controlling Party**” means the Company entitled to control the Tax Contest under such Section and “**Non-Controlling Party**” means the other Company. Notwithstanding anything in the above provisions of this clause (i) to the contrary, Parent shall be entitled to determine, in its reasonable discretion, the positions taken, including with respect to settlement or other disposition, in any Tax Contest to which this clause (i) applies and as to which Parent is the Controlling Party, which determinations of Parent shall, in the absence of bad faith and mathematical error, be conclusive, final and binding on SpinCo and each member of the SpinCo Group.

(ii) Notwithstanding anything to the contrary herein:

(A) in the event of any Separation-Related Tax Contest as a result of which SpinCo could reasonably be expected to become exclusively liable for any Tax or Tax-Related Loss and which Parent has the right to administer and control pursuant to Section 10.02(a), (b), (c), or (d), Parent shall have the sole right to contest, litigate, compromise and settle such Tax Contest without obtaining the prior consent of SpinCo and (I) Parent shall keep SpinCo informed of all actions taken by Parent with respect to such potential adjustment in such Tax Contest; (II) Parent shall provide SpinCo copies of any written materials relating to such potential adjustment in such Tax Contest received from any Tax Authority; (III) Parent shall timely provide SpinCo with copies of any correspondence or filings submitted to any Tax Authority or judicial authority in connection with such potential adjustment in such Tax Contest; and (IV) Parent shall consult with SpinCo in connection with such potential adjustment in such Tax Contest; *provided, however*, that the failure of Parent to take any action specified in any of clauses (I) through (IV) shall not relieve SpinCo of any liability or obligation which it may have to Parent under this Agreement in respect of such adjustment, and in no event shall such failure relieve SpinCo from any other liability or obligation which it may have to Parent under this Agreement. Notwithstanding anything in the above provisions of this clause (A) to the contrary, Parent shall be entitled to determine, in its sole discretion, the positions taken, including with respect to settlement or other disposition, in any Separation-Related Tax Contest described in the preceding sentence, which determinations of Parent shall, in the absence of bad faith and mathematical error, be conclusive, final and binding on SpinCo and each member of the SpinCo Group; and

(B) in the event of any Separation-Related Tax Contest as a result of which Parent could reasonably be expected to become liable for any Tax or Tax-Related Loss and which SpinCo has the right to administer and control pursuant to Section 10.02(a), (I) SpinCo shall consult with Parent reasonably in advance of taking any significant action in connection with such Tax Contest, (II) SpinCo shall consult with Parent and offer Parent a reasonable opportunity to comment before submitting any written materials prepared or furnished in connection with such Tax Contest, (III) 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, (IV) Parent shall be entitled to participate in such Tax Contest and receive copies of any written materials relating to such Tax Contest from the relevant Tax Authority, and (V) SpinCo shall not settle, compromise or abandon any such Tax Contest without obtaining the prior written consent of Parent, which consent shall not be unreasonably withheld; *provided, however*, that Parent shall have the right to elect to assume control of such Tax Contest, in which case, Section 10.02(e)(ii)(A) shall apply to such Tax Contest.

(f) *Power of Attorney.* Each member of the SpinCo Group shall execute and deliver to Parent (or such member of the Parent Group as Parent shall designate) any power of attorney or other similar document reasonably requested by Parent (or such designee) in connection with any Tax Contest (as to which Parent is the Controlling Party) described in this Section 10. Each member of the Parent Group shall execute and deliver to SpinCo (or such member of the SpinCo Group as SpinCo shall designate) any power of attorney or other similar document reasonably requested by SpinCo (or such designee) in connection with any Tax Contest (as to which SpinCo is the Controlling Party) described in this Section 10.

**Section 11. Effective Date; Termination of Prior Intercompany Tax Allocation Agreements.** This Agreement shall be effective as of the date hereof. As of the date hereof or on such other date (on or prior to the Distribution Date) as Parent may determine, (i) the 2019 Tax Allocation Agreement, the 1993 Tax Allocation Agreement and all other intercompany Tax allocation agreements or arrangements (other than this Agreement) solely between or among Parent and/or any of its Subsidiaries, on the one hand, and SpinCo and/or any of its Subsidiaries, on the other hand, shall be terminated with respect to SpinCo and/or any of its Subsidiaries, and (ii) amounts due under such agreements as of the date hereof shall be settled by such means as Parent shall determine in its reasonable discretion. Upon such termination and settlement, no further payments by or to Parent or any member of the Parent Group or by or to SpinCo or any member of the SpinCo Group, with respect to such agreements shall be made, and all other rights and obligations resulting from such agreements between the Companies and their Affiliates shall cease at such time.

**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. 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 indemnified party hereunder, or assert a defense against any claim asserted by any indemnified party hereunder, before any court, arbitrator, mediator or administrative agency anywhere in the world, alleging that: (a) the indemnification obligations of SpinCo on the terms and conditions set forth in this Agreement are void or unenforceable for any reason; (b) the indemnification obligations of Parent on the terms and conditions set forth in this Agreement are void or unenforceable for any reason; or (c) the provisions of Section 2 or Section 7 are void or unenforceable for any reason.

**Section 14. Survival of Indemnities.** The rights and obligations of each of Parent and SpinCo and their respective indemnified parties under Section 2 and Section 7 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.

**Section 15. Treatment of Payments; Tax Gross Up.**

Section 15.01 *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 payments made by a Company under this Agreement or the Separation and Distribution Agreement as distributions or capital contributions, as appropriate, occurring immediately before the Distribution (but only to the extent the payment does not relate to a Tax allocated to the payor in accordance with Section 1552 of the Code or the regulations thereunder or Treasury Regulations Section 1.1502-33(d) (or under corresponding principles of other applicable Tax Laws)) or as payments of an assumed or retained liability;

(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; and

(c) any Tax Benefit payments made by a Company under Sections 5, 6 or 7.06, as distributions or capital contributions, as appropriate, occurring immediately before the Distribution (but only to the extent the payment does not relate to a Tax allocated to the payor in accordance with Section 1552 of the Code or the regulations thereunder or Treasury Regulations Section 1.1502-33(d) (or under corresponding principles of other applicable Tax Laws)) or as payments of an assumed or retained liability.

Section 15.02 *Tax Gross Up*. If notwithstanding the manner in which payments described in Sections 15.01(a) and (c) were reported, there is an adjustment to the 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 increased 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 which the Company receiving such payment would otherwise be entitled to receive. For purposes of this Section 15.02, the amount of any Income Taxes payable with respect to the receipt of a payment pursuant to this Agreement or the Separation and Distribution Agreement shall be calculated by assuming that the recipient or the Group of which it is a member, as applicable, (I) pays Tax at the highest marginal corporate Tax rates in effect in each relevant taxable year and (II) has no Tax Attributes in any relevant taxable year.

Section 15.03 *Interest Under this Agreement*. Anything herein to the contrary notwithstanding, to the extent one Company (“**Indemnitor**”) makes a payment of interest to another Company (“**Indemnitee**”) under this Agreement with respect to the period from the date that the Indemnitee made a payment of Tax to a Tax Authority to the date that the Indemnitor reimbursed the Indemnitee for such Tax payment, the interest payment shall be treated as interest expense to the Indemnitor (deductible to the extent provided by law) and as interest income by the Indemnitee (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 Indemnitor or increase in Tax to the Indemnitee.

## **Section 16. Disagreements.**

Section 16.01 *Interaction with Article VII of the Separation and Distribution Agreement*. In the event of any dispute between any member of the Parent Group and any member of the SpinCo Group as to any matter covered by this Agreement, the Companies shall agree as to whether such dispute shall be governed by the procedures set forth in Section 16.02 of this Agreement or in Article VII of the Separation and Distribution Agreement. If the Parties cannot agree within 30 days from the time such dispute arises as to which procedure will govern such dispute, such disagreement shall be resolved pursuant to Article VII of the Separation and Distribution Agreement.

Section 16.02 *Dispute Resolution*. The Companies shall try, and shall 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 Department Dispute**”) between any member of the Parent 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 Department Dispute. If such good faith negotiations do not resolve the Tax Department Dispute, then such Tax Department 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 shall be a Tax Advisor (other than the auditing firm of Parent or SpinCo). Notwithstanding the foregoing provisions of this Section 16, a Party may seek preliminary provisional or injunctive judicial relief with respect to any dispute under this Agreement without first complying with the procedures set forth in this Section 16 (or Article VII of the Separation and Distribution Agreement) if such action is reasonably necessary to avoid irreparable harm.

**Section 17. Late Payments.** Any amount owed by one party to another party under this Agreement which is not paid when due shall bear interest at the Prime Rate plus two percentage points, compounded semiannually, from the Due Date of the payment to the date paid. To the extent interest required to be paid under this Section 17 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 17 or the interest rate provided under such other provision.

**Section 18. 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 19. General Provisions.**

Section 19.01 *Addresses and Notices*. Each party giving any notice required or permitted under this Agreement will give the notice in writing and use one of the following methods of delivery to the party to be notified, at the address set forth below or another address of which the sending party has been notified in accordance with this Section 19.01: (a) personal delivery; (b) commercial overnight courier with a reasonable method of confirming delivery; or (c) prepaid, United States of America certified or registered mail, return receipt requested. Notice to a party is effective for purposes of this Agreement only if given as provided in this Section 19.01 and shall be deemed given on the date that the intended addressee actually receives the notice.

If to Parent, to:

MDU Resources Group, Inc.  
1200 West Century Avenue  
P.O. Box 5650  
Bismarck, North Dakota 58506  
Attention: Paul R. Sanderson, Vice President, Chief Legal Officer & Secretary  
E-mail: paul.sanderson@mduresources.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Andrew R. Brownstein  
John L. Robinson  
E-mail: ARBrownstein@wlrk.com  
JLRobinson@wlrk.com

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

Knife River Holding Company  
1150 West Century Avenue  
P.O. Box 5568  
Bismarck, North Dakota 58503  
Attention: Karl A. Liepitz, General Counsel & Corporate Secretary  
E-mail: karl.liepitz@mduresources.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Andrew R. Brownstein  
John L. Robinson  
E-mail: ARBrownstein@wlrk.com  
JLRobinson@wlrk.com

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

Knife River Holding Company  
1150 West Century Avenue  
P.O. Box 5568  
Bismarck, North Dakota 58503  
Attention: Karl A. Liepitz, Chief Legal Counsel  
E-mail: karl.liepitz@kniferiver.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Andrew R. Brownstein  
John L. Robinson  
E-mail: ARBrownstein@wlrk.com  
John L. Robinson

A party may change the address for receiving notices under this Agreement by providing written notice of the change of address to the other parties.

Section 19.02 *Binding Effect*. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. None of the parties hereto may assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other parties hereto.

Section 19.03 *Waiver*. The parties may waive a provision of this Agreement only by a writing signed by the party intended to be bound by the waiver. A party is not prevented from enforcing any right, remedy or condition in the party's favor because of any failure or delay in exercising any right or remedy or in requiring satisfaction of any condition, except to the extent that the party specifically waives the same in writing. A written waiver given for one matter or occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver for any other matter or occasion. Any enumeration of a party's rights and remedies in this Agreement is not intended to be exclusive, and a party's rights and remedies are intended to be cumulative to the extent permitted by law and include any rights and remedies authorized in law or in equity.

Section 19.04 *Severability*. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding and enforceable.

Section 19.05 *Authority*. Each of the parties represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action, (c) it has duly and validly executed and delivered this Agreement, and (d) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

Section 19.06 *Further Action*. The parties shall execute and deliver all documents, provide all information, and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement, 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.



Section 19.07 *Integration*. This Agreement, together with any exhibits and schedules appended hereto, constitutes the final agreement between the parties, and is the complete and exclusive statement of the parties' agreement on the matters contained herein. All prior and contemporaneous negotiations and agreements between the parties with respect to the matters contained herein are superseded by this Agreement, as applicable. In the event of any conflict or 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.

Section 19.08 *Construction*. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning and shall not be strictly construed for or against any party. The captions, titles and headings included in this Agreement are for convenience only, and do not affect this Agreement's construction or interpretation. Unless otherwise indicated, all "Section" references in this Agreement are to sections of this Agreement. This Agreement shall be deemed to be the joint work product of the parties hereto and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

Section 19.09 *No Double Recovery*. No provision of this Agreement shall be construed to provide an indemnity or other recovery for any costs, damages, or other amounts for which the damaged party has been fully compensated under any other provision of this Agreement or under any other agreement or action at law or in equity (it being agreed and understood that none of the payments to be made by any member of the SpinCo Group to any member of the Parent Group in connection with the Transactions shall be considered to compensate any member of the Parent Group for any amount for which SpinCo would otherwise be liable or responsible hereunder, unless otherwise specifically identified by Parent as a payment pursuant to the 2019 Tax Allocation Agreement, the 1993 Tax Allocation Agreement, or this Agreement). Unless expressly required in this Agreement, a party shall not be required to exhaust all remedies available under other agreements or at law or in equity before recovering under the remedies provided in this Agreement.

Section 19.10 *Counterparts*. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original as against the party that signed it, and all of which together constitute one agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other party. The signatures of the parties need not appear on the same counterpart. The delivery of signed counterparts by facsimile or email transmission that includes a copy of the sending party's signature is as effective as signing and delivering the counterpart in person.

Section 19.11 *Governing Law*. The internal laws of the State of Delaware (without reference to its principles of conflicts of law) govern the construction, interpretation and other matters arising out of or in connection with this Agreement and any exhibits and schedules hereto and thereto (whether arising in contract, tort, equity or otherwise).

Section 19.12 *Jurisdiction*. If any dispute arises out of or in connection with this Agreement, except as expressly contemplated by another provision of this Agreement, the parties irrevocably (and the parties will cause each other member of their respective Group to irrevocably) (a) consent and submit to the exclusive jurisdiction of federal and state courts located in Delaware, (b) waive any objection to that choice of forum based on venue or to the effect that the forum is not convenient, and (c) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO TRIAL OR ADJUDICATION BY JURY.

Section 19.13 *Amendment*. The parties may amend this Agreement only by a written agreement signed by each party to be bound by the amendment and that identifies itself as an amendment to this Agreement.

Section 19.14 *SpinCo Subsidiaries*. If, at any time, SpinCo acquires or creates one or more subsidiaries that are includable in the SpinCo Group (or that would be so includable if membership in the SpinCo Group were measured after such acquisition or creation), they shall be subject to this Agreement and all references to the SpinCo Group herein shall thereafter include a reference to such subsidiaries.

Section 19.15 *Successors*. This Agreement shall be binding on and inure to the benefit of any successor by merger, acquisition of assets, or otherwise, to any of the parties hereto (including, but not limited to, any successor of Parent or SpinCo succeeding to the Tax attributes thereof under Section 381 of the Code), to the same extent as if such successor had been an original party to this Agreement.

Section 19.16 *Injunctions*. The parties acknowledge that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with its specific terms or were otherwise breached. The parties hereto shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof in any court having jurisdiction, such remedy being in addition to any other remedy to which they may be entitled at law or in equity.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on its behalf by a duly authorized officer on the date first set forth above.

**“Parent”**

MDU RESOURCES GROUP, INC.

By: /s/ David L. Goodin  
Name: David L. Goodin  
Title: President and Chief Executive Officer

**“SpinCo”**

KNIFE RIVER HOLDING COMPANY

By: /s/ Brian R. Gray  
Name: Brian R. Gray  
Title: President and Chief Executive Officer

*[Signature Page to Tax Matters Agreement]*

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EMPLOYEE MATTERS AGREEMENT

BY AND BETWEEN

MDU RESOURCES GROUP, INC.

AND

KNIFE RIVER HOLDING COMPANY

DATED AS OF MAY 30, 2023

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## TABLE OF CONTENTS

	<u>Page</u>	
Article I DEFINITIONS		
Section 1.01	Definitions	1
Section 1.02	Interpretation	7
Article II GENERAL PRINCIPLES FOR ALLOCATION OF LIABILITIES		
Section 2.01	General Principles	7
Section 2.02	Service Credit Recognized by SpinCo and SpinCo Benefit Plans	9
Section 2.03	Adoption and Transfer and Assumption of Benefit Plans	9
Section 2.04	Reimbursement	10
Article III ASSIGNMENT OF EMPLOYEES		
Section 3.01	Active Employees	11
Section 3.02	Individual Agreements	12
Section 3.03	Consultation with Labor Representatives; Labor Agreements	13
Section 3.04	Non-Solicitation	13
Article IV EQUITY, INCENTIVE AND EXECUTIVE COMPENSATION		
Section 4.01	Generally	14
Section 4.02	Equity Incentive Awards	14
Section 4.03	Non-Equity Incentive Practices and Plans	16
Section 4.04	Director Compensation	17
Article V QUALIFIED RETIREMENT PLANS		
Section 5.01	Parent Pension Plans	17
Section 5.02	SpinCo Pension Plan	17
Section 5.03	SpinCo 401(k) Plans	19
Article VI NONQUALIFIED DEFERRED COMPENSATION PLANS		
Section 6.01	Deferred Compensation Plans	21
Section 6.02	Director Deferred Compensation	22
Section 6.03	Participation; Distributions	23

Article VII  
WELFARE BENEFIT PLANS

Section 7.01	Welfare Plans	23
Section 7.02	Retiree Medical, Dental, Vision, AD&D, and Life Plans	25
Section 7.03	COBRA	25
Section 7.04	Flexible Spending Accounts	26
Section 7.05	Disability Plans	26
Section 7.06	Vacation, Holidays, PTO and Leaves of Absence	26
Section 7.07	Workers' Compensation	27

Article VIII  
MISCELLANEOUS

Section 8.01	Preservation of Rights to Amend	27
Section 8.02	Fiduciary Matters	27
Section 8.03	Further Assurances	27
Section 8.04	Counterparts; Entire Agreement; Corporate Power	27
Section 8.05	Governing Law	28
Section 8.06	Assignability	28
Section 8.07	Third-Party Beneficiaries	29
Section 8.08	Notices	29
Section 8.09	Severability	30
Section 8.10	Force Majeure	31
Section 8.11	Headings	31
Section 8.12	Survival of Covenants	31
Section 8.13	Waivers of Default	31
Section 8.14	Dispute Resolution	31
Section 8.15	Specific Performance	31
Section 8.16	Amendments	32
Section 8.17	Interpretation	32
Section 8.18	Limitations of Liability	32
Section 8.19	Mutual Drafting	32

## EMPLOYEE MATTERS AGREEMENT

This EMPLOYEE MATTERS AGREEMENT, dated as of May 30, 2023 (this "Agreement"), is by and between MDU Resources Group, Inc., a Delaware corporation ("Parent"), and Knife River Holding Company, a Delaware corporation ("SpinCo").

### RECITALS:

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 eighty point one percent (80.1%) or more of the outstanding SpinCo Shares (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.

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“Agreement” shall have the meaning set forth in the Preamble to this Agreement and shall include all Schedules hereto and all amendments, modifications, and changes hereto entered into pursuant to Section 8.16.

“Benefit Plan” shall mean any contract, agreement, policy, practice, program, plan, trust, commitment or arrangement providing for benefits, perquisites or compensation of any nature from an employer to any Employee or Former Employee, or to any family member, dependent, or beneficiary of any such Employee or Former Employee, including cash or deferred arrangement plans, profit-sharing plans, post-employment programs, pension plans, supplemental pension plans, welfare plans, stock purchase, and contracts, agreements, policies, practices, programs, plans, trusts, commitments and arrangements providing for terms of employment, fringe benefits, severance benefits, change in control protections or benefits, life, accidental death and dismemberment, disability and accident insurance, tuition reimbursement, adoption assistance, travel reimbursement, vacation, sick, paid time off (PTO), 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.

“Distribution Date Valuation” shall have the meaning set forth in Section 5.02(b)(ii).

“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.

“Final SpinCo Pension Assets” shall have the meaning set forth in Section 5.02(b)(iii).

“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, as of the Effective Time, a former employee of any member of the SpinCo Group.

“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 non-solicitation 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.

“Initial Transfer” shall have the meaning set forth in Section 5.02(b)(i).

“Initial Transfer Date” shall have the meaning set forth in Section 5.02(b)(i).

“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 MDU Resources Group, Inc. 401(k) Retirement Plan, as in effect or as it may be amended from time to time.

“Parent Annual Bonus Plans” means the Parent EICP and the Parent STIP.

“Parent Awards” shall mean Parent RSU Awards and Parent Performance Share 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 Benefit Protection Rabbi Trust” shall have the meaning set forth in Section 6.01(c)(ii).

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

“Parent Compensation Committee” shall mean the Compensation Committee of the Parent Board.

“Parent Deferred Compensation Plan Rabbi Trust” shall have the meaning set forth in Section 6.01(c)(i).

“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 Director Deferred Compensation Plan” means the MDU Resources Group, Inc. Deferred Compensation Plan for Directors.

“Parent EICP” shall mean the MDU Resources, Inc. Executive Incentive Compensation Plan.

“Parent Equity Plan” shall mean any equity compensation plan sponsored or maintained by the Parent immediately prior to the Effective Time, including the MDU Resources, Inc. Long-Term Performance-Based Incentive Plan, as amended February 11, 2016, and as further amended from time to time.

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

“Parent Master Trust” shall have the meaning set forth in Section 5.02(b).

“Parent Nonqualified Deferred Compensation Plan” shall mean each of the following plans: MDU Resources Group, Inc. Supplemental Income Security Plan (SISP), MDU Resources Group, Inc. Nonqualified Defined Contribution Plan (NQDC), incentive compensation deferred pursuant to the MDU Resources Group, Inc. Executive Incentive Compensation Plan (EICP), and the MDU Resources Group, Inc. Deferred Compensation Plan.

“Parent Pension Plans” shall mean the MDU Resources Group, Inc. Pension Plan for Non-Bargaining Unit Employees, MDU Resources Group, Inc. Pension Plan for Collective Bargaining Unit Employees, Williston Basin Interstate Pipeline Company Pension Plan and Retirement Plan for Employees of Cascade Natural Gas Corporation.

“Parent Performance Share Award” shall mean a performance share award that is outstanding as of immediately prior to the Effective Time, granted pursuant to the Parent Equity Plan.

“Parent Ratio” shall mean the quotient obtained by dividing (a) the Pre-Separation Parent Stock Value by (b) the Post-Separation Parent Stock Value.

“Parent Retiree Medical Plan” shall mean each of the following plans: MDU Resources Basic Major Medical Plan, MDU Resources Comprehensive Medical Plans, MDU Resources Retiree Reimbursement Account, MDU Resources Dental Basic Plan, MDU Resources Vision Insurance Plan, MDU Resources Health Reimbursement Arrangement (HRA), Cascade Natural Gas Retiree Medical and Prescription Drug Arrangement, Cascade Natural Gas Medicare Advantage Plans, Cascade Natural Gas Pre-65 Health Reimbursement Account, MDU Resources Accidental Death and Dismemberment, Intermountain Gas Company Medicare Supplemental Reimbursement and Retiree Drug Subsidy Program.

“Parent RSU Award” shall mean a restricted stock unit award outstanding as of immediately prior to the Effective Time granted pursuant to the Parent Equity Plan.

“Parent Share Fund” shall have the meaning set forth in Section 5.03(b).

“Parent STIP” shall mean the MDU Resources Group, Inc. 2023 Short-Term Incentive Plan.

“Parent Welfare Plan” shall mean any Parent Benefit Plan that is a Welfare Plan.

“Parties” shall mean the parties to this Agreement.

“Post-Separation Parent RSU Award” shall mean a Parent RSU Award or Parent Performance Share Award, as adjusted as of the Effective Time in accordance with Section 4.02, 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.

“ODRO” 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.

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

“SpinCo 401(k) Plan” shall mean the SpinCo 401(k) Savings Plans, to be adopted by SpinCo prior to or on the Distribution Date as described in Section 5.03.

“SpinCo 401(k) Trust” shall have the meaning set forth in Section 5.03(a).

“SpinCo 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 Benefit Protection Rabbi Trust” shall have the meaning set forth in Section 6.01(c)(ii).

“SpinCo Board” shall mean the board of directors of SpinCo.

“SpinCo Deferred Compensation Plan Rabbi Trust” shall have the meaning set forth in Section 6.01(c)(i).

“SpinCo Director Deferred Compensation Plan” shall mean the SpinCo Deferred Compensation Plan for Directors established pursuant to Section 6.02.

“SpinCo Equity Plan” shall mean the SpinCo 2023 Long-Term Performance-Based Incentive Plan, as established by SpinCo as of the Effective Time pursuant to Section 2.03(a) and Section 4.01.

“SpinCo Flex Plan” shall have the meaning set forth in Section 7.04.

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

“SpinCo Master Trust” shall have the meaning set forth in Section 5.02(b).

“SpinCo Nonqualified Deferred Compensation Plans” shall mean the SpinCo deferred compensation plans established pursuant to Section 2.03(a) and Section 6.01(a).

“SpinCo Pension Assets” shall have the meaning set forth in Section 5.02(b).

“SpinCo Pension Plan” shall mean the Knife River Corporation Salaried Employees’ Pension Plan and Pension Plan for Bargaining Unit Employees of Hawaiian Cement, Maui Concrete and Aggregate Division.

“SpinCo Ratio” shall mean the quotient obtained by dividing (a) the Pre-Separation Parent Stock Value by (b) the SpinCo Stock Value.

“SpinCo Retiree Welfare Plan” shall mean the Knife River Corporation Basic Major Medical, Knife River Corporation Comprehensive Medical Plan, Knife River Corporation Retiree Reimbursement Account (RRA), Dental Basic Plan, KRC Accidental Death and Dismemberment Insurance (AD&D), KRC Vision Insurance Plan, KRC Retiree Life Insurance Plan and Hawaiian Cement Retiree Life Insurance Plan for Eligible Retired Maui Concrete Bargaining Unit Employees, and Knife River Corporation Health Reimbursement Arrangement (HRA).

“SpinCo RSU Award” shall mean an award of restricted stock units granted pursuant to the SpinCo Equity Plan in accordance with Section 4.02.

“SpinCo Share Fund” shall have the meaning set forth in Section 5.03(e).

“SpinCo Stock Value” shall mean the closing per-share price of SpinCo Shares on the NYSE on the first regular trading session (9:30 a.m. to 4:00 p.m. EST) commencing after the Effective Time.

“SpinCo Welfare Plan” shall mean a Welfare Plan established, sponsored, maintained or contributed to by any member of the SpinCo Group for the benefit of SpinCo Group Employees and Former SpinCo Group Employees.

“Transferred Account Balances” shall have the meaning set forth in Section 7.04.

“Transferred Director” shall mean each SpinCo nonemployee director as of immediately after the Effective Time who served on the Parent Board immediately prior to the Effective Time.

“True-Up Transfer” shall have the meaning set forth in Section 5.02(b)(iv).

“Trustee” shall have the meaning set forth in Section 5.02(b)(i).

“U.S.” shall mean the United States of America.

“Welfare Plan” shall mean any “welfare plan” (as defined in Section 3(1) of ERISA) or a “cafeteria plan” under Section 125 of the Code, and any benefits offered thereunder, and any other plan offering health benefits (including medical, prescription drug, dental, vision, mental health, substance abuse and retiree health), disability benefits, or life, accidental death and dismemberment, and business travel insurance, pre-Tax premium conversion benefits, dependent care assistance programs, employee assistance programs, paid time off programs, contribution funding toward a health savings account, flexible spending accounts or severance.

Section 1.02 Interpretation. Section 10.15 of the Separation and Distribution Agreement is hereby incorporated by reference.

Article II  
GENERAL PRINCIPLES FOR ALLOCATION OF LIABILITIES

Section 2.01 General Principles. All provisions herein shall be subject to the requirements of all applicable Law and any collective bargaining, works council or similar agreement or arrangement with any labor union, works council or other labor representative (each, a “Labor Agreement”). Notwithstanding anything in this Agreement to the contrary, if the terms of a Labor Agreement or applicable Law require that any Assets or Liabilities be retained or assumed by, or transferred to, a Party in a manner that is different than what is set forth in this Agreement, such retention, assumption or transfer shall be made in accordance with the terms of such Labor Agreement and applicable Law and shall not be made as otherwise set forth in this Agreement; provided that, in such case, the Parties shall take all necessary action to preserve the economic terms of the allocation of Assets and Liabilities contemplated by this Agreement. The provisions of this Agreement shall apply in respect of all jurisdictions.

(a) *Acceptance and Assumption of SpinCo Liabilities*. Except as otherwise provided by this Agreement, on or prior to the Effective Time, but in any case prior to the Distribution, SpinCo and the applicable SpinCo Designees shall accept, assume and agree faithfully to perform, discharge and fulfill all of the following Liabilities in accordance with their respective terms (each of which shall be considered a SpinCo Liability), regardless of when or where such Liabilities arose or arise, or whether the facts on which they are based occurred prior to, at or subsequent to the Effective Time, regardless of where or against whom such Liabilities are asserted or determined (including any Liabilities arising out of claims made by Parent’s or SpinCo’s respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates against any member of the Parent Group or the SpinCo Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentation by any member of the Parent Group or the SpinCo Group, or any of their respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates:

(i) any and all wages, salaries, incentive compensation, equity compensation, commissions, bonuses and any other employee compensation or benefits payable to or on behalf of any SpinCo Group Employees and Former SpinCo Group Employees after the Effective Time, without regard to when such wages, salaries, incentive compensation, equity compensation, commissions, bonuses or other employee compensation or benefits are or may have been awarded or earned;

(ii) any and all Liabilities whatsoever with respect to claims under a SpinCo Benefit Plan, taking into account the SpinCo Benefit Plan's assumption of Liabilities with respect to SpinCo Group Employees and Former SpinCo Group Employees that were originally the Liabilities of the corresponding Parent Benefit Plan with respect to periods prior to the Effective Time;

(iii) any and all Liabilities arising out of, relating to or resulting from the employment, or termination of employment of all SpinCo Group Employees and Former SpinCo Group Employees; and

(iv) any and all Liabilities expressly assumed or retained by any member of the SpinCo Group pursuant to this Agreement.

(b) *Acceptance and Assumption of Parent Liabilities.* Except as otherwise provided by this Agreement, on or prior to the Effective Time, but in any case prior to the Distribution, Parent and certain members of the Parent Group designated by Parent shall accept, assume and agree faithfully to perform, discharge and fulfill all of the following Liabilities in accordance with their respective terms (each of which shall be considered a Parent Liability), regardless of when or where such Liabilities arose or arise, or whether the facts on which they are based occurred prior to, at or subsequent to the Effective Time, regardless of where or against whom such Liabilities are asserted or determined (including any Liabilities arising out of claims made by Parent's or SpinCo's respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates against any member of the Parent Group or the SpinCo Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentation by any member of the Parent Group or the SpinCo Group, or any of their respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates:

(i) any and all wages, salaries, incentive compensation, equity compensation, commissions, bonuses and any other employee compensation or benefits payable to or on behalf of any Parent Group Employees and Former Parent Group Employees after the Effective Time, without regard to when such wages, salaries, incentive compensation, equity compensation, commissions, bonuses or other employee compensation or benefits are or may have been awarded or earned;

(ii) any and all Liabilities whatsoever with respect to claims under a Parent Benefit Plan, taking into account a corresponding SpinCo Benefit Plan's assumption of Liabilities with respect to SpinCo Group Employees and Former SpinCo Group Employees that were originally the Liabilities of such Parent Benefit Plan with respect to periods prior to the Effective Time;

(iii) any and all Liabilities arising out of, relating to or resulting from the employment, or termination of employment of all Parent Group Employees and Former Parent Group Employees; and

(iv) any and all Liabilities expressly assumed or retained by any member of the Parent Group pursuant to this Agreement.

(c) *Unaddressed Liabilities.* To the extent that this Agreement does not address particular Liabilities under any Benefit Plan and the Parties later determine that they should be allocated in connection with the Distribution, the Parties shall agree in good faith on the allocation, taking into account the treatment of comparable Liabilities under this Agreement.

Section 2.02 Service Credit Recognized by SpinCo and SpinCo Benefit Plans. As of the Effective Time, the SpinCo Benefit Plans shall, and SpinCo shall cause each member of the SpinCo Group to, recognize each SpinCo Group Employee's and each Former SpinCo Group Employee's full service with Parent or any of its Subsidiaries or predecessor entities at or before the Effective Time, to the same extent that such service was recognized by Parent for similar purposes prior to the Effective Time as if such full service had been performed for a member of the SpinCo Group, for purposes of eligibility, vesting and determination of level of benefits under any SpinCo Benefit Plans.

Section 2.03 Adoption and Transfer and Assumption of Benefit Plans.

(a) *Adoption by SpinCo of Benefit Plans.* As of no later than the Effective Time, SpinCo shall, or shall cause the members of the SpinCo Group to, adopt Benefit Plans (and related trusts, if applicable) as contemplated and in accordance with the terms of this Agreement, which Benefit Plans are generally intended to contain terms substantially similar in all material respects to those of the corresponding Parent Benefit Plans as in effect immediately prior to the Effective Time, with such changes, modifications or amendments to the SpinCo Benefit Plans as may be required by applicable Law or to reflect the Separation and Distribution, including limiting participation in any such SpinCo Benefit Plan to SpinCo Group Employees and Former SpinCo Group Employees who participated in the corresponding Benefit Plan immediately prior to the Effective Time.

(b) *Plans Not Required to Be Adopted.* With respect to any Benefit Plan not otherwise addressed in this Agreement, the Parties shall agree in good faith on the treatment of such plan, taking into account the treatment 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.* 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.



(b) *By Parent.* From time to time after the completion of the Separation, Parent shall promptly reimburse SpinCo for the cost of any obligations or Liabilities that SpinCo elects to, or is compelled to, pay or otherwise satisfy, that are or that pursuant to this Agreement have become, the responsibility of the Parent Group. SpinCo shall invoice Parent after the end of each fiscal month for all such costs (if any) in such fiscal month. Parent shall pay any amounts due by Parent hereunder in immediately available funds within thirty (30) days of Parent's receipt of each invoice therefor. Any amount not paid within thirty (30) days after the date when payable shall bear interest at the rate described in the definition of Interest Payment from the date such amount is due. Parent shall not deduct, set off, counterclaim or otherwise withhold any amount owed by it to SpinCo (on account of any obligation owed by the SpinCo Group, whether or not such obligation has been finally adjudicated, settled or otherwise agreed upon in writing) against the amounts payable pursuant to this Agreement; provided that, if Parent disputes any amount on an invoice, Parent shall notify SpinCo in writing within twenty (20) days after Parent's receipt of such invoice and shall describe in detail the reason for disputing such amount, provide any documents or other materials supporting its dispute, and will be entitled to withhold only the amount in dispute during the pendency of the dispute. Parent shall cause the timely payment of the undisputed portion of each invoice in the manner set forth in this Agreement and shall be subject to late charges at the rate described in the definition of Interest Payment and any other costs incurred by SpinCo and controlled pursuant to this Section 2.04(b) on any amount that is unsuccessfully disputed.

Article III  
ASSIGNMENT OF EMPLOYEES

Section 3.01 Active Employees.

(a) *Assignment and Transfer of Employees.* Effective as of no later than the Effective Time and except as otherwise agreed to by the Parties, (i) the applicable member of the Parent Group shall have taken such actions as are necessary to ensure that each individual who is intended to be an employee of the SpinCo Group as of immediately after the Effective Time (including any such individual who is not actively working as of the Effective Time as a result of an illness, injury or an approved leave of absence (collectively, the "SpinCo Group Employees") is employed by a member of the SpinCo Group as of immediately after the Effective Time, and (ii) the applicable member of the Parent Group shall have taken such actions as are necessary to ensure that each individual who is intended to be an employee of the Parent Group as of immediately after the Effective Time (including any such individual who is not actively working as of the Effective Time as a result of an illness, injury or an approved leave of absence) and any other individual employed by the Parent Group as of the Effective Time who is not a SpinCo Group Employee (collectively, the "Parent Group Employees") is employed by a member of the Parent Group as of immediately after the Effective Time. Each of the Parties agrees to execute, and to seek to have the applicable Employees execute, such documentation, if any, as may be necessary to reflect such assignment and/or transfer.

(b) *At-Will Status*. Nothing in this Agreement shall create any obligation on the part of any member of the Parent Group or any member of the SpinCo Group to (i) 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 of an Employee 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 Group Employee who is able to return to employment following the commencement of long-term disability benefits under a Parent Welfare Plan (as described in Section 7.05), SpinCo shall comply with any requirements relating to employment rights of such SpinCo Group Employee and such obligations, and any related Liabilities shall be obligations and related Liabilities of 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, Distribution and the assignment, transfer or continuation of the employment of Employees as contemplated by this Section 3.01 shall not be deemed an involuntary termination of employment entitling any SpinCo Group Employee or Parent Group Employee to non-compete, severance, change in control, or other payments or benefits.

(d) *Not a Change in Control*. The Parties acknowledge and agree that neither the consummation of the Separation, Distribution nor any transaction contemplated by this Agreement, the Separation and Distribution Agreement or any other Ancillary Agreement shall be deemed a “change in control,” “change of control,” or term of similar import for purposes of any Benefit Plan sponsored or maintained by any member of the Parent Group or member of the SpinCo Group, and except as provided in this Agreement or as otherwise required by applicable law or Individual Agreement, no provision of this Agreement shall be construed to accelerate any vesting or create any right or entitlement to any compensation or benefits on the part of any Employee.

Section 3.02 Individual Agreements.

(a) *Assignment by Parent*. To the extent necessary, Parent shall assign, or cause an applicable member of the Parent Group to assign, to SpinCo or another member of the SpinCo Group, as designated by SpinCo, all Individual Agreements, with such assignment to be effective as of no later than the Effective Time; provided, however, that, to the extent that assignment of any such Individual Agreement is not permitted by the terms of such agreement or by applicable Law, effective as of the Effective Time, each member of the SpinCo Group shall be considered to be a successor to each member of the Parent Group for purposes of, and a third-party beneficiary with respect to, such Individual Agreement, such that each member of the SpinCo Group shall enjoy all the rights and benefits under such agreement (including rights and benefits as a third-party beneficiary); provided, further, that in no event shall Parent be permitted to enforce any Individual Agreement (including any agreement containing noncompetition or non-solicitation covenants) against a SpinCo Group Employee or Former SpinCo Group Employee for action taken in such individual’s capacity as a SpinCo Group Employee or Former SpinCo Group Employee.

(b) *Assumption by SpinCo.* Effective as of the Effective Time, SpinCo shall, or shall cause the members of the SpinCo Group to, assume and honor any Individual Agreement to the extent assigned, including any Liabilities and 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 (i) 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, to the extent applicable) and (ii) 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. For the avoidance of doubt, any withdrawal liability that is imposed on any member of the Parent Group at or after the Effective Time by a multiemployer pension plan and that relates to the obligation, or cessation of the obligation, of a member of the SpinCo Group to contribute to such plan, shall be a SpinCo Liability.

Section 3.04 Non-Solicitation.

(a) *Non-Solicitation.* Each Party agrees that, for the period of 12 months immediately following the Effective Time, such Party shall, and shall cause each member in its Group, to not solicit for employment any individual who, as of immediately prior to the Effective Time, was an employee of a member of the other Group and worked from, or was otherwise assigned to, the corporate office of such Group ("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, and (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 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 Equity Plan shall be established, with such terms as are necessary to permit the implementation of the provisions of this Article IV.

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) If the holder is a Parent Group Employee or Former Employee, 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 down to the nearest whole number of shares, obtained by multiplying (A) the number of Parent Shares subject to the corresponding Parent RSU Award immediately prior to the Effective Time, by (B) the Parent Ratio.

(ii) If the holder is a SpinCo Group Employee, 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 down 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.

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

(i) If the holder is a Parent Group Employee or Former Employee, 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 time-based vesting) after the Effective Time as were applicable to such Parent Performance Share 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 down to the nearest whole number of shares, obtained by multiplying (A) the number of Parent Shares subject to the corresponding Parent Performance Share Award immediately prior to the Effective Time, by (B) the Parent Ratio. The applicable performance-based vesting conditions shall be deemed achieved as of the Effective Time at the levels approved by the Parent Compensation Committee prior to the Effective Time.

(ii) If the holder is a SpinCo Group Employee, 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 time-based vesting) after the Effective Time as were applicable to such Parent Performance Share 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 down to the nearest whole number of shares, obtained by multiplying (A) the number of Parent Shares subject to the corresponding Parent Performance Share Award immediately prior to the Effective Time by (B) the SpinCo Ratio. The applicable performance-based vesting conditions shall be deemed achieved as of the Effective Time at the levels approved by the Parent Compensation Committee prior to the Effective Time.

(c) *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 nonemployee 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 Equity Plan applicable to such award (x) with respect to Post-Separation Parent RSU 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 Equity Plan, and (y) with respect to SpinCo RSU Awards, shall be deemed to refer to a “Change in Control” as defined in the SpinCo Equity Plan.

(d) *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 Equity Plan, as required pursuant to the Securities Act, at or promptly following the Effective Time.

Section 4.03 Non-Equity Incentive Practices and Plans.

(a) *Annual Bonuses.* The Parent Group shall be responsible for all bonus awards that would otherwise be payable under the Parent Annual Bonus Plans to SpinCo Group Employees or Former SpinCo Group Employees for all periods prior to the Distribution Date; provided that, with respect to fiscal year 2023, each such bonus award shall be based on: (i) in the case of the Parent EICP, the performance level certified by the Parent Compensation Committee and prorated based on the number of days elapsed from and including January 1 through the Distribution Date out of three hundred and sixty-five (365), and paid promptly following the Distribution Date, subject to the payment eligibility requirements of the Parent EICP and subject, to the extent applicable, to any valid deferral election made under the Parent Deferred Compensation Plan or SpinCo Deferred Compensation Plan, as applicable; or (ii) in the case of the Parent STIP, the target level, based on the employee's pay grade prior to the Distribution Date and such employee's straight-time wages paid in the plan year up to the Distribution Date and prorated based on the number of days elapsed from and including January 1 through the Distribution Date out of three hundred and sixty-five (365), and paid promptly following the Distribution Date, and subject, to the extent applicable, to any valid deferral election made under the Parent Deferred Compensation Plan or SpinCo Deferred Compensation Plan, as applicable. As of no later than the Effective Time, SpinCo shall establish the SpinCo EICP, which shall have substantially the same terms as of immediately prior to the Effective Time as the Parent EICP. SpinCo Group Employees who were covered by the Parent EICP immediately prior to the Distribution Date shall be eligible to participate in the SpinCo EICP, as applicable, on such terms as determined by SpinCo or required by an Individual Agreement. SpinCo Group Employees who participated in the Parent STIP shall be eligible to participate in the KRC Salaried Employees Incentive Plan for 2023 as of the Effective Date through the end of the plan year on a prorated basis.

(b) *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 that is for the exclusive benefit of Parent Group Employees and Former Parent Group Employees 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 establish or continue to retain (or assume as necessary) any cash incentive plan that is for the exclusive benefit of SpinCo Group Employees and Former SpinCo Group Employees and, from and after the Effective Time, shall be solely responsible for all Liabilities thereunder.

Section 4.04 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 Transferred Director, SpinCo shall be responsible for the payment of any cash 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 month in which the Distribution Date occurs, for any Transferred Director, Parent shall be responsible for the payment of the portion of the monthly cash director's fee that relates to the portion of the month elapsed prior to the Distribution Date, and SpinCo shall be responsible for the payment of the remainder of such monthly cash director's fee.

Article V  
QUALIFIED RETIREMENT PLANS

Section 5.01 Parent Pension Plans. Parent shall assume and retain the Parent Pension Plans as of the Effective Time and no member of the SpinCo Group shall assume or retain any Liability with respect to the Parent Pension Plans. Following the Effective Time, no SpinCo Group Employee shall be credited with any additional service under the Parent Pension Plans.

Section 5.02 SpinCo Pension Plan.

(a) *Retention of SpinCo Pension Plans*. SpinCo shall assume and retain the SpinCo Pension Plans as of the Effective Time and no member of the Parent Group shall assume or retain any Liability with respect to the SpinCo Pension Plans. Following the Effective Time, no Parent Group Employee shall be credited with any additional service under the SpinCo Pension Plans.

(b) *Master Trust Assets*. Assets attributable to the SpinCo Pension Plans (the "SpinCo Pension Assets") under the MDU Resources, Inc. Master Trust (the "Parent Master Trust") (including for the avoidance of doubt any Assets held in a separate account under the Parent Master Trust for the benefit of the SpinCo Pension Plans) shall be transferred to a master trust designated by SpinCo (the "SpinCo Master Trust") and adopted by SpinCo no later than the Distribution Date which forms a part of each SpinCo Pension Plan as follows:

(i) On the first Business Day following the Distribution Date (such date, the "Initial Transfer Date"), SpinCo Pension Assets under the Parent Master Trust shall be transferred to the SpinCo Master Trust based on an April 30, 2023 valuation provided by the trustee of the Parent Master Trust (the "Trustee") in an amount as approved by the Employee Benefits Committee of the Parent (such initial transfer, the "Initial Transfer").

(ii) As soon as practical following the Distribution Date, Parent shall obtain from the Trustee a valuation of the Parent Master Trust as of the Distribution Date reflecting the valuation of the Assets of the Parent Master Trust (based on the close of market (regular hours) on the Distribution Date) (the "Distribution Date Valuation").

(iii) For purposes of a potential True-Up Transfer as defined in Section 5.02(b)(iv), the SpinCo Pension Assets shall be an amount approved by the Employee Benefits Committee of the Parent based on the value of the SpinCo Pension Plans' interest in the Parent Master Trust based on the Distribution Date Valuation and, to the extent necessary, shall be adjusted to take into account any contributions or benefit payments, in either case to be made from the Parent Master Trust after the Distribution Date on behalf of the SpinCo Pension Plans and third-party fees, costs and expenses including Trustee, investment management, Trustee and administration and other similar fees incurred or due in respect of the Parent Master Trust for periods prior to the Effective Time (such adjusted amount, the "Final SpinCo Pension Assets").

(iv) To the extent that the Assets transferred to the SpinCo Master Trust in connection with the Initial Transfer as of the Distribution Date, as determined in accordance with Section 5.02(b)(i) (A) exceed the Final SpinCo Pension Assets, the trustee on behalf of the SpinCo Master Trust shall transfer Assets to the Parent Master Trust equal to such excess or (B) fall short of the Final SpinCo Pension Assets, the Trustee on behalf of the Parent Master Trust shall transfer Assets to the SpinCo Master Trust equal to such shortfall (such subsequent transfer described in this Section 5.02(b)(iv)(A) and (B), the “True-Up Transfer”). Such True-Up Transfer, if any, shall be made within twenty (20) business days following the receipt by the Parent of the Distribution Date Valuation. The Employee Benefits Committee of the Parent shall approve the amount, if any, subject to the True-Up Transfer.

(v) The Initial Transfer shall, to the extent practicable, be made in kind (on a pro rata basis). By way of illustration, if the Parent Master Trusts holds 100 units of a collective investment fund ABC and the SpinCo Pension Assets constitute 7% of the Assets of the Parent Master Trust as of the Initial Transfer, seven units of collective investment fund ABC shall be transferred from the Parent Master Trust to the SpinCo Master Trust on the Distribution Date.

(vi) With respect to the Initial Transfer, to the extent it is not practicable to transfer Assets in kind (on a pro rata basis) as determined by the Trustee, investment advisor or manager to the Parent Master Trust and agreed by the Employee Benefits Committee of the Parent (e.g., due to Assets held as fractional shares, Assets held in cash, minimum investment requirements or any similar restrictions or circumstances), such transfer shall be made in cash and if such cash transfer is delayed beyond the Initial Transfer Date, plus simple interest (using the one-month Treasury rate in effect on the Initial Transfer Date) from the Initial Transfer Date through the date immediately preceding the date of transfer. Any True-Up Transfer shall also be made in cash plus simple interest (using the one-month Treasury Rate in effect on the Initial Transfer Date) from the Initial Transfer Date through the date immediately preceding the date of transfer.

(vii) For the avoidance of doubt, the insurance company separate accounts for each of the plans held in the Parent Master Trust prior to the Distribution Date do not constitute Assets of the Parent Master Trust and are held directly by each of the plans that participate in the Parent Master Trust.

(viii) As soon as practicable following any transfers made pursuant to this Section 5.02(b), the Parent Group shall deliver to the SpinCo Group copies of relevant valuation reports used by the Parent Group to make the determinations required by this Section 5.02(b) and any other supporting information as may be reasonably requested by SpinCo. The Parties shall cooperate in making any subsequent adjustments with respect to fees and expenses incurred by the Parent Master Trust prior to the Effective Time with respect to the Assets attributable to the SpinCo Pension Plans.



(c) *Plan Fiduciaries.* For all periods at and after the Effective Time and except as otherwise set forth in this Section 5.02, the parties agree that the applicable fiduciaries of each of the Parent Pension Plans and the SpinCo Pension Plans, respectively, shall have the authority with respect to the Parent Pension Plans and the SpinCo Pension Plans, respectively, to determine the investments and such other matters as are within the scope of their duties under ERISA and the terms of the applicable plan documents. Prior to the Effective Time, SpinCo shall or shall cause the appropriate members of the SpinCo Group to establish an Employee Benefit Committee as a fiduciary with respect to the SpinCo Pension Plans and SpinCo Master Trust and such committee shall have the authority to take the necessary action to establish an investment policy effective as of the Effective Time.

Section 5.03 SpinCo 401(k) Plans.

(a) *Establishment of Plan.* Effective on or before the Distribution Date, SpinCo shall or shall cause the members of the SpinCo Group to, adopt and establish a SpinCo 401(k) Plan and a related trust (the "SpinCo 401(k) Trust"), which shall be intended to meet the tax qualification requirements of Section 401(a) of the Code, the tax exemption requirement of Section 501(a) of the Code, and the requirements described in Sections 401(k) and (m) of the Code and which shall have substantially the similar terms in all material respects as of immediately prior to the Distribution Date as the Parent 401(k) Plan. Notwithstanding the foregoing, SpinCo may make such changes, modifications or amendments to the SpinCo 401(k) Plan as may be required by applicable Law or as are necessary and appropriate to reflect the Separation or which result from vendor limitations.

(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 the Parent 401(k) Plan to transfer from the trust which forms a part of the Parent 401(k) Plan to the SpinCo 401(k) Trust, the account balances of SpinCo Group Employees under the Parent 401(k) Plan, determined as of the date of the transfer. Unless otherwise agreed by the Parties, such transfers shall be made in kind, including promissory notes evidencing the transfer of outstanding loans and, with respect to investments in the MDU Resources Common Stock (the "Parent Share Fund"), such transfer shall include Parent Shares and, if applicable, SpinCo Shares. Any Asset and Liability transfers pursuant to this Section 5.03 shall comply in all respects with Sections 414(l) and 411(d)(6) of the Code and, if required, shall be made not less than thirty (30) days after Parent shall have filed the notice under Section 6058(b) of the Code with respect to the applicable Parent 401(k) Plan. The Parties agree that to the extent that any Assets are not transferred in kind, the Assets transferred will be mapped into an appropriate investment vehicle. The SpinCo 401(k) Plan shall assume and honor the terms of all QDROs in effect under the Parent 401(k) Plan in respect of SpinCo Group Employees immediately prior to the Effective Time.

(c) *Transfer of Liabilities.* Effective as of the Effective Time or if earlier, the date of transfer under Section 5.03(b) but subject to the Asset transfer specified in Section 5.03(b) above and retirement contribution described in Section 5.03(d), the SpinCo 401(k) Plan shall assume and be solely responsible for all the Liabilities for or relating to SpinCo Group Employees under the 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 the SpinCo 401(k) Plan.

(d) *Employer Contributions.* As soon as practical following the Distribution Date, Parent shall make a pro rata retirement contribution to the SpinCo 401(k) Plan for each SpinCo Group Employee who transferred to the SpinCo Group prior to the Distribution Date for the portion of the current plan year of the Parent 401(k) Plan that has elapsed since January 1, 2023 until the date such SpinCo Group Employee transferred to the SpinCo Group (with the level of such retirement contribution based on the terms of the Parent 401(k) Plan).

(e) *SpinCo Share Fund in SpinCo 401(k) Plan.* The SpinCo 401(k) Plan shall provide, effective as of the Effective Time: (i) for the establishment of a share fund for SpinCo Shares (the "SpinCo Share Fund"); (ii) that such SpinCo Share Fund shall receive all SpinCo Shares distributed in connection with the Distribution in respect of Parent Shares held in SpinCo 401(k) Plan accounts of SpinCo Group Employees and Former SpinCo Group Employees participating in the SpinCo 401(k) Plan immediately prior to the Effective Time; and (iii) that, following the Effective Time, contributions made by or on behalf of such participants shall be allocated to the SpinCo Share Fund, if so directed in accordance with the terms of the SpinCo 401(k) Plan.

(f) *Parent Share Fund in SpinCo 401(k) Plan.* Participants in the SpinCo 401(k) Plan shall be prohibited from increasing their holdings in the Parent Share Fund under the SpinCo 401(k) Plan and may elect to liquidate their holdings in the Parent Share Fund and invest those monies in any other investment fund offered under the SpinCo 401(k) Plan. After the Effective Time, all outstanding investments in the Parent Share Fund under the SpinCo 401(k) Plan shall be liquidated and reinvested in other investment funds offered under the SpinCo 401(k) Plan, on such dates and in accordance with such procedures as are determined by the administrator of the SpinCo 401(k) Plan.

(g) *SpinCo Share Fund in Parent 401(k) Plan.* SpinCo Shares distributed in connection with the Distribution in respect of Parent Shares transferred to the Parent 401(k) Plan accounts of Parent Group Employees or Former Parent Group Employees who participate in the Parent 401(k) Plan shall be deposited in a SpinCo Share Fund under the Parent 401(k) Plan, and such participants in the Parent 401(k) Plan shall be prohibited from increasing their holdings in such SpinCo Share Fund under the Parent 401(k) Plan and may elect to liquidate their holdings in such SpinCo Share Fund and invest those monies in any other investment fund offered under the Parent 401(k) Plan. After the Effective Time, all outstanding investments in the SpinCo Share Fund under the Parent 401(k) Plan shall be liquidated and reinvested in other investment funds offered under the Parent 401(k) Plan, on such dates and in accordance with such procedures as are determined by the administrator of the Parent 401(k) Plan.

(h) *Plan Fiduciaries.* For all periods at and after the Effective Time, the parties agree that the applicable fiduciaries of each of the Parent 401(k) Plans and the SpinCo 401(k) Plans, respectively, shall have the authority with respect to the Parent 401(k) Plans and the SpinCo 401(k) Plans, respectively, to determine the investment alternatives, the terms and conditions with respect to those investment alternatives and such other matters as are within the scope of their duties under ERISA and the terms of the applicable plan documents.

Article VI  
NONQUALIFIED DEFERRED COMPENSATION PLANS

Section 6.01 Deferred Compensation Plans.

(a) *Establishment of Plans*. As of no later than the Effective Time, SpinCo shall establish a SpinCo Deferred Compensation Plan corresponding to each Parent Nonqualified Deferred Compensation Plan, and each SpinCo Nonqualified Deferred Compensation Plan shall have substantially the same terms as of the effective date of such SpinCo Nonqualified Deferred Compensation Plan as the corresponding Parent Nonqualified Deferred Compensation Plan. SpinCo may make such changes, modifications or amendments to each SpinCo Nonqualified Deferred Compensation Plan as may be required by applicable Law or as are necessary and appropriate to reflect the Separation, it being understood that any such changes, modifications or amendments shall not result in benefits that are less favorable than those provided under the corresponding Parent Nonqualified Deferred Compensation Plan to participants in such Parent Nonqualified Deferred Compensation Plan immediately prior to the effective date of the SpinCo Nonqualified Deferred Compensation Plan.

(b) *Assumption of Liabilities in General*. No later than the Effective Time, except as otherwise provided in this Section 6.01, SpinCo shall, and shall cause the SpinCo Nonqualified Deferred Compensation Plans to, assume all Liabilities under each Parent Nonqualified Deferred Compensation Plan for the benefits of SpinCo Group Employees and Former SpinCo Group Employees, determined as of immediately prior to the effective date of such SpinCo Nonqualified Deferred Compensation Plan, and the Parent Group and the Parent Nonqualified Deferred Compensation Plans shall be relieved of all Liabilities for those benefits. Parent shall, or shall cause a member of the Parent Group to, assume and retain all Liabilities under the Parent Nonqualified Deferred Compensation Plans for the benefits of Parent Group Employees and Former Parent Group Employees. On and after the effective date of each SpinCo Nonqualified Deferred Compensation Plan, SpinCo Group Employees and Former SpinCo Group Employees shall cease to be participants in the corresponding Parent Nonqualified Deferred Compensation Plan.

(c) *Establishment of Rabbi Trusts*.

(i) Deferred Compensation Rabbi Trust. No later than the Effective Time, SpinCo shall, or shall cause a member of the Spin Group to, adopt a rabbi trust with respect to the SpinCo Deferred Compensation Plan (which plan shall be adopted pursuant to Sections 2.02(a) and 6.01(a)) (the "SpinCo Deferred Compensation Plan Rabbi Trust"), the terms of which rabbi trust shall be substantially comparable as of the date that such rabbi trust is formed to the terms of the rabbi trust for the MDU Resources Group, Inc. Deferred Compensation Plan (the "Parent Deferred Compensation Plan Rabbi Trust") to the extent that such terms of the Parent Deferred Compensation Rabbi Trust relate to obligations in respect of the MDU Resources Group, Inc. Deferred Compensation Plan, with such changes, modifications or amendments to the SpinCo Deferred Compensation Plan Rabbi Trust as may be required by applicable Law. In connection with the establishment by SpinCo of the SpinCo Deferred Compensation Plan and the assumption by SpinCo and the SpinCo Deferred Compensation Plan of the Liabilities under the MDU Resources Group, Inc. Deferred Compensation Plan in respect of the SpinCo Group Employees and Former SpinCo Group Employees, Parent shall transfer from the Parent Deferred Compensation Plan Rabbi Trust to the SpinCo Deferred Compensation Plan Rabbi Trusts a pro rata portion of the Assets held by the Parent Deferred Compensation Rabbi Trust based on the ratio of the bookkeeping account balances of the SpinCo Group Employees and Former SpinCo Group Employees to the bookkeeping account balances of all Employees and Former Employees under the MDU Resources Group, Inc. Deferred Compensation Plan as of the last business day prior to the date of transfer.

(ii) Benefit Protection Rabbi Trust. No later than the Effective Time and in accordance with the Plan of Reorganization, a member of the SpinCo Group shall have adopted a rabbi trust with respect to the SpinCo Supplemental Income Security Plan and the SpinCo Nonqualified Defined Compensation Plan (which plans shall be adopted pursuant to Sections 2.02(a) and 6.01(a)) (the “SpinCo Benefit Protection Rabbi Trust”), the terms of which shall be substantially comparable as of the date that such rabbi trust is formed to the terms of the rabbi trust for the MDU Resources Group, Inc. Supplemental Income Security Plan and the MDU Resources Group, Inc. Nonqualified Defined Compensation Plan (the “Parent Benefit Protection Rabbi Trust”), to the extent that such terms of the Parent Benefit Protection Rabbi Trust relate to obligations in respect of the MDU Resources Group, Inc. Supplemental Income Security Plan and the MDU Resources Group, Inc. Nonqualified Defined Compensation Plan, with such changes, modifications or amendments to the SpinCo Benefit Protection Rabbi Trust as may be required by applicable Law. In connection with the Plan of Reorganization and the establishment by a member of the SpinCo Group of the SpinCo Benefit Protection Rabbi Trust and the assumption by SpinCo and the SpinCo Supplemental Income Security Plan and the SpinCo Nonqualified Defined Contribution Plan of the Liabilities under the MDU Resources Group, Inc. Supplemental Income Security Plan and the MDU Resources Group, Inc. Nonqualified Defined Contribution Plan in respect of the SpinCo Group Employees and Former SpinCo Group Employees, such trust shall have received Assets from the Parent Benefit Protection Trust in such amounts as determined by Parent.

Section 6.02 Director Deferred Compensation.

(a) *Establishment of SpinCo Director Deferred Compensation Plan*. As of no later than the Effective Time, SpinCo shall establish the SpinCo Director Deferred Compensation Plan, which plan shall have substantially the same terms as of immediately prior to the Effective Time as the Parent Director Deferred Compensation Plan. SpinCo may make such changes, modifications or amendments to the SpinCo Director Deferred Compensation Plan as may be required by applicable Law or as are necessary and appropriate to reflect the Separation, it being understood that any such changes, modifications or amendments shall not result in benefits that are less favorable than those provided under the Parent Director Deferred Compensation Plan to Transferred Directors who participated in the Parent Director Deferred Compensation Plan immediately prior to the Effective Time.

(b) *Liability for Director Deferred Compensation Plan Accounts*. As of the Effective Time, except as otherwise provided in this Section 6.02, SpinCo shall, and shall cause the SpinCo Director Deferred Compensation Plan to, assume all Liabilities under the Parent Director Deferred Compensation Plan for the benefits of Transferred Directors, determined as of immediately prior to the Effective Time, and the Parent Group and the Parent Director Deferred Compensation Plan shall be relieved of all Liabilities for those benefits. Parent shall assume and retain all Liabilities under the Parent Director Deferred Compensation Plans the benefits of Parent Directors and all nonemployee directors who ceased serving on the Parent Board prior to the Effective Time. On and after the Effective Time, Transferring Directors shall cease to be participants in the Parent Director Deferred Compensation Plan.

(c) *Adjustment Methodology*. All deferred stock units notionally credited to a participant's account under the Parent Director Deferred Compensation Plan immediately prior to the Effective Time shall be adjusted from and after the Effective Time so that (i) with respect to a participant in the Parent Director Deferred Compensation Plan immediately following the Effective Time, such deferred stock units shall continue to relate solely to Parent Shares and the number of deferred stock units notionally credited as of the Effective Time under the Parent Director Deferred Compensation Plan shall be equal to the product, rounding down to the nearest whole number of shares, obtained by multiplying (A) the number of Parent Shares underlying deferred stock units notionally credited to such participant's account under the Parent Director Deferred Compensation Plan immediately prior to the Effective Time by (B) the Parent Ratio, and (ii) with respect to a participant in the SpinCo Director Deferred Compensation Plan immediately following the Effective Time, such deferred stock units shall relate solely to SpinCo Shares and the number of deferred stock units notionally credited as of the Effective Time under the SpinCo Director Deferred Compensation Plan shall be equal to the product, rounding down to the nearest whole number of shares, obtained by multiplying (A) the number of Parent Shares underlying deferred stock units notionally credited to such participant's account under the Parent Director Deferred Compensation Plan immediately prior to the Effective Time by (B) the SpinCo Ratio.

Section 6.03 Participation; Distributions. The Parties acknowledge that none of the transactions contemplated by this Agreement, the Separation and Distribution Agreement or any Ancillary Agreement shall trigger a payment or distribution of compensation for any participant under any of the Parent Nonqualified Deferred Compensation Plans, SpinCo Nonqualified Deferred Compensation Plans, Parent Director Deferred Compensation Plan, or SpinCo Director Deferred Compensation Plan and, consequently, that the payment or distribution of any compensation to which such participant is entitled under any such plan shall occur upon such participant's separation from service from the Parent Group or SpinCo Group or at such other time as provided in the applicable deferred compensation plan or participant's deferral election.

Article VII  
WELFARE BENEFIT PLANS

Section 7.01 Welfare Plans.

(a) *Establishment of SpinCo Welfare Plans*. Except as otherwise provided in this Article VII, as of or before the Effective Time, SpinCo shall, or shall cause the members of the SpinCo Group to establish the SpinCo Welfare Plans pursuant to Section 2.03(a) that generally correspond to the Parent Welfare Plans in which such SpinCo Group Employees participate immediately prior to the Effective Time, with such changes, modifications or amendments as may be required by applicable Law or as are necessary and appropriate to reflect the Separation. In addition, SpinCo or members of the SpinCo Group shall retain the right to modify, amend, alter or terminate the terms of any SpinCo Welfare Plan after the Effective Time to the same extent that the Parent Group had such rights under the corresponding Parent Welfare Plan. For the avoidance of doubt, to the extent that SpinCo maintains SpinCo Welfare Plans for SpinCo Group Employees and Former SpinCo Group Employees prior to the Distribution Date, SpinCo may continue to provide such SpinCo Welfare Plans after the Effective Time, including with the same level of benefits, employee premiums, copays and deductibles in effect immediately prior to the Distribution Date.

(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](#) or in the proviso to this sentence, 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 Employees or Former Employees under the Parent Welfare Plans before the Effective Time; provided that the SpinCo Group shall retain or assume, as applicable, Liabilities relating to, arising out of or resulting from group health coverage or claims incurred by or on behalf of SpinCo Group Employees or Former SpinCo Group Employees before the Effective Time. Promptly after the receipt by Parent of a rebate or credit as a result of an administrative performance guarantee for 2022 plan year with respect to the group health plan, Parent shall pay to SpinCo its pro rata share on such basis as determined by Parent. 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, Dental, Vision, AD&D, and Life Plans.

(a) *Treatment of VEBA Trust.* Immediately prior to the Effective Time, the SpinCo Group shall withdraw and cease to be a participating employer in the MDU Resources Group, Inc. Retiree Benefit VEBA.

(b) *SpinCo Group Employees.* Effective as of the Distribution Date, SpinCo shall assume and retain all Liabilities for retiree medical, dental, vision, AD&D, or life benefits with respect to SpinCo Group Employees and Former SpinCo Group Employees, including those who are eligible for benefits under a Parent Retiree Welfare Plan (other than a SpinCo Group Employee who has attained age 60 with at least 10 years of service and who has elected prior to the Effective Time to be covered under a Parent Retiree Plan). As of the Distribution Date, with respect to a SpinCo Group Employee who was eligible under a Parent Retiree Welfare Plan as of immediately prior to the Distribution Date (other than a SpinCo Group Employee who makes the election described in the preceding sentence), SpinCo shall cause such employee to be eligible for benefits and coverage under a SpinCo Retiree Welfare Plan.

(c) *Parent Group Employees.* Effective as of the Distribution Date, Parent shall assume and retain all Liabilities for retiree medical, dental, vision, AD&D, or life benefits with respect to Parent Group Employees and Former Parent Group Employees and any SpinCo Group Employee who has attained age 60 with at least 10 years of service and who has elected prior to the Effective Time to be covered under a Parent Retiree Plan. As of the Distribution Date, with respect to a Parent Group Employee who was eligible under a SpinCo Retiree Welfare Plan as of immediately prior to the Distribution Date, Parent shall cause such employee to be eligible for benefits and coverage under a Parent Retiree Welfare Plan.

Section 7.03 COBRA. The Parent Group shall continue to be responsible for complying with, and providing coverage pursuant to, the health care continuation requirements of COBRA, and the corresponding provisions of the Parent Welfare Plans with respect to any Parent Group Employees and any Former Parent Group Employees (and their covered dependents) who experience a qualifying event under COBRA before, as of, or after the Effective Time. 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 (but only to the extent such accounts under the Parent Welfare Plans are not already maintained by SpinCo). 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. In addition, Parent shall provide to SpinCo a cash payment equal to any forfeitures under the Parent cafeteria plan attributable to SpinCo Group Employees and Former SpinCo Group Employees for the plan years ending prior to the Distribution Date that have a Covid-19 extension for making claims, with such cash payment to be made by Parent as soon as practical following resolution of such extended claim periods.

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 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 that 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 that 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 that 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.

Section 7.06 Vacation, Holidays, PTO 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, PTO, annual leave or other leave of absence, and required payments related thereto, for each SpinCo Group Employee, unless otherwise required by applicable Law; provided that the Parent Group shall pay to each SpinCo Group Employee who was covered under a Parent Group vacation policy prior to the Distribution Date such employee’s vacation accrual to the extent such amount exceeds the maximum amount allowed under the SpinCo vacation policy or to the extent such employee elected to sell vacation prior to the Distribution Date and has not yet been paid. 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. For the avoidance of doubt, to the extent that SpinCo maintains SpinCo Welfare Plans providing vacation, holiday, PTO, annual leave or other leave of absence prior to the Distribution Date, SpinCo may continue such arrangements with the same level of benefits after the Effective Time.



Section 7.07 Workers' Compensation. The treatment of workers' compensation claims shall be governed by Section 5.1 of the Separation and Distribution Agreement.

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. Except as expressly set forth in this Agreement, 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. Except as expressly set forth in this Agreement, 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 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 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:

MDU Resources Group, Inc.

1200 West Century Avenue

P.O. Box 5650

Bismarck, North Dakota 58506

Attention: Paul R. Sanderson, Vice President, Chief Legal Officer, and Secretary

E-mail: paul.sanderson@mduresources.com

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

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street

New York, New York 10019

Attention: Andrew R. Brownstein

John L. Robinson

E-mail: ARBrownstein@wlrk.com

JLRobinson@wlrk.com

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

Knife River Holding Company  
1150 West Century Avenue  
P.O. Box 5568  
Bismarck, North Dakota 58503  
Attention: Karl A. Liepitz, General Counsel & Corporate Secretary  
E-mail: karl.liepitz@mduresources.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Andrew R. Brownstein  
John L. Robinson  
E-mail: ARBrownstein@wlrk.com  
JLRobinson@wlrk.com

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

Knife River Holding Company  
1150 West Century Avenue  
P.O. Box 5568  
Bismarck, North Dakota 58503  
Attention: Karl A. Liepitz, Chief Legal Counsel  
E-mail: karl.liepitz@kniferiver.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Andrew R. Brownstein  
John L. Robinson  
E-mail: ARBrownstein@wlrk.com  
John L. Robinson

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

Section 8.09 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties.

Section 8.10 Force Majeure. No Party shall be deemed in default of this Agreement or, unless otherwise expressly provided therein, any Ancillary Agreement for any delay or failure to fulfill any obligation (other than a payment obligation) hereunder or thereunder so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. In the event of any such excused delay, the time for performance of such obligations (other than a payment obligation) shall be extended for a period equal to the time lost by reason of the delay. A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to the other Party of the nature and extent of any such Force Majeure condition; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement and the Ancillary Agreements, as applicable, as soon as reasonably practicable.

Section 8.11 Headings. The article, section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.12 Survival of Covenants. Except as expressly set forth in this Agreement, the covenants, representations and warranties contained in this Agreement, and Liability for the breach of any obligations contained herein, shall survive the Separation and Distribution and shall remain in full force and effect.

Section 8.13 Waivers of Default. Waiver by a Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of the other Party. No failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 8.14 Dispute Resolution. The dispute resolution procedures set forth in Article VII of the Separation and Distribution Agreement shall apply to any dispute, controversy or claim arising out of or relating to this Agreement.

Section 8.15 Specific Performance. Subject to the provisions of Article VII of the Separation and Distribution Agreement, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the Party or Parties who are, or are to be, thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief in respect of its or their rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The Parties agree that the remedies at law for any breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived by each of the Parties.

Section 8.16 Amendments. No provisions of this Agreement shall be deemed waived, amended, supplemented or modified by a Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of the Party against whom it is sought to enforce such waiver, amendment, supplement or modification.

Section 8.17 Interpretation. In this Agreement, (a) words in the singular shall be deemed to include the plural and vice versa, and words of one gender shall be deemed to include the other genders as the context requires; (b) the terms “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules, Exhibits and Appendices hereto and thereto) and not to any particular provision of this Agreement; (c) Article, Section, Schedule, Exhibit and Appendix references are to the Articles, Sections, Schedules, Exhibits and Appendices to this Agreement unless otherwise specified; (d) unless otherwise stated, all references to any agreement (including this Agreement and each Ancillary Agreement) shall be deemed to include the exhibits, schedules and annexes (including all Schedules, Exhibits and Appendices) to such agreement; (e) the word “including” and words of similar import when used in this Agreement (or the applicable Ancillary Agreement) shall mean “including, without limitation,” unless otherwise specified; (f) the word “or” shall not be exclusive; (g) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if”; (h) unless otherwise specified in a particular case, the word “days” refers to calendar days; (i) references to “business day” shall mean any day other than a Saturday, a Sunday or a day on which banking institutions are generally authorized or required by law to close in the United States or Bismarck, North Dakota; (j) 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 (k) 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 May 30, 2023.

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]*

above. 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

MDU RESOURCES GROUP, INC.

By: /s/ David L. Goodin

Name: David L. Goodin

Title: President and Chief Executive Officer

---

above. 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

KNIFE RIVER HOLDING COMPANY

By: /s/ Brian R. Gray  
Name: Brian R. Gray  
Title: President and Chief Executive Officer

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**CREDIT AGREEMENT  
DATED AS OF MAY 31, 2023**

**AMONG**

**KNIFE RIVER HOLDING COMPANY,  
AS THE BORROWER,**

**JPMORGAN CHASE BANK, N.A.,  
AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT**

**AND**

**THE LENDERS AND L/C ISSUERS PARTY HERETO**

---

**JPMORGAN CHASE BANK, N.A.,  
BOFA SECURITIES, INC.,  
MUFG BANK, LTD.,  
RBC CAPITAL MARKETS<sup>1</sup>,  
U.S. BANK NATIONAL ASSOCIATION  
AND  
WELLS FARGO SECURITIES, LLC,  
AS JOINT LEAD ARRANGERS, JOINT BOOKRUNNERS AND CO-SYNDICATION AGENTS**

**AND**

**TD BANK N.A.,  
AS DOCUMENTATION AGENT**

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<sup>1</sup> RBC Capital Markets is a brand name for the capital markets business of Royal Bank of Canada and its affiliates.

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I DEFINITIONS AND ACCOUNTING TERMS	1
Section 1.01	1
Section 1.02	94
Section 1.03	97
Section 1.04	98
Section 1.05	98
Section 1.06	98
Section 1.07	98
Section 1.08	98
Section 1.09	99
Section 1.10	99
Section 1.11	100
Section 1.12	100
Section 1.13	101
ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS	101
Section 2.01	101
Section 2.02	102
Section 2.03	104
Section 2.04	113
Section 2.05	113
Section 2.06	117
Section 2.07	119
Section 2.08	119
Section 2.09	120
Section 2.10	120
Section 2.11	121
Section 2.12	122
Section 2.13	124
Section 2.14	124
Section 2.15	132
Section 2.16	134
Section 2.17	135
Section 2.18	137
Section 2.19	140
Section 2.20	143
ARTICLE III TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY	144
Section 3.01	144
Section 3.02	148
Section 3.03	148
Section 3.04	149
Section 3.05	151
Section 3.06	152

Section 3.07	Matters Applicable to All Requests for Compensation	152
Section 3.08	Replacement of Lenders under Certain Circumstances	154
ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS		155
Section 4.01	Conditions to the Initial Credit Extension on the Closing Date	155
Section 4.02	Conditions to All Credit Extensions	158
ARTICLE V REPRESENTATIONS AND WARRANTIES		158
Section 5.01	Existence, Qualification and Power; Compliance with Laws	158
Section 5.02	Authorization; No Contravention	159
Section 5.03	Governmental Authorization; Other Consents	159
Section 5.04	Binding Effect	159
Section 5.05	Financial Statements; No Material Adverse Effect	159
Section 5.06	Litigation	160
Section 5.07	Use of Proceeds	160
Section 5.08	Ownership of Property; Liens	160
Section 5.09	Environmental Compliance	161
Section 5.10	Taxes	161
Section 5.11	Employee Benefit Plans	161
Section 5.12	Subsidiaries; Capital Stock	162
Section 5.13	Margin Regulations; Investment Company Act	162
Section 5.14	Disclosure	163
Section 5.15	Compliance with Laws	163
Section 5.16	Intellectual Property; Licenses, Etc.	163
Section 5.17	Solvency	163
Section 5.18	Perfection, Etc.	164
Section 5.19	Sanctions; OFAC	164
Section 5.20	Anti-Corruption Laws	164
Section 5.21	No Default	164
ARTICLE VI AFFIRMATIVE COVENANTS		165
Section 6.01	Financial Statements	165
Section 6.02	Certificates; Other Information	167
Section 6.03	Notices	168
Section 6.04	Payment of Taxes	169
Section 6.05	Preservation of Existence, Etc.	169
Section 6.06	Maintenance of Properties	169
Section 6.07	Maintenance of Insurance	169
Section 6.08	Compliance with Laws	170
Section 6.09	Books and Records	170
Section 6.10	Inspection Rights	170
Section 6.11	Use of Proceeds	170
Section 6.12	Covenant to Guarantee Obligations and Give Security	171
Section 6.13	Compliance with Environmental Laws	172
Section 6.14	Further Assurances	172
Section 6.15	Maintenance of Ratings	173
Section 6.16	Post-Closing Undertakings	173
Section 6.17	No Change in Line of Business	173
Section 6.18	Transactions with Affiliates	173

ARTICLE VII NEGATIVE COVENANTS		177
Section 7.01	Indebtedness	177
Section 7.02	Limitations on Liens	184
Section 7.03	Fundamental Changes	184
Section 7.04	Asset Dispositions	185
Section 7.05	Restricted Payments	187
Section 7.06	Burdensome Agreements	196
Section 7.07	Accounting Changes	198
Section 7.08	Financial Covenant	199
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES		199
Section 8.01	Events of Default	199
Section 8.02	Remedies upon Event of Default	202
Section 8.03	[Reserved]	202
Section 8.04	Application of Funds	202
ARTICLE IX ADMINISTRATIVE AGENT AND OTHER AGENTS		204
Section 9.01	Appointment and Authorization of Agents	204
Section 9.02	Delegation of Duties	205
Section 9.03	Liability of Agents	205
Section 9.04	Reliance by Agents	207
Section 9.05	Notice of Default	207
Section 9.06	Credit Decision; Disclosure of Information by Agents	208
Section 9.07	Indemnification of Agents	208
Section 9.08	Agents in Their Individual Capacities	209
Section 9.09	Successor Agents	209
Section 9.10	Administrative Agent May File Proofs of Claim	210
Section 9.11	Collateral and Guaranty Matters	211
Section 9.12	Other Agents; Arranger and Managers	214
Section 9.13	Secured Cash Management Agreements and Secured Hedge Agreements	214
Section 9.14	Appointment of Supplemental Agents, Incremental Arrangers, Incremental Equivalent Debt Arrangers and Specified Refinancing Agents	214
Section 9.15	Intercreditor Agreement	216
Section 9.16	Withholding Tax	216
Section 9.17	Credit Bidding	217
Section 9.18	Certain ERISA Matters	218
Section 9.19	Erroneous Payments	219
ARTICLE X MISCELLANEOUS		221
Section 10.01	Amendments, Etc.	221
Section 10.02	Notices; Electronic Communications	224
Section 10.03	No Waiver; Cumulative Remedies; Enforcement	226
Section 10.04	Expenses	227
Section 10.05	Indemnification by the Borrower	228
Section 10.06	Payments Set Aside	229
Section 10.07	Successors and Assigns	229
Section 10.08	Confidentiality	237
Section 10.09	Setoff	238
Section 10.10	Interest Rate Limitation	239

Section 10.11	Counterparts	239
Section 10.12	Integration; Effectiveness	239
Section 10.13	Survival of Representations and Warranties	239
Section 10.14	Severability	239
Section 10.15	Governing Law; Jurisdiction; Etc.	240
Section 10.16	Service of Process	240
Section 10.17	Waiver of Right to Trial by Jury	241
Section 10.18	Binding Effect	241
Section 10.19	No Advisory or Fiduciary Responsibility	241
Section 10.20	Affiliate Activities	242
Section 10.21	Electronic Execution of Assignments and Certain Other Documents	242
Section 10.22	USA PATRIOT Act	242
Section 10.23	Judgment Currency	242
Section 10.24	Acknowledgement and Consent to Bail-In of Affected Financial Institutions	243
Section 10.25	Acknowledgement Regarding Any Supported QFCs	243

SCHEDULES

1.01(a)	Subsidiary Guarantors
1.01(b)	Contracts Prohibiting Subsidiary Guarantees
1.01(c)	Closing Date L/C Issuers and Letter of Credit Sublimits
1.01(d)	Closing Date Liens
1.01(e)	Closing Date Investments
1.01(f)	Existing Letters of Credit
2.01	Commitments and Pro Rata Shares
5.12	Restricted Subsidiaries
5.16	Intellectual Property Matters
6.16	Post-Closing Undertakings
7.01	Closing Date Indebtedness
10.02	Administrative Agent's Office, Certain Addresses for Notices

EXHIBITS

Form of

A-1	Committed Loan Notice
A-2	Request for L/C Credit Extension
B-1	Term Note
B-2	Revolving Credit Note
C	Compliance Certificate
D	Assignment and Assumption
E	Administrative Questionnaire
F-1	First Lien/Second Lien Intercreditor Agreement
F-2	First Lien Pari Passu Intercreditor Agreement
G	Intercompany Subordination Agreement
H-1	U.S. Tax Compliance Certificate (For Non-U.S. Lenders That Are Not Partnerships for U.S. Federal Income Tax Purposes)
H-2	U.S. Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)
H-3	U.S. Tax Compliance Certificate (For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)
H-4	U.S. Tax Compliance Certificate (For Non-U.S. Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)
I	Optional Prepayment of Loans
J	Solvency Certificate
K	Agency Appointment Agreement

This **CREDIT AGREEMENT** is entered into as of May 31, 2023, among KNIFE RIVER HOLDING COMPANY, a Delaware corporation (to be renamed Knife River Corporation on the Spin-Off Date (as defined below)) (the “**Company**”), each lender from time to time party hereto (collectively, the “**Lenders**” and, each individually, a “**Lender**”), each L/C Issuer party hereto and JPMORGAN CHASE BANK, N.A. (“**JPM**”), as Administrative Agent and Collateral Agent.

## PRELIMINARY STATEMENTS

WHEREAS, the Borrower intends to undertake the Transactions (as defined below).

WHEREAS, in connection with the Transactions, and in its capacity as the Borrower hereunder, the Borrower has requested that, upon the satisfaction (or waiver by the Administrative Agent) in full of the conditions precedent set forth in the applicable provisions of Article IV below, the applicable Lenders (a) make initial term loans to the Borrower in an aggregate principal amount of \$275,000,000 under the Initial Term Commitment and (b) make available to the Borrower an initial \$350,000,000 revolving credit facility for the making, from time to time, of revolving loans and the issuance, from time to time, of Letters of Credit, in each case on the terms and subject to the conditions set forth in this Agreement.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“**7.750% Notes**” means the 7.750% notes due 2031 of the Borrower in an aggregate principal amount of \$425,000,000.

“**7.750% Notes Indenture**” means the Indenture, dated as of April 25, 2023, by and among the Borrower, the guarantors party thereto from time to time and U.S. Bank Trust Company, National Association, as trustee, pursuant to which the 7.750% Notes are issued, as such indenture may be amended or supplemented from time to time.

“**7.750% Notes Documents**” means the 7.750% Notes Indenture and the other transaction documents referred to therein (including any related guarantee, the notes and the notes purchase agreement).

“**ABR**” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate.

“**ABR Loan**” means a Loan that bears interest based on ABR.

“**Acceleration**” has the meaning specified in Section 8.01(e)(C).

“**Acceptable Commitment**” has the meaning specified in Section 7.04(a)(3)(b).

“**Accounting Change**” has the meaning specified in the definition of “GAAP”.

---

“**Acquired EBITDA**” means, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary for any period, the amount for such period of Consolidated EBITDA of such Acquired Entity or Business or Converted Restricted Subsidiary, as applicable, all determined on a consolidated basis for such Acquired Entity or Business or Converted Restricted Subsidiary, as applicable.

“**Acquired Entity or Business**” has the meaning specified in the definition of the term “Consolidated EBITDA”.

“**Acquired Indebtedness**” means, with respect to any Person, (x) Indebtedness of any other Person or any of its Subsidiaries existing at the time such other Person becomes a Restricted Subsidiary or merges or amalgamates with or into or consolidates or otherwise combines with the Borrower or any Restricted Subsidiary and (y) Indebtedness secured by a Lien encumbering any asset acquired by such Person. Acquired Indebtedness shall be deemed to have been incurred, with respect to clause (x) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary or on the date of the relevant merger, amalgamation, consolidation, acquisition or other combination.

“**Acquisition Indebtedness**” means any Indebtedness incurred in connection with an acquisition or Investment permitted hereunder.

“**Additional Assets**” means:

(1) any property or assets (other than Capital Stock) used or to be used by the Borrower, a Restricted Subsidiary or otherwise useful in a Similar Business (it being understood that capital expenditures on property or assets already used in a Similar Business or to replace any property or assets that are the subject of such Asset Disposition shall be deemed an investment in Additional Assets);

(2) the Capital Stock of a Person that is engaged in a Similar Business and becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Borrower or a Restricted Subsidiary; or

(3) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary.

“**Adjusted Daily Simple SOFR**” means an interest rate per annum equal to (a) the Daily Simple SOFR, *plus* (b) 0.10%; *provided* that if the Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“**Adjusted Term SOFR**” means, for any Interest Period, an interest rate per annum equal to (a) the Term SOFR for such Interest Period, *plus* (b) 0.10%; *provided* that if the Adjusted Term SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“**Administrative Agent**” means JPM, acting through such of its Affiliates or branches as it may designate, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent permitted by the terms hereof.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02 or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.



“**Administrative Questionnaire**” means an Administrative Questionnaire in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

“**Affected Financial Institution**” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**Affiliate**” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Affiliate Transaction**” has the meaning specified in Section 6.18(a).

“**Agent-Related Distress Event**” means, with respect to the Administrative Agent, the Collateral Agent or any Person that directly or indirectly controls the Administrative Agent or the Collateral Agent (each, a “**Distressed Agent-Related Person**”), a voluntary or involuntary case with respect to such Distressed Agent-Related Person under any Debtor Relief Law is commenced, or a custodian, conservator, receiver or similar official is appointed for such Distressed Agent-Related Person or any substantial part of such Distressed Agent-Related Person’s assets, or such Distressed Agent-Related Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Agent-Related Person to be, insolvent or bankrupt; *provided* that an Agent-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in the Administrative Agent, the Collateral Agent or any Person that directly or indirectly controls the Administrative Agent by a Governmental Authority or an instrumentality thereof, so long as such ownership interest does not result in or provide the Administrative Agent or the Collateral Agent with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit the Administrative Agent or the Collateral Agent (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with the Administrative Agent or the Collateral Agent.

“**Agent-Related Persons**” means each Agent, together with its Related Parties.

“**Agents**” means, collectively, the Administrative Agent, the Collateral Agent, the Arrangers, the Co-Syndication Agents, the Documentation Agent, the Incremental Arrangers (if any) and the Supplemental Agents (if any).

“**Agent’s Spot Rate of Exchange**” has the meaning specified in Section 1.08(a).

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this credit agreement, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“**Agreement Currency**” has the meaning specified in Section 10.23.

“**AHYDO Catch-up Payment**” means any payment required to be made (as determined by the Borrower) under the terms of Indebtedness in order to avoid the application of Section 163(e)(5) of the Code to such Indebtedness.

“**Alternate Base Rate**” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day, plus ½ of 1% and (c) the Adjusted Term SOFR for a one month Interest Period as published two (2) U.S. Government Securities Business Days prior to such day (or if such day is not a U.S. Government Securities Business Day, the immediately preceding U.S. Government Securities Business Day), plus 1.0%; provided that for the purpose of this definition, the Adjusted Term SOFR for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 3.04 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 3.04(b)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

“**Alternative Currency**” means (a) Euros and (b) any other lawful currency that is readily available and freely transferable and convertible into Dollars.

“**Anti-Corruption Laws**” has the meaning specified in Section 5.20.

“**Applicable Commitment Fee**” means a percentage per annum equal to the applicable amount set forth under the heading “Commitment Fee” in the definition of Applicable Rate.

“**Applicable Intercreditor Arrangements**” means customary intercreditor arrangements that are reasonably satisfactory to the Administrative Agent (it being understood that an intercreditor agreement that is substantially in the form of the first lien/second lien intercreditor agreement attached as Exhibit F-1 or the *pari passu* intercreditor agreement attached as Exhibit F-2 hereto, as applicable, is reasonably satisfactory to the Administrative Agent).

“**Applicable Jurisdiction**” means the United States of America, any state thereof or the District of Columbia.

“**Applicable Rate**” means the percentage, per annum, determined by reference to the Consolidated Total Net Leverage Ratio of the Borrower in effect from time to time as set forth below:

Level	Consolidated Total Net Leverage Ratio	Applicable Rate for ABR Loans	Applicable Rate for SOFR Loans	Commitment Fee
I	< 2.00:1.00	0.75%	1.75%	0.25%
II	≥ 2.00:1.00 but < 3.00:1.00	1.00%	2.00%	0.375%
III	≥ 3.00:1.00 but < 4.00:1.00	1.25%	2.25%	0.375%
IV	≥ 4.00:1.00	1.50%	2.50%	0.50%

For purposes of the foregoing,

(i) Level II shall be deemed applicable for the period from the Closing Date until three (3) Business Days after the date that financial statements of the Borrower are required to be delivered pursuant to Sections 6.01(a) or (b), as applicable, for the first full fiscal quarter ended after the Closing Date;

(ii) if at any time the Borrower fails to deliver the financial statements required to be delivered pursuant to Sections 6.01(a) or (b) on or before the date the such required financials are due pursuant to such Sections 6.01(a) or (b), Level IV shall be deemed applicable for the period commencing three (3) Business Days after the required date of delivery and ending on the date which is three (3) Business Days after such required financials are actually delivered, after which the Level shall be determined in accordance with the table above as applicable; and

(iii) adjustments, if any, to the Level then in effect shall be effective three (3) Business Days after the Administrative Agent has received the applicable financial statements required to be delivered pursuant to Sections 6.01(a) or (b) (it being understood and agreed that each change in Level shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change).

“**Appropriate Lender**” means, at any time, (a) with respect to any Facility, a Lender that has a Commitment with respect to such Facility or holds Loans made under such Facility at such time, and (b) with respect to the Letter of Credit Sublimit, (i) each L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03(a), the Revolving Credit Lenders.

“**Approved Commercial Bank**” means a commercial bank with a consolidated combined capital and surplus of at least \$5,000,000,000.

“**Approved Foreign Bank**” has the meaning specified in the definition of “Cash Equivalents”.

“**Approved Fund**” means any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender and controls such Lender.

“**Arrangers**” means each of JPM, BofA Securities, Inc., MUFG Bank, Ltd., RBC Capital Markets, U.S. Bank National Association and Wells Fargo Securities, LLC, in their respective capacities as exclusive joint lead arrangers and bookrunners.

“**Asset Disposition**” means:

(a) the voluntary sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Leaseback Transaction), in each case outside the ordinary course of business, of any Restricted Group Member (in each case other than Capital Stock of the Borrower) (each referred to in this definition as a “**Disposition**”); or

(b) the issuance or sale of Capital Stock of any Restricted Subsidiary (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 7.01 or directors’ qualifying shares and shares issued to foreign nationals as required under applicable law), whether in a single transaction or a series of related transactions;

in each case, other than:

(1) a disposition by the Borrower or a Restricted Subsidiary to the Borrower or a Restricted Subsidiary, including pursuant to any Intercompany License Agreement;

(2) a disposition of cash, Cash Equivalents or Investment Grade Securities, including any marketable securities portfolio owned by the Borrower and its Subsidiaries on the Closing Date;

(3) a disposition of inventory, goods or other assets (including Settlement Assets) in the ordinary course of business or consistent with past practice or held for sale or no longer used in the ordinary course of business, including any disposition of disposed, abandoned or discontinued operations;

(4) a disposition of obsolete, worn-out, uneconomic, damaged, non-core or surplus property, equipment or other assets or property, equipment or other assets that are no longer economically practical or commercially desirable to maintain or used or useful in the business of the Borrower and its Restricted Subsidiaries whether now or hereafter owned or leased or acquired in connection with an acquisition or used or useful in the conduct of the business of the Borrower and its Restricted Subsidiaries (including by ceasing to enforce, allowing the lapse, abandonment or invalidation of or discontinuing the use or maintenance of or putting into the public domain any intellectual property that is, in the reasonable judgment of the Borrower or its Restricted Subsidiaries, no longer used or useful, or economically practicable to maintain, or in respect of which the Borrower or any Restricted Subsidiary determines in its reasonable judgment that such action or inaction is desirable);

(5) transactions permitted under Section 7.03 or a transaction that constitutes a Change of Control;

(6) an issuance of Capital Stock by a Restricted Subsidiary to the Borrower or to another Restricted Subsidiary or as part of or pursuant to an equity incentive or compensation plan approved by the Board of Directors of the Borrower;

(7) any dispositions of Capital Stock, properties or assets in a single transaction or series of related transactions with a fair market value (as determined in good faith by the Borrower) of less than the greater of (i) \$45,000,000 and (ii) 15.0% of LTM EBITDA;

(8) any Restricted Payment that is permitted to be made, and is made, under Section 7.05 and the making of any Permitted Payment or Permitted Investment, or solely for purposes of Section 7.04(a)(3), asset sales, the proceeds of which are used to make such Restricted Payments or Permitted Investments;

(9) dispositions in connection with Permitted Liens, Permitted Intercompany Activities, Permitted Tax Restructurings and related transactions;

(10) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or consistent with past practice or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;

(11) conveyances, sales, transfers, licenses, sublicenses, cross-licenses or other dispositions of intellectual property, software or other general intangibles and licenses, sublicenses, cross-licenses (including the provision of software under an open source license), leases or subleases of other property, in each case, in the ordinary course of business or consistent with past practice or pursuant to a research or development agreement in which the counterparty to such agreement receives a license in the intellectual property or software that result from such agreement;

(12) the lease, assignment, license, sublease or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice;

(13) foreclosure, condemnation, expropriation, forced disposition or any similar action with respect to any property or other assets or the granting of Liens not prohibited by this Agreement;

(14) the sale, discount or other disposition (with or without recourse, and on customary or commercially reasonable terms and for credit management purposes) of inventory, accounts receivable or notes receivable in the ordinary course of business or consistent with past practice, or the conversion or exchange of accounts receivable for notes receivable;

(15) any issuance or sale of Capital Stock in, or Indebtedness or other securities of, an Unrestricted Subsidiary or any other disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary or an Immaterial Subsidiary;

(16) any disposition of Capital Stock of a Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Borrower or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired, or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(17) (i) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property that is promptly purchased, (ii) dispositions of property to the extent that the proceeds of such disposition are promptly applied to the purchase price of such replacement property (which replacement property is actually promptly purchased) and (iii) to the extent treated as tax-free under Section 1031 of the Code or comparable law or regulation, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(18) any disposition of assets of the type specified in the definitions of Securitization Assets or Receivables Assets, or participations therein in connection with any Qualified Securitization Financing or Receivables Facility;

(19) any financing transaction with respect to property constructed, acquired, leased, renewed, relocated, expanded, replaced, repaired, maintained, upgraded or improved (including any reconstruction, refurbishment, renovation and/or development of real property) by the Borrower or any Restricted Subsidiary after the Closing Date, including Sale and Leaseback Transactions and asset securitizations, not prohibited by this Agreement;

(20) sales, transfers or other dispositions of Investments in joint ventures or similar entities to the extent required by, or made pursuant to customary buy/sell arrangements between, the parties set forth in joint venture arrangements and similar binding arrangements;

(21) any surrender or waiver of contractual rights or the settlement, release, surrender or waiver of contractual, tort, litigation or other claims of any kind;

(22) the unwinding of any Obligations in respect of Cash Management Agreements or Swap Obligations;

(23) transfers of property or assets subject to Casualty Events upon receipt of the Net Cash Proceeds of such Casualty Event; *provided* that any Cash Equivalents received by the Borrower or any of its Restricted Subsidiaries in respect of such Casualty Event shall be deemed to be Net Cash Proceeds of an Asset Disposition, and such Net Cash Proceeds shall be applied in accordance with Section 2.05(b)(i);

(24) any disposition to a Captive Insurance Subsidiary;

(25) any sale of property or assets, if the acquisition of such property or assets was financed with Excluded Contributions and the proceeds of such sale are used to make a Restricted Payment pursuant to clause (10)(b) under Section 7.05(b);

(26) the disposition of any assets (including Capital Stock) (i) acquired in a transaction after the Closing Date, which assets are not useful in the core or principal business of the Borrower and its Restricted Subsidiaries, or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the reasonable determination of the Borrower to consummate any acquisition;

(27) any sale, transfer or other disposition to affect the formation of any Subsidiary that is a Divided LLC; *provided* that upon formation of such Divided LLC, such Divided LLC shall be a Restricted Subsidiary if the entity was a Restricted Subsidiary prior to the formation of such Divided LLC;

(28) any disposition of (i) non-revenue producing assets to a Person who is providing services related to such assets, the provision of which have been or are to be outsourced by the Borrower or any Restricted Subsidiary to such Person, (ii) *de minimis* amounts of equipment provided to employees of the Borrower or any Subsidiary or (iii) samples, including time-limited evaluation software, provided to customer or prospective customers;

(29) [reserved];

(30) any disposition to effect the Transactions; and

(31) other sales or Dispositions in an amount not to exceed the greater of (i) \$90,000,000 and (ii) 30.0% of LTM EBITDA.

In the event that a transaction (or any portion thereof) meets the criteria of a permitted Asset Disposition and would also be a Permitted Investment or an Investment permitted under Section 7.05, the Borrower, in its sole discretion, will be entitled to divide, classify and reclassify such transaction (or a portion thereof) as an Asset Disposition and/or one or more of the types of Permitted Investments or Investments permitted under Section 7.05.

“**Assignee Group**” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit D, or otherwise in form and substance reasonably acceptable to the Administrative Agent.

“**Associate**” means (i) any Person engaged in a Similar Business of which the Borrower or its Restricted Subsidiaries are the legal and beneficial owners of between 20% and 50% of all outstanding Voting Stock and (ii) any joint venture entered into by the Borrower or any Restricted Subsidiary.

“**Auto-Extension Letter of Credit**” has the meaning specified in Section 2.03(c)(iii).

“**Available Amount Builder Basket**” has the meaning specified in Section 7.05(a)(v)(6).

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of Section 3.04.

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Benchmark**” means, initially, with respect to any (i) RFR Loan, the Daily Simple SOFR or (ii) SOFR Loan, the Term SOFR; *provided* that if a Benchmark Transition Event, and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR or Term SOFR, as applicable, or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 3.04.

“**Benchmark Replacement**” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the Adjusted Daily Simple SOFR;

(2) the sum of: (a) the alternate unadjusted benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to clauses (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time in the United States.

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides, after consultation with the Borrower, in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides in its reasonable discretion that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Administrative Agent decides in its reasonable discretion is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**“Benchmark Replacement Date”** means, with respect to any Benchmark, the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clauses (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; *provided* that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clauses (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Transition Event”** means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);



(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; *provided* that at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.04 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.04.

“**beneficial owner**” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, in each case as in effect on the date hereof, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act, as in effect on the date hereof), such “person” will not be deemed to have beneficial ownership of any securities that such “person” has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms “beneficial ownership,” “beneficially owns” and “beneficially owned” have a corresponding meaning.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**BHC Act Affiliate**” means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**Board of Directors**” means (i) with respect to the Borrower or any corporation, the board of directors or managers, as applicable, of the corporation, or any duly authorized committee thereof; (ii) with respect to any partnership, the board of directors or other governing body of the general partner, as applicable, of the partnership or any duly authorized committee thereof; (iii) with respect to a limited liability company, the managing member or members or any duly authorized controlling committee thereof; and (iv) with respect to any other Person, the board or any duly authorized committee of such Person serving a similar function. Whenever any provision requires any action or determination to be made by, or any approval of, a Board of Directors, such action, determination or approval shall be deemed to have been taken or made if approved by a majority of the directors on any such Board of Directors (whether or not such action or approval is taken as part of a formal board meeting or as a formal board approval). Unless the context requires otherwise, Board of Directors means the Board of Directors of the Borrower.

“**Borrower**” means the Company. In the event that the Borrower consummates any merger, amalgamation or consolidation in accordance with Section 7.03, the surviving Person in such merger, amalgamation or consolidation shall be deemed to be the “Borrower” for all purposes of this Agreement and the other Loan Documents.

“**Borrower Materials**” has the meaning specified in Section 6.02.

“**Borrowing**” means a Revolving Credit Borrowing or a Term Borrowing, as the context may require.

“**Business Day**” means, any day (other than a Saturday or a Sunday) on which banks are open for business in New York City; *provided that*, in addition to the foregoing, a Business Day shall only be (a) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings of such RFR Loan and (b) in relation to Loans referencing the Adjusted Term SOFR and any interest rate settings, fundings, disbursements, settlements or payments of any such Loans referencing the Adjusted Term SOFR or any other dealings of such Loans referencing the Adjusted Term SOFR, any such day that is also a U.S. Government Securities Business Day.

“**Business Successor**” means (i) any former Subsidiary of the Borrower and (ii) any Person that, after the Closing Date, has acquired, merged or consolidated with a Subsidiary of the Borrower (that results in such Subsidiary ceasing to be a Subsidiary of the Borrower), or acquired (in one transaction or a series of transactions) all or substantially all of the property and assets or business of a Subsidiary or assets constituting a business unit, line of business or division of a Subsidiary of the Borrower.

“**Canadian Dollars**” means freely transferable lawful money of Canada (expressed in Canadian dollars).

“**Capital Stock**” of any Person means any and all shares of, rights to purchase or acquire, warrants, options or depositary receipts for, or other equivalents of, or partnership or other interests in (however designated), equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into, or exchangeable for, such equity.

“**Capitalized Software Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

“**Captive Insurance Subsidiary**” means (i) any Subsidiary of the Borrower operating for the purpose of (a) insuring the businesses, operations or properties owned or operated by the Borrower or any of its Subsidiaries, including their future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members), and related benefits and/or (b) conducting any activities or business incidental thereto (it being understood and agreed that activities which are relevant or appropriate to qualify as an insurance company for U.S. federal or state tax purposes shall be considered “activities or business incidental thereto”) or (ii) any Subsidiary of any such insurance subsidiary operating for the same purpose described in clause (i) above.

“Cash-Capped Incremental Facility” has the meaning specified in Section 2.14(a).

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent or L/C Issuer (as applicable) and the Lenders, as collateral for L/C Obligations or obligations of Revolving Credit Lenders to fund participations in respect of either thereof (as the context may require), cash, Cash Equivalents (if reasonably acceptable to the Administrative Agent and the applicable L/C Issuer) or deposit account balances (in the case of L/C Obligations in the respective currency or currencies in which the applicable L/C Obligations are denominated unless otherwise agreed by the Administrative Agent or L/C Issuer benefiting from such collateral) or, if the Administrative Agent or L/C Issuer benefiting from such collateral shall agree in its sole discretion, other credit support (including by backstop with a letter of credit satisfactory to the applicable L/C Issuer or by being deemed reissued under another agreement acceptable to the applicable L/C Issuer), in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the applicable L/C Issuer (which documents are hereby consented to by the Revolving Credit Lenders). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means:

(1) (a) Dollars, Canadian Dollars, Pounds Sterling, Yen, Euro, any national currency of any member state of the European Union or any Alternative Currency; or (b) any other foreign currency held by the Borrower and its Restricted Subsidiaries from time to time in the ordinary course of business or consistent with past practice;

(2) securities issued or directly and fully guaranteed or insured by the United States, Canadian, United Kingdom or Japanese governments, a member state of the European Union or, in each case, any agency or instrumentality thereof (*provided* that the full faith and credit obligation of such country or such member state is pledged in support thereof), with maturities of 36 months or less from the date of acquisition;

(3) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits, demand deposits or bankers’ acceptances having maturities of not more than two years from the date of acquisition thereof issued by any bank, trust company or other financial institution (a) whose commercial paper is rated at least “P-2” or the equivalent thereof by S&P or at least “A-2” or the equivalent thereof by Moody’s (or, if at the time, neither S&P or Moody’s is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Borrower) or (b) having combined capital and surplus in excess of \$100,000,000;

(4) repurchase obligations for underlying securities of the types described in clauses (2), (3), (7) and (8) entered into with any Person meeting the qualifications specified in clause (3) above;

(5) securities with maturities of two years or less from the date of acquisition backed by standby letters of credit issued by any Person meeting the qualifications in clause (3) above;

(6) commercial paper and variable or fixed rate notes issued by any Person meeting the qualifications specified in clause (3) above (or by the parent company thereof) maturing within two years after the date of creation thereof, or if no rating is available in respect of the commercial paper or variable or fixed rate notes, the issuer of which has an equivalent rating in respect of its long-term debt;

(7) marketable short-term money market and similar securities having a rating of at least "P-2" or "A-2" from either S&P or Moody's, respectively (or, if at the time, neither S&P nor Moody's is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Borrower);

(8) readily marketable direct obligations issued by any state, province, commonwealth or territory of the United States of America or any political subdivision, taxing authority or any agency or instrumentality thereof, rated BBB- (or the equivalent) or better by S&P or Baa3 (or the equivalent) or better by Moody's (or, if at the time, neither S&P nor Moody's is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Borrower) with maturities of not more than two years from the date of acquisition;

(9) readily marketable direct obligations issued by any foreign government or any political subdivision, taxing authority or agency or instrumentality thereof, with a rating of "BBB-" or higher from S&P or "Baa3" or higher by Moody's or the equivalent of such rating by such rating organization (or, if at the time, neither S&P nor Moody's is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Borrower) with maturities of not more than two years from the date of acquisition;

(10) Investments with average maturities of 24 months or less from the date of acquisition in money market funds with a rating of "A" or higher from S&P or "A-2" or higher by Moody's or the equivalent of such rating by such rating organization (or, if at the time, neither S&P nor Moody's is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Borrower);

(11) with respect to any Non-U.S. Subsidiary: (i) obligations of the national government of the country in which such Non-U.S. Subsidiary maintains its chief executive office and principal place of business *provided* such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers' acceptance of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Non-U.S. Subsidiary maintains its chief executive office and principal place of business *provided* such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least "P-2" or the equivalent thereof or from Moody's is at least "A-2" or the equivalent thereof (any such bank being an "**Approved Foreign Bank**"), and in each case with maturities of not more than 270 days from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank;

(12) Indebtedness or Preferred Stock issued by Persons with a rating of "BBB-" or higher from S&P or "Baa3" or higher by Moody's or the equivalent of such rating by such rating organization (or, if at the time, neither S&P nor Moody's is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Borrower) with maturities of not more than two years from the date of acquisition;

(13) bills of exchange issued in the United States of America, Canada, the United Kingdom, Japan, a member state of the European Union eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent);

(14) investments in industrial development revenue bonds that (i) “re-set” interest rates not less frequently than quarterly, (ii) are entitled to the benefit of a remarketing arrangement with an established broker dealer and (iii) are supported by a direct pay letter of credit covering principal and accrued interest that is issued by any bank meeting the qualifications specified in clause (3) above;

(15) investments in pooled funds or investment accounts consisting of investments in the nature described in the foregoing clause (14);

(16) investments in money market funds access to which is provided as part of “sweep” accounts maintained with any bank meeting the qualifications specified in clause (3) above;

(17) Cash Equivalents or instruments similar to those referred to in clauses (1) through (16) above denominated in Dollars or any Alternative Currency; and

(18) any investment company, money market, enhanced high yield, pooled or other investment fund investing 90% or more of its assets in instruments of the types specified in clauses (1) through (17) above.

In the case of Investments by any Non-U.S. Subsidiary that is a Restricted Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents shall also include (a) investments of the type and maturity described in the clauses above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (b) other short-term investments utilized by Non-U.S. Subsidiaries that are Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in the clauses above and in this paragraph.

In addition, in the case of Investments by any Captive Insurance Subsidiary, Cash Equivalents shall also include (a) such Investments with average maturities of 12 months or less from the date of acquisition in issuers rated BBB- (or the equivalent thereof) or better by S&P or Baa3 (or the equivalent thereof) or better by Moody’s, in each case at the time of such Investment and (b) any Investment with a maturity of more than 12 months that would otherwise constitute Cash Equivalents of the kind described in any of the clauses of this definition above or clause (a) in this paragraph, if the maturity of such Investment was 12 months or less; *provided* that the effective maturity of such Investment does not exceed 15 years.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clause (1) above; *provided* that such amounts are converted into any currency listed in clause (1) as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

For the avoidance of doubt, any items identified as Cash Equivalents under this definition will be deemed to be Cash Equivalents for all purposes under this Agreement regardless of the treatment of such items under GAAP.

“**Cash Management Agreement**” means any agreement or arrangement to provide Cash Management Services to the Borrower or any Restricted Group Member.

“Cash Management Bank” means any Person in its capacity as a party to a Cash Management Agreement that:

(a)

(i) at the time it enters into a Cash Management Agreement, is a Lender or an Agent or an Affiliate of a Lender or an Agent,

(ii) in the case of any Cash Management Agreement in effect on or prior to the Closing Date, is, as of the Closing Date or within 45 days thereafter, a Lender or an Agent or an Affiliate of a Lender or an Agent and a party to a Cash Management Agreement, or

(iii) within 45 days after the time it enters into the applicable Cash Management Agreement, becomes a Lender or an Affiliate of a Lender or an Agent,

(b) in the case of any Person described in the foregoing clause (a)(iii), is designated by the Borrower in writing to the Administrative Agent as a “Cash Management Bank” for purposes of this Agreement and the other Loan Documents; and

(c) to the extent not the Administrative Agent, the Collateral Agent or a Lender hereunder, shall have appointed the Administrative Agent and the Collateral Agent as its agents under the applicable Loan Documents and agreed to be bound by the provisions of Article IX as if it were a Lender pursuant to a writing substantially in the form of Exhibit K or otherwise reasonably satisfactory to the Borrower and the Administrative Agent.

“Cash Management Services” means any of the following to the extent not constituting a line of credit (other than an overnight draft facility that is not in default): automated clearing house transactions, treasury and/or cash management services, including, without limitation, treasury, depository, overdraft, credit, purchasing or debit card, non-card e-payable services, electronic funds transfer, treasury management services (including controlled disbursement services, overdraft automatic clearing house fund transfer services, return items and interstate depository network services), other demand deposit or operating account relationships, foreign exchange facilities, and merchant services.

“Casualty Event” means any event that gives rise to the receipt by any Restricted Group Member of any insurance proceeds or condemnation awards in respect of any equipment, assets or real property (including any improvements thereon) to replace or repair such equipment, assets or real property.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

“CFC” means a “controlled foreign corporation” as defined in Section 957 of the Code.

A “Change of Control” will be deemed to occur if:

(a) prior to the Spin-Off Date, MDU Resources ceases to own, directly or indirectly, 100% of the Equity Interests of the Borrower; or

(b) any person or “group” (within the meaning of Rule 13d-3 and Rule 13d-5 under the Exchange Act as in effect on the date hereof, but excluding any employee benefit plan, any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than (prior to the Spin-Off Date) MDU Resources or any of its Subsidiaries, acquires beneficial ownership of more than 35.0% of the Voting Stock (measured by reference to ordinary voting power) of the Borrower (determined on a fully diluted basis).

Notwithstanding the foregoing, (i) a transaction in which the Borrower becomes a subsidiary of another Person shall not constitute a Change of Control if the direct or indirect holders of the Voting Stock of such Person immediately following that transaction (x) are substantially the same as the holders of the Voting Stock of the Borrower outstanding immediately prior to such transaction and (y) directly or indirectly hold such Voting Stock in substantially the same proportion as immediately prior to such transaction and (ii) the Transactions shall not constitute a Change of Control. For purposes of this definition, a Person shall not be deemed to have beneficial ownership of securities subject to a stock purchase agreement, merger agreement or similar agreement until the consummation of the transactions contemplated by such agreement.

“**Closing Date**” means May 31, 2023.

“**CME Term SOFR Administrator**” means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

“**Co-Syndication Agents**” means each of JPM, BofA Securities, Inc., MUFG Bank, Ltd., RBC Capital Markets, U.S. Bank National Association and Wells Fargo Securities, LLC, in their respective capacities as co-syndication agents.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” means all of the “Collateral” (or similar term) referred to in the Collateral Documents and all of the other property and assets that are or are required under the terms of the Collateral Documents to be subject to Liens in favor of the Collateral Agent for the benefit of the Secured Parties.

“**Collateral Agent**” means JPM, acting through such of its Affiliates or branches as it may designate, in its capacity as collateral agent under any of the Loan Documents, or any successor collateral agent permitted by the terms hereof.

“**Collateral Documents**” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, collateral assignments, Security Agreement Supplements, Intellectual Property Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Collateral Agent pursuant to [Section 6.12](#), [Section 6.14](#) or [Section 6.16](#) that creates or purports to create a Lien in favor of the Collateral Agent, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“**Commitment**” means a Term Commitment and/or a Revolving Credit Commitment, as the context may require.

“**Commitment Fee**” has the meaning set forth in [Section 2.09\(a\)](#).

“**Committed Loan Notice**” means a notice of (a) a Term Borrowing, (b) a Revolving Credit Borrowing, (c) a conversion of Loans from one Type to another or (d) a continuation of SOFR Loans pursuant to [Section 2.02\(a\)](#), which shall be substantially in the form of [Exhibit A-1](#).

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. §§ 1 *et. seq.*), as amended from time to time, and any successor statute.

“**Company**” has the meaning set forth in the preamble to this Agreement.

“**Company Competitor**” means any Person that competes with the business of the Borrower and its direct and indirect Subsidiaries from time to time.

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit C or such other form as may be agreed between the Borrower and the Administrative Agent.

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated Cash Interest Expense**” means, with respect to any Person for any period, without duplication, the cash interest expense (including that attributable to any Finance Lease Obligation), net of cash interest income, with respect to Indebtedness of such Person and its Restricted Subsidiaries for such period, other than non-recourse Indebtedness, including commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs under hedging agreements (other than in connection with the early termination thereof), excluding, in each case:

- (i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest (including as a result of the effects of acquisition method accounting or pushdown accounting),
- (ii) interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Obligations or other derivative instruments,
- (iii) costs associated with incurring or terminating Swap Contracts and cash costs associated with breakage in respect of hedging agreements for interest rates,
- (iv) commissions, discounts, yield, make-whole premium and other fees and charges (including any interest expense) incurred in connection with any non-recourse Indebtedness,
- (v) “additional interest” owing pursuant to a registration rights agreement with respect to any securities,
- (vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including any Indebtedness issued in connection with the Transactions,
- (vii) penalties and interest relating to Taxes,
- (viii) accretion or accrual of discounted liabilities not constituting Indebtedness,
- (ix) interest expense attributable to the Borrower resulting from push-down accounting,
- (x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting,
- (xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto in connection with the Transactions or any acquisition or Investment, and
- (xii) annual agency fees paid to any trustees, administrative agents and collateral agents with respect to any secured or unsecured loans, debt facilities, debentures, bonds, commercial paper facilities or other forms of Indebtedness (including any security or collateral trust arrangements related thereto), including the 7.750% Notes.



For purposes of this definition, interest on a Finance Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Finance Lease Obligation in accordance with GAAP.

“**Consolidated Depreciation and Amortization Expense**” means, with respect to any Person for any period, the total amount of depreciation and amortization expense and capitalized fees, including amortization or write-off of:

- (i) intangible assets and non-cash organization costs,
- (ii) deferred financing and debt issuance fees, costs and expenses,
- (iii) property, plant and equipment consisting of leasehold improvements, freehold improvements, office equipment and fittings,
- (iv) right-of-use assets consisting of property and office equipment,
- (v) capitalized expenditures (including Capitalized Software Expenditures), customer acquisition costs and incentive payments and signing bonuses, upfront payments related to any contract signing, media development costs, conversion costs and contract acquisition costs, the amortization of original issue discount resulting from the issuance of Indebtedness at less than par and amortization of favorable or unfavorable lease assets or liabilities, and
- (vi) capitalized fees related to any Qualified Securitization Financing or Receivables Facility, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP and any write-down of assets or asset value carried on the balance sheet.

“**Consolidated EBITDA**” means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period:

- (1) increased (without duplication) by:
  - (a) Fixed Charges of such Person for such period (including (w) non-cash rent expense and the implied interest component of synthetic leases with respect to such period, (x) net payments and losses or any obligations on any Swap Obligations or other derivative instruments, (y) bank, letter of credit and other financing fees and (z) costs of surety bonds in connection with financing activities, *plus* amounts excluded from the definition of “Consolidated Interest Expense” and any non-cash interest expense), to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*
  - (b) (x) provision for taxes based on income, profits, revenue or capital, including federal, foreign, state, provincial, territorial, local, unitary, excise, property, franchise, value added and similar taxes and withholding taxes (including any future taxes or other levies which replace or are intended to be in lieu of such taxes and any penalties, additions to tax and interest related to such taxes or arising from tax examinations), state taxes in lieu of business fees (including business license fees), payroll tax credits, income tax credits and similar credits, and similar taxes of such Person paid or accrued during such period (including in respect of repatriated funds), (y) any distributions made to a direct or indirect parent of the Borrower with respect to the foregoing and (z) the net tax expense associated with any adjustments made pursuant to the definition of “Consolidated Net Income” in each case, to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(d) any fees, costs, expenses or charges (other than Consolidated Depreciation and Amortization Expense) related to any actual, proposed or contemplated Equity Offering (including any expense relating to enhanced accounting functions or other transaction costs associated with becoming or being a stand-alone entity or a public company, including Public Company Costs), Permitted Investment, Restricted Payment, acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful and including any such transaction consummated prior to the Closing Date), including (i) such fees, expenses or charges (including rating agency fees, consulting fees and other related expenses and/or letter of credit or similar fees) related to the offering or incurrence of, or ongoing administration of the 7.750% Notes, this Agreement, any other credit facilities or notes, any Securitization Fees and the Transactions, including Transaction Costs, and (ii) any amendment, waiver or other modification of the 7.750% Notes, this Agreement, Receivables Facilities, Securitization Facilities, any other credit facilities or notes, any Securitization Fees, any other Indebtedness or any Equity Offering, in each case, whether or not consummated, to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(e) (i) the amount of any restructuring charge, accrual, reserve (and adjustments to existing reserves) or expense, integration cost, inventory optimization programs or other business optimization expense or cost (including charges directly related to the implementation of operating expense reductions, platform consolidations and migrations, transitions, insourcing initiatives, operating improvements, cost-savings initiatives and tax restructurings) that is deducted (and not added back) in such period in computing Consolidated Net Income, including any costs incurred in connection with acquisitions or divestitures after the Closing Date, any severance, retention, signing bonuses, relocation, recruiting and other employee related costs, costs in respect of strategic initiatives and curtailments or modifications to pension and post-retirement employment benefit plans (including any settlement of pension liabilities), costs related to entry into new markets (including unused office or warehouse space costs) and new product design, development and introductions (including intellectual property development, labor costs, scrap costs and lower absorption of costs, including due to decreased productivity and greater inefficiencies), systems and/or software development and establishment costs, operational and reporting systems, technology initiatives, contract termination costs, costs related to customer disputes, distribution networks or sales channels, the implementation, replacement, development or upgrade of operational, reporting and information technology systems and technology initiatives, contract termination, retention, recruiting, severance, signing, consulting and transition services arrangements, future lease commitments, lease breakage and costs related to the pre-opening, opening and closure and/or consolidation of facilities (including severance, rent termination, moving and legal costs) and to exiting lines of business and consulting fees incurred with any of the foregoing and (ii) fees, costs and expenses associated with acquisition related litigation and settlement thereof; *plus*

(f) any other non-cash charges, write-downs, expenses, losses or items reducing Consolidated Net Income for such period including (i) non-cash losses on the sale of assets and any write-offs or write-downs, deferred revenue or impairment charges, (ii) impairment charges, amortization (or write offs) of financing costs (including debt discount, debt issuance costs and commissions and other fees associated with Indebtedness, including the 7.750% Notes and this Agreement) of such Person and its Subsidiaries and/or (iii) the impact of acquisition method accounting adjustment and any non-cash write-up, write-down or write-off with respect to re-valuing assets and liabilities in connection with the Transactions or any Investment, deferred revenue or any effects of adjustments resulting from the application of purchase accounting, purchase price accounting (including any step-up in inventory and loss of profit on the acquired inventory) (*provided* that if any such non-cash charge, write-down, expense, loss or item represents an accrual or reserve for potential cash items in any future period, (A) the Borrower may elect not to add back such non-cash charge, expense or loss in the current period and (B) to the extent the Borrower elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA when paid), or other items classified by the Borrower as special items less other non-cash items of income increasing Consolidated Net Income (excluding any amortization of a prepaid cash item that was paid in a prior period or such non-cash item of income to the extent it represents a receipt of cash in any future period); *plus*

(g) the amount of pro forma “run rate” cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings and any savings expected to result from the reduction of a public target’s Public Company Costs), operating expense reductions, other operating improvements and synergies (including, to the extent applicable, from (i) the Transactions and/or (ii) mergers or other business combinations, acquisitions or other investments, divestitures, restructurings, integration, insourcing initiatives, operating improvements, cost savings initiatives or any other initiative, action or event) (it is understood and agreed that “run rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or expected to be taken, net of the amount of actual benefits realized during such period from such actions) projected by the Borrower in good faith to be reasonably anticipated to be realizable or a plan for realization shall have been established within 24 months of the date thereof (including from any actions taken in whole or in part prior to such date), which will be added to Consolidated EBITDA as so projected until fully realized and calculated on a pro forma basis as though such cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings and any savings expected to result from the reduction of a public target’s Public Company Costs), operating expense reductions, other operating improvements, and synergies had been realized on the first day of such period, net of the amount of actual benefits realized prior to or during such period from such actions; *provided* that the aggregate amount of adjustments made pursuant to this clause (g) (combined with the aggregate amount of cost savings, operating expense reductions and synergies added to Consolidated EBITDA pursuant to Section 1.10) shall not exceed 25% of Consolidated EBITDA for any four fiscal quarter period (determined after giving effect thereto and all other adjustments and addbacks); *provided, further*, that in each case of this clause (g) and Section 1.10, such 25% cap shall not apply to any such adjustments that would be permitted to be included in pro forma financial statements prepared in accordance with Regulation S-X under the Securities Act; *plus*

(h) any costs or expenses incurred by the Borrower or a Restricted Subsidiary or a direct or indirect parent of the Borrower pursuant to any management equity plan, stock option plan, phantom equity plan, profits interests or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement, and any costs or expenses in connection with the roll-over, acceleration or payout of Capital Stock held by management, to the extent that such costs or expenses are non-cash or otherwise funded with cash proceeds contributed to the capital of the Borrower or Net Cash Proceeds of an issuance of Capital Stock (other than Disqualified Stock) of the Borrower; *plus*

- (i) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*
- (j) any net loss included in the Consolidated Net Income attributable to non-controlling or minority interests pursuant to the application of Accounting Standards Codification Topic 810-10-45 (or any successor provision or other financial accounting standard having a similar result or effect); *plus*
- (k) the amount of any non-controlling or minority interest expense consisting of Subsidiary income attributable to non-controlling or minority equity interests of third parties in any non-Wholly Owned Subsidiary; *plus*
- (l) (i) unrealized or realized foreign exchange losses resulting from the impact of foreign currency changes and (ii) gains and losses due to fluctuations in currency values and related tax effects determined in accordance with GAAP; *plus*
- (m) with respect to any joint venture, an amount equal to the proportion of those items described in clauses (a), (b) and (c) above relating to such joint venture corresponding to the Borrower's and its Restricted Subsidiaries' proportionate share of such joint venture's Consolidated Net Income (determined as if such joint venture were a Restricted Subsidiary) to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*
- (n) the amount of any costs, charges or expenses relating to payments made to stock appreciation or similar rights, stock option, restricted stock, phantom equity, profits interests or other interests or rights holders of the Borrower or any of its Subsidiaries or any direct or indirect parent of the Borrower in connection with, or as a result of, any distribution being made to equityholders of such Person or any of its Subsidiaries or any direct or indirect parent thereof, which payments are being made to compensate such holders as though they were equityholders at the time of, and entitled to share in, such distribution; *plus*
- (o) at the option of the Borrower, any adjustments (including pro forma adjustments) of the type reflected in (x) any quality of earnings report obtained in connection with the Transactions or (y) any quality of earnings report obtained in connection with any subsequent transaction and, in the case of this clause (y), made available to the Administrative Agent and prepared by a financial advisor that is reasonably acceptable to the Administrative Agent (it being agreed that any nationally recognized financial advisor (including any "big four" accounting firm) is acceptable to the Administrative Agent) (in each case, without regard to time or amounts); *plus*
- (p) rent expense as determined in accordance with GAAP not actually paid in cash during such period (net of rent expense paid in case during such period over and above rent expense as determined in accordance with GAAP); *plus*
- (q) any non-cash increase in expense resulting from the revaluation of inventory (including any impact of changes to inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments; *plus*

(r) any fees, costs and expenses incurred in connection with the adoption or implementation of Accounting Standards Codification Topic 606—Revenue from Contracts with Customers (or any successor provision or other financial accounting standard having a similar result or effect), and any non-cash losses or charges resulting from the application of Accounting Standards Codification Topic 606—Revenue from Contracts with Customers (or any successor provision or other financial accounting standard having a similar result or effect); *plus*

(s) any fees, costs, expenses or charges related to or recorded in cost of sales to recognize cost on a last-in-first-out basis; *plus*

(t) earn-out obligations incurred in connection with any acquisition or other Investment and paid or accrued during the applicable period, including any mark-to-market adjustments; and

(2) decreased (without duplication) by non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period (other than non-cash gains relating to the application of Accounting Standards Codification Topic 842—Leases) (or any successor provision or other financial accounting standard having a similar result or effect).

There shall be included in determining Consolidated EBITDA for any period, without duplication, (A) the Acquired EBITDA of any Person, property, business or asset acquired by the Borrower or any Restricted Subsidiary (including, as applicable, the property, businesses and assets acquired by (or contributed to) the Borrower and its Restricted Subsidiaries as part of the Transactions) during such period to the extent not subsequently sold, transferred or otherwise disposed of by the Borrower or such Restricted Subsidiary during such period (each such Person, property, business or asset acquired and not subsequently so disposed of, an “**Acquired Entity or Business**”), and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary during such period (each, a “**Converted Restricted Subsidiary**”), based on the actual Acquired EBITDA of such Acquired Entity or Business or Converted Restricted Subsidiary for such period (including the portion thereof occurring prior to such acquisition) and (B) pro forma adjustments in respect of each Acquired Entity or Business as are consistent with Section 1.10.

For purposes of determining the Consolidated EBITDA for any period, there shall be excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business or asset (other than an Unrestricted Subsidiary) sold, transferred or otherwise disposed of, closed or classified as discontinued operations by the Borrower or any Restricted Subsidiary during such period (each such Person, property, business or asset so sold or disposed of, a “**Sold Entity or Business**”) and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each, a “**Converted Unrestricted Subsidiary**”), based on the actual Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer or disposition); *provided* that for the avoidance of doubt, at the Borrower’s option, notwithstanding any classification under GAAP of any Person, property, business or asset as discontinued operations, the Disposed EBITDA of such Person, property, business or asset shall not be excluded for any purposes hereunder until such disposition shall have been consummated.

“**Consolidated First Lien Net Leverage Ratio**” means, as of any date of determination, the ratio of (a) Consolidated Funded First Lien Indebtedness of the Restricted Group as of such date to (b) LTM EBITDA, in each case, calculated on a pro forma basis in a manner consistent with Section 1.10.

“**Consolidated Funded First Lien Indebtedness**” means Consolidated Funded Indebtedness of the Restricted Group that is secured by a Lien on the Collateral on an equivalent priority basis (but, in each case, without regard to control of remedies) with the Liens on the Collateral securing the Obligations. For the avoidance of doubt, Consolidated Funded First Lien Indebtedness shall not include Finance Lease Obligations or Purchase Money Obligations.

“**Consolidated Funded Indebtedness**” means, as of any date of determination, an amount equal to:

(a) the aggregate principal amount of outstanding Indebtedness for borrowed money (excluding Indebtedness with respect to obligations in respect of Cash Management Agreements, intercompany Indebtedness, Disqualified Stock and Preferred Stock of Restricted Subsidiaries) as of such date, including Guarantees thereof by the Borrower or its Restricted Subsidiaries; *provided* that, with respect to borrowings under the Revolving Credit Facility, Consolidated Funded Indebtedness shall include the daily average of such borrowings over the portion of the fiscal quarter in which the applicable calculation occurs and the immediately preceding three quarters and not the borrowings under the Revolving Credit Facility on the date of determination (it being understood that solely for purposes of the calculation described in this proviso, the daily average borrowings under the Revolving Credit Facility (a) for the fiscal quarter ended September 30, 2022, shall be deemed to be \$90,000,000, (b) for the fiscal quarter ended December 31, 2022, shall be deemed to be \$90,000,000, (c) for the fiscal quarter ended March 31, 2023, shall be deemed to be \$90,000,000, and (d) for the fiscal quarter ended June 30, 2023, the daily average for such fiscal quarter shall exclude the period prior to the Closing Date), *plus*

(b) the aggregate principal amount of Finance Lease Obligations, Indebtedness represented by promissory notes or similar instruments and unreimbursed drawings under letters of credit of the Borrower and its Restricted Subsidiaries outstanding on such date (*provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Funded Indebtedness until three (3) Business Days after such amount is drawn), *minus*

(c) the aggregate amount of Unrestricted Cash and Cash Equivalents (*provided* that the cash proceeds of any proposed incurrence of Indebtedness shall not be included in this clause (c) for purposes of calculating the Consolidated Total Net Leverage Ratio or the Consolidated First Lien Net Leverage Ratio, as applicable),

in each case, with such pro forma adjustments as are consistent with Section 1.10.

For the avoidance of doubt, Consolidated Funded Indebtedness shall exclude (i) Indebtedness in respect of any Receivables Facility or Securitization Facility and (ii) any Indebtedness of a Person if, upon or prior to the maturity thereof, such Person has irrevocably deposited with the proper Person in trust or escrow the necessary funds (or evidences of indebtedness) for the payment, redemption or satisfaction of such Indebtedness; it being understood that such escrowed funds shall not constitute cash or Cash Equivalents for purposes of cash netting pursuant to clause (b) above.

“**Consolidated Interest Coverage Ratio**” means, as of any date of determination, the ratio of (a) LTM EBITDA to (b) Consolidated Cash Interest Expense of the Restricted Group on a consolidated basis for the Test Period ended on such date, in each case, calculated on a pro forma basis in a manner consistent with Section 1.10.

“**Consolidated Interest Expense**” means, with respect to any Person for any period, without duplication, the sum of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income, which shall include:

- (a) amortization of original issue discount or premium resulting from the issuance of Indebtedness at less than par,
- (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances,
- (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in mark-to-market valuation of any Swap Obligations or other derivative instruments pursuant to GAAP),
- (d) the interest component of Finance Lease Obligations, and
- (e) net payments, if any made (less net payments, if any, received), pursuant to interest rate Swap Obligations with respect to Indebtedness,

and which shall exclude:

- (i) Securitization Fees,
- (ii) penalties and interest relating to taxes,
- (iii) annual agency or similar fees paid to the administrative agents, collateral agents and other agents under any credit facility (including the Facilities),
- (iv) any additional interest or liquidated damages owing pursuant to any registration rights obligations,
- (v) costs associated with obtaining Swap Obligations,
- (vi) accretion or accrual of discounted liabilities other than Indebtedness,
- (vii) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or purchase accounting in connection with the Transactions or any acquisition,
- (viii) amortization, expensing or write-off of deferred financing fees, amendment and consent fees, debt issuance costs, debt discount or premium, terminated hedging obligations and other commissions, fees and expenses, discounted liabilities, original issue discount and any other amounts of non-cash interest and, adjusted to the extent included, to exclude any refunds or similar credits received in connection with the purchasing or procurement of goods or services under any purchasing card or similar program,
- (ix) any expensing of bridge, arrangement, structuring, commitment, agency, consent and other financing fees and any other fees related to the Transactions or any acquisitions after the Closing Date,
- (x) any accretion of accrued interest on discounted liabilities and any prepayment, make-whole or breakage premium, penalty or cost,
- (xi) interest expense with respect to Indebtedness of any direct or indirect parent of such Person resulting from push-down accounting,

- (xii) any lease, rental or other expense in connection with a Non-Financing Lease Obligations, and
  - (xiii) any interest expense attributable to any actual or prospective legal settlement, fine, judgment or order; *plus*
- (2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued;
- less*
- (3) interest income for such period.

For purposes of this definition, interest on a Finance Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Finance Lease Obligation in accordance with GAAP.

**“Consolidated Net Income”** means, with respect to any Person for any period, the net income (loss) of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided, however*, that there will not be included in such Consolidated Net Income:

- (1) any net income (loss) of any Person if such Person is not a Restricted Subsidiary (including any net income (loss) from investments recorded in such Person under the equity method of accounting), except that the Borrower’s equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed (or to the extent converted into cash or Cash Equivalents) or that (as determined by the Borrower in its reasonable discretion) could have been distributed by such Person during such period to the Borrower or a Restricted Subsidiary as a dividend or other distribution or return on investment;
- (2) solely for the purpose of determining the amount available for Restricted Payments under clause (y)(i) of Section 7.05(a), any net income (loss) of any Restricted Subsidiary (other than the Guarantors) if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Borrower or any Guarantor by operation of the terms of such Restricted Subsidiary’s articles, charter or any agreement, instrument, judgment, decree, order, statute or governmental rule or regulation applicable to such Restricted Subsidiary or its stockholders (other than (a) restrictions that have been waived or otherwise released (or such Person reasonably believes such restriction could be waived or released and is using commercially reasonable efforts to pursue such waiver or release), (b) restrictions pursuant to this Agreement, the 7.750% Notes, the 7.750% Notes Documents or other similar indebtedness and (c) restrictions specified in clause (14)(i) of Section 7.06(b)), except that the Borrower’s equity in the net income of any such Restricted Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed (or to the extent converted, or having the ability to be converted, into cash or Cash Equivalents) or that could have been distributed by such Restricted Subsidiary during such period to the Borrower or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend to another Restricted Subsidiary, to the limitation contained in this clause (2));



- (3) any gain (or loss) (a) in respect of facilities no longer used or useful in the conduct of the business of the Borrower or its Restricted Subsidiaries, abandoned, transferred, closed, disposed or discontinued operations, (b) on disposal, abandonment or discontinuance of disposed, abandoned, transferred, closed or discontinued operations, and (c) attributable to asset dispositions, abandonments, sales or other dispositions of any asset (including pursuant to any Sale and Leaseback Transaction) or the designation of an Unrestricted Subsidiary other than in the ordinary course of business;
- (4) (a) any extraordinary, exceptional, unusual, infrequently occurring or nonrecurring loss, charge or expense, as well as Transaction Costs, Public Company Costs, restructuring and duplicative running costs, restructuring charges or reserves (whether or not classified as restructuring expense on the consolidated financial statements), relocation costs, start-up or initial costs for any project or new production line, division or new line of business, integration and facilities' or bases' opening costs, facility consolidation and closing costs, severance costs and expenses, one-time charges (including compensation charges), payments made pursuant to the terms of change in control agreements that the Borrower or a Subsidiary or a direct or indirect parent of the Borrower had entered into with employees of the Borrower or a Subsidiary or a direct or indirect parent of the Borrower, costs relating to pre-opening, opening and conversion costs for facilities, losses, costs or cost inefficiencies related to project terminations, facility or property disruptions or shutdowns (including due to work stoppages, natural disasters and epidemics), signing, retention and completion bonuses (including management bonus pools), recruiting costs, costs incurred in connection with any strategic or cost savings initiatives, transition costs, contract terminations, litigation and arbitration fees, costs and charges, expenses in connection with one-time rate changes, costs incurred with acquisitions, investments and dispositions (including travel and out-of-pocket costs), human resources costs (including relocation bonuses), litigation and arbitration costs, charges, fees and expenses (including settlements), management transition costs, advertising costs and non-recurring product and intellectual property development, other business optimization expenses or reserves (including costs and expenses relating to business optimization programs and new systems design and costs or reserves associated with improvements to IT and accounting functions), retention charges (including charges or expenses in respect of incentive plans), system establishment costs and implementation costs, and operating expenses attributable to the implementation of strategic or cost-savings initiatives, and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments) and professional, legal, accounting, consulting and other service fees incurred with any of the foregoing (in each case, as applicable, whether or not consummated), and
- (b) any charge, expense, cost, accrual or reserve of any kind associated with acquisition related litigation and settlements thereof;
- (5) (a) at the election of the Borrower with respect to any quarterly period, the cumulative effect (including charges, accruals, expenses and reserves) of a change in law, regulation or accounting principles and changes as a result of the adoption, implementation or modification of accounting policies, including the adoption,

- (b) subject to the last paragraph of the definition of “GAAP,” the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period (including any impact resulting from an election by the Borrower to apply IFRS or other Accounting Changes), and
- (c) any costs, charges, losses, fees or expenses in connection with the implementation or tracking of such changes or modifications specified in the foregoing clauses (a) and (b), in each case as reasonably determined by the Borrower;
- (6) (a) any equity-based or non-cash compensation or similar charge, cost or expense or reduction of revenue, including any such charge, cost, expense or reduction arising from any grant of stock, stock appreciation or similar rights, stock options, restricted stock, phantom equity, profits interests or other interests, or other rights or equity- or equity-based incentive programs (“**equity incentives**”), any income (loss) associated with the equity incentives or other long-term incentive compensation plans (including under deferred compensation arrangements of the Borrower or any direct or indirect parent thereof or any Subsidiary and any positive investment income with respect to funded deferred compensation account balances), roll-over, acceleration or payout of Capital Stock by employees, directors, officers, managers, contractors, consultants, advisors or business partners (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower or any direct or indirect parent thereof or any Subsidiary, and any cash awards granted to employees of the Borrower and its Subsidiaries in replacement for forfeited awards,
- (b) any non-cash losses attributable to deferred compensations plans or trusts or realized in such period in connection with adjustments to any employee benefit plan due to changes in estimates, actuarial assumptions, valuations, studies or judgments,
- (c) non-cash compensation expense resulting from the application of Accounting Standards Codification Topic 718, Compensation—Stock Compensation or Accounting Standards Codification Topics 505-50, Equity-Based Payments to Non-Employees (or any successor provision or other financial accounting standard having a similar result or effect), and
- (d) any net pension or post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, amortization of such amounts arising in prior periods, amortization of the unrecognized obligation (and loss or cost) existing at the date of initial application of Statement of Financial Accounting Standards No. 87, 106 and 112—Employee Benefits (or any successor provision or other financial accounting standard having a similar result or effect), and any other item of a similar nature;
- (7) any income (loss) from the extinguishment, conversion or cancellation of Indebtedness, Swap Obligations or other derivative instruments (including deferred financing costs written off, premiums paid or other expenses incurred);
- (8) any unrealized or realized gains or losses in respect of any Swap Obligations or any ineffectiveness recognized in earnings related to hedge transactions or the fair value of changes therein recognized in earnings for derivatives that do not qualify as hedge transactions;

- (9) any fees, losses, costs, expenses or charges incurred during such period (including any transaction, retention bonus or similar payment), or any amortization thereof for such period, in connection with (a) any acquisition, recapitalization, Investment, Asset Disposition, disposition, issuance or repayment of Indebtedness (including such fees, expense or charges related to the offering, issuance and rating of the 7.750% Notes, other securities and any credit facilities (including the Facilities)), issuance of Capital Stock, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the 7.750% Notes, other securities and any credit facilities (including the Facilities)), in each case, including the Transactions, any such transaction consummated prior to, on or after the Closing Date and any such transaction undertaken but not completed, and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt, the effects of expensing all transaction-related expenses in accordance with Accounting Standards Codification Topic 805—Business Combinations (or any successor provision or other financial accounting standard having a similar result or effect) and (if applicable) any adjustments resulting from the application of Accounting Standards Codification Topic 460—Guarantees (or any successor provision or other financial accounting standard having a similar result or effect) or any related pronouncements) and (b) complying with the requirements under, or making elections permitted by, the documentation governing any Indebtedness;
- (10) any unrealized or realized gain or loss resulting in such period from currency translation increases or decreases or transaction gains or losses, including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from Swap Obligations for currency risk), intercompany loans, accounts receivables, accounts payable, intercompany balances, other balance sheet items, Swap Obligations or other obligations of the Borrower or any Restricted Subsidiary owing to the Borrower or any Restricted Subsidiary and any other realized or unrealized foreign exchange gains or losses relating to the translation of assets and liabilities denominated in foreign currencies;
- (11) any unrealized or realized income (loss) or non-cash expense attributable to movement in mark-to-market valuation of foreign currencies, Indebtedness or derivative instruments pursuant to GAAP;
- (12) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) in such Person's consolidated financial statements pursuant to GAAP (including, if applicable, those required or permitted by Accounting Standards Codification Topic 805—Business Combinations and (if applicable) Accounting Standards Codification Topic 350—Intangibles-Goodwill and Other (or any successor provision or other financial accounting standard having a similar result or effect) and related pronouncements), including in the inventory (including any impact of changes to inventory valuation policy methods, including changes in capitalization of variances), property and equipment, software, loans, leases, goodwill, intangible assets, in-process research and development, deferred revenue (including deferred costs related thereto and deferred rent) and debt line items thereof, resulting from the application of acquisition method accounting, recapitalization accounting or purchase accounting, as applicable, in relation to the Transactions or any consummated acquisition (by merger, consolidation, amalgamation or otherwise), joint venture investment or other Investment or the amortization or write-off or write-down of any amounts thereof;
- (13) any impairment charge, write-off or write-down, including impairment charges, write-offs or write-downs related to intangible assets, long-lived assets, goodwill, investments in debt or equity securities (including any losses with respect to the foregoing in bankruptcy, insolvency or similar proceedings) and investments recorded using the equity method or as a result of a change in law or regulation, in connection with any disposition of assets and the amortization of intangibles arising pursuant to GAAP;

- (14) (a) accruals and reserves (including contingent liabilities) that are established or adjusted in connection with the Transactions or within 24 months after the closing of any acquisition or disposition that are so required to be established or adjusted as a result of such acquisition or disposition in accordance with GAAP, or changes as a result of adoption or modification of accounting policies, and
- (b) earn-out, non-compete and contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise (and including deferred performance incentives in connection with any acquisition (by merger, consolidation, amalgamation or otherwise), joint venture investment or other Investment whether or not a service component is required from the transferor or its related party)) and adjustments thereof and purchase price adjustments, including any mark-to-market adjustments;
- (15) any income (loss) related to any realized or unrealized gains and losses resulting from Swap Obligations or embedded derivatives that require similar accounting treatment (including embedded derivatives in customer contracts), and the application of Accounting Standards Codification Topic 815—Derivatives and Hedging (or any successor provision or other financial accounting standard having a similar result or effect) and its related pronouncements or mark to market movement of non-U.S. currencies, Indebtedness, derivatives instruments or other financial instruments pursuant to GAAP, including (if applicable) Accounting Standards Codification Topic 825—Financial Instruments (or any successor provision or other financial accounting standard having a similar result or effect) or an alternative basis of accounting applied in lieu of GAAP;
- (16) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures and any deferred tax expense associated with tax deductions or net operating losses arising as a result of the Transactions, or the release of any valuation allowances related to such item;
- (17) the amount of (x) Board of Directors (or equivalent thereof) fees, management, monitoring, consulting, refinancing, transaction, advisory and other fees (including exit and termination fees) and indemnities, costs and expenses paid or accrued in such period to any member of the Board of Directors (or the equivalent thereof) of the Borrower, any of its Subsidiaries or any direct or indirect parent of the Borrower, and (y) payments made to option holders of the Borrower or any direct or indirect parent thereof in connection with, or as a result of, any distribution being made to equityholders of such Person or its direct or indirect parent, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution, including any cash consideration for any repurchase of equity;
- (18) the amount of loss or discount on sale of Securitization Assets, Receivables Assets and related assets in connection with a Qualified Securitization Financing or Receivables Facility;
- (19) (i) at the election of the Borrower, payments to third parties in respect of research and development, including amounts paid upon signing, success, completion and other milestones and other progress payments, to the extent expensed, and

(ii) at the election of the Borrower with respect to any quarterly period, effects of adjustments to accruals and reserves during a period relating to any change in the methodology of calculating reserves for returns, rebates and other chargebacks (including government program rebates);

(20) (i) the non-cash portion of “straight-line” rent expense will be excluded, and

(ii) the cash portion of “straight-line” rent expense that exceeds the amount expensed in respect of such rent expense will be included; and

(21) non-cash charges relating to increases or decreases of deferred tax asset valuation allowances.

In addition, to the extent not already excluded (or included, as applicable) from the Consolidated Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall be increased by the amount of: (i) any expenses, charges or losses that are reimbursed by indemnification or other reimbursement provisions in connection with any investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed within 365 days of the date of such evidence (net of any amount so added back in a prior period to the extent not so reimbursed within the applicable 365-day period) and (ii) to the extent covered by insurance (including business interruption insurance) and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is in fact reimbursed within 365 days of the date of such evidence (net of any amount so added back in a prior period to the extent not so reimbursed within the applicable 365-day period), expenses, charges or losses (including lost profits) with respect to liability or Casualty Events or business interruption. Consolidated Net Income shall be reduced by the amount of distributions for or payments of Permitted Tax Amounts actually made to any direct or indirect parent of such Person in respect of such period in accordance with [clause 9\(a\)](#) of [Section 7.05\(b\)](#), as though such amounts had been paid as Taxes directly by such Person for such periods.

“**Consolidated Total Net Leverage Ratio**” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness of the Restricted Group as of such date to (b) LTM EBITDA, in each case, calculated on a pro forma basis in a manner consistent with [Section 1.10](#).

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing in any manner, whether directly or indirectly, any Non-Financing Lease Obligation, dividend or other obligation that does not constitute Indebtedness (“**primary obligations**”) of any other Person (the “**primary obligor**”), including any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds:

(a) for the purchase or payment of any such primary obligation; or

(b) to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person, or of any agreement, loan agreement, indenture, mortgage, deed of trust, lease, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**Controlled Investment Affiliate**” means, as to any Person, any other Person, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Borrower and/or other companies.

“**Converted Restricted Subsidiary**” has the meaning specified in the definition of the term “Consolidated EBITDA”.

“**Converted Unrestricted Subsidiary**” has the meaning specified in the definition of the term “Consolidated EBITDA”.

“**Corresponding Tenor**” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“**Covered Entity**” has the meaning specified in [Section 10.25\(b\)](#).

“**Credit Agreement Refinancing Debt**” means one or more series of (I) senior unsecured loans or notes, (II) senior secured loans or notes secured by a lien on the Collateral on a *pari passu* basis with the Initial Term Loans or (III) senior secured loans or notes secured by a lien on the Collateral on a junior basis to the Initial Term Loans, in each case issued in respect of a refinancing of outstanding Indebtedness of the Borrower under any one or more Term Loan Tranches or Revolving Tranches; *provided that*,

(a) such Credit Agreement Refinancing Debt shall comply with the Incremental Debt Lien/Guarantee Parameters;

(b) if in the form of a term loan facility or notes, such Credit Agreement Refinancing Debt, other than with respect to Extendable Bridge Loans/Interim Debt, (i) shall not mature prior to the Latest Maturity Date of the Term Loan Tranche being refinanced (*provided that notwithstanding the foregoing, any such Credit Agreement Refinancing Debt incurred in reliance on an Inside Maturity Basket shall be permitted to have a Stated Maturity earlier than the Maturity Date of any Facilities to which such Inside Maturity Basket applies; provided, further, that such Credit Agreement Refinancing Debt shall not have a final Stated Maturity and Weighted Average Life to Maturity at the time such Credit Agreement Refinancing Debt is incurred which is less than the final Stated Maturity and remaining Weighted Average Life to Maturity of the Initial Term Loans*) or (ii) be subject to any amortization prior to the final maturity thereof (except if such Credit Agreement Refinancing Debt is in the form of term loans that are secured on a *pari passu* basis with the Initial Term Loans, customary amortization not to exceed 1.0% per annum or, in the case of term loans structured as term “a” loans, as determined in good faith by the Borrower, amortization that is customary for such loans at such time, as determined in good faith by the Borrower), or be subject to any mandatory redemption or prepayment provisions or rights (except (x) customary assets sale, casualty events or similar event, change of control provisions, special mandatory redemptions in connection with customary escrow arrangements, prepayments with excess cash flow (or similar metrics) and proceeds of prohibited indebtedness, and customary acceleration rights after an event of default and (y) customary AHYDO Catch-up Payments); and

(c) the Net Cash Proceeds of such Credit Agreement Refinancing Debt shall be applied, substantially concurrently with the incurrence thereof, to the repayment or prepayment of outstanding Term Loans under the applicable Term Loan Tranche being so refinanced or to the prepayment and termination of Commitments of outstanding Revolving Credit Loans under the applicable Revolving Tranche being so refinanced, as applicable, and the payment of fees, expenses and premiums, if any, payable in connection therewith.

“**Credit Extension**” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“**Custodian**” has the meaning specified in Section 8.01(f)(iii).

“**Daily Simple SOFR**” means, for any day (a “**SOFR Rate Day**”), a rate per annum equal to SOFR for the day (such day “**SOFR Determination Date**”) that is five (5) U.S. Government Securities Business Days prior to (a) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (b) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, judicial management, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**Declining Lender**” has the meaning specified in Section 2.05(c).

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means an interest rate equal to (after as well as before judgment), (a) with respect to any overdue principal for any Loan, the applicable interest rate for such Loan, plus 2.00% per annum (*provided* that with respect to SOFR Loans, the determination of the applicable interest rate is subject to Section 2.02(c) to the extent that SOFR Loans may not be converted to, or continued as, SOFR Loans pursuant thereto) and (b) with respect to any other overdue amount, including overdue interest, the applicable interest rate for ABR Loans, plus 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws.

“**Defaulting Lender**” means, subject to Section 2.17(b), any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit within three (3) Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or, solely with respect to a Revolving Credit Lender, under other agreements generally in which it commits to extend credit, (c) has failed, within three (3) Business Days after reasonable request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations (*provided* that the Administrative Agent shall request such confirmation upon reasonable request from any L/C Issuer; *provided, further*, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such confirmation by the Administrative Agent) or (d) has, or has a direct or indirect parent company that has, other than via an Undisclosed Administration, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (iv) become the subject of a Bail-In Action; *provided* that no Lender shall be a Defaulting Lender solely by virtue of (x) the ownership or acquisition by a Governmental Authority of any Equity Interest in that Lender or any direct or indirect parent company thereof so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender, or (y) the occurrence of any of the events described in clauses (d)(i), (d)(ii) or (d)(iii) of this definition which in each case has been dismissed or terminated prior to the date of this Agreement. Any determination by the Administrative Agent (or the Required Lenders to the extent that the Administrative Agent is a Defaulting Lender) that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination to the Administrative Agent, the Borrower, each L/C Issuer and each Lender, as applicable.

**“Designated Non-Cash Consideration”** means the fair market value (as determined in good faith by the Borrower) of non-cash consideration received by the Borrower or any of its Restricted Subsidiaries in connection with an Asset Disposition as designated by the Borrower, which designation may be made at or after the time of the applicable Asset Disposition, less the amount of cash or Cash Equivalents received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 7.04.

**“Designated Preferred Stock”** means Preferred Stock of the Borrower or a direct or indirect parent thereof (other than Disqualified Stock) that is issued for cash (other than to the Borrower or a Subsidiary of the Borrower or an employee stock ownership plan or trust established by the Borrower or any such Subsidiary for the benefit of their employees to the extent funded by the Borrower or such Subsidiary) and that is designated as “Designated Preferred Stock” pursuant to a certificate of a Responsible Officer of the Borrower at or prior to the issuance thereof, the Net Cash Proceeds of which are excluded from the calculation set forth in clause (y)(iii) of Section 7.05(a).

**“Designation Date”** has the meaning specified in Section 2.19(f).

**“Disinterested Director”** means, with respect to any Affiliate Transaction, a member of the Board of Directors having no material direct or indirect financial interest in or with respect to such Affiliate Transaction. A member of the Board of Directors shall be deemed not to have such a financial interest by reason of such member’s holding Capital Stock of the Borrower or any Parent Entity or any options, warrants or other rights in respect of such Capital Stock.

**“Disposed EBITDA”** means, with respect to any Sold Entity or Business or any Converted Unrestricted Subsidiary for any period, the amount for such period of Consolidated EBITDA of such Sold Entity or Business or such Converted Unrestricted Subsidiary, all as determined on a consolidated basis for such Sold Entity or Business or such Converted Unrestricted Subsidiary.

**“Disposition”** has the meaning specified in the definition of “Asset Disposition”.



**“Disqualified Institution”** means (a) each person identified as a “Disqualified Institution” on a list delivered to the Administrative Agent by the Borrower on or prior to the Closing Date (as such list may be updated from time to time after the Closing Date with the Administrative Agent’s consent (such consent not to be unreasonably withheld, conditioned or delayed)), (b) any Company Competitor identified on a list delivered to the Administrative Agent by the Borrower on or prior to the Closing Date (as such list may be updated from time to time after the Closing Date) and (c) as to any entity referenced in each of clauses (a) and (b) above (the **“Primary Disqualified Institution”**), any of such Primary Disqualified Institution’s Affiliates identified in writing to the Administrative Agent from time to time or otherwise clearly identifiable solely on the basis of the similarity of such Affiliate’s name to an entity on the disqualified lender list, but excluding any Affiliate that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and with respect to which the Primary Disqualified Institution does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity; *provided* that (i) changes or additions to the list of Disqualified Institutions shall be at any time and from time to time via email to [JPMDQ\\_Contact@jpmorgan.com](mailto:JPMDQ_Contact@jpmorgan.com) (the **“Notice Email Address”**), (ii) any such update to the list of Disqualified Institutions shall not become effective until the date that is two (2) Business Days after notice thereof is furnished to JPM at the Notice Email Address and (iii) any additional designation permitted by the foregoing shall not apply retroactively to disqualify (as to any assignment, allocation or participation) any Person that acquired or agreed to acquire such assignment or allocation of, or participation in, the Commitments and/or Loans hereunder prior to the effectiveness of any such addition.

**“Disqualified Stock”** means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

- (1) matures or is mandatorily redeemable for cash or in exchange for Indebtedness pursuant to a sinking fund obligation or otherwise; or
- (2) is or may become (in accordance with its terms) upon the occurrence of certain events or otherwise redeemable or repurchasable for cash or in exchange for Indebtedness at the option of the holder of the Capital Stock in whole or in part,

in each case on or prior to the earlier of the date that is 91 days after the Latest Maturity Date of the Term Loans at the time of issuance of the respective Disqualified Stock; *provided, however*, that (i) only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock and (ii) any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the issuer thereof to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (howsoever defined or referred to) shall not constitute Disqualified Stock if any such redemption or repurchase obligation is subject to compliance by the relevant Person with Section 7.05; *provided, further*, that if such Capital Stock is issued to any future, current or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower, any of its Subsidiaries, any direct or indirect parent of the Borrower or any other entity in which the Borrower or a Restricted Subsidiary has an Investment and is designated in good faith as an “affiliate” by the Board of Directors (or the compensation committee thereof) or any other plan for the benefit of current, former or future employees (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower or its Subsidiaries or by any such plan to such employees (or their respective Controlled Investment Affiliates or Immediate Family Members), such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“**Distressed Agent-Related Person**” has the meaning specified in the definition of “Agent-Related Distress Event”.

“**Divided LLC**” means a limited liability company which has been formed upon the consummation of an LLC Division.

“**Documentation Agent**” means TD Bank N.A., in its capacity as documentation agent.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Effective Extension Incremental Facility**” has the meaning specified in Section 2.14(a).

“**Election Date**” has the meaning specified in Section 7.05.

“**Eligible Assignee**” means any Person that meets the requirements to be an assignee under Section 10.07(b) (subject to receipt of such consents, if any, as may be required for the assignment of the applicable Loan and/or Commitments to such Person under Section 10.07(b)(iii)).

“**EMU**” means the economic and monetary union as contemplated in the EU Treaty.

“**EMU Legislation**” means the legislative measures of the EMU for the introduction of, changeover to, or operation of the Euro in one or more member states.

“**Engagement Letter**” means the Engagement and Fee Letter, dated March 20, 2023, among JPM and MDU Resources.

“**Environment**” means ambient air, indoor air, surface water, groundwater, drinking water, land surface, sediments, and subsurface strata and natural resources such as wetlands, flora and fauna.

“**Environmental Laws**” means any and all applicable federal, state, provincial, territorial, local and foreign statutes, laws, including common law, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses or governmental restrictions relating to pollution, the protection of the Environment, and human health and safety (to the extent relating to exposure to Hazardous Materials), including those related to Hazardous Materials, air emissions and discharges to public pollution control systems.

“**Environmental Liability**” means any liability (including any liability for damages, costs of environmental remediation, monitoring or oversight by a Governmental Authority, fines, penalties or indemnities) directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Materials, (c) human exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the Environment or (e) any contract, agreement or other binding consensual arrangement to the extent liability is assumed or imposed with respect to any of the foregoing.

“**Environmental Permit**” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“**equity incentives**” has the meaning specified in the definition of “Consolidated Net Income”.

“**Equity Interests**” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding (x) any Capital Stock that arises only by reason of the happening of a contingency that is outside the control of the holder of such Capital Stock or any debt security that is convertible into, or exchangeable for, Capital Stock and (y) Permitted Call Spread Swap Agreements).

“**Equity Offering**” means (x) a sale of Capital Stock (other than through the issuance of Disqualified Stock or Designated Preferred Stock or through an Excluded Contribution) other than (a) offerings registered on Form S-8 (or any successor form) under the Securities Act or any similar offering in other jurisdictions or other securities of the Borrower or any Parent Entity and (b) issuances of Capital Stock to any Subsidiary of the Borrower or (y) a cash equity contribution to the Borrower.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

“**ERISA Affiliate**” means any Person who together with any Loan Party is treated as a single employer within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code) or Section 4001(b) of ERISA.

“**ERISA Event**” means (a) a Reportable Event with respect to a Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent (within the meaning of Section 4245 of ERISA); (d) the filing of a written notice of intent to terminate or the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, respectively, (e) the institution by the PBGC of, or the receipt of any notice by any Loan Party or any ERISA Affiliate from the PBGC or a plan administrator indicating an intent by the PBGC to institute, proceedings to terminate a Plan or Multiemployer Plan; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan; (g) the determination that any Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA; (h) the determination that any Multiemployer Plan is considered a plan in “endangered,” “critical,” or “critical and declining” status within the meaning of Section 432 of the Code or Section 305 of ERISA; (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate; (j) the conditions for the imposition of a Lien under Section 430(k) of the Code or Section 303(k) of ERISA shall have been met with respect to any Plan; or (k) any Foreign Benefit Event.

“**Erroneous Payment**” has the meaning assigned to it in [Section 9.19\(a\)](#).

“**Erroneous Payment Deficiency Assignment**” has the meaning assigned to it in Section 9.19(d)(i).

“**Erroneous Payment Impacted Class**” has the meaning assigned to it in Section 9.19(d)(i).

“**Erroneous Payment Return Deficiency**” has the meaning assigned to it in Section 9.19(d)(i).

“**Erroneous Payment Subrogation Rights**” has the meaning assigned to it in Section 9.19(e).

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**EU Treaty**” means the Treaty on European Union.

“**Euro**” and “**€**” means the single currency of the Participating Member States introduced in accordance with the provisions of Article 109(i)4 of the EU Treaty.

“**Event of Default**” has the meaning specified in Section 8.01.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

“**Exchange Agent**” means (a) the Administrative Agent or (b) any other financial institution or advisor employed by the Borrower (whether or not an Affiliate of the Administrative Agent), after consultation with the Administrative Agent, to act as an arranger in connection with any Permitted Debt Exchange pursuant to Section 2.20; *provided* that the Borrower shall not designate the Administrative Agent as the Exchange Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Exchange Agent); *provided, further*, that neither the Borrower nor any of its Affiliates may act as the Exchange Agent.

“**Exchange Rate**” means on any day with respect to any currency other than Dollars, the rate at which such currency may be exchanged into Dollars in the London foreign exchange market at or about 11:00 a.m. London time (or New York City time, as applicable) on a particular day as displayed by ICE Data Services as the “ask price,” or as displayed on such other information service which publishes that rate of exchange from time to time in place of ICE Data Services (or if such service ceases to be available, the equivalent of such amount in Dollars as determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower, or, in the absence of such agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted), at or about 9:00 a.m. (Chicago time) on such date for the purchase of Dollars for delivery two (2) Business Days later.

“**Excluded Accounts**” means any account that is used solely as:

- (1) payroll, healthcare and other employee wage and benefit accounts,
- (2) tax accounts, including, without limitation, sales, use, payroll, and withholding tax accounts,
- (3) escrow, defeasance and redemption accounts, in each case maintained for the benefit of a Person that is not a Loan Party,

- (4) fiduciary or trust accounts, in each case maintained for the benefit of a Person that is not a Loan Party,
- (5) cash collateral accounts subject to Permitted Liens solely to secure reimbursement obligations in respect of letters of credit (other than Letters of Credit), and
- (6) the funds or other property held in or maintained for such purposes in any such account described in clauses (1) through (5).

“**Excluded Casualty Event**” means a Casualty Event relating to property or assets which, had they been disposed of immediately prior to the applicable Casualty Event, would not have constituted an “Asset Disposition”.

“**Excluded Contributions**” means Net Cash Proceeds or property or assets received by the Borrower as capital contributions to the equity (other than through the issuance of Disqualified Stock or Designated Preferred Stock) of the Borrower after the Closing Date or from the issuance or sale (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Borrower or any Subsidiary of the Borrower for the benefit of their employees to the extent funded by the Borrower or any Restricted Subsidiary) of Capital Stock (other than Disqualified Stock or Designated Preferred Stock) of the Borrower.

“**Excluded Information**” has the meaning specified in Section 10.07(j).

“**Excluded Property**” means:

- (a) any fee-owned real property and/or any real property leasehold or subleasehold interests,
- (b) motor vehicles and other assets or goods subject to certificates of title to the extent a Lien thereon cannot be perfected by filing a UCC financing statement,
- (c) goods, chattel paper, investment property, documents of title, instruments, money, intangibles and other assets to the extent a security interest in such goods, chattel paper, investment property, documents of title, instruments, money, intangibles and other assets would result in adverse tax consequences to the Borrower or the Restricted Group, or material adverse regulatory consequences, in each case, as reasonably determined by the Borrower in good faith,
- (d) any goods, chattel paper, investment property, documents of title, instruments, money, intangibles and other assets, in each case, of or in which pledges or security interests in favor of the Collateral Agent are prohibited by applicable Law (including any requirement to obtain the consent of any Governmental Authority or third person under such applicable Law, unless such consent has been obtained) or by any contract binding on such assets at the time of its acquisition and not entered into in contemplation thereof, as reasonably determined by the Borrower; *provided* that (i) any such limitation described in this clause (d) on the security interests granted under the Collateral Documents shall only apply to the extent that any such prohibition could not be rendered ineffective pursuant to the UCC or any other applicable Law or principles of equity and shall not apply to any proceeds or receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Law (respectively) notwithstanding such prohibition and (ii) in the event of the termination or elimination of any such prohibition contained in any applicable Law, a security interest in such goods, chattel paper, investment property, documents of title, instruments, money, intangibles and other assets shall be automatically and simultaneously granted under the applicable Collateral Documents and shall be included as Collateral,

(e) any governmental licenses or state or local franchises, charters and authorizations (but not the proceeds thereof), to the extent security interests in favor of the Collateral Agent in such licenses, franchises, charters or authorizations are prohibited or restricted thereby; *provided* that (i) any such limitation described in this clause (e) on the security interests granted shall only apply to the extent that any such prohibition or restriction could not be rendered ineffective pursuant to the Uniform Commercial Code of any applicable jurisdiction or any other applicable Law or principles of equity and shall not apply to any proceeds or receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Law (respectively) notwithstanding such prohibition and (ii) in the event of the termination or elimination of any such prohibition or restriction contained in any applicable license, franchise, charter or authorization, a security interest in such licenses, franchises, charters or authorizations shall be automatically and simultaneously granted under the applicable Collateral Documents and such licenses, franchises, charters or authorizations shall be included as Collateral,

(f) Equity Interests in (A) any Person (other than Wholly Owned Restricted Subsidiaries of the Borrower) to the extent and for so long as the pledge thereof in favor of the Collateral Agent is not permitted by the terms of such Person's joint venture agreement or other applicable Organization Documents; *provided* that such prohibition exists on the Closing Date or at the time such Equity Interests are acquired (so long as such prohibition did not arise in contemplation of the Closing Date or such acquisition), (B) any not-for-profit Subsidiary, (C) any Captive Insurance Subsidiary, (D) any special purpose securitization vehicle (or similar entity), (E) any Unrestricted Subsidiary, (F) any Person which is acquired after the Closing Date to the extent and for so long as such Equity Interests are pledged in respect of Acquired Indebtedness permitted under this Agreement and such pledge constitutes a Permitted Lien and (G) (except to the extent perfected through the filing of a UCC financing statement) any Immaterial Subsidiary,

(g) any lease, license or other agreement or any goods or other property subject to a purchase money security interest, Finance Lease Obligation or similar arrangement, in each case, permitted under this Agreement, to the extent that a grant of a security interest therein would violate or invalidate such lease, license, capital lease or agreement or purchase money arrangement or create a right of termination in favor of any other party thereto (other than a Loan Party or their Wholly Owned Subsidiaries), in each case, except to the extent such prohibition is unenforceable after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code of any applicable jurisdiction, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code of any applicable jurisdiction notwithstanding such prohibition,

(h) "intent-to-use" trademark applications prior to the filing of a "Statement of Use" or "Amendment to Allege Use",

(i) any goods or assets sold pursuant to a Qualified Securitization Financing or Receivables Facility or other factoring or receivables arrangement permitted hereunder,

(j) Margin Stock,

(k) cash pledged solely to secure letter of credit reimbursement obligations to the extent such letters of credit and such pledge are permitted by this Agreement (excluding Cash Collateral securing L/C Obligations under this Agreement),

(l) Excluded Accounts, or

(m) (A) Voting Stock in excess of 65.0% of the total combined voting power of all Voting Stock of any CFC, of any Non-U.S. Subsidiary or of any FSHCO, (B) any Equity Interests of any Subsidiary not directly owned by a Loan Party and (C) the Equity Interests in any Immaterial Subsidiary (except to the extent perfected through the filing of a UCC financing statement).

Other goods, chattel paper, investment property, documents of title, instruments, money, intangibles and other assets shall be deemed to be “Excluded Property” if the Administrative Agent and the Borrower agree in writing that the cost or other consequences of obtaining or perfecting a security interest in such goods, chattel paper, investment property, documents of title, instruments, money, intangibles or other assets is excessive in relation to either the value of such goods, chattel paper, investment property, documents of title, instruments, money, intangibles and other assets as Collateral or to the benefit of the Lenders of the security afforded thereby. Notwithstanding anything herein or the Collateral Documents to the contrary, Excluded Property shall not include any Proceeds (as defined in the UCC), substitutions or replacements of any Excluded Property (unless such Proceeds, substitutions or replacements would otherwise constitute Excluded Property referred to above).

“**Excluded Subsidiary**” means any direct or indirect Subsidiary of the Borrower that is:

- (a) an Unrestricted Subsidiary,
- (b) not a Wholly Owned Restricted Subsidiary of the Borrower (other than a Subsidiary that was a Wholly Owned Restricted Subsidiary and that ceases to be a Wholly Owned Restricted Subsidiary as a result of (x) a transaction that is not bona fide or (y) the sale of its Equity Interests with sole intention to release such Subsidiary from its Guarantee of the Obligations),
- (c) an Immaterial Subsidiary,
- (d) a FSHCO or a CFC (or any direct or indirect Subsidiary of a Subsidiary that is a FSHCO or CFC),
- (e) a Non-U.S. Subsidiary or any direct or indirect Subsidiary of a Non-U.S. Subsidiary,
- (f) prohibited or restricted by applicable Law from guaranteeing the Facilities, or which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee, unless such consent, approval, license or authorization has been received,
- (g) prohibited or restricted from guaranteeing the Facilities by any Contractual Obligation in existence on the Spin-Off Date (but not entered into in contemplation thereof) and listed on Schedule 1.01(b) hereto and for so long as any such Contractual Obligation exists (or, in the case of any newly-acquired Subsidiary, in existence at the time of acquisition thereof but not entered into in contemplation thereof and for so long as any such Contractual Obligation exists),
- (h) a Subsidiary with respect to which a guarantee by it of the Facilities would result in an adverse tax consequence to the Borrower or the Restricted Group, or material adverse regulatory consequences, in each case, as reasonably determined by the Borrower in good faith,
- (i) a not-for-profit subsidiary,
- (j) an employee benefit trust or similar construct or a trust company,
- (k) a special purpose entity,
- (l) a Captive Insurance Subsidiary, or

(m) in the reasonable judgment of the Administrative Agent and the Borrower, a Subsidiary as to which the cost or other consequences (including any adverse tax consequences) of guaranteeing the Facilities would be excessive in view of the benefits to be obtained by the Lenders therefrom; *provided* that, subject to [Section 9.11](#), if a Subsidiary executes the Guaranty as a “Guarantor,” then it shall not constitute an “Excluded Subsidiary” (unless released from its obligations under the Guaranty, as a “Guarantor” in accordance with the terms hereof and thereof); *provided, further*, that no Subsidiary of the Borrower shall be an Excluded Subsidiary if such Subsidiary is a guarantor with respect to (x) any of the 7.750% Notes Documents or (y) any other Indebtedness for borrowed money of the Borrower or a Guarantor (other than any Guarantor that will simultaneously cease to be a Restricted Subsidiary or an Excluded Subsidiary), in an aggregate outstanding principal amount in excess of an amount equal to the greater of (i) \$100,000,000 and (ii) 33.0% of LTM EBITDA; *provided, however*, that, if such other Indebtedness will permit the release of such Subsidiary if such Subsidiary is released from its obligations hereunder, then such Subsidiary shall be released pursuant to this [clause \(m\)](#), notwithstanding the foregoing proviso.

“**Excluded Swap Obligation**” means, with respect to any Guarantor, (a) any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (i) by virtue of such Guarantor’s failure to constitute an “eligible contract participant,” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to any applicable keepwell, support, or other agreement for the benefit of such Guarantor), at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation or (ii) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Guarantor is a “financial entity,” as defined in section 2(h)(7)(C) the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation or (b) any other Swap Obligation designated as an “Excluded Swap Obligation” of such Guarantor as specified in any agreement between the relevant Loan Parties and Hedge Bank applicable to such Swap Obligation.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office, or being treated as a resident or as having a permanent establishment for tax purposes in, or, in the case of any Lender, having its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, any U.S. federal withholding Taxes imposed pursuant to a Law in effect on the date on which such Lender acquires an interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, the date on which such Lender acquires the applicable interest in such Loan (in each case, other than any Lender acquiring an interest in a Loan or Commitment pursuant to a request by any Loan Party under [Section 3.08](#)) or changes its Lending Office, except in each case to the extent that, pursuant to [Section 3.01](#), additional amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired the applicable Commitment or Loan or to such Lender immediately before it changes its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with [Section 3.01\(h\)](#) and (d) any Taxes imposed under FATCA.

“**Executive Order**” means Executive Order No. 13224 of September 23, 2001, entitled Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)).



“**Existing Letter of Credit**” means any letter of credit and/or bank guarantee previously issued by an L/C Issuer that (a) will remain outstanding on and after the Closing Date and (b) is listed on Schedule 1.01(f).

“**Existing Loans**” has the meaning specified in Section 2.19(a).

“**Existing Revolving Tranche**” has the meaning specified in Section 2.19(a).

“**Existing Term Loans**” has the meaning specified in Section 2.19(a).

“**Existing Term Tranche**” has the meaning specified in Section 2.19(a).

“**Existing Tranche**” has the meaning specified in Section 2.19(a).

“**Extendable Bridge Loans/Interim Debt**” means customary “bridge” loans, escrow or similar arrangements which by their terms will be converted into loans or other indebtedness that have, or extended such that they have, a maturity date later than the Latest Maturity Date of all Term Loan Tranches then in effect and a Weighted Average Life to Maturity that is not shorter than the Weighted Average Life to Maturity of any Term Loan Tranches then in effect.

“**Extended Loans**” has the meaning specified in Section 2.19(a).

“**Extended Loans Agent**” has the meaning specified in Section 2.19(a).

“**Extended Revolving Commitments**” has the meaning specified in Section 2.19(a).

“**Extended Revolving Tranche**” has the meaning specified in Section 2.19(a).

“**Extended Term Loans**” has the meaning specified in Section 2.19(a).

“**Extended Term Tranche**” has the meaning specified in Section 2.19(a).

“**Extended Tranche**” has the meaning specified in Section 2.19(a).

“**Extending Lender**” has the meaning specified in Section 2.19(b).

“**Extension**” has the meaning specified in Section 2.19(b).

“**Extension Amendment**” has the meaning specified in Section 2.19(c).

“**Extension Date**” has the meaning specified in Section 2.19(d).

“**Extension Election**” has the meaning specified in Section 2.19(b).

“**Extension Request**” has the meaning specified in Section 2.19(a).

“**Facility**” or “**Facilities**” means any Term Facility and/or any Revolving Credit Facility (including the Letter of Credit Sublimit), as the context may require.

“**fair market value**” means, with respect to any asset or property, the price which could be negotiated in an arm’s-length transaction, for cash, between a willing seller and a willing and able buyer; for purposes of this Agreement, fair market value may be conclusively established by means of a certificate of a Responsible Officer or resolutions of the Board of Directors setting out such fair market value as determined by such Responsible Officer or such Board of Directors in good faith.

“**FATCA**” means Sections 1471 through 1474 of the Code as of the date hereof (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future Treasury Regulations thereunder or official administrative interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version described above), and any intergovernmental agreement, treaty or convention among Governmental Authorities (and any related Laws) implementing the foregoing.

“**Federal Funds Effective Rate**” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as shall be set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; *provided* that if the Federal Funds Effective Rate as so determined would be less than the Floor, such rate shall be deemed to be the Floor for the purposes of this Agreement.

“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System of the United States of America.

“**Fee Letter**” means that certain Agent Fee Letter, dated as of March 20, 2023, between MDU Resources and JPM.

“**Finance Lease Obligations**” means an obligation that is required to be classified and accounted for as a finance lease (in accordance with GAAP) (and, for the avoidance of doubt, not a straight-line or operating lease) for financial reporting purposes. The amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination thereof is to be made as determined in accordance with GAAP, and the stated maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty.

“**Financial Covenants**” has the meaning specified in [Section 7.08](#).

“**First Lien Pari Passu Intercreditor Agreement**” means a First Lien Pari Passu Intercreditor Agreement, substantially in the form of the first lien *pari passu* intercreditor agreement attached as [Exhibit F-2](#).

“**First Lien/Second Lien Intercreditor Agreement**” means a First Lien/Second Lien Intercreditor Agreement, substantially in the form of the first lien/second lien intercreditor agreement attached as [Exhibit F-1](#).

“**First Lien Specified Debt**” means Indebtedness in respect of any Term Facility (including, for the avoidance of doubt, any New Term Facility), any Revolving Credit Facility (including, for the avoidance of doubt, any New Revolving Facility), any other loans incurred pursuant to any Loan Document, any Incremental Equivalent Debt, any Ratio Debt, any Permitted Debt Exchange Notes, any Specified Refinancing Debt, any Credit Agreement Refinancing Debt and/or any Refinancing Indebtedness in respect of any of the foregoing, in each case, that is secured by a Lien on the Collateral on a *pari passu* basis with the Initial Term Loans.

“**Fixed Charges**” means, with respect to any Person for any period, the sum of (without duplication):

- (1) Consolidated Interest Expense of such Person for such period;
- (2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock of any Restricted Subsidiary of such Person during such period; and
- (3) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock of such Person during such period.

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt the initial Floor for each of Adjusted Term SOFR or the Adjusted Daily Simple SOFR shall be 0%.

“**Foreign Benefit Event**” means, with respect to any Foreign Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable Law, whether or not waived by a Governmental Authority, (b) the failure to make the required contributions or payments, under any applicable Law, on or before the due date for such contributions or payments, (c) the receipt of a notice from a Governmental Authority relating to the intention to terminate any such Foreign Plan or to appoint a trustee or similar official to administer any such Foreign Plan, or alleging the insolvency of any such Foreign Plan, (d) the incurrence of any liability by a Loan Party or any of its Subsidiaries under applicable Law on account of the complete or partial termination of such Foreign Plan or the complete or partial withdrawal of any participating employer therein or (e) the occurrence of any transaction that is prohibited under any applicable Law and that would reasonably be expected to result in the incurrence of any liability by a Loan Party or any of its Subsidiaries, or the imposition on a Loan Party or any of its Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any applicable Law.

“**Foreign Casualty Event**” has the meaning assigned to such term in Section 2.05(b)(vii).

“**Foreign Disposition**” has the meaning assigned to such term in Section 2.05(b)(vii).

“**Foreign Plan**” means any pension benefit plan, fund (including any superannuation fund) or other similar program established, maintained or contributed to by a Loan Party or any of its Subsidiaries primarily for the benefit of employees employed and residing outside the United States (other than plans, funds or other similar programs that are maintained exclusively by a Governmental Authority), and which plan is not subject to ERISA or the Code.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, with respect to an L/C Issuer, such Defaulting Lender’s Pro Rata Share of the outstanding L/C Obligations (other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Non-Defaulting Lenders or Cash Collateralized in accordance with the terms hereof).

“**FSHCO**” means any direct or indirect Subsidiary of the Borrower that owns no material assets (directly or indirectly) other than (i) Equity Interests (including, for this purpose, any debt or other instrument treated as equity for U.S. federal income tax purposes (as determined by the Borrower)) of one or more Subsidiaries that are Non-U.S. Subsidiaries or other FSHCOs or (ii) assets of the type described in the immediately preceding clause (i) and cash and Cash Equivalents incidental thereto.

“**Fund**” means any Person (other than a Natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP” means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time; *provided* that (a) all terms of an accounting or financial nature used in this Agreement shall be construed, and all computations of amounts and ratios referred to in this Agreement shall be made, without giving effect to any election under Accounting Standards Codification Topic 825—Financial Instruments (if applicable), or any successor thereto or comparable accounting principle (including pursuant to the Accounting Standards Codification), to value any Indebtedness of the Borrower or any Subsidiary at “fair value,” as defined therein and (b) the amount of any Indebtedness under GAAP with respect to Finance Lease Obligations shall be determined in accordance with the definition of Finance Lease Obligations. At any time after the Closing Date, the Borrower may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS (except as otherwise provided in this Agreement); *provided* that any such election, once made, shall be irrevocable; *provided, further*, any calculation or determination in this Agreement that requires the application of GAAP for periods that include fiscal quarters ended prior to the Borrower’s election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP. The Borrower shall give notice of any such election made in accordance with this definition to the Administrative Agent. For the avoidance of doubt, solely making an election (without any other action) referred to in this definition will not be treated as an incurrence of Indebtedness.

If there occurs a change in IFRS or GAAP, as applicable, and such change would cause a change in the method of calculation of any standards, terms or measures (including all computations of amounts and ratios) used in this Agreement (an “Accounting Change”), then the Borrower may elect that such standards, terms or measures shall be calculated as if such Accounting Change had or had not occurred.

All references to an accounting rule, regulation, standard, principal, term or measure, as applicable, in this Agreement (x) with respect to GAAP shall be deemed to refer to the equivalent rule, regulation, standard, principal, term or measure with respect to IFRS (if applicable) and (y) with respect to IFRS shall be deemed to refer to the equivalent rule, regulation, standard, principal, term or measure with respect to GAAP (if applicable).

“Governmental Authority” means any nation or government, any state, province, territory or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any applicable supranational bodies (such as the European Union or the European Central Bank).

“Granting Lender” has the meaning specified in [Section 10.07\(g\)](#).

“Guarantee” means, any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any such obligation, direct or indirect, contingent or otherwise, of such Person:

(i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(ii) entered into primarily for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

*provided, however*, that the term “Guarantee” will not include (x) endorsements for collection or deposit in the ordinary course of business or consistent with past practice and (y) standard contractual indemnities or product warranties provided in the ordinary course of business, and *provided, further*, that the amount of any Guarantee shall be deemed to be the lower of (i) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made and (ii) the maximum amount for which such guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee or, if such Guarantee is not an unconditional guarantee of the entire amount of the primary obligation and such maximum amount is not stated or determinable, the amount of such guaranteeing Person’s maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith. The term “Guarantee” used as a verb has a corresponding meaning.

“**Guarantors**” means, collectively:

- (i) as of the Closing Date, the Subsidiaries of the Borrower listed on Schedule 1.01(a),
- (ii) each other Subsidiary of the Borrower that executes and delivers a Guaranty or guaranty supplement pursuant to the Guaranty, Sections 6.12 or 6.16, in each case of clauses (i) and (ii) unless any such Subsidiary of the Borrower has ceased to be a Guarantor pursuant to the terms hereof, and
- (iii) the Borrower (except as to its own Obligations).

For the avoidance of doubt, no Excluded Subsidiary shall be a Guarantor, except as provided in the last sentence of Section 6.12.

“**Guaranty**” means, collectively, the Guaranty, to be dated as of the Closing Date, executed by the Loan Parties party thereto, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12, Section 6.14 or Section 6.16.

“**Guaranty Supplement**” has the meaning specified in the Guaranty.

“**Hazardous Materials**” means all explosive or radioactive substances or wastes, contaminants, pollutants and hazardous or toxic substances, materials or wastes, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, toxic mold, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other toxic substances, materials or wastes of any nature regulated pursuant to any Environmental Law.

“**Hedge Bank**” means any Person in its capacity as a party to a Swap Contract that:

- (a)
  - (i) at the time it enters into a Swap Contract, is a Lender or an Agent or an Affiliate of a Lender or an Agent,
  - (ii) in the case of any Person party to a Swap Contract in effect as of the Closing Date, either is a Lender or an Agent or an Affiliate of a Lender or an Agent as of the Closing Date or becomes a Lender or an Agent or an Affiliate of a Lender within 45 days after the Closing Date, or

(iii) within 45 days after the time it enters into a Swap Contract, becomes a Lender or an Agent or an Affiliate of a Lender or an Agent, and

(b)

(i) in the case of any Person described in the foregoing clause (a)(iii), has been designated by the Borrower in writing to the Administrative Agent as a “Hedge Bank” for purposes of this Agreement and the other Loan Documents, and

(ii) to the extent not the Administrative Agent, the Collateral Agent or a Lender hereunder, shall have appointed the Administrative Agent and the Collateral Agent as its agents under the applicable Loan Documents and agreed to be bound by the provisions of Article IX as if it were a Lender pursuant to a writing substantially in the form of Exhibit K or otherwise reasonably satisfactory to the Borrower and the Administrative Agent.

“**Honor Date**” has the meaning specified in Section 2.03(d)(i).

“**IFRS**” means the international financial reporting standards as issued by the International Accounting Standards Board and adopted by the European Union as in effect from time to time.

“**Immaterial Subsidiary**” means, at any date of determination, each Restricted Subsidiary of the Borrower that (i) has not guaranteed any other Indebtedness of the Borrower and (ii) (A) has Total Assets and revenues of less than 7.5% of Total Assets and revenues of the Borrower and its Restricted Subsidiaries on a consolidated basis, and (B) together with all other Immaterial Subsidiaries, has Total Assets and revenues of less than 7.5% of Total Assets and revenues of the Borrower and its Restricted Subsidiaries on a consolidated basis, in each case for clauses (A) and (B), measured at the end of the most recent fiscal period for which consolidated financial statements are available (which may, at the election of the Borrower, be internal financial statements) on a *pro forma* basis giving effect to any acquisitions or dispositions of companies, division or lines of business since such balance sheet date or the start of such four quarter period, as applicable, and on or prior to the date of acquisition of such Subsidiary.

“**Immediate Family Members**” means, with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships, the estate of such individual and such other individuals above) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“**Increase Effective Date**” has the meaning specified in Section 2.14(c).

“**Increased Amount**” means, with respect to any Indebtedness, any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness.

“**Incremental Amount**” has the meaning specified in Section 2.14(a).

“**Incremental Arranger**” has the meaning specified in Section 2.14(a).

**“Incremental Debt Lien/Guarantee Parameters”** means with respect to any Credit Agreement Refinancing Debt, Permitted Debt Exchange Notes, New Revolving Facility, New Term Facility, Extended Tranche, Incremental Equivalent Debt, or Specified Refinancing Debt, as applicable,

(a) if such debt is borrowed or issued by (x) the Borrower or any Guarantor, it shall not be Guaranteed by any Person that is not a Loan Party or does not become a Loan Party substantially concurrently with the incurrence of such debt, or (y) any Non-Loan Party Subsidiary, the amount thereof shall not exceed the Non-Loan Party Sublimit as of the date of Incurrence; and

(b) if such debt is secured, (x) it shall not be secured by any assets other than assets that constitute Collateral, (y) it shall be secured by a lien on the Collateral on a *pari passu* basis with the Initial Term Loans or secured by a lien on the Collateral on a junior basis to the Initial Term Loans and (z) such debt shall be subject to Applicable Intercreditor Arrangements.

**“Incremental Equivalent Debt”** has the meaning specified in Section 2.15(a).

**“Incremental Equivalent Debt Arranger”** has the meaning specified in Section 2.15(a).

**“Incremental Facilities”** has the meaning specified in Section 2.14(a).

**“Incur”** or **“incur”** means to issue, create, assume, enter into any Guarantee of, incur, extend or otherwise become liable for; *provided, however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) will be deemed to be incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary and the terms “incurred” and “incurrence” have meanings correlative to the foregoing and any Indebtedness pursuant to any revolving credit or similar facility shall only be “incurred” at the time any funds are borrowed thereunder.

**“Indebtedness”** means, with respect to any Person on any date of determination (without duplication):

- (1) the principal of indebtedness of such Person for borrowed money;
- (2) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all reimbursement obligations of such Person in respect of letters of credit, bankers’ acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit or other instruments, *plus* the aggregate amount of drawings thereunder that have not been reimbursed) (except to the extent such reimbursement obligations relate to trade payables and such obligations are satisfied within 30 days of incurrence);
- (4) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables or similar obligations, including accrued expenses owed, to a trade creditor), which purchase price is due more than one year after the date of placing such property in service or taking final delivery and title thereto;
- (5) Finance Lease Obligations of such Person;
- (6) the principal component of all obligations, or liquidation preference, of such Person with respect to any Disqualified Stock or, with respect to any Restricted Subsidiary, any Preferred Stock (but excluding, in each case, any accrued dividends);

(7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided, however*, that the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination (as determined in good faith by the Borrower) and (b) the amount of such Indebtedness of such other Persons;

(8) Guarantees by such Person of the principal component of Indebtedness of the type referred to in clauses (1), (2), (3), (4), (5) and (9) of other Persons to the extent Guaranteed by such Person; and

(9) to the extent not otherwise included in this definition, net obligations of such Person under Swap Obligations (the amount of any such obligations to be equal at any time to the net payments under such agreement or arrangement giving rise to such obligation that would be payable by such Person at the termination of such agreement or arrangement);

with respect to clauses (1), (2), (3), (4), (5) and (9) above, if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Swap Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP.

The amount of Indebtedness of any Person at any time in the case of a revolving credit or similar facility shall be the total amount of funds borrowed and then outstanding. The amount of any Indebtedness outstanding as of any date shall be (a) the accreted value thereof in the case of any Indebtedness issued with original issue discount and (b) the principal amount of Indebtedness, or liquidation preference thereof, in the case of any other Indebtedness. Indebtedness shall be calculated without giving effect to the effects of Accounting Standards Codification Topic 815—Derivatives and Hedging and related pronouncements to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

(i) Contingent Obligations incurred in the ordinary course of business or consistent with past practice, other than Guarantees or other assumptions of Indebtedness;

(ii) obligations in respect of Cash Management Agreements;

(iii) any lease, concession or license of property (or Guarantee thereof) which would be considered an operating lease under GAAP as in effect on the Closing Date, Non-Financing Lease Obligations, Sale and Leaseback Transactions or any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practice;

(iv) obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) incurred prior to the Closing Date or in the ordinary course of business or consistent with past practice;

(v) in connection with the purchase by the Borrower or any Restricted Subsidiary of any business, any deferred or prepaid revenue, post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner;



(vi) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage Taxes;

(vii) Indebtedness of any direct or indirect parent of the Borrower appearing on the balance sheet of the Borrower solely by reason of push down accounting under GAAP;

(viii) Capital Stock (other than in the case of clause (6) above, Disqualified Stock); or

(ix) amounts owed to dissenting stockholders (including in connection with, or as a result of, exercise of dissenters' or appraisal rights and the settlement of any claims or action (whether actual, contingent or potential)), pursuant to or in connection with a consolidation, amalgamation, merger or transfer of assets that complies with Section 7.03.

“**Indemnified Liabilities**” has the meaning specified in Section 10.05.

“**Indemnified Taxes**” means (a) all Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), all Other Taxes.

“**Indemnitees**” has the meaning specified in Section 10.05.

“**Independent Financial Advisor**” means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing; *provided, however*, that such firm or appraiser is not an Affiliate of the Borrower.

“**Information**” has the meaning specified in Section 10.08.

“**Information Memorandum**” means the lender presentation and private supplement thereto dated March 2023.

“**Initial Agreement**” has the meaning specified in Section 7.06(b)(17).

“**Initial Revolving Credit Commitments**” means, as to any Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrower and (b) purchase participations in L/C Obligations, in an aggregate principal amount not to exceed the amount set forth under the heading “Initial Revolving Credit Commitment” opposite such Lender's name on Schedule 2.01, as such amount may be adjusted from time to time in accordance with the terms of this Agreement. The original amount of the Initial Revolving Credit Commitments shall be \$350,000,000 on the Closing Date.

“**Initial Revolving Tranche**” means the Revolving Tranche established pursuant to Section 2.01(b) on the Closing Date.

“**Initial Term Borrowing**” means a borrowing consisting of simultaneous Initial Term Loans made by each of the Initial Term Lenders pursuant to Section 2.01(a), in each case, on the Closing Date.

“**Initial Term Commitment**” means, as to each Initial Term Lender, its obligation to make Initial Term Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount not to exceed the amount set forth opposite such Initial Term Lender's name on Schedule 2.01 under the caption “Initial Term Commitment” as such amount may be adjusted from time to time in accordance with this Agreement. The initial aggregate amount of the Initial Term Commitments is \$275,000,000.

“**Initial Term Lender**” means (a) at any time on or prior to the Closing Date, any Lender that has an Initial Term Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Initial Term Loans at such time.

“**Initial Term Loans**” has the meaning specified in [Section 2.01\(a\)](#).

“**Inside Maturity Basket**” has the meaning specified in [Section 2.14\(d\)\(ii\)\(E\)](#).

“**Intellectual Property Security Agreement**” means, individually and collectively, the intellectual property security agreement substantially in the form of Exhibit B to the Security Agreement, to be dated as of the Closing Date, together with each other intellectual property security agreement or Intellectual Property Security Agreement Supplement executed and delivered pursuant to [Section 6.12](#), [Section 6.14](#) or [Section 6.16](#).

“**Intellectual Property Security Agreement Supplement**” means, collectively, any intellectual property security agreement supplement entered into in connection with, and pursuant to the terms of, any Intellectual Property Security Agreement.

“**Intercompany License Agreement**” means any cost sharing agreement, commission or royalty agreement, license or sublicense agreement, distribution agreement, services agreement, intellectual property rights transfer agreement, any related agreements or similar agreements, in each case where all parties to such agreement are one or more of the Borrower or a Restricted Subsidiary.

“**Intercompany Subordination Agreement**” means an intercompany subordination agreement, in substantially the form of [Exhibit G](#) hereto, or otherwise in form and substance reasonably satisfactory to the Administrative Agent.

“**Interest Payment Date**” means (a) with respect to any ABR Loan, the last day of each March, June, September and December and the Maturity Date, (b) with respect to any RFR Loan, (1) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the Maturity Date and (c) with respect to any SOFR Loan, (1) the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a SOFR Loan with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period, and (2) the Maturity Date.

“**Interest Period**” means, as to any Loan or Borrowing, the period commencing on the date of such Loan or Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability thereof), as specified in the applicable Committed Loan Notice; *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (c) no Interest Period in respect of a Facility shall extend beyond the Maturity Date of such Facility and (d) no tenor that has been removed from this definition pursuant to [Section 3.04](#) shall be available for specification in such Committed Loan Notice. For purposes hereof, the date of a Loan or Borrowing initially shall be the date on which such Loan or Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Loan or Borrowing.

“**Investment**” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of advances, loans or other extensions of credit (excluding (i) accounts receivable, trade credit, advances or extensions of credit to customers, suppliers, future, present or former employees, directors, officers, managers, contractors, consultants or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of any Person in the ordinary course of business or consistent with past practice, (ii) any debt or extension of credit represented by a bank deposit other than a time deposit, (iii) intercompany advances arising from cash management, tax and accounting operations and (iv) intercompany loans, advances or Indebtedness having a term not exceeding 364 days (exclusive of any roll-over or extensions of terms)) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or the incurrence of a Guarantee of any obligation of, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such other Persons and all other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP; *provided, however*, that endorsements of negotiable instruments and documents in the ordinary course of business or consistent with past practice will not be deemed to be an Investment.

For purposes of Section 7.05 and the definition of “Unrestricted Subsidiary”:

(1) “**Investment**” will include the portion (proportionate to the Borrower’s equity interest in such Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the fair market value of the net assets of such Restricted Subsidiary at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; *provided, however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower will be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to (a) the Borrower’s “Investment” in such Subsidiary at the time of such redesignation less (b) the portion (proportionate to the Borrower’s equity interest in such Subsidiary) of the fair market value of the net assets (as determined by the Borrower) of such Subsidiary at the time that such Subsidiary is so re-designated a Restricted Subsidiary;

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer, in each case as determined by the Borrower; and

(3) if the Borrower or any Restricted Subsidiary issues, sells or otherwise disposes of Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any investment by the Borrower or any Restricted Subsidiary in such Person remaining after giving effect thereto shall not be deemed to be an Investment at such time.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash and Cash Equivalents by the Borrower or a Restricted Subsidiary in respect of such Investment to the extent such amounts do not increase any other baskets under this Agreement.

**“Investment Grade Securities”** means:

- (1) securities issued or directly and fully Guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) securities issued or directly and fully guaranteed or insured by the Canadian, United Kingdom or Japanese governments, a member state of the European Union, or any agency or instrumentality thereof (other than Cash Equivalents);
- (3) debt securities or debt instruments with a rating of “BBB-” or higher from S&P or “Baa3” or higher by Moody’s or the equivalent of such rating by such rating organization or, if no rating of Moody’s or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Ratings Organization, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its Subsidiaries;
- (4) investments in any fund that invests exclusively in investments of the type described in clauses (1), (2) and (3) above which fund may also hold cash and Cash Equivalents pending investment or distribution; and
- (5) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

**“IP Rights”** has the meaning specified in Section 5.16.

**“IRS”** means the United States Internal Revenue Service.

**“ISP”** means, with respect to any Letter of Credit, the “International Standby Practices 1998” International Chamber of Commerce publication number 590 (or such later version thereof as may be in effect at the time of issuance and to which such Letter of Credit is subject).

**“Issuer Documents”** means, with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the applicable L/C Issuer and the Borrower (or, if applicable, a Restricted Subsidiary) or in favor of such L/C Issuer and relating to such Letter of Credit.

**“JPM”** has the meaning specified in the preamble to this Agreement.

**“joint venture”** means any joint venture or similar arrangement (in each case, regardless of legal formation), including collaboration arrangements, profit sharing arrangements or other contractual arrangements.

**“Judgment Currency”** has the meaning specified in Section 10.23.

**“Junior Lien Specified Debt”** means Indebtedness in respect of any Term Facility (including, for the avoidance of doubt, any New Term Facility), any Revolving Credit Facility (including, for the avoidance of doubt, any New Revolving Facility), any other loans incurred pursuant to any Loan Document, any Incremental Equivalent Debt, any Ratio Debt, any Permitted Debt Exchange Notes, any Specified Refinancing Debt, any Credit Agreement Refinancing Debt and/or any Refinancing Indebtedness in respect of any of the foregoing, in each case, that is secured by a Lien on the Collateral on a junior basis to the Initial Term Loans.

**“Latest Maturity Date”** means, at any date of determination, the latest maturity or expiration date applicable to any Term Loan Tranche or Revolving Tranche at such time under this Agreement, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” means, collectively, all applicable international, foreign, federal, state, provincial and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“**L/C Advance**” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its applicable Pro Rata Share.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed by the Borrower on the date required under [Section 2.03\(d\)\(i\)](#) or refinanced as a Revolving Credit Borrowing.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the reinstatement or increase of the amount thereof.

“**L/C Issuer**” means (a) each of the L/C Issuers identified on [Schedule 1.01\(c\)](#) in their capacity as an issuer of Letters of Credit hereunder (it being understood that none of the L/C Issuers identified in this [clause \(a\)](#) shall be obligated to issue any letters of credit hereunder other than standby letters of credit in Dollars), and (b) any other Lender reasonably acceptable to the Borrower and the Administrative Agent (which consent shall not be unreasonably withheld, delayed or conditioned) that agrees to issue Letters of Credit pursuant hereto, in each case in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder, and in each case, applicable Affiliates; *provided* that any Revolving Credit Lender may provide bank guarantees, bond agreements and other such arrangements under this Agreement, in each case, as agreed in such Revolving Credit Lender’s sole discretion.

“**L/C Obligations**” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit, *plus* the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with [Section 1.09](#). For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but (a) any amount may still be drawn thereunder by reason of the operation of any rule of law or standard practices to which any Letter of Credit is subject (such as Rules 3.13 and 3.14 of the ISP and Article 29 of the UCP) or any express term of the Letter of Credit, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn, or (b) any drawing was made thereunder on or before the last day permitted thereunder and such drawing has not been honored or refused by the applicable L/C Issuer, such Letter of Credit shall be deemed to be “outstanding” in the amount of such drawing.

“**LCT Election**” has the meaning specified in [Section 1.02\(i\)](#).

“**LCT Public Offer**” has the meaning specified in [Section 1.02\(i\)](#).

“**LCT Test Date**” has the meaning specified in [Section 1.02\(i\)](#).

“**Lender**” has the meaning specified in the preamble to this Agreement and, as the context requires, includes each L/C Issuer.

“**Lender’s Regarded Owner**” has the meaning assigned to such term in Section 3.01(h)(ii)(A).

“**Lending Office**” means, as to any Lender, the office or offices or branch of such Lender or any of its Affiliates described as such in such Lender’s Administrative Questionnaire, or such other office or offices or as a Lender or any of its Affiliates may from time to time notify the Borrower and the Administrative Agent.

“**Letter of Credit**” means any letter of credit issued (or, in the case of any Existing Letter of Credit, deemed to be issued), extended or amended hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

“**Letter of Credit Application**” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer, together with a request for L/C Credit Extension, substantially in the form of Exhibit A-2 hereto.

“**Letter of Credit Sublimit**” means an amount equal to \$75,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“**Letter of Credit Sublimit Expiration Date**” means, subject to Section 2.03(a)(ii)(C), the day that is five (5) Business Days prior to the scheduled Maturity Date then in effect for the Revolving Credit Facility or the date of termination of the applicable Revolving Credit Commitments (or, if such day is not a Business Day, the immediately preceding Business Day).

“**Lien**” means any mortgage, pledge, security interest, encumbrance, lien, hypothecation or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof); *provided* that in no event shall Non-Financing Lease Obligations be deemed to constitute a Lien.

“**Limited Condition Transaction**” means (1) any Investment or acquisition (whether by merger, amalgamation, consolidation or other business combination or the acquisition of Capital Stock or otherwise and which may include, for the avoidance of doubt, a transaction that may constitute a Change of Control) in or of any assets, business or Person, (2) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness, Disqualified Stock or Preferred Stock requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment and (3) any asset sale or a disposition.

“**LLC Conversion**” means the conversion of any Restricted Subsidiary of the Borrower that is a U.S. Subsidiary from a corporation into a limited liability company.

“**LLC Division**” means the statutory division of any limited liability company into two or more limited liability companies pursuant to Section 18-217 of the Delaware Limited Liability Company Act or a comparable provision of any other Law.

“**Loan**” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term Loan, an Extended Term Loan, a Revolving Credit Loan, an Extended Revolving Commitment or a Specified Refinancing Revolving Loan.

“**Loan Documents**” means, collectively, (i) this Agreement, (ii) the Notes, (iii) the Guaranty, (iv) the Collateral Documents, (v) the Intercompany Subordination Agreement, (vi) any intercreditor agreement entered into pursuant to the terms of this Agreement, (vii) any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.16 of this Agreement and (viii) any Refinancing Amendment.

“**Loan Parties**” means, collectively, the Borrower and each Guarantor.

“**LP Division**” means the statutory division of any limited partnership into two or more limited partnerships pursuant to Section 17-220 of the Delaware Limited Partnership Act or a comparable provision of any other Law.

“**LTM EBITDA**” means, as of any date of determination, Consolidated EBITDA of the Borrower measured for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which consolidated financial statements are available (which may, at the election of the Borrower, be internal financial statements), in each case with such pro forma adjustments as are consistent with the pro forma adjustments set forth in [Section 1.10](#).

“**Majority Lenders**” of any Tranche or class of Loans, as applicable, means those Non-Defaulting Lenders of such Tranche or class which would constitute the Required Lenders under, and as defined in, this Agreement if all outstanding Obligations of the other Tranches or classes under this Agreement were repaid in full and all Commitments with respect thereto were terminated.

“**Management Advances**” means loans or advances made to, or Guarantees with respect to loans or advances made to, future, present or former employees, directors, officers, managers, contractors, consultants or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of any direct or indirect parent of the Borrower, the Borrower or any Restricted Subsidiary:

(1) (a) in respect of travel, entertainment, relocation or moving related expenses, payroll advances and other analogous or similar expenses or payroll expenses, in each case incurred in the ordinary course of business or consistent with past practice or (b) for purposes of funding any such person’s purchase of Capital Stock (or similar obligations) of the Borrower or its Subsidiaries or any direct or indirect parent of the Borrower with (in the case of this [clause \(1\)\(b\)](#)) the approval of the Board of Directors of the Borrower;

(2) in respect of relocation or moving related expenses, payroll advances and other analogous or similar expenses or payroll expenses, in each case incurred in connection with any closing or consolidation of any facility or office; or

(3) not exceeding the greater of (i) \$15,000,000 and (ii) 5.0% of LTM EBITDA in the aggregate outstanding at the time of incurrence.

“**Margin Stock**” has the meaning assigned to such term in Regulation U of the FRB as from time to time in effect.

“**Material Adverse Effect**” means (i) a material adverse effect on the business, assets, property, liabilities (actual or contingent), financial condition or results of operations of the Restricted Group, taken as a whole, (ii) a material adverse effect on the legal validity or legal enforceability of the rights or remedies of the Agents or the Lenders under the Loan Documents (taken as a whole) or (iii) a material adverse effect on the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the Loan Documents (taken as a whole).

“**Material Indebtedness**” has the meaning specified in [Section 8.01\(c\)](#).

“**Material Intellectual Property**” shall mean intellectual property that is material to the business of the Borrower and its Restricted Subsidiaries, taken as a whole, as determined by the Borrower in good faith.

“**Material Subsidiary**” means any Restricted Subsidiary of the Borrower constituting, or group of Restricted Subsidiaries of the Borrower in the aggregate constituting (as if such Restricted Subsidiaries constituted a single Subsidiary), a “significant subsidiary” in accordance with Rule 1-02 under Regulation S-X.

“**Maturity Date**” means: (a) with respect to the Revolving Credit Facility, the earlier of (i) the fifth anniversary of the Closing Date and (ii) the date of termination in whole of the Revolving Credit Commitments pursuant to Sections 2.06(a) or 8.02; and (b) with respect to the Initial Term Loans, the earliest of (i) the fifth anniversary of the Closing Date, (ii) the date of termination in whole of the Initial Term Commitments and (iii) the date that the Initial Term Loans are declared due and payable pursuant to Section 8.02; *provided* that the reference to Maturity Date with respect to (i) Term Loans and Revolving Credit Commitments that are the subject of Extension pursuant to Section 2.19 and (ii) Term Loans and Revolving Credit Commitments that are incurred pursuant to Sections 2.14 or 2.18 shall, in each case, be the final maturity date as specified in the loan modification documentation, incremental documentation, or specified refinancing documentation, as applicable thereto.

“**Maximum Leverage Requirement**” means, with respect to any request made in reliance on this definition for an increase in any Revolving Tranche or any Term Loan Tranche, for a New Revolving Facility, for a New Term Facility or for the incurrence of Incremental Equivalent Debt and with respect to any Incurrence of Ratio Debt the requirement that, on a pro forma basis in a manner consistent with Section 1.10, after giving effect to the incurrence of any such increase, such new Facility, such Incremental Equivalent Debt, such Ratio Debt (and, in each case, after giving effect to any acquisition or other transaction referred to in Section 1.10 consummated concurrently therewith and all other appropriate pro forma adjustment events and calculated as if any increase in any Revolving Tranche or any New Revolving Facility were fully drawn on the effective date thereof but without netting any portion of the cash proceeds of such Indebtedness then being incurred and without giving effect to any interest expense attributable thereto):

(a) for any such Indebtedness that is secured by a Lien on the Collateral on a *pari passu* basis with the Initial Term Loans, the Consolidated First Lien Net Leverage Ratio on a pro forma basis does not exceed, at the Borrower’s option, (i) 3.50 to 1.00 or (ii) in the case of Acquisition Indebtedness, the Consolidated First Lien Net Leverage Ratio immediately prior to the incurrence of such Indebtedness; or

(b) for any such Indebtedness that is secured by a Lien on the Collateral on a junior basis to the Initial Term Loans or that is unsecured, the Consolidated Total Net Leverage Ratio on a pro forma basis does not exceed, at the Borrower’s option, (i) 4.50 to 1.00 or (ii) in the case of Acquisition Indebtedness, the Consolidated Total Net Leverage Ratio immediately prior to the incurrence of such Indebtedness.

“**Maximum Rate**” has the meaning specified in Section 10.10.

“**MDU Resources**” means MDU Resources Group, Inc., a Delaware corporation.

“**Minimum Extension Condition**” has the meaning specified in Section 2.19(g).

“**Minimum Tender Condition**” has the meaning specified in Section 2.20(b).

“**Moody’s**” means Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.

“**Multiemployer Plan**” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years has made or been obligated to make contributions, or has any liability or obligation, whether fixed or contingent.



“**Natural Person**” means (a) any natural person or (b) a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person.

“**Net Cash Proceeds**” means:

(a) with respect to any Asset Disposition or any Casualty Event (other than an Excluded Casualty Event), the excess, if any, of cash proceeds received (including any cash proceeds received from the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Disposition, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition, or received in any other non-cash form), in each case net of:

(1) all legal, accounting, consulting, investment banking, survey costs, title and recording expenses, title insurance premiums, payments made in order to obtain a necessary consent or required by applicable law, brokerage and sales commissions, relocation expenses, commissions, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such transaction;

(2) all Taxes paid, reasonably estimated to be payable, Tax reserves set aside or payable or accrued as a liability under GAAP (including, for the avoidance of doubt, any income, withholding and other Taxes payable as a result of the distribution or deemed distribution of such proceeds to any Restricted Group Member, transfer Taxes, deed or mortgage recording Taxes and Taxes that would be payable in connection with any repatriation of such proceeds), as a consequence of such transaction, including distributions and payments for Permitted Tax Amounts made as a result of or in connection with such transaction or any transactions occurring or deemed to occur to effectuate a payment under this Agreement;

(3) all payments made on any Indebtedness which is (x) secured by any assets subject to such transaction, in accordance with the terms of any Lien upon such assets; *provided* that such Lien existed, or was required to be granted pursuant to the terms of such Indebtedness as in effect, prior to the consummation of such transaction, (y) is owed by a non-Guarantor or (z) which is required by applicable law be repaid out of the proceeds from such transaction;

(4) all distributions and other payments required to be made to non-controlling interest or minority interest holders (other than any direct or indirect parent of the Borrower, the Borrower or any of its Subsidiaries) in Subsidiaries or joint ventures as a result of such transaction;

(5) all costs associated with unwinding any related Swap Obligations in connection with such transaction;

(6) the deduction of appropriate amounts required to be provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the assets disposed of in such transaction and retained by the Borrower or any Restricted Subsidiary after such transaction, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction;

(7) any portion of the purchase price from such transaction placed in escrow, whether for the satisfaction of any indemnification obligations in respect of such transaction, as a reserve for adjustments to the purchase price associated with any such transaction or otherwise in connection with such transaction;

(8) the amount of any liabilities (other than Indebtedness in respect of this Agreement and the 7.750% Notes) directly associated with such asset being sold and retained by the Borrower or any of its Restricted Subsidiaries; and

(9) the amount of any Restricted Payment made with the proceeds of any such transaction pursuant to Section 7.05(b)(12)(b).

(b) with respect to the incurrence or issuance of any Indebtedness by any Restricted Group Member, the excess, if any, of (i) the sum of the cash received in connection with such incurrence or issuance and in connection with unwinding any related Swap Contract in connection therewith over (ii) the investment banking fees, underwriting discounts and commissions, premiums, expenses, accrued interest and fees related thereto, Taxes paid, reasonably estimated to be payable, Tax reserves set aside or payable or accrued as a liability under GAAP (including, for the avoidance of doubt, any income, withholding and other Taxes payable as a result of the distribution of such proceeds to any Restricted Group Member and including distributions and payments for Permitted Tax Amounts made as a result of or in connection with the issuance of such Indebtedness) and other out-of-pocket expenses and other customary expenses, incurred by any Restricted Group Member in connection with such incurrence or issuance and any costs associated with unwinding any related Swap Contract in connection therewith and, in the case of Indebtedness of any Non-U.S. Subsidiary, deductions in respect of withholding Taxes that are or would otherwise be payable in cash if such funds were repatriated to the United States; and

(c) with respect to any issuance of Capital Stock by any Person, the excess, if any, of (A) the sum of the cash received in connection with such issuance over (B) the investment banking fees, underwriting discounts and commissions, premiums, expenses and fees related thereto and other out-of-pocket expenses and other customary expenses, incurred by such Person in connection with such issuance; *provided* that, in the case of any issuance of Capital Stock by any direct or indirect parent of the Borrower, the amount thereof shall be limited to the amount of cash from such issuance of Capital Stock contributed to the capital of the Borrower.

“**New Loan Commitments**” has the meaning specified in Section 2.14(a).

“**New Revolving Commitment**” has the meaning specified in Section 2.14(a).

“**New Revolving Facility**” has the meaning specified in Section 2.14(a).

“**New Revolving Loan**” has the meaning specified in Section 2.14(a).

“**New Term Commitment**” has the meaning specified in Section 2.14(a).

“**New Term Facility**” has the meaning specified in Section 2.14(a).

“**New Term Loan**” has the meaning specified in Section 2.14(a).

“**Non-Consenting Lender**” has the meaning specified in Section 3.08(c).

“**Non-Defaulting Lender**” means any Lender other than a Defaulting Lender.

“**Non-Extending Lender**” has the meaning specified in Section 2.19(c).

“**Non-Financing Lease Obligation**” means a lease obligation that is not required to be accounted for as a financing lease in accordance with GAAP. For the avoidance of doubt, a straight-line or operating lease shall be considered a Non-Financing Lease Obligation.

“**Non-Loan Party Sublimit**” means an aggregate principal amount equal to, when taken together with the aggregate outstanding principal amount of all other Indebtedness Incurred in reliance on this definition, the greater of (a) \$135,000,000 and (b) 45.0% of LTM EBITDA.

“**Non-Loan Party Subsidiary**” means any Restricted Subsidiary of the Borrower that is not a Guarantor.

“**Non-U.S. Lender**” means a lender that is not a U.S. Person.

“**Non-U.S. Subsidiary**” means any direct or indirect Subsidiary of the Borrower that is not a U.S. Subsidiary.

“**Note**” means a Term Note or a Revolving Credit Note, as the context may require.

“**NPL**” means the National Priorities List under CERCLA.

“**NYFRB**” means the Federal Reserve Bank of New York.

“**NYFRB’s Website**” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“**NYFRB Rate**” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. (New York City time) on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; *provided, further*, that if any of the aforesaid rates as so determined shall be less than zero, such rate shall be deemed to be zero for all purposes of this Agreement.

“**Obligations**” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, and obligations of any Loan Party or any Restricted Subsidiary arising under any Secured Cash Management Agreement or Secured Hedge Agreement, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; *provided* that (a) obligations of any Loan Party or any Restricted Subsidiary under any Secured Cash Management Agreement or Secured Hedge Agreement shall be secured and guaranteed pursuant to the Collateral Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed, (b) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Secured Hedge Agreements or Secured Cash Management Agreements and (c) the Obligations with respect to any Guarantor shall not include Excluded Swap Obligations of such Guarantor. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents include (a) the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing pursuant to Section 10.04.

“OFAC” has the meaning specified in the definition of “Sanctions Laws and Regulations”.

“OID” means original issue discount.

“**Organization Documents**” means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating or limited liability company agreement (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction) and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture, trust or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document or Letter of Credit, or sold or assigned an interest in any Loan, Loan Document or Letter of Credit).

“**Other LC**” has the meaning specified in [Section 2.03\(e\)\(v\)](#).

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes that are imposed with respect to an assignment (other than an assignment made pursuant to [Section 3.08](#)).

“**Outstanding Amount**” means: (a) with respect to the Term Loans, Revolving Credit Loans, Specified Refinancing Term Loans and Specified Refinancing Revolving Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of the Term Loans, Revolving Credit Loans (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing), Specified Refinancing Term Loans and Specified Refinancing Revolving Loans, as applicable, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Revolving Credit Borrowing) or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“**Overnight Bank Funding Rate**” means, for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

“**Parent Entity**” means any direct or indirect parent of the Borrower which holds directly or indirectly 100.0% of the equity interests of the Borrower and which does not hold Capital Stock in any other Person (except for any other Parent Entity).

“**Parent Entity Expenses**” means:

(1) fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) incurred or paid by any direct or indirect parent of the Borrower in connection with reporting obligations under or otherwise incurred or paid in connection with compliance with applicable laws, rules or regulations of any governmental, regulatory or self-regulatory body or stock exchange, this Agreement or any other agreement or instrument relating to the Loans, the Guarantees or any other Indebtedness of the Borrower or any Restricted Subsidiary, including in respect of any reports filed or delivered with respect to the Securities Act, Exchange Act or the respective rules and regulations promulgated thereunder;

(2) customary salary, bonus, severance, indemnity, insurance (including premiums therefor) and other benefits payable to any employee, director, officer, manager, contractor, consultant or advisor of any direct or indirect parent of the Borrower or other Persons under its articles, charter, by-laws, partnership agreement or other organizational documents or pursuant to written agreements with any such Person to the extent relating to the Borrower and its Subsidiaries;

(3) (x) general corporate operating and overhead fees, costs and expenses, (including all legal, accounting and other professional fees, costs and expenses, and director and officer insurance (including premiums therefor)) and, following the first public offering of the Capital Stock of any direct or indirect parent of the Borrower, listing fees and other costs and expenses attributable to being a publicly traded company of any direct or indirect parent of the Borrower and (y) other operational expenses of any direct or indirect parent of the Borrower related to the ownership or operation of the business of the Borrower or any of the Restricted Subsidiaries;

(4) expenses incurred by any direct or indirect parent of the Borrower in connection with (i) any offering, sale, conversion or exchange of Capital Stock or Indebtedness (whether or not successful) and (ii) any related compensation paid to employees, directors, officers, managers, contractors, consultants or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of such direct or indirect parent;

(5) amounts payable pursuant to any management services or similar agreements or the management services provisions in an investor rights agreement or other equityholders’ agreement (including any amendment thereto or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the reasonable determination of the Borrower to the Lenders when taken as a whole, as compared to the management services or similar agreements as in effect immediately prior to such amendment or replacement), solely to the extent such amounts are not paid directly by the Borrower or its Subsidiaries; and

(6) amounts to finance Investments that would otherwise be permitted to be made pursuant to Section 7.05 if made by the Borrower or a Restricted Subsidiary; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment, (B) such direct or indirect parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Capital Stock) to be contributed to the capital of the Borrower or one of its Restricted Subsidiaries or (2) the merger, consolidation or amalgamation of the Person formed or acquired by or merged or consolidated with the Borrower or one of its Restricted Subsidiaries (to the extent not prohibited by Section 7.03) in order to consummate such Investment, (C) such direct or indirect parent and its Affiliates (other than the Borrower or a Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Borrower or a Restricted Subsidiary could have given such consideration or made such payment in compliance with this Agreement and such consideration or other payment is included as a Restricted Payment under this Agreement, (D) any property received by the Borrower shall not increase amounts available for Restricted Payments pursuant to clause (b) of Section 7.05(a) and (E) such Investment shall be deemed to be made by the Borrower or such Restricted Subsidiary pursuant to a provision of Section 7.05 or pursuant to the definition of “Permitted Investment”.

“**Parent Holding Company**” means any direct or indirect parent entity of the Borrower which holds directly or indirectly 100.0% of the Equity Interests of the Borrower and which does not hold Capital Stock in any other Person (except for any other Parent Holding Company).

“**Participant**” has the meaning specified in Section 10.07(d).

“**Participant Register**” has the meaning specified in Section 10.07(m).

“**Participating Member State**” means each state as described in any EMU Legislation.

“**PATRIOT Act**” has the meaning specified in Section 10.22.

“**Payment Block**” means any of the circumstances described in Sections 2.05(b)(vii) and (viii).

“**Payment Recipient**” has the meaning specified in Section 9.19(a).

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Pension Funding Rules**” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Plans and as set forth in Section 412 and 430 of the Code and Sections 302 and 303 of ERISA.

“**Perfection Certificate**” shall mean the Perfection Certificate, dated as of the Closing Date, executed and delivered by the Loan Parties and each other Perfection Certificate or any supplement thereto delivered by any of the Loan Parties pursuant to the terms hereof.

“**Perfection Exceptions**” means that no Loan Party shall be required to:

(i) enter into control agreements with respect to, or otherwise perfect any security interest by “control” (or similar arrangements) over, commodities accounts, securities accounts, deposit accounts, futures accounts, other bank accounts, cash and cash equivalents and accounts related to the clearing, payment processing and similar operations of the Restricted Group,

(ii) perfect the security interest in the following other than by the filing of a UCC financing statement: (1) letter-of-credit rights (as defined in the UCC), (2) commercial tort claims (as defined in the UCC), (3) Fixtures (as defined in the UCC), except to the extent that the same are Equipment (as defined in the UCC) and (4) Assigned Agreements (as defined in the Security Agreement),

- (iii) send notices to account debtors or other contractual third-parties unless an Event of Default has occurred,
- (iv) enter into, make or obtain any (x) security documents to be governed by the law of any jurisdiction outside of the United States or (y) other non-U.S. law filings or non-U.S. consents or corporate or organizational action in respect of security, including with respect to any share pledges and any intellectual property registered in any non-U.S. jurisdiction; *provided, however*, that the foregoing clause (iv) shall not affect the requirements to deliver certificates and related stock powers in respect of Equity Interest of Non-U.S. Subsidiaries constituting Collateral that would otherwise be required to be delivered pursuant to the Collateral Documents,
- (v) deliver landlord waivers, estoppels or collateral access letters, or
- (vi) enter into any source code escrow arrangement or be obligated to register intellectual property.

“**Permitted Asset Swap**” means the concurrent purchase and sale or exchange of assets used or useful in a Similar Business or a combination of such assets and cash or Cash Equivalents between the Borrower or any of its Restricted Subsidiaries and another Person; *provided* that any cash or Cash Equivalents received in excess of the value of any cash or Cash Equivalents sold or exchanged must be applied in accordance with Section 7.04.

“**Permitted Call Spread Swap Agreements**” shall mean (a) a Swap Contract pursuant to which a Person acquires a call or a capped call option requiring the counterparty thereto to deliver to such Person shares of common stock of Person (or other Equity Interests, securities, property or assets following a merger event or other event or circumstance resulting in the common stock of such Person generally being converted into, or exchanged for, other Equity Interests, securities, property or assets), the cash value thereof or a combination thereof from time to time upon exercise of such option and (b) if entered into by such Person in connection with any Swap Contract described in clause (a) above, a Swap Contract pursuant to which such Person issues to the counterparty thereto warrants or other rights to acquire common stock of such Person (or other Equity Interests, securities, property or assets following a merger event or other event or circumstance resulting in the common stock of such Person generally being converted into, or exchanged for, other Equity Interests, securities, property or assets), whether such warrant or other right is settled in shares (or such other Equity Interests, securities, property or assets), cash or a combination thereof, in each case entered into by such Person in connection with the issuance of Permitted Convertible Notes; *provided* that the terms, conditions and covenants of each such Swap Contract shall be customary or more favorable to than customary for Swap Contracts of such type (as determined by the Borrower in good faith).

“**Permitted Convertible Notes**” shall mean any notes issued by the Borrower or any direct or indirect parent of the Borrower that are convertible into common stock of the Borrower or any direct or indirect parent of the Borrower (or other Equity Interests, securities, property or assets following a merger event or other event or circumstance resulting in the common stock of the Borrower or any direct or indirect parent of the Borrower generally being converted into, or exchanged for, other Equity Interests, securities, property or assets), cash (the amount of such cash being determined by reference to the price of such common stock or such other Equity Interests, securities, property or assets), or any combination of any of the foregoing, and cash in lieu of fractional shares of common stock; *provided* that the issuance of such notes is permitted under Section 7.01.

“**Permitted Debt**” has the meaning specified in Section 7.01(b).

“Permitted Debt Exchange” has the meaning specified in Section 2.20(a).

“Permitted Debt Exchange Notes” means Indebtedness in the form of unsecured, first lien, second lien or other junior lien notes; *provided* that such Indebtedness:

(i) does not mature or have scheduled amortization payments of principal and is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (except (w) customary offers or obligations to repurchase, repay or redeem upon a change of control, asset sale, casualty or condemnation event or initial public offering, (x) maturity payments and customary mandatory prepayments for Extendable Bridge Loans/Interim Debt and Indebtedness incurred pursuant to the Inside Maturity Basket which may have a maturity date earlier than the Latest Maturity Date for any then outstanding Term Loans, (y) special mandatory redemptions in connection with customary escrow arrangements and customary acceleration rights after an event of default or (z) AHYDO Catch-up Payments), in each case prior to the Latest Maturity Date for the applicable then outstanding Term Loans in respect of which such Indebtedness is being exchanged, and

(ii) shall comply with the Incremental Debt Lien/Guarantee Parameters.

“Permitted Debt Exchange Offer” has the meaning specified in Section 2.20(a).

“Permitted Intercompany Activities” means any transactions (A) between or among the Borrower and its Restricted Subsidiaries that are entered into in the ordinary course of business or consistent with past practice of the Borrower and its Restricted Subsidiaries and, in the reasonable determination of the Borrower are necessary or advisable in connection with the ownership or operation of the business of the Borrower and its Restricted Subsidiaries, including (i) payroll, cash management, purchasing, insurance and hedging arrangements; (ii) management, technology and licensing arrangements; and (iii) customary loyalty and rewards programs; and (B) between or among the Borrower, its Restricted Subsidiaries and any Captive Insurance Subsidiary.

“Permitted Investments” means (in each case, by the Borrower or any of the Restricted Subsidiaries):

(1) Investments in (a) a Restricted Subsidiary (including the Capital Stock of, or guarantees of obligations of, a Restricted Subsidiary) or the Borrower or (b) a Person (including the Capital Stock of any such Person) that will, upon the making of such Investment, become a Restricted Subsidiary; *provided* that the aggregate amount of Investments made by any Loan Party in any Non-Loan Party Subsidiary pursuant to this clause (1) and clause (2)(a) below then outstanding shall not exceed the greater of (i) \$165,000,000 and (ii) 55.0% of LTM EBITDA;

(2) (a) Investments in another Person if such Person is engaged, directly or through entities that will be Restricted Subsidiaries, in any Similar Business and as a result of such Investment such other Person, in one transaction or a series of transactions, is merged, amalgamated, consolidated or otherwise combined with or into, or transfers or conveys all or substantially all its assets (or such division, business unit, product line or business) to, or is liquidated into, the Borrower or a Restricted Subsidiary; *provided* that the aggregate amount of Investments made by any Loan Party in any Non-Loan Party Subsidiary pursuant to this clause (2)(a) and clause (1) above then outstanding shall not exceed the greater of (i) \$165,000,000 and (ii) 55.0% of LTM EBITDA and (b) any Investment held by such Person; *provided* in the case of this clause (b), that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, combination, transfer or conveyance;



- (3) Investments in cash, Cash Equivalents or Investment Grade Securities;
- (4) Investments in receivables owing to the Borrower or any Restricted Subsidiary created or acquired in the ordinary course of business or consistent with past practice;
- (5) Investments in payroll, travel, entertainment, relocation, moving related and similar advances that are made in the ordinary course of business or consistent with past practice;
- (6) Management Advances;
- (7) Investments (including debt obligations and equity interests) (a) received in settlement, compromise or resolution of debts created in the ordinary course of business or consistent with past practice, (b) in exchange for any other Investment or accounts receivable, endorsements for collection or deposit held by the Borrower or any such Restricted Subsidiary, (c) as a result of foreclosure, perfection or enforcement of any Lien, (d) in satisfaction of judgments or (e) pursuant to any plan of reorganization or similar arrangement including upon the bankruptcy or insolvency of a debtor or litigation, arbitration or other disputes or otherwise with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;
- (8) Investments made as a result of the receipt of promissory notes or other non-cash consideration (including earn-outs) from a sale or other disposition of property or assets, including an Asset Disposition;
- (9) Investments (a) existing or pursuant to binding commitments, agreements or arrangements in effect on the Closing Date and, to the extent the outstanding principal amount thereof is in excess of \$10,000,000, listed on Schedule 1.01(e) and any modification, replacement, renewal, reinvestment or extension thereof; *provided* that the amount of any such Investment may not be increased pursuant to this clause (9) except (i) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including in respect of any unused commitment), *plus* any accrued but unpaid interest (including any accretion of interest, original issue discount or the issuance of pay-in-kind securities) and premium payable by the terms of such Indebtedness thereon and fees and expenses associated therewith as of the Closing Date or (ii) as otherwise permitted under this Agreement and (b) made after the Closing Date in joint ventures of the Borrower or any of its Restricted Subsidiaries existing on the Closing Date;
- (10) Swap Obligations, which transactions or obligations are not prohibited by Section 7.01;
- (11) pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business or Liens otherwise described in the definition of "Permitted Liens" or made in connection with Liens permitted under Section 7.02;
- (12) any Investment to the extent made using Capital Stock of the Borrower (other than Disqualified Stock) or Capital Stock of any direct or indirect parent of the Borrower or any Unrestricted Subsidiary as consideration;
- (13) any transaction to the extent constituting an Investment that is permitted by and made in accordance with the provisions of Section 6.18(b) (except those described in clauses (1), (4), (8) and (9) thereof);
- (14) Investments consisting of (i) purchases or other acquisitions of inventory, supplies, materials, equipment and similar assets or (ii) licenses, sublicenses, cross-licenses, leases, subleases, assignments, contributions or other Investments of intellectual property or other intangibles or services in the ordinary course of business pursuant to any joint development, joint venture or marketing arrangements with other Persons or any Intercompany License Agreement and any other Investments made in connection therewith;

(15) (i) Guarantees of Indebtedness not prohibited by Section 7.01 and (other than with respect to Indebtedness) guarantees, keepwells and similar arrangements in the ordinary course of business or consistent with past practice and (ii) performance guarantees and Contingent Obligations with respect to obligations that are not prohibited by this Agreement;

(16) Investments consisting of earnest money deposits required in connection with a purchase agreement, or letter of intent, or other acquisitions to the extent not otherwise prohibited by this Agreement;

(17) Investments of a Restricted Subsidiary acquired after the Closing Date or of an entity merged or amalgamated into or consolidated with the Borrower or merged or amalgamated into or consolidated with a Restricted Subsidiary after the Closing Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(18) [reserved];

(19) contributions to a “rabbi” trust for the benefit of any employee, director, officer, manager, contractor, consultant, advisor or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Borrower, and Investments relating to non-qualified deferred payment plans in the ordinary course of business or consistent with past practice;

(20) Investments in joint ventures and similar entities and Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (20) and all Investments made pursuant to clause (22), in each case, that are at that time outstanding, not to exceed the greater of (i) \$165,000,000 and (ii) 55.0% of LTM EBITDA (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), *plus* the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such Investments (without duplication for purposes of Section 7.05 of any amounts applied pursuant to clause (y) of Section 7.05(a)) with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value; *provided, however*, that if any Investment pursuant to this clause (20) is made in any Person that is not the Borrower or a Restricted Subsidiary at the date of the making of such Investment and such Person becomes the Borrower or a Restricted Subsidiary after such date, such Investment may, at the option of the Borrower, thereafter be deemed to have been made pursuant to clauses (1) or (2) above and, in such case, shall cease to have been made pursuant to this clause (20);

(21) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (21) that are at that time outstanding, not to exceed the greater of (i) \$180,000,000 and (ii) 60.0% of LTM EBITDA (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), *plus* the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such Investments (without duplication for purposes of Section 7.05 of any amounts applied pursuant to clause (y) of Section 7.05(a)) with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value; *provided, however*, that if any Investment pursuant to this clause (21) is made in any Person that is not the Borrower or a Restricted Subsidiary at the date of the making of such Investment and such Person becomes the Borrower or a Restricted Subsidiary after such date, such Investment may, at the option of the Borrower, be deemed to have been made pursuant to clauses (1) or (2) above and, in such case, shall cease to have been made pursuant to this clause (21);

(22) any Investment in a Similar Business having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (22) and all Investments made pursuant to clause (20), in each case, that are at that time outstanding, not to exceed the greater of (i) \$165,000,000 and (ii) 55.0% of LTM EBITDA (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), *plus* the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such Investments (without duplication for purposes of Section 7.05 of any amounts applied pursuant to clause (y) of Section 7.05(a)) with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value; *provided, however*, that if any Investment pursuant to this clause (22) is made in any Person that is not the Borrower or a Restricted Subsidiary at the date of the making of such Investment and such Person becomes the Borrower or a Restricted Subsidiary after such date, such Investment may, at the option of the Borrower, thereafter be deemed to have been made pursuant to clause (1) or (2) above and, in such case, shall cease to have been made pursuant to this clause (22);

(23) (i) Investments arising in connection with a Qualified Securitization Financing or Receivables Facility and (ii) distributions or payments of Securitization Fees and purchases of Securitization Assets or Receivables Assets in connection with a Qualified Securitization Financing or Receivables Facility;

(24) Investments in connection with the Transactions;

(25) repurchases of the 7.750% Notes;

(26) Investments by an Unrestricted Subsidiary entered into prior to the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary as described under the definition of "Unrestricted Subsidiary";

(27) guaranty and indemnification obligations arising in connection with surety bonds issued in the ordinary course of business or consistent with past practice;

(28) Investments (a) consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with past practice, (b) made in the ordinary course of business or consistent with past practice in connection with obtaining, maintaining or renewing client, franchisee and customer contracts and loans or (c) advances, loans, extensions of credit (including the creation of receivables) or prepayments made to, and guarantees with respect to obligations of, franchisees, distributors, suppliers, lessors, licensors and licensees in the ordinary course of business or consistent with past practice;

(29) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with past practice;

(30) Investments consisting of UCC Article 3 endorsements for collection or deposit and Article 4 trade arrangements with customers (or any comparable or similar provisions in other applicable jurisdictions) in the ordinary course of business or consistent with past practices;

(31) any Investment by any Captive Insurance Subsidiary in connection with the provision of insurance to the Borrower or any Subsidiaries, which Investment is made in the ordinary course of business or consistent with past practice of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(32) non-cash Investments in connection with tax planning and reorganization activities, and Investments in connection with any Permitted Intercompany Activities, Permitted Tax Restructuring and related transactions;

(33) Investments made from casualty insurance proceeds in connection with the replacement, substitution, restoration or repair of assets on account of a Casualty Event; and

(34) any other Investment so long as (x) no Event of Default exists and (y) immediately after giving pro forma effect to the Investment and the incurrence of any Indebtedness the net proceeds of which are used to make such Investment, the Consolidated Total Net Leverage Ratio shall be no greater than 3.25 to 1.00.

“**Permitted Liens**” means, with respect to any Person:

(1) Liens on assets or property of a Restricted Subsidiary that is not a Guarantor securing Indebtedness and other obligations of any Restricted Subsidiary that is not a Guarantor;

(2) pledges, deposits or Liens (a) in connection with workmen’s compensation laws, payroll taxes, unemployment insurance laws, employers’ health tax and other social security laws or similar legislation or other insurance related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto), (b) securing liability, reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instruments) for the benefit of insurance carriers under insurance or self-insurance arrangements or otherwise supporting the payments of items set forth in the foregoing clause (a), or (c) in connection with bids, tenders, completion guarantees, contracts, leases, utilities, licenses, public or statutory obligations, or to secure the performance of bids, trade contracts, government contracts and leases, statutory obligations, surety, stay, indemnity, warranty, release, judgment, customs, appeal, performance bonds, guarantees of government contracts, return of money bonds, bankers’ acceptance facilities and obligations of a similar nature (including those to secure health, safety and environmental obligations), and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, or as security for contested taxes or import or customs duties or for the payment of rent, or other obligations of like nature, in each case incurred in the ordinary course of business or consistent with past practice;

(3) Liens with respect to outstanding motor vehicle fines and Liens imposed by law or regulation, including carriers’, warehousemen’s, mechanics’, landlords’, suppliers’, materialmen’s, repairmen’s, architects’, construction contractors’ or other similar Liens, in each case (x) for amounts not overdue for a period of more than 60 days or, if more than 60 days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith by appropriate proceedings or (y) so long as such Liens do not individually or in the aggregate have a Material Adverse Effect;

(4) Liens for Taxes, assessments or other governmental charges, in each case (x) (i) that are not overdue for a period of more than 60 days, (ii) that are not yet payable or subject to penalties for nonpayment, (iii) that are being contested in good faith by appropriate proceedings and with respect to which appropriate reserves required pursuant to GAAP (or other applicable accounting principles) have been made in respect thereof or (iv) for property Taxes on property of the Borrower or one of its Subsidiaries that the Borrower (or the applicable Subsidiary) has determined to abandon if the sole recourse for such Tax is to such property or (y) so long as such Liens do not individually or in the aggregate have a Material Adverse Effect;

(5) encumbrances, charges, ground leases, easements (including reciprocal easement agreements), survey exceptions, restrictions, encroachments, protrusions, by-law, regulation, zoning restrictions or reservations of, or rights of others for, licenses, rights of way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects and irregularities in title and similar encumbrances) as to the use of real properties, exceptions on title policies insuring Liens granted on any mortgaged properties or any other collateral or Liens incidental to the conduct of the business of such Person or to the ownership of its properties, including servicing agreements, development agreements, site plan agreements, subdivision agreements, facilities sharing agreements, cost sharing agreements and other similar agreements, charges or encumbrances, which do not in the aggregate materially interfere with the ordinary course conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(6) Liens (a) securing Swap Obligations, Obligations in respect of Cash Management Agreements and the costs thereof; (b) that are rights of set-off, rights of pledge or other bankers' Liens (i) relating to treasury, depository and cash management services or any automated clearing house transfers of funds in the ordinary course of business or consistent with past practice, (ii) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary or consistent with past practice or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with past practice; (c) on cash accounts securing Indebtedness and other Obligations permitted to be incurred under clause (8)(c) of Section 7.01(b) with financial institutions; (d) encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with past practice and not for speculative purposes; and (e) (i) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection, (ii) in favor of a banking or other financial institution or electronic payment service providers arising as a matter of law encumbering deposits (including the right of set-off) arising in the ordinary course of business in connection with the maintenance of such accounts and (iii) arising under customary general terms and conditions of the account bank in relation to any bank account maintained with such bank and attaching only to such account and the products and proceeds thereof, which Liens, in any event, do not secure any Indebtedness;

(7) leases, licenses, subleases and sublicenses of assets (including real property, intellectual property, software and other technology rights), in each case entered into in the ordinary course of business, consistent with past practice or, with respect to intellectual property, software and other technology rights, that are not material to the conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(8) Liens securing or otherwise arising out of judgments, decrees, attachments, orders or awards not giving rise to an Event of Default under Section 8.01(h);

(9) Liens (a) securing Finance Lease Obligations or Purchase Money Obligations, or securing the payment of all or a part of the purchase price of, or securing Indebtedness or other obligations incurred to finance or refinance the acquisition, improvement or construction of, assets or property acquired or constructed in the ordinary course of business; *provided* that (i) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be incurred under this Agreement and (ii) any such Liens may not extend to any assets or property of the Borrower or any Restricted Subsidiary other than the assets or property the acquisition, leasing, expansion, construction, installation, replacement, repair or improvement and assets and property affixed or appurtenant thereto and accessions, additions, improvements, proceeds, dividends or distributions thereof, including after-acquired property that is (A) affixed or incorporated into the property or assets covered by such Lien, (B) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (C) the proceeds and products thereof and (b) any interest or title of a lessor, sublessor, franchisor, licensor or sublicensor or secured by a lessor's, sublessor's, franchisor's, licensor's or sublicensor's interest under any Finance Lease Obligations or Non-Financing Lease Obligations;

(10) Liens arising from UCC financing statements, including precautionary financing statements (or similar filings) regarding operating leases or consignments entered into by the Borrower and its Restricted Subsidiaries;

(11) Liens existing on the Closing Date and, to the extent the outstanding principal amount of the obligations secured thereby is in excess of \$10,000,000, listed on Schedule 1.01(d), including any Liens securing any Refinancing Indebtedness of any Indebtedness secured by such Liens;

(12) Liens on property, other assets or shares of stock of a Person at the time such Person becomes a Subsidiary (or at the time the Borrower or a Subsidiary acquires such property, other assets or shares of stock, including any acquisition by means of a merger, amalgamation, consolidation or other business combination transaction with or into the Borrower or any Restricted Subsidiary); *provided, however*, that such Liens are not created in anticipation of such other Person becoming a Subsidiary (or such acquisition of such property, other assets or stock); *provided, further*, that such Liens are limited to all or part of the same property, other assets or stock (*plus* property and assets affixed or appurtenant thereto and additions, improvements, accessions, proceeds, dividends or distributions thereof, including (i) after-acquired property that is affixed or incorporated into the property or assets covered by such Lien, (ii) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (iii) the proceeds and products thereof) that secured (or, under the written arrangements under which such Liens arose, could secure) the Obligations relating to any Indebtedness or other obligations to which such Liens relate;

(13) Liens securing Obligations relating to any Indebtedness or other obligations of the Borrower or a Restricted Subsidiary owing to the Borrower or a Restricted Subsidiary, or Liens in favor of the Borrower or any Restricted Subsidiary or the Agents;

(14) Liens securing Refinancing Indebtedness incurred to refinance Indebtedness that was previously so secured, and permitted to be secured under this Agreement; *provided* that any such Lien is limited to all or part of the same property or assets (*plus* property and assets affixed or appurtenant thereto and additions, improvements, accessions, proceeds, dividends or distributions thereof, including after-acquired property that is (i) affixed or incorporated into the property or assets covered by such Lien, (ii) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (iii) the proceeds and products thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Obligations relating to the Indebtedness or other obligations being refinanced or is in respect of property or assets that is or could be the security for or subject to a Permitted Lien hereunder;

(15) (a) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property over which the Borrower or any Restricted Subsidiary has easement rights or on any leased property and subordination or similar arrangements relating thereto and (b) any condemnation or eminent domain proceedings affecting any real property;

(16) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture secured financing arrangement, joint venture or similar arrangement pursuant to any joint venture secured financing arrangement, joint venture or similar agreement;

(17) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;

(18) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale or purchase of goods entered into in the ordinary course of business or consistent with past practice;

(19) Liens securing Indebtedness and other obligations in respect of (a) the Facilities, including any Letters of Credit, any New Loan Commitment and any Extended Loans and (b) obligations of the Borrower or any Subsidiary in respect of any obligations in respect of Cash Management Agreements, Secured Hedge Agreements or Swap Obligations provided by any lender party to this Agreement or Affiliate of such lender or any other Hedge Bank or Cash Management Bank (or any Person that was a lender or an Affiliate of a lender at the time the applicable agreements in respect of such Obligations in respect of Cash Management Agreements or Swap Obligation were entered into), including all Obligations;

(20) Liens securing Indebtedness and other obligations under clause (5) of Section 7.01(b) (subject, for the avoidance of doubt, to any limitations on the ability to incur secured Indebtedness (including the priority thereof) expressly set forth therein); *provided* that any such Liens securing Acquired Indebtedness shall only be permitted if such Liens are limited to all or part of the same property or assets, including Capital Stock (*plus* property and assets affixed or appurtenant thereto and additions, improvements, accessions, proceeds, dividends or distributions thereof, including after-acquired property that is (i) affixed or incorporated into the property or assets covered by such Lien, (ii) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (iii) the proceeds and products thereof) acquired, or of any Person acquired or merged, consolidated or amalgamated with or into the Borrower or any Restricted Subsidiary, in any transaction to which such Indebtedness or other obligation relates;

- (21) Liens securing Indebtedness and other obligations under clauses (1), (11) (provided that, in the case of clause (11), such Liens cover only the assets of non-Guarantors), (16) or (17) of Section 7.01(b);
- (22) Liens on Capital Stock of the Borrower held by the Borrower or any of its Subsidiaries;
- (23) Liens on Capital Stock or other securities or assets of any Unrestricted Subsidiary that secure Indebtedness or other obligations of such Unrestricted Subsidiary;
- (24) Liens deemed to exist in connection with Investments permitted under clause (4) of the definition of “Cash Equivalents”;
- (25) Liens on (i) goods the purchase price of which is financed by a documentary letter of credit issued for the account of the Borrower or any Subsidiary or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments and (ii) specific items of inventory or other goods and proceeds of any Person securing such Person’s obligations in respect of bankers’ acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (26) Liens on vehicles or equipment of the Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with past practice;
- (27) Liens on assets or securities deemed to arise in connection with and solely as a result of the execution, delivery or performance of contracts to sell such assets or securities if such sale is otherwise not prohibited by this Agreement;
- (28) (a) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto, and (b) Liens, pledges, deposits made or other security provided to secure liabilities to, or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefits of), insurance carriers in the ordinary course of business or consistent with past practice;
- (29) Liens solely on any cash earnest money deposits made in connection with any letter of intent or purchase agreement permitted under this Agreement;
- (30) Liens (i) on cash advances or escrow deposits in favor of the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment or otherwise in connection with any escrow arrangements with respect to any such Investment (including any letter of intent or purchase agreement with respect to such Investment), and (ii) consisting of an agreement to sell, transfer, lease or otherwise dispose of any property in an asset sale, in each case, solely to the extent such Investment or sale, transfer, lease or other disposition, as applicable, would have been permitted on the date of the creation of such Lien;
- (31) Liens securing Indebtedness and other obligations in an aggregate principal amount not to exceed the greater of (i) \$150,000,000 and (ii) 50.0% of LTM EBITDA at the time incurred and any Liens securing any Refinancing Indebtedness of any Indebtedness secured by such Liens;



(32) Liens then existing with respect to assets of an Unrestricted Subsidiary on the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary as described under the definition of “Unrestricted Subsidiary”;

(33) Liens securing Indebtedness and other obligations permitted under Section 7.01(a);

(34) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 7.05; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(35) Liens arising in connection with a Qualified Securitization Financing or a Receivables Facility, and back-up Liens in connection with any other factoring, securitization or similar arrangement;

(36) Settlement Liens;

(37) rights of recapture of unused real property in favor of the seller of such property set forth in customary purchase agreements and related arrangements with any government, statutory or regulatory authority;

(38) the rights reserved to or vested in any Person or government, statutory or regulatory authority by the terms of any lease, license, franchise, grant or permit held by the Borrower or any Restricted Subsidiary or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(39) restrictive covenants affecting the use to which real property may be put and Liens or covenants restricting or prohibiting access to or from lands abutting on controlled access highways or covenants affecting the use to which lands may be put; *provided* that such Liens or covenants do not interfere with the ordinary conduct of the business of the Borrower or any Restricted Subsidiary;

(40) Liens on property, assets or Permitted Investments used to defease or to satisfy or discharge Indebtedness; *provided* that such defeasance, satisfaction or discharge is not prohibited by this Agreement;

(41) Liens relating to escrow arrangements securing Indebtedness, including (i) Liens on escrowed proceeds from the issuance of Indebtedness for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, arrangers, trustee or collateral agent thereof) and (ii) Liens on cash or Cash Equivalents set aside at the time of the incurrence of any Indebtedness, in either case to the extent such cash or Cash Equivalents prefund the payment of interest or premium or discount on such Indebtedness (or any costs related to the issuance of such Indebtedness) and are held in an escrow account or similar arrangement to be applied for such purpose;

(42) [Reserved];

- (43) Liens on assets securing any Indebtedness owed to any Captive Insurance Subsidiary by the Borrower or any Restricted Subsidiary;
- (44) Liens arising in connection with any Permitted Intercompany Activities, Permitted Tax Restructuring and related transactions;
- (45) Liens securing Permitted Debt Exchange Notes; and
- (46) Liens arising in connection with the Transactions.

In the event that a Permitted Lien meets the criteria of more than one of the types of Permitted Liens (at the time of incurrence or at a later date), the Borrower in its sole discretion may divide, classify or from time to time reclassify all or any portion of such Permitted Lien in any manner that complies with this Agreement and such Permitted Lien shall be treated as having been made pursuant only to the clause or clauses of the definition of Permitted Lien to which such Permitted Lien has been classified or reclassified.

“**Permitted Payments**” has the meaning specified in Section 7.05(b).

“**Permitted Tax Amount**” means (a) for any taxable period for which the Borrower is a member (or is an entity treated as disregarded from a member) of a group filing a consolidated, group, affiliated, unitary, combined or similar income or similar tax return with any direct or indirect parent of the Borrower, any income or similar Taxes for which such parent is liable that are attributable to the taxable income of the Borrower and its applicable Subsidiaries up to an amount not to exceed with respect to such taxable period the amount of any such Taxes that the Borrower and such Subsidiaries would have been required to pay on a separate company basis or on a consolidated basis calculated as if the Borrower and such Subsidiaries had paid Tax on a consolidated, combined, group, affiliated, unitary or similar basis on behalf of a consolidated, combined, affiliated, unitary or similar group consisting only of the Borrower and such Subsidiaries for all relevant taxable periods; *provided* that, such amount attributable to the taxable income of an Unrestricted Subsidiary for each taxable period shall not exceed the amount actually paid by such Unrestricted Subsidiary to any Loan Party for such purpose and (b) franchise and similar taxes required to be paid by any direct or indirect parent of the Borrower to maintain its organizational existence.

“**Permitted Tax Restructuring**” means any reorganizations, restructuring, and other activities related to Tax planning, Tax reorganization, or any Tax restructuring entered into prior to, on or after the date hereof so long as such Permitted Tax Restructuring is not materially adverse to the holders of the Loans (as determined by the Borrower in good faith). For purposes of clarity, a Permitted Tax Restructuring may include (but is not limited to) reorganizations, restructurings, and other activities related to Tax planning, Tax reorganization, or any Tax restructuring entered into by or among any direct or indirect parent of the Borrower, the Borrower and any Subsidiary of the Borrower.

“**Person**” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or any other entity.

“**Plan**” means any “employee benefit plan” (other than a Multiemployer Plan) within the meaning of Section 3(3) of ERISA that is maintained or is contributed to by a Loan Party or any ERISA Affiliate or under which any Loan Party or ERISA Affiliate has any liability or obligation, whether fixed or contingent, and, in any case, is subject to Title IV of ERISA or the Pension Funding Rules. For greater certainty, “Plan” excludes any Foreign Plan.

“**Platform**” has the meaning specified in [Section 6.02](#).

“**Pledged Debt**” means “Pledged Debt” (or similar term) as defined in the Security Agreement.

“**Pledged Interests**” means “Pledged Interests” (or similar term) as defined in the Security Agreement.

“**Pounds Sterling**” and “**£**” means freely transferable lawful money of the United Kingdom (expressed in Pounds Sterling).

“**Preferred Stock**” as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“**Prepayment Amount**” has the meaning specified in [Section 2.05\(c\)](#).

“**Prepayment-Based Incremental Facility**” has the meaning specified in [Section 2.14\(a\)](#).

“**Prepayment Date**” has the meaning specified in [Section 2.05\(c\)](#).

“**Primary Disqualified Institution**” has the meaning specified in the definition of “Disqualified Institution”.

“**primary obligations**” has the meaning specified in the definition of “Contingent Obligations”.

“**primary obligor**” has the meaning specified in the definition of “Contingent Obligations”.

“**Prime Rate**” means, for any day, the rate of interest last quoted by *The Wall Street Journal* as the “Prime Rate” in the U.S. for such day or, if *The Wall Street Journal* ceases to quote such rate, the highest per annum interest rate published by the FRB in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate for such day or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent in its reasonable discretion) or any similar release by the FRB (as determined by the Administrative Agent in its reasonable discretion), in each case, for such day. Each change in the Prime Rate shall be effective from and including the date that such change is publicly announced or quoted as being effective.

“**Pro Rata Share**” means, with respect to each Lender and any Facility or all the Facilities or any Tranche or all the Tranches (as applicable) at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place, and subject to adjustment as provided in [Section 2.17](#)), the numerator of which is the amount of the Commitments of such Lender under the applicable Facility or the Facilities or Tranche or Tranches (and, in the case of any Term Loan Tranche after the applicable borrowing date and without duplication, the outstanding principal amount of Term Loans under such Tranche, of such Lender, at such time) at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable Facility or the Facilities or Tranche or Tranches at such time (and, in the case of any Term Loan Tranche and without duplication, the outstanding principal amount of Term Loans under such Tranche, at such time); *provided* that if the commitment of each Lender to make Loans and the obligation of each L/C Issuer to make L/C Credit Extensions have been terminated pursuant to [Section 8.02](#), then the Pro Rata Share of each Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof. The initial Pro Rata Share of each Lender is set forth opposite the name of such Lender on [Schedule 2.01](#) or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as applicable.

“**Projections**” means the projections of the Borrower and its Subsidiaries included in the Information Memorandum and any other projections, financial estimates, forecast and any other forward-looking statements (including statements with respect to booked business) of such entities furnished to the Lenders or the Agents in writing by or on behalf of the Borrower or any of its Subsidiaries prior to the Closing Date.

“**PIE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Public Company Costs**” means, as to any Person, costs associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and costs relating to compliance with the provisions of the Securities Act and the Exchange Act or any other comparable body of laws, rules or regulations, as companies with listed equity, directors’ compensation, fees and expense reimbursement, costs relating to enhanced accounting functions and investor relations, stockholder meetings and reports to stockholders, directors’ and officers’ insurance and other executive costs, legal and other professional fees, listing fees and other transaction costs, in each case to the extent arising solely by virtue of the listing of such Person’s equity securities on a national securities exchange or issuance of public debt securities.

“**Public Lender**” has the meaning specified in Section 6.02.

“**Public Side Information**” has the meaning specified in Section 6.02.

“**Purchase Money Obligations**” means any Indebtedness incurred to finance or refinance the acquisition, leasing, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or assets (including Capital Stock), and whether acquired through the direct acquisition of such property or assets, or the acquisition of the Capital Stock of any Person owning such property or assets, or otherwise.

“**Qualified Securitization Financing**” means any Securitization Facility that meets the following conditions:

(i) the Board of Directors shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and its Restricted Subsidiaries,

(ii) all sales of Securitization Assets and related assets by the Borrower or any Restricted Subsidiary to the Securitization Subsidiary or any other Person are made for fair consideration (as determined in good faith by the Borrower) and

(iii) the financing terms, covenants, termination events and other provisions thereof shall be fair and reasonable terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings.

“**Qualifying Material Acquisition**” means any acquisition, or a series of related acquisitions by the Borrower or any Subsidiary, of (a) Capital Stock in any Person if, after giving effect thereto, such Person will become a Subsidiary (or, if such Person is already a Subsidiary of the Borrower, such acquisition shall increase the amount of Equity Interests of such Person owned by the Borrower and its Subsidiaries) or (b) any going business or assets comprising all or substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line or line of business of) any Person; *provided* that, in the case of each of the foregoing clauses (a) and (b), the aggregate consideration therefor (including Indebtedness assumed in connection therewith, all obligations in respect of deferred purchase price (including obligations under any purchase price adjustment, earn-out, contingent payment or similar payments, in each case as estimated in good faith by the Borrower) and all other consideration payable in connection therewith (including payment obligations in respect of noncompetition agreements or other arrangements representing acquisition consideration)) is equal to or greater than \$100,000,000.

“**Ratio-Based Incremental Facility**” has the meaning specified in [Section 2.14\(a\)](#).

“**Ratio Debt**” has the meaning specified in [Section 7.01\(a\)](#).

“**Receivables Assets**” means (a) any accounts receivable owed to the Borrower or a Restricted Subsidiary subject to a Receivables Facility and the proceeds thereof and (b) all collateral securing such accounts receivable, all contracts and contract rights, guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in connection with a non-recourse accounts receivable factoring arrangement.

“**Receivables Facility**” means any arrangement between the Borrower or a Subsidiary and a commercial bank, an asset based lender or other financial institution or an Affiliate thereof pursuant to which (a) the Borrower or such Subsidiary, as applicable, sells (directly or indirectly) to such commercial bank, asset based lender or other financial institution (or such Affiliate) Receivables Assets and (b) the obligations of the Borrower or such Restricted Subsidiary, as applicable, thereunder are non-recourse (except for Securitization Repurchase Obligations) to the Borrower and such Subsidiary and (c) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Borrower) and may include Standard Securitization Undertakings, and shall include any guaranty in respect of such arrangements.

“**Recipient**” means the Administrative Agent, any Lender or any L/C Issuer.

“**Reference Period**” has the meaning specified in [Section 1.10\(a\)](#).

“**Reference Time**” means with respect to any setting of the then-current Benchmark means (a) if such Benchmark is the Term SOFR, 5:00 a.m. (Chicago time) on the day that is two (2) U.S. Government Securities Business Days preceding the date of such setting, (b) if the RFR for such Benchmark is Daily Simple SOFR, then four (4) Business Days prior to such setting or (c) if such Benchmark is none of the Term SOFR or Daily Simple SOFR, the time determined by the Administrative Agent in its reasonable discretion.

“**Refinancing Amendment**” means an amendment to this Agreement, in form and substance reasonably satisfactory to the Administrative Agent, among the Borrower, the Administrative Agent and the Lenders providing Specified Refinancing Debt, effecting the incurrence of such Specified Refinancing Debt in accordance with [Section 2.18](#).

**“Refinancing Indebtedness”** means Indebtedness that is incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness (or unutilized commitment in respect of Indebtedness) existing on the Closing Date or incurred (or established) in compliance with this Agreement (including Indebtedness of the Borrower that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of the Borrower or a Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness, and Indebtedness incurred pursuant to a commitment that refinances any Indebtedness or unutilized commitment; *provided, however*, that:

(1) (a) such Refinancing Indebtedness (x) has a final Stated Maturity and Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the final Stated Maturity and remaining Weighted Average Life to Maturity of the Indebtedness being refunded, refinanced, replaced, exchanged, renewed, repaid or extended or (y) requires no or nominal payments in cash (other than interest payments) prior to the date that is 91 days after the Latest Maturity Date for the then outstanding Initial Term Loans; and (b) to the extent such Refinancing Indebtedness refinances Subordinated Indebtedness, Disqualified Stock or Preferred Stock, such Refinancing Indebtedness is Subordinated Indebtedness, Disqualified Stock or Preferred Stock, respectively, and, in the case of Subordinated Indebtedness, is subordinated to the Loans on customary terms (as determined by the Borrower in good faith);

(2) Refinancing Indebtedness shall not include:

- (i) Indebtedness of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness of the Borrower or a Guarantor; or
- (ii) Indebtedness of the Borrower or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary; and

(3) such Refinancing Indebtedness is incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of (x) the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being Refinanced, *plus* (y) an amount equal to any unutilized commitment relating to the Indebtedness being refinanced or otherwise then outstanding under a financing arrangement being refinanced to the extent the unutilized commitment being refinanced could be drawn in compliance with Section 7.01 immediately prior to such refinancing, *plus* (z) accrued and unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing.

**“Refunding Capital Stock”** has the meaning specified in Section 7.05(b).

**“Register”** has the meaning specified in Section 10.07(c).

**“Regulation S-X”** means Regulation S-X under the Securities Act.

**“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the partners, members, directors, managers, officers, employees, agents, attorneys-in-fact, trustees and advisors of such Person and of such Person’s Affiliates.

**“Release”** means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching, movement or migration of any Hazardous Materials into or through the Environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material).

**“Relevant Governmental Body”** means, the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“**Relevant Rate**” means (i) with respect to any SOFR Borrowing, the Adjusted Term SOFR or (ii) with respect to any RFR Borrowing, the Adjusted Daily Simple SOFR, as applicable.

“**Relevant Transaction**” has the meaning specified in [Section 2.05\(b\)\(i\)](#).

“**Remaining Obligations**” means contingent indemnification obligations as to which no claim has been asserted and obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements, and Letters of Credit that have been Cash Collateralized or as to which arrangements satisfactory to the L/C Issuer that issued such Letters of Credit shall have been made.

“**Repayment**” has the meaning specified in the definition of “Transactions”.

“**Replaceable Lender**” has the meaning specified in [Section 3.08\(a\)](#).

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the 30-day notice period has been waived.

“**Request for Credit Extension**” means (a) with respect to a Borrowing, conversion or continuation of Loans, a Committed Loan Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

“**Required Lenders**” means, as of any date of determination, Lenders having more than 50.0% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; *provided* that the unused Revolving Credit Commitment of, and the portion of the Total Outstandings held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“**Required Revolving Lenders**” means, as of any date of determination, Revolving Credit Lenders holding more than 50.0% of the sum of (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; *provided* that the unused Revolving Credit Commitment of, and the portion of the Total Revolving Credit Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders.

“**Reserved Indebtedness Amount**” has the meaning specified in [Section 1.12](#).

“**Resolution Authority**” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“**Responsible Officer**” means the chief executive officer, representative, director, manager, president, vice president, executive vice president, chief financial officer, treasurer or assistant treasurer, secretary or assistant secretary, an authorized signatory, an attorney-in-fact (to the extent empowered by the Board of Directors/managers of the Borrower) or other similar officer of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“**Restricted Group**” means the collective reference to from and after the Closing Date, the Borrower and its Restricted Subsidiaries, and “**Restricted Group Member**” means any one of them.

“**Restricted Investment**” means any Investment other than a Permitted Investment.

“**Restricted Payment**” has the meaning specified in [Section 7.05\(a\)](#).

“**Restricted Subsidiary**” means any Subsidiary of a Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Restricted Subsidiaries shall mean Restricted Subsidiaries of the Borrower.

“**Retained Asset Excess Proceeds**” has the meaning specified in [Section 2.05\(b\)\(i\)](#).

“**Retained Declined Proceeds**” has the meaning specified in [Section 2.05\(c\)](#).

“**Revolving Commitment Increase Lender**” has the meaning specified in [Section 2.14\(e\)](#).

“**Revolving Credit Borrowing**” means a borrowing under the Revolving Credit Facility consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of SOFR Loans, having the same Interest Period made by each of the Revolving Credit Lenders pursuant to [Section 2.01\(b\)](#).

“**Revolving Credit Commitment Increase**” has the meaning specified in [Section 2.14\(a\)](#).

“**Revolving Credit Commitments**” means, as to any Revolving Credit Lender, (i) its Initial Revolving Credit Commitment, (ii) its Revolving Credit Commitment Increase, (iii) its New Revolving Commitment or (iv) its Specified Refinancing Revolving Credit Commitment. The amount of each Revolving Credit Lender’s Initial Revolving Credit Commitment is as set forth in the definition thereof and the amount of each Lender’s other Revolving Credit Commitments shall be as set forth in the Assignment and Assumption or in the amendment or agreement relating to the respective Revolving Credit Commitment Increase, New Revolving Commitment or Specified Refinancing Revolving Credit Commitment pursuant to which such Lender shall have assumed its Revolving Credit Commitment, as applicable, as such amounts may be adjusted from time to time in accordance with this Agreement.

“**Revolving Credit Facility**” means, at any time, the aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments in respect of any Revolving Tranche at such time.

“**Revolving Credit Lender**” means, at any time, any Lender that has a Revolving Credit Commitment or that holds any Outstanding Amount in respect of Revolving Credit Loans and/or L/C Obligations at such time (and after the termination of all Revolving Credit Commitments, any Lender that holds any Outstanding Amount in respect of Revolving Credit Loans and/or L/C Obligations).

“**Revolving Credit Loan**” means an advance made by any Revolving Credit Lender under any Revolving Credit Facility (including, for the avoidance of doubt, the Initial Revolving Tranche).

“**Revolving Credit Note**” means a promissory note of the Borrower payable to any Revolving Credit Lender or its registered assigns, in substantially the form of [Exhibit B-2](#) hereto, evidencing the aggregate indebtedness of the Borrower to such Revolving Credit Lender resulting from the Revolving Credit Loans made by such Revolving Credit Lender.

“**Revolving Tranche**” means (a) the Revolving Credit Facility pursuant to which Revolving Credit Loans, New Revolving Loans or Letters of Credit are made and (b) any Specified Refinancing Debt constituting revolving credit facility commitments, in each case, including the extensions of credit made thereunder. Additional Revolving Tranches may be added after the Closing Date pursuant to the terms hereof (*e.g.*, New Revolving Commitments and Extended Revolving Commitments).



“**RFR Borrowing**” means, as to any Borrowing, the RFR Loans comprising such Borrowing.

“**RFR Loan**” means a Loan that bears interest at a rate based on the Adjusted Daily Simple SOFR.

“**S&P**” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business or any successor to the rating agency business thereof.

“**Sale and Leaseback Transaction**” means any arrangement providing for the leasing by the Borrower or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary to a third Person in contemplation of such leasing.

“**Sanctioned Country**” means, at any time, a country, region, or territory that is the subject of a comprehensive export, import, financial, investment or other trade-related embargo under any Sanctions Laws and Regulations, which as of the date of this Agreement consist of Cuba, Iran, North Korea, Syria, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic and the Crimea, Kherson, and Zaporizhzhia regions of Ukraine.

“**Sanctioned Person**” means, at any time, any Person that is the subject or target of Sanctions Laws and Regulations, including (a) any Person listed in any Sanctions Laws and Regulations-related lists of designated Persons maintained by the U.S. government (including OFAC’s Specially Designated Nationals and Blocked Persons List, the U.S. Department of State’s list of Debarred Parties, and the U.S. Department of Commerce’s Entity List), the United Nations Security Council, HM’s Treasury of the United Kingdom or any European Union member state, (b) any Person located, operating, organized, or resident in a Sanctioned Country, and (c) any Person owned or controlled by any Person or Persons described in clause (a) or (b) above.

“**Sanctions Laws and Regulations**” means (i) any economic or financial sanctions or other requirements imposed by or based upon the obligations or authorities set forth in the U.S. International Emergency Economic Powers Act (50 U.S.C. §§ 1701 *et seq.*), the U.S. Trading with the Enemy Act (50 U.S.C. App. §§ 1 *et seq.*), the Export Administration Act, the Export Administration Regulations, the U.S. Syria Accountability and Lebanese Sovereignty Act, the U.S. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, the Iran Sanctions Act of 1996, Section 1245 of the National Defense Authorization Act of 2012, all as amended, or any of the foreign assets control regulations (including 31 C.F.R., Subtitle B, Chapter V, as amended) or any other law or executive order relating thereto administered by the U.S. Department of the Treasury Office of Foreign Assets Control (“**OFAC**”), the U.S. Department of Commerce, the U.S. Department of State, and any similar law, regulation, or executive order that may be enacted, from time to time, by the United States government and (ii) any economic or financial sanctions or other requirements imposed under similar laws or regulations enacted by the European Union or any member state thereof or the United Kingdom, or administered, enacted or enforced by the respective governmental institutions or agencies of any of the foregoing, including, without limitation, HM’s Treasury of the United Kingdom, that apply to the Loan Parties, any of their respective Subsidiaries, or that apply to any other party to this Agreement (as any of the foregoing laws may from time to time be amended, renewed, extended or replaced).

“**SEC**” means the U.S. Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

“**Section 2.19 Additional Amendment**” has the meaning specified in [Section 2.19\(c\)](#).

“**Secured Cash Management Agreement**” means any Cash Management Agreement that is entered into by and between any Loan Party or any Restricted Subsidiary and any Cash Management Bank, except for any such Cash Management Agreement designated by the Borrower in writing to the Administrative Agent and the relevant Cash Management Bank as an “unsecured cash management agreement” as of the Closing Date or, if later, on or about the time of entering into such Cash Management Agreement.

“**Secured Hedge Agreement**” means any Swap Contract that is entered into by and between any Loan Party or any Restricted Subsidiary and any Hedge Bank, except for any such Swap Contract designated by the Borrower and the applicable Hedge Bank in writing to the Administrative Agent as an “unsecured hedge agreement” as of the Closing Date or, if later, as of the time of entering into such Swap Contract.

“**Secured Obligations**” has the meaning specified in the Security Agreement.

“**Secured Parties**” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders (including, for the avoidance of doubt, the L/C Issuers), the Hedge Banks to the extent they are party to one or more Secured Hedge Agreements, the Cash Management Banks to the extent they are party to one or more Secured Cash Management Agreements and each co-agent or subagent appointed by the Administrative Agent or the Collateral Agent from time to time pursuant to [Article IX](#).

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

“**Securitization Asset**” means (a) any accounts receivable, mortgage receivables, loan receivables, royalty, franchise fee, license fee, patent or other revenue streams and other rights to payment or related assets and the proceeds thereof and (b) all collateral securing such receivable or asset, all contracts and contract rights, guarantees or other obligations in respect of such receivable or asset, lockbox accounts and records with respect to such account or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted) together with accounts or assets in connection with a securitization, factoring or receivable sale transaction.

“**Securitization Facility**” means any of one or more securitization, financing, factoring or sales transactions, as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, pursuant to which the Borrower or any of its Restricted Subsidiaries sells, transfers, pledges or otherwise conveys any Securitization Assets (whether now existing or arising in the future) to a Securitization Subsidiary or any other Person.

“**Securitization Fees**” means distributions or payments made directly or by means of discounts with respect to any Securitization Asset or Receivables Asset or participation interest therein issued or sold in connection with, and other fees, expenses and charges (including commissions, yield, interest expense and fees and expenses of legal counsel) paid in connection with, any Qualified Securitization Financing or Receivables Facility.

“**Securitization Repurchase Obligation**” means any obligation of a seller of Securitization Assets or Receivables Assets in a Qualified Securitization Financing or a Receivables Facility to repurchase or otherwise make payments with respect to Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“**Securitization Subsidiary**” means any Subsidiary of the Borrower in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings or Receivables Facilities and other activities reasonably related thereto or another Person formed for this purpose.

“**Security Agreement**” means, collectively, the Security Agreement, dated as of the Closing Date, executed by and among the Loan Parties party thereto and the Collateral Agent, together with each other security agreement and Security Agreement Supplement executed and delivered pursuant to Section 6.12, 6.14 or 6.16.

“**Security Agreement Supplement**” means the Security Agreement Supplements, as defined in the Security Agreement.

“**SEMS**” means the Superfund Enterprise Management System maintained by the U.S. Environmental Protection Agency.

“**Series LLC**” shall mean any series of a limited liability company (including any protected or registered series) established in accordance with Section 18-215(b) or 18-218 of the Delaware Limited Liability Company Act or a comparable provision of any other Law.

“**Series LP**” shall mean any series of a limited partnership (including any protected or registered series) established in accordance with Section 17-218(b) or 17-221 of the Delaware Limited Partnership Act or a comparable provision of any other Law.

“**Settlement**” means the transfer of cash or other property with respect to any credit or debit card charge, check or other instrument, electronic funds transfer, or other type of paper-based or electronic payment, transfer, or charge transaction for which a Person acts as a processor, remitter, funds recipient or funds transmitter in the ordinary course of its business.

“**Settlement Asset**” means any cash, receivable or other property, including a Settlement Receivable, due or conveyed to a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person or an Affiliate of such Person.

“**Settlement Indebtedness**” means any payment or reimbursement obligation in respect of a Settlement Payment.

“**Settlement Lien**” means any Lien relating to any Settlement or Settlement Indebtedness (and may include, for the avoidance of doubt, the grant of a Lien in or other assignment of a Settlement Asset in consideration of a Settlement Payment, Liens securing intraday and overnight overdraft and automated clearing house exposure, and similar Liens).

“**Settlement Payment**” means the transfer, or contractual undertaking (including by automated clearing house transaction) to effect a transfer, of cash or other property to effect a Settlement.

“**Settlement Receivable**” means any general intangible, payment intangible, or instrument representing or reflecting an obligation to make payments to or for the benefit of a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person.

“**Similar Business**” means (a) any businesses, services or activities engaged in by the Borrower or any of its Subsidiaries or any Associates on the Closing Date (after giving effect to the Transactions), (b) any businesses, services and activities engaged in by the Borrower or any of its Subsidiaries or any Associates that are related, complementary, incidental, ancillary or similar to any of the foregoing or are extensions or developments of any thereof and (c) a Person conducting a business, service or activity specified in clauses (a) and (b), and any Subsidiary thereof. For the avoidance of doubt, any Person that invests in or owns Capital Stock or Indebtedness of another Person that is engaged in a Similar Business shall be deemed to be engaged in a Similar Business.

“**SOFR**” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**SOFR Determination Date**” has the meaning specified in the definition of “Daily Simple SOFR”.

“**SOFR Rate Day**” has the meaning specified in the definition of “Daily Simple SOFR”.

“**SOFR Borrowing**” means, as to any Borrowing, the SOFR Loans comprising such Borrowing.

“**SOFR Loan**” means a Loan that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “Alternate Base Rate”.

“**Sold Entity or Business**” has the meaning specified in the definition of the term “Consolidated EBITDA”.

“**Solvent**” means, with respect to the Borrower and its Restricted Subsidiaries on any date of determination, that on such date (a) the sum of the debt (including contingent liabilities) of such Person, taken as a whole, does not exceed the fair value of the present assets of the Borrower and its Restricted Subsidiaries, taken as a whole, (b) the fair salable value of the assets of the Borrower and the Restricted Subsidiaries, taken as a whole, is not less than the amount that will be required to pay the probable liabilities (including contingent liabilities) of the Borrower and its Restricted Subsidiaries, taken as a whole, on their debts as they become absolute and matured, (c) the capital of the Borrower and its Restricted Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Borrower and its Restricted Subsidiaries, taken as a whole, as contemplated on such date of determination and (d) the Borrower and its Restricted Subsidiaries, taken as a whole, do not intend to incur debts (including current obligations and contingent liabilities) beyond their ability to pay such debts as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“**SPC**” has the meaning specified in Section 10.07(g).

“**Specified Existing Tranche**” has the meaning specified in Section 2.19(a).

“**Specified Refinancing Agent**” has the meaning specified in Section 2.18(a).

“**Specified Refinancing Debt**” has the meaning specified in Section 2.18(a).

“**Specified Refinancing Revolving Credit Commitment**” has the meaning specified in Section 2.18(a).

“**Specified Refinancing Revolving Loans**” means Specified Refinancing Debt constituting revolving loans.

“**Specified Refinancing Term Commitment**” has the meaning specified in Section 2.18(a).

“**Specified Refinancing Term Facilities**” has the meaning specified in Section 2.18(a).

“**Specified Refinancing Term Loans**” means Specified Refinancing Debt constituting term loans.

“**Specified Representations**” means the representations and warranties made solely by the Borrower and the Guarantors in Sections 5.01(a) and (b)(ii) and Sections 5.02(a), 5.04, 5.13, 5.17, 5.18, 5.19 and 5.20 (in the case of the representations and warranties made pursuant to Sections 5.19 and 5.20, to be limited to the use of proceeds not violating the Laws referenced therein).

“**Spinco Business**” has the meaning given to such term in the definition of “Transactions”.

“**Spin-Off**” has the meaning given to such term in the definition of “Transactions”.

“**Spin-Off Date**” has the meaning given to such term in the definition of “Transactions”.

“**Standard Securitization Undertakings**” means representations, warranties, covenants, guarantees and indemnities entered into by the Borrower or any of its Subsidiaries which the Borrower has determined in good faith to be customary in a Securitization Facility or Receivables Facility, including those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking or, in the case of a Receivables Facility, a non-credit related recourse accounts receivable factoring arrangement.

“**Stated Maturity**” means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“**Subject Lien**” has the meaning specified in Section 7.02.

“**Subordinated Indebtedness**” means any Indebtedness (other than intercompany Indebtedness), whether outstanding on the Closing Date or thereafter incurred, which is expressly subordinated in right of payment to the Loans pursuant to a written agreement.

“**Subsidiary**” means, with respect to any Person:

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof;

(2) any partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership interests or otherwise; and

(b) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity; or

(3) at the election of the Borrower, any partnership, joint venture, limited liability company or similar entity of which such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Unless otherwise indicated in this Agreement, all references to Subsidiaries shall mean Subsidiaries of the Borrower.

“**Subsidiary Redesignation**” has the meaning given to such term in the definition of “Unrestricted Subsidiary”.

“**Supplemental Agent**” has the meaning specified in Section 9.14(a).

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, including any obligations or liabilities under any such master agreement.

“**Swap Obligation**” means, with respect to the Borrower or any Subsidiary, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Taxes**” means all present and future taxes, levies, imposts, deductions, charges, duties, assessments, fees and withholdings (including backup withholdings) and any other charges in the nature of a tax (including interest, penalties and other liabilities with respect thereto) that are imposed by any governmental or other taxing authority.

“**Term Borrowing**” means a borrowing of the same Type of Term Loan of a single Tranche from all Lenders having Term Commitments or Term Loans of the respective Tranche on a given date (or resulting from a continuation or conversions of such date) having, if applicable, the same Interest Period.

“**Term B Loans**” has the meaning specified in Section 2.14(d)(ii)(E).

“**Term Commitment**” means, as to each Term Lender, (i) its Initial Term Commitment, (ii) its Term Commitment Increase, (iii) its New Term Commitment or (iv) its Specified Refinancing Term Commitment. The amount of each Lender’s Initial Term Commitment is as set forth in the definition thereof and the amount of each Lender’s other Term Commitments shall be as set forth in the Assignment and Assumption, or in the amendment or agreement relating to the respective Term Commitment Increase, New Term Commitment or Specified Refinancing Term Commitment pursuant to which such Lender shall have assumed its Term Commitment, as applicable, as such amounts may be adjusted from time to time in accordance with this Agreement.

“**Term Commitment Increase**” has the meaning specified in Section 2.14(a).

“**Term Facility**” means a facility in respect of any Term Loan Tranche (including any Term Commitment Increase with respect to any Term Loan Tranche), as the context may require.

“**Term Lender**” means (a) at any time on or prior to the Closing Date, any Lender that has an Initial Term Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Term Loans and/or Term Commitments at such time.

“**Term Loan**” means an advance made by any Term Lender under any Term Facility (including, for the avoidance of doubt, the Initial Term Loans).

“**Term Loan Tranche**” means the respective facility and commitments utilized in making (or, where applicable, conversion of) Term Loans hereunder, with there being one Tranche on the Closing Date (*i.e.*, the Initial Term Loans and Initial Term Commitments). Additional Term Loan Tranches may be added after the Closing Date pursuant to the terms hereof (*e.g.*, New Term Loans, Specified Refinancing Term Loans, New Term Commitments, Extended Term Loans and Specified Refinancing Term Commitments).

“**Term Note**” means, as applicable, any Term Notes and any other promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit B-1, evidencing the indebtedness of the Borrower to such Term Lender resulting from the Term Loans under the same Term Loan Tranche made or held by such Term Lender.

“**Term SOFR**” means, with respect to any SOFR Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two (2) U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

“**Term SOFR Reference Rate**” means, for any day and time (such day, the “**Term SOFR Determination Day**”), with respect to any SOFR Borrowing and for any tenor comparable to the applicable Interest Period, the rate per annum published by the CME Term SOFR Administrator and identified by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 p.m. (New York City time) on such Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR has not occurred, then so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding U.S. Government Securities Business Day is not more than five (5) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

“**Test Period**” means the most recent period of four consecutive fiscal quarters of the Restricted Group ended on or prior to such time (taken as one accounting period) in respect of which financial statements for each such quarter or fiscal year in such period are internally available (as determined in good faith by the Borrower).

“**Threshold Amount**” means \$75,000,000.

“**Total Assets**” means, as of any date, the total consolidated assets of the Borrower and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent consolidated balance sheet of the Borrower and its Restricted Subsidiaries, determined on a pro forma basis in a manner consistent with Section 1.10.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“**Total Revolving Credit Outstandings**” means the aggregate Outstanding Amount of all Revolving Credit Loans and L/C Obligations.

“**Tranche**” means any Term Loan Tranche or any Revolving Tranche.

“**Transaction Costs**” has the meaning given to such term in clause (ii) of the definition of “Transactions”.

“**Transaction Documents**” means that certain Separation and Distribution Agreement by and between MDU Resources and the Borrower, expected to be dated on or about the Closing Date, and any other agreements entered into by the Borrower in connection with the Transactions.

“**Transactions**” means,

(i) internal reorganization transactions undertaken by MDU Resources, the Borrower and their respective Subsidiaries as a result of which the Borrower will hold, directly or through its subsidiaries, the business, operations and activities of the construction materials unit of MDU Resources as conducted as of immediately prior to the Spin-Off Date (the “**Spinco Business**”);

(ii) the Borrower (a) (1) obtaining the initial Facilities consisting of the initial Revolving Credit Facility and the initial Term Facility and (2) issuing the 7.750% Notes and (b) (1) lending or contributing the proceeds of the initial fundings thereunder to Knife River Corporation, a Delaware corporation and a direct, Wholly Owned Subsidiary of the Borrower and, at the Borrower’s option, using the remaining proceeds to pay the Borrower’s and its Subsidiaries’ fees, costs and expenses related to the Transactions (the “**Transaction Costs**”);

(iii) the repayment (the “**Repayment**”), on the Closing Date, by Knife River Corporation of intercompany obligations owing to certain Subsidiaries of MDU Resources;

(iv) the distribution on a pro rata basis to equityholders of MDU Resources of 80.1% or more of the shares of equity interests of the Borrower (with cash in lieu of fractional shares) with the Borrower holding, directly or through its subsidiaries, the Spinco Business (the consummation of the foregoing, the “**Spin-Off**”, and the date of such consummation of the Spin-Off, the “**Spin-Off Date**”);



(v) the separation of the Spinco Business from MDU Resources and the consummation of the other transactions contemplated by the Transaction Documents;

(vi) the execution and performance of the agreements (along with schedules and exhibits thereto) relating to the foregoing;

(vii) each of the transactions ancillary to the foregoing, including any distributions or other transfers of cash and/or other property or liabilities by MDU Resources or its Subsidiaries to the Borrower or its Subsidiaries, and vice versa; and

(viii) the payment of the Transaction Costs.

“**Treasury Capital Stock**” has the meaning specified in [Section 7.05\(b\)\(2\)](#).

“**Type**” means, with respect to a Loan, its character as an ABR Loan or SOFR Loan.

“**UCP**” means the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time).

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“**Undisclosed Administration**” means in relation to a Lender or its direct or indirect parent company, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Person is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

“**Unfunded Advances/Participations**” means (a) with respect to the Administrative Agent, the aggregate amount, if any (i) made available to the Borrower on the assumption that each Lender has made available to the Administrative Agent such Lender’s share of the applicable Borrowing available to the Administrative Agent as contemplated by [Section 2.12\(b\)](#) and (ii) with respect to which a corresponding amount shall not in fact have been returned to the Administrative Agent by the Borrower or made available to the Administrative Agent by any such Lender and (b) with respect to any L/C Issuer, the aggregate amount, if any, of amounts drawn under Letters of Credit in respect of which a Revolving Credit Lender shall have failed to make Revolving Credit Loans or L/C Advances to reimburse such L/C Issuer pursuant to [Section 2.03\(d\)](#).

“**Unfunded Pension Liability**” means the excess of a Plan’s benefit liabilities under Section 4001(a) of ERISA over the current value of such Plan’s assets, determined in accordance with assumptions used for funding the Plan pursuant to Section 412 of the Code for the applicable plan year.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unreimbursed Amount**” has the meaning specified in Section 2.03(d)(i).

“**Unrestricted Cash and Cash Equivalents**” means, as of any date of determination, cash or Cash Equivalents included on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries as of the end of the most recent fiscal period for which consolidated financial statements are available (which may, at the Borrower’s election, be internal financial statements) that (1) would not appear as “restricted” on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries or (2) are restricted in favor of the Facilities (which may also secure other Indebtedness secured by a *pari passu* or junior Lien basis with the Facilities).

“**Unrestricted Subsidiary**” means:

- (1) any Subsidiary of the Borrower that at the time of determination is an Unrestricted Subsidiary (as designated by the Borrower in the manner provided below); and
- (2) any Subsidiary of an Unrestricted Subsidiary.

The Borrower may designate any Subsidiary of the Borrower (other than the Borrower or any Subsidiary that directly or indirectly owns Capital Stock of the Borrower), (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger, consolidation or other business combination transaction, or Investment therein), to be an Unrestricted Subsidiary only if:

- (1) at the time of such designation, such Subsidiary or any of its Subsidiaries does not own any Capital Stock of the Borrower or any other Subsidiary of the Borrower which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary;
- (2) such designation and the Investment, if any, of the Borrower in such Subsidiary complies with Section 7.05; and
- (3) such designation would not cause an Event of Default.

If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate fair market value of all outstanding Investments owned by the Borrower and its Restricted Subsidiaries in the Subsidiary designated as an Unrestricted Subsidiary will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments pursuant to Section 7.05 or under one or more clauses of the definition of Permitted Investments, as determined by the Borrower. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Borrower may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause an Event of Default (such redesignation, a “**Subsidiary Redesignation**”).

Any designation of a Subsidiary of the Borrower as an Unrestricted Subsidiary will be evidenced to the Administrative Agent by delivering to the Administrative Agent a certificate of a Responsible Officer certifying that such designation complies with the preceding conditions and was not prohibited by Section 7.05. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Indebtedness and Liens of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary as of such date and, if such Indebtedness or Liens are not permitted to be incurred as of such date under Section 7.01, the Borrower will be in default of such covenant.

The Borrower may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that such designation will be deemed to be an incurrence of Indebtedness and Liens by a Restricted Subsidiary of any outstanding Indebtedness and Liens of such Unrestricted Subsidiary, and such designation will only be permitted if (1) such Indebtedness is permitted under Section 7.01 (including pursuant to clause (5) of the second paragraph thereof treating such redesignation as an acquisition for the purpose of such clause), calculated on a pro forma basis as if such designation had occurred at the beginning of the applicable reference period; and (2) no Event of Default pursuant to Sections 8.01(a), (f) or (g) would be in existence following such designation. Any such designation by the Borrower shall be evidenced to the Administrative Agent by delivering to the Administrative Agent a certificate of a Responsible Officer certifying that such designation complies with the preceding conditions.

Notwithstanding anything else herein to the contrary, (a) the Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, sell, convey, transfer or otherwise dispose of (including pursuant to an Investment) any Material Intellectual Property that is owned by, or exclusively licensed to, the Borrower or any Restricted Subsidiary to any Unrestricted Subsidiary and (b) the Borrower may not designate any Restricted Subsidiary as an Unrestricted Subsidiary to the extent that such Restricted Subsidiary or any of its Subsidiaries owns, licenses or otherwise holds any legal right in any Material Intellectual Property.

“**Unsecured Specified Debt**” means Indebtedness in respect of any Term Facility (including, for the avoidance of doubt, any New Term Facility), any Revolving Credit Facility (including, for the avoidance of doubt, any New Revolving Facility), any other loans incurred pursuant to any Loan Document, any Incremental Equivalent Debt, any Ratio Debt, any Permitted Debt Exchange Notes, any Specified Refinancing Debt, any Credit Agreement Refinancing Debt, any Refinancing Indebtedness in respect of any of the foregoing, in each case, that is unsecured.

“**U.S. Government Securities Business Day**” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**U.S. Person**” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“**U.S. Subsidiary**” means any Subsidiary of the Borrower that is organized under the laws of any jurisdiction within the United States of America (but not, for the avoidance of doubt, any territory thereof).

“**U.S. Tax Compliance Certificate**” has the meaning assigned to such term in Section 3.01(h)(ii)(B)(3).

“**Voting Stock**” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person. When referring to a CFC or FSHCO, the term Voting Stock shall be interpreted in a manner consistent with Treasury Regulations Section 1.956-2(c)(2).

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the quotient (in number of years) obtained by dividing:

- (1) the sum of the products obtained by multiplying (i) the number of years (calculated to the nearest one-twelfth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, by (ii) the amount of such payment, by
- (2) the sum of all such payments;

*provided* that, for purposes of determining the Weighted Average Life to Maturity of any Indebtedness, the effects of any prepayments or amortization made on such Indebtedness prior to the date of such determination will be disregarded.

“**Wholly Owned Restricted Subsidiary**” means any Wholly Owned Subsidiary that is a Restricted Subsidiary.

“**Wholly Owned Subsidiary**” of any Person means a direct or indirect Subsidiary of such Person 100.0% of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person. Unless otherwise indicated in this Agreement, all references to Wholly Owned Subsidiaries shall mean Wholly Owned Subsidiaries of the Borrower.

“**Withholding Agent**” means any Loan Party and the Administrative Agent or any other withholding agent under applicable Law.

“**Write-Down and Conversion Powers**” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

“**Yen**” means freely transferable lawful money of Japan (expressed in Yen).

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

- (c) References in this Agreement to an Exhibit, Schedule, Article, Section, clause or subclause refer (A) to the appropriate Exhibit or Schedule to, or Article, Section, clause or subclause in this Agreement or (B) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears.
- (d) The terms “including,” “include” and “includes” are by way of example and shall be deemed to be followed by the phrase “without limitation”.
- (e) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- (f) Any reference herein to any Person shall be construed to include such Person’s successors and assigns.
- (g) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including”.
- (h) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.
- (i) When calculating the availability under any basket or ratio under this Agreement or compliance with any provision of this Agreement which requires the calculation of a basket or ratio in connection with any Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence, issuance or assumption of Indebtedness and the use of proceeds thereof, the incurrence or creation of Liens, repayments, Restricted Payments and Asset Dispositions), in each case, at the option of the Borrower (the Borrower’s election to exercise such option, an “**LCT Election**”), the date of determination for availability under any such basket or ratio and whether any such action or transaction is permitted (or any requirement or condition therefor is complied with or satisfied (including as to the absence of any continuing Default or Event of Default (other than in connection with testing the satisfaction of any conditions to the making any L/C Credit Extension or any Revolving Credit Borrowing with respect to the Revolving Credit Commitments that exist on the Closing Date))) or whether any representations and warranties (or any specified representations and warranties) are true and correct (other than in connection with testing the satisfaction of any conditions to the making of any L/C Credit Extension or any Revolving Credit Borrowing with respect to Revolving Credit Commitments that exist on the Closing Date) under this Agreement shall be deemed to be the date (the “**LCT Test Date**”) either (a) the definitive agreement (or other relevant definitive documentation) for such Limited Condition Transaction is entered into (or, if applicable, the date of delivery of an irrevocable declaration of a Restricted Payment or similar event or the date of any notice, which may be conditional, of such a repayment, repurchase or refinancing of Indebtedness is given to the holders of such Indebtedness), or (b) solely in connection with an acquisition to which the United Kingdom City Code on Takeovers and Mergers applies, the date on which a “Rule 2.7 announcement” of a firm intention to make an offer (or equivalent announcement in another jurisdiction) (an “**LCT Public Offer**”) in respect of a target of a Limited Condition Transaction and, in each case, if, after giving pro forma effect to the Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence, issuance or assumption of Indebtedness and the use of proceeds thereof, the incurrence or creation of Liens, repayments, Restricted Payments and Asset Dispositions) and any related pro forma adjustments as if they had occurred at the beginning of the most recent Test Period ended prior to the LCT Test Date, the Borrower or any of its Restricted Subsidiaries would have been permitted to take such actions or consummate such transactions on the relevant LCT Test Date in compliance with such ratio, test or basket (and any related requirements and conditions), such ratio, test or basket (and any related requirements and conditions) shall be deemed to have been complied with (or satisfied) for all purposes (in the case of Indebtedness, for example, whether such Indebtedness is committed, issued, assumed or incurred at the LCT Test Date or at any time thereafter); *provided* that (a) if financial statements for one or more subsequent fiscal quarters shall have become available, the Borrower may elect, in its sole discretion, to redetermine all such ratios, tests or baskets on the basis of such financial statements, in which case, such date of redetermination shall thereafter be the applicable LCT Test Date for purposes of such ratios, tests or baskets, (b) except as contemplated in the foregoing clause (a), compliance with such ratios, test or baskets (and any related requirements and conditions) shall not be determined or tested at any time after the applicable LCT Test Date for such Limited Condition Transaction and any actions or transaction related thereto (including acquisitions, Investments, the incurrence, issuance or assumption of Indebtedness and the use of proceeds thereof, the incurrence or creation of Liens, repayments, Restricted Payments and Asset Dispositions) and (c) Consolidated Cash Interest Expense will be calculated using an assumed interest rate as reasonably determined by the Borrower.

For the avoidance of doubt, if the Borrower has made an LCT Election:

(1) if any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would at any time after the LCT Test Date have been exceeded or otherwise failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in EBITDA or Total Assets of the Borrower or the Person subject to such Limited Condition Transaction, such baskets, tests or ratios will not be deemed to have been exceeded or failed to have been complied with as a result of such fluctuations;

(2) any change to the applicable exchange rate utilized in calculating compliance with any Dollar-based provision of this Agreement, at any time from and after the LCT Test Date to the date of consummation of such Investment, acquisition or repayment, repurchase or refinancing of Indebtedness, will not be taken into account for purposes of determining (x) whether any Indebtedness or Lien that is being incurred in connection with such Investment, acquisition or repayment, repurchase or refinancing of Indebtedness is permitted, or (y) compliance by any Restricted Group Member with any other provision of the Loan Documents;

(3) if any related requirements and conditions (including as to the absence of any continuing Default or Event of Default) for which compliance or satisfaction was determined or tested as of the LCT Test Date would at any time after the LCT Test Date not have been complied with or satisfied (including due to the occurrence or continuation of a Default or an Event of Default), such requirements and conditions will not be deemed to have been failed to be complied with or satisfied (and such Default or Event of Default shall be deemed not to have occurred or be continuing);

(4) for purposes of determining whether the bring down of representations and warranties (or specified representations and warranties) in connection with any such Investment, acquisition or repayment, repurchase or refinancing of Indebtedness, as applicable, are true and correct, such condition shall be deemed satisfied so long as such representation and warranties, as applicable, are true and correct in all material respects on the LCT Test Date; and

(5) in calculating the availability under any ratio, test or basket in connection with any action or transaction unrelated to such Limited Condition Transaction following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or date for redemption, purchase or repayment specified in an irrevocable notice for such Limited Condition Transaction is terminated, expires or passes (or, if applicable, the irrevocable notice is terminated, expires or passes or, as applicable, the offer in respect of an LCT Public Offer for, such acquisition is terminated), as applicable, without consummation of such Limited Condition Transaction, any such ratio, test or basket shall be determined or tested giving pro forma effect to such Limited Condition Transaction.

(j) For the purposes of Sections 2.05(b)(i), 6.12, 7.03, 7.04 and 7.05, an allocation of assets to a division of a Restricted Subsidiary that is a limited liability company, or an allocation of assets to a series of a Restricted Subsidiary that is a limited liability company, shall be treated as a transfer of assets from one Restricted Subsidiary to another Restricted Subsidiary.

(k) Any transaction or event shall be considered “permitted by” or made “in accordance with” or “in compliance with” this Agreement or any particular provision hereof if such transaction or event is not expressly prohibited by this Agreement or such provision, as the case may be.

(l) Notwithstanding anything to the contrary herein, in the event an item of Indebtedness (or any portion thereof) is incurred or issued, any Lien is incurred or other transaction is undertaken in reliance on any ratio based exceptions, thresholds and baskets, such ratio(s) shall be calculated with respect to such incurrence, issuance or other transaction without giving effect to amounts being utilized under any other exceptions, thresholds or baskets (other than ratio based baskets) on the same date. Each item of Indebtedness that is incurred or issued, each Lien incurred and each other transaction undertaken will be deemed to have been incurred, issued or taken first, to the extent available, pursuant to the relevant ratio based test.

(m) Notwithstanding anything to the contrary herein, in the event an item of Indebtedness (or any portion thereof) is incurred or issued, any Lien is incurred or other transaction is undertaken in reliance on any ratio based exceptions, thresholds and baskets, such ratio(s) shall be calculated such that, with respect to borrowings under the Revolving Credit Facility, such ratio(s) shall include the daily average of such borrowings over the portion of the fiscal quarter in which the applicable calculation occurs and the immediately preceding three quarters and not the borrowings under the Revolving Credit Facility on the applicable date of determination.

Section 1.03 Accounting Term.

(a) All financial statements and all financial data required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, as in effect from time to time, and all terms of an accounting or financial nature shall be construed and interpreted in accordance with GAAP, as in effect on the date hereof.

(b) If at any time any change in GAAP or the application thereof would affect the computation or interpretation of any financial ratio, basket, requirement or other provision set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio, basket, requirement or other provision to preserve the original intent thereof in light of such change in GAAP or the application thereof (subject to the approval of the Required Lenders, such consent not to be unreasonably withheld, conditioned or delayed) (*provided* that any change affecting the computation of the ratio set forth in Section 7.08 shall be subject solely to the approval of the Required Revolving Lenders (not to be unreasonably withheld, conditioned or delayed) and the Borrower); *provided* that, until so amended, (i) such ratio, basket, requirement or other provision shall continue to be computed or interpreted in accordance with GAAP or the application thereof prior to such change therein or (ii) the Borrower may elect to fix GAAP (for purposes of such ratio, basket, requirement or other provision) as of another later date notified in writing to the Administrative Agent from time to time.

(c) Notwithstanding anything to the contrary contained herein, all such financial statements shall be prepared, and all financial covenants contained herein or in any other Loan Document shall be calculated, in each case, without giving effect to any election under FASB ASC 825 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof.

Section 1.04 Rounding. Under this Agreement, any financial ratios required to be maintained or satisfied in order for a specific action to be permitted shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 References to Agreements and Laws. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by any Loan Document and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Chicago time (daylight savings or standard, as applicable).

Section 1.07 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as specifically provided in Section 2.12 or as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

Section 1.08 Currency Equivalents Generally.

(a) Any amount specified in this Agreement (other than in Articles II, IX and X or as set forth in clause (b) of this Section 1.08) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount (the “**Agent’s Spot Rate of Exchange**”) to be determined at the rate of exchange for the purchase of Dollars with the Alternative Currency or other currency in the London foreign exchange market at or about 11:00 a.m. London time (or New York City time, as applicable) on a particular day as displayed by ICE Data Services as the “ask price” or as displayed on such other information service which publishes that rate of exchange from time to time in place of ICE Data Services (or if such service ceases to be available, the equivalent of such amount in Dollars as determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower, or, in the absence of such agreement, such rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 9:00 a.m. (Chicago time) on such date for the purchase of Dollars for delivery two (2) Business Days later); *provided* that if any basket is exceeded solely as a result of fluctuations in applicable currency exchange rates after the last time such basket was utilized, such basket will not be deemed to have been exceeded solely as a result of such fluctuations in currency exchange rates.

(b) For purposes of determining the Consolidated First Lien Net Leverage Ratio, the Consolidated Interest Coverage Ratio and the Consolidated Total Net Leverage Ratio, amounts of Indebtedness denominated in a currency other than Dollars will be converted to Dollars (i) for the purposes of testing the Financial Covenants, at the exchange rate consistent with that used to calculate consolidated net income in the most recent financial statements of the Borrower upon which such calculations were based and (ii) for any other purpose, at the exchange rate as of the date of determination; *provided* that, at the option of the Borrower, if any Restricted Group Member has entered into any currency Swap Contracts in respect of any borrowings, the Dollar amount of such borrowings shall be determined by first taking into account the effects of that currency Swap Contract.



(c) Notwithstanding anything to the contrary in this Agreement, (i) any representation or warranty that would be untrue or inaccurate, (ii) any undertaking that would be breached or (iii) any event that would constitute a Default or an Event of Default, in each case, solely as a result of fluctuations in applicable currency exchange rates, shall not be deemed to be untrue, inaccurate, breached or so constituted, as applicable, solely as a result of such fluctuations in currency exchange rates.

Section 1.09 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount available to be drawn under such Letter of Credit during the remaining life of such Letter of Credit; *provided, however*, that if any presentation of drawing documents shall have been made on or prior to the expiration date of such Letter of Credit and the applicable L/C Issuer shall not yet have honored such drawing or given notice of dishonor, the amount of such Letter of Credit that is the subject of such drawing shall be treated as still outstanding.

Section 1.10 Pro Forma Calculations. (a) For any events described below that occur subsequent to the commencement of a period for which the financial effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation will give pro forma effect to such events as if such events occurred on the first day of the most recent Test Period ended on or before the occurrence of such event (the “**Reference Period**”):

(i) the incurrence, assumption, guarantee, redemption, defeasance, retirement or extinguishment of any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced), the incurrence of any Reserved Indebtedness Amount and/or the issuance, repurchase or redemption of Disqualified Stock or Preferred Stock;

(ii) the making of any Investments, acquisitions, dispositions, Asset Disposition, mergers, amalgamations, consolidations, operational changes, business expansions and disposed or discontinued operations; *provided* that for the avoidance of doubt, at the Borrower’s option, notwithstanding any classification under GAAP of any Person, property, business or asset as discontinued operations, no pro forma effect shall be given to any discontinued operations (and the income or loss attributable to such Person, property, business or asset shall not be excluded for any purposes hereunder) until such disposition shall have been consummated;

(iii) operational changes or restructurings of the business of the Borrower or any of its Subsidiaries that the Borrower or such Subsidiary, as applicable, has determined to make and/or made during or subsequent to such Reference Period which are expected to have a continuing impact and are factually supportable, which would include cost savings resulting from head count reduction, closure of facilities and other operational changes and other cost savings in connection therewith; and

(iv) the designation of any Restricted Subsidiary as an Unrestricted Subsidiary or the designation of any Unrestricted Subsidiary as a Restricted Subsidiary.

(b) For purposes of this Section 1.10, whenever pro forma effect is to be given to a transaction (including the Transactions), the pro forma calculations shall be made in good faith by a Responsible Officer of the Borrower (and may include, for the avoidance of doubt, cost savings, operating expense reductions and synergies resulting from such transactions which is being given pro forma effect; *provided* that the aggregate amount of cost savings, operating expense reductions and synergies added to Consolidated EBITDA pursuant to this Section 1.10 (combined with the aggregate amount of cost savings, operating expense reductions and synergies added to Consolidated EBITDA pursuant to clause (1)(g) of the definition of Consolidated EBITDA) shall not exceed 25% of Consolidated EBITDA for any four fiscal quarter period (determined after giving effect thereto and all other adjustments and addbacks); *provided, further*, that in each case of this clause (b) and clause (1)(g) of the definition of Consolidated EBITDA, such 25% cap shall not apply to any such adjustments that (A) are of the type that would be permitted to be included in pro forma financial statements prepared in accordance with Regulation S-X under the Securities Act or (B) are otherwise in connection with or related to the Transactions). If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date on which the relevant calculation is being made had been the applicable rate for the entire reference period (taking into account any Swap Obligations applicable to such Indebtedness). Interest on a Finance Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Finance Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed with a pro forma basis shall be computed based upon the daily average of borrowings over the portion of the fiscal quarter in which the applicable calculation occurs and the immediately preceding three quarters and not the borrowings under such revolving credit facility on the applicable date of determination. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a SOFR-based rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower may designate.

(c) Notwithstanding the foregoing, when calculating the Consolidated First Lien Net Leverage Ratio and/or Consolidated Interest Coverage Ratio for purposes of determining actual compliance (and not pro forma compliance or compliance on a pro forma basis) with the Financial Covenants, any transaction and any related pro forma adjustment contemplated in this Section 1.10 (and corresponding provisions of the definition of Consolidated EBITDA) that occurred subsequent to the end of the applicable four quarter period shall not be given pro forma effect.

Section 1.11 Calculation of Baskets. If any of the baskets set forth in this Agreement are exceeded solely as a result of fluctuations to LTM EBITDA and/or Total Assets for the most recently completed fiscal quarter after the last time such baskets were calculated for any purpose under this Agreement, such baskets will not be deemed to have been exceeded solely as a result of such fluctuations.

Section 1.12 Calculation of Ratios. For all purposes under this Agreement, including for purposes of calculating the Consolidated First Lien Net Leverage Ratio, the Consolidated Total Net Leverage Ratio or the Consolidated Interest Coverage Ratio, as applicable, in connection with the incurrence, issuance or assumption of any Indebtedness or the incurrence or creation of any Lien pursuant to the definition of "Permitted Liens," the Borrower may elect, at its option, to treat all or any portion of the committed amount of any Indebtedness (and the issuance and creation of letters of credit and bankers' acceptances thereunder) which is to be incurred (or any commitment in respect thereof) or secured by such Lien, as applicable (any such committed amount elected until revoked as described below, the "**Reserved Indebtedness Amount**"), as being incurred as of such election date, and, if such Consolidated First Lien Net Leverage Ratio, Consolidated Total Net Leverage Ratio, Consolidated Interest Coverage Ratio or other provision of this Agreement, as applicable, is complied with (or satisfied) with respect thereto on such election date, any subsequent borrowing or reborrowing thereunder (and the issuance and creation of letters of credit and bankers' acceptances thereunder) will be deemed to be permitted under this Agreement, whether or not the Consolidated First Lien Net Leverage Ratio, Consolidated Total Net Leverage Ratio, Consolidated Interest Coverage Ratio or other provision of this Agreement, as applicable, at the actual time of any subsequent borrowing or reborrowing (or issuance or creation of letters of credit or bankers' acceptances thereunder) is complied with (or satisfied) for all purposes (including as to the absence of any continuing Default or Event of Default); *provided* that for purposes of subsequent calculations of the Consolidated First Lien Net Leverage Ratio, the Consolidated Total Net Leverage Ratio or the Consolidated Interest Coverage Ratio or such other provision of this Agreement, as applicable, the Reserved Indebtedness Amount shall be deemed to be outstanding, whether or not such amount is actually outstanding, for so long as such commitments are outstanding or until the Borrower revokes an election of a Reserved Indebtedness Amount.

Section 1.13 Interest Rates; Benchmark Notification. The interest rate on a Loan denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 3.04(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

## ARTICLE II

### THE COMMITMENTS AND CREDIT EXTENSIONS

#### Section 2.01 The Loans.

(a) The Initial Term Borrowing. Subject to the terms and conditions set forth herein, each Initial Term Lender severally agrees to make to the Borrower a single loan denominated in Dollars (the “**Initial Term Loans**”) on the Closing Date in an amount not to exceed such Initial Term Lender’s Initial Term Commitment. The Initial Term Borrowing shall consist of Initial Term Loans made simultaneously by the Initial Term Lenders in accordance with their respective Initial Term Commitments. Amounts borrowed under this Section 2.01(a) and subsequently repaid or prepaid may not be reborrowed (it being understood, however, that prepayments will be taken into account for purposes of any Prepayment-Based Incremental Facility to the extent provided by Section 2.14). Initial Term Loans may be ABR Loans or SOFR Loans as further provided herein.

(b) The Revolving Credit Borrowings. Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make Revolving Credit Loans denominated in Dollars to the Borrower from time to time on a revolving basis on and after the Closing Date on any Business Day until and excluding the Business Day preceding the Maturity Date for the Revolving Credit Facility, in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Initial Revolving Credit Commitment; *provided, however*, that after giving effect to any Revolving Credit Borrowing, (x) the Total Revolving Credit Outstandings shall not exceed the aggregate amount of Initial Revolving Credit Commitments and (y) the aggregate Pro Rata Share of the Outstanding Amount of the Revolving Credit Loans of any Lender, *plus* such Lender’s Pro Rata Share of the Outstanding Amount of all L/C Obligations shall not exceed the aggregate amount of such Lender’s Initial Revolving Credit Commitment. Within the limits of each Lender’s Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(b), prepay under Section 2.05, and reborrow under this Section 2.01(b). Revolving Credit Loans may be ABR Loans or SOFR Loans. To the extent that any portion of the Revolving Credit Facility has been refinanced with one or more new revolving credit facilities constituting Specified Refinancing Debt, each Revolving Credit Borrowing (including any deemed Revolving Credit Borrowings made pursuant to Section 2.03) shall be allocated pro rata among the Revolving Tranches.

(c) After the Closing Date, subject to the terms and conditions set forth herein, each Lender with a Term Commitment (other than an Initial Term Commitment) with respect to any Tranche of Term Loans (other than Initial Term Loans) pursuant to any Term Commitment Increase, New Term Commitment or Specified Refinancing Term Commitment, as applicable, severally agrees to make a Term Loan under such Tranche to the Borrower of such Tranche as set forth in the amendment or agreement relating to the respective Term Commitment Increase, New Term Commitment or Specified Refinancing Term Commitment pursuant to which such Lender shall have assumed its Term Commitment, as applicable.

(d) After the Closing Date, subject to the terms and conditions set forth herein, each Revolving Credit Lender with a Revolving Credit Commitment pursuant to any Revolving Credit Commitment Increase, New Revolving Commitment or Specified Refinancing Revolving Credit Commitment, as applicable, severally agrees to make Revolving Credit Loans to the Borrower as set forth in the amendment or agreement relating to the respective Revolving Credit Commitment Increase, New Revolving Commitment or Specified Refinancing Revolving Credit Commitment pursuant to which such Lender shall have assumed its Revolving Credit Commitment, as applicable.

Section 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Term Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to another, and each continuation of SOFR Loans shall be made upon irrevocable notice by the Borrower to the Administrative Agent. Each such notice must be in writing and must be received by the Administrative Agent not later than (i) 11:00 a.m. (Chicago time) three (3) U.S. Government Securities Business Days prior to the requested date of any Borrowing of, conversion of ABR Loans to, or continuation of (as applicable), SOFR Loans and (ii) 11:00 a.m. (Chicago time) on the requested date of any Borrowing of ABR Loans or of any conversion of SOFR Loans to ABR Loans. Each notice pursuant to this Section 2.02(a) shall be delivered to the Administrative Agent in the form of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower.

Each Borrowing of, conversion to or continuation of SOFR Loans shall be (i) in a principal amount of \$1,000,000, or (ii) a whole multiple of \$100,000 in excess thereof. Except as provided in Section 2.03(d), each Borrowing of, or conversion to, ABR Loans shall be (i) in a principal amount of \$1,000,000 or (ii) a whole multiple of \$100,000 in excess thereof. Subject to Section 3.04, Loans shall be required to be maintained as SOFR Loans or ABR Loans.

Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Term Borrowing, a Revolving Credit Borrowing, a conversion of a Tranche of Term Loans or Revolving Credit Loans from one Type to another, or a continuation of SOFR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as applicable (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Tranche of Term Loans or Revolving Credit Loans are to be converted and (v) if applicable, the duration of the Interest Period with respect thereto. If, with respect to any SOFR Loans, the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Tranche of Term Loans or Revolving Credit Loans shall be made as, or converted to, SOFR Loans with an Interest Period of one month. Any such automatic conversion or continuation pursuant to the immediately preceding sentence shall be effective as of the last day of the Interest Period then in effect with respect to the applicable SOFR Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of SOFR Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each applicable Lender of the amount of its Pro Rata Share of the applicable Tranche of Term Loans or Revolving Credit Loans, and if no timely notice of a conversion or continuation of SOFR Loans is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to SOFR Loans, with an Interest Period of one month as described in Section 2.02(a). In the case of a Term Borrowing or a Revolving Credit Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 2:00 p.m. (Chicago time) on the Business Day specified in the applicable Committed Loan Notice. Each Lender may, at its option, make any Loan available to the Borrower by causing any foreign or domestic branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. Upon satisfaction of the applicable conditions set forth in Section 4.02 (or, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; *provided, however*, that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowings, and second, to the Borrower as provided above.

(c) Except as otherwise provided herein, a SOFR Loan may be continued or converted only on the last day of an Interest Period for such SOFR Loan unless the Borrower pays the amount due under Section 3.06 in connection therewith. During the existence of an Event of Default, at the election of the Administrative Agent or the Required Lenders, no Loans may be requested as, converted to or continued as SOFR Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for SOFR Loans upon determination of such interest rate. The determination of Term SOFR by the Administrative Agent shall be conclusive in the absence of manifest error.

(e) After giving effect to all Term Borrowings, all Revolving Credit Borrowings, all conversions of Term Loans or Revolving Credit Loans from one Type to another, and all continuations of Term Loans or Revolving Credit Loans of the same Type, there shall not be more than ten Interest Periods in effect.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing, which for the avoidance of doubt does not limit such Lender's obligations under Section 2.17.

Section 2.03 Letters of Credit.

(a) The Letter of Credit Commitment. (i) Subject to the terms and conditions set forth herein,

(A) each L/C Issuer agrees, in reliance upon (among other things) the agreements of the other Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Sublimit Expiration Date, to issue Letters of Credit denominated in Dollars (*provided* that no L/C Issuer shall be required to issue Letters of Credit hereunder other than standby Letters of Credit denominated in Dollars) for the account of any Restricted Group Member (*provided* that the Borrower hereby irrevocably agrees to reimburse the applicable L/C Issuer for amounts drawn on any Letters of Credit issued for the account of any Restricted Group Member on a joint and several basis with such Restricted Subsidiary and shall be a co-applicant for each such Letter of Credit issued for the account of a Restricted Subsidiary, but in no event shall any Excluded Subsidiary be responsible for any amounts drawn on any Letters of Credit issued for the account of the Borrower or any other Subsidiary) and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(c), and (2) to honor drawings under the Letters of Credit; and

(B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of any Restricted Group Member; *provided* that no L/C Issuer shall be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit, if as of the date of such L/C Credit Extension (w) the Total Revolving Credit Outstandings in respect of any Revolving Tranche would exceed such Revolving Tranche, (x) the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, (y) the aggregate Pro Rata Share of the Outstanding Amount of the Revolving Credit Loans of any Lender, *plus* such Lender's Pro Rata Share of the Outstanding Amount of all L/C Obligations would exceed such Lender's Initial Revolving Credit Commitment or (z) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit; *provided, further*, that no L/C Issuer identified on Schedule 1.01(c) shall have any obligation to make an L/C Credit Extension if, after giving effect thereto, the L/C Obligations in respect of Letters of Credit issued by such L/C Issuer would exceed the amount set forth opposite such L/C Issuer's name on Schedule 1.01(c). Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or been terminated or that have been drawn upon and reimbursed. All Letters of Credit shall be denominated in Dollars.

(ii) No L/C Issuer shall be under any obligation to issue any Letter of Credit (and, in the case of clauses (B) and (C) below unless the applicable requisite consents specified therein have been obtained, no L/C Issuer shall issue any Letter of Credit) if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of Law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which, in each case, such L/C Issuer in good faith deems material to it;

(B) subject to Section 2.03(c)(iii), the expiry date of such requested Letter of Credit would occur after the earlier of (x) five (5) Business Days prior to the scheduled Maturity Date then in effect for the Revolving Credit Facility (or, if such day is not a Business Day, the immediately preceding Business Day) and (y) more than 12 months after the date of issuance, unless the applicable L/C Issuer, in its sole discretion, has approved such expiry date;

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Sublimit Expiration Date, unless (i) all the Revolving Credit Lenders and the applicable L/C Issuer have approved such expiry date and/or (ii) the applicable L/C Issuer has approved such expiry date and such requested Letter of Credit has been Cash Collateralized by the applicant requesting such Letter of Credit in accordance with Section 2.16;

(D) the issuance of such Letter of Credit would violate one or more generally applicable policies of such L/C Issuer in place at the time of such request;

(E) such Letter of Credit is in an initial amount of less than \$5,000 or such lesser amount as is acceptable to the applicable L/C Issuer in its sole discretion;

(F) such Letter of Credit is denominated in a currency other than Dollars;

(G) the proceeds of such Letter of Credit would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or any dealing or investment in or with any country or territory that, at the time of such funding, is a Sanctioned Country or (ii) in any manner that would result in a violation of any Sanctions Laws and Regulations by any party to this Agreement;

(H) such L/C Issuer does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency; or

(I) any Revolving Credit Lender is at that time a Defaulting Lender, unless the applicable L/C Issuer has entered into arrangements, including reallocation of the Defaulting Lender's Pro Rata Share of the outstanding L/C Obligations pursuant to Section 2.17(a)(iv) or the delivery of Cash Collateral in accordance with Section 2.16 with the Borrower or such Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure under such Tranche.

(iii) No L/C Issuer shall be under any obligation to issue an amendment to any Letter of Credit if such L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof.

(iv) Each L/C Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term “Administrative Agent” as used in Article IX included each L/C Issuer with respect to such acts or omissions and (B) as additionally provided herein with respect to each L/C Issuer.

(b) The foregoing benefits and immunities shall not excuse any L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to indirect, special, consequential, punitive or exemplary damages claims which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such L/C Issuer’s gross negligence, bad faith or willful misconduct as determined by a court of competent jurisdiction in a final and nonappealable judgment.

(c) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as applicable, upon the request of the Borrower delivered to the applicable L/C Issuer (with a copy to the Administrative Agent) in the form of an irrevocable Letter of Credit Application, including agreed-upon draft language for such Letter of Credit reasonably acceptable to the applicable L/C Issuer (it being understood that such draft language for each such Letter of Credit must be in English or, if agreed to in the sole discretion of the applicable L/C Issuer, accompanied by an English translation certified by the Borrower to be a true and correct English translation), appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the applicable L/C Issuer and the Administrative Agent not later than 2:00 p.m. (Chicago time) at least five (5) Business Days (or such shorter period as such L/C Issuer and the Administrative Agent may agree in a particular instance in their sole discretion) prior to the proposed issuance date. In the case of a request for the issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day not later than 30 days prior to the Maturity Date of the Revolving Credit Facility, unless the Administrative Agent and the applicable L/C Issuer otherwise agree); (B) the Person for whose account the requested Letter of Credit is to be issued (which must be a Restricted Group Member); and (C) such other matters as the applicable L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (1) the Letter of Credit to be amended; (2) the proposed date of the issuance of the amendment (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the applicable L/C Issuer may reasonably request.

(ii) Promptly following delivery of any Letter of Credit Application to the applicable L/C Issuer, the applicable L/C Issuer will confirm with the Administrative Agent that the Administrative Agent has received a copy of such Letter of Credit Application and, if the Administrative Agent has not received a copy of such Letter of Credit Application, then the applicable L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by such L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of any Restricted Group Member (as designated in the Letter of Credit Application) or issue the applicable amendment, as applicable. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable L/C Issuer a risk participation in such Letter of Credit in an amount equal to such Lender’s Pro Rata Share of the Revolving Credit Facility, *multiplied* by the amount of such Letter of Credit.



(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an “**Auto-Extension Letter of Credit**”); *provided* that any such Auto-Extension Letter of Credit must permit such L/C Issuer to prevent any such extension at least once in each 12-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day in each such 12-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to such L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Sublimit Expiration Date; *provided, however*, that such L/C Issuer shall not permit any such extension if such L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its extended form under the terms hereof (by reason of the provisions of [Section 2.03\(a\)\(ii\)](#) or otherwise).

(iv) Promptly upon request thereof by the Borrower or the Administrative Agent and after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also (A) deliver to the Borrower, the applicable Restricted Group Member and the Administrative Agent a true and complete copy of such Letter of Credit or amendment and (B) the Administrative Agent in turn will notify each Revolving Credit Lender of such issuance or amendment and the amount of such Revolving Credit Lender’s Pro Rata Share therein.

(v) Notwithstanding anything to the contrary set forth above, the issuance of any Letters of Credit by any L/C Issuer under this Agreement shall be subject to such reasonable additional letter of credit issuance procedures and requirements as may be required by such L/C Issuer’s internal letter of credit issuance policies and procedures, in its sole discretion, as in effect at the time of such issuance, including requirements with respect to the prior receipt by such L/C Issuer of customary “know your customer” information regarding a prospective account party or applicant that is not a Loan Party hereunder, as well as regarding any beneficiaries of a requested Letter of Credit. Additionally, if (a) the beneficiary of a Letter of Credit issued hereunder is an issuer of a letter of credit not governed by this Agreement for the account of any Restricted Group Member (an “**Other LC**”) and (b) such Letter of Credit is issued to provide credit support for such Other LC, no amendments may be made to such Other LC without the consent of the applicable L/C Issuer hereunder.

(d) Drawings and Reimbursements; Funding of Participations.

(i) After examination of drawing document(s), the applicable L/C Issuer shall notify the Borrower of the date and the amount of a drawing presented under any Letter of Credit and paid by such L/C Issuer. Each L/C Issuer shall notify the Borrower on the date of any payment by such L/C Issuer under a Letter of Credit (each such date, an “**Honor Date**”), and the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing no later than on the next succeeding Business Day (and any reimbursement made on such next Business Day shall be taken into account in computing interest and fees in respect of any such Letter of Credit) after the Borrower shall have received notice of such payment with interest on the amount so paid or disbursed by such L/C Issuer, to the extent not reimbursed prior to 2:00 p.m. (Chicago time) on the applicable Honor Date, from and including the date paid or disbursed to but excluding the date such L/C Issuer was reimbursed by the Borrower therefor at a rate per annum equal to the ABR as in effect from time to time, *plus* the Applicable Rate as in effect from time to time for Revolving Credit Loans that are maintained as ABR Loans. If the Borrower fails to so reimburse such L/C Issuer on such next Business Day, the L/C Issuer will notify the Administrative Agent thereof and the Administrative Agent shall promptly notify each Revolving Credit Lender under the applicable Revolving Tranche of the Honor Date, the amount of the unreimbursed drawing (the “**Unreimbursed Amount**”), and the amount of such Revolving Credit Lender’s Pro Rata Share thereof. In such event, in the case of an Unreimbursed Amount, the Borrower shall be deemed to have requested a Revolving Credit Borrowing of ABR Loans, to be disbursed on such date in an amount equal to the Unreimbursed Amount, in accordance with the requirements of [Section 2.02](#) but without regard to the minimum and multiples specified in [Section 2.02](#) for the principal amount of ABR Loans or SOFR Loans, as applicable, but subject to the amount of the unused portion of the Revolving Credit Commitments under such Revolving Tranche and the conditions set forth in [Section 4.02](#) (other than the delivery of a Committed Loan Notice). Any notice given by an L/C Issuer or the Administrative Agent pursuant to this [Section 2.03\(d\)\(i\)](#) may be given by telephone if promptly confirmed in writing; *provided* that the lack of such a prompt confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Credit Lender (including each Lender acting as an L/C Issuer) under the applicable Revolving Tranche shall upon any notice pursuant to Section 2.03(d)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the applicable L/C Issuer, at the Administrative Agent's Office in an amount equal to, and in Dollars, its applicable Pro Rata Share of the Unreimbursed Amount not later than 2:00 p.m. (Chicago time) on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(d)(iii), each Revolving Credit Lender under such Revolving Tranche that so makes funds available shall be deemed to have made an ABR Revolving Credit Loan under such Revolving Tranche to the Borrower in such amount. The Administrative Agent shall promptly remit the funds so received to the applicable L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of ABR Loans because the conditions set forth in Section 4.02 cannot be satisfied (other than the condition in Section 4.02(c), which shall be deemed to be satisfied) or for any other reason, the Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate then applicable to ABR Revolving Credit Loans. In such event, each Revolving Credit Lender's payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.03(d)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Credit Lender under the applicable Revolving Tranche funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(d) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's applicable Pro Rata Share of such amount shall be solely for the account of such L/C Issuer.

(v) Each applicable Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the applicable L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(d), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against such L/C Issuer, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(d) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by the applicable L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(d) by the time specified in Section 2.03(d)(ii), then, without limiting the other provisions of this Agreement, such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the greater of the NYFRB Rate from time to time in effect and a rate reasonably determined by such L/C Issuer in accordance with banking industry rules on interbank compensation, *plus* any reasonable administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. If such Lender pays such principal amount, the amount so paid (less interest and fees) shall constitute such Lender's Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as applicable. A certificate of the applicable L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(d)(vi) shall be conclusive absent manifest error.

(e) Repayment of Participations.

(i) If, at any time after an L/C Issuer has made a payment under any Letter of Credit issued by it and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(d), the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its applicable Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 2.03(d)(i) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of such L/C Issuer its applicable Pro Rata Share thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the NYFRB Rate from time to time in effect. The obligations of the Lenders under this clause (ii) shall survive the payment in full of the Obligations and the termination of this Agreement.

(f) **Obligations Absolute.** The obligation of the Borrower to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the applicable L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
- (iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
- (iv) any payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft, certificate or other drawing document that does not comply with the terms of such Letter of Credit; or any payment made by the applicable L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, administrator, administrative receiver, judicial manager, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;
- (v) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guaranty or any other guarantee, for all or any of the Obligations of the Borrower in respect of such Letter of Credit; or
- (vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a legal or equitable discharge of, or provide a right of setoff against the Borrower's obligations hereunder.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the instructions of the Borrower or other irregularity, the Borrower will promptly notify the applicable L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against any L/C Issuer and its correspondents unless such notice is given as aforesaid.

(g) **Role of L/C Issuer.** Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and other documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the applicable L/C Issuer, any Agent-Related Person nor any of the respective correspondents, participants or assignees of the applicable L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of bad faith, gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and nonappealable judgment; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at Law or under any other agreement. None of the applicable L/C Issuer, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of such L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.03(f); *provided, however*, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against such L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to indirect, special, punitive, consequential or exemplary, damages suffered by the Borrower which a court of competent jurisdiction determines in a final non-appealable judgment were caused by such L/C Issuer's bad faith, willful misconduct or gross negligence or material breach of its obligations under this Agreement. In furtherance and not in limitation of the foregoing, the applicable L/C Issuer may, in its sole discretion, either accept documents that appear on their face to be in order and make payment upon such documents, without responsibility for further investigation, regardless of any notice or information to the contrary, and such L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(h) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its applicable Pro Rata Share, a Letter of Credit fee in Dollars which shall accrue for each Letter of Credit issued for its account in an amount equal to the Applicable Rate then in effect for SOFR Loans with respect to the Revolving Credit Facility, *multiplied* by the daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount may be drawn immediately under such Letter of Credit); *provided, however*, that any Letter of Credit fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the applicable L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Revolving Credit Lenders in accordance with the upward adjustments in their respective applicable Pro Rata Shares allocable to such Letter of Credit pursuant to Section 2.17(a)(iv), with the balance of such fee, if any, payable to the applicable L/C Issuer for its own account. Such Letter of Credit fees shall be computed on a quarterly basis in arrears and shall be due and payable on January 15, April 15, July 15 and October 15 of each year, commencing with the first such date to occur after the issuance of such Letter of Credit, in respect of the three-month period then ending (or portion thereof, in the case of the first payment), the date of termination or expiration of the applicable Letter of Credit, on the Letter of Credit Sublimit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) Fronting Fee and Documentary and Processing Charges Payable to an L/C Issuer. The Borrower shall pay directly to the applicable L/C Issuer for its own account a fronting fee in Dollars equal to 0.125% of the maximum daily amount available to be drawn under such Letter of Credit issued for its account on a quarterly basis in arrears. Such fronting fee shall be due and payable on January 15, April 15, July 15 and October 15 of each year, in respect of the three-month period then ending (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Sublimit Expiration Date and thereafter on demand. For purposes of computing the maximum daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.09. In addition, the Borrower, as applicable, shall pay directly to the applicable L/C Issuer for its own account the customary issuance, presentation, administration, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable within five (5) Business Days of demand and are nonrefundable.

(j) Conflict with Letter of Credit Application. In the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(k) Reporting. To the extent that any Letters of Credit are issued by an L/C Issuer other than the Administrative Agent, each such L/C Issuer shall furnish to the Administrative Agent a report detailing the L/C Obligations outstanding under all Letters of Credit issued by it, such report to be in a form and at reporting intervals as shall be agreed between the Administrative Agent and such L/C Issuer; *provided* that in no event shall such reports be furnished at intervals less than 31 days (and in no event shall any such report be provided earlier than the fifth (5th) Business Day after the end of any calendar month in respect of a calendar month period).

(l) Provisions Related to Extended Revolving Credit Commitments. If the Maturity Date in respect of any Tranche of Revolving Credit Commitments occurs prior to the expiration of any Letter of Credit, then (i) if one or more other Tranches of Revolving Credit Commitments in respect of which the Maturity Date shall not have occurred are then in effect, such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Credit Lenders to purchase participations therein and to make Revolving Credit Loans and payments in respect thereof pursuant to this Section 2.03) under (and ratably participated in by Lenders pursuant to) the Revolving Credit Commitments in respect of such non-terminating Tranches up to an aggregate amount not to exceed the aggregate principal amount of the unused Revolving Credit Commitments thereunder at such time (it being understood that no partial amount of any Letter of Credit may be so reallocated) and to the extent any Letters of Credit are not able to be reallocated pursuant to this clause (l) and there are outstanding Revolving Credit Loans under the non-terminating Tranches, the Borrower agrees to repay all such Revolving Credit Loans (or such lesser amount as is necessary to reallocate all Letters of Credit pursuant to this clause (l)) or (ii) to the extent not reallocated pursuant to immediately preceding clause (i), the Borrower shall Cash Collateralize any such Letter of Credit in accordance with Section 2.16 but only up to the amount of such Letter of Credit not so reallocated. Except to the extent of reallocations of participations pursuant to clause (i) of the immediately preceding sentence, the occurrence of a Maturity Date with respect to a given tranche of Revolving Credit Commitments shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Credit Lenders in any Letter of Credit issued before such Maturity Date.

(m) Letters of Credit Issued for Account of Restricted Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Restricted Subsidiary, or states that a Restricted Subsidiary is the "account party," "applicant," "customer," "instructing party," or the like of or for such Letter of Credit, and without derogating from any rights of the applicable L/C Issuer (whether arising by contract, at law, in equity or otherwise) against such Restricted Subsidiary in respect of such Letter of Credit, the Borrower (i) shall reimburse, indemnify and compensate the applicable L/C Issuer hereunder for such Letter of Credit (including to reimburse any and all drawings thereunder) as if such Letter of Credit had been issued solely for the account of the Borrower and (ii) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Restricted Subsidiary in respect of such Letter of Credit. The Borrower hereby acknowledges that the issuance of such Letters of Credit for its Restricted Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Restricted Subsidiaries.

(n) Applicability of ISP and UCP. Unless otherwise expressly agreed in writing by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued for the Borrower's account by such L/C Issuer, (i) the rules of the ISP shall be stated therein to apply to each standby Letter of Credit and (ii) the rules of the UCP shall be stated therein to apply to each commercial Letter of Credit. Notwithstanding the foregoing, no L/C Issuer shall be responsible to the Borrower for, and such L/C Issuer's rights and remedies against any the Borrower shall not be impaired by, any action or inaction of such L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Laws or any order of a jurisdiction where such L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the International Chamber of Commerce Banking Commission, the Bankers Association for Finance and Trade (BAFT), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such laws or practice rules.

Section 2.04 [Reserved].

Section 2.05 Prepayments.

(a) Optional.

(i) The Borrower may, upon notice substantially in the form of Exhibit I to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided* that (1) such notice must be received by the Administrative Agent not later than (A) 12:00 noon (Chicago time) three (3) U.S. Government Securities Business Days prior to any date of prepayment of SOFR Loans and (B) 11:00 a.m. (Chicago time) on the date of prepayment of ABR Loans (or, in each case, such shorter period as the Administrative Agent shall agree); (2) any prepayment of SOFR Loans shall be (x) in a principal amount of \$3,000,000, or (y) a whole multiple of \$1,000,000 in excess thereof; and (3) any prepayment of ABR Loans shall be (x) in a principal amount of \$500,000, or (y) a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment, the Tranche of Loans to be prepaid, the Type(s) of Loans to be prepaid and, if SOFR Loans are to be prepaid, the Interest Period(s) of such Loans (except that if the class of Loans to be prepaid includes both (i) ABR Loans and (ii) SOFR Loans, absent direction by the Borrower, the applicable prepayment shall be applied first to ABR Loans to the full extent thereof before application to SOFR Loans, in a manner that minimizes the amount payable by the Borrower in respect of such prepayment pursuant to Section 3.06, to the extent applicable). The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's ratable share of the relevant Facility). If such notice is given by the Borrower, subject to clause (ii) below, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a SOFR Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to, if applicable, Section 3.06. Subject to Section 2.17, each prepayment of outstanding Term Loan Tranches pursuant to this Section 2.05(a) shall be applied to the Term Loan Tranche or Term Loan Tranches designated on such notice on a pro rata basis within such Term Loan Tranche. Subject to Section 2.17, each prepayment of an outstanding Term Loan Tranche pursuant to this Section 2.05(a) shall be applied to the remaining amortization payments of such Term Loan Tranche as directed by the Borrower (or, if the Borrower has not made such designation, in direct order of maturity), but, in any event, on a pro rata basis to the Lenders within such Term Loan Tranche.

(ii) Notwithstanding anything to the contrary contained in this Agreement, any notice of prepayment under Section 2.05(a)(i) may state that it is conditioned upon the occurrence or non-occurrence of any event specified therein (including the effectiveness of other credit facilities, indentures or similar agreements or other transactions), in which case such notice may be revoked or extended by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(b) Mandatory.

(i) If any Asset Disposition or Casualty Event (or series of related Asset Dispositions or Casualty Events) (other than, in each case, any Excluded Casualty Event) results in the receipt by any Restricted Group Member of aggregate Net Cash Proceeds in excess of the greater of \$45,000,000 and 15.0% of LTM EBITDA (“**Relevant Transaction**”), then, except to the extent the Borrower elects to reinvest an amount equal to all or a portion of such Net Cash Proceeds in accordance with Section 7.04, the Borrower shall prepay, subject to Section 2.05(b)(vii), an aggregate principal amount of Term Loans in an amount equal to 100.0% (as may be adjusted pursuant to the second proviso below) of the Net Cash Proceeds received from such Relevant Transaction within the time period specified in Section 7.04;

*provided* that the Borrower or any Restricted Subsidiary may use a portion of the Net Cash Proceeds received from such Relevant Transaction to prepay or repurchase any other Indebtedness that is *pari passu* in right of payment and security with the Initial Term Loans to the extent the documentation governing such other Indebtedness requires such a prepayment or repurchase thereof with the proceeds of such Relevant Transaction, to the extent not deducted in the calculation of Net Cash Proceeds, in each case in an amount not to exceed the product of:

(1) the amount of such Net Cash Proceeds and

(2) a fraction, the numerator of which is the outstanding principal amount of such other Indebtedness (or to the extent such amount is not in Dollars, such equivalent amount of such Indebtedness converted into Dollars as determined in accordance with Section 1.08) and the denominator of which is the aggregate outstanding principal amount of Term Loans and such other Indebtedness (or to the extent such amount is not in Dollars, such equivalent amount of such Indebtedness converted into Dollars as determined in accordance with Article I);

*provided, further*, that such prepayment percentage shall be reduced from 100.0% to 50.0% and to 0.0% if, on a pro forma basis after giving effect to such Asset Disposition or Casualty Event, as applicable, and the use of proceeds therefrom, the Consolidated First Lien Net Leverage Ratio would be equal to or less than 2.00 to 1.00 or 1.50 to 1.00, respectively (any Net Cash Proceeds in respect of any such Asset Disposition or Casualty Event not required to be applied in accordance with this Section 2.05(b) as a result of the application of this proviso shall collectively constitute “**Retained Asset Excess Proceeds**”, which Retained Asset Excess Proceeds may be used for any purpose permitted hereunder);



*provided, further*, that only the amount of Net Cash Proceeds in excess of the greater of \$45,000,000 and 15.0% of LTM EBITDA for any Asset Disposition or Casualty Event (or series of related Asset Dispositions or Casualty Events) shall be subject to prepayment pursuant to this [Section 2.05\(b\)\(i\)](#) and, in such case, the required prepayment shall be only the amount in excess thereof.

(ii) Upon the incurrence or issuance by any Restricted Group Member of any Credit Agreement Refinancing Debt, any Specified Refinancing Term Loans, in each case, incurred to refinance a Term Loan Tranche, or any Indebtedness not expressly permitted to be incurred or issued pursuant to [Section 7.01](#), the Borrower shall prepay an aggregate principal amount of Term Loan Tranches in an amount equal to 100.0% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by such Restricted Group Member.

(iii) Upon the incurrence by any Restricted Group Member of any Specified Refinancing Debt constituting revolving credit facilities incurred to refinance Revolving Credit Loans, the Borrower shall prepay an aggregate principal amount of Revolving Credit Loans in an amount equal to 100.0% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by such Restricted Group Member.

(iv) If for any reason the sum of the Total Revolving Credit Outstandings of a Revolving Tranche at any time exceeds the sum of the applicable Revolving Tranche in respect thereof (including after giving effect to any reduction in the Revolving Credit Commitments of such Revolving Tranche pursuant to [Section 2.06](#)), the Borrower shall immediately prepay the Loans under the applicable Revolving Tranche and/or Cash Collateralize the L/C Obligations related thereto in an aggregate amount equal to such excess; *provided, however*, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this [Section 2.05\(b\)\(iv\)](#) unless after the prepayment in full of the Loans under the applicable Revolving Tranche the sum of the Total Revolving Credit Outstandings of such applicable Revolving Tranche exceed the aggregate Revolving Credit Commitments for such applicable Revolving Tranche then in effect.

(v) Subject to [Section 2.17](#), the aggregate amount of any prepayment of Term Loans that is required pursuant to this [Section 2.05\(b\)](#) shall be made to each Term Loan Tranche on a *pro rata* basis (or, if agreed to in writing by the Majority Lenders of a Term Loan Tranche (including pursuant to any amendment to the Credit Agreement pursuant to which such Term Loan Tranche was established), in a manner that provides for more favorable prepayment treatment of other Term Loan Tranches) (other than a prepayment of (x) Term Loans or Revolving Credit Loans, as applicable, with the proceeds of Indebtedness incurred pursuant to [Section 2.18](#), which shall be applied to the Term Loan Tranche or Revolving Tranche, as applicable, being refinanced pursuant thereto or (y) Term Loans with the proceeds of any Credit Agreement Refinancing Debt issued to the extent permitted under [Section 7.01\(b\)\(1\)](#), which shall be applied to the Term Loan Tranche being refinanced pursuant thereto). Amounts to be applied to a Term Loan Tranche in connection with prepayments made pursuant to this [Section 2.05\(b\)](#) shall be applied to interest on each such Term Loan Tranche on a pro rata basis that is accrued and payable at such time and thereafter to the remaining scheduled installments with respect to such Term Loan Tranche in direct order of maturity. Each prepayment of Term Loans under a particular Tranche of a Facility pursuant to this [Section 2.05\(b\)](#) be applied to the remaining amortization payments of such Term Loan Tranche as directed by the Borrower (or, if Borrower has not made such designation, in direct order of maturity), but, in any event, on a pro rata basis to the Lenders within such Term Loan Tranche and be applied on a pro rata basis to the then outstanding ABR Loans and SOFR Loans under such Tranche; *provided* that, if there are no Declining Lenders with respect to such prepayment, then the amount thereof shall be applied first to ABR Loans under such Tranche to the full extent thereof before application to SOFR Loans, in each case in a manner that minimizes the amount payable by the Borrower in respect of such prepayment pursuant to [Section 3.06](#).

(vi) All prepayments under this Section 2.05 shall be made together with, in the case of any such prepayment of a SOFR Loan on a date other than the last day of an Interest Period therefor, any amounts owing in respect of such SOFR Loan pursuant to Section 3.06. Notwithstanding any of the other provisions of this Section 2.05(b), so long as no Event of Default shall have occurred and be continuing, if any prepayment of SOFR Loans is required to be made under this Section 2.05(b), other than on the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit the amount of any such prepayment otherwise required to be made thereunder into a Cash Collateral account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05(b) (it being agreed, for clarity, that interest shall continue to accrue on the Loans so prepaid until the amount so deposited is actually applied to prepay such Loans). Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with this Section 2.05(b).

(vii) Notwithstanding any other provisions of this Section 2.05, to the extent that any or all of the Net Cash Proceeds of any Asset Disposition by a Non-U.S. Subsidiary (or a U.S. Subsidiary of a Non-U.S. Subsidiary) (a "**Foreign Disposition**") or the Net Cash Proceeds of any Casualty Event from a Non-U.S. Subsidiary (or a U.S. Subsidiary of a Non-U.S. Subsidiary) (a "**Foreign Casualty Event**"), in each case, giving rise to a prepayment event pursuant to Section 2.05(b)(i), are or is prohibited, restricted or delayed by applicable local law, rule or regulation (including, without limitation, (i) financial assistance and corporate benefit restrictions and (ii) fiduciary and statutory duties of any director or officer of such Subsidiaries), restricted by applicable organizational documents or any agreement or is subject to other onerous organizational or administrative impediments, in each case, from being repatriated or otherwise paid to the Borrower or so prepaid or such repatriation, other payment or prepayment would present a material risk of liability for the applicable Subsidiary or its directors or officers (or gives rise to a material risk of breach of fiduciary or statutory duties by any director or officer), an amount equal to the portion of such Net Cash Proceeds so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05. Notwithstanding any other provisions of this Section 2.05, to the extent that the Borrower has determined in good faith that repatriation or other payment of any or all of the Net Cash Proceeds of any Foreign Disposition or any Foreign Casualty Event, in each case, giving rise to a prepayment event pursuant to Section 2.05(b)(i), could reasonably be expected to result in adverse Tax consequences (which for the avoidance of doubt, includes, but is not limited to, any prepayment out of such Net Cash Proceeds whereby doing so the Borrower, any of its Subsidiaries, any direct or indirect parent of the Borrower or any of their respective affiliates and/or equity owners would incur a Tax liability, including as a result of a taxable dividend or a withholding Tax) or is prohibited or restricted by applicable law, rule or regulation, an amount equal to the Net Cash Proceeds so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05.

(viii) No Restricted Group Member shall be required to monitor any Payment Block and/or reserve cash for future repatriation after the Borrower has notified the Administrative Agent of the existence of such Payment Block.

(c) Term Lender Opt-Out. With respect to any mandatory prepayment of Initial Term Loans and, unless otherwise specified in the documents therefor, other Term Loan Tranches, pursuant to Section 2.05(b)(i), any Appropriate Lender, at its option, may elect not to accept such prepayment as provided below. The Borrower may notify the Administrative Agent of any event giving rise to a prepayment under Section 2.05(b)(i) at least ten (10) Business Days prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment that is required to be made under Section 2.05(b)(i) (the “**Prepayment Amount**”). The Administrative Agent will promptly notify each Appropriate Lender of the contents of any such prepayment notice so received from the Borrower, including the date on which such prepayment is to be made (the “**Prepayment Date**”). Any Appropriate Lender may (but solely to the extent the Borrower elects for this clause (c) to be applicable to a given prepayment) decline to accept all (but not less than all) of its share of any such prepayment (any such Lender, a “**Declining Lender**”) by providing written notice to the Administrative Agent no later than five (5) Business Days after the date of such Appropriate Lender’s receipt of notice from the Administrative Agent regarding such prepayment. If any Appropriate Lender does not give a notice to the Administrative Agent on or prior to such fifth (5th) Business Day informing the Administrative Agent that it declines to accept the applicable prepayment, then such Lender will be deemed to have accepted such prepayment. On any Prepayment Date, an amount equal to the Prepayment Amount, *minus* the portion thereof allocable to Declining Lenders, in each case for such Prepayment Date, shall be paid to the Administrative Agent by the Borrower and applied by the Administrative Agent ratably to prepay Term Loans under the Term Loan Tranches owing to Appropriate Lenders (other than Declining Lenders) in the manner described in Section 2.05(b) for such prepayment. Any amounts that would otherwise have been applied to prepay Term Loans, New Term Loans or Specified Refinancing Term Loans owing to Declining Lenders shall be retained by the Borrower (any Net Cash Proceeds retained by the Borrower in accordance with this Section 2.05(c) shall constitute “**Retained Declined Proceeds**”).

(d) All Loans shall be repaid, whether pursuant to this Section 2.05 or otherwise, in the currency in which they were made.

Section 2.06 Termination or Reduction of Commitments.

(a) Optional. The Borrower may, upon written notice by the Borrower to the Administrative Agent, terminate the unused portions of the Commitments under any Term Loan Tranche, the Letter of Credit Sublimit, or the unused Revolving Credit Commitments under any Revolving Tranche, or from time to time permanently reduce the unused portions of the Commitments under any Term Loan Tranche, the Letter of Credit Sublimit, or the unused Revolving Credit Commitments under any Revolving Tranche; *provided* that (i) any such notice shall be received by the Administrative Agent three (3) Business Days (or such shorter period as the Administrative Agent shall agree) prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$500,000 or any whole multiple of \$100,000 in excess thereof and (iii) the Borrower shall not terminate or reduce (A) the Commitments under any Tranche of the Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, (x) the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility or (y) the Total Revolving Credit Outstandings with respect to such Tranche would exceed the Revolving Credit Commitments under such Tranche or (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit. Any such notice of termination or reduction of commitments pursuant to this Section 2.06(a) may state that it is conditioned upon the occurrence or non-occurrence of any event specified therein (including the effectiveness of other credit facilities, indentures or similar agreements or other transactions), in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. For the avoidance of doubt, upon termination of the Aggregate Commitments and payment in full of all Obligations in cash and in immediately available funds (other than any Remaining Obligations) and the expiration without any pending drawing or termination of all Letters of Credit (other than any Remaining Obligations), this Agreement shall automatically terminate and the Administrative Agent shall comply with Section 9.01(c) and Section 9.11.

(b) Mandatory.

(i) The Aggregate Commitments under a Term Loan Tranche shall be automatically and permanently reduced to zero on the date of the initial incurrence of Term Loans under such Term Loan Tranche, which in the case of the Initial Term Commitments shall be the Closing Date (except as provided pursuant to the definitive documentation relating to any Term Loan Tranche that is in the form of a delayed draw facility).

(ii) Upon the incurrence by any Restricted Group Member of any Specified Refinancing Debt constituting revolving credit facilities, the Revolving Credit Commitments of the Lenders under the Tranche of Revolving Credit Loans being refinanced shall be automatically and permanently reduced on a ratable basis by an amount equal to 100.0% of the Commitments under such Specified Refinancing Debt constituting revolving credit facilities.

(iii) If after giving effect to any reduction or termination of Revolving Credit Commitments under this Section 2.06, the Letter of Credit Sublimit exceeds the amount of the Revolving Credit Facility at such time, the Letter of Credit Sublimit shall be automatically reduced by the amount of such excess.

(iv) The aggregate Revolving Credit Commitments with respect to any Tranche of the Revolving Credit Facility shall automatically and permanently be reduced to zero on the Maturity Date with respect to such Tranche of the Revolving Credit Facility.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the applicable Lenders of the applicable Facility of any termination or reduction of the Commitments under any Term Loan Tranche, the Letter of Credit Sublimit or the Revolving Credit Commitment under this Section 2.06. Upon any reduction of Commitments under a Facility or a Tranche thereof, the Commitment of each Lender under such Facility or Tranche thereof shall be reduced by such Lender's ratable share of the amount by which such Facility or Tranche thereof is reduced (other than the termination of the Commitment of any Lender as provided in Section 3.08). All facility fees accrued until the effective date of any termination of the Aggregate Commitments and unpaid, shall be paid on the effective date of such termination. For the avoidance of doubt, to the extent that any portion of the Revolving Credit Loans have been refinanced with one or more new revolving credit facilities constituting Specified Refinancing Debt, any prepayments of Revolving Credit Loans made pursuant to this Section 2.06 (other than any prepayments of Revolving Credit Loans made pursuant to Section 2.06(b)(ii)) shall be allocated ratably among the Revolving Tranches.

Section 2.07 Repayment of Loans.

(a) Initial Term Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Initial Term Lenders the aggregate principal amount of the Initial Term Loans outstanding in consecutive quarterly installments as follows (which installments shall, to the extent applicable, be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Sections 2.05 and 2.06, or be increased as a result of any increase in the amount of Initial Term Loans pursuant to Section 2.14 (such increased amortization payments to be calculated in the same manner (and on the same basis) as the schedule set forth below for the Initial Term Loans made as of the Closing Date)):

<b>Date</b>	<b>Amount</b>
The last Business Day of each fiscal quarter starting with the fiscal quarter ending on September 30, 2023 and through and including the fiscal quarter ending June 30, 2025	0.625% of the aggregate initial principal amount of the Initial Term Loans on the Closing Date
The last Business Day of each fiscal quarter starting with the fiscal quarter ending September 30, 2025 and through and including the fiscal quarter ending June 30, 2027	1.25% of the aggregate initial principal amount of the Initial Term Loans on the Closing Date
The last Business Day of each fiscal quarter starting with the fiscal quarter ending September 30, 2027 and through and including the last full fiscal quarter ending prior to the Maturity Date	1.875% of the aggregate initial principal amount of the Initial Term Loans on the Closing Date
Maturity Date for the Initial Term Loans	All unpaid aggregate principal amounts of any outstanding Initial Term Loans

*provided, however,* that (i) if the date scheduled for any principal repayment installment is not a Business Day, such principal repayment installment shall be repaid on the immediately preceding Business Day and (ii) the final principal repayment installment of the Initial Term Loans shall be repaid on the Maturity Date for the Initial Term Loans and in any event shall be in an amount equal to the aggregate principal amount of all Initial Term Loans outstanding on such date.

(b) Revolving Credit Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the applicable Maturity Date for the Revolving Credit Facilities of a given Tranche the aggregate principal amount of all of its Revolving Credit Loans of such Tranche outstanding on such date.

(c) All Loans shall be repaid, whether pursuant to this Section 2.07 or otherwise, in the currency in which they were made.

Section 2.08 Interest.

(a) Each SOFR Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the sum of (A) Adjusted Term SOFR for such Interest Period, *plus* (B) the Applicable Rate for SOFR Loans under such Facility.

(b) Each ABR Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date or conversion date, as applicable, at a rate per annum equal to the sum of (A) the ABR, *plus* (B) the Applicable Rate for ABR Loans under such Facility.

(c) Notwithstanding the foregoing, during the continuance of an Event of Default, the Borrower shall pay interest on all overdue Obligations hereunder, which shall include all Obligations following an acceleration pursuant to Section 8.02 (including an automatic acceleration), at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(d) Accrued interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein; *provided* that in the event of any repayment or prepayment of any Loan (other than Revolving Credit Loans bearing interest based on the ABR that are repaid or prepaid without any corresponding termination or reduction of the Revolving Credit Commitments other than as set forth in Section 2.14(e)), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(e) Interest on each Loan shall be payable in the currency in which each Loan was made.

(f) All computations of interest hereunder shall be made in accordance with Section 2.10 of this Agreement.

Section 2.09 Fees. In addition to certain fees described in Sections 2.03(h) and (i):

(a) Revolving Credit Commitments Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Pro Rata Share of each Tranche of the Revolving Credit Facility, a commitment fee (a “**Commitment Fee**”) equal to the Applicable Commitment Fee, *multiplied* by the average daily amount for the applicable fiscal quarter by which the aggregate Revolving Credit Commitments under such Tranche exceed the sum of (A) the Outstanding Amount of Revolving Credit Loans under such Tranche and (B) the Outstanding Amount of L/C Obligations under such Tranche, subject to adjustment as provided in Section 2.17. The Commitment Fee shall accrue at all times from the Closing Date until the Maturity Date for the Revolving Credit Facility, and shall be due and payable quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, beginning with the first such date to occur following the Closing Date, and on the Maturity Date for the Revolving Credit Facility. For the avoidance of doubt, the Commitment Fee payable hereunder shall accrue and be payable in Dollars.

(b) Other Fees. The Borrower shall pay to the Lenders, the Administrative Agent and the Collateral Agent such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified.

Section 2.10 Computation of Interest and Fees: Retroactive Adjustments of Applicable Rate.

(a) All computations of interest for ABR Loans when the Alternate Base Rate is based on the Prime Rate shall be made on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Total Net Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of such ratio would have resulted in higher interest and/or fees for any period, the Borrower shall be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the applicable L/C Issuer, as applicable, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and with any such demand by the Administrative Agent being excused), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This clause (b) shall not limit the rights of the Administrative Agent, any Lender or the applicable L/C Issuer, as applicable, under Section 2.03(d)(iii), Sections 2.03(h) or (i), Section 2.08 or under Article VIII. Except in any case where a demand is excused as provided above, any additional interest and fees under this Section 2.10(b) shall not be due and payable until a demand is made for such payment by the Administrative Agent and accordingly, any nonpayment of such interest and fees as result of any such inaccuracy shall not constitute a Default (whether retroactively or otherwise), and none of such additional amounts shall be deemed overdue or accrue interest at the Default Rate, in each case at any time prior to the date that is five (5) Business Days following such demand.

Section 2.11 Evidence of Indebtedness.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, in each case in the ordinary course of business. The accounts or records maintained by each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the written request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which execution and delivery the Administrative Agent shall record in the Register, which, to the extent consistent with the records in the Register, shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records and, in the case of the Administrative Agent, entries in the Register, evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Sections 2.11(a) and (b), and by each Lender in its accounts or records pursuant to Sections 2.11(a) and (b), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such accounts or records, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such accounts or records shall not limit the obligations of the Borrower under this Agreement and the other Loan Documents.

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 1:00 p.m. (Chicago time) on the date specified herein. The Administrative Agent will promptly distribute to each Lender its ratable share in respect of the relevant Facility or Tranche thereof (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 1:00 pm (Chicago time) shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as applicable; *provided, however*, that, if such extension would cause payment of interest on or principal of SOFR Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(b) (i) Funding by Lenders: Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Loans (or, in the case of any Borrowing of ABR Loans, prior to 2:00 p.m. (Chicago time) on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with and at the time required by Section 2.02(b) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if any Lender does not in fact make its share of the applicable Borrowing available to the Administrative Agent, then such Lender and the Borrower agrees to pay to the Administrative Agent forthwith on demand an amount equal to such applicable share in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower by the Administrative Agent to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the NYFRB Rate and a rate reasonably determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, *plus* any reasonable administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to ABR Loans under the applicable Facility. If both the Borrower and such Lender pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid (less interest and fees) shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make its share of any Borrowing available to the Administrative Agent.

(ii) Payments by the Borrower: Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or an L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the applicable L/C Issuer, as applicable, the amount due. In such event, if the Borrower does not in fact make such payment, then each of the Appropriate Lenders or the applicable L/C Issuer, as applicable, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed by the Administrative Agent to but excluding the date of payment to the Administrative Agent, at the greater of the NYFRB Rate and a rate reasonably determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, *plus* any reasonable administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing.



A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender on demand, without interest.

(d) Obligations of the Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 9.07 are several and not joint. The failure of any Lender to make any Loan or to fund any such participation or to make any payment under Section 9.07 on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or, to fund its participation or to make its payment under Section 9.07.

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

(g) Unallocated Funds. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's ratable share of the sum of (a) the Outstanding Amount of all Loans outstanding at such time and (b) the Outstanding Amount of all L/C Obligations outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

Section 2.13 Sharing of Payments. If, other than as expressly provided elsewhere herein (including the application of funds arising from the existence of a Defaulting Lender), any Lender shall obtain on account of the Loans made by it, or the participations in L/C Obligations held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C Obligations held by them, as applicable, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as applicable, pro rata with each of them; *provided, however*, that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. For the avoidance of doubt, the provisions of this Section 2.13 shall not be construed to apply to (A) the application of Cash Collateral provided for in Section 2.16, (B) the assignments and participations (including by means of a dutch auction, exchange, open market debt repurchase, or otherwise) described in Section 10.07, (C) (i) the incurrence of any New Term Loans in accordance with Section 2.14, (ii) the prepayment of Revolving Credit Loans in accordance with Section 2.14(e) in connection with a Revolving Credit Commitment Increase or (iii) any Specified Refinancing Debt in accordance with Section 2.18, (D) any Extension described in Section 2.19, or (E) any applicable circumstances contemplated by Sections 2.05(b), 2.14, 2.17 or 3.08. For purposes of clause (b) of the definition of "Excluded Taxes," a Lender that acquires a participation pursuant to this Section 2.13 shall be treated as having acquired such participation on the earlier date(s) on which such Lender acquired the applicable interest(s) in the Commitment(s) or Loan(s) (as applicable) to which such participation relates.

Section 2.14 Incremental Facilities.

(a) The Borrower may, from time to time after the Closing Date, upon notice by the Borrower to the Administrative Agent and the Person appointed by the Borrower to arrange an incremental Facility (such Person (who may be (i) the Administrative Agent, if it so agrees, or (ii) any other Person appointed by the Borrower), the "**Incremental Arranger**") specifying the proposed amount thereof and the proposed currency denomination thereof, request (i) an increase in the Commitments under any Revolving Tranche (which shall be on the same terms as, and become part of, the Revolving Tranche proposed to be increased) (each, a "**Revolving Credit Commitment Increase**"), (ii) an increase in any Term Loan Tranche then outstanding (which shall be on the same terms as, and become part of, the Term Loan Tranche proposed to be increased hereunder (except as otherwise provided in clause (d) below with respect to amortization)) (each, a "**Term Commitment Increase**"), (iii) the addition of one or more new revolving credit facilities to the Facilities, in each case, in such currency or currencies as the Borrower identifies in such notice (each, a "**New Revolving Facility**" and, any advance made by a Lender thereunder, a "**New Revolving Loan**"; and the commitments thereof, the "**New Revolving Commitment**") and (iv) the addition of one or more new term loan facilities (including one or more delayed draw term loan facilities), in each case, in such currency or currencies as the Borrower identifies in such notice (each, a "**New Term Facility**", together with any New Revolving Facility, Term Commitment Increase or Revolving Credit Commitment Increase, the "**Incremental Facilities**"; and any advance made by a Lender thereunder, a "**New Term Loan**"; and the commitments thereof, the "**New Term Commitment**" and such New Term Commitment, together with the Revolving Credit Commitment Increase, the New Revolving Commitments and the Term Commitment Increase, the "**New Loan Commitments**") in an amount not to exceed the sum of:

(w) (i) the greater of (1) \$300,000,000 and (2) 100.0% of LTM EBITDA, *minus* (ii) the amount of any Indebtedness previously incurred in reliance on this clause (w) as incremental facilities incurred pursuant to this Section 2.14, Incremental Equivalent Debt, Ratio Debt and/or Incurred Acquisition Indebtedness (and not redesignated as incurred under any other provision of the Incremental Amount in accordance with this Agreement) (the “**Cash-Capped Incremental Facility**”),

(x) an unlimited amount (the “**Ratio-Based Incremental Facility**”) so long as the Maximum Leverage Requirement is satisfied,

(y) an amount equal to (i) (A) all voluntary prepayments of Term Loans or any other long-term Indebtedness that is secured by a Lien on the Collateral on a senior or *pari passu* basis with the Initial Term Loans (including, for the avoidance of doubt, any New Term Loans that are secured by a Lien on the Collateral on a *pari passu* basis with the Initial Term Loans) (including any payments made pursuant to Section 2.05(a) or Section 3.08(a)) and (B) all repurchases and/or cancellations of Term Loans or any other long-term Indebtedness that is secured by a Lien on the Collateral on a senior or *pari passu* basis with the Initial Term Loans (including, for the avoidance of doubt, any New Term Loans that are secured by a Lien on the Collateral on a *pari passu* basis with the Initial Term Loans) in an amount equal to the amount of the Indebtedness retired in connection with such repurchase and (ii) (A) all voluntary prepayments of Revolving Credit Loans and any other revolving credit loans that are secured by a Lien on the Collateral on a *pari passu* basis with the Initial Term Loans (including, for the avoidance of doubt, any New Revolving Loans that are secured by a Lien on the Collateral on a *pari passu* basis with the Initial Term Loans) (including any payments made pursuant to Section 2.05(a) or Section 3.08(a)) to the extent accompanied by a corresponding, permanent reduction in the applicable revolving credit commitment, (B) all repurchases and/or cancellations of Revolving Credit Loans or any other revolving credit loans that are secured by a Lien on the Collateral on a *pari passu* basis with the Initial Term Loans (including, for the avoidance of doubt, any New Revolving Loans that are secured by a Lien on the Collateral on a senior or *pari passu* basis with the Initial Term Loans) in an amount equal to the amount of the Indebtedness retired in connection with such repurchase and (C) all voluntary prepayments, repurchases and/or cancellations of any other First Lien Specified Debt, in each case under this clause (y), (x) including any payments made at a discount to par or via an open-market purchase (with credit given for the actual amount of any cash payment) and (y) to the extent not funded with the proceeds of long-term Indebtedness (it being agreed and understood, for the avoidance of doubt, that Indebtedness incurred pursuant to any revolving credit facility (including the Revolving Credit Facility) shall not constitute long-term Indebtedness for such purpose), in each case less the amount of any Indebtedness previously incurred in reliance on this clause (y) as incremental facilities incurred pursuant to this Section 2.14, Incremental Equivalent Debt, Ratio Debt and/or Incurred Acquisition Indebtedness (and not redesignated as incurred under any other provision of the Incremental Amount in accordance with this Agreement) (the “**Prepayment-Based Incremental Facility**”), and

(z) (i) in the case of any New Revolving Facility or New Term Facility that effectively extends the maturity date of any First Lien Specified Debt, Junior Lien Specified Debt or Unsecured Specified Debt, an amount equal to the portion of such First Lien Specified Debt, Junior Lien Specified Debt or Unsecured Specified Debt that will be replaced by such New Revolving Facility or New Term Facility (the “**Effective Extension Incremental Facility**”) and (ii) in the case of any New Revolving Facility or Revolving Credit Commitment Increase that effectively replaces any Commitments under the Revolving Credit Facility or any New Revolving Facility or Revolving Credit Commitment Increase that is terminated pursuant to Section 3.08(a), an amount equal to the portion of such Commitments that will be so terminated;

(such sum of the foregoing clauses (w) through (z), at any such time and subject to Section 1.02(i), the “**Incremental Amount**”);

*provided* that any such request for an increase shall be in a minimum amount of the lesser of (x) \$5,000,000 or, in the case of any New Loan Commitments denominated in an Alternative Currency, the equivalent Dollar amount, and (y) the entire amount of any increase that may be requested under this Section 2.14;

*provided, further*, that for purposes of any New Loan Commitments established pursuant to this Section 2.14, Incremental Equivalent Debt Incurred pursuant to Section 2.15 and any Ratio Debt:

(A) unless the Borrower elects otherwise, (x) the Borrower shall be deemed to have used amounts under the Ratio-Based Incremental Facility (to the extent compliant therewith) prior to using amounts under the Effective Extension Incremental Facility, the Prepayment-Based Incremental Facility or the Cash-Capped Incremental Facility and (y) the Borrower shall be deemed to have used the Prepayment-Based Incremental Facility prior to utilization of the Cash-Capped Incremental Facility;

(B) New Loan Commitments pursuant to this Section 2.14, Incremental Equivalent Debt pursuant to Section 2.15 and Ratio Debt may be incurred substantially concurrently under the Ratio-Based Incremental Facility (to the extent compliant therewith), the Effective Extension Incremental Facility, the Prepayment-Based Incremental Facility and the Cash-Capped Incremental Facility or any combination of any of the foregoing, and proceeds from any such incurrence may be utilized in a single transaction or series of related transactions by, unless the Borrower elects otherwise, first, calculating the incurrence under the Ratio-Based Incremental Facility (without inclusion of (x) any amounts incurred substantially concurrently pursuant to the Prepayment-Based Incremental Facility or the Cash-Capped Incremental Facility, (y) any amounts incurred substantially concurrently under any fixed basket under Section 7.01 or (z) any revolving credit loans incurred substantially concurrently with such single transaction or series of related transactions) and then calculating the incurrence under the Prepayment-Based Incremental Facility (without inclusion of any amounts utilized pursuant to the Cash-Capped Incremental Facility) and then calculating the incurrence under the Effective Extension Incremental Facility and the Cash-Capped Incremental Facility, as applicable;

(C) all or any portion of Indebtedness originally designated as incurred under the Prepayment-Based Incremental Facility or the Cash-Capped Incremental Facility shall automatically cease to be deemed incurred under the Prepayment-Based Incremental Facility or the Cash-Capped Incremental Facility and shall instead be deemed incurred under the Ratio-Based Incremental Facility from and after the first date on which the Borrower would be permitted to incur all or such portion, as applicable, of the aggregate principal amount of such Indebtedness under the Ratio-Based Incremental Facility (for the avoidance of doubt, which determination shall be made without duplication of such Indebtedness originally designated as incurred under the Prepayment-Based Incremental Facility or the Cash-Capped Incremental Facility) (which, for the avoidance of doubt, shall have the effect of increasing the Prepayment-Based Incremental Facility and/or the Cash-Capped Incremental Facility, as applicable, by all or such portion, as applicable, of the aggregate principal amount of such Indebtedness); and

(D) solely for the purpose of cash netting in calculating the Consolidated First Lien Net Leverage Ratio or the Consolidated Total Net Leverage Ratio to determine the availability under the Ratio-Based Incremental Facility at the time of incurrence any cash proceeds of any New Loan Commitments incurred pursuant to this Section 2.14 and any Incremental Equivalent Debt Incurred pursuant to Section 2.15, in each case, incurred at such test date shall be excluded for purposes of calculating cash or Cash Equivalents.

The Borrower may designate any Incremental Arranger of any New Loan Commitments with such titles under the New Loan Commitments as Borrower may deem appropriate.

(b) For the avoidance of doubt, the Borrower will not be obligated to approach any Lender to participate in any New Loan Commitments. Any Lender approached to participate in any New Loan Commitments may elect or decline, in its sole discretion, to participate in such increase or new facility. The Borrower may also invite additional Eligible Assignees reasonably satisfactory to the Incremental Arranger and with the consent of the Administrative Agent and, solely in connection with a Revolving Credit Commitment Increase or New Revolving Facility, each L/C Issuer (to the extent the consent of any of the foregoing would be required to assign Revolving Credit Loans or Term Loans, as applicable, to such Eligible Assignee, which consent shall not be unreasonably withheld, delayed or conditioned) to become Lenders pursuant to a joinder agreement to this Agreement. Unless requested by the Borrower, neither the Administrative Agent nor the Collateral Agent (in their respective capacities as such) shall be required to execute, accept or acknowledge any joinder agreement pursuant to this Section 2.14 and such execution shall not be required for any such joinder agreement to be effective; *provided that*, with respect to any New Loan Commitments, the Borrower must provide to the Administrative Agent the documentation providing for such New Loan Commitments.

(c) If (i) a Revolving Tranche or a Term Loan Tranche is increased in accordance with this Section 2.14 or (ii) a New Term Facility or New Revolving Facility is added in accordance with this Section 2.14, the Incremental Arranger and the Borrower shall determine the effective date (the “**Increase Effective Date**”) and the final allocation of such increase, New Term Facility or New Revolving Facility among the applicable Lenders. The Incremental Arranger shall promptly notify the applicable Lenders of the final allocation of such increase, New Term Facility or New Revolving Facility and the Increase Effective Date. In connection with (i) any increase in a Term Loan Tranche or Revolving Tranche or (ii) any addition of a New Term Facility or New Revolving Facility, in each case, pursuant to this Section 2.14, this Agreement and the other Loan Documents may be amended in writing (which may be executed and delivered by the Borrower, the Administrative Agent and the Incremental Arranger (and the Lenders hereby authorize any such Incremental Arranger to execute and deliver any such documentation)) in order to establish the New Term Facility or New Revolving Facility or to effectuate the increases to the Term Loan Tranche or Revolving Tranche and to reflect any technical changes necessary or appropriate to give effect to such increase or new facility in accordance with its terms as set forth herein pursuant to the documentation relating to such New Term Facility or New Revolving Facility. As of the Increase Effective Date, in the case of an increase to an existing Term Loan Tranche, the amortization schedule for such Term Loan Tranche then increased set forth in Section 2.07(a) (or any other applicable amortization schedule for New Term Loans or Specified Refinancing Term Loans) shall be amended in writing (which may be executed and delivered by the Borrower, the Administrative Agent and the Incremental Arranger (and the Lenders hereby authorize any such Incremental Arranger to execute and deliver any such documentation)) to increase the then-remaining unpaid installments of principal by an aggregate amount equal to the additional Loans under such Term Loan Tranche being made on such date, such aggregate amount to be applied to increase such installments ratably in accordance with the amounts in effect immediately prior to the Increase Effective Date.

(d) With respect to any Revolving Credit Commitment Increase, Term Commitment Increase or addition of New Term Facility or New Revolving Facility pursuant to this Section 2.14:

(i) no Event of Default (subject to Section 1.02(i)) would exist immediately after giving effect thereto;

(ii)

(A) in the case of any increase of the Revolving Tranche, (1) the final maturity shall be the same as the Maturity Date applicable to the applicable Revolving Credit Facility, (2) no amortization or mandatory commitment reduction prior to the Latest Maturity Date applicable to the Revolving Credit Facility shall be required and (3) the terms and documentation applicable to the Revolving Credit Facility shall apply (other than with respect to pricing (except with respect to the Applicable Rate and any interest rate floors) and fees),

(B) in the case of any New Revolving Facility, (1) the final maturity shall be no earlier than the Latest Maturity Date applicable to the Revolving Credit Facility, (2) no amortization or mandatory commitment reduction prior to the Latest Maturity Date applicable to the Revolving Credit Facility shall be required and (3) shall have terms that are substantially the same as those applicable to the Revolving Credit Facility (other than with respect to pricing and fees) or that are otherwise reasonably acceptable to the Administrative Agent (it being understood that certain provisions regarding prepayment, borrowing, participation and commitment reduction may differ and that any terms that are applicable only after the Latest Maturity Date of the then existing Revolving Credit Facility shall be deemed acceptable to the Administrative Agent),

(C) in the case of an increase to an existing Term Loan Tranche, (1) the final maturity shall be the same as the Maturity Date applicable to the applicable Term Loan Tranche, (2) the amortization shall be as described under clause (c) above and (3) the terms and documentation applicable to the applicable existing Term Loan Tranche shall apply (other than with respect to pricing (except with respect to the Applicable Rate and any interest rate floors) and fees),

(D) in the case of any New Term Facility, the final maturity of the New Term Loans thereunder shall be no earlier than the Latest Maturity Date for, and such New Term Loans shall not have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of, any then outstanding Term Loans; *provided* that (x) Extendable Bridge Loans/Interim Debt and (y) an aggregate principal amount of New Term Loans under such New Term Facility not in excess of the maximum aggregate principal amount then permitted to be incurred in reliance on the Inside Maturity Basket, in each case, may have a maturity date earlier than the Latest Maturity Date for any then outstanding Term Loans (or, in the case of New Term Facilities incurred in reliance on an Inside Maturity Basket, the Facilities to which such Inside Maturity Basket applies) and the Weighted Average Life to Maturity thereof may be shorter than the remaining Weighted Average Life to Maturity of any then outstanding Term Loans (or, in the case of New Term Facilities incurred in reliance on an Inside Maturity Basket, the Facilities to which such Inside Maturity Basket applies (it being agreed that no such final Stated Maturity or Weighted Average Life to Maturity of New Term Facilities incurred pursuant to this clause (y) shall be less than the final Stated Maturity and remaining Weighted Average Life to Maturity of the Initial Term Loans)); and

(E) (to the extent the initial Facilities are then outstanding) in the case of any New Term Facility or New Revolving Facility, the terms of such facility (other than pricing, final maturity and Weighted Average Life to Maturity), taken as a whole, shall not be materially more restrictive than the terms of the initial Term Facility or the initial Revolving Facility, respectively, as determined in good faith by the Borrower (but excluding any terms (x) that are added in the applicable initial Facility for the benefit of the Lenders thereunder pursuant to an amendment hereto (with no consent of the Lenders being required), (y) that are only applicable to periods after the latest final maturity date of the applicable initial Facility existing at the time of the incurrence of such facility or (z) reflect market terms and conditions (taken as a whole) (as determined by the Borrower in good faith) at the time of incurrence); *provided that*, notwithstanding anything herein to the contrary, any New Term Facility in the form of term “b” loans (the New Term Loans thereunder, “**Term B Loans**”) (v) may include a basket providing that future Incremental Facilities in an aggregate amount equal to (1) the greater of \$300,000,000 and 100% of LTM EBITDA, *plus* (2) the amount of any prepayments of Term Loans under any future term loan “a” facility (but not, for the avoidance of doubt, the Initial Term Facility), may have a maturity date (and Weighted Average Life to Maturity) that is earlier than the latest maturity and Weighted Average Life to Maturity of such Term B Loans (but not, for the avoidance of doubt, the Initial Term Facility) (the “**Inside Maturity Basket**”); (w) may include, applicable only to any Term B Loans, “anti-Windstream” two (2) year statute of limitations on known defaults and anti-net-short language on terms agreed between the Borrower and the Administrative Agent, (x) may include a customary “excess cash flow” mandatory prepayment event, (y) may have customary call-protection including “soft-call” protection in connection with any repricing transaction and (z) may also, to the extent so provided in the applicable amendment to this Agreement setting forth the terms of such Term B Loans, specify whether (A) the Lenders of such Term B Loans shall have any voting rights in respect of the Financial Covenants and (B) any breach of such covenants would result in a Default or Event of Default for the Lenders of such Term B Loans prior to an acceleration of Commitments or Loans by the applicable Lenders in accordance with the terms of this Agreement as a result of such breach (such terms described in clauses (v) through (y), the “**Permitted TLB Terms**”); and

(iii) except as set forth in subclauses (d)(ii)(B) and (d)(ii)(D) above with respect to final maturity and Weighted Average Life to Maturity of any New Term Facility or terms of a New Revolving Facility, and subject to subclause (d)(ii)(E), any such New Term Facility or New Revolving Facility shall have such terms as are agreed to by the Borrower and the Incremental Arranger (including with respect to the interest rate margins, OID, upfront fees (if any), interest rate “floors” (if any) and amortization schedule of such New Term Facility or New Revolving Facility, as applicable);

(iv) to the extent reasonably requested by the Incremental Arranger and expressly set forth in the documentation relating to such New Loan Commitments, the Incremental Arranger shall have received legal opinions, resolutions, officers’ certificates, reaffirmation agreements and/or subsequent ranking agreements or amendment agreements to, confirmations of and/or lower ranking Collateral Documents, as applicable, consistent with those delivered on the Closing Date under Section 4.01 or delivered from time to time pursuant to Section 6.12, Section 6.14 and/or Section 6.16 with respect to the Borrower and each material Guarantor that is organized in a jurisdiction for which counsel to the Administrative Agent advises that such deliveries are reasonably necessary to preserve the Collateral in such jurisdiction (other than changes to such legal opinions resulting from a change in Law, change in fact or change to counsel’s form of opinion); and

(v) subject to Section 1.02(i), except to the extent otherwise agreed by the applicable Incremental Arranger and the Borrower, no Revolving Credit Commitment Increase, Term Commitment Increase, New Term Commitment or New Revolving Commitment shall become effective unless (x) the representations and warranties of each the Borrower and each other Loan Party contained in Article V or any other Loan Document shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the date of such effectiveness, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date, and except that for purpose of this clause (v), the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent financial statements furnished pursuant to Sections 6.01(a) and (b), respectively, prior to such effectiveness or (y) in the event that such Revolving Credit Commitment Increase, Term Commitment Increase, New Term Commitment or New Revolving Commitment is used to finance a Limited Condition Transaction, the Specified Representations, and in the case of any Limited Condition Transaction consisting of an acquisition, those representations of the seller or the target company (as applicable) included in the acquisition agreement related to such acquisition that are material to the interests of the Lenders in respect of such Revolving Credit Commitment Increase, Term Commitment Increase, New Term Commitment or New Revolving Commitment and only to the extent that the Borrower or its applicable Subsidiary has the right to terminate its obligations under such acquisition agreement as a result of a failure of such representations to be accurate, shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the date of such effectiveness, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date.



Subject to the foregoing, the conditions precedent to each such increase or New Loan Commitment shall be solely those agreed to by the Lenders providing such increase or New Loan Commitment, as applicable, and the Borrower.

Notwithstanding the foregoing, (x) to the extent any terms of any Term Commitment Increase, Revolving Credit Commitment Increase, New Term Facility or New Revolving Facility are more favorable (with respect to the lenders thereunder) than the comparable terms hereunder (with respect to the Lenders under the Initial Term Loans or the Initial Revolving Tranche, as applicable), such terms (if favorable to the applicable Lenders) may be, solely at the request of the Borrower, incorporated into this Agreement (or any other applicable Loan Document) for the benefit of the applicable Lenders (to the extent applicable to such Lender) without further amendment requirements (it being agreed and understood, for the avoidance of doubt, that, at the option of the Borrower and with the consent of the Administrative Agent (not to be unreasonably withheld or delayed), the Borrower may, but shall not be required to, increase the Applicable Rate or amortization payments relating to any existing Term Facility to bring such Applicable Rate in line with the relevant Term Commitment Increase or New Term Facility to achieve fungibility with such existing Term Facility) and (y) such terms other than the terms described in clause (x) above may, solely at the request of the Borrower, be incorporated into this Agreement (or any other applicable Loan Document) for the benefit of the applicable Lenders (to the extent applicable to such Lender) without further amendment requirements if reasonably satisfactory to the Borrower, the Incremental Arranger and the Administrative Agent.

To the extent the Borrower establishes a New Revolving Facility, then the Administrative Agent and the Borrower shall be permitted to amend this Agreement to require borrowings and repayments on a pro rata basis among Revolving Tranches (except for (A) payments of interest and fees at different rates on the Revolving Credit Commitments (and related outstandings), (B) repayments required upon the Maturity Date of any Revolving Credit Loan and (C) repayments made in connection with a permanent repayment and termination of the Revolving Credit Loans or Revolving Credit Commitments of Revolving Credit Loans after the effective date of such New Revolving Facility).

(e) On the Increase Effective Date with respect to an increase to an Existing Revolving Tranche, (x) each Revolving Credit Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each Lender providing a portion of the increase to the Revolving Credit Commitments (each, a “**Revolving Commitment Increase Lender**”), and each such Revolving Commitment Increase Lender will automatically and without further act be deemed to have assumed, a portion of such Revolving Credit Lender’s participations hereunder in outstanding L/C Obligations such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding participations hereunder in L/C Obligations will equal the Pro Rata Share of the aggregate Revolving Credit Commitments of all Revolving Credit Lenders represented by such Revolving Credit Lender’s Revolving Credit Commitment and (y) if, on the date of such increase, there are any Revolving Credit Loans outstanding, such Revolving Credit Loans shall on or prior to the Increase Effective Date be prepaid from the proceeds of Revolving Credit Loans made hereunder (reflecting such increase in Revolving Credit Commitments), which prepayment shall be accompanied by accrued interest on the Revolving Credit Loans being prepaid and any costs incurred by any Lender in accordance with Section 3.06. The Administrative Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence. The additional Term Loans made under the Term Loan Tranche subject to the increases shall be made by the applicable Lenders participating therein pursuant to the procedures set forth in Sections 2.01 and 2.02 and on the date of the making of such New Term Loans, and notwithstanding anything to the contrary set forth in Sections 2.01 and 2.02, such new Loans shall be added to (and form part of) each Borrowing of outstanding Term Loans under such Term Loan Tranche on a pro rata basis (based on the relative sizes of the various outstanding Borrowings), so that each Lender under such Term Loan Tranche will participate proportionately in each then outstanding Borrowing of Term Loans under the Term Loan Tranche.

(f) (i) Any New Revolving Facility and New Term Facility, shall comply with the Incremental Debt Lien/Guarantee Parameters,

(ii) the New Term Facility or New Revolving Facility, as applicable, shall, for purposes of prepayments, be treated substantially the same as (and in any event no more favorably than) the Initial Term Loans or Initial Revolving Tranche, as applicable, unless the Borrower otherwise elects (but in any event no more favorably than the Initial Term Loans or the Initial Revolving Tranche, as applicable), unless any such more favorable terms are applicable only after the Latest Maturity Date of the Initial Term Loans and the Initial Revolving Tranche, and

(iii) any New Term Facility that is secured by a lien on the Collateral on a *pari passu* basis with the Initial Term Loans shall share ratably (or on a lesser basis) with respect to any mandatory prepayments of the Initial Term Loans (other than mandatory prepayments resulting from a refinancing of any Facility, which may be applied exclusively to the Facility being refinanced and other than any excess cash flow prepayments in respect of Term B Loans which may be applied ratably across all Term Facilities).

(g) If the Incremental Arranger is not the Administrative Agent, the actions authorized to be taken by the Incremental Arranger herein shall be done in consultation with the Administrative Agent and, with respect to the preparation of any documentation necessary or appropriate to carry out the provisions of this Section 2.14 (including amendments to this Agreement and the other Loan Documents), any comments to such documentation reasonably requested by the Administrative Agent shall be reflected therein.

Section 2.15 Incremental Equivalent Debt.

(a) Any Loan Party may from time to time after the Closing Date issue one or more series of senior secured, senior unsecured, senior subordinated or subordinated notes, loans or Extendable Bridge Loans/Interim Debt (such notes, loans and/or Extendable Bridge Loans/Interim Debt, collectively, "**Incremental Equivalent Debt**") in an amount not to exceed the Incremental Amount available at the time of incurrence (subject to Section 1.02(i)); *provided* that (i) no Event of Default (subject to Section 1.02(i)) would exist immediately after giving effect to any such incurrence of Incremental Equivalent Debt and (ii) any such incurrence of Incremental Equivalent Debt shall be in a minimum amount of the lesser of (x) \$5,000,000 (or the equivalent Dollar amount) and (y) the entire amount that may be requested under this Section 2.15; *provided, further*, that:

(A) unless the Borrower elects otherwise, (x) the Borrower shall be deemed to have used amounts under the Ratio-Based Incremental Facility (to the extent compliant therewith) prior to using amounts under the Effective Extension Incremental Facility, the Prepayment-Based Incremental Facility or the Cash-Capped Incremental Facility and (y) the Borrower shall be deemed to have used the Prepayment-Based Incremental Facility prior to utilization of the Cash-Capped Incremental Facility;

(B) New Loan Commitments pursuant to Section 2.14, Incremental Equivalent Debt pursuant to this Section 2.15 and Ratio Debt may be incurred substantially concurrently under the Ratio-Based Incremental Facility (to the extent compliant therewith), the Effective Extension Incremental Facility, the Prepayment-Based Incremental Facility and the Cash-Capped Incremental Facility or any combination of any of the foregoing, and proceeds from any such incurrence may be utilized in a single transaction or series of related transactions by, unless the Borrower elects otherwise, first, calculating the incurrence under the Ratio-Based Incremental Facility (without inclusion of (x) any amounts incurred substantially concurrently pursuant to the Prepayment-Based Incremental Facility or the Cash-Capped Incremental Facility, (y) any amounts incurred substantially concurrently under any fixed basket under Section 7.01 or (z) any revolving credit loans incurred substantially concurrently with such single transaction or series of related transactions) and then calculating the incurrence under the Prepayment-Based Incremental Facility (without inclusion of any amounts utilized pursuant to the Cash-Capped Incremental Facility) and then calculating the incurrence under the Effective Extension Incremental Facility and the Cash-Capped Incremental Facility, as applicable;

(C) all or any portion of Indebtedness originally designated as incurred under the Prepayment-Based Incremental Facility or the Cash-Capped Incremental Facility shall automatically cease to be deemed incurred under the Prepayment-Based Incremental Facility or the Cash-Capped Incremental Facility and shall instead be deemed incurred under the Ratio-Based Incremental Facility from and after the first date on which the Borrower would be permitted to incur all or such portion, as applicable, of the aggregate principal amount of such Indebtedness under the Ratio-Based Incremental Facility (for the avoidance of doubt, which determination shall be made without duplication of such Indebtedness originally designated as incurred under the Prepayment-Based Incremental Facility or the Cash-Capped Incremental Facility) (which, for the avoidance of doubt, shall have the effect of increasing the Prepayment-Based Incremental Facility and/or the Cash-Capped Incremental Facility, as applicable, by all or such portion, as applicable, of the aggregate principal amount of such Indebtedness); and

(D) solely for the purpose of cash netting in calculating the Consolidated First Lien Net Leverage Ratio or the Consolidated Total Net Leverage Ratio to determine the availability under the Ratio-Based Incremental Facility at the time of incurrence any cash proceeds of any New Loan Commitments incurred pursuant to Section 2.14, any Incremental Equivalent Debt Incurred pursuant to this Section 2.15, in each case, incurred at such test date shall be excluded for purposes of calculating cash or Cash Equivalents.

The Borrower may appoint any Person as arranger of such Incremental Equivalent Debt (such Person (who may be the Administrative Agent, if it so agrees), the “**Incremental Equivalent Debt Arranger**”).

(b) (i) Any Incremental Equivalent Debt shall comply with the Incremental Debt Lien/Guarantee Parameters,

(ii) the final maturity of any Incremental Equivalent Debt shall be no earlier than the Latest Maturity Date for, and such Incremental Equivalent Debt shall not have a Weighted Average Life to Maturity shorter than the remaining Weighted Average Life to Maturity of, any then outstanding Term Loans; *provided* that (x) Extendable Bridge Loans/Interim Debt and (y) an aggregate principal amount of Incremental Equivalent Debt not in excess of the maximum aggregate principal amount then permitted to be incurred in reliance on the Inside Maturity Basket, in each case, may have a maturity date earlier than the Latest Maturity Date for any then outstanding Term Loans (or, in the case of Incremental Equivalent Debt incurred in reliance on an Inside Maturity Basket, the Facilities to which such Inside Maturity Basket applies) and the Weighted Average Life to Maturity thereof may be shorter than the remaining Weighted Average Life to Maturity of any then outstanding Term Loans (or, in the case of Incremental Equivalent Debt incurred in reliance on an Inside Maturity Basket, the Facilities to which such Inside Maturity Basket applies (it being agreed that no such final Stated Maturity or Weighted Average Life to Maturity of Incremental Equivalent Debt incurred pursuant to this clause (y) shall be less than the final Stated Maturity and remaining Weighted Average Life to Maturity of the Initial Term Loans)) and

(iii) any Incremental Equivalent Debt (other than any Extendable Bridge Loans/Interim Debt) shall not be subject to any mandatory redemption or prepayment provisions or rights, except to the extent any such mandatory redemption or prepayment is required to be applied pro rata (or greater than pro rata) to the Initial Term Loans and other Incremental Equivalent Debt that is secured by a lien on the Collateral on a *pari passu* basis with the Initial Term Loans and other than mandatory prepayments resulting from a refinancing of any Facility, which may be applied exclusively to the Facility being refinanced and other than any excess cash flow prepayments in respect of Incremental Equivalent Debt structured as term “b” loans, as reasonably determined by the Borrower, which prepayments may be applied ratably across all Term Facilities. Subject to the foregoing, the conditions precedent to each such incurrence shall be agreed to by the creditors providing such Incremental Equivalent Debt and the Borrower.

(c) The Lenders hereby authorize the Incremental Equivalent Debt Arranger and the Administrative Agent (and the Lenders hereby authorize the Incremental Equivalent Debt Arranger and the Administrative Agent to execute and deliver such amendments) to enter into amendments to this Agreement and the other Loan Documents with the Borrower as may be necessary in order to secure any Incremental Equivalent Debt with the Collateral and/or to make such technical amendments as may be necessary or appropriate in the reasonable opinion of the Incremental Equivalent Debt Arranger, the Administrative Agent and the Borrower in connection with the incurrence of such Incremental Equivalent Debt, in each case on terms consistent with this [Section 2.15](#). If the Incremental Equivalent Debt Arranger is not the Administrative Agent, the actions authorized to be taken by the Incremental Equivalent Debt Arranger herein shall be done in consultation with the Administrative Agent and, with respect to applicable documentation (including amendments to this Agreement and the other Loan Documents), any comments to such documentation reasonably requested by the Administrative Agent shall be reflected therein.

Section 2.16 Cash Collateral.

(a) Upon the request of the Administrative Agent or the applicable L/C Issuer (i) if the applicable L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing or (ii) if, as of the Letter of Credit Sublimit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, promptly deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover 103.0% of the then Outstanding Amount of all L/C Obligations. At any time that there shall exist a Defaulting Lender, promptly upon the request of the Administrative Agent or the applicable L/C Issuer, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover 103.0% of all Fronting Exposure of such Defaulting Lender after giving effect to [Section 2.17\(a\)\(iv\)](#) and any Cash Collateral provided by such Defaulting Lender.

(b) All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, deposit accounts at the Administrative Agent or the Collateral Agent (or other financial institution selected by any of them). The Borrower, and to the extent provided by any Revolving Credit Lender, such Revolving Credit Lender, hereby grant to (and subject to the control of) the Administrative Agent and the Collateral Agent, for the benefit of the Administrative Agent, the applicable L/C Issuer and the Revolving Credit Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to [Section 2.16\(c\)](#). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower and the relevant Defaulting Lender shall, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this [Section 2.16](#) or [Sections 2.03, 2.05, 2.06, 2.17, 8.02](#) or [8.04](#) in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided prior to any other application of such property as may be provided for herein.

(d) Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure (after giving effect to such release) or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with [Section 10.07\(b\)\(viii\)](#))) or (ii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; *provided, however*, (x) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default under [Sections 8.01\(a\), \(f\)](#) or [\(g\)](#) or an Event of Default (and following application as provided in this [Section 2.16](#) may be otherwise applied in accordance with [Section 8.04](#)) and (y) the Person providing Cash Collateral and the applicable L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

#### Section 2.17 [Defaulting Lenders.](#)

(a) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in [Section 10.01](#).

(ii) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to [Article VIII](#) or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to [Section 10.09](#)), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuers hereunder; third, if so reasonably determined by the Administrative Agent or reasonably requested by the applicable L/C Issuer, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Letter of Credit; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; sixth, to the payment of any amounts owing to the Lenders or any L/C Issuer as a result of any non-appealable judgment of a court of competent jurisdiction obtained by any Lender or any L/C Issuer against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default pursuant to [Sections 8.01\(a\), \(f\)](#) or [\(g\)](#) exists, to the payment of any amounts owing to the Borrower or any of its Subsidiaries as a result of any non-appealable judgment of a court of competent jurisdiction obtained by the Borrower or any of its Subsidiaries against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in [Section 4.02](#) were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this [Section 2.17\(a\)\(ii\)](#) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit fees as provided in Section 2.03(h).

(iv) During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.03, the Pro Rata Share of each non-Defaulting Lender under a Revolving Tranche shall be determined without giving effect to the Commitment under such Revolving Tranche of that Defaulting Lender; *provided* that the aggregate obligation of each non-Defaulting Lender under a Revolving Tranche to acquire, refinance or fund participations in Letters of Credit issued under such Revolving Tranche shall not exceed the positive difference, if any, of (1) the Commitment under such Revolving Tranche of that non-Defaulting Lender, *minus* (2) the aggregate Outstanding Amount of the Loans under such Revolving Tranche of that Revolving Credit Lender. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(b) If the Borrower, the Administrative Agent and each L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may reasonably determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Lenders in accordance with their ratable shares (without giving effect to the application of Section 2.17(a)(iv) in respect of that Lender, whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(a) The Borrower may, from time to time after the Closing Date, add one or more new term loan facilities and new revolving credit facilities to the Facilities (“**Specified Refinancing Debt**”); and the commitments in respect of such new term facilities, the “**Specified Refinancing Term Commitment**”; and such new term facilities, “**Specified Refinancing Term Facilities**”; and the commitments in respect of such new revolving credit facilities, the “**Specified Refinancing Revolving Credit Commitment**”) pursuant to procedures reasonably specified by any Person appointed by the Borrower, as agent under such Specified Refinancing Debt (such Person (who may be the Administrative Agent, if it so agrees), the “**Specified Refinancing Agent**”) and reasonably acceptable to the Borrower, to refinance (including by extending the maturity):

(x) all or any portion of any Term Loan Tranches then outstanding under this Agreement,

(y) all or any portion of any Revolving Tranches then in effect under this Agreement or

(z) all or any portion of any Revolving Credit Commitment Increase, Term Commitment Increase, New Term Facility or New Revolving Facility then in effect that was incurred under Section 2.14, in each case pursuant to a Refinancing Amendment;

*provided that:*

(i) such Specified Refinancing Debt shall comply with the Incremental Debt Lien/Guarantee Parameters;

(ii) such Specified Refinancing Debt shall have such pricing and optional prepayment and other terms as may be agreed by the Borrower and the applicable Lenders thereof;

(iii) such Specified Refinancing Debt (x) to the extent constituting Specified Refinancing Revolving Credit Commitments, shall not have a maturity date (or have mandatory commitment reductions or amortization) that is prior to the scheduled Maturity Date of the applicable Revolving Tranche being refinanced and (y) to the extent constituting Specified Refinancing Term Loans, shall have a maturity date that is not prior to the date that is the Latest Maturity Date of, and will have a Weighted Average Life to Maturity that is not shorter than the remaining Weighted Average Life to Maturity of, the Term Loans being refinanced; *provided that* (x) Extendable Bridge Loans/Interim Debt and (y) an aggregate principal amount of Specified Refinancing Term Loans not in excess of the maximum aggregate principal amount then permitted to be incurred in reliance on the Inside Maturity Basket, in each case, may have a maturity date that is earlier than the Latest Maturity Date of the Term Loans being refinanced (or, in the case of Specified Refinancing Debt incurred in reliance on an Inside Maturity Basket, the Facilities to which such Inside Maturity Basket applies) and the Weighted Average Life to Maturity thereof may be shorter than the remaining Weighted Average Life to Maturity of the Term Loans being refinanced (or, in the case of Specified Refinancing Debt incurred in reliance on an Inside Maturity Basket, the Facilities to which such Inside Maturity Basket applies (it being agreed that no such final Stated Maturity or Weighted Average Life to Maturity of Specified Refinancing Debt incurred pursuant to this clause (y) shall be less than the final Stated Maturity and remaining Weighted Average Life to Maturity of the Initial Term Loans));

(iv) such Specified Refinancing Debt, in the case of Specified Refinancing Term Loans, shall share ratably in any mandatory prepayments of the then outstanding Initial Term Loans pursuant to Section 2.05 (or otherwise provide for more favorable prepayment treatment for the then outstanding Initial Term Loans than the Specified Refinancing Term Loans), other than mandatory prepayments resulting from a refinancing of any Facility, which may be applied exclusively to the Facility being refinanced and other than any excess cash flow prepayments in respect of any Specified Refinancing Term Loans structured as term “b” loans, as reasonably determined by the Borrower, which prepayments may be applied ratably across all Term Facilities;

(v) such Specified Refinancing Debt, in the case of Specified Refinancing Revolving Credit Commitments, shall provide that each Revolving Credit Borrowing (including any deemed Revolving Credit Borrowings made pursuant to Section 2.03) and participations in Letters of Credit pursuant to Section 2.03 shall be allocated pro rata among the Revolving Tranches; and

(vi) the Net Cash Proceeds of such Specified Refinancing Debt shall be applied, substantially concurrently with the incurrence thereof, to the pro rata prepayment of outstanding Loans or Commitments being so refinanced (or less than the pro rata prepayment of outstanding Loans made by any Term Lenders or the Revolving Credit Lenders, as applicable, that will be lenders of the Specified Refinancing Debt, as approved by such Term Lenders or the Revolving Credit Lenders, as applicable); *provided* that in the case of Revolving Credit Loans, a corresponding amount of Revolving Credit Commitments shall be permanently reduced, in each case pursuant to Sections 2.05 and 2.06, as applicable, and the payment of fees, expenses and premiums, if any, payable in connection therewith;

*provided, however*, that such Specified Refinancing Debt shall not have a principal or commitment amount (or accreted value) greater than the Loans or Commitments being refinanced (*plus* an amount equal to accrued interest, fees, discounts, premiums and expenses).

Any Lender approached to provide all or a portion of any Specified Refinancing Debt may elect or decline, in its sole discretion, to provide such Specified Refinancing Debt. To achieve the full amount of a requested issuance of Specified Refinancing Debt, and subject to the approval of the Administrative Agent and each L/C Issuer in the case of Specified Refinancing Revolving Credit Commitments, the Borrower may also invite additional Eligible Assignees to become Lenders in respect of such Specified Refinancing Debt pursuant to a joinder agreement to this Agreement in form and substance reasonably satisfactory to the Specified Refinancing Agent. For the avoidance of doubt, any allocations of Specified Refinancing Debt shall be made at the Borrower’s sole discretion, and the Borrower will not be obligated to allocate any Specified Refinancing Debt to any Lender.



(b) The effectiveness of any Refinancing Amendment shall be subject to conditions as are mutually agreed with the participating Lenders providing such Specified Refinancing Debt and to the extent reasonably requested by the Specified Refinancing Agent and expressly set forth in the documentation relating to such Specified Refinancing Debt, receipt by the Specified Refinancing Agent of legal opinions, board resolutions, officers' certificates and/or reaffirmation agreements with respect to the Borrower and the Guarantors, including any supplements or amendments to the Collateral Documents providing for such Specified Refinancing Debt to be secured thereby, consistent with those delivered on the Closing Date under Section 4.01 or delivered from time to time pursuant to Sections 6.12, 6.14 and/or Section 6.16 (other than changes to such legal opinions resulting from a change in Law, change in fact or change to counsel's form of opinion). The Lenders hereby authorize the Specified Refinancing Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower as may be necessary in order to establish new Tranches of Specified Refinancing Debt and to make such technical amendments as may be necessary or appropriate in the reasonable opinion of the Specified Refinancing Agent and the Borrower in connection with the establishment of such new Tranches, in each case on terms consistent with and/or to effect the provisions of this Section 2.18.

(c) Each class of Specified Refinancing Debt incurred under this Section 2.18 shall be in an aggregate principal amount that is (x) not less than \$5,000,000 (or the equivalent Dollar amount) and (y) an integral multiple of \$1,000,000 (or the equivalent Dollar amount) in excess thereof. Any Refinancing Amendment may provide for the issuance of Letters of Credit for the account of the Borrower in respect of a Revolving Tranche pursuant to any revolving credit facility established thereby, in each case on terms substantially equivalent to the terms applicable to Letters of Credit under the Revolving Credit Commitments.

(d) The Specified Refinancing Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Specified Refinancing Debt incurred pursuant thereto (including the addition of such Specified Refinancing Debt as separate "Facilities" hereunder and treated in a manner consistent with the Facilities being refinanced, including for purposes of prepayments and voting). Any Refinancing Amendment may, without the consent of any Person other than the Borrower, the Specified Refinancing Agent and the Lenders providing such Specified Refinancing Debt, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Specified Refinancing Agent and the Borrower, to effect the provisions of or consistent with this Section 2.18. In addition, if so provided in the relevant Refinancing Amendment and with the consent of each L/C Issuer, participations in Letters of Credit expiring on or after the scheduled Maturity Date in respect of a Revolving Tranche shall be reallocated from Lenders holding Revolving Credit Commitments to Lenders holding extended revolving commitments in accordance with the terms of such Refinancing Amendment; *provided, however*, that such participation interests shall, upon receipt thereof by the relevant Lenders holding extended revolving commitments, be deemed to be participation interests in respect of such extended revolving commitments and the terms of such participation interests (including the commission applicable thereto) shall be adjusted accordingly. If the Specified Refinancing Agent is not the Administrative Agent, the actions authorized to be taken by the Specified Refinancing Agent herein shall be done in consultation with the Administrative Agent and, with respect to the preparation of any documentation necessary or appropriate to carry out the provisions of this Section 2.18 (including amendments to this Agreement and the other Loan Documents), any comments to such documentation reasonably requested by the Administrative Agent shall be reflected therein.

(a) The Borrower may at any time and from time to time request that all or a portion of the (i) Term Loans of one or more Tranches existing at the time of such request (each, an “**Existing Term Tranche**”, and the Term Loans of such Tranche, the “**Existing Term Loans**”) or (ii) Revolving Credit Commitments of one or more Tranches existing at the time of such request (each, an “**Existing Revolving Tranche**” and together with the Existing Term Tranches, each an “**Existing Tranche**”, and the Revolving Credit Commitments of such Existing Revolving Tranche together with the Existing Term Loans, the “**Existing Loans**”), in each case, be converted to extend the scheduled maturity date(s) of any payment of principal with respect to all or a portion of any principal amount of any Existing Tranche (any such Existing Tranche which has been so extended, an “**Extended Term Tranche**” or “**Extended Revolving Tranche**”, as applicable, and each an “**Extended Tranche**”, and the Term Loans or Revolving Credit Commitments, as applicable, of such Extended Tranches, the “**Extended Term Loans**” or “**Extended Revolving Commitments**”, as applicable, and collectively, the “**Extended Loans**”) and to provide for other terms consistent with this Section 2.19; *provided* that (i) any such request shall be made by the Borrower to certain Lenders specified by the Borrower with Term Loans or Revolving Credit Commitments, as applicable, with a like maturity date (whether under one or more Tranches) on a pro rata basis (based on the aggregate outstanding principal amount of the Term Loans or on the aggregate Revolving Credit Commitments, as applicable) and (ii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower in its sole discretion. In order to establish any Extended Tranche, the Borrower shall provide a notice to the Administrative Agent (in such capacity, the “**Extended Loans Agent**”) (who shall provide a copy of such notice to each of the requested Lenders of the applicable Existing Tranche) (an “**Extension Request**”) setting forth the proposed terms of the Extended Tranche to be established, which terms shall be substantially similar to those applicable to the Existing Tranche from which they are to be extended (the “**Specified Existing Tranche**”), except that (w) all or any of the final maturity dates of such Extended Tranches shall be delayed to later dates than the final maturity dates of the Specified Existing Tranche, (x) (A) the interest margins with respect to the Extended Tranche may be higher or lower than the interest margins for the Specified Existing Tranche and/or (B) additional fees may be payable to the Lenders providing such Extended Tranche in addition to or in lieu of any increased margins contemplated by the preceding clause (A), (y) in the case of any Extended Term Tranche, such Extended Term Tranche shall share ratably in any mandatory prepayments of the then outstanding Initial Term Loans pursuant to Section 2.05 (or otherwise provide for more favorable mandatory prepayment treatment for the then outstanding Initial Term Loans than such Extended Term Tranche, other than mandatory prepayments resulting from a refinancing of any Facility, which may be applied exclusively to the Facility being refinanced and other than any excess cash flow prepayments in respect of any Extended Term Tranche structured as term “b” loans, as reasonably determined by the Borrower, which may be applied ratably across all Term Facilities), and (z) in the case of any Extended Term Tranche (other than any Extended Term Tranche in an aggregate principal amount not in excess of the maximum aggregate principal amount then permitted to be incurred in reliance on a then-applicable Inside Maturity Basket), so long as the Weighted Average Life to Maturity of such Extended Tranche would be no shorter than the remaining Weighted Average Life to Maturity of the Specified Existing Tranche, amortization rates with respect to the Extended Term Tranche may be higher or lower than the amortization rates for the Specified Existing Tranche, in each case to the extent provided in the applicable Extension Amendment; *provided* that, notwithstanding anything to the contrary in this Section 2.19 or otherwise, assignments and participations of Extended Tranches shall be governed by the same or, at the Borrower’s discretion, more restrictive assignment and participation provisions applicable to Initial Term Loans or Revolving Credit Commitments, as applicable, set forth in Section 10.07; and *provided, further*, for the avoidance of doubt that any Extended Term Tranche may be structured as term “b” loans and may include Permitted TLB Terms. No requested Lender shall have any obligation to agree to have any of its Existing Loans converted into an Extended Tranche pursuant to any Extension Request and the commitment of any L/C Issuer to issue or maintain Letters of Credit shall not be extended pursuant to an extension of any Existing Revolving Tranche pursuant to this Section 2.19 without its written consent. Any Extended Tranche shall constitute a separate Tranche of Loans from the Specified Existing Tranches and from any other Existing Tranches (together with any other Extended Tranches so established on such date). On the Extension Date applicable to any applicable Revolving Tranche under the Revolving Credit Facility, the Borrower shall prepay the Revolving Credit Loans or L/C Advances (to the extent participated to Revolving Credit Lenders) outstanding on such Extension Date applicable to the relevant Revolving Tranche (and pay any additional amounts required pursuant to Section 3.06) to the extent necessary to keep the outstanding Revolving Credit Loans or L/C Advances (to the extent participated to Revolving Credit Lenders), as applicable, applicable to the non-extending Revolving Credit Lenders under such Revolving Tranche in accordance with any revised Pro Rata Share of a Revolving Credit Lender in respect of the extended Revolving Credit Facility arising from any non-ratable Extension to the Revolving Credit Commitments under this Section 2.19.

(b) The Borrower shall provide the applicable Extension Request at least ten (10) Business Days (or such shorter period as the Extended Loans Agent may agree in its sole discretion) prior to the date on which Lenders under the applicable Existing Tranche or Existing Tranches are requested to respond. Any Lender (an “**Extending Lender**”) wishing to have all or a portion of its Specified Existing Tranche converted into an Extended Tranche shall notify the Extended Loans Agent (each, an “**Extension Election**”) on or prior to the date specified in such Extension Request of the amount of its Specified Existing Tranche that it has elected to convert into an Extended Tranche. In the event that the aggregate amount of the Specified Existing Tranche subject to Extension Elections exceeds the amount of Extended Tranches requested pursuant to the Extension Request, the Specified Existing Tranches subject to Extension Elections shall be converted to Extended Tranches on a pro rata basis based on the amount of Specified Existing Tranches included in each such Extension Election. In connection with any extension of Loans pursuant to this Section 2.19 (each, an “**Extension**”), the Borrower and Extended Loans Agent shall agree to such procedures regarding timing, rounding, lender revocation and other administrative adjustments to ensure reasonable administrative management of the credit facilities hereunder after such Extension, in each case acting reasonably to accomplish the purposes of this Section 2.19. The Borrower may amend, revoke or replace an Extension Request pursuant to procedures reasonably acceptable to the Extended Loans Agent at any time prior to the date on which Lenders under the applicable Existing Term Tranche or Existing Term Tranches are requested to respond to the Extension Request.

(c) Extended Tranches shall be established pursuant to an amendment (an “**Extension Amendment**”) to this Agreement (which may include amendments to provisions related to maturity, interest margins or fees referenced in clauses (x) and (y) of Section 2.19(a), or, in the case of Extended Term Tranches, amortization rates referenced in clause (z) of Section 2.19(a), and which, in each case, except to the extent expressly contemplated by the last sentence of this Section 2.19(c) and notwithstanding anything to the contrary set forth in Section 10.01, shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Tranches established thereby) executed by the Loan Parties, the Extended Loans Agent, and the Extending Lenders. Subject to the requirements of this Section 2.19 and without limiting the generality or applicability of Section 10.01 to any Section 2.19 Additional Amendments (as defined below), any Extension Amendment may provide for additional terms and/or additional amendments other than those referred to or contemplated above (any such additional amendment, a “**Section 2.19 Additional Amendment**”) to this Agreement and the other Loan Documents; *provided* that such Section 2.19 Additional Amendments do not become effective prior to the time that such Section 2.19 Additional Amendments have been consented to (including, without limitation, pursuant to consents applicable to holders of any Extended Tranches provided for in any Extension Amendment) by such of the Lenders, Loan Parties and other parties (if any) as may be required in order for such Section 2.19 Additional Amendments to become effective in accordance with Section 10.01; *provided, further*, that such Extended Tranche shall comply with the Incremental Debt Lien/Guarantee Parameters. Notwithstanding anything to the contrary in Section 10.01, any such Extension Amendment may, without the consent of any other Lenders, effect such amendments to any Loan Documents as may be necessary or appropriate, in the reasonable judgment of the Borrower and the Extended Loans Agent, to effect the provisions of this Section 2.19; *provided* that the foregoing shall not constitute a consent on behalf of any Lender to the terms of any Section 2.19 Additional Amendment. The Lenders hereby authorize the Extended Loans Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower as may be necessary in order to establish any Extended Loans and to make such technical amendments as may be necessary or appropriate in the reasonable opinion of the Extended Loans Agent and the Borrower in connection with the establishment of such Extended Loans, in each case on terms consistent with and/or to effect the provisions of this Section 2.19.

(d) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any Existing Tranche is converted to extend the related scheduled maturity date(s) in accordance with clause (a) above (an “**Extension Date**”), in the case of the Specified Existing Tranche of each Extending Lender, the aggregate principal amount of such Specified Existing Tranche shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Tranche so converted by such Lender on such date, and such Extended Tranches shall be established as a separate Tranche from the Specified Existing Tranche and from any other Existing Tranches (together with any other Extended Tranches so established on such date).

(e) If, in connection with any proposed Extension Amendment, any requested Lender declines to consent to the applicable extension on the terms and by the deadline set forth in the applicable Extension Request (each such other Lender, a “**Non-Extending Lender**”) then the Borrower may, on notice to the Extended Loans Agent and the Non-Extending Lender, replace such Non-Extending Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.07 (with the assignment fee and any other costs and expenses to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more assignees; *provided* that neither the Extended Loans Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; *provided, further*, that the applicable assignee shall have agreed to provide Extended Loans on the terms set forth in such Extension Amendment; *provided, further*, that all obligations of the Borrower owing to the Non-Extending Lender relating to the Existing Loans so assigned shall be paid in full by the assignee Lender to such Non-Extending Lender concurrently with such Assignment and Assumption. In connection with any such replacement under this Section 2.19, if the Non-Extending Lender does not execute and deliver to the Extended Loans Agent a duly completed Assignment and Assumption by the later of (A) the date on which the replacement Lender executes and delivers such Assignment and Assumption and (B) the date as of which all obligations of the Borrower owing to the Non-Extending Lender relating to the Existing Loans so assigned shall be paid in full by the assignee Lender to such Non-Extending Lender, then such Non-Extending Lender shall be deemed to have executed and delivered such Assignment and Assumption as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Assumption on behalf of such Non-Extending Lender.

(f) Following any Extension Date, with the written consent of the Borrower, any Non-Extending Lender may elect to have all or a portion of its Existing Loans deemed to be an Extended Loan under the applicable Extended Tranche on any date (each date a “**Designation Date**”) prior to the maturity date of such Extended Tranche; *provided* that such Lender shall have provided written notice to the Borrower and the Extended Loans Agent at least ten (10) Business Days prior to such Designation Date (or such shorter period as the Administrative Agent may agree in its reasonable discretion); *provided, further*, that no greater amount shall be paid by or on behalf of the Borrower or any of its Affiliates to any such Non-Extending Lender as consideration for its extension into such Extended Tranche than was paid to any Extending Lender as consideration for its Extension into such Extended Tranche. Following a Designation Date, the Existing Loans held by such Lender so elected to be extended will be deemed to be Extended Loans of the applicable Extended Tranche, and any Existing Loans held by such Lender not elected to be extended, if any, shall continue to be “Existing Loans” of the applicable Tranche.

(g) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.19, (i) such Extensions shall not constitute optional or mandatory payments or prepayments for purposes of Sections 2.05(a) and (b) and (ii) no Extension Request is required to be in any minimum amount or any minimum increment; *provided* that the Borrower may at its election specify as a condition (a “**Minimum Extension Condition**”) to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Request in Borrower’s sole discretion and may be waived by the Borrower) of Existing Loans of any or all applicable Tranches be extended. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Loans on such terms as may be set forth in the relevant Extension Request) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.05(a) and (b) and 2.07) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.19.

Section 2.20 Permitted Debt Exchanges.

(a) Notwithstanding anything to the contrary contained in this Agreement, pursuant to one or more offers (each, a “**Permitted Debt Exchange Offer**”) made from time to time by the Borrower, the Borrower may from time to time following the Closing Date consummate one or more exchanges of Term Loans for Permitted Debt Exchange Notes (each such exchange a “**Permitted Debt Exchange**”) with any Lender (other than any Lender that, if requested by the Borrower, is unable to certify that it is either a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act) or an institutional “accredited investor” (as defined in Rule 501 under the Securities Act)), so long as the following conditions are satisfied: (i) no Event of Default shall have occurred and be continuing at the time the final offering document in respect of a Permitted Debt Exchange Offer is delivered to the relevant Lenders, (ii) the aggregate principal amount (calculated on the face amount thereof) of Term Loans exchanged shall equal no more than the aggregate principal amount (calculated on the face amount thereof) of Permitted Debt Exchange Notes issued in exchange for such Term Loans; *provided* that the aggregate principal amount of the Permitted Debt Exchange Notes may include accrued interest and premium (if any) under the Term Loans exchanged and underwriting discounts, fees, commissions and other amounts referred to in clause (3) of the definition of “Refinancing Indebtedness” in connection with the issuance of such Permitted Debt Exchange Notes, (iii) the aggregate principal amount (calculated on the face amount thereof) of all Term Loans exchanged by the Borrower pursuant to any Permitted Debt Exchange shall automatically be cancelled and retired by the Borrower on the date of the settlement thereof (and, if requested by the Administrative Agent, any applicable exchanging Lender shall execute and deliver to the Administrative Agent an Assignment and Assumption, or such other form as may be reasonably requested by the Administrative Agent, in respect thereof pursuant to which the respective Lender assigns its interest in the Term Loans being exchanged pursuant to the Permitted Debt Exchange to the Borrower for immediate cancellation), (iv) if the aggregate principal amount of all Term Loans (calculated on the face amount thereof) tendered by Lenders in respect of the relevant Permitted Debt Exchange Offer (with no Lender being permitted to tender a principal amount of Term Loans which exceeds the principal amount thereof actually held by it) shall exceed the maximum aggregate principal amount of such Term Loans offered to be exchanged by the Borrower pursuant to such Permitted Debt Exchange Offer, then the Borrower shall exchange Term Loans subject to such Permitted Debt Exchange Offer tendered by such Lenders ratably up to such maximum amount based on the respective principal amounts so tendered, (v) all documentation in respect of such Permitted Debt Exchange shall be consistent with the foregoing, and all written communications generally directed to the Lenders in connection therewith shall be in form and substance consistent with the foregoing and made in consultation with the Borrower and the Exchange Agent and (vi) any applicable Minimum Tender Condition (as defined below) shall be satisfied.

(b) With respect to all Permitted Debt Exchanges effected by the Borrower pursuant to this Section 2.20, (i) such Permitted Debt Exchanges (and the cancellation of the exchanged Term Loans in connection therewith) shall not constitute voluntary or mandatory payments or prepayments for purposes of Sections 2.05(a) or (b), and (ii) such Permitted Debt Exchange Offer shall be made for not less than \$5,000,000 in aggregate principal amount of Term Loans; *provided* that subject to the foregoing clause (ii) the Borrower may at its election specify as a condition (a “**Minimum Tender Condition**”) to consummating any such Permitted Debt Exchange that a minimum amount (to be determined and specified in the relevant Permitted Debt Exchange Offer in Borrower’s discretion) of Term Loans of any or all applicable classes be tendered.

(c) In connection with each Permitted Debt Exchange, the Borrower and the Exchange Agent shall mutually agree to such procedures as may be necessary or advisable to accomplish the purposes of this Section 2.20 and without conflict with Section 2.20(d); *provided* that the terms of any Permitted Debt Exchange Offer shall provide that the date by which the relevant Lenders are required to indicate their election to participate in such Permitted Debt Exchange shall be not less than a reasonable period (in the discretion of the Borrower and the Exchange Agent) of time following the date on which the Permitted Debt Exchange Offer is made.

(d) The Borrower shall be responsible for compliance with, and hereby agrees to comply with, all applicable securities and other laws and regulations in connection with each Permitted Debt Exchange, it being understood and agreed that (x) none of the Exchange Agent, the Administrative Agent nor any Lender assumes any responsibility in connection with Borrower’s compliance with such laws and regulations in connection with any Permitted Debt Exchange (other than the Borrower’s reliance on any certificate delivered pursuant to Section 2.20(a) above for which such Lender shall bear sole responsibility) and (y) each Lender shall be solely responsible for its compliance with any applicable “insider trading” laws and regulations to which such Lender may be subject under the Exchange Act, and/or other applicable securities laws and regulations.

(e) If the Exchange Agent is not the Administrative Agent, the actions authorized to be taken by the Exchange Agent herein shall be done in consultation with the Administrative Agent and, with respect to the preparation of any documentation necessary or appropriate to carry out the provisions of this Section 2.20, any comments to such documentation reasonably requested by the Administrative Agent shall be reflected therein.

### ARTICLE III

#### TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

##### Section 3.01 Taxes.

(a) All payments by or on account of any obligation of the Borrower or any other Loan Party hereunder or under any other Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from or in respect of any such payment, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, the sum payable by the applicable Loan Party shall be increased as necessary so that after all such deductions or withholdings for Indemnified Taxes have been made (including such deductions and withholdings for Indemnified Taxes applicable to additional sums payable under this Section 3.01) the Administrative Agent (for amounts paid to the Administrative Agent in its own right) or Lender receives an amount equal to the sum it would have received had no such deduction or withholding for Indemnified Taxes been made.

(b) In addition but without duplication, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Without duplication of amounts paid pursuant to Section 3.01(a) or Section 3.01(b), the Loan Parties shall jointly and severally indemnify each Recipient, within 30 days after receipt by the applicable Loan Party of written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to or for the account of such Recipient and any reasonable out-of-pocket expenses arising therefrom or with respect thereto (other than any interest or penalties resulting from the gross negligence, bad faith or willful misconduct of such Recipient), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the calculation of the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) [Reserved].

(e) As soon as reasonably practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.01, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.01 with respect to the Indemnified Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party (which request shall include a copy of any notice of assessment or other evidence of any requirement to repay such refund; *provided* that, such indemnified party may redact any information therein that such indemnified party deems confidential), shall promptly repay to such indemnified party the amount paid over pursuant to this Section 3.01(f) (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.01(f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 3.01(f) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) [Reserved].

(h) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to any payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (h)(ii)(A), (ii)(B) and (ii)(D) of this Section 3.01(h)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person (or is disregarded as an entity separate from its owner for U.S. federal income tax purposes if such Lender's regarded owner for U.S. federal income tax purposes (the "**Lender's Regarded Owner**") is a U.S. person) shall deliver to the Borrower and the Administrative Agent (in such number as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent) a properly completed and duly executed IRS Form W-9 (or any successor form) certifying that such Lender (or, if such Lender is disregarded as an entity separate from its owner for U.S. federal income tax purposes, the Lender's Regarded Owner) is exempt from U.S. federal backup withholding Tax;

(B) any Non-U.S. Lender shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Administrative Agent (in such number as shall be requested by the recipient) on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Non-U.S. Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, a properly completed and duly executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any applicable successor form), establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, a properly completed and duly executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any applicable successor form), claiming an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) in the case of a Non-U.S. Lender claiming that its extension of credit will generate U.S. effectively connected income, a properly completed and duly executed IRS Form W-8ECI (or any successor form);



(3) in the case of a Non-U.S. Lender (or, if a Non-U.S. Lender is disregarded as an entity separate from its owner for U.S. federal income tax purposes, the Lender's Regarded Owner) claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Non-U.S. Lender (or the Lender's Regarded Owner, as applicable) is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10-percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code or a "controlled foreign corporation" that is related to the Borrower described in Section 881(c)(3)(C) of the Code, and that no payments under any Loan Document are effectively connected with such Lender's (or the Lender's Regarded Owner's, as applicable) conduct of a U.S. trade or business (a "**U.S. Tax Compliance Certificate**") and (y) a properly completed and duly executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any applicable successor form); or

(4) to the extent a Non-U.S. Lender (or, if a Non-U.S. Lender is disregarded as an entity separate from its owner for U.S. federal income tax purposes, the Lender's Regarded Owner) is not the beneficial owner (e.g., where the Non-U.S. Lender (or the Lender's Regarded Owner, as applicable) is a partnership or a participating Lender), a properly completed and duly executed IRS Form W-8IMY (or any successor form), accompanied by a properly completed and duly executed IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any applicable successor form), a certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9 (or any successor form), and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Non-U.S. Lender (or the Lender's Regarded Owner, as applicable) is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Non-U.S. Lender (or Lender's Regarded Owner, as applicable) are claiming the portfolio interest exemption, such Non-U.S. Lender shall provide a certificate substantially in the form of Exhibit H-4 on behalf of such direct and indirect partner(s);

(C) any Non-U.S. Lender shall, to the extent it is legally eligible to do so, deliver to the Borrower or the Administrative Agent (in such number as shall be requested by the recipient) on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), any properly completed and duly executed other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made;

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to (i) comply with their obligations under FATCA and (ii) determine whether such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. For purposes of this Section 3.01(h)(ii)(D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement; and

(E) the Administrative Agent, and any successor or supplemental Administrative Agent, shall deliver to the Borrower (in such number as shall be requested by the recipient) on or prior to the date on which the Administrative Agent becomes the administrative agent hereunder or under any other Loan Document (and from time to time thereafter upon the reasonable request of the Borrower) either a properly completed and duly executed (i) if it is a U.S. Person (or a disregarded entity of a U.S. Person for U.S. federal income tax purposes), a properly completed and duly executed IRS Form W-9 (or any successor form) or (ii) if it is not a U.S. Person (or a disregarded entity of a U.S. Person for U.S. federal income tax purposes), a properly completed and duly executed IRS Form W-8IMY (or any successor form), together with the required accompanying documentation, evidencing its agreement with the Borrower to assume primary withholding responsibility under Chapters 3 and 4 of the Code (with respect to amounts received under the Loan Documents on account of any Lender) and a properly completed and duly executed IRS Form W-8ECI (with respect to amounts received under the Loan Documents on its own account), with the effect that, in either case, the Borrower will be entitled to make payments hereunder to the Administrative Agent without withholding or deduction on account of U.S. federal withholding Tax. Notwithstanding any provision of this Section 3.01(h), the Administrative Agent shall not be required to deliver any form or other documentation that the Administrative Agent is not legally eligible to deliver as a result of a change in Law after the date of this Agreement.

Each Recipient agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall promptly update and deliver such documentation to the Borrower and the Administrative Agent or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Notwithstanding any other provision of this Section 3.01(h), no Lender shall be required to provide any documentation that such Lender is not legally eligible to provide.

Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(h).

(i) The agreements in this Section 3.01 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

(j) For the avoidance of doubt, for purposes of this Section 3.01, the term “Lender” shall include any L/C Issuer, and the term “applicable Law” includes FATCA.

Section 3.02 [Reserved].

Section 3.03 Illegality. If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Term SOFR Reference Rate or to determine or charge interest rates based upon Term SOFR or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (a) any obligation of such Lender to make or continue SOFR Loans or to convert ABR Loans to SOFR Loans shall be suspended and (b) if such notice asserts the illegality of such Lender making or maintaining ABR Loans, the interest rate on which is determined by reference to the Term SOFR component of the ABR, the interest rate on which ABR Loans of such Lender, shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the ABR, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or convert all of such Lender’s SOFR Loans to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the ABR). Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.06. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.04 Alternate Rate of Interest.

(a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 3.04, if:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) (A) prior to the commencement of any Interest Period for a SOFR Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR (including because the Term SOFR Reference Rate is not available or published on a current basis) for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR; or

(ii) the Administrative Agent is advised by the Required Lenders that (A) prior to the commencement of any Interest Period for a SOFR Borrowing, the Adjusted Term SOFR for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period or (B) at any time, Adjusted Daily Simple SOFR will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, if such notice is given, the Borrower may revoke any Committed Loan Notice for the affected Borrowing and, failing that, until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Committed Loan Notice in accordance with the terms of Section 2.02, any Committed Loan Notice that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a SOFR Borrowing and any Committed Loan Notice that requests a SOFR Borrowing, shall instead be deemed to be a Committed Loan Notice for (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 3.04(a)(i) or (ii) above or (y) an ABR Borrowing if the Adjusted Daily Simple SOFR also is the subject of Section 3.04(a)(i) or (ii) above, and any Committed Loan Notice that requests the conversion of any Borrowing to, or continuation of any Borrowing as, an RFR Borrowing, and any Committed Loan Notice that requests an RFR Borrowing shall instead be deemed to be a Committed Loan Notice for an ABR Borrowing if the Adjusted Daily Simple SOFR is the subject of Section 3.04(a)(i) or (ii) above; *provided* that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any SOFR Loan or RFR Loan is outstanding on the date of the Borrower's receipt of the notice from the Administrative Agent referred to in this Section 3.04(a) with respect to a Relevant Rate applicable to such SOFR Loan or RFR Loan, then until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Committed Loan Notice in accordance with the terms of Section 2.02, (1) any SOFR Loan shall on the last day of the Interest Period applicable to such Loan, be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 3.04(a)(i) or (ii) above or (y) an ABR Loan if the Adjusted Daily Simple SOFR also is the subject of Section 3.04(a)(i) or (ii) above, on such day and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR Loan.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any other Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any other Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.04, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.04.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a SOFR Borrowing or RFR Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any request for a SOFR Borrowing into a request for a Borrowing of or conversion to (A) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) an ABR Borrowing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any SOFR Loan or RFR Loan is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such SOFR Loan or RFR Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 3.04, (1) any SOFR Loan shall on the last day of the Interest Period applicable to such Loan, be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) an ABR Loan if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR Loan.

Section 3.05 Increased Cost and Reduced Return: Capital Adequacy and Liquidity Requirements.

(a) If any Lender reasonably determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the date hereof, or such Lender's compliance therewith, there shall be any material increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Loan or (as applicable) issuing or participating in Letters of Credit, or a material reduction in the amount received or receivable by such Lender in connection with any of the foregoing (including Taxes on or in respect of its loans, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, but excluding for purposes of this Section 3.05(a) any such increased costs or reduction in amount resulting from (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (iii) Connection Income Taxes), then within 15 days after demand of such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender reasonably determines that the introduction of any Law regarding capital adequacy and liquidity requirements or any change therein or in the interpretation thereof, in each case after the date hereof, or compliance by such Lender (or its Lending Office) therewith, has the effect of materially reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and liquidity and such Lender's desired return on capital), then within 15 days after demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves or liquidity with respect to liabilities or assets consisting of or including SOFR funds or deposits, additional interest on the unpaid principal amount of each SOFR Loan equal to the actual costs of such reserves or liquidity allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any liquidity requirement, reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the SOFR Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan; *provided* that the Borrower shall have received at least 15 days' prior written notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give written notice 15 days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable 15 days from receipt of such written notice.

(d) For purposes of this Section 3.05, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (other than foreign regulatory authorities in Switzerland), in each case pursuant to Basel III, shall, in each case, be deemed to have gone into effect after the date hereof and on the date enacted, adopted or issued.

Section 3.06 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, setting forth in reasonable detail the basis for calculating such compensation, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any actual loss, cost or expense incurred by it as a result of:

(a) any continuation (if applicable), conversion, payment or prepayment of any SOFR Loans on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan or pursuant to a conditional notice that has been revoked in accordance with the terms of this Agreement) to prepay, borrow, continue or convert any SOFR Loan on the date or in the amount notified by the Borrower; or

(c) any mandatory assignment of such Lender's SOFR Loans pursuant to Section 3.08 on a day other than the last day of the Interest Period for such Loans (including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained but excluding anticipated profits). The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

Section 3.07 Matters Applicable to All Requests for Compensation. A certificate of any Agent or any Lender claiming compensation under this Article III and setting forth in reasonable detail a calculation of the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods. With respect to any Recipient's claim for compensation under Section 3.03, 3.04 or 3.05, the Loan Parties shall not be required to compensate such Recipient for any amount incurred more than 180 days prior to the date that such Recipient notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(b) If any Lender requests compensation under Section 3.05, or the Borrower is required to pay any additional amount to any Lender, any L/C Issuer, or any Governmental Authority for the account of any Lender or any L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.03, then such Lender or the L/C Issuer, as applicable, will, if requested by the Borrower and at the Borrower's expense, use commercially reasonable efforts to designate another Lending Office for any Loan or Letter of Credit affected by such event; *provided* that such efforts (i) would eliminate or reduce amounts payable pursuant to Sections 3.01 or 3.05, as applicable, in the future and (ii) would not, in the reasonable judgment of such Lender or such L/C Issuer, as applicable, be disadvantageous in any material legal, economic or regulatory respect to such Lender or its Lending Office or such L/C Issuer. The provisions of this clause (b) shall not affect or postpone any Obligations of the Borrower or rights of such Lender pursuant to Sections 3.01 and 3.05.

(c) If any Lender requests compensation by the Borrower under Section 3.05, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another SOFR Loans, or to convert ABR Loans into SOFR Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.07(e) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(d) If the obligation of any Lender to make or continue from one Interest Period to another any SOFR Loans, or to convert ABR Loans into SOFR Loans shall be suspended pursuant to Section 3.07(c) hereof, such Lender's SOFR Loans, shall be automatically converted into ABR Loans on the last day(s) of the then current Interest Period(s) for such SOFR Loans (or, in the case of an immediate conversion required by Section 3.03, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Sections 3.03, 3.04 or 3.05 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's SOFR Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's SOFR Loans shall be applied instead to its ABR Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as SOFR Loans shall be made or continued instead as ABR Loans, and all ABR Loans of such Lender that would otherwise be converted into SOFR Loans shall remain as ABR Loans.

(e) If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Sections 3.03, 3.04 or 3.05 hereof that gave rise to the conversion of such Lender's SOFR Loans pursuant to this Section 3.07 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when SOFR Loans, made by other Lenders are outstanding, such Lender's ABR Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding SOFR Loans to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding SOFR Loans, as applicable, and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments.

(f) A Lender shall not be entitled to any compensation pursuant to Sections 3.03, 3.04 or 3.05 to the extent such Lender does not upon request certify that it is imposing such charges or requesting such compensation from borrowers (similarly situated to the Borrower hereunder) under comparable syndicated credit facilities.

Section 3.08 Replacement of Lenders under Certain Circumstances.

(a) If at any time (i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Sections 3.01 or 3.05 as a result of any condition described in such Sections or any Lender ceases to make SOFR Loans, as and if applicable, as a result of any condition described in Sections 3.03 or 3.04, (ii) any Lender becomes a Defaulting Lender, (iii) any Lender becomes a Non-Consenting Lender (as defined below in this Section 3.08) or (iv) any Lender becomes a Non-Extending Lender (collectively, a “**Replaceable Lender**”), then the Borrower may, on three (3) Business Days’ prior written notice from the Borrower to the Administrative Agent and such Lender (for the avoidance of doubt, such notice shall be deemed provided on the same day that an amendment or waiver is posted to the Lenders for consent), either (i) replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.07(b) (with the assignment fee to be paid by the Borrower in such instance unless waived by the Administrative Agent) all of its rights and obligations under this Agreement (or, in the case of a Non-Consenting Lender, all of its rights and obligations under this Agreement with respect to the Facility or Facilities for which its consent is required) to one or more Eligible Assignees; *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person or (ii) so long as no Default or Event of Default shall have occurred and be continuing, terminate the Commitment of such Lender or L/C Issuer, as applicable, and (1) in the case of a Lender (other than an L/C Issuer), repay all Obligations of the Borrower owing (and the amount of all accrued interest and fees in respect thereof) to such Lender relating to the Loans and participations held by such Lender as of such termination date and (2) in the case of an L/C Issuer, repay all obligations of the Borrower owing to such L/C Issuer relating to the Loans and participations held by such L/C Issuer as of such termination date and cancel or backstop on terms satisfactory to such L/C Issuer any Letters of Credit issued by it; *provided* that (i) in the case of any such replacement of, or termination of Commitments with respect to a Non-Consenting Lender such replacement or termination shall be sufficient (together with all other consenting Lenders including any other replacement Lender) to cause the adoption of the applicable modification, waiver or amendment of the Loan Documents, (ii) in the case of any such replacement of, or termination of Commitments with respect to a Non-Extending Lender, such replacement Lender shall have agreed to the applicable Extension and (iii) in the case of any such replacement as a result of the Borrower having become obligated to pay amounts described in Sections 3.01 or 3.05, such replacement would eliminate or reduce payments pursuant to Sections 3.01 or 3.05, as applicable, in the future. Any Lender being replaced pursuant to this Section 3.08(a) shall (i) execute and deliver an Assignment and Assumption with respect to such Lender’s Commitment and outstanding Loans and participations in L/C Obligations and (ii) deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (for return to the Borrower). Pursuant to such Assignment and Assumption, (A) the assignee Lender shall acquire all or a portion, as applicable, of the assigning Lender’s Commitment and outstanding Loans and participations in L/C Obligations, (B) all Obligations relating to the Loans and participations (and the amount of all accrued interest, fees and premiums in respect thereof) so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such Assignment and Assumption and (C) upon such payment and, if so requested by the assignee Lender, the assigning Lender shall deliver to the assignee Lender the applicable Note or Notes executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender. In connection with any such replacement, if any such Replaceable Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such replacement within two (2) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption to such Replaceable Lender, then such Replaceable Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Replaceable Lender. In connection with the replacement of any Lender pursuant to this Section 3.08(a), the Borrower shall pay to such Lender such amounts as may be required pursuant to Section 3.06.



(b) Notwithstanding anything to the contrary contained above, (i) any Lender that acts as an L/C Issuer may not be replaced hereunder at any time that it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such L/C Issuer (including the furnishing of a backstop standby letter of credit in form and substance and issued by an issuer reasonably satisfactory to such L/C Issuer or the depositing of Cash Collateral into a cash collateral account in amounts and pursuant to arrangements consistent with the requirements of Section 2.16) have been made with respect to such outstanding Letter of Credit and (ii) the Lender that acts as the Administrative Agent may not be replaced hereunder in its capacity as the Administrative Agent or Collateral Agent except in accordance with the terms of Section 9.09.

(c) In the event that (i) the Borrower or the Administrative Agent has requested the Lenders to consent to a waiver of any provisions of the Loan Documents or to agree to any amendment or other modification thereto, (ii) the waiver, amendment or modification in question requires the agreement of all affected Lenders in accordance with the terms of Section 10.01 or all the Lenders with respect to a certain class of the Loans and (iii) the Required Lenders or Majority Lenders of the applicable class, as applicable, have agreed to such waiver, amendment or modification, then any Lender who does not agree to such waiver, amendment or modification, in each case, shall be deemed a “**Non-Consenting Lender**”; *provided* that the term “Non-Consenting Lender” shall also include any Lender that (x) rejects (or is deemed to reject) an Extension under Section 2.19, which Extension has been accepted by at least the Majority Lenders of the respective Tranche of Loans whose Loans and/or Commitments are to be extended pursuant to such Extension and (y) does not elect to become a lender in respect of any Specified Refinancing Debt pursuant to Section 2.18.

(d) Survival. All of the Loan Parties’ obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder, any assignment by or replacement of a Lender and any resignation or removal of the Administrative Agent.

#### ARTICLE IV

#### CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01 Conditions to the Initial Credit Extension on the Closing Date. The obligation of each Lender to make its initial Credit Extension hereunder on the Closing Date is subject to satisfaction of each of the following conditions precedent, except as may be waived or otherwise agreed between the Borrower and the Lenders:

(a) The Administrative Agent shall have received all of the following, subject to Section 6.16, each of which shall be originals or facsimiles or “pdf” files unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, as applicable, each dated as of the Closing Date (or, in the case of certificates of governmental officials, as of a recent date before the Closing Date), and each accompanied by their respective required schedules and other attachments (and set forth thereon shall be all required information with respect to the Borrower and its Subsidiaries, after giving effect to the Transactions occurring on or before such date):

- (i) an executed counterpart of this Agreement from the Borrower;

- (ii) the Guaranty, duly executed by the Borrower and each Guarantor;
- (iii) the Intercompany Subordination Agreement;
- (iv) the Perfection Certificate;
- (v) the Security Agreement, duly executed by the Borrower and each Guarantor, together with:

(A) subject to Section 6.16, to the extent required to be pledged under the terms of the Security Agreement, certificates, if any, representing the Equity Interests in each Wholly Owned Subsidiary other than Immaterial Subsidiaries (and other than to the extent that such Equity Interests constitute Excluded Property), accompanied by undated stock powers executed in blank (or stock transfer forms, as applicable) and instruments evidencing the Pledged Debt (as defined in the Security Agreement) indorsed in blank (or instrument of transfer, as applicable);

(B) copies of proper financing statements, filed or duly prepared for filing under the Uniform Commercial Code in all applicable United States jurisdictions that the Collateral Agent may deem reasonably necessary in order to perfect and protect the Liens on assets of each Loan Party created under the Security Agreement, covering the Collateral described in the Security Agreement;

(C) the results of the Uniform Commercial Code (or equivalent) filings, intellectual property lien searches, and tax and judgment lien searches made with respect to the Loan Parties in the jurisdictions contemplated by the Perfection Certificate and copies of the financing statements (or similar documents) disclosed by such search and evidence reasonably satisfactory to the Administrative Agent that the liens indicated by such financing statements (or similar documents) are permitted by this Agreement;

(D) subject to Section 6.16, insurance certificates and endorsements with respect to the insurance policies contemplated by Section 6.07, naming the Collateral Agent as additional insured or loss payee, as applicable; and

(E) all other documents and instruments required to create and perfect the Collateral Agent's security interests in the Collateral shall have been executed by each Loan Party, as applicable, and filed or delivered to the Collateral Agent and, if applicable, shall be in proper form for filing in accordance with applicable Law;

(vi) an Intellectual Property Security Agreement, duly executed by the Collateral Agent and each Loan Party that owns intellectual property that is required to be pledged in accordance with the Security Agreement;

(vii) such customary documents and certifications (including Organization Documents and, if applicable, good standing certificates or certificates of status) as the Administrative Agent may reasonably require to evidence (A) the identity, authority and capacity of each Responsible Officer of the Loan Parties acting as such in connection with this Agreement and the other Loan Documents and (B) that each Loan Party is duly organized or formed, and that each of them is validly existing and, to the extent applicable, in good standing, except to the extent that failure to be so qualified could not reasonably be expected to have a Material Adverse Effect;

(viii) an opinion of (A) Wachtell, Lipton, Rosen & Katz, special New York counsel to the Borrower and (B) Gordon Rees Scully Mansukhani, local counsel to the Borrower, in each case in form and substance reasonably satisfactory to the Administrative Agent;

(ix) a solvency certificate executed by a senior financial officer (or an officer serving the equivalent function) of the Borrower (after giving effect to the Transactions occurring on or before the Closing Date) substantially in the form attached hereto as Exhibit J;

(x) a Note executed by the Borrower in favor of each Lender requesting a Note at least three (3) Business Days prior to the Closing Date;

(xi) a Committed Loan Notice and a Letter of Credit Application, if applicable, in each case relating to the initial Credit Extension to be made on the Closing Date; and

(xii) a certificate of a Responsible Officer of the Borrower certifying that the conditions set forth in Sections 4.01(b), (d) and (e) have been satisfied.

(b) Since March 31, 2023, a Material Adverse Effect shall not have occurred.

(c) The Borrower shall have provided at least four (4) Business Days prior to the Closing Date (x) all documentation and other information about the Borrower and the Guarantors as has been reasonably requested in writing at least ten (10) Business Days prior to the Closing Date by the Administrative Agent or any Lender that the Administrative Agent or such Lender reasonably determines is required by regulatory authorities under applicable “know your customer” requirements and applicable anti-money-laundering laws, including the PATRIOT Act and (y) if the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Borrower shall have delivered to each Lender that so requests a Beneficial Ownership Certification in relation to the Borrower.

(d) The representations and warranties of the Loan Parties contained in Article V or any other Loan Document shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the Closing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date.

(e) No Default or Event of Default shall have occurred and be continuing or would result from the Transactions contemplated to occur on the Closing Date.

(f) All fees required to be paid on the Closing Date pursuant to the Fee Letter and the reasonable and documented out-of-pocket expenses required to be paid on the Closing Date pursuant to the Engagement Letter, to the extent such expenses are invoiced at least three (3) Business Days prior to the Closing Date (or such later date as the Borrower may reasonably agree) shall, upon the initial borrowing hereunder, have been paid or shall be paid substantially concurrently with the initial funding under this Agreement (which amounts may, at the Borrower’s option, be offset against the proceeds of the Initial Term Loans or the proceeds of the funding of the Initial Revolving Credit Commitments).

(g) The Administrative Agent shall have received (i) audited consolidated financial statements of the Borrower for the two most recent fiscal years ended at least 60 days prior to the Closing Date (which the Administrative Agent acknowledges, with respect to the 2021 and 2022 fiscal years, have been received) and (ii) unaudited interim consolidated financial statements of the Borrower for each quarterly period (other than the fourth quarter of a fiscal year) ended at least 45 days prior to the Closing Date that is subsequent to the date of the latest financial statements delivered pursuant to the preceding clause (i).

(h) The Borrower shall have issued the 7.750% Notes prior to, or substantially concurrently with, the initial Credit Extension hereunder on the Closing Date.

Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender as of the Closing Date shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender prior to the Closing Date specifying its objection thereto.

Section 4.02 Conditions to All Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than on the Closing Date, or with respect to a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of SOFR Loans) is subject to the satisfaction or due waiver in accordance with Section 10.01 of the following conditions precedent (subject to Section 1.02(i)):

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent financial statements furnished pursuant to Sections 6.01(a) and (b), respectively, prior to such proposed Credit Extension.

(b) No Default or Event of Default shall exist at the time of or immediately after giving effect to such proposed Credit Extension.

(c) The Administrative Agent and, if applicable, the L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants, in each case after giving effect to the Transactions occurring on or before such date, to the Administrative Agent, Collateral Agent and the Lenders on the Closing Date and on each other date thereafter on which a Credit Extension is made, that:

Section 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of the Restricted Subsidiaries (subject, in the case of clause (c), to Section 5.03) (a) is a Person duly organized, formed or incorporated, amalgamated or continued, validly existing and in good standing (to the extent such concept is applicable in the relevant jurisdiction) under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and is authorized to do business and in good standing (to the extent such concept is applicable in the relevant jurisdiction) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification and (d) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clauses (a) (other than with respect to the Borrower), (b)(i), (b)(ii) (other than with respect to the Borrower), (c) and (d), to the extent that any failure to be so or to have such would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party, are within such Loan Party's corporate or other powers, have been duly authorized by all necessary corporate or other organizational action and do not (a) contravene the terms of any of such Person's Organization Documents or (b) violate any Law, except in the case of this clause (b), to the extent that such violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery, performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents or (c) the perfection or maintenance of the Liens created under the Collateral Documents, except for (w) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties consisting of UCC financing statements and filings in the United States Patent and Trademark Office and the United States Copyright Office, (x) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect, (y) those approvals, consents, exemptions, authorizations or other actions, notices or filings set out in the Collateral Documents and (z) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party (to the extent such concept is applicable in the relevant jurisdiction and subject, in each case, to Section 5.03) that is party thereto. This Agreement and each other Loan Document constitutes, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity).

Section 5.05 Financial Statements; No Material Adverse Effect.

(a) The audited consolidated financial statements of the Borrower (or of any Parent Holding Company or Subsidiary of a Parent Holding Company allowed to be delivered pursuant to the terms hereof) and its Subsidiaries most recently delivered pursuant to Section 6.01(a) fairly present in all material respects the consolidated financial condition of the Borrower (or of any Parent Holding Company or Subsidiary of a Parent Holding Company allowed to be delivered pursuant to the terms hereof) and its Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited consolidated financial statements of the Borrower (or of any Parent Holding Company or Subsidiary of a Parent Holding Company allowed to be delivered pursuant to the terms hereof) and its Subsidiaries most recently delivered pursuant to Section 6.01(b) (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the consolidated financial condition of the Borrower (or of any Parent Holding Company or Subsidiary of a Parent Holding Company allowed to be delivered pursuant to the terms hereof) and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject to the absence of footnotes and to normal and recurring year-end audit adjustments.

(c) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

(d) The Projections prepared by or on behalf of the Borrower or any of its representatives and that have been made available to any Lenders or Agents in writing prior to the Closing Date in connection with the Transactions or the other transactions contemplated hereby were prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed by the Borrower to be reasonable in light of the conditions existing at the time of delivery of such forecasts; it being understood that no assurance can be given that any particular projections will be realized, actual results may vary from such forecasts and that such variations may be material.

Section 5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, against any Restricted Group Member, or against any of their properties or revenues that would reasonably be expected to have a Material Adverse Effect.

Section 5.07 Use of Proceeds. The Borrower:

(a) will only use the proceeds of the Initial Term Loans (i) to fund the Repayment, (ii) to pay the Transaction Costs (including paying any fees, commissions and expenses associated therewith), (iii) to finance any OID and/or upfront fees and (iv) for working capital and other general corporate purposes;

(b) will only use the proceeds of the Revolving Credit Loans made on the Closing Date (i) to fund the Repayment, (ii) to pay the Transaction Costs in an amount not to exceed \$30,000,000, (iii) to finance any OID and/or upfront fees, and (iv) for working capital and other general corporate purposes (other than the Transaction Costs); and

(c) will use the Letters of Credit issued and the proceeds of all other Borrowings made after the Closing Date to finance the working capital needs of any Restricted Group Member, for general corporate purposes of any Restricted Group Member (including acquisitions, restricted payments and other Investments permitted hereunder) and/or for any other purpose not prohibited by this Agreement.

Section 5.08 Ownership of Property; Liens. Each Loan Party and each of the Restricted Subsidiaries has fee simple or other comparable valid title to, or leasehold interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens not prohibited by Section 7.02, except where the failure to have such title or interests would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the use or operation of any real property necessary for the ordinary conduct of the Borrower's business, taken as a whole.

Section 5.09 Environmental Compliance. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) The Restricted Group and their respective operations and properties are in compliance with all applicable Environmental Laws and Environmental Permits and none of the Restricted Group are subject to any Environmental Liability.

(b) (i) None of the properties currently or, to the knowledge of the Borrower, formerly owned or operated by any Restricted Group Member is listed or, to the knowledge of the Borrower, proposed for listing on the NPL or on the SEMS or any analogous foreign, state, provincial, territorial or local list, (ii) there is no asbestos or asbestos-containing material on any property currently owned or operated by any Restricted Group Member requiring investigation, remediation, mitigation, removal, or assessment, or other response, remedial or corrective action, pursuant to any Environmental Law and (iii) Hazardous Materials have not been Released and there exists no threat of Release of Hazardous Materials on any property currently or, to the knowledge of the Borrower, formerly owned or operated by any Restricted Group Member, except for such Releases or threats of Releases that were in compliance with, or would not reasonably be expected to give rise to liability of any Restricted Group Member under any Environmental Law.

(c) None of the Restricted Group is undertaking, either individually or together with other potentially responsible parties, any investigation, remediation, mitigation, removal, assessment or remedial, response or corrective action relating to any actual or threatened Release of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law.

(d) All Hazardous Materials Released, generated, used, treated, handled or stored at, or transported to or from, any property currently or, to the knowledge of the Borrower, formerly owned or operated by any Restricted Group Member have been disposed of in a manner that would not reasonably be expected to result in liability to any Restricted Group Member.

(e) None of the Restricted Group has received notice of or is subject to any claim, action, proceeding or suit with respect to any actual or alleged Environmental Liability.

Section 5.10 Taxes. The Restricted Group Members have filed or have caused to be filed all federal, state, local and other Tax returns and reports required to have been filed (taking into account any valid extensions thereof), and have paid all Taxes (including in their capacity as withholding agents) levied or imposed upon them or their properties, income or assets otherwise due and payable, except those (a) which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (b) with respect to which the failure to make such filing or payment would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.11 Employee Benefit Plans.

(a) Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) each Plan is in compliance with the applicable provisions of ERISA, the Code and other applicable federal and state Laws and (ii) each Plan that is intended to be a qualified plan under Section 401(a) of the Code may rely upon an opinion letter for a prototype plan or has received a favorable determination letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter will be submitted to the IRS within the applicable required time period with respect thereto or is currently being processed by the IRS, and to the knowledge of any Loan Party, nothing has occurred that would prevent, or cause the loss of, such tax-qualified status.

(b) Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, each Foreign Plan is in compliance with all requirements of Law applicable thereto and the respective requirements of the governing documents for such plan.

(c) Except as would not reasonably be expected to have a Material Adverse Effect: (i) there are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan and (ii) there has been no “prohibited transaction” within the meaning of Section 4975 of the Code or Section 406 or 407 of ERISA (and not otherwise exempt under Section 408 of ERISA) with respect to any Plan.

(d) Except as would not reasonably be expected to have a Material Adverse Effect: (i) No ERISA Event has occurred and neither any Loan Party nor, to the knowledge of any Loan Party, any ERISA Affiliate is aware of any fact, event or circumstance that would reasonably be expected to constitute or result in an ERISA Event with respect to any Plan, Multiemployer Plan or Foreign Plan, (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Plan, and no waiver of the minimum funding standards under such Pension Funding Rules has been applied for or obtained, (iii) there exists no Unfunded Pension Liability, (iv) as of the most recent valuation date for any Plan, the present value of all accrued benefits under such Plan (based on the actuarial assumptions used to fund such Plan) did not exceed the value of the assets of such Plan allocable to such accrued benefits, (v) neither any Loan Party nor, to the knowledge of any Loan Party, any ERISA Affiliate knows of any facts or circumstances that would reasonably be expected to cause the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) for any Plan, if applicable, to drop below 80.0% as of the most recent valuation date, (vi) neither any Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid, (vii) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA and (viii) no Plan has been terminated by the plan administrator thereof or by the PBGC and no event or circumstance has occurred or exists that would reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Plan or Multiemployer Plan.

Section 5.12 Subsidiaries: Capital Stock. As of the Closing Date there are no Restricted Subsidiaries other than those specifically disclosed in Schedule 5.12, and all of the outstanding Capital Stock in such Restricted Subsidiaries that are owned by a Loan Party have been validly issued, are fully paid and non-assessable (other than for those Restricted Subsidiaries that are limited liability companies and limited partnerships and to the extent such concepts are not applicable in the relevant jurisdiction) and are owned free and clear of all Liens except for Permitted Liens. As of the Closing Date, each Subsidiary of the Borrower (other than any Excluded Subsidiaries) is listed on Schedule 5.12.

Section 5.13 Margin Regulations: Investment Company Act.

(a) None of the Loan Parties is engaged, nor will any such Loan Party engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock. Neither the making of any Credit Extension hereunder nor the use of proceeds thereof will violate any regulations of the FRB, including the provisions of Regulations T, U or X of the FRB. No proceeds of any Borrowings and no Letters of Credit will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock; *provided* that this sentence shall not be included in any representation or warranty in connection with the establishment of any New Loan Commitments or the incurrence of New Term Loans unless otherwise agreed by the Borrower and the applicable lenders under any such facility.



(b) None of the Loan Parties is, or is required to be, registered as an “investment company” under the Investment Company Act of 1940, as amended.

Section 5.14 Disclosure. As of the Closing Date, no report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, pro forma financial information and information of a general economic or industry nature) to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished), when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading; *provided* that, with respect to projected and pro forma financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation and delivery; it being understood that actual results may vary from such forecasts and that such variances may be material. As of the Closing Date, in relation to the Initial Term Loans incurred by the Borrower on such date, the information included in the Beneficial Ownership Certification, if applicable, is, to the knowledge of the Borrower, true and correct in all respects.

Section 5.15 Compliance with Laws. The Borrower and each Restricted Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 5.16 Intellectual Property; Licenses, Etc. To the knowledge of the Borrower, the Borrower and each Guarantor owns, licenses or possesses the right to use, all of the trademarks, service marks, trade names, copyrights, patents and other intellectual property rights (collectively, “**IP Rights**”) that are necessary for the operation of its respective business, as currently conducted, except to the extent such failure to own, license or possess, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and *provided* that the foregoing shall not be deemed to constitute a representation that the Borrower and the Guarantors do not infringe or violate the IP Rights held by any other Person. Set forth on Schedule 5.16 is a complete and accurate list of all material registrations or applications for registration in the United States Patent and Trademark Office or the United States Copyright Office of patents, trademarks, and copyrights owned or, in the case of copyrights, exclusively licensed by the Borrower and Guarantors as of the Closing Date. To the knowledge of the Borrower, the conduct of the business of the Borrower or Guarantors as currently conducted does not infringe upon or violate any IP Rights held by any other Person, except for such infringements and violations which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and no claim or litigation alleging any such infringement or violation is pending or, to the knowledge of the Borrower, threatened in writing, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 5.17 Solvency. On the Closing Date, after giving pro forma effect to the Transactions occurring on or before the Spin-Off Date, including the incurrence of indebtedness and obligations being incurred on or before the Spin-Off Date in connection with this Agreement and the Transactions occurring on or before the Spin-Off Date, the Borrower and its Restricted Subsidiaries, on a consolidated basis, are Solvent.

Section 5.18 Perfection, Etc. Each Collateral Document delivered pursuant to this Agreement will, upon execution and delivery thereof, be effective to create in favor of the Collateral Agent for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, the Collateral described therein to the extent intended to be created thereby, except as to enforcement, as may be limited by applicable domestic or foreign bankruptcy, winding-up, insolvency, fraudulent conveyance, reorganization (by way of voluntary arrangement, schemes of arrangements or otherwise), moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and (a) when financing statements and other filings in the appropriate form are filed or registered, as applicable, in the offices of the Secretary of State of each Loan Party's jurisdiction of organization or formation and applicable documents are filed and recorded as applicable in the United States Copyright Office or the United States Patent and Trademark Office and (b) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent possession or control by the Collateral Agent is required by the applicable Collateral Document) the Liens created by the Collateral Documents shall constitute fully perfected Liens and, solely with respect to Equity Interests (other than with respect to Equity Interests constituting Excluded Property), fully perfected Liens (subject to no other Liens other than Permitted Liens), in each case, so far as possible under relevant law on, and security interests in (to the extent intended to be created thereby and required to be perfected under the Loan Documents), all right, title and interest of the grantors in such Collateral in each case free and clear of any Liens other than Liens permitted hereunder.

Section 5.19 Sanctions: OFAC.

(a) Sanctions Laws and Regulations. The Borrower and each of its Subsidiaries is (i) in compliance with applicable Sanctions Laws and Regulations and (ii) in compliance, in all material respects, with applicable anti-money laundering laws and regulations. No Borrowing or Letter of Credit, or use of proceeds therefrom, will violate or result in the violation of any Sanctions Laws and Regulations by any party hereto.

(b) OFAC. None of (i) the Borrower or any other Loan Party and (ii) the Non-Loan Party Subsidiaries or any director, officer or, to the knowledge of the Borrower, manager, agent or employee of the Borrower or any of their respective Restricted Subsidiaries, in each case, is a Sanctioned Person. The Borrower will not directly or indirectly use the proceeds of the Loans or otherwise make available such proceeds to any Person, (x) for the purpose of financing activities or transactions of or with any Sanctioned Person, or dealings or investments in or with any Sanctioned Country or (y) in any manner that would constitute or give rise to a violation of Sanctions Laws and Regulations by any party hereto.

Section 5.20 Anti-Corruption Laws. No part of the proceeds of any Loan will, directly or, to the knowledge of the Borrower, indirectly, be used for any improper payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, or any other party (if applicable) in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or any other similar law relating to corruption or bribery that applies to any Loan Party or any of its Subsidiaries (the "**Anti-Corruption Laws**"). Each of the Borrower, each of its Subsidiaries and their respective officers, directors and, to the knowledge of the Borrower, employees and agents are in compliance in all material respects with Anti-Corruption Laws.

Section 5.21 No Default. No Default or Event of Default has occurred or is continuing under this Agreement.

ARTICLE VI

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than any Remaining Obligations) hereunder shall remain unpaid or unsatisfied, or any Letter of Credit remains outstanding (other than any Remaining Obligations), the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each Restricted Subsidiary:

Section 6.01 Financial Statements. Deliver to the Administrative Agent for further distribution to each Lender:

(a) within 90 days after the end of each fiscal year (or 120 days after the fiscal year ending December 31, 2023) (or if such day is not a Business Day, on the next succeeding Business Day) of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case, starting with the fiscal year ending December 31, 2024, in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of any independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any qualification or exception as to "going concern" or scope of the audit (other than any such qualification, exception or explanatory paragraph that is expressly solely with respect to, or expressly resulting solely from, (i) an upcoming maturity date under the Facilities, the 7.750% Notes or other Indebtedness that is scheduled to occur within one year from the time such report and opinion are delivered, (ii) any actual or potential inability to satisfy a financial maintenance covenant, including the Financial Covenants, on a future date or in a future period or (iii) the activities, operations, financial results, assets or liabilities of any Unrestricted Subsidiary (but which may contain an explanatory note or emphasis of matter paragraph));

(b) within 45 days (or 60 days with respect to each of the first three of such fiscal quarters for which quarterly financial statements are required to be delivered pursuant to this Section 6.01(b)) after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (or if such day is not a Business Day, the next succeeding Business Day), starting with the first fiscal quarter ended after the Closing Date, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations and cash flows for such fiscal quarter and for the portion of the fiscal year then ended, setting forth in each case, starting with the fiscal quarter ending June 30, 2024, in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) [reserved]; and

(d) if the Borrower has designated any of its Subsidiaries as an Unrestricted Subsidiary, and such Unrestricted Subsidiary would, if taken as a whole with all other Unrestricted Subsidiaries, constitute a Material Subsidiary, then the annual and quarterly information required by Sections 6.01(a) and (b) above shall include a presentation, either on the face of the financial statements or in footnotes thereto, to reflect the adjustments which would be necessary to eliminate the accounts of Unrestricted Subsidiaries from such financial statements (and which presentation, for the avoidance of doubt, need not be audited).

Notwithstanding the foregoing:

(A) the obligations in clauses (a), (b) and (c) of this Section 6.01 may be satisfied by furnishing, at the Borrower's option, the applicable financial statements or, as applicable, forecasts of (I) any successor of the Borrower, (II) any Wholly Owned Restricted Subsidiary of the Borrower that, together with its consolidated Restricted Subsidiaries, constitutes substantially all of the assets of the Borrower and its combined and consolidated Subsidiaries (a "**Qualified Reporting Subsidiary**") or (III) any Parent Holding Company; *provided* that to the extent such information relates to a Qualified Reporting Subsidiary or a Parent Holding Company, such information is accompanied by customary consolidating information (which may be unaudited) that explains in reasonable detail the material differences between the information relating to such Qualified Reporting Subsidiary or any Parent Holding Company, on the one hand, and the information relating to the Restricted Group on a standalone basis, on the other hand, (B) (i) in the event that the Borrower (or any Parent Holding Company or Subsidiary of a Parent Holding Company allowed to be delivered pursuant to the terms hereof) delivers to the Administrative Agent an Annual Report on Form 10-K for any fiscal year (or similar filing in the applicable jurisdiction or other reports or filings which contain the information contemplated herein), as filed with the SEC or in such form as would have been suitable for filing with the SEC (or similar governing body in the applicable jurisdiction, in each case), within the time frames set forth in clause (a) above, such Form 10-K shall satisfy all requirements of clause (a) of this Section 6.01 with respect to such fiscal year to the extent that it contains the information and report and opinion required by such clause (a) and such report and opinion does not contain any qualification or exception as to "going concern" or the scope of the audit (other than any such qualification, exception or explanatory paragraph that is expressly permitted to be contained therein under clause (a) of this Section 6.01) (but which may contain an explanatory note or emphasis of matter paragraph) and (ii) in the event that the Borrower (or any Parent Holding Company or Subsidiary of a Parent Holding Company allowed to be delivered pursuant to the terms hereof) delivers to the Administrative Agent a Quarterly Report on Form 10-Q for any fiscal quarter (or similar filing in the applicable jurisdiction or other reports or filings which contain the information contemplated herein), as filed with the SEC or in such form as would have been suitable for filing with the SEC (or similar governing body in the applicable jurisdiction, in each case), within the time frames set forth in clause (b) above, such Form 10-Q shall satisfy all requirements of clause (b) of this Section 6.01 with respect to such fiscal quarter to the extent that it contains the information required by such clause (b), and

(B) any financial statements required to be delivered pursuant to Sections 6.01(a) and 6.01(b) shall not be required to contain:

- (i) purchase accounting adjustments relating to the Transactions or any other transactions permitted hereunder to the extent it is not practicable to include any such adjustments in such financial statements,
- (ii) segment reporting and disclosure (including any required by FASB Accounting Standards Codification Topic 280),
- (iii) separate financial statements or other information contemplated by Rules 3-05, 3-09, 3-10, 3-16, Rule 13-01 and Rule 13-02 or 4-08 of Regulation S-X (or any successor provisions) or any schedules required by Regulation S-X,
- (iv) information required by Regulation G under the Exchange Act or Item 10, Item 302, Item 402 or Item 601 of Regulation S-K (or any successor provision),

- (v) XBRL exhibits,
- (vi) earnings per share information,
- (vii) information regarding executive compensation and related party disclosure related to SEC Release Nos. 33-8732A, 34-54302A and IC-27444A,
- (viii) other information customarily excluded from an offering circular, including any information that is not otherwise of the type and form currently included in the applicable offering memoranda relating to the 7.750% Notes, and
- (ix) following the consummation of an acquisition in the applicable period or the period thereafter, the obligations in clauses (a) and (b) of this Section 6.01 with respect to the target of such acquisition may be satisfied by, at the option of the Borrower, (A) furnishing management accounts for the target of such acquisition or (B) omitting the target of such acquisition from the required financial statements of the Borrower and its Subsidiaries for the applicable period and the period thereafter.

Section 6.02 Certificates; Other Information. Deliver to the Administrative Agent:

(a) no later than five (5) Business Days after the delivery of (i) the financial statements referred to in Sections 6.01(a) and (b) or (ii) an Annual Report on Form 10-K or a Quarterly Report on Form 10-Q (in either case, delivered pursuant to the last paragraph of Section 6.01), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower (which delivery may, unless the Administrative Agent or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes);

(b) promptly after the same are available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any Governmental Authority that may be substituted therefor, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(c) [reserved];

(d) promptly after the receipt thereof by any Loan Party or any of its Subsidiaries, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any material investigation or other material inquiry by such agency regarding financial or other operational results of any Loan Party or any of its Subsidiaries;

(e) promptly after the assertion or occurrence thereof, notice of any action arising under any Environmental Law against any Loan Party or any of its Subsidiaries, or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit, in each case that would reasonably be expected to have a Material Adverse Effect;

(f) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), a report supplementing Schedule 5.12 hereto to the extent necessary so that the related representation and warranty would be true and correct if made as of the date of such Compliance Certificate; and

(g) promptly, such additional information regarding the business, legal, financial or corporate affairs of any Loan Party or any Restricted Subsidiary thereof as the Administrative Agent or, following the occurrence and continuation of any Event of Default, any Lender through the Administrative Agent may from time to time reasonably request, except to the extent that the provision of any such information would breach any law or contract to which the Borrower or a Subsidiary is a party.

Documents required to be delivered pursuant to Sections 6.01(a), (b), (c) or (d) or Section 6.02(b) or (c) (or to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are posted on the Borrower's (or any Parent Holding Company or Subsidiary of a Parent Holding Company allowed to be delivered pursuant to the terms hereof) behalf on the Platform or another relevant internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent). The Administrative Agent shall have no responsibility to monitor compliance by the Borrower, and each Lender shall be solely responsible for timely accessing posted documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks/IntraAgency, SyndTrak or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who wish only to receive information that (i) is publicly available, (ii) is not material with respect to the Restricted Group or its respective securities for purposes of applicable foreign, United States federal and state securities laws with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market related activities with respect to such Persons' securities or (iii) constitutes information of a type that would be publicly available if the Restricted Group were public reporting companies (as determined by the Borrower in good faith) (such information, "**Public Side Information**"). Notwithstanding anything herein to the contrary, the Administrative Agent may treat financial statements delivered pursuant to Sections 6.01(a) and (b) and Compliance Certificates delivered pursuant to Section 6.02(a) as being deemed to be suitable for posting on a portion of the Platform designated "Public Side Information".

Section 6.03 Notices. Promptly, after a Responsible Officer of any Loan Party has obtained knowledge thereof, notify the Administrative Agent:

(a) of the occurrence of any Default or Event of Default;

(b) of the institution of any material litigation not previously disclosed by the Borrower to the Administrative Agent, or any material development in any material litigation that is reasonably likely to be adversely determined, and would, in either case, if adversely determined be reasonably expected to have a Material Adverse Effect; and

(c) (i) of the occurrence of any ERISA Event, where there is any reasonable likelihood of the imposition of liability on any Loan Party as a result thereof that would be reasonably expected to have a Material Adverse Effect; and (ii) promptly after any reasonable request therefor by the Administrative Agent or any Lender, provide copies of (A) any documents described in Section 101(k)(1) of ERISA that the Borrower or any ERISA Affiliate has received with respect to any Multiemployer Plan with respect to which there is any reasonable likelihood of a Material Adverse Effect or (B) any notices described in Section 101(l)(1) of ERISA that the Borrower or any ERISA Affiliate has received with respect to any Multiemployer Plan with respect to which there is any reasonable likelihood of the imposition of liability that would reasonably be expected to have a Material Adverse Effect; *provided, however*, that if the Borrower has not requested or received such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the Borrower or ERISA Affiliate shall promptly make a request for such documents and notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Taxes. Pay, discharge or otherwise satisfy as the same shall become due and payable, all Taxes (including in its capacity as withholding agent) imposed upon it or its income, profits, properties or other assets except those (a) which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves in accordance with GAAP are being maintained by any Restricted Group Member or (b) with respect to which the failure to pay, discharge or satisfy the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction not prohibited by Sections 7.03 or 7.04, (b) take all reasonable action to maintain all rights, privileges (including its good standing, if such concept is applicable in its jurisdiction of organization), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect or as otherwise permitted hereunder, and (c) use commercially reasonable efforts to preserve or renew all of its registered copyrights, patents, trademarks, trade names and service marks, the non-preservation of which would reasonably be expected to have a Material Adverse Effect or as otherwise permitted hereunder; *provided* that nothing in this Section 6.05 shall require the preservation, renewal or maintenance of, or prevent the abandonment by, any Restricted Group Member of any registered copyrights, patents, trademarks, trade names and service marks that any Restricted Group Member reasonably determines is not useful to its business or is no longer commercially desirable.

Section 6.06 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its tangible properties and equipment that are necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted.

Section 6.07 Maintenance of Insurance. Except if the failure to do so would not reasonably be expected to have a Material Adverse Effect, maintain in full force and effect, with insurance companies that the Borrower believes (in the good faith judgment of the Borrower) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which the Borrower believes (in the good faith judgment of management of the Borrower) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as are usually insured against in the same general area by companies engaged in businesses similar to those engaged by the Restricted Group. Subject to Section 6.16, the Borrower shall use commercially reasonable efforts to ensure that at all times from and after the Closing Date the Collateral Agent, for the benefit of the Secured Parties, shall be named as an additional insured with respect to liability policies (other than directors and officers policies and workers compensation) maintained by the Borrower, the Borrower and each Guarantor and the Collateral Agent, for the benefit of the Secured Parties, shall be named as loss payee and mortgagee with respect to the property insurance maintained by the Borrower and each Guarantor; *provided* that, unless an Event of Default shall have occurred and be continuing subject to Section 2.05, (A) all proceeds from insurance policies shall be paid to the Borrower or applicable Guarantor, (B) to the extent the Collateral Agent receives any proceeds, the Collateral Agent shall turn over to the Borrower any amounts received by it as an additional insured or loss payee under any property insurance maintained by the Borrower and its Subsidiaries and (C) the Collateral Agent agrees that the Borrower and/or its Subsidiaries shall have the sole right to adjust or settle any claims under such insurance.

Section 6.08 Compliance with Laws. Comply with all applicable Laws (including, without limitation, ERISA, the PATRIOT Act, Anti-Corruption Laws and Sanctions Laws and Regulations) in all material respects and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except if the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 6.09 Books and Records. Maintain proper books of record and account, in a manner to allow financial statements to be prepared in all material respects in conformity with GAAP consistently applied in respect of all financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as applicable (it being understood and agreed that Non-U.S. Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization).

Section 6.10 Inspection Rights. Permit representatives of the Administrative Agent and, during the continuance of any Event of Default, of each Lender to visit and inspect any of its properties (subject to the rights of lessees or sublessees thereof and subject to any restrictions or limitations in the applicable lease, sublease or other written occupancy arrangement pursuant to which any Restricted Group Member is a party), to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, managers, officers, and independent public accountants (subject to such accountants' customary policies and procedures), at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance written notice to the Borrower; *provided* that, excluding any such visits and inspections during the continuation of an Event of Default, (i) only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 6.10, (ii) the Administrative Agent shall not exercise such rights more often than one time during any calendar year and (iii) such exercise shall be at the Borrower's reasonable expense; *provided, further*, that when an Event of Default is continuing the Administrative Agent (or any of its respective representatives) may do any of the foregoing at the reasonable expense of the Borrower at any time and from time to time during normal business hours and upon reasonable advance written notice. The Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's accountants. Notwithstanding anything to the contrary in this Section 6.10, none of the Restricted Group will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product.

Section 6.11 Use of Proceeds. The Borrower will use the Letters of Credit and the proceeds of the Loans only as provided in Sections 5.07, 5.13(a), 5.19 and 5.20.



Section 6.12 Covenant to Guarantee Obligations and Give Security. (a) Upon the formation or acquisition of any new Wholly Owned Subsidiary (including, without limitation, pursuant to an LLC Division or LP Division, or the creation of new Series LLC or Series LP) by any Loan Party after the Closing Date (*provided* that each of (x) any Subsidiary Redesignation resulting in an Unrestricted Subsidiary becoming a Restricted Subsidiary and (y) any Excluded Subsidiary ceasing to be an Excluded Subsidiary but remaining a Restricted Subsidiary shall be deemed to constitute the acquisition of a Restricted Subsidiary for all purposes of this Section 6.12) and/or (b) upon the acquisition of any property (other than Excluded Property) by any Loan Party, which property, in the reasonable judgment of the Administrative Agent, is not already subject to a perfected Lien in favor of the Collateral Agent for the benefit of the Secured Parties (and where such a perfected Lien would be required in accordance with the terms of the Collateral Documents or other Loan Documents), the Borrower shall, at the Borrower's expense:

- (1) in connection with such formation or acquisition of a Subsidiary pursuant to Section 6.12(a), within the later of (x) 90 days after such formation or acquisition or (y) the date of delivery of the next Compliance Certificate in accordance with Section 6.02(a) after such formation or acquisition (or, in each case, such longer period as the Collateral Agent may agree in its reasonable discretion), (A) cause each such Subsidiary that is not an Excluded Subsidiary to duly execute and deliver to the Collateral Agent and the Administrative Agent a Guaranty Supplement, in form and substance reasonably satisfactory to the Administrative Agent, and a joinder or supplement to the applicable Collateral Documents and (B) (if not already so delivered) deliver certificates (or the foreign equivalent thereof, as applicable) representing the Pledged Interests of each such Subsidiary (if any) held by the applicable Loan Party accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and instruments evidencing the Pledged Debt owing by such Subsidiary to any Loan Party indorsed in blank to the Collateral Agent, together with, if requested by the Collateral Agent, supplements to the Security Agreement; *provided* that no Excluded Property shall be required to be pledged as Collateral,
- (2) in connection with such acquisition of any property pursuant to Section 6.12(b), within the later of (x) 90 days after such acquisition or (y) the date of delivery of the next Compliance Certificate in accordance with Section 6.02(a) after such acquisition (or, in each case, such longer period as the Collateral Agent may agree in its reasonable discretion), (A) cause each such Loan Party to duly execute and deliver to the Collateral Agent one or more Security Agreement Supplements, Intellectual Property Security Agreement Supplements and other Collateral Documents, in form and substance reasonably satisfactory to the Collateral Agent (consistent, to the extent applicable, with the Security Agreement, the Intellectual Property Security Agreement and the other Collateral Documents (and Section 6.14)), securing payment of all the Obligations of the applicable Loan Party under the Loan Documents and establishing Liens on all such properties or property; *provided* that such properties or property shall not be required to be pledged as Collateral, and no Security Agreement Supplements, Intellectual Property Security Agreement Supplements or other Collateral Documents shall be required to be delivered in respect thereof, to the extent that any such properties or property constitute Excluded Property, and
- (3) within the later of (x) 90 days after such formation or acquisition or (y) the date of delivery of the next Compliance Certificate in accordance with Section 6.02(a) after such formation or acquisition (or, in each case, such longer period as the Collateral Agent may agree in its reasonable discretion), take, and cause such Subsidiary that is not an Excluded Subsidiary and each applicable Loan Party to take, whatever action (including the filing of UCC financing statements, the giving of notices and delivery of stock and membership interest certificates or foreign equivalents representing the applicable Capital Stock) as may be necessary or advisable in the reasonable opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it), subject to Section 5.03, valid and subsisting Liens on the properties purported to be subject to the Security Agreement Supplements, Intellectual Property Security Agreement Supplements, supplements to other Collateral Documents and security agreements delivered pursuant to this Section 6.12, in each case to the extent required under the Loan Documents and subject to the Perfection Exceptions, enforceable against all third parties in accordance with their terms, and

- (4) at any time and from time to time, promptly execute and deliver any and all further instruments and documents and take all such other action as the Collateral Agent in its reasonable judgment may deem necessary or desirable in obtaining the full benefits of, or in perfecting and preserving the Liens of, such guaranties, Security Agreement Supplements, Intellectual Property Security Agreement Supplements, Collateral Documents and security agreements, in each case, with respect to guaranteeing and/or securing Obligations consistent with the terms hereof, in each case to the extent required under the Loan Documents and subject to the Perfection Exceptions.

For the avoidance of doubt, nothing in this Section 6.12 or in Section 6.14 shall be deemed to require any Restricted Group Member to grant security interests or take steps with respect to perfection thereof to the extent such steps are not required in the Collateral Documents entered into on the Closing Date (or after the Closing Date in accordance with Section 6.16) or to the extent in contravention with the Perfection Exceptions.

Notwithstanding anything to the contrary herein or in any other Loan Document, the Borrower shall have the right, at any time, to designate an Excluded Subsidiary as a Guarantor (and to subsequently release such Guarantee in accordance with Section 9.11(c)); *provided* that, in the case of a designation of a Non-U.S. Subsidiary, the jurisdiction of such Subsidiary shall be reasonably satisfactory to the Administrative Agent, and the Administrative Agent, the Collateral Agent and the Revolving Credit Lenders, as applicable, shall have received a Beneficial Ownership Certification and all other documentation and other information about such Non-U.S. Subsidiary as has been reasonably requested in writing by the Administrative Agent, the Collateral Agent or such Lenders that they reasonably determine is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the PATRIOT Act and Beneficial Ownership Regulation; *provided, further*, that in no circumstance shall an Excluded Subsidiary become a Guarantor unless designated in writing as a Guarantor by the Borrower in its sole discretion.

Section 6.13 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect, (a) comply, and take commercially reasonable efforts to cause all lessees operating or occupying its properties to comply with all Environmental Laws and Environmental Permits; (b) obtain, maintain and renew all applicable Environmental Permits required under Environmental Laws for its operations and properties; and (c) to the extent required under Environmental Laws, conduct any investigation, mitigation, study, sampling and testing, and undertake any cleanup, removal or remedial, corrective or other response action necessary to respond to and remove and clean up all Releases of Hazardous Materials from any of its properties, in accordance with the requirements of applicable Environmental Laws; *provided, however*, that no Restricted Group Member shall be required to undertake any such cleanup, removal, remedial, corrective or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

Section 6.14 Further Assurances.

(a) Promptly upon request by the Administrative Agent, or the Collateral Agent or any Lender through the Administrative Agent, and subject to the limitations described in Section 6.12, (i) correct any material defect or error that may be discovered in any Loan Document or other document or instrument relating to any Collateral or in the execution, acknowledgment, filing or recordation thereof and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or the Collateral Agent or any Lender through the Administrative Agent, may reasonably require from time to time in order to grant, preserve, protect and continue the validity, perfection and priority of the security interests created or intended to be created by the Collateral Documents. Notwithstanding anything to the contrary in any Loan Documents, neither the Borrower nor any other Loan Party shall be required to make any filings or take any other actions to perfect, evidence or create the Lien on and security interest in any intellectual property except for filings in the United States Patent and Trademark Office or the United States Copyright Office and the filing of UCC financing statements, and neither the Borrower nor any other Loan Party shall be required to reimburse the Administrative Agent or the Collateral Agent for any costs incurred in connection with any filings or actions to perfect, evidence or create the Lien on and security interest in any intellectual property other than in connection with such filings in the United States Patent and Trademark Office or the United States Copyright Office and the filing of such UCC financing statements.

(b) Promptly following any request therefor, provide information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” requirements under applicable anti-money-laundering laws, the PATRIOT Act and the Beneficial Ownership Regulation.

Section 6.15 Maintenance of Ratings. Use commercially reasonable efforts to obtain and maintain (but not obtain or maintain a specific rating) (a) a public corporate family rating of the Borrower and a rating of the Facilities, in each case from Moody’s, and (b) a public corporate credit rating of the Borrower and a rating of the Facilities, in each case from S&P (it being understood and agreed that “commercially reasonable efforts” shall in any event include the payment of customary rating agency fees and cooperation with information and data requests by Moody’s and S&P in connection with their ratings process).

Section 6.16 Post-Closing Undertakings. Within the time periods specified on Schedule 6.16 hereto (as each may be extended by the Administrative Agent in its reasonable discretion), complete such undertakings as are set forth on Schedule 6.16 hereto.

Section 6.17 No Change in Line of Business. Not engage in any material lines of business substantially different from those lines of business conducted by the Spinco Business on the Closing Date or any business reasonably related, complementary, synergistic or ancillary thereto or reasonable extensions thereof (or other lines of business which are permitted as Investments).

Section 6.18 Transactions with Affiliates.

(a) Not enter into or conduct any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower (an “**Affiliate Transaction**”) involving value in excess of the greater of (i) \$15,000,000 and (ii) 5.0% of LTM EBITDA unless:

(1) the terms of such Affiliate Transaction, taken as a whole, are not materially less favorable to the Borrower or such Restricted Subsidiary, as applicable, than those that could be obtained in a comparable transaction at the time of such transaction or the execution of the agreement providing for such transaction in arm’s length dealings with a Person who is not such an Affiliate; and

- (2) in the event such Affiliate Transaction involves an aggregate value in excess of the greater of (i) \$45,000,000 and (ii) 15.0% of LTM EBITDA, the terms of such transaction have been approved by a majority of the members of the Board of Directors of the Borrower.

Any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in clause (2) of this paragraph if such Affiliate Transaction is approved by a majority of the Disinterested Directors of the Borrower, if any.

(b) The provisions of the preceding paragraph will not apply to:

- (1) any Restricted Payment or other transaction permitted to be made or undertaken pursuant to Section 7.05 (including Permitted Payments) or any Permitted Investment;
- (2) any issuance, transfer or sale of (a) Capital Stock, options, other equity-related interests or other securities, or other payments, awards or grants in cash, securities or otherwise to any direct or indirect parent of the Borrower or future, current or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower or any of its Subsidiaries or any of its direct or indirect parents and (b) directors' qualifying shares and shares issued to foreign nationals as required under applicable law;
- (3) any Management Advances and any waiver or transaction with respect thereto;
- (4) (a) any transaction between or among the Borrower and any Restricted Subsidiary (or entity that becomes a Restricted Subsidiary as a result of such transaction), or between or among Restricted Subsidiaries and (b) any merger, amalgamation or consolidation with any direct or indirect parent of the Borrower; *provided* that such direct or indirect parent shall have no material liabilities and no material assets other than cash, Cash Equivalents and the Capital Stock of the Borrower and such merger, amalgamation or consolidation is otherwise not prohibited under this Agreement;
- (5) the payment of compensation, fees, costs, reimbursements and expenses to, and indemnities (including under insurance policies) and reimbursements, employment and severance arrangements, and employee benefit and pension expenses provided on behalf of, or for the benefit of, future, current or former employees, directors, officers, managers, contractors, consultants, distributors or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower, any direct or indirect parent thereof or any Restricted Subsidiary (whether directly or indirectly and including through their Controlled Investment Affiliates or Immediate Family Members);
- (6) the entry into and performance of obligations of the Borrower or any of its Restricted Subsidiaries under the terms of any transaction arising out of, and any payments pursuant to or for purposes of funding, any agreement or instrument in effect as of or on the Closing Date, as these agreements and instruments may be amended, modified, supplemented, extended, renewed or refinanced from time to time in accordance with the other terms of this covenant or to the extent not disadvantageous in any material respect in the reasonable determination of the Borrower to the Lenders when taken as a whole as compared to the applicable agreement as in effect on the Closing Date;
- (7) any transaction effected as part of a Qualified Securitization Financing or Receivables Facility, any disposition or acquisition of Securitization Assets, Receivables Assets or related assets in connection with any Qualified Securitization Financing or Receivables Facility;

- (8) transactions with customers, vendors, clients, joint venture partners, suppliers, contractors, distributors or purchasers or sellers of goods or services, in each case in the ordinary course of business or consistent with past practice, which are fair to the Borrower or its Restricted Subsidiaries, in the reasonable determination of the Borrower, or are on terms, taken as a whole, that are not materially less favorable as might reasonably have been obtained at such time from an unaffiliated party;
- (9) any transaction between or among the Borrower or any Restricted Subsidiary (or any entity that becomes a Restricted Subsidiary as a result of such transaction) or joint venture (regardless of the form of legal entity) in which the Borrower or any Subsidiary has invested (and which Subsidiary or joint venture would not be an Affiliate of the Borrower but for the Borrower's or a Subsidiary's ownership of Equity Interests in such joint venture or Subsidiary);
- (10) any issuance, sale or transfer of Capital Stock (other than Disqualified Stock or Designated Preferred Stock) of the Borrower, any direct or indirect parent thereof or any of its Restricted Subsidiaries or options, warrants or other rights to acquire such Capital Stock and the granting of registration and other customary rights (and the performance of the related obligations) in connection therewith or any contribution to capital of the Borrower or any Restricted Subsidiary;
- (11) [reserved];
- (12) [reserved];
- (13) the Transactions and the payment of all fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) related to the Transactions, including Transaction Costs;
- (14) transactions in which the Borrower or any Restricted Subsidiary, as applicable, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 6.18(a)(1);
- (15) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any equityholders, investor rights or similar agreement (including any registration rights agreement or purchase agreements related thereto) to which it is party as of the Closing Date and any similar agreement that it (or any direct or indirect parent of the Borrower) may enter into thereafter; *provided* that the existence of, or the performance by the Borrower or any Restricted Subsidiary (or any direct or indirect parent of the Borrower) of its obligations under any future amendment to any such existing agreement or under any similar agreement entered into after the Closing Date will only be permitted under this clause (15) to the extent that the terms of any such amendment or new agreement are not otherwise, when taken as a whole, more disadvantageous to the Lenders in any material respect in the reasonable determination of the Borrower than those in effect on the Closing Date;

- (16) any purchases by Affiliates of the Borrower of Indebtedness or Disqualified Stock of the Borrower or any of the Restricted Subsidiaries the majority of which Indebtedness or Disqualified Stock is purchased by Persons who are not Affiliates of the Borrower; *provided* that such purchases by Affiliates of the Borrower are on the same terms as such purchases by such Persons who are not Affiliates of the Borrower;
- (17) (i) investments by Affiliates in securities or loans of the Borrower or any of its Restricted Subsidiaries (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Borrower or such Restricted Subsidiary generally to other non-affiliated third party investors on the same or more favorable terms and (ii) payments to Affiliates in respect of securities or loans of the Borrower or any of its Restricted Subsidiaries contemplated in the foregoing subclause (i) or that were acquired from Persons other than the Borrower and its Restricted Subsidiaries, in each case, in accordance with the terms of such securities or loans;
- (18) payments by any direct or indirect parent of the Borrower, the Borrower or its Subsidiaries pursuant to any tax sharing agreements or other agreements in respect of Permitted Tax Amounts among any such direct or indirect parent of the Borrower, the Borrower and/or its Subsidiaries on customary terms to the extent attributable to the ownership or operation of the Borrower and its Subsidiaries;
- (19) payments, Indebtedness and Disqualified Stock (and cancellation of any thereof) of the Borrower and its Restricted Subsidiaries and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower, any of its Subsidiaries or any of its direct or indirect parents pursuant to any management equity plan, stock option plan, phantom equity plan or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement with any such employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) that are, in each case, approved by the Borrower in good faith;
- (20) any management equity plan, stock option plan, phantom equity plan or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement between the Borrower or its Restricted Subsidiaries and any distributor, employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) approved by the reasonable determination of the Borrower or entered into in connection with the Transactions;
- (21) any transition services arrangement, supply arrangement or similar arrangement entered into in connection with or in contemplation of the disposition of assets or Capital Stock in any Restricted Subsidiary permitted under Section 7.04 or entered into with any Business Successor, in each case, that the Borrower determines in good faith is either fair to the Borrower or otherwise on customary terms for such type of arrangements in connection with similar transactions;

- (22) transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the day such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary as described under the definition of “Unrestricted Subsidiary” and pledges of Capital Stock of Unrestricted Subsidiaries;
- (23) (i) any lease entered into between the Borrower or any Restricted Subsidiary, as lessee, and any Affiliate of the Borrower, as lessor and (ii) any operational services or other arrangement entered into between the Borrower or any Restricted Subsidiary and any Affiliate of the Borrower, in each case, which is approved by the reasonable determination of the Borrower;
- (24) intellectual property licenses and research and development agreements in the ordinary course of business or consistent with past practice;
- (25) payments to or from, and transactions with, any Subsidiary or any joint venture in the ordinary course of business or consistent with past practice (including any cash management arrangements or activities related thereto);
- (26) the payment of fees, costs and expenses related to registration rights and indemnities provided to equityholders pursuant to equityholders, investor rights, registration rights or similar agreements;
- (27) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium; and
- (28) Permitted Intercompany Activities, Permitted Tax Restructurings, Intercompany License Agreements and related transactions.

In addition, if the Borrower or any of its Restricted Subsidiaries (i) purchases or otherwise acquires assets or properties from a Person which is not an Affiliate, the purchase or acquisition by an Affiliate of the Borrower of an interest in all or a portion of the assets or properties acquired shall not be deemed an Affiliate Transaction (or cause such purchase or acquisition by the Borrower or such Restricted Subsidiary to be deemed an Affiliate Transaction) or (ii) sells or otherwise disposes of assets or other properties to a Person who is not an Affiliate, the sale or other disposition by an Affiliate of the Borrower of an interest in all or a portion of the assets or properties sold shall not be deemed an Affiliate Transaction (or cause such sale or other disposition by the Borrower or such Restricted Subsidiary to be deemed an Affiliate Transaction).

**ARTICLE VII**  
**NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation (other than any Remaining Obligations) hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (other than any Remaining Obligations), (A) except with respect to Section 7.03 and Section 7.06, the Borrower shall not, nor shall it permit any Restricted Subsidiary to and (B) with respect to Section 7.03 and Section 7.06, the Borrower shall not, nor shall it permit any Guarantor to:

Section 7.01 Indebtedness.

(a) Incur any Indebtedness (including Acquired Indebtedness); *provided* that the Borrower and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness) in an amount not to exceed the Incremental Amount available as of the date of Incurrence (subject to Section 1.02(i)); *provided, however*, that such Indebtedness, other than Extendable Bridge Loans/Interim Debt, has a (i) Stated Maturity that is no earlier than the latest Maturity Date applicable with respect to any then outstanding Term Loans and (ii) a Weighted Average Life to Maturity that is no shorter than the then longest remaining Weighted Average Life to Maturity of any then outstanding Term Loans (*provided* that notwithstanding the foregoing, any such Indebtedness incurred in reliance on an Inside Maturity Basket shall be permitted to have a Stated Maturity earlier than the Maturity Date of and a Weighted Average Life to Maturity that is shorter than any Facilities to which such Inside Maturity Basket applies (it being agreed that no such final Stated Maturity or Weighted Average Life to Maturity shall be less than the final Stated Maturity and remaining Weighted Average Life to Maturity of the Initial Term Loans)) (such Indebtedness Incurred and Disqualified Stock and Preferred Stock issued, “**Ratio Debt**”); *provided, further*, that the aggregate principal amount of Indebtedness (including Acquired Indebtedness) Incurred pursuant to the foregoing by Non-Loan Party Subsidiaries shall not exceed the Non-Loan Party Sublimit as of the date of Incurrence (subject to Section 1.02(i)).

- (b) The provisions of Section 7.01(a) will not prohibit the incurrence of the following Indebtedness (collectively, “Permitted Debt”):
- (1) (w) Indebtedness incurred under the Loan Documents, including any refinancing thereof in accordance with Section 2.18, (x) Credit Agreement Refinancing Debt and any Refinancing Indebtedness in respect thereof (or successive refinancings thereof that each constitute Refinancing Indebtedness), (y) Incremental Equivalent Debt and any Refinancing Indebtedness in respect thereof (or successive refinancings thereof that each constitute Refinancing Indebtedness) and (z) Permitted Debt Exchange Notes;
  - (2) Guarantees by the Borrower or any Restricted Subsidiary of Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations is not prohibited by the terms of this Agreement;
  - (3) Indebtedness of the Borrower to any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary to the Borrower or any Restricted Subsidiary; *provided, however*, that:
    - (a) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being held by a Person other than the Borrower or a Restricted Subsidiary, and
    - (b) any sale or other transfer of any such Indebtedness to a Person other than the Borrower or a Restricted Subsidiary, shall be deemed, in each case, to constitute an incurrence of such Indebtedness by the Borrower or such Restricted Subsidiary, as applicable;
  - (4) Indebtedness represented by (a) the 7.750% Notes (other than any Additional Notes (as defined in the 7.750% Notes Documents)), including any Guarantee thereof, (b) any Indebtedness (other than Indebtedness incurred pursuant to clauses (1) and (4)(a) of this Section 7.01(b)) outstanding on the Closing Date and any Guarantees thereof and, to the extent the outstanding principal amount thereof is in excess of \$10,000,000, listed on Schedule 7.01, (c) Refinancing Indebtedness (including with respect to the 7.750% Notes and any Guarantee thereof) incurred in respect of any Indebtedness described in this clause (4) or clauses (2) or (5) of this Section 7.01(b) or incurred pursuant to Section 7.01(a) and (d) Management Advances;
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- (5) Indebtedness of the Borrower or any Restricted Subsidiary incurred or issued to finance an acquisition or Investment (“**Incurred Acquisition Indebtedness**”) or Acquired Indebtedness; *provided* that such Indebtedness is in an aggregate amount not to exceed (i) in the case of Incurred Acquisition Indebtedness, the Incremental Amount available as of the date of incurrence (*provided* that (A) unsecured Incurred Acquisition Indebtedness may be incurred in an unlimited amount if the Borrower would be in compliance with the Financial Covenants after giving pro forma effect to the incurrence of such Indebtedness, (B) the aggregate principal amount of such Incurred Acquisition Debt incurred by Non-Loan Party Subsidiaries shall not exceed the available Non-Loan Party Sublimit, and (C) such Incurred Acquisition Indebtedness, other than Extendable Bridge Loans/Interim Debt, shall have (i) Stated Maturity that is no earlier than the latest Maturity Date applicable with respect to any then outstanding Term Loans and (ii) a Weighted Average Life to Maturity that is no shorter than the then longest remaining Weighted Average Life to Maturity of any then outstanding Term Loans (*provided* that notwithstanding the foregoing, any such Incurred Acquisition Indebtedness incurred in reliance on an Inside Maturity Basket shall be permitted to have a Stated Maturity and Weighted Average Life to Maturity earlier than the Stated Maturity and Weighted Average Life to Maturity of any Facilities to which such Inside Maturity Basket applies (it being agreed that no such final Stated Maturity or Weighted Average Life to Maturity shall be less than the final Stated Maturity and remaining Weighted Average Life to Maturity of the Initial Term Loans)), and (ii) in the case of Acquired Indebtedness, (A) such Indebtedness was in existence prior to such acquisition, merger, amalgamation or consolidation, (B) such Indebtedness was not created in contemplation of such acquisition, merger, amalgamation or consolidation, (C) the only obligors with respect to such Indebtedness shall be those Persons who were obligors of such Indebtedness prior to such acquisition, merger, amalgamation or consolidation and such Indebtedness shall not be secured other than by the assets of those Persons who were obligors of such Indebtedness prior to such acquisition, merger, amalgamation or consolidation and (D) immediately after giving pro forma effect to such acquisition or Investment, no Event of Default shall have occurred and be continuing;
- (6) Swap Obligations (excluding Swap Obligations which are entered into for speculative purposes);
- (7) Indebtedness (i) represented by Finance Lease Obligations or Purchase Money Obligations in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this clause (7)(i) and then outstanding, does not exceed the greater of (a) \$90,000,000 and (b) 30.0% of LTM EBITDA at the time of incurrence, and any Refinancing Indebtedness in respect thereof and (ii) arising out of Sale and Leaseback Transactions in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this clause (7)(ii) and then outstanding, does not exceed the greater of (a) \$90,000,000 and (b) 30.0% of LTM EBITDA at the time of incurrence, and any Refinancing Indebtedness in respect thereof;
- (8) Indebtedness in respect of (a) workers’ compensation claims, health, disability or other employee benefits, property, casualty or liability insurance, self-insurance obligations, customer guarantees, performance, indemnity, surety, judgment, bid, appeal, advance payment (including progress premiums), customs, value added or other tax or other guarantees or other similar bonds, instruments or obligations, completion guarantees and warranties or relating to liabilities, obligations or guarantees incurred in the ordinary course of business or consistent with past practice; (b) the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with past practice; (c) customer deposits and advance payments (including progress premiums) received from customers for goods or services purchased in the ordinary course of business or consistent with past practice; (d) letters of credit, bankers’ acceptances, discounted bills of exchange, discounting or factoring of receivables or payables for credit management purposes, warehouse receipts, guarantees or other similar instruments or obligations issued or entered into, or relating to liabilities or obligations incurred in the ordinary course of business or consistent with past practice; (e) Cash Management Agreements; and (f) Settlement Indebtedness;

- (9) Indebtedness arising from agreements providing for guarantees, indemnification, obligations in respect of earn-outs, deferred purchase price or other adjustments of purchase price or, in each case, similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets, a Person (including any Capital Stock of a Subsidiary) or Investment (other than Guarantees of Indebtedness incurred by any Person acquiring or disposing of such business, assets, Person or Investment for the purpose of financing such acquisition or disposition);
- (10) [reserved];
- (11) Indebtedness of non-Guarantors in an aggregate principal amount not to exceed the greater of (i) \$150,000,000 and (ii) 50.0% of LTM EBITDA at the time of incurrence, and any Refinancing Indebtedness in respect thereof;
- (12) (a) Indebtedness issued by the Borrower or any of its Subsidiaries to any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower or any of its Subsidiaries or any direct or indirect parent of the Borrower in each case to finance the purchase or redemption of Capital Stock of the Borrower or any direct or indirect parent thereof that is not prohibited by Section 7.05 and (b) Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in the ordinary course of business, consistent with past practice or in connection with the Transactions, any Investment or any acquisition (by merger, consolidation, amalgamation or otherwise);
- (13) Indebtedness of the Borrower or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business or consistent with past practice;
- (14) Indebtedness in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this clause (14) and then outstanding, will not exceed the greater of (i) \$150,000,000 and (ii) 50.0% of LTM EBITDA and any Refinancing Indebtedness in respect thereof;
- (15) Indebtedness in respect of any Qualified Securitization Financing or any Receivables Facility in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness incurred pursuant to this clause (15) and then outstanding, does not exceed the greater of (i) \$150,000,000 and (ii) 50.0% of LTM EBITDA and any Refinancing Indebtedness in respect thereof;

- (16) any obligation, or guaranty of any obligation, of the Borrower or any Restricted Subsidiary to reimburse or indemnify a Person extending credit to customers of the Borrower or a Restricted Subsidiary incurred in the ordinary course of business or consistent with past practice for all or any portion of the amounts payable by such customers to the Person extending such credit;
- (17) Indebtedness to a customer to finance the acquisition of any equipment necessary to perform services for such customer; *provided* that the terms of such Indebtedness are consistent with those entered into with respect to similar Indebtedness prior to the Closing Date, including, if so consistent, that (i) the repayment of such Indebtedness is conditional upon such customer ordering a specific amount or volume, as applicable, of goods or services and (ii) such Indebtedness does not bear interest or provide for scheduled amortization or maturity;
- (18) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries to the extent that the net proceeds thereof are promptly deposited with the Trustee (as defined in the 7.750% Notes Indenture), another trustee or agent, as applicable, to satisfy or discharge the 7.750% Notes, any Ratio Debt, debt incurred pursuant to this Section 7.01, Incremental Equivalent Debt and/or Credit Agreement Refinancing Debt or exercise the applicable borrower's or issuer's legal defeasance or covenant defeasance, in each case, in accordance with the relevant documents governing such Indebtedness;
- (19) Indebtedness of the Borrower or any of its Restricted Subsidiaries arising pursuant to any Permitted Intercompany Activities, Permitted Tax Restructuring and related transactions;
- (20) [reserved];
- (21) [reserved];
- (22) obligations in respect of Disqualified Stock in an amount not to exceed the greater of (i) \$30,000,000 and (ii) 10.0% of LTM EBITDA outstanding at the time of incurrence;
- (23) Indebtedness incurred for the benefit of joint ventures in an aggregate principal amount not to exceed the greater of (i) \$30,000,000 and (ii) 10.0% of LTM EBITDA outstanding at the time of incurrence and any Refinancing Indebtedness in respect thereof;
- (24) [reserved]; and
- (25) to the extent constituting Indebtedness, Guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of the Borrower and its Subsidiaries.

For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness incurred pursuant to and in compliance with, this Section

7.01:

- (a) in the event that all or any portion of any item of Indebtedness meets the criteria of more than one of the types of Indebtedness described in this Section 7.01, the Borrower, in its sole discretion, will classify, and may from time to time reclassify pursuant to clause (b) below, such item of Indebtedness (or any portion thereof) and only be required to include the amount and type of such Indebtedness in Section 7.01(a) or one of the clauses of Section 7.01(b);

- (b) additionally, subject to clause (c) below, all or any portion of any item of Indebtedness may later be reclassified as having been incurred pursuant to any type of Indebtedness described in this Section 7.01 so long as such Indebtedness is permitted to be incurred pursuant to such provision and any related Liens are permitted to be incurred at the time of reclassification; *provided* that any Indebtedness incurred by any Loan Party pursuant to one of the clauses of Section 7.01(b) shall automatically cease to be deemed incurred or outstanding for purposes of such clause of Section 7.01(b) and shall automatically be deemed incurred for the purposes of Section 7.01(a) from and after the first date on which the Borrower or its Restricted Subsidiaries could have incurred such Indebtedness under Section 7.01(a) without reliance on such clause of Section 7.01(b);
- (c) all Indebtedness outstanding on the Closing Date under this Agreement shall be deemed incurred on the Closing Date under clause (1) of Section 7.01(b) (or with respect to the 7.750% Notes, clause (4) of Section 7.01(b));
- (d) in the case of any Refinancing Indebtedness, when measuring the outstanding amount of such Indebtedness, such amount shall not include the aggregate amount of accrued and unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing;
- (e) Guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments relating to, or Liens securing, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included;
- (f) if obligations in respect of letters of credit, bankers' acceptances or other similar instruments are being treated as incurred pursuant to any clause of Section 7.01(b) or Section 7.01(a) and the letters of credit, bankers' acceptances or other similar instruments relate to other Indebtedness, then such other Indebtedness shall not be included;
- (g) the principal amount of any Disqualified Stock of the Borrower or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;
- (h) Indebtedness permitted by this covenant need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this covenant permitting such Indebtedness;
- (i) notwithstanding anything in this covenant to the contrary, in the case of any Indebtedness incurred to refinance Indebtedness initially incurred in reliance on a clause of Section 7.01(b) measured by reference to a percentage of LTM EBITDA at the time of incurrence, if such refinancing would cause the percentage of LTM EBITDA restriction to be exceeded if calculated based on the percentage of LTM EBITDA on the date of such refinancing, such percentage of LTM EBITDA restriction shall not be deemed to be exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced, *plus* accrued and unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing; and

- (j) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined in accordance with GAAP.

Accrual of interest, accrual of dividends, the accretion of accreted value, the accretion or amortization of original issue discount, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock or the reclassification of commitments or obligations not treated as Indebtedness due to a change in GAAP, will not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.01.

If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary as of such date (and, if such Indebtedness is not permitted to be incurred as of such date under this Section 7.01, the Borrower shall be in default of this covenant).

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed (a) the principal amount of such Indebtedness being refinanced, *plus* (b) the aggregate amount of accrued and unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing.

Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Borrower or a Restricted Subsidiary may incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

With respect to any Indebtedness that was permitted to be incurred hereunder on the date of such incurrence, any Increased Amount of such Indebtedness shall also be permitted hereunder after the date of such incurrence.

This Agreement will not treat (1) unsecured Indebtedness as subordinated or junior to secured Indebtedness merely because it is unsecured or (2) senior Indebtedness as subordinated or junior to any other senior Indebtedness merely because it has a junior priority with respect to the same collateral or is secured by different collateral or because it is guaranteed by different obligors.

Section 7.02 Limitations on Liens. Create, incur or permit to exist any Lien on any of its assets or properties (each, a “**Subject Lien**”), except if such Subject Lien is a Permitted Lien.

With respect to any Lien that was permitted to secure such Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness.

Section 7.03 Fundamental Changes. Merge, dissolve, liquidate, amalgamate, consolidate with or into another Person, or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, (other than in the case of clause (e) below) so long as no Event of Default would result therefrom:

(a) the Borrower or any Guarantor may merge, amalgamate or consolidate with or into, or directly or indirectly dispose of all or substantially all of its assets to (upon voluntary liquidation or otherwise) the Borrower, as applicable (including a merger, the purpose of which is to reorganize the Borrower or the Borrower into a new jurisdiction) or any other Person; *provided* that (A) the surviving person (if other than the Borrower or the Borrower or, in the case of a merger or sale of assets of a Guarantor, a Guarantor) shall be a person organized under the laws of an Applicable Jurisdiction and shall expressly assume the obligations of the Borrower or such Guarantor under the Loan Documents, as applicable, pursuant to documents reasonably acceptable to the Administrative Agent and (B) the surviving person (if other than the Borrower or the Borrower or, in the case of a merger or sale of assets of a Guarantor, a Guarantor) shall provide any documentation and other information about such person as shall have been reasonably requested in writing by any Lender through the Administrative Agent that such Lender shall have reasonably determined is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including Title III of the PATRIOT Act;

(b) [reserved];

(c) any Guarantor may merge, amalgamate or consolidate with or into, or directly or indirectly dispose of all or substantially all of its assets to (upon voluntary liquidation or otherwise) the Borrower or any Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then either (i) the transferee must either be the Borrower or a Guarantor (or become a Guarantor concurrently with the transaction) or (ii) if clause (i) does not apply, to the extent such Disposition of assets shall be deemed to constitute either an Investment or Disposition, such Investment is a Permitted Investment or Indebtedness of a Non-Loan Party Subsidiary in accordance with Section 7.01, respectively, or such Disposition is a Disposition permitted hereunder;

(d) any Guarantor may merge, amalgamate or consolidate with or into, or directly or indirectly dispose of all or substantially all of its assets to (upon voluntary liquidation or otherwise) any other Person in order to effect (i) a Permitted Investment or Indebtedness of a Non-Loan Party Subsidiary in accordance with Section 7.01, respectively, and/or (ii) a Disposition permitted hereunder;

(e) the Restricted Group may consummate the Transactions;

(f) the Restricted Group may engage in any Permitted Tax Restructuring;

(g) any Guarantor may merge, amalgamate or consolidate with or into, or directly or indirectly dispose of all or substantially all of its assets to (upon voluntary liquidation or otherwise) any Person, so long as (i) such transaction is undertaken in good faith to improve the tax efficiency of any direct or indirect parent of the Borrower, and/or any of its Subsidiaries, and (ii) after giving effect to such transaction, each of the security interest of the Collateral Agent in the Collateral, taken as a whole, and the value of the Guarantees, taken as a whole, is not materially impaired (as determined in good faith by the Borrower);

- (h) the Borrower may contribute Capital Stock of any or all of its subsidiaries to any Guarantor or any Restricted Subsidiary; and
- (i) any Permitted Investment and/or Disposition permitted hereunder may be structured as a merger, consolidation or amalgamation.

For the avoidance of doubt, notwithstanding anything else contained herein, any LLC Conversion shall be permitted under this Agreement and each other Loan Document.

Section 7.04 Asset Dispositions.

- (a) Cause or make any Asset Disposition, unless:
  - (1) the Borrower or such Restricted Subsidiary, as applicable, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at least equal to the fair market value (such fair market value to be determined on the date of contractually agreeing to such Asset Disposition), as determined in good faith by the Borrower, of the shares and assets subject to such Asset Disposition (including, for the avoidance of doubt, if such Asset Disposition is a Permitted Asset Swap);
  - (2) in any such Asset Disposition, or series of related Asset Dispositions (except to the extent the Asset Disposition is a Permitted Asset Swap), with a purchase price in excess of the greater of (i) \$60,000,000 and (ii) 20.0% of LTM EBITDA, at least 75% of the consideration from such Asset Disposition received by the Borrower or such Restricted Subsidiary, as applicable, is in the form of cash or Cash Equivalents; *provided* that, for purposes of this clause (2), the following will be deemed to be cash:
    - (i) the assumption by the transferee of Indebtedness or other liabilities (including by way of relief from, or by any other Person assuming responsibility for, any such Indebtedness or other liabilities, contingent or otherwise) of the Borrower or a Restricted Subsidiary (other than Subordinated Indebtedness of the Borrower or a Guarantor) or the release of the Borrower or such Restricted Subsidiary from all liability on such Indebtedness or other liability in connection with such Asset Disposition;
    - (ii) securities, notes or other obligations or other property received by the Borrower or any Restricted Subsidiary from the transferee that are converted by the Borrower or such Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash and Cash Equivalents (to the extent of the cash or Cash Equivalents received), in each case, within 365 days following the closing of such Asset Disposition;
    - (iii) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Disposition, to the extent that, immediately following such Asset Disposition, neither the Borrower nor any other Restricted Subsidiary Guarantees the payment of such Indebtedness;

- (iv) consideration consisting of Indebtedness of the Borrower (other than Subordinated Indebtedness) received after the Closing Date from Persons who are not the Borrower or any Restricted Subsidiary; and
  - (v) any Designated Non-Cash Consideration received by the Borrower or any Restricted Subsidiary in such Asset Dispositions having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this covenant that is at that time outstanding, not to exceed the greater of (i) \$67,500,000 and (ii) 22.5% of LTM EBITDA, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value; and
- (3) within 540 days from the later of (A) the date of such Asset Disposition and (B) the receipt of the Net Cash Proceeds from such Asset Disposition (as may be extended by an Acceptable Commitment as set forth below), an amount equal to the Net Cash Proceeds from such Asset Disposition is applied, to the extent the Borrower or any Restricted Subsidiary, as applicable, elects:
- (a) to prepay Loans and other Permitted Debt in accordance with Section 2.05(b)(i);
  - (b) (i) to invest (including capital expenditures) in Additional Assets (including by means of an investment in Additional Assets by a Restricted Subsidiary); or  
(ii) to invest (including capital expenditures) in any one or more businesses, properties or assets that replace the businesses, properties and/or assets that are the subject of such Asset Disposition, with any such investment made by way of a capital or other lease valued at the present value of the minimum amount of payments under such lease (as reasonably determined by the Borrower);  
*provided, however*, that a binding agreement shall be treated as a permitted application of Net Cash Proceeds from the date of such commitment provided that an amount equal to Net Cash Proceeds will be applied to satisfy such commitment within 180 days after the end of such 540-day period (an “**Acceptable Commitment**”);
  - (c) to make any other Permitted Investment (other than in cash and Cash Equivalents); or
  - (d) any combination of the foregoing;

*provided* that (1) pending the final application of the amount of any such Net Cash Proceeds pursuant to Section 2.05(b)(i) and this Section 7.04, the Borrower or the applicable Restricted Subsidiaries may apply such Net Cash Proceeds temporarily to reduce Indebtedness under the Revolving Credit Facility or otherwise apply such Net Cash Proceeds in any manner not prohibited by this Agreement, and (2) the Borrower (or any Restricted Subsidiary, as applicable) may elect to invest in Additional Assets prior to receiving the Net Cash Proceeds attributable to any given Asset Disposition (*provided* that such investment shall be made no earlier than the earliest of notice to the Administrative Agent of the relevant Asset Disposition, execution of a definitive agreement for the relevant Asset Disposition, and consummation of the relevant Asset Disposition) and deem the amount so invested to be applied pursuant to and in accordance with clause (b) above with respect to such Asset Disposition.



Section 7.05 Restricted Payments. (a)

- (1) Declare or pay any dividend or make any distribution on or in respect of the Borrower's or any Restricted Subsidiary's Capital Stock (including any such payment in connection with any merger or consolidation involving the Borrower or any of the Restricted Subsidiaries) except:
  - (a) dividends, payments or distributions payable in Capital Stock of the Borrower (other than Disqualified Stock) or in options, warrants or other rights to purchase such Capital Stock of the Borrower;
  - (b) dividends, payments or distributions payable to the Borrower or a Restricted Subsidiary (and, in the case of any such Restricted Subsidiary making such dividend or distribution, to holders of its Capital Stock other than the Borrower or a Restricted Subsidiary on no more than a *pro rata* basis); and
  - (c) dividends or distributions payable to any direct or indirect parent of the Borrower to fund interest payments in respect of Indebtedness of such direct or indirect parent which is guaranteed by the Borrower or any Restricted Subsidiary;
- (2) purchase, repurchase, redeem, retire or otherwise acquire or retire for value any Capital Stock of the Borrower or any direct or indirect parent thereof held by Persons other than the Borrower or any Restricted Subsidiary;
- (3) purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness (other than (a) any such purchase, repurchase, redemption, defeasance or other acquisition or retirement in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case, due within one year of the date of purchase, repurchase, redemption, defeasance or other acquisition or retirement and (b) any Indebtedness incurred pursuant to clause (3) of Section 7.01(b)); or
- (4) make any Restricted Investment;

(any such dividend, distribution, payment, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in clauses (1) through (4) above are referred to herein as a "**Restricted Payment**"), if at the time the Borrower or such Restricted Subsidiary makes such Restricted Payment:

- (x) an Event of Default shall have occurred and be continuing (or would immediately thereafter result therefrom);

- (y) the aggregate amount of such Restricted Payment and all other Restricted Payments made subsequent to the Closing Date (and not returned or rescinded) (including Permitted Payments made pursuant to clause (1) (without duplication) and clause (7) of Section 7.05(b), but excluding all other Restricted Payments permitted by Section 7.05(b)) would exceed the sum of (without duplication):
- (i) 50% of Consolidated Net Income for the period (treated as one accounting period) from the first day of the fiscal quarter in which the Closing Date occurs to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which consolidated financial statements are available (which may, at the Borrower's election, be internal financial statements) (or, in the case such Consolidated Net Income is a deficit, *minus* 100% of such deficit);
  - (ii) 100% of the aggregate amount of cash, and the fair market value of property or assets or marketable securities, received by the Borrower from the issue or sale of its Capital Stock or as the result of a merger or consolidation with another Person subsequent to the Closing Date or otherwise contributed to the equity (in each case other than through the issuance of Disqualified Stock or Designated Preferred Stock) of the Borrower or a Restricted Subsidiary (including the aggregate principal amount of any Indebtedness of the Borrower or a Restricted Subsidiary contributed to the Borrower or a Restricted Subsidiary for cancellation) or that becomes part of the capital of the Borrower or a Restricted Subsidiary through consolidation or merger subsequent to the Closing Date (other than (A) Net Cash Proceeds or property or assets or marketable securities received from an issuance or sale of such Capital Stock to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries for the benefit of their employees to the extent funded by the Borrower or any Restricted Subsidiary, (B) cash or property or assets or marketable securities to the extent that any Restricted Payment has been made from such proceeds in reliance on clause (6) of Section 7.05(b) and (C) Excluded Contributions);
  - (iii) 100% of the aggregate amount of cash, and the fair market value of property or assets or marketable securities, received by the Borrower or any Restricted Subsidiary from the issuance or sale (other than to the Borrower or a Restricted Subsidiary or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries for the benefit of their employees to the extent funded by the Borrower or any Restricted Subsidiary) by the Borrower or any Restricted Subsidiary subsequent to the Closing Date of any Indebtedness, Disqualified Stock or Designated Preferred Stock that has been converted into or exchanged for Capital Stock of the Borrower (other than Disqualified Stock or Designated Preferred Stock), *plus*, without duplication, the amount of any cash, and the fair market value of property or assets or marketable securities, received by the Borrower or any Restricted Subsidiary upon such conversion or exchange;
  - (iv) 100% of the aggregate amount received in cash and the fair market value, as determined in good faith by the Borrower, of marketable securities or other property received by means of: (i) the sale or other disposition (other than to the Borrower or a Restricted Subsidiary) of, or other returns on Investment from, Restricted Investments made by the Borrower or its Restricted Subsidiaries and repurchases and redemptions of, or cash distributions or cash interest received in respect of, such Investments from the Borrower or its Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments by the Borrower or its Restricted Subsidiaries, in each case after the Closing Date; or (ii) the sale or other disposition (other than to the Borrower or a Restricted Subsidiary) of the Capital Stock of an Unrestricted Subsidiary or a dividend, payment or distribution from an Unrestricted Subsidiary (other than to the extent of the amount of the Investment that constituted a Permitted Investment or was made under clause (17) of Section 7.05(b) and will increase the amount available under the applicable clause of the definition of "Permitted Investment" or clause (17) of Section 7.05(b), as applicable) or a dividend from a Person that is not a Restricted Subsidiary after the Closing Date;

- (v) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Borrower or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Borrower or a Restricted Subsidiary after the Closing Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred), as determined in good faith by the Borrower at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, amalgamation or consolidation or transfer of assets (after taking into consideration any Indebtedness associated with the Unrestricted Subsidiary so designated or merged, amalgamated or consolidated or Indebtedness associated with the assets so transferred), other than to the extent of the amount of the Investment that constituted a Permitted Investment or was made under clause (17) of Section 7.05(b) and will increase the amount available under the applicable clause of the definition of “Permitted Investment” or clause (17) of Section 7.05(b), as applicable; and
- (vi) the greater of (A) \$105,000,000 and (B) 35.0% of LTM EBITDA (the foregoing clause (y), the “**Available Amount Builder Basket**”).

For the avoidance of doubt, the acquisition by and/or transfer to the Borrower and/or any of its Subsidiaries of the Spinco Business and the related transactions in connection with the Spin-Off shall be deemed not to increase the Available Amount Builder Basket.

- (b) Section 7.05(a) will not prohibit any of the following (collectively, “**Permitted Payments**”):
  - (1) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Agreement or the redemption, repurchase or retirement of Indebtedness if, at the date of any redemption notice, such payment would have complied with the provisions of this Agreement as if it were and is deemed at such time to be a Restricted Payment at the time of such notice;

- (2) (a) any prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of Capital Stock, including any accrued and unpaid dividends thereon (“**Treasury Capital Stock**”) or Subordinated Indebtedness made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Borrower or any direct or indirect parent thereof to the extent contributed to the Borrower (in each case, other than Disqualified Stock or Designated Preferred Stock) (“**Refunding Capital Stock**”), (b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Borrower or to an employee stock ownership plan or any trust established by the Borrower or any of its Subsidiaries) of Refunding Capital Stock and (c) if immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under clause (13) of this Section 7.05(b), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Capital Stock of a direct or indirect parent of the Borrower) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;
- (3) any prepayment, purchase, repurchase, exchange, redemption, defeasance, discharge, retirement or other acquisition of Subordinated Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent sale of, Refinancing Indebtedness permitted to be incurred pursuant to Section 7.01;
- (4) any prepayment, purchase, repurchase, exchange, redemption, defeasance, discharge, retirement or other acquisition of Preferred Stock of the Borrower or a Restricted Subsidiary made by exchange for, or out of the proceeds of the substantially concurrent sale of, Preferred Stock of the Borrower or a Restricted Subsidiary, as applicable, that, in each case, is permitted to be incurred pursuant to Section 7.01;
- (5) any prepayment, purchase, repurchase, exchange, redemption, defeasance, discharge, retirement or other acquisition of Subordinated Indebtedness of the Borrower or a Restricted Subsidiary or Disqualified Stock or Preferred Stock of a Restricted Subsidiary:
- (a) from Net Cash Proceeds to the extent permitted under Section 7.04, but only if the Borrower shall have first complied with the terms described under Section 2.05(b)(i); or
- (b) to the extent required by the agreement governing such Subordinated Indebtedness, Disqualified Stock or Preferred Stock, following the occurrence of (i) a Change of Control (or other similar event described therein as a “change of control”) or (ii) an Asset Disposition (or other similar event described therein as an “asset disposition” or “asset sale”), but only if the Borrower shall have first complied with the terms described under “Change of Control” or Section 7.04, as applicable, and purchased all Loans tendered pursuant to the offer to repurchase all the Loans required thereby, prior to purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness, Disqualified Stock or Preferred Stock; or

- (c) consisting of Acquired Indebtedness (other than Indebtedness incurred in connection with or contemplation of such acquisition);
- (6) a Restricted Payment to pay for the prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of Capital Stock of the Borrower or any direct or indirect parent thereof held by any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower or any of its Subsidiaries or any direct or indirect parent of the Borrower pursuant to any management equity plan, stock option plan, phantom equity plan or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement (including, for the avoidance of doubt, any principal and interest payable on any Indebtedness issued by the Borrower or any direct or indirect parent thereof in connection with such prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition), including any Capital Stock rolled over, accelerated or paid out by or to any employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower or any of its Subsidiaries or any direct or indirect parent of the Borrower in connection with any transaction; *provided, however*, that the aggregate Restricted Payments made under this clause do not exceed the greater of (i) \$15,000,000 and (ii) 5.0% of LTM EBITDA in any calendar year (with unused amounts in any calendar year being carried over to the immediately succeeding calendar year, so long as the aggregate amount of all Restricted Payments made in reliance on this clause (6) in any fiscal year does not exceed the sum of (a) the greater of (x) \$30,000,000 and (y) 10.0% of LTM EBITDA and (b) any amounts described in the immediately following proviso; *provided, further*, that such amount in any calendar year may be increased by an amount not to exceed:
- (a) the cash proceeds from the sale of Capital Stock (other than Disqualified Stock) of the Borrower and, to the extent contributed to the capital of the Borrower, the cash proceeds from the sale of Capital Stock of any direct or indirect parent of the Borrower, in each case, to any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower or any of its Subsidiaries or any direct or indirect parent of the Borrower that occurred after the Closing Date, to the extent the cash proceeds from the sale of such Capital Stock have not otherwise been applied to the payment of Restricted Payments by virtue of clause (v) of Section 7.05(a); *plus*
  - (b) the cash proceeds of key man life insurance policies received by the Borrower or its Restricted Subsidiaries (or any direct or indirect parent of the Borrower to the extent contributed to the Borrower) after the Closing Date; *less*
  - (c) the amount of any Restricted Payments made in previous calendar years pursuant to subclauses (a) and (b) of this clause (6);

*provided* that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by subclauses (a) and (b) of this clause (6) in any fiscal year; *provided, further*, that (i) cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower or its Restricted Subsidiaries or any direct or indirect parent of the Borrower in connection with a repurchase of Capital Stock of the Borrower or any direct or indirect parent thereof and (ii) the repurchase of Capital Stock deemed to occur upon the exercise of options, warrants or similar instruments if such Capital Stock represents all or a portion of the exercise price thereof and payments, in lieu of the issuance of fractional shares of such Capital Stock or withholding to pay other taxes payable in connection therewith, in the case of each of clauses (i) and (ii), will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

- (7) the declaration and payment of dividends on Disqualified Stock of the Borrower or any of its Restricted Subsidiaries or Preferred Stock of a Restricted Subsidiary, issued in accordance with Section 7.01;
- (8) payments made or expected to be made by the Borrower or any Restricted Subsidiary (including, for purposes of clarity, payments by the Borrower or any Restricted Subsidiary to an any direct or indirect parent of the Borrower so that such parent may make payments) in respect of withholding or similar taxes payable in connection with the exercise or vesting of Capital Stock or any other equity award by any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower or any Restricted Subsidiary or any direct or indirect parent of the Borrower and purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Capital Stock deemed to occur upon the exercise, conversion or exchange of stock options, warrants, equity-based awards or other rights in respect thereof if such Capital Stock represents a portion of the exercise price thereof or payments in respect of withholding or similar taxes payable upon exercise or vesting thereof;
- (9) dividends, loans, advances or distributions to any direct or indirect parent of the Borrower or other payments by the Borrower or any Restricted Subsidiary in amounts equal to (without duplication):
- (a) the amounts required for any direct or indirect parent of the Borrower to pay any Parent Entity Expenses or any Permitted Tax Amounts; and
  - (b) amounts constituting or to be used for purposes of making payments to the extent specified in clauses (2), (3), (5), (13), (15) and (19) of Section 6.18(b);
- (10) (a) the declaration and payment of dividends on the common stock or common equity interests of the Borrower or any direct or indirect parent thereof (and any equivalent declaration and payment of a distribution of any security exchangeable for such common stock or common equity interests to the extent required by the terms of any such exchangeable securities and any Restricted Payment to any such direct or indirect parent to fund the payment by such direct or indirect parent of dividends on such entity's Capital Stock), in an amount in any fiscal year not to exceed \$50,000,000 (which permitted amount shall increase by 5.0% each year beginning with the first fiscal year after the fiscal year in which the Closing Date occurs); or (b) in lieu of all or a portion of the dividends permitted by clause (a), any prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of the Borrower's Capital Stock (and any equivalent declaration and payment of a distribution of any security exchangeable for such common stock or common equity interests to the extent required by the terms of any such exchangeable securities and any Restricted Payment to any such direct or indirect parent to fund the payment by such direct or indirect parent of dividends on such entity's Capital Stock) for aggregate consideration that, when taken together with dividends permitted by clause (a), does not exceed the amount contemplated by clause (a);

- (11) payments by the Borrower, or loans, advances, dividends or distributions to any direct or indirect parent thereof to make payments, to holders of Capital Stock of the Borrower or any direct or indirect parent thereof in lieu of the issuance of fractional shares of such Capital Stock; *provided, however*, that any such payment, loan, advance, dividend or distribution shall not be for the purpose of evading any limitation of this covenant or otherwise to facilitate any dividend or other return of capital to the holders of such Capital Stock (as determined in good faith by the Borrower);
- (12) Restricted Payments that are made (a) in an amount not to exceed the amount of Excluded Contributions or (b) in an amount equal to the amount of Net Cash Proceeds from an asset sale or Disposition in respect of property or assets acquired, if the acquisition of such property or assets was financed with Excluded Contributions;
- (13) (i) the declaration and payment of dividends on Designated Preferred Stock of the Borrower or any of its Restricted Subsidiaries issued after the Closing Date;
- (ii) the declaration and payment of dividends to a direct or indirect parent of the Borrower in an amount sufficient to allow such direct or indirect parent to pay dividends to holders of its Designated Preferred Stock issued after the Closing Date; and
- (iii) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock;
- provided, however*, that, in the case of subclause (ii), the amount of dividends paid to a Person pursuant to such clause shall not exceed the cash proceeds received by the Borrower or the aggregate amount contributed in cash to the equity of the Borrower (other than through the issuance of Disqualified Stock or an Excluded Contribution of the Borrower), from the issuance or sale of such Designated Preferred Stock; *provided* that in the case of clauses (i) and (iii), for the most recently ended four fiscal quarters for which consolidated financial statements are available (which may, at the Borrower's election, be internal financial statements) immediately preceding the date of issuance of such Designated Preferred Stock or declaration of such dividends on such Refunding Capital Stock, after giving effect to such payment on a pro forma basis, the Borrower would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the test set forth in Section 7.01(a);
- (14) distributions, by dividend or otherwise, or other transfer or disposition of shares of Capital Stock of, or equity interests in, an Unrestricted Subsidiary (or a Restricted Subsidiary that owns one or more Unrestricted Subsidiaries and no other material assets), or Indebtedness owed to the Borrower or a Restricted Subsidiary by an Unrestricted Subsidiary (or a Restricted Subsidiary that owns one or more Unrestricted Subsidiaries and no other material assets), in each case, other than Unrestricted Subsidiaries, substantially all the assets of which are cash and Cash Equivalents or proceeds thereof;

- (15) distributions or payments of Securitization Fees, sales contributions and other transfers of Securitization Assets or Receivables Assets and purchases of Securitization Assets or Receivables Assets pursuant to a Securitization Repurchase Obligation, in each case in connection with a Qualified Securitization Financing or Receivables Facility;
- (16) any Restricted Payment made in connection with the Transactions (including, for the avoidance of doubt, the Repayment) and any fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) related thereto, including Transaction Costs, or used to fund amounts owed to Affiliates in connection with the Transactions (including dividends to any direct or indirect parent of the Borrower to permit payment by such direct or indirect parent of such amounts);
- (17) (i) Restricted Payments (including loans or advances) in an aggregate amount outstanding at the time made not to exceed the greater of (a) \$105,000,000 and (b) 35.0% of LTM EBITDA at such time, and (ii) any Restricted Payments, so long as, (x) immediately after giving pro forma effect to the payment of any such Restricted Payment and the incurrence of any Indebtedness the net proceeds of which are used to make such Restricted Payment, the Consolidated Total Net Leverage Ratio shall be no greater than 3.00 to 1.00 and (y) no Event of Default shall have occurred or be continuing;
- (18) mandatory redemptions of Disqualified Stock issued as a Restricted Payment or as consideration for a Permitted Investment;
- (19) (i) the redemption, defeasance, repurchase, exchange or other acquisition or retirement of Subordinated Indebtedness of the Borrower or any Guarantor or the making of any Restricted Investment in an aggregate amount outstanding at the time made, taken together with all other redemptions, defeasances, repurchases, exchanges or other acquisitions or retirements of Subordinated Indebtedness or Restricted Investments made pursuant to this clause (19), not to exceed the greater of (a) \$75,000,000 and (b) 25.0% of LTM EBITDA at such time, and (ii) the redemption, defeasance, repurchase, exchange or other acquisition or retirement of Subordinated Indebtedness of the Borrower or any Guarantor, so long as, (x) immediately after giving pro forma effect to the payment of any such Restricted Payment and the incurrence of any Indebtedness the net proceeds of which are used to make such Restricted Payment, the Consolidated Total Net Leverage Ratio shall be no greater than 3.25 to 1.00 and (y) no Event of Default shall have occurred or be continuing;
- (20) payments or distributions to dissenting stockholders pursuant to applicable law (including in connection with, or as a result of, exercise of dissenters' or appraisal rights and the settlement of any claims or action (whether actual, contingent or potential)), pursuant to or in connection with a merger, amalgamation, consolidation or transfer of assets that complies with Section 7.03;
- (21) Restricted Payments to a direct or indirect parent of the Borrower to finance Investments that would otherwise be permitted to be made pursuant to this covenant if made by the Borrower; *provided* that (a) such Restricted Payment shall be made substantially concurrently with the closing of such Investment (or anytime following the closing of such Investment with respect to earn-out or similar payments), (b) such direct or indirect parent shall, promptly following the closing thereof, cause (1) all property acquired (whether assets or Capital Stock) to be contributed to the capital of the Borrower or one of its Restricted Subsidiaries or (2) the merger or amalgamation of the Person formed or acquired by or merged or consolidated with the Borrower or one of its Restricted Subsidiaries (to the extent not prohibited by Section 7.03) to consummate such Investment, (c) such direct or indirect parent and its Affiliates (other than the Borrower or a Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Borrower or a Restricted Subsidiary could have given such consideration or made such payment in compliance with this Agreement, (d) any property received by the Borrower shall not increase amounts available for Restricted Payments pursuant to clause (b) of Section 7.05(y), except to the extent the fair market value at the time of such receipt of such property exceeds the Restricted Payment made pursuant to this clause (21) and (e) such Investment shall be deemed to be made by the Borrower or such Restricted Subsidiary pursuant to another provision of this covenant (other than pursuant to clause (12) hereof) or pursuant to the definition of "Permitted Investment" (other than pursuant to clause (12) thereof);



- (22) investments or other Restricted Payments in an aggregate amount not to exceed an amount equal to the Retained Declined Proceeds;
- (23) any Restricted Payment made in connection with a Permitted Intercompany Activity, Permitted Tax Restructuring or related transactions; and
- (24) any Restricted Payment payable solely in the Capital Stock of any Parent Holding Company.

(c) For purposes of determining compliance with this covenant, in the event that a Restricted Payment or Investment (or portion thereof) meets the criteria of more than one of the categories of Permitted Payments described in the clauses above, or is permitted pursuant to Section 7.05(a) and/or one or more of the clauses contained in the definition of “Permitted Investment,” the Borrower will be entitled to divide or classify (or later divide, classify or reclassify in whole or in part in its sole discretion) such Restricted Payment or Investment (or portion thereof) in any manner that complies with this covenant, including as an Investment pursuant to one or more of the clauses contained in the definition of “Permitted Investment”; *provided* that any Restricted Payment permitted pursuant to one of the clauses of Section 7.05(b) (other than Section 7.05(b)(17)(ii) or Section 7.05(b)(19)(ii), as applicable) shall automatically cease to be deemed permitted or outstanding for purposes of such clause of Section 7.05(b), and shall automatically be deemed permitted for the purposes of Section 7.05(b)(17)(ii) or Section 7.05(b)(19)(ii), as applicable, from and after the first date on which the Borrower or its Restricted Subsidiaries could have incurred such Restricted Payment under Section 7.05(b)(17)(ii) or Section 7.05(b)(19)(ii), as applicable, without reliance on such other clause of Section 7.01(b); *provided, further*, that any Investment permitted pursuant to one of the clauses of the definition of “Permitted Investment” (other than clause (34)(y) thereof) shall automatically cease to be deemed permitted or outstanding for purposes of such clause of the definition of “Permitted Investment” and shall automatically be deemed permitted for the purposes of clause (34)(y) thereof from and after the first date on which the Borrower or its Restricted Subsidiaries could have incurred such Investment under clause (34)(y) of the definition of “Permitted Investment” without reliance on such other clause of such definition.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Borrower or such Restricted Subsidiary, as applicable, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount, and the fair market value of any non-cash Restricted Payment, property or assets other than cash shall be determined conclusively by the Borrower acting in good faith.

In connection with any binding commitment or entry into a definitive agreement relating to an Investment, the Borrower or the applicable Restricted Subsidiary may designate such Investment as having occurred on the date of the binding commitment or entry into the definitive agreement relating thereto (such date, the “**Election Date**”) if, after giving pro forma effect to such Investment and all related transactions in connection therewith (including any contemplated incurrence of Indebtedness) and any related pro forma adjustments, the Borrower or any of its Restricted Subsidiaries would have been permitted to make such Investment on the relevant Election Date in compliance with this Agreement, and any related subsequent actual making of such Investment will be deemed for all purposes under this Agreement to have been made on such Election Date, including for purposes of calculating any ratio, compliance with any test, usage of any baskets hereunder (if applicable) and Consolidated EBITDA and for purposes of determining whether there exists any Default or Event of Default (and all such calculations on and after the Election Date (other than for purposes of determining (i) actual compliance with the Financial Covenants and (ii) the Applicable Rate or the Applicable Commitment Fee) until the termination, expiration, passing, rescission, retraction or rescindment of such binding commitment or definitive agreement shall be made on a pro forma basis giving effect thereto and all related transactions in connection therewith); *provided* that the foregoing shall not limit the application of Section 1.02(i), to the extent applicable.

For the avoidance of doubt, this covenant shall not restrict the making of, or dividends or other distributions in amounts sufficient to make, any AHYDO Catch-up Payment with respect to any Indebtedness of any direct or indirect parent of the Borrower, the Borrower or any of its Restricted Subsidiaries permitted to be incurred under this Agreement.

Section 7.06 Burdensome Agreements.

(a) Create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Loan Party other than the Borrower to pay dividends or make any other distributions on its Capital Stock;

*provided* that (x) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill requirements to) loans or advances made to the Borrower or any Restricted Subsidiary to other Indebtedness incurred by the Borrower or any Restricted Subsidiary shall not be deemed to constitute such an encumbrance or restriction.

(b) The provisions of Section 7.06(a) will not prohibit:

- (1) any encumbrance or restriction (x) for the benefit of the Lenders with respect to the Facilities and the Obligations or under the Loan Documents or (y) pursuant to any instrument or agreement in effect at or entered into on the Spin-Off Date;
- (2) any encumbrance or restriction pursuant to the 7.750% Notes Documents;
- (3) any encumbrance or restriction pursuant to applicable law, rule, regulation or order;
- (4) any encumbrance or restriction pursuant to an agreement or instrument of a Person or relating to any Capital Stock or Indebtedness of a Person, entered into on or before the date on which such Person was acquired by or merged, consolidated or otherwise combined with or into the Borrower or any Restricted Subsidiary, or was designated as a Restricted Subsidiary or on which such agreement or instrument is assumed by the Borrower or any Restricted Subsidiary in connection with an acquisition of assets (other than Capital Stock or Indebtedness incurred as consideration in, or to provide all or any portion of the funds utilized to consummate, the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was acquired by the Borrower or was merged, consolidated or otherwise combined with or into the Borrower or any Restricted Subsidiary or entered into in contemplation of or in connection with such transaction) and outstanding on such date; *provided* that, for the purposes of this clause, if another Person is the successor company, any Subsidiary of such Person or agreement or instrument of such Person or any such Subsidiary shall be deemed acquired or assumed by the Borrower or any Restricted Subsidiary when such Person becomes the successor company;

- (5) any encumbrance or restriction:
- (a) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract or agreement, or the assignment or transfer of any lease, license or other contract or agreement;
  - (b) contained in mortgages, pledges, charges or other security agreements permitted under this Agreement or securing Indebtedness of the Borrower or a Restricted Subsidiary permitted under this Agreement to the extent such encumbrances or restrictions restrict the transfer or encumbrance of the property or assets subject to such mortgages, pledges, charges or other security agreements;
  - (c) contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Borrower or any of its Restricted Subsidiaries is a party entered into in the ordinary course of business or consistent with past practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Restricted Subsidiary that are subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Borrower or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary; or
  - (d) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Borrower or any Restricted Subsidiary;
- (6) any encumbrance or restriction pursuant to Purchase Money Obligations and Finance Lease Obligations permitted under this Agreement, in each case, that impose encumbrances or restrictions on the property so acquired;
- (7) any encumbrance or restriction imposed pursuant to an agreement entered into for the direct or indirect sale or disposition to a Person of all or substantially all the Capital Stock or assets of the Borrower or any Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;
- (8) customary provisions in leases, licenses, equityholder agreements, joint venture agreements, organizational documents and other similar agreements and instruments;
- (9) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order, or required by any regulatory authority;

- (10) any encumbrance or restriction on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business or consistent with past practice;
- (11) any encumbrance or restriction pursuant to Swap Obligations;
- (12) other Indebtedness, Disqualified Stock or Preferred Stock of Non-Loan Party Subsidiaries permitted to be incurred or issued subsequent to the Closing Date pursuant to the provisions of Section 7.01 that impose restrictions solely on the Non-Loan Party Subsidiaries party thereto and/or their Subsidiaries;
- (13) restrictions created in connection with any Qualified Securitization Financing or Receivables Facility that, in the good faith determination of the Borrower, are necessary or advisable to effect such Securitization Facility or Receivables Facility;
- (14) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be incurred subsequent to the Closing Date pursuant to the provisions of the covenant described under Section 7.01 if (i) the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Lenders than the encumbrances and restrictions contained in this Agreement, together with the security documents associated therewith, or the 7.750% Notes Documents as in effect on the Closing Date or (ii) either (a) the Borrower determines at the time of entry into such agreement or instrument that such encumbrances or restrictions will not adversely affect, in any material respect, the Borrower's ability to make principal or interest payments on the Loans or (b) such encumbrance or restriction applies only during the continuance of a default in respect of a payment relating to such agreement or instrument;
- (15) any encumbrance or restriction existing by reason of any lien permitted under Section 7.02;
- (16) any encumbrance or restriction arising pursuant to the Transaction Documents; or
- (17) any encumbrance or restriction pursuant to an agreement or instrument effecting a refinancing of Indebtedness incurred pursuant to, or that otherwise refinances, an agreement or instrument referred to in the clauses above or this clause (17) (an "**Initial Agreement**") or contained in any amendment, supplement or other modification to an agreement referred to in the clauses above or this clause (17); *provided, however*, that the encumbrances and restrictions with respect to such Guarantor contained in any such agreement or instrument are no less favorable in any material respect to the Lenders taken as a whole than the encumbrances and restrictions contained in the Initial Agreement or Initial Agreements to which such refinancing or amendment, supplement or other modification relates (as determined in good faith by the Borrower).

Section 7.07 Accounting Changes. Make any change in fiscal year; *provided, however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any amendments to this Agreement that are necessary, in the judgment of the Administrative Agent and the Borrower, as applicable, to reflect such change in fiscal year.

Section 7.08 Financial Covenants.

(a) Permit the Consolidated Total Net Leverage Ratio as of the last day of any fiscal quarter of the Borrower (commencing with the last day of the first full fiscal quarter to end after the Closing Date) to be greater than 4.75 to 1.00 (the “**Covenant Leverage Ratio**”); *provided* that the Covenant Leverage Ratio may be increased at the Borrower’s option to 5.00 to 1.00 solely with respect to the last day of each of the five immediately succeeding fiscal quarters ending on or after the consummation of a Qualifying Material Acquisition (each such increase, a “**Financial Covenant Increase**”); *provided, further*, that (i) in order to initiate a Financial Covenant Increase, the Borrower shall provide written notice to the Administrative Agent notifying the Administrative Agent and Lenders that there is a Financial Covenant Increase in effect by a date no later than fifteen (15) Business Days after consummating such Qualifying Material Acquisition, (ii) there shall be no more than one Financial Covenant Increase in effect at any one time and (iii) at least one full fiscal quarter shall have passed during which a Financial Covenant Increase was not in effect before the Borrower may elect to initiate a Financial Covenant Increase; or

(b) permit the Consolidated Interest Coverage Ratio as of the last day of any fiscal quarter of the Borrower (commencing with the first full fiscal quarter to end after the Closing Date) to be less than 2.25 to 1.00 (the covenants set forth in Section 7.08, the “**Financial Covenants**”).

**ARTICLE VIII**

**EVENTS OF DEFAULT AND REMEDIES**

Section 8.01 Events of Default. Any of the following shall constitute an “**Event of Default**”:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when due and as required to be paid herein, any amount of principal of any Loan or (ii) within five (5) Business Days after the same becomes due and payable, any interest on any Loan or on any L/C Obligation, any fee due hereunder or any other amount payable hereunder or with respect to any other Loan Document; or

(b) Specific Covenants. The Borrower or any other Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.05(a) (solely with respect to the Borrower) or 6.11 (solely with respect to Section 5.07) or in any Section of Article VII;

(c) Other Defaults. Any Loan Party fails to perform or observe any covenant or agreement (other than those specified in Sections 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after notice thereof by the Administrative Agent to the Borrower; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect (or in any respect if such representation or warranty is already qualified by materiality) when made or deemed made and, to the extent capable of being cured, such representation, warranty, certification or statement of fact is not corrected or clarified within 30 days after it was initially made; or

(e) Cross-Default. Any Loan Party or any Restricted Subsidiary:

(A) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder and intercompany Indebtedness) having an aggregate outstanding principal amount equal to or greater than the Threshold Amount (any such Indebtedness, “**Material Indebtedness**”);

(B) fails to observe or perform any other agreement relating to Material Indebtedness, or any other event occurs under Material Indebtedness, and any applicable grace or cure period under the applicable Material Indebtedness has expired, such that the holder or holders of such Material Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) have caused, or are permitted to cause such Indebtedness to become due, in each case, prior to its Stated Maturity; *provided* that this clause (e)(B) shall not apply to (x) secured Indebtedness that becomes due as a result of the sale or transfer or other Disposition (including a Casualty Event) of the property or assets securing such Indebtedness permitted hereunder and under the documents providing for such Indebtedness and such Indebtedness is repaid when required under the documents providing for such Indebtedness, (y) events of default, termination events or any other similar event under the documents governing Swap Contracts for so long as such event of default, termination event or other similar event does not result in the occurrence of an early termination date or any acceleration of any amounts or other Indebtedness payable thereunder or (z) Indebtedness that upon the happening of any such default or event automatically converts into Equity Interests (other than Disqualified Stock or, in the case of a Restricted Subsidiary, Disqualified Stock or Preferred Stock) in accordance with its terms; *provided, further*, that this clause (e)(B) shall automatically cease to apply if the applicable failure or event giving rise hereto is validly waived by the holders of such Material Indebtedness in accordance with the terms of the documents governing such Material Indebtedness prior to any termination of the Revolving Credit Commitments or acceleration of the Loans pursuant to Section 8.02; or

(f) Insolvency Proceedings, Etc. The Borrower or any Material Subsidiary:

(i) institutes, resolves to institute or consents to the institution of any proceeding under any Debtor Relief Law, in each case relating to a winding-up, an administration, a dissolution, or a composition thereof;

(ii) makes an assignment for the benefit of creditors or any other action is commenced (by way of voluntary arrangement, scheme of arrangement or otherwise);

(iii) appoints, resolves to appoint, applies for or consents to the appointment of any receiver, administrator, administrative receiver, trustee, custodian, conservator, liquidator, rehabilitator, judicial manager, provisional liquidator, administrator, receiver and manager, controller, monitor or similar officer (any such person, a “**Custodian**”) for it or for all or substantially all of its property;

(iv) has a Custodian appointed with respect thereto without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 days; or

(v) becomes subject to any proceeding under any Debtor Relief Law (including, without limitation, for the appointment of any Custodian with respect thereto) relating to such Person or to all or substantially all of its property without the consent of such Person, and such proceeding continues undismissed or unstayed for 60 days; or

(g) Inability to Pay Debts: Attachment. (i) The Borrower or any Material Subsidiary admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued, commenced or levied against all or substantially all of the property of any such Person and is not released, vacated or fully bonded within 60 days after its issue, commencement or levy; or

(h) Judgments. There is entered against any Loan Party or any Material Subsidiary a final judgment or order for the payment of money in an aggregate amount (as to all such judgments and orders) equal to or greater than the Threshold Amount (to the extent not paid and not covered by (i) independent third-party insurance as to which the insurer has been notified of such judgment or order and does not deny coverage or (ii) an enforceable indemnity to the extent that such Loan Party or Restricted Subsidiary shall have made a claim for indemnification and the applicable indemnifying party shall not have disputed such claim) and there is a period of 60 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal, bond or otherwise, is not in effect; or

(i) ERISA. (i) One or more ERISA Events occur or there is or arises an Unfunded Pension Liability (taking into account only Plans with positive Unfunded Pension Liability) which ERISA Event or ERISA Events or Unfunded Pension Liability or Unfunded Pension Liabilities results or would reasonably be expected to result in liability of any Loan Party in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA which has resulted or could reasonably be expected to result in liability of any Loan Party in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; or

(j) Invalidity of Certain Loan Documents. Any material provision of any Collateral Document and/or any Guaranty (in each case, subject to the Perfection Exceptions), at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.03 or Section 7.04) or satisfaction in full of all the Obligations (other than any Remaining Obligations) ceases to be in full force and effect (except that any such failure to be in full force and effect with respect to the documents referred to in clause (vii) of the definition of "Loan Documents" shall constitute an Event of Default only if the Borrower receives notice thereof and the Borrower fails to remedy the relevant failure in all material respects within fifteen days of receiving said notice); or any Lien purported to be created under the Collateral Documents and to extend to assets that are material to the Borrower and its Subsidiaries on a consolidated basis shall cease to be a valid and perfected Lien on the assets covered thereby (except to the extent that any such loss of perfection results from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file UCC continuation statements); or any Loan Party contests in writing the validity or enforceability of any provision of this Agreement, any Collateral Document and/or any Guaranty; or any Loan Party denies in writing that it has any or further liability or obligation under any Collateral Document or Guaranty (other than as a result of repayment in full of the Obligations (other than any Remaining Obligations) and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Collateral Document or Guaranty or the Liens created thereby (except as otherwise expressly provided in this Agreement or the Collateral Documents);

(k) Change of Control. There occurs any Change of Control; or

(l) Spin-Off Date. The Spin-Off Date does not occur on the Closing Date or on the Business Day immediately following the Closing Date.

Notwithstanding anything to the contrary in this Agreement, no Event of Default or breach of any representation or warranty in Article V or any covenant in Article VI or VII shall constitute a Default or Event of Default if such Event of Default or breach of such representation or warranty in Article V or such covenant in Article VI or VII would not have occurred but for a fluctuation (or other adverse change) in Exchange Rates.

Section 8.02 Remedies upon Event of Default. If any Event of Default occurs and is continuing (including any Event of Default arising by virtue of the termination and declaration contemplated by the proviso to Section 8.01(b)), the Administrative Agent may, or at the request of the Required Lenders shall, take any or all of the following actions:

- (a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;
- (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;
- (c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and/or
- (d) exercise on behalf of itself, the L/C Issuers and the Lenders all rights and remedies available to it, the L/C Issuers and the Lenders under the Loan Documents, under any document evidencing Indebtedness in respect of which the Facilities have been designated as “Designated Senior Debt” (or any comparable term) and/or under applicable Law;

*provided, however*, that upon the occurrence of any Event of Default under Sections 8.01(f) or (g) (with respect to the Borrower or any other Loan Party) or Section 8.01(l), the obligation of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

Section 8.03 [Reserved].

Section 8.04 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after an actual or deemed entry of an order for relief with respect to the Borrower under any Debtor Relief Law), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.16 and 2.17, be applied by the Administrative Agent subject to the terms of any Applicable Intercreditor Agreement in the following order:

- (a) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, disbursements and other charges of counsel payable under Section 10.04, Section 10.05 and amounts payable under Article III and amounts owing in respect of (x) the preservation of Collateral or the Collateral Agent’s security interest in the Collateral or (y) with respect to enforcing the rights of the Secured Parties under the Loan Documents) payable to the Administrative Agent and the Collateral Agent in their respective capacity as such;



(b) second, to payment in full of Unfunded Advances/Participations (the amounts so applied to be distributed between or among, as applicable, the Administrative Agent and the L/C Issuers pro rata in accordance with the amounts of Unfunded Advances/Participations owed to them on the date of any such distribution);

(c) third, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal, interest and Letter of Credit fees) payable to the Lenders and the L/C Issuers (including fees, disbursements and other charges of counsel payable under Sections 10.04 and 10.05) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause (c) held by them;

(d) fourth, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit fees and interest on the Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause (d) held by them;

(e) fifth, (i) to payment of that portion of the Obligations constituting unpaid principal of the Loans and the L/C Borrowings, that portion of the Obligations of the Loan Parties then owing in respect of regularly scheduled payments or termination payments (whether as a result of the occurrence of any event of default or other termination event) under the Secured Hedge Agreements and that portion of the Obligations of the Loan Parties then owing under the Secured Cash Management Agreements and (ii) to Cash Collateralize that portion of L/C Obligations comprising the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.16, ratably among the Lenders, the L/C Issuers, the Hedge Banks party to such Secured Hedge Agreements and the Cash Management Banks party to such Secured Cash Management Agreements in proportion to the respective amounts described in this clause (e) held by them; *provided* that (x) any such amounts applied pursuant to the foregoing clause (ii) shall be paid to the Administrative Agent for the ratable account of the applicable L/C Issuers to Cash Collateralize such L/C Obligations, (y) subject to Sections 2.03(d) and 2.16, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to this clause (e) shall be applied to satisfy drawings under such Letters of Credit as they occur and (z) upon the expiration of any Letter of Credit without any pending drawing, the pro rata share of Cash Collateral attributable to such expired Letter of Credit shall be applied by the Administrative Agent in accordance with the priority of payments set forth in this Section 8.04;

(f) sixth, to the payment of all other Obligations of the Loan Parties owing under or in respect of the Loan Documents or under Secured Hedge Agreements and the Secured Cash Management Agreements that are then due and payable to the Administrative Agent and the other Secured Parties, and not otherwise paid pursuant to clause (e) above, ratably based upon the respective aggregate amounts of all such Obligations then owing to the Administrative Agent and the other Secured Parties; and

(g) last, after all of the Obligations have been paid in full (other than any Remaining Obligations), to the Borrower or as otherwise required by Law; *provided* that no amounts received from any Guarantor shall be applied to Excluded Swap Obligations of such Guarantor.

If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired without any pending drawing, such remaining amount shall be applied to the other Obligations, if any, in accordance with the priority of payments set forth above. Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application of payments described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Cash Management Bank or Hedge Bank, as applicable. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a "Lender" party hereto.

It is understood and agreed by each Loan Party and each Secured Party that the Administrative Agent and Collateral Agent shall have no liability for any determinations made by it in this Section 8.04, in each case except to the extent resulting from the gross negligence, bad faith or willful misconduct of, or material breach of the Loan Documents by, the Administrative Agent or the Collateral Agent, as applicable (as determined by a court of competent jurisdiction in a final and non-appealable decision). Each Loan Party and each Secured Party also agrees that the Administrative Agent and the Collateral Agent may (but shall not be required to), at any time and in its sole discretion, and with no liability resulting therefrom, petition a court of competent jurisdiction regarding any application of Collateral in accordance with the requirements hereof or any Applicable Intercreditor Agreement, and the Administrative Agent and the Collateral Agent shall be entitled to wait for, and may conclusively rely on, any such determination.

## ARTICLE IX

### ADMINISTRATIVE AGENT AND OTHER AGENTS

#### Section 9.01 Appointment and Authorization of Agents.

(a) Each Lender and L/C Issuer hereby irrevocably appoints JPM and its successors and permitted assigns to act on its behalf as Administrative Agent hereunder and under the other Loan Documents (subject to the provisions in Section 9.09), and designates and authorizes the Administrative Agent to take such actions on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement or any other Loan Document, together with such actions and powers as are reasonably incidental thereto. The Administrative Agent may perform any of its duties through its officers, directors, agents, employees, or affiliates. The provisions of this Article IX (other than Sections 9.09, 9.11, 9.13, 9.14 and 9.15 to the extent of the rights of the Borrower or the other Loan Parties and the obligations and agreements of the Administrative Agent, the Lenders and the other Secured Parties for the benefit of the Borrower or the other Loan Parties, in each case expressly set forth therein) are solely for the benefit of the Administrative Agent and the Lenders, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, no Agent shall have any duties or responsibilities, except those expressly set forth herein, nor shall any Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against any Agent. Regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties; additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and the transactions contemplated hereby.

(b) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and such L/C Issuer shall have all of the benefits and immunities (i) provided to the Agents in this Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term “Agent” as used in this Article IX and in the definition of “Agent-Related Person” included such L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such L/C Issuer.

(c) The Administrative Agent shall also act as the Collateral Agent under the Loan Documents, and each of the Lenders (including in its capacities as a Lender, L/C Issuer (if applicable) and a potential Cash Management Bank party to a Secured Cash Management Agreement and/or a potential Hedge Bank party to a Secured Hedge Agreement) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest, charge or other Lien created by the Collateral Documents for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder), shall be entitled to the benefits of all provisions of this Article IX (including Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the Collateral Agent under the Loan Documents) and Section 10.04 as if set forth in full herein with respect thereto and all references to Administrative Agent in this Article IX shall, where applicable, be read as including a reference to the Collateral Agent. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize (i) the Administrative Agent and Collateral Agent, as applicable, to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party and (ii) the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver, and to perform its obligations under, any and all documents (including releases, payoff letters and similar documents) with respect to the Collateral and the rights of the Secured Parties with respect thereto (including any intercreditor agreement), as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders (including in its capacities as a Lender, L/C Issuer (if applicable) and a potential Cash Management Bank party to a Secured Cash Management Agreement and/or a potential Hedge Bank party to a Secured Hedge Agreement).

Section 9.02 Delegation of Duties. The Administrative Agent may execute any of its duties and exercise its rights and powers under this Agreement or any other Loan Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or of exercising any rights and remedies thereunder) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Agent-Related Persons. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct by the Administrative Agent, as determined by a final non-appealable judgment by a court of competent jurisdiction. The exculpatory provisions of this Article IX shall apply to any such sub agent and to the Agent-Related Persons of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 9.03 Liability of Agents.

(a) No Agent-Related Person shall be (i) liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence, bad faith or willful misconduct, to the extent determined in a final, non-appealable judgment by a court of competent jurisdiction), (ii) liable for any action taken or not taken by it or its Related Parties under or in connection with this Agreement or any other Loan Document (A) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Sections 10.01 and 8.02) or (B) in the absence of its own gross negligence, bad faith or willful misconduct, as determined by the final, non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein, (iii) responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Loan Party or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document, (iv) responsible for or have any duty to ascertain or inquire into the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien, or security interest created or purported to be created under the Collateral Documents, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder, (v) responsible for or have any duty to ascertain or inquire into the value or the sufficiency of any Collateral or (vi) responsible for or have any duty to ascertain or inquire into the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof. The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into monitor or enforce, compliance with the provisions relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of loans, or disclosure of confidential information, to, or the restriction on any exercise of rights or remedies of, any Disqualified Institution.

(b) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), neither the Administrative Agent nor the Collateral Agent, as applicable, shall be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each L/C Issuer; *provided, however*, that neither the Administrative Agent nor the Collateral Agent, as applicable, shall be required to take any action that (i) the Administrative Agent or the Collateral Agent, as applicable, in good faith believes exposes it to liability unless the Administrative Agent or the Collateral Agent, as applicable, receives an indemnification satisfactory to it from the Lenders and the L/C Issuers with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of Law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of Law relating to bankruptcy, insolvency or reorganization or relief of debtors; *provided, further*, that the Administrative Agent or the Collateral Agent, as applicable, may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Neither the Administrative Agent nor the Collateral Agent, as applicable, shall have any duty to disclose, except as expressly set forth herein and in the other Loan Documents, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of their Affiliates that is communicated to or obtained by any Person serving as an Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent or the Collateral Agent, as applicable, to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) Any assignor of a Loan or seller of a participation hereunder shall be entitled to rely conclusively on a representation of the assignee Lender or Participant in the relevant Assignment and Assumption or participation agreement, as applicable, that such assignee or purchaser is not a Disqualified Institution.

Section 9.04 Reliance by Agents.

(a) Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, request, consent, certificate, instrument, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, Internet or intranet website posting or other distribution statement or other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons. Each Agent also may rely upon any statement made to it orally or by telephone and reasonably believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. Each Agent may consult with, and rely upon (and be fully protected in relying upon), advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by such Agent. Each Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

(b) For purposes of determining compliance with the conditions specified in Sections 4.01 and 4.02, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender prior to the proposed Closing Date, specifying its objection thereto.

Section 9.05 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, unless the Administrative Agent shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Default and stating that such notice is a “notice of default”. The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to any Event of Default as may be directed by the Required Lenders or the Required Revolving Lenders, as applicable, in accordance with Article VIII; *provided, however*, that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Lenders. Notwithstanding anything herein to the contrary, the Administrative Agent shall not be liable for, or be responsible for any loss, cost or expense suffered by the Borrower, any Subsidiary, any Lender or any L/C Issuer as a result of any determination of the outstanding Revolving Credit Commitments, any of the component amounts thereof or any portion thereof attributable to each Lender or L/C Issuer, or any Exchange Rate or Dollar-equivalent in the absence of its own gross negligence, bad faith or willful misconduct, to the extent determined in a final, non-appealable judgment by a court of competent jurisdiction.

Section 9.06 Credit Decision; Disclosure of Information by Agents. Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to each Agent that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and the other Loan Parties hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person. Each Lender, by delivering its signature page to this Agreement on the Closing Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Closing Date.

Section 9.07 Indemnification of Agents. Whether or not the transactions contemplated hereby are consummated, each Lender shall, on a ratable basis based on such Lender's Pro Rata Share of all the Facilities, indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), and hold harmless each Agent-Related Person in each case from and against any and all Indemnified Liabilities incurred by such Agent-Related Person (including, for the avoidance of doubt, any such Agent-Related Person in its capacity as L/C Issuer); *provided, however*, that no Lender shall be liable for any Indemnified Liabilities incurred by an Agent-Related Person to the extent such Indemnified Liabilities are determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence, bad faith or willful misconduct; *provided, however*, that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence, bad faith or willful misconduct for purposes of this Section 9.07; *provided, further*, that to the extent any L/C Issuer is entitled to indemnification under this Section 9.07 solely in its capacity and role as an L/C Issuer, only the Revolving Credit Lenders shall be required to indemnify such L/C Issuer under this Section 9.07 (which indemnity shall be provided by such Lenders based upon their respective Pro Rata Share of the Revolving Credit Facility). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.07 shall apply whether or not any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limiting the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its Pro Rata Share of any costs or out-of-pocket expenses (including the fees, disbursements and other charges of counsel) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower; *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto; *provided, further*, that failure of any Lender to indemnify or reimburse the Administrative Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.07 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation or removal of the Administrative Agent.

Section 9.08 Agents in Their Individual Capacities. Any Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Capital Stock in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with each of the Loan Parties and their respective Affiliates as though it were not an Agent or an L/C Issuer hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, an Agent or its Affiliates may receive information regarding any Loan Party or its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that such Agent shall be under no obligation to provide such information to them. With respect to its Loans, such Agent shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not an Agent or an L/C Issuer, and the terms “Lender” and “Lenders” include such Agent in its individual capacity (unless otherwise expressly indicated or unless the context otherwise requires).

Section 9.09 Successor Agents.

(a) The Administrative Agent (which for purposes of this Section 9.09 shall also apply to the Administrative Agent in its role as Collateral Agent) may resign at any time by giving 30 days’ prior written notice thereof to the Lenders and the Borrower, whether or not a successor Administrative Agent has been appointed. If the Administrative Agent or a controlling Affiliate of the Administrative Agent is subject to an Agent-Related Distress Event, the Borrower may remove the Administrative Agent upon ten days’ written notice to the Lenders. Upon any such resignation or removal, the Required Lenders shall promptly appoint a successor Administrative Agent, which shall be a bank with an office in New York, New York or an Affiliate of any such entity. If no successor Administrative Agent shall have been so appointed and shall have accepted such appointment prior to the effective date of the resignation or removal, then the retiring Administrative Agent or, solely to the extent the retiring Administrative Agent does not promptly so appoint a successor agent and the Borrower did not previously withhold its consent to a successor Administrative Agent appointed by the Required Lenders, the Borrower may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be an entity engaged in the business of agenting syndicated loans with an office in New York, New York or an Affiliate of any such entity; provided that any such appointment by the Borrower shall become effective at 5:00 p.m. (Chicago time), on the fifth Business Day after the Borrower has notified all Lenders of such appointment, so long as the Borrower has not received, by such time, written notice from Lenders comprising Required Lenders objecting to such appointment and appointing (effective immediately) a successor Administrative Agent acceptable to the Borrower. In either case, such appointment shall be subject to the prior written approval of the Borrower (which approval may not be unreasonably withheld or delayed and shall not be required while an Event of Default under Sections 8.01(a), (f) or (g) has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring or removed Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring or removed Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring or removed Administrative Agent’s resignation or removal hereunder as Administrative Agent, the retiring or removed Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(b) Notwithstanding clause (a) of this Section 9.09, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment prior to the effective date of the resignation or removal, the resignation or removal shall nevertheless thereupon become effective, whereupon, on the date of effectiveness of such resignation or removal, (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; *provided* that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Security Agreement for the benefit of the Secured Parties, the retiring or removed Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties, and continue to be entitled to the rights set forth in such Security Agreement and Loan Document, and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section 9.09 (it being understood and agreed that the retiring or removed Administrative Agent shall have no duty or obligation to take any further action under any Security Agreement, including any action required to maintain the perfection of any such security interest) and (ii) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent; *provided* that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person (but only to the extent that such Person shall have provided to the Borrower all information customary or necessary in order to permit the making of such payment) and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall directly be given or made to each Lender. Following the effectiveness of the Administrative Agent's resignation or removal from its capacity as such, the provisions of this Article IX and Section 10.04, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (i) above.

Section 9.10 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, administrative receivership, judicial management, insolvency, liquidation, bankruptcy, reorganization (by way of voluntary arrangement, schemes of arrangement or otherwise), arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:



(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel to the extent provided for herein and all other amounts due the Lenders and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any administrator, administrative receiver, custodian, receiver, assignee, trustee, judicial manager, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts, in each case, due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization (by way of voluntary arrangement, schemes of arrangement or otherwise), arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.11 Collateral and Guaranty Matters. Except with respect to the exercise of setoff rights in accordance with Section 10.09 or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, on behalf of the Secured Parties in accordance with the terms thereof. Each Secured Party agrees that it shall not, and hereby waives any right to, take or institute any actions or proceedings, judicial or otherwise, for any such right or remedy under any Loan Document against any Loan Party or any past, present, or future Subsidiary of any Loan Party concerning any Collateral, or any other property of any Loan Party or any past, present or future Loan Party other than through the Administrative Agent or the Collateral Agent, as applicable; *provided* that, for the avoidance of doubt, this sentence may be enforced against any Secured Party by the Required Lenders, any Agent or the Borrower (or any of its Affiliates) and each Secured Party expressly acknowledge that this sentence shall be available as a defense of the Borrower (or any of its Affiliates) in any such action, proceeding or remedial procedure. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Obligations, to have agreed to the foregoing provisions. Each of the Lenders (including in their capacities as potential or actual Hedge Banks party to a Secured Hedge Agreement and potential or actual Cash Management Banks party to a Secured Cash Management Agreement) and each L/C Issuer, the Administrative Agent and the Collateral Agent hereby irrevocably agree:

(a) that any Lien on any property granted to or held by the Administrative Agent or Collateral Agent under any Loan Document shall be automatically released (and following such automatic release the Administrative Agent or Collateral Agent shall execute any appropriate release documentation to document or evidence such release at the Borrower's reasonable request and sole expense):

(i) upon termination of the Aggregate Commitments and payment in full of all Obligations in cash and in immediately available funds (other than any Remaining Obligations) and the expiration without any pending drawing or termination of all Letters of Credit (other than any Remaining Obligations),

(ii) if the property subject to such Lien is sold, disposed of or distributed as part of or in connection with any transaction or series of related transactions not prohibited hereunder or under any other Loan Document, in each case to a Person that is not a Loan Party (including pursuant to any Receivables Facility permitted under this Agreement),

(iii) subject to Section 10.01, if such release is approved, authorized or ratified in writing by the Required Lenders,

(iv) if the property subject to such Lien constitutes or becomes Excluded Property as a result of an occurrence not prohibited hereunder, or

(v) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guaranty, any Collateral Document or hereunder, as applicable, pursuant to clause (c) below;

(b) that any Lien on any property granted to or held by the Administrative Agent or Collateral Agent under any Loan Document shall be, upon the written request of the Borrower to the Administrative Agent (x) subordinated (and the Administrative Agent or Collateral Agent shall execute any appropriate documentation to document or evidence such subordination at the Borrower's reasonable request and sole expense) to the holder of any Permitted Lien on such property that is permitted by clauses (1), (2), (5), (6), (7), (8), (9), (11) (solely with respect to cash deposits), (12), (14) (to the extent either (x) the Indebtedness so refinanced was senior to the Obligations or (y) the Liens securing such Indebtedness so refinanced were senior to the Liens securing the Obligations), (16), (17), (20) (with respect to the Liens securing Acquired Indebtedness), (21) (solely to the extent relating to a Lien securing Indebtedness and other obligations under clauses (11) or (17) (solely with respect to the assets so financed by such customer) of Section 7.01(b)), (23), (25), (26) (solely to the extent the Lien of the Collateral Agent on such property is not, pursuant to such agreements, permitted to be senior to or *pari passu* with such Liens), (27), (28) (other than with respect to self-insurance arrangements), (29) (only for so long as required to be secured for such letter of intent or investment), (30), (34), (35), (39), (40) and (41) of the definition thereof and/or (y) released (and the Administrative Agent or Collateral Agent shall execute any appropriate documentation to document or evidence such release at the Borrower's reasonable request and sole expense) to the holder of any Permitted Lien on such property that is permitted by clauses (1), (2), (6), (7), (9), (11) (solely with respect to cash deposits), (12) (solely to the extent the Lien of the Collateral Agent on such property is not, pursuant to such agreements, permitted), (14) (solely to the extent the Lien of the Collateral Agent on such property is not, pursuant to the agreements being refinanced, permitted), (16) (solely to the extent the Lien of the Collateral Agent on such property is not, pursuant to such agreements, permitted), (17), (21) (solely to the extent relating to a Lien securing Indebtedness and other obligations under clauses (11) or (17) (solely with respect to the assets so financed by such customer) of Section 7.01(b)), (23), (25), (26) (solely to the extent the Lien of the Collateral Agent on such property is not, pursuant to such agreements, permitted), (27), (28) (other than with respect to self-insurance arrangements), (29) (only for so long as required to be secured for such letter of intent or investment), (30), (34), (35), (40) and (41) of the definition thereof;

(c) that any Guarantor shall be automatically released from its obligations under the applicable Guaranty, Collateral Document or hereunder, as applicable (and following such automatic release the Administrative Agent or Collateral Agent shall execute any appropriate documentation to document or evidence such release and/or subordination at the Borrower's reasonable request and sole expense):

(i) if in the case of any Subsidiary, such Person ceases to be a Restricted Subsidiary or otherwise becomes an Excluded Subsidiary as a result of a transaction or designation permitted hereunder (other than upon the basis of such Subsidiary becoming a non-Wholly Owned Subsidiary as a result of (x) a transaction that is not bona fide or (y) the sale of its Equity Interests with the sole intention to release such Subsidiary from its Guarantee of the Obligations); *provided* that no such release shall occur if such Guarantor continues to be a guarantor in respect of (x) the 7.750% Notes or (y) any other Indebtedness for borrowed money of the Borrower or a Guarantor (other than any Guarantor that will simultaneously cease to be a Restricted Subsidiary or an Excluded Subsidiary) in an aggregate outstanding principal amount in excess of an amount equal to the greater of (i) \$100,000,000 and (ii) 33.0% of LTM EBITDA; *provided, however*, that, if such other Indebtedness will permit the release of such Subsidiary if such Subsidiary is released from its obligations hereunder, then such Subsidiary shall be released pursuant to this clause (i), notwithstanding the foregoing proviso;

(ii) upon termination of the Aggregate Commitments and payment in full of all Obligations in cash and in immediately available funds (other than any Remaining Obligations) and the expiration without any pending drawing or termination of all Letters of Credit (other than any Remaining Obligations); or

(d) if such Guarantor was designated as such pursuant to the last sentence of Section 6.12, if the Borrower so requests, so long as any Indebtedness of such Subsidiary then outstanding could have been incurred by such Subsidiary (either (x) when so incurred or (y) at the time of the release of such Guarantee) and such Subsidiary is not otherwise required to be a Guarantor at the time of such release in accordance with the provisions of this Agreement or the other Loan Documents; and

(e) that they shall establish, enter into (or amend, renew, extend, supplement, restate, waive or otherwise modify) intercreditor arrangements as expressly contemplated by this Agreement (including, without limitation, those consistent with either (x) the terms of Exhibit F-1 or F-2 (which shall be deemed satisfactory to the Administrative Agent and Collateral Agent) or (y) any other terms set forth in this Agreement, in each case, to the extent the Indebtedness being incurred and secured in connection therewith is not prohibited from being incurred under Sections 7.01 and 7.02 of this Agreement, which the Administrative Agent and Collateral Agent shall be required to enter into upon the delivery of a certificate described in the following paragraph).

In each case as specified in this Section 9.11, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty or Collateral Documents, in each case in accordance with the terms of the Loan Documents and this Section 9.11.

Additionally, upon reasonable request of the Borrower, the Collateral Agent will return possessory Collateral held by it that is released from the security interests created by the Collateral Documents pursuant to this [Section 9.11](#); *provided* that in each case of this [Section 9.11](#), prior to the Administrative Agent's or Collateral Agent's execution of any release or intercreditor documentation (but without effecting the releases and/or subordinations described in this [Section 9.11](#)), upon the Collateral Agent's reasonable request, the Borrower shall deliver to the Administrative Agent and Collateral Agent a certificate of a Responsible Officer of the Borrower certifying that any such transaction has been consummated in compliance with this Agreement and the other Loan Documents and that such release is not prohibited hereby. In the event that the Collateral Agent loses or misplaces any possessory collateral delivered to the Collateral Agent by the Borrower, upon reasonable request of the Borrower the Collateral Agent shall provide a loss affidavit to the Borrower, in the form customarily provided by the Collateral Agent in such circumstances.

Section 9.12 [Other Agents; Arranger and Managers](#). None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a "documentation agent," "joint lead arranger," or "joint bookrunner" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such; *provided* that each Arranger shall be entitled to any express rights given to that Arranger under any Loan Document. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

Section 9.13 [Secured Cash Management Agreements and Secured Hedge Agreements](#). No Cash Management Bank or Hedge Bank that obtains the benefits of [Section 8.04](#), any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this [Article IX](#) to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as applicable. By accepting the benefits of the Collateral, each Secured Party that is a party to any such arrangement in respect of Secured Cash Management Agreements or Secured Hedge Agreement, as applicable, shall be deemed to have appointed the Administrative Agent to serve as administrative agent under the Loan Documents, and shall be deemed to have appointed the Collateral Agent to serve as collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

Section 9.14 [Appointment of Supplemental Agents, Incremental Arrangers, Incremental Equivalent Debt Arrangers and Specified Refinancing Agents](#).

(a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent or the Collateral Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent and the Collateral Agent are hereby authorized to appoint an additional individual or institution selected by them in their sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent, as applicable (any such additional individual or institution being referred to herein individually as a "**Supplemental Agent**" and collectively as "**Supplemental Agents**").

(b) In the event that the Administrative Agent or the Collateral Agent appoints a Supplemental Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent or the Collateral Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Agent to the extent, and only to the extent, necessary to enable such Supplemental Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Agent shall run to and be enforceable by either the Administrative Agent and the Collateral Agent or such Supplemental Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 (obligating the Borrower to pay the Administrative Agent's and the Collateral Agent's expenses and to indemnify the Administrative Agent and the Collateral Agent) that refer to the Administrative Agent and/or the Collateral Agent shall inure to the benefit of such Supplemental Agent and all references therein to the Administrative Agent and/or Collateral Agent shall be deemed to be references to the Administrative Agent and/or Collateral Agent and/or such Supplemental Agent, as the context may require.

(c) Should any instrument in writing from the Borrower or any other Loan Party be required by any Supplemental Agent so appointed by the Administrative Agent or the Collateral Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent or the Collateral Agent. In case any Supplemental Agent, or a successor thereto, shall become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent or the Collateral Agent, as applicable, until the appointment of a new Supplemental Agent.

(d) In the event that the Borrower appoints or designates any Incremental Arranger, Incremental Equivalent Debt Arranger or Specified Refinancing Agent pursuant to Sections 2.14, 2.15 and 2.18, as applicable, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to an agent or arranger with respect to New Loan Commitments, Incremental Equivalent Debt or Specified Refinancing Debt, as applicable, shall be exercisable by and vest in such Incremental Arranger, Incremental Equivalent Debt Arranger or Specified Refinancing Agent to the extent, and only to the extent, necessary to enable such Incremental Arranger, Incremental Equivalent Debt Arranger or Specified Refinancing Agent to exercise such rights, powers and privileges with respect to the New Loan Commitments, Incremental Equivalent Debt or Specified Refinancing Debt, as applicable, and to perform such duties with respect to such New Loan Commitments, Incremental Equivalent Debt or Specified Refinancing Debt, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Incremental Arranger, Incremental Equivalent Debt Arranger or Specified Refinancing Agent shall run to and be enforceable by either the Administrative Agent or such Incremental Arranger, Incremental Equivalent Debt Arranger or Specified Refinancing Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 (obligating the Borrower to pay the Administrative Agent's and the Collateral Agent's expenses and to indemnify the Administrative Agent and the Collateral Agent) that refer to the Administrative Agent and/or the Collateral Agent shall inure to the benefit of such Incremental Arranger, Incremental Equivalent Debt Arranger or Specified Refinancing Agent and all references therein to the Administrative Agent and/or Collateral Agent shall be deemed to be references to the Administrative Agent and/or Collateral Agent and/or such Incremental Arranger, Incremental Equivalent Debt Arranger or Specified Refinancing Agent, as the context may require. Each Lender and L/C Issuer hereby irrevocably appoints any Incremental Arranger, Incremental Equivalent Debt Arranger or Specified Refinancing Agent to act on its behalf hereunder and under the other Loan Documents pursuant to Sections 2.14, 2.15 and 2.18, as applicable, and designates and authorizes such Incremental Arranger, Incremental Equivalent Debt Arranger or Specified Refinancing Agent to take such actions on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to such Incremental Arranger, Incremental Equivalent Debt Arranger or Specified Refinancing Agent by the terms of this Agreement or any other Loan Document, together with such actions and powers as are reasonably incidental thereto.

Section 9.15 Intercreditor Agreement. Without limiting Section 9.11, the Administrative Agent and the Collateral Agent are authorized by the Lenders and other Secured Parties to, (i) enter into any intercreditor agreement expressly contemplated by this Agreement or any other Loan Document, (ii) enter into any Collateral Document or (iii) make or consent to any filings or take any other actions in connection therewith (and any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to, such agreements in connection with the incurrence by any Loan Party of any Indebtedness of such Loan Party that is permitted to be secured pursuant to Sections 7.01 and 7.02 of this Agreement, in order to permit such Indebtedness to be secured by a valid, perfected lien on the Collateral (with such priority as may be designated by such Loan Party, to the extent such priority is permitted by the Loan Documents)), and the parties hereto acknowledge that any intercreditor agreement, Collateral Document, consent, filing or other action will be binding upon them. Each Lender and other Secured Party (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of any intercreditor agreement (if entered into by the Collateral Agent) and (b) hereby authorizes and instructs the Administrative Agent and the Collateral Agent to enter into any intercreditor agreement expressly contemplated by this Agreement or any other Loan Document or Collateral Document (and any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to, such agreements in connection with the incurrence by any Loan Party of any Indebtedness of such Loan Party that is permitted to be secured pursuant to Sections 7.01 and 7.02 of this Agreement, in order to permit such Indebtedness to be secured by a valid, perfected lien on the Collateral (with such priority as may be designated by such Loan Party, to the extent such priority is permitted by the Loan Documents)), and to subject the Liens on the Collateral securing the Obligations to the provisions thereof.

Section 9.16 Withholding Tax. To the extent required by any applicable Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify the Administrative Agent against, and shall make payable in respect thereof within 30 days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the U.S. Internal Revenue Service or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate documentation was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of, withholding tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement, any other Loan Document or otherwise against any amount due to the Administrative Agent under this paragraph. The agreements in this paragraph shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other obligations under any Loan Document. For the avoidance of doubt, for purposes of this Section 9.16, the term "Lender" shall include any L/C Issuer.

Section 9.17 Credit Bidding. Each Lender and L/C Issuer hereby irrevocably authorizes the Administrative Agent (and the Collateral Agent at the direction of the Administrative Agent), at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any other Debtor Relief Laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid, (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as applicable, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 10.01 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agents and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code with such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments, and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments, and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agents and such Lender.

(b) In addition, unless either (1) subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with subclause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agents and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Agents are not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Agents under this Agreement, any Loan Document or any documents related hereto or thereto).



(a) If the Administrative Agent (x) notifies a Lender, L/C Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, L/C Issuer or Secured Party (any such Lender, L/C Issuer, Secured Party or other recipient (and each of their respective successors and assigns) (but for the avoidance of doubt, excluding the Borrower and its Subsidiaries), a “**Payment Recipient**”) that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under the immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent (or any of its Affiliates) were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, L/C Issuer, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**”) and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 9.19 and held in trust for the benefit of the Administrative Agent, and such Lender, L/C Issuer or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than one (1) Business Day thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of (x) the NYFRB Rate and (y) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, L/C Issuer, Secured Party or any Person who has received funds on behalf of a Lender, L/C Issuer or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, L/C Issuer or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of the immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of the immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, L/C Issuer or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in the immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.19(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 9.19(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.19(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender, L/C Issuer or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, L/C Issuer or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, L/C Issuer or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under the immediately preceding clause (a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with the immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "**Erroneous Payment Return Deficiency**"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "**Erroneous Payment Impacted Class**") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "**Erroneous Payment Deficiency Assignment**") (on a cashless basis and such amount calculated at par, *plus* any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 10.07 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, L/C Issuer or Secured Party, to the rights and interests of such Lender, L/C Issuer or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the “**Erroneous Payment Subrogation Rights**”) (provided that the Loan Parties’ Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party; provided that this Section 9.19 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, the immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making any payment hereunder that became subject to such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this Section 9.19 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or L/C Issuer, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

## ARTICLE X

### MISCELLANEOUS

Section 10.01 Amendments, Etc. Except as otherwise expressly set forth in this Agreement or the applicable Loan Document, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent at the instruction of the Required Lenders) and the Borrower or the applicable Loan Party, as applicable, and acknowledged by the Administrative Agent (other than with respect to any amendment or waiver contemplated in clause (h) below, which shall only require the consent of the Required Revolving Lenders and acknowledged by the Administrative Agent), and each such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender, or reinstate the Commitment of any Lender after the termination of such Commitment pursuant to Section 8.02, in each case without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.02 or the waiver of (or amendment to the terms of) any Default or Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal of, or interest on, any Loan or L/C Borrowing or any fees or other amounts payable hereunder, without the written consent of each Lender directly and adversely affected thereby (and subject to such further requirements as may be applicable thereto under Section 2.19), it being understood that the waiver of any obligation to pay interest at the Default Rate, or the amendment or waiver of any mandatory prepayment of Loans under the any Term Facilities shall not constitute a postponement of any date scheduled for the payment of principal, interest or fees;

(c) reduce the principal of, or the rate of interest specified herein on, or change the currency of, any Loan or L/C Borrowing (it being understood that a waiver of any Default or Event of Default or mandatory prepayment shall not constitute a reduction or forgiveness of principal), or (subject to clause (iv) of the second proviso to clause (h) below) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; *provided, however*, that only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate”, to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) amend or modify any term or provision of any Loan Document to permit the issuance or incurrence of any Indebtedness for borrowed money (including any exchange of existing Indebtedness that results in another class of Indebtedness for borrowed money) with respect to which either (i) the Liens on all or substantially all of the Collateral securing the Obligations of any Tranche would be subordinated or (ii) any Obligations hereunder would be subordinated in right of payment to such Indebtedness for borrowed money, except (A) Indebtedness that is expressly permitted by this Agreement as in effect as of the Closing Date to be secured by a Lien that is senior (including by way of subordination) to the Lien securing the Obligations, (B) any “debtor-in-possession” facility (or similar financing under applicable Law) or (C) any other Indebtedness so long as the opportunity to participate in such Indebtedness is offered ratably and on the same terms to all adversely affected Lenders, in each case, without the written consent of each Lender directly and adversely affected thereby;

(e) change (i) any provision of this Section 10.01, or the definition of Required Lenders, or any other provision hereof specifying the number or percentage of Lenders or portion of the Loans or Commitments required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definition specified in clause (ii) of this Section 10.01(c) or modifications in connection with repurchases of Term Loans, amendments with respect to the New Term Facilities or New Revolving Facility and amendments with respect to extensions of maturity, which shall only require the written consent of each Lender directly and adversely affected thereby), without the written consent of each Lender; (ii) the definition of “Required Revolving Lenders,” without the written consent of each Revolving Credit Lender or (iii) the provisions of Section 2.13 or Section 8.04, in each case, in a manner that would alter the pro rata sharing of payments or setoffs required thereby without the written consent of each Lender;

(f) other than in a transaction permitted under Section 7.03 or Section 7.04, release all or substantially all of the Liens on the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(g) other than in a transaction permitted under Section 7.03 or Section 7.04 or as provided pursuant to Section 9.11, release all or substantially all of the aggregate value of the Guaranty, or all or substantially all of the Guarantors, without the written consent of each Lender;

(h) amend, waive or otherwise modify any condition precedent set forth in Section 4.02 with respect to Credit Extensions involving the Revolving Credit Facility, without the written consent of the Required Revolving Lenders (other than any Defaulting Lender); *provided, however*, that the amendments, modifications, waivers and consents described in this clause (h) shall not require the consent of any Lenders other than the Required Revolving Lenders;

(i) amend, waive or grant any consent that would affect the rights or duties of an L/C Issuer, in its capacity as such, under this Agreement or any Letter of Credit Application or other Issuer Document relating to any Letter of Credit issued or to be issued by it without the written consent of such L/C Issuer in addition to the Borrower and the Lenders required above;

(j) amend, waive or grant any consent that would affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent or the Collateral Agent, as applicable, under this Agreement or any other Loan Document without the written consent of the Administrative Agent, the Collateral Agent in their respective capacities as such, in addition to the Borrower and the Lenders required above; or

(k) Section 10.07(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification.

Notwithstanding anything to the contrary herein, any amendment, modification, waiver or other action which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders, except that (x) no amendment, waiver or consent relating to Sections 10.01(a), (b) or (c) may be effected, in each case without the consent of such Defaulting Lender and (y) any amendment, modification, waiver or other action that by its terms adversely affects any Defaulting Lender in its capacity as a Lender in a manner that differs in any material respect from, and is more adverse to such Defaulting Lender than it is to, other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything to the contrary herein, (1) any waiver, amendment, modification or consent in respect of this Agreement or any other Loan Document that by its terms affects the rights or duties under this Agreement or any other Loan Document of Lenders holding Loans or Commitments of a particular Tranche (but not the Lenders holding Loans or Commitments of any other Tranche) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the Lenders with respect to such Tranche that would be required to consent thereto under this Section 10.01 if such Lenders were the only Lenders hereunder at the time and (2) any fee letter (including the Fee Letter) may be amended, or the rights or privileges thereunder waived, in a writing executed only by the parties thereto.

This Section 10.01 shall be subject to any contrary provision of Section 2.14, Section 2.15, Section 2.17, Section 2.18 or Section 2.19. In addition, notwithstanding anything else to the contrary contained in this Section 10.01 or otherwise herein, (a) amendments and modifications to this Agreement and to any other Loan Document in connection with the transactions provided for by Section 2.14, Section 2.15, Section 2.17, Section 2.18 or Section 2.19 that benefit existing Lenders may be effected without such Lenders' consent, (b) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error, ambiguity or omission, defect or inconsistency of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend or modify such provision, (c) the Administrative Agent and the Borrower shall be permitted to amend or modify any provision of any Collateral Document, the Guaranty or any other Loan Document, or enter into any new agreement or instrument, to be consistent with this Agreement and the other Loan Documents or as required by local law to give effect to any guaranty, or to give effect to or to protect any security interest for the benefit of the Secured Parties, in any property so that the security interests comply with applicable Law, (d) the Administrative Agent and the Borrower shall be permitted to amend or modify any Loan Document to effect the provisions of Article XI and (e) the Administrative Agent and the Borrower shall be permitted to amend or modify any Loan Document to comply with local law or advice or local counsel.

Section 10.02 Notices; Electronic Communications.

(a) General. Unless otherwise expressly provided herein, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, any other Loan Party, the Administrative Agent, the Collateral Agent or an L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, telecopier number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties hereto, as provided in Section 10.02(d);

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire;  
and

(iii) if to any Hedge Bank or Cash Management Bank, at its address specified in the applicable Secured Hedge Agreement or Secured Cash Management Agreement to which it is a party, or as otherwise agreed between the Borrower or any Restricted Subsidiary and such Hedge Bank or Cash Management Bank.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in clause (b) below shall be effective as provided in such clause (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to Article II if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving, or is unwilling to receive, notices under Article II by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes (with the Borrower's consent), (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENT-RELATED PERSONS DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT-RELATED PERSON IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall any Agent-Related Person have any liability to any Loan Party or any of their respective Subsidiaries, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of the Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of, or material breach of the Loan Documents by, such Agent-Related Person; *provided, however*, that in no event shall any Agent-Related Person have any liability to any Loan Party or any of their respective Subsidiaries, any Lender, any L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower, the Guarantors, the Administrative Agent, the Collateral Agent and each L/C Issuer may change its address, telecopier, telephone number or electronic mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier, telephone number or electronic mail address for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and each L/C Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to the Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States federal or state securities laws.

(c) Reliance by Administrative Agent, Collateral Agent, L/C Issuer and Lenders. The Administrative Agent, the Collateral Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof except to the extent such reliance is deemed to be gross negligence, bad faith or willful misconduct of, or material breach of the Loan Documents by, the Administrative Agent, Collateral Agent, L/C Issuer or Lender in a final non-appealable judgment of a court of competent jurisdiction. The Borrower shall indemnify the Administrative Agent, the Collateral Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower to the extent required by Section 10.05. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies; Enforcement.

(a) No failure by any Lender, any L/C Issuer, the Administrative Agent or the Collateral Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided hereunder and under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them, and the right to realize upon any of the Collateral or to enforce any Guarantee of the Obligations shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent or the Collateral Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuers; *provided, however*, that the foregoing shall not prohibit (i) the Administrative Agent or the Collateral Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as the Administrative Agent or the Collateral Agent) hereunder and under the other Loan Documents, (ii) each L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as an L/C Issuer) hereunder and under the other Loan Documents or (iii) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.13); and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (x) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (y) in addition to the matters set forth in clauses (ii) and (iii) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders. In the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale, the Administrative Agent, the Collateral Agent or any Lender (or any person nominated by them) may be the purchaser of any or all of such Collateral at any such sale and the Administrative Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold in any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent at such sale.



Notwithstanding anything to the contrary herein, each Lender agrees that it shall not, and hereby expressly and irrevocably waives any right to, take or institute any actions or proceedings, judicial or otherwise, for any right or remedy or assert any other Cause of Action against any Loan Party (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings or any other Cause of Action, or otherwise commence any remedial procedures, against the Borrower and/or any of its Subsidiaries or parent companies with respect to any Collateral or any other property of any such Person, without the prior written consent of the Required Lenders.

**Section 10.04 Expenses.** The Borrower agrees (a) to pay or reimburse the Administrative Agent and the other Agents for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents (including reasonable and documented out-of-pocket expenses incurred in connection with due diligence and travel, courier, reproduction, printing and delivery expenses), and any amendment, waiver, consent or other modification of the provisions hereof and thereof, and the consummation and administration of the transactions contemplated hereby and thereby, including the reasonable and documented out-of-pocket fees, disbursements and other charges of counsel (limited to the reasonable, documented out-of-pocket fees, disbursements and other charges of one primary counsel to the Agents taken as a whole and, if reasonably necessary, one local counsel to the Agents taken as a whole in each relevant material jurisdiction (which may include a single special counsel acting in multiple jurisdictions, in each case, in relevant jurisdictions material to the interests of the Lenders)), and (b) to pay or reimburse the Administrative Agent, the other Agents and each Lender (including, for the avoidance of doubt, each L/C Issuer) for all reasonable documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such reasonable and documented out-of-pocket costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law or in connection with any workout or restructuring), including the reasonable and documented out-of-pocket fees, disbursements and other charges of counsel (limited to the reasonable fees, documented out-of-pocket disbursements and other charges of one counsel to the Administrative Agent, the other Agents and the Lenders taken as a whole, and, if reasonably necessary, of one local counsel to such Persons take as a whole in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions, in each case, in relevant jurisdictions material to the interests of the Lenders) and, in the event of any actual or reasonably perceived conflict of interest, one additional counsel in each relevant jurisdiction for each Lender or group of similarly affected Lenders or Agents taken as a whole subject to such conflict with the consent of the Borrower). The foregoing costs and expenses shall include all reasonable search, filing, recording, title insurance and appraisal charges and fees, and other out-of-pocket expenses incurred by any Agent. All amounts due under this Section 10.04 shall be paid within 30 days (or such longer period as the Administrative Agent may agree to in its reasonable discretion) after invoiced or demand therefor (with a reasonably detailed invoice with respect thereto) (except for any such costs and expenses incurred prior to the Closing Date, which shall be paid on the Closing Date to the extent invoiced at least three (3) Business Days prior to the Closing Date). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. If the Borrower fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of the Borrower by the Administrative Agent after any applicable grace periods have expired, in its sole discretion and the Borrower shall immediately reimburse the Administrative Agent, as applicable. This Section 10.04 shall not apply with respect to Taxes other than any Taxes arising from any non-Tax cost or expense.

Section 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless each Arranger, each Agent-Related Person, each Lender, each L/C Issuer, each of their respective Affiliates and each partner, director, officer, employee, counsel, agent and representative of the foregoing and, in the case of any funds, trustees and advisors and attorneys-in-fact (collectively, the “**Indemnitees**”) from and against (and will reimburse each Indemnitee, as and when incurred, for) any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs (including settlement costs), disbursements, and reasonable and documented or invoiced out-of-pocket fees and expenses (but (x) limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of (i) one counsel to the Indemnitees taken as a whole, (ii) in the case of an actual or reasonably perceived conflict of interest, where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for each such affected Indemnitee in each relevant jurisdiction material to the interests of the Lenders, and (iii) if reasonably necessary, one local counsel in each jurisdiction material to the interests of the Indemnitees (which may include a single special counsel acting in multiple jurisdictions) and (y) excluding the fees and expenses of any other third-party advisors retained without the Borrower’s prior written consent) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted or awarded against any such Indemnitee in any way relating to or arising out of or in connection with or by reason of (x) any actual or prospective claim, litigation, investigation or proceeding in any way relating to, arising out of, in connection with or by reason of any of the following, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding): (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby or (b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, disbursements, fees or related expenses resulted from (A) the bad faith, gross negligence or willful misconduct of such Indemnitee or any of its Affiliates or controlling persons or any of the officers, directors, employees, agents, advisors, or members of any of the foregoing, as applicable, as determined by a court of competent jurisdiction in a final and non-appealable decision, (B) a material breach of the Loan Documents by such Arranger, Agent-Related Person, Lender, L/C Issuer (or any of their respective Affiliates, partners, directors, officers, employees, counsel, agents and representatives), as applicable, as determined by a court of competent jurisdiction in a final and non-appealable decision or (C) any dispute that is among Indemnitees (other than any dispute involving claims against the Administrative Agent, any Arranger or any other Agent or any L/C Issuer, in each case in their respective capacities as such) that did not involve actions or omissions of the Borrower or its Subsidiaries or any of their respective Affiliates; or (y) to the extent related to the foregoing in clauses (a) and (b) above, any actual or alleged presence or Release of Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower or its Subsidiaries and any other Environmental Liability related in any way to the Borrower or any of its Subsidiaries (clauses (x) and (y), collectively, the “**Indemnified Liabilities**”), in all cases; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through the Platform or other information transmission systems (including electronic telecommunications) in connection with this Agreement unless determined by a court of competent jurisdiction in a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee, nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date); *provided* that such waiver of special, punitive, indirect or consequential damages shall not limit the indemnification obligations of the Loan Parties under this Section 10.05. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by or against any Loan Party, its directors, shareholders or creditors, an Indemnitee or any other Person, and whether or not any Indemnitee is otherwise a party thereto. Should any investigation, litigation or proceeding be settled, or if there is a judgment in any such investigation, litigation or proceeding, the Borrower shall indemnify and hold harmless each Indemnitee in the manner set forth above; *provided* that the Borrower shall not be liable for any settlement effected without the Borrower’s prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), but if settled with the Borrower’s consent, or if there is a final judgment against an Indemnitee, the Borrower shall indemnify and hold harmless such Indemnitee in the manner set forth above. All amounts due under this Section 10.05 shall be payable within 30 days (or such longer period as any Agent may agree to in its reasonable discretion) after demand therefor (and after receipt by the Borrower of a reasonably detailed invoice with respect thereto). The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This Section 10.05 shall not apply with respect to Taxes other than any Taxes that represent Indemnified Liabilities arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund or return any and all amounts paid by any Loan Party under this paragraph to such Indemnitee for any losses, claims, damages, liabilities and expenses to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof as determined in a final, non-appealable judgment of a court of competent jurisdiction.

Section 10.06 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to any Agent, to any L/C Issuer or any Lender, in each case in their capacities as such, or any Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by any Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the NYFRB Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (other than in connection with a transaction permitted by Section 7.03), and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee (other than to any Disqualified Institution or Natural Person) in accordance with the provisions of Section 10.07(b), (ii) by way of participation in accordance with the provisions of Section 10.07(d), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(f) or (iv) to an SPC in accordance with the provisions of Section 10.07(g). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(d) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.07(b), participations in L/C Obligations) at the time owing to it); *provided* that:

(i) (A) in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility, no minimum amount shall need be assigned, and (B) in any case not described in clause (b)(i)(A) of this Section 10.07, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the outstanding principal balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 (or equivalent) or integral multiples of \$1,000 (or equivalent) (or such lesser amount or multiple as is acceptable to the Administrative Agent and the Borrower), in the case of any assignment in respect of the Revolving Credit Facility, or \$5,000,000 (or equivalent) or integral multiples of \$1,000 (or such lesser amount or multiple as is acceptable to the Administrative Agent and the Borrower), in the case of any assignment in respect of a Term Facility, in each case unless each of the Administrative Agent and, so long as no Event of Default under Sections 8.01(a), (f) or (g) has occurred and is continuing, the Borrower otherwise consents (in each case, which consent shall not be unreasonably withheld, conditioned or delayed); *provided, however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities (or tranche of any Facilities) on a non-pro rata basis;

(iii)

(A) the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed; *provided* that Borrower shall have absolute consent rights with regards to any proposed assignment to a Disqualified Institution) shall be required for any assignment, unless (1) an Event of Default under Sections 8.01(a), (f) or (g) has occurred and is continuing at the time of such assignment (in each case, other than in the case of a proposed assignment to any Disqualified Institution); (2) such assignment is in respect of a Term Facility and is to a Lender, an Affiliate of a Lender or an Approved Fund (other than any Disqualified Institution) (except that Borrower consent shall be required pursuant to this clause (2) with respect to any assignment of any interest in a Term Facility pursuant to which the Lenders thereunder have rights in respect of the Financial Covenants to a Lender that does not (nor does an Affiliate or Approved Fund of such Lender) hold Loans in a Facility that has any rights in respect of the Financial Covenants); or (3) such assignment is in respect of the Revolving Credit Facility and made from a Revolving Credit Lender to an Affiliate of such Revolving Credit Lender or another Revolving Credit Lender that was a Revolving Credit Lender as of the Closing Date (other than any Disqualified Institution); *provided* that (1) other than with respect to assignments of the Revolving Credit Facility, the Borrower shall be deemed to have consented to any assignment unless the Borrower objects thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof and (2) during the 90 day period following the Closing Date, the Borrower shall be deemed to have consented to an assignment to any Lender (other than any Disqualified Institution) if such Lender was previously identified in writing and approved in writing in the initial allocations of the Loans and Commitments provided by the Arrangers to the Borrower,

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment unless (1) such assignment is in respect of a Term Facility and is to a Lender, an Affiliate of a Lender, an Approved Fund, the Borrower or any Subsidiary of the Borrower, or (2) such assignment is in respect of the Revolving Credit Facility and is to a Revolving Credit Lender, an Affiliate of a Revolving Credit Lender or an Approved Fund related thereto (*provided* that in each case the Administrative Agent shall acknowledge any such assignment), and

(C) the consent of each L/C Issuer of the applicable Revolving Tranche (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment in respect of the Revolving Credit Facility of such Revolving Tranche; *provided, however*, that the consent of each L/C Issuer shall not be required for any assignment in respect of a Term Loan;

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), together with a processing and recordation fee of \$3,500 for each assignment. Each Eligible Assignee that is not an existing Lender shall deliver to the Administrative Agent an Administrative Questionnaire;

(v) no such assignment shall be made (A) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary of a Defaulting Lender, (B) to any Natural Person, (C) to any Disqualified Institution or (D) to the Borrower or any of its Subsidiaries except as permitted under clause (j) below; *provided* that each Lender shall make an inquiry to the Administrative Agent as to whether a specific potential assignee or prospective participant is a Disqualified Institution and upon such inquiry by any Lender to the Administrative Agent, the Administrative Agent shall be permitted to disclose to such inquiring Lender whether such specific potential assignee or prospective participant is on the list of Disqualified Institutions; *provided, further*, that such Lender agrees to keep such identity confidential; *provided, further*, that the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions and shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation to or disclosure of confidential information to, a Disqualified Institution; *provided, further*, that the Administrative Agent shall not disclose (verbally or in writing) the list of entities that are Disqualified Institutions to any person, but may, upon the written request or inquiry by any Lender, disclose whether a particular potential assignee or participant is a Disqualified Institution (*provided* that such Lender agrees to keep such information confidential and each Lender party to this Agreement (on or after the Closing Date) expressly acknowledges that the Disqualified Institutions list shall be treated as “Information” subject to the restrictions of Section 10.08 except to the extent disclosure of a particular Disqualified Institution’s status is required in connection with a potential assignment to such particular Disqualified Institution);

(vi) [reserved];

(vii) the assigning Lender shall deliver any Notes or, in lieu thereof, a lost note affidavit and indemnity reasonably acceptable to the Borrower evidencing such Loans to the Borrower or the Administrative Agent; and

(viii) in connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any L/C Issuer or Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit in accordance with its Pro Rata Share; *provided* that notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this clause, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(c), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment, and subject to the obligations set forth in Section 10.08). Upon request, and the surrender by the assigning Lender of its Note (or, in lieu thereof, a lost note affidavit and indemnity reasonably acceptable to the Borrower), the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement (other than any purported assignment or transfer to a Disqualified Institution) that does not comply with this clause (b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register in which it shall record the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, L/C Obligations (specifying the Unreimbursed Amounts), L/C Borrowings and amounts due under Section 2.03, owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as Defaulting Lender. The Register shall be available for inspection by the Borrower, any Agent and any Lender (but only to entries with respect to itself), at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(c), Section 10.07(m) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2), and 881(c)(2) of the Code, and United States Treasury Regulations Section 5f.103-1(c), and proposed United States Treasury Regulations Section 1.163-5(b) (or any other relevant or successor provisions of the Code or of such Treasury Regulations).

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent or the L/C Issuers, sell participations to any Person (other than a Natural Person, a Person that the Administrative Agent has identified in a notice to the Lenders as a Defaulting Lender or a Disqualified Institution) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document unless otherwise agreed by the Borrower; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 (in the case of any amendment, waiver or other modification described in clause (a), (b) or (c) of such proviso, that directly and adversely affects such Participant). Subject to Section 10.07(c), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and the limitations of such Sections (it being understood that the documentation required under Section 3.01(h) shall be delivered solely to the participating Lender) and Section 3.08) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) A Participant (i) shall be subject to the provisions of Section 3.08 as if it were an assignee pursuant to Section 10.07(b) and (ii) shall not be entitled to receive any greater payment under Sections 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such greater entitlement results from a change in Law after the Participant acquires such participation.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) (other than to a Disqualified Institution or a Natural Person) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a FRB or any central bank having jurisdiction over such Lender; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary herein, any Lender (a “**Granting Lender**”) may grant to a special purpose funding vehicle (an “**SPC**”) identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof or, if it fails to do so, to make such payment to the Administrative Agent as is required under Section 2.12(b). Each party hereto hereby agrees that an SPC shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and the limitations of such Sections (it being understood that the documentation required under Section 3.01(h) shall be delivered solely to the Granting Lender) and Section 3.08); *provided* that neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including under Sections 3.01, 3.04 or 3.05), except to the extent such greater entitlement results from a change in Law after the applicable grant. Each party hereto further agrees that (i) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (ii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the Lender of record hereunder. Other than as expressly provided in this Section 10.07(g), (A) such Granting Lender’s obligations under this Agreement shall remain unchanged, (B) such Granting Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Granting Lender in connection with such Granting Lender’s rights and obligations under this Agreement. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not, other than in respect of matters unrelated to this Agreement or the transactions contemplated hereby, institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its rights hereunder with respect to any Loan to the Granting Lender and (ii) subject to Section 10.08, disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(h) Notwithstanding anything to the contrary herein, any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents, and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.



(i) [Reserved].

(j) Notwithstanding anything to the contrary herein, including Sections 2.13 and 8.04, so long as no Default or Event of Default exists, any Lender may assign all or any portion of its Term Loans, Specified Refinancing Term Loans and New Term Loans hereunder to the Borrower or any of its Subsidiaries, whether pursuant to open market purchase, dutch auction, exchange, or otherwise, and, for the avoidance of doubt any such assignment may be made on a non-pro rata basis, and *provided* that:

(i) any such Term Loans shall be automatically and permanently cancelled immediately upon acquisition thereof by the Borrower or any of its Subsidiaries; and

(ii) the Borrower and its Subsidiaries do not use the proceeds of the Revolving Credit Facility (whether or not the Revolving Credit Facility has been increased pursuant to Section 2.14 or refinanced pursuant to Section 2.18) to acquire such Term Loan.

In connection with any assignment pursuant to Section 10.07(j), each Lender acknowledges and agrees that, in connection therewith:

(1) the Borrower and/or any of its Subsidiaries may have, and later may come into possession of, information regarding either the Borrower or any of its Subsidiaries and/or any of their respective Affiliates not known to such Lender and that may be material to a decision by such Lender to participate in such assignment (including material non-public information) (“**Excluded Information**”),

(2) such Lender, independently and, without reliance on the Borrower, any of its Subsidiaries, any Agent or any of their respective Affiliates, has made its own analysis and determination to participate in such assignment notwithstanding such Lender’s lack of knowledge of the Excluded Information, and

(3) none of the Borrower, any of its Subsidiaries, any Agent or any of their respective Affiliates shall have any liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by law, any claims such Lender may have against the Borrower, any of its Subsidiaries, any Agent or any of their respective Affiliates, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information.

(k) [Reserved].

(l) Notwithstanding anything to the contrary herein, any L/C Issuer may, upon 30 days’ notice to the Borrower and the Lenders, resign as L/C Issuer; *provided* that on or prior to the expiration of such 30-day period with respect to such resignation, the relevant L/C Issuer shall have identified a successor L/C Issuer willing to accept its appointment as successor L/C Issuer, and the effectiveness of such resignation shall be conditioned upon such successor assuming the rights and duties of the L/C Issuer. In the event of any such resignation as L/C Issuer, the Borrower shall be entitled to appoint from among the Lenders agreeing to accept such appointment a successor L/C Issuer hereunder; *provided, however*, that no failure by the Borrower to appoint any such successor shall affect the resignation of the L/C Issuer. If an L/C Issuer resigns as L/C Issuer, it shall retain all the rights and obligations of an L/C Issuer hereunder with respect to all Letters of Credit outstanding, as of the effective date of such resignation and all L/C Obligations with respect thereto (including the right to require the Lenders to make ABR Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(d)). Upon the appointment of a successor L/C Issuer, (A) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and (B) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

(m) The applicable Lender, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a register on which it enters the name and address of (i) each SPC (other than any SPC that is treated as a disregarded entity of the Granting Lender for U.S. federal income tax purposes) that has exercised its option pursuant to Section 10.07(g) and (ii) each Participant, and the amount of each such SPC's and Participant's interest in such Lender's rights and/or obligations under this Agreement or any Loan Document (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary in connection with a Tax audit or other proceeding or requirement to establish that such commitment, loan, letter of credit or other obligation is in "registered form" under Sections 163(f), 871(h)(2), and 881(c)(2) of the Code, United States Treasury Regulations Section 5f.103-1(c), and proposed United States Treasury Regulations Section 1.163-5(b) (or any other relevant or successor provisions of the Code or of such Treasury Regulations). The entries in the Participant Register shall be conclusive absent manifest error, and the Borrower and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of the applicable rights and/or obligations of such Lender under this Agreement, notwithstanding notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no obligation to maintain the Participant Register.

(n) In the event that a transfer by any of the Secured Parties of its rights and/or obligations under this Agreement (and/or any relevant Loan Document) occurred or was deemed to occur by way of novation, the Borrower and any other Loan Parties explicitly agree that all securities and guarantees created under any Loan Documents shall be preserved for the benefit of the new Lender and the other Secured Parties.

(o) Notwithstanding anything to the contrary herein and without limiting the rights or remedies of the Borrower as a result thereof or arising therefrom, if any Loans are assigned or any participations are purchased or otherwise acquired, without the Borrower's consent (including, without limitation, in violation of Sections 10.07(b) or (d)), to any Disqualified Institution or otherwise when the Borrower's consent is otherwise required hereunder, then: (i) Borrower may, at its sole option, expense and effort, upon notice to the applicable Disqualified Institution or the applicable assignee and the Administrative Agent (*provided* that the Administrative Agent shall provide appropriate cooperation to effect this Section 10.07(o)), (I) (x) terminate any commitment of such Disqualified Institution or such applicable assignee and repay any applicable outstanding Loans (in the case of Loans, at a price equal to the least of (A) par and (B) the amount that the applicable Disqualified Institution or such applicable assignee paid to acquire such Loans or participation), without premium, penalty, prepayment fee, breakage or accrued interest, and/or (y) require such Disqualified Institution or such applicable assignee to assign its rights and obligations to one or more Eligible Assignees at the price indicated in the immediately preceding clause (x), without premium, penalty, prepayment fee, accrued interest or breakage (which assignment shall not be subject to the processing and recordation fee described in Section 10.07(b)(iv)) or (II) (x) force the termination of any participation with respect to any Participant which is a Disqualified Institution or terminate any commitment of a Lender which has sold a participation to a Participant which is a Disqualified Institution and repay any applicable outstanding Loans of such Lender (in the case of Loans, at a price equal to the least of (A) par, (B) the amount that the applicable Disqualified Institution paid to acquire such participation in such Loans and (C) the average trading price for such Loans over the immediately prior five trading days), without premium, penalty, prepayment fee, breakage or accrued interest, and/or (y) require such Participant which is a Disqualified Institution to assign its rights and obligations to one or more Eligible Assignees at the price indicated in the immediately preceding clause (x), without premium, penalty, prepayment fee, accrued interest or breakage (which assignment shall not be subject to the processing and recordation fee described in Section 10.07(b)(iv)), (ii) no such Disqualified Institution or such applicable assignee shall (x) receive any information or reporting provided by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders, (iii) for purposes of voting, any Loans, Commitments or participations held by such Disqualified Institution or such applicable assignee shall be deemed not to be outstanding and such Disqualified Institution or such applicable assignee shall have no voting or consent rights with respect to "Required Lender" or class votes or consents, in each case notwithstanding Section 10.01, (iv) for purposes of any matter requiring the vote or consent of each Lender affected by any amendment or waiver, such Disqualified Institution or such applicable assignee shall be deemed to have voted or consented to approve such amendment or waiver if a majority of the affected class so approves and (v) such Disqualified Institution or such applicable assignee shall not be entitled to any expense reimbursement or indemnification rights ordinarily afforded to Lenders or Participants hereunder or in any Loan Document and such Disqualified Institution or such applicable assignee shall be treated in all other respects as a Defaulting Lender.

Section 10.08 Confidentiality. Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, limited partners, managed accounts, investors, lenders, directors, officers, employees, trustees, representatives and agents, including accountants, legal counsel and other advisors and service providers on a need-to-know basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential in accordance with customary practices); (b) to the extent requested by any regulatory authority having jurisdiction over such Agent, Lender or its respective Affiliates or in connection with any pledge or assignment permitted under Section 10.07(f); (c) in any legal, judicial, administrative proceeding or other compulsory process or otherwise as required by applicable Laws or regulations or by any subpoena or similar legal process, in each case based upon the reasonable advice of the disclosing Agent's or Lender's legal counsel (in which case the disclosing Agent or Lender, as applicable, agrees (except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority or self-regulatory authorities exercising examination or regulatory authority), to the extent not prohibited by applicable Law, to (i) promptly notify the Borrower in writing prior to such disclosure, (ii) cooperate with the Borrower to obtain a protective order or similar confidential treatment, and (iii) only disclose that portion of the Information as counsel for the Agent or the applicable Lender advises the Agent or the applicable Lender it must disclose pursuant to such requirement); (d) to any other party to this Agreement; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same (or at least as restrictive) as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement; *provided* that no such disclosure shall be made by such Lender or such Agent or any of their respective Affiliates to any such Person that is a Disqualified Institution; (g) with the written consent of the Borrower; (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08; (i) to any state, federal or foreign authority or examiner (including the National Association of Insurance Commissioners or any other similar organization) regulating any Agent or Lender or any Affiliate of any Agent or Lender; (j) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to the Loan Parties received by it from such Agent or Lender); (k) to any contractual counterparty (or prospective contractual counterparty) in any swap, hedge, or similar agreement or to any such contractual counterparty's (or prospective contractual counterparty's) professional advisor (other than a Disqualified Institution); (l) in connection with establishing a "due diligence" defense in connection with any legal, judicial, administrative proceeding or other process; or (m) to the extent such Information becomes available to such Person on a non-confidential basis from a source other than the Borrower or on the Borrower's behalf and not in violation of any confidentiality agreement or obligation owed to the Borrower. In addition, the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to (x) market data collectors, similar service providers to the lending industry, and (y) service providers to the Agents and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments, and the Credit Extensions; *provided* that in the case of clause (y), such Person is advised and agrees to be bound by the provisions of this Section 10.08.

For the purposes of this Section 10.08, “**Information**” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is publicly available to any Agent or any Lender prior to disclosure by any Loan Party other than as a result of a breach of this Section 10.08 by such Lender or Agent. Any Person required to maintain the confidentiality of Information as provided in this Section 10.08 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each Agent, each Lender and each L/C Issuer acknowledges that (i) the Information may include material non-public information concerning the Borrower or any of its Subsidiaries, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws.

Section 10.09 Setoff. In addition to any rights and remedies of the Secured Parties provided by Law, upon the occurrence and during the continuance of any Event of Default, each Secured Party is authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, without prior notice to the Borrower or any other Loan Party, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party) to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in any currency), other than deposits in fiduciary accounts as to which a Loan Party is acting as fiduciary for another Person who is not a Loan Party and other than payroll or trust fund accounts, at any time held by, and other Indebtedness (in any currency) at any time owing by, such Lender to or for the credit or the account of the respective Loan Parties against any and all Obligations owing to such Secured Party hereunder or under any other Loan Document (or Security Agreement), now or hereafter existing, irrespective of whether or not such Agent or such Lender shall have made demand under this Agreement or any other Loan Document (or other Security Agreement) and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Secured Party agrees promptly to notify the Borrower and the Administrative Agent after any such set-off and application made by such Secured Party; *provided, however*, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent and each Secured Party under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent and such Secured Party may have.

Section 10.10 Interest Rate Limitation. Notwithstanding anything to the contrary in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.11 Counterparts. This Agreement and each other Loan Document may be executed in one or more counterparts (and by different parties hereto in different counterparts), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier or other electronic transmission of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier or other electronic transmission be confirmed by a manually signed original thereof; *provided* that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier or other electronic transmission.

Section 10.12 Integration; Effectiveness. This Agreement and the other Loan Documents, and the Fee Letter, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Agents or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto as of the date hereof.

Section 10.13 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation (other than any Remaining Obligations) hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding (other than any Remaining Obligations).

Section 10.14 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.14, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.15 Governing Law; Jurisdiction; Etc.

(a) Governing Law. THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT (OTHER THAN WITH RESPECT TO ANY COLLATERAL DOCUMENTS TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE THEREIN) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF, BUT INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) Submission to Jurisdiction. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (OTHER THAN WITH RESPECT TO ANY COLLATERAL DOCUMENT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE THEREIN), OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) Waiver of Venue. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 10.15(b). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 10.16 Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.17 Waiver of Right to Trial by Jury. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.17 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 10.18 Binding Effect. When this Agreement shall have become effective in accordance with Section 10.12, it shall thereafter be binding upon and inure to the benefit of the Borrower, each Agent and each Lender and their respective successors and permitted assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders, except as permitted by Section 7.03.

Section 10.19 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges and agrees that it has informed its Affiliates, that: (i) (A) no fiduciary, advisory or agency relationship between any of the Borrower and its Subsidiaries and any Agent or any Arranger or Lender (or their respective Affiliates) is intended to be or has been created in respect of any of the transactions contemplated hereby and by the other Loan Documents, irrespective of whether any Agent or any Arranger or any Lender (or their respective Affiliates) has advised or is advising the Borrower and its Subsidiaries on other matters, (B) the arranging and other services regarding this Agreement provided by the Agents and the Arrangers are arm's-length commercial transactions between the Borrower and its Subsidiaries, on the one hand, and the Agents and the Arrangers on the other hand, (C) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (D) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent, Arranger and Lender is and has been acting solely as a principal and, except as may otherwise be expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of their respective Affiliates, or any other Person and (B) none of the Agents or Arrangers or Lenders has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Arrangers and Lenders and/or their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and none of the Agents, the Arrangers or the Lenders has any obligation to disclose any of such interests and transactions to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Agents, the Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.20 Affiliate Activities. The Borrower acknowledges that each Agent and each Arranger (and their respective Affiliates) are full service securities firms engaged, either directly or through affiliates, in various activities, including securities trading, investment banking and financial advisory, investment management, principal investment, hedging, financing and brokerage activities and financial planning and benefits counseling for both companies and individuals. In the ordinary course of these activities, any of them may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and/or financial instruments (including bank loans) for their own account and for the accounts of customers and may at any time hold long and short positions in such securities and/or instruments. Such investment and other activities may involve securities and instruments of the Borrower and its Affiliates, as well as of other entities and persons and their Affiliates which may (i) be involved in transactions arising from or relating to the transactions contemplated hereby and by the other Loan Documents, (ii) be customers or competitors of the Borrower and its Affiliates or (iii) have other relationships with the Borrower and its Affiliates. In addition, it may provide investment banking, underwriting and financial advisory services to such other entities and persons. It may also co-invest with, make direct investments in, and invest or co-invest client monies in or with funds or other investment vehicles managed by other parties, and such funds or other investment vehicles may trade or make investments in securities of the Borrower and its Affiliates or such other entities. The transactions contemplated hereby and by the other Loan Documents may have a direct or indirect impact on the investments, securities or instruments referred to in this Section 10.20.

Section 10.21 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “execute,” “signed,” “signature,” and words of like import in any Loan Document, any Assignment and Assumption, any Committed Loan Notice or any amendment or other modification hereof or thereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as applicable, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.22 USA PATRIOT Act. Each Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001, as amended from time to time)) (the “**PATRIOT Act**”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the PATRIOT Act. Each Loan Party shall, promptly following a request by the Administrative Agent, the Collateral Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act and Beneficial Ownership Regulation.

Section 10.23 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “**Agreement Currency**”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Law).



Section 10.24 Acknowledgment and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 10.25 Acknowledgment Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**” and each such QFC a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.25, the following terms have the following meanings:

“**Covered Entity**” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

*[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**KNIFE RIVER HOLDING COMPANY,**  
as the Borrower

By: /s/ Brian R. Gray  
Name: Brian R. Gray  
Title: President and Chief Executive Officer

[Signature Page to Credit Agreement]

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**JPMORGAN CHASE BANK, N.A.,**  
as the Administrative Agent, the Collateral Agent, a Lender and an L/C Issuer

By: /s/ Zachary Blaner  
Name: Zachary Blaner  
Title: Vice President

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[Signature Page to Credit Agreement]

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**BANK OF AMERICA, N.A.,**  
as a Lender and an L/C Issuer

By: /s/ Michael Snook  
Name: Michael Snook  
Title: Senior Vice President

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[Signature Page to Credit Agreement]

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**MUFG BANK, LTD.,**  
as a Lender and an L/C Issuer

By: /s/ James Chaon  
Name: James Chaon  
Title: Authorized Signatory

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[Signature Page to Credit Agreement]

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**ROYAL BANK OF CANADA,**  
as a Lender and an L/C Issuer

By: /s/ Brian Hueter  
Name: Brian Hueter  
Title: Authorized Signatory

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**U.S. BANK NATIONAL ASSOCIATION,**  
as a Lender and an L/C Issuer

By: /s/ Heather Thoma  
Name: Heather Thoma  
Title: Vice President

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[Signature Page to Credit Agreement]

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**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as a Lender and an L/C Issuer

By: /s/ Andrew Payne  
Name: Andrew Payne  
Title: Managing Director

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[Signature Page to Credit Agreement]

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**TD BANK N.A.,**  
as a Lender

By: /s/ Peter Echausse  
Name: Peter Echausse  
Title: Managing Director

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**KNIFE RIVER CORPORATION  
LONG-TERM PERFORMANCE-BASED INCENTIVE PLAN**

**ARTICLE 1  
Establishment, Purpose and Duration**

1.1 Purpose of the Plan. The purpose of the Knife River Corporation Long-Term Performance-Based Incentive Plan (hereinafter referred to as the “Plan”) is to promote the success and enhance the value of the Company by linking the personal interests of Participants to those of Company stockholders and customers. The Plan permits the grant of Restricted Stock, Restricted Stock Units, Performance Units, Performance Shares and other awards.

The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract and retain the services of Participants upon whose judgment, interest and special effort the successful conduct of its operations is largely dependent.

1.2 Duration of the Plan. The Plan became effective on the date on which the Spin-Off occurred (the “Effective Date”). Prior to the Effective Date, this Plan was approved by the Board and by MDU Resources Group, Inc. as the sole shareholder of the Company. The Plan shall remain in effect, subject to the right of the Board of Directors to terminate the Plan at any time pursuant to Article 13, until all Shares subject to it shall have been purchased or acquired according to the Plan’s provisions.

**ARTICLE 2  
Definitions**

Whenever used in the Plan, the following terms shall have the meanings set forth below and, when such meaning is intended, the initial letter of the word is capitalized:

2.1 “Assumed Spin-Off Award” means an award granted to certain employees and non-employee directors of the Company, MDU Resources Group, Inc. and their respective subsidiaries under an equity compensation plan maintained by MDU Resources Group, Inc., which is assumed by the Company in connection with the Spin-Off pursuant to the terms of the Employee Matters Agreement.

2.2 “Award” means, individually or collectively, a grant under the Plan of Restricted Stock, Restricted Stock Units, Performance Units, Performance Shares or any other type of award permitted under Article 8 or an Assumed Spin-Off Award.

2.3 “Award Agreement” means an agreement entered into by each Participant and the Company, setting forth the terms and provisions applicable to an Award granted to a Participant under the Plan.

2.4 “Board” or “Board of Directors” means the Board of Directors of the Company.

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2.5 A “Change in Control” shall mean:

- (a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (a “Person”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then outstanding shares of common stock of the Company (the “Outstanding Company Common Stock”) or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”); provided, however, that for purposes of this subsection (a), the following acquisitions shall not constitute a Change in Control: (i) any acquisition directly from the Company, (ii) any acquisition by the Company, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company or (iv) any acquisition by any corporation<sup>2</sup> pursuant to a transaction which complies with clauses (i), (ii) and (iii) of subsection (c) of this Section 2.5; or
- (b) Individuals who, as of the Effective Date constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or
- (c) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a “Business Combination”), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation or entity resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(d) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

For avoidance of doubt, unless otherwise determined by the Board, the sale of a subsidiary, operating entity or business unit of the Company shall not constitute a Change in Control for purposes of this Agreement.

2.6 “Code” means the Internal Revenue Code of 1986, as amended from time to time.

2.7 “Committee” means the Committee, as specified in Article 3, appointed by the Board to administer the Plan with respect to Awards.

2.8 “Company” means prior to the Spin-Off, Knife River Holding Company, and on and after the Spin-Off, the Knife River Corporation, a Delaware corporation, or any successor thereto as provided in Article 16.

2.9 “Director” means any individual who is a member of the Board of Directors of the Company.

2.10 “Disability” means “permanent and total disability” as defined under Section 22(e)(3) of the Code.

2.11 “Dividend Equivalent” means, with respect to Shares subject to an Award, a right to be paid an amount equal to dividends declared on an equal number of outstanding Shares, whether deliverable in the form of cash or additional Shares.

2.12 “Effective Date” has the meaning set forth in Section 1.2.

2.13 “Eligible Individual” means non-employee director, Employee or consultants of the Company or any of its Subsidiaries, and any prospective non-employee director, Employee or consultant who has accepted an offer of employment or consultancy from the Company or any of its Subsidiaries.

2.14 “Employee” means any full-time or regularly-scheduled part-time employee of the Company or of the Company’s Subsidiaries, who is not covered by any collective bargaining agreement to which the Company or any of its Subsidiaries is a party. For purposes of the Plan, transfer of employment of an Employee between the Company and any one of its Subsidiaries (or between Subsidiaries) shall not be deemed a termination of employment.

2.15 “Employee Matters Agreement” means the Employee Matters Agreement entered into between the Company and MDU Resources Group, Inc. in connection with the Spin-Off.

2.16 “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, or any successor act thereto.

2.17 “Fair Market Value” means, with respect to a Share and except as otherwise provided by the Award Agreement, the average of the high and low sale prices as reported in the consolidated transaction reporting system or, if there is no such sale on the relevant date, then on the last previous day on which a sale was reported or in the event that there shall be no public market on the relevant date, the fair market value as determined by the Committee.

2.18 “Full Value Award” means an Award pursuant to which Shares may be issued.

2.19 “Participant” means any Eligible Individual who is selected by the Committee to receive an Award under the Plan or who receives an Assumed Spin-Off Award.

2.20 “Performance Goals” means the performance goals established by the Committee, which may be based on one or more of the following measures or other measures selected by the Committee: sales or revenues, earnings per share, shareholder return and/or value, funds from operations, cash flow from operations (dollar target or as % of revenue), gross margin or gross profit (dollar target or as % of revenue), operations and maintenance expense (dollar target or as % of revenue), general and administrative expense (dollar target or as % of revenue), total operating expense (dollar target or as % of revenue), operating income (dollar target or as % of revenue), pretax income (dollar target or as % of revenue), earnings before interest, taxes, depreciation and amortization or “EBITDA” (dollar target or as % of revenue), earnings before interest and taxes or “EBIT” (dollar target or as % of revenue), gross income, net income, cash flow, earnings, return on equity, return on invested capital, return on assets, return on net assets, working capital as percentage of revenue, days sales outstanding/accounts receivable turnover, current ratio, capital efficiency, operating ratios, stock price, enterprise value, company value, asset value growth, net asset value, shareholders’ equity, dividends, customer satisfaction, accomplishment of mergers, acquisitions, dispositions or similar extraordinary business transactions, safety, sustainability, profit returns and margins, financial return ratios, and market performance. Performance goals may be measured solely on a corporate, subsidiary, business unit or individual basis, or a combination thereof. Performance goals may reflect absolute entity or individual performance or a relative comparison of entity or individual performance to the performance of a peer group of entities or other external measure.

2.21 “Performance Share” means an Award granted to an Employee, as described in Article 7.

2.22 “Performance Unit” means an Award granted to an Employee, as described in Article 7.

- 2.23 “Period of Restriction” means the period during which the transfer of Restricted Stock is limited in some way, as provided in Article 6.
- 2.24 “Person” has the meaning set forth in Section 2.5(a).
- 2.25 “Plan” has the meaning set forth in Section 1.1.
- 2.26 “Restricted Stock” means an Award of Shares granted to a Participant pursuant to Article 6.
- 2.27 “Restricted Stock Unit” means an Award of Shares granted to a Participant pursuant to Article 7.
- 2.28 “Separation from Service” has the meaning set forth in Article 20.
- 2.29 “Shares” means the shares of common stock of the Company.
- 2.30 “Spin-Off” means the distribution of 80.1% or more of the outstanding Shares to the stockholders of MDU Resources Group, Inc. in 2023, pursuant to the Separation and Distribution Agreement between the Company and MDU Resources Group, Inc entered into in connection with such distribution.
- 2.31 “Subsidiary” means any corporation that is a “subsidiary corporation” of the Company as that term is defined in Section 424(f) of the Code.

**ARTICLE 3**  
**Administration**

3.1 The Committee. The Plan shall be administered by the Compensation Committee of the Board, or by any other Committee appointed by the Board. The members of the Committee shall be appointed from time to time by, and shall serve at the discretion of, the Board of Directors.

3.2 Authority of the Committee. The Committee shall have full power except as limited by law, the Articles of Incorporation and the Bylaws of the Company, subject to such other restricting limitations or directions as may be imposed by the Board and subject to the provisions herein, to determine the size and types of Awards; to determine the terms and conditions of such Awards in a manner consistent with the Plan; to construe and interpret the Plan and any agreement or instrument entered into under the Plan; to establish, amend or waive rules and regulations for the Plan’s administration; and (subject to the provisions of Article 13) to amend the terms and conditions of any outstanding Award. Further, the Committee shall make all other determinations which may be necessary or advisable for the administration of the Plan. As permitted by law, the Committee may delegate its authorities as identified hereunder.

3.3 Restrictions on Share Transferability. The Committee may impose such restrictions on any Shares acquired pursuant to Awards under the Plan as it may deem advisable, including, without limitation, restrictions to comply with applicable Federal securities laws, with the requirements of any stock exchange or market upon which such Shares are then listed and/or traded and with any blue sky or state securities laws applicable to such Shares.

3.4 Approval. The Board or the Committee shall approve all Awards made under the Plan and all elections made by Participants, prior to their effective date, to the extent necessary to comply with Rule 16b-3 under the Exchange Act.

3.5 Decisions Binding. All determinations and decisions made by the Committee pursuant to the provisions of the Plan and all related orders or resolutions of the Board shall be final, conclusive and binding on all persons, including the Company, its stockholders, Employees, Participants and their estates and beneficiaries.

3.6 Costs. The Company shall pay all costs of administration of the Plan.

#### **ARTICLE 4** **Shares Subject to the Plan**

4.1 Number of Shares. Subject to Section 4.2, the maximum number of Shares that may be issued pursuant to Awards under the Plan shall be 2,500,000 which includes Shares subject to the Assumed Spin-Off Awards. Shares underlying lapsed or forfeited Awards of Restricted Stock shall not be treated as having been issued pursuant to an Award under the Plan. Shares withheld from an Award to satisfy tax withholding obligations shall be counted as Shares issued pursuant to an Award under the Plan. Shares that are potentially deliverable under an Award that expires or is canceled, forfeited, settled in cash or otherwise settled without the delivery of Shares shall not be treated as having been issued under the Plan.

Shares issued pursuant to the Plan may be (i) authorized but unissued Shares of Common Stock, (ii) treasury shares, or (iii) shares purchased on the open market.

4.2 Adjustments in Authorized Shares. In the event of any equity restructuring such as a stock dividend, stock split, spinoff, rights offering or recapitalization through a large, nonrecurring cash dividend, the Committee shall cause an equitable adjustment to be made (i) in the number and kind of Shares that may be delivered under the Plan, (ii) in the individual limitations set forth in Section 4.3 and (iii) with respect to outstanding Awards, in the number and kind of Shares subject to outstanding Awards, price of Shares subject to outstanding Awards, any Performance Goals relating to Shares, the market price of Shares, or per-Share results, and other terms and conditions of outstanding Awards, in the case of (i), (ii) and (iii) to prevent dilution or enlargement of rights. In the event of any other change in corporate capitalization, such as a merger, consolidation or liquidation, the Committee may, in its sole discretion, cause an equitable adjustment as described in the foregoing sentence to be made to prevent dilution or enlargement of rights. The number of Shares subject to any Award shall always be rounded down to a whole number when adjustments are made pursuant to this Section 4.2. Adjustments made by the Committee pursuant to this Section 4.2 shall be final, binding and conclusive.

4.3 Individual Limitations. Subject to Section 4.2, (i) the total maximum number of Shares that may be subject to Awards granted in any calendar year to any Participant (other than a non-employee director) shall not exceed 2,250,000 Shares; (ii) the total maximum value of cash Awards that may be granted pursuant to Article 8 in any calendar year to any Participant shall not exceed \$6,000,000; and (iii) the maximum value of Shares that may be granted pursuant to Awards to any non-employee director in any calendar year shall be equal to \$350,000 as of the applicable date of grant. None of the foregoing individual limitations set forth in this Section 4.3 shall apply to Assumed Spin-Off Awards.



**ARTICLE 5**  
**Eligibility and Participation**

5.1 Eligibility. Eligible Individuals shall be eligible to participate in the Plan.

5.2 Actual Participation. Subject to the provisions of the Plan, the Committee may, from time to time, select from all Eligible Individuals those to whom Awards shall be granted and shall determine the nature and amount of each Award.

**ARTICLE 6**  
**Restricted Stock**

6.1 Grant of Restricted Stock. Subject to the terms and conditions of the Plan, Restricted Stock may be granted to Eligible Individuals at any time and from time to time, as shall be determined by the Committee.

The Committee shall have complete discretion in determining the number of shares of Restricted Stock granted to each Participant (subject to Article 4) and, consistent with the provisions of the Plan, in determining the terms and conditions pertaining to such Restricted Stock.

In addition, the Committee may condition the grant or vesting, as applicable, of Restricted Stock upon the attainment of the Performance Goals selected by the Committee.

6.2 Restricted Stock Award Agreement. Each Restricted Stock grant shall be evidenced by a Restricted Stock Award Agreement that shall specify the Period or Periods of Restriction, the number of Restricted Stock Shares granted and such other provisions as the Committee shall determine.

6.3 Transferability. Restricted Stock granted hereunder may not be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated until the end of the applicable Period of Restriction established by the Committee and specified in the Restricted Stock Award Agreement. All rights with respect to the Restricted Stock granted to a Participant under the Plan shall be available during his or her lifetime only to such Participant or his or her legal representative.

6.4 Certificate Legend. Each certificate representing Restricted Stock granted pursuant to the Plan may bear a legend substantially as follows:

The sale or other transfer of the shares of stock represented by this certificate, whether voluntary, involuntary or by operation of law, is subject to certain restrictions on transfer as set forth in Knife River Corporation Long-Term Performance-Based Incentive Plan and in a Restricted Stock Award Agreement. A copy of such Plan and such Agreement may be obtained from the Knife River Corporation.

The Company shall have the right to retain the certificates representing Restricted Stock in the Company's possession until such time as all restrictions applicable to such Shares have been satisfied.

6.5 Removal of Restrictions. Restricted Stock shall become freely transferable by the Participant after the last day of the Period of Restriction applicable thereto. Once Restricted Stock is released from the restrictions, the Participant shall be entitled to have the legend referred to in Section 6.4 removed from his or her stock certificate.

6.6 Voting Rights. During the Period of Restriction, Participants holding Restricted Stock may exercise full voting rights with respect to those Shares.

6.7 Dividends and Other Distributions. Subject to the Committee's right to determine otherwise at the time of grant, during the Period of Restriction, Participants holding Restricted Stock shall receive all regular cash dividends paid with respect to all Shares while they are so held. All other distributions paid with respect to such Restricted Stock shall be credited to Participants subject to the same restrictions on transferability and forfeitability as the Restricted Stock with respect to which they were paid and shall be paid to the Participant within forty-five (45) days following the full vesting of the Restricted Stock with respect to which such distributions were made.

6.8 Termination of Employment. Each Restricted Stock Award Agreement shall set forth the extent to which the Participant shall have the right to vest in unvested Restricted Stock upon termination of the Participant's employment with the Company and its Subsidiaries. Such provisions shall be determined in the sole discretion of the Committee, shall be included in the Restricted Stock Award Agreement entered into with Participants, need not be uniform among all grants of Restricted Stock or among Participants and may reflect distinctions based on the reasons for termination of employment.

**ARTICLE 7**  
**Restricted Stock Units, Performance**  
**Units and Performance Shares**

7.1 Grant of Restricted Stock Units, Performance Units and Performance Shares. Subject to the terms and conditions of the Plan, Restricted Stock Units, Performance Units and/or Performance Shares may be granted to an Eligible Individual at any time and from time to time, as shall be determined by the Committee.

The Committee shall have complete discretion in determining the number of Restricted Stock Units, Performance Units and/or Performance Shares granted to each Participant (subject to Article 4 herein) and, consistent with the provisions of the Plan, in determining the terms and conditions pertaining to such Awards.

7.2 Restricted Stock Units/Performance Unit/Performance Share Award Agreement. Each grant of Restricted Stock Units, Performance Units and/or Performance Shares shall be evidenced by a Restricted Stock Unit, Performance Unit and/or Performance Share Award Agreement that shall specify the number of Restricted Share Units, Performance Units and/or Performance Shares granted, the initial value (if applicable), the vesting conditions which may be time-based or performance based and such other provisions as the Committee shall determine, including but not limited to any rights to Dividend Equivalents.

7.3 Value of Restricted Stock Units, Performance Units/Performance Shares. Each Restricted Stock Unit or Performance Unit shall have an initial value that is established by the Committee at the time of grant. The Committee may set Performance Goals in its discretion which, depending on the extent to which they are met, will determine the number and/or value of Performance Units/Performance Shares that will be paid out to the Participants. The time period during which the Performance Goals must be met shall be called a “Performance Period.”

7.4 Earning of Performance Units/Performance Shares. After the applicable Performance Period has ended, the holder of Performance Units/Performance Shares shall be entitled to receive a payout with respect to the Performance Units/Performance Shares earned by the Participant over the Performance Period, to be determined as a function of the extent to which the corresponding Performance Goals have been achieved.

7.5 Form and Timing of Payment of Restricted Stock Units/Performance Units/Performance Shares. Except as provided in the Award Agreement, payment of a Restricted Stock Unit shall be made as soon as administratively practicable following the date on which such Restricted Stock Unit becomes vested and may be made in the discretion of the Committee, in cash or in Shares (or a combination thereof). Payment of earned Performance Units/Performance Shares shall be made following the close of the applicable Performance Period. The Committee, in its sole discretion, may pay earned Performance Units/Performance Shares in cash or in Shares (or in a combination thereof). Such Shares may be granted subject to any restrictions deemed appropriate by the Committee.

7.6 Termination of Employment. Each Restricted Stock Unit/Performance Unit/Performance Share Award Agreement shall set forth the extent to which the Participant shall have the right to receive a Restricted Stock Unit/Performance Unit/Performance Share payment on or following termination of the Participant’s employment with the Company and its Subsidiaries during a Performance Period or other vesting period. Such provisions shall be determined in the sole discretion of the Committee, shall be included in the Award Agreement entered into with Participants, need not be uniform among all grants of Restricted Stock Units/Performance Units/Performance Shares or among Participants and may reflect distinctions based on reasons for termination of employment.

7.7 Transferability. Except as otherwise determined by the Committee and set forth in the Restricted Stock Unit/Performance Unit/Performance Share Award Agreement, Restricted Stock Unit/Performance Units/Performance Shares may not be sold, transferred, pledged, assigned or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution, and a Participant’s rights with respect to Restricted Stock Units/Performance Units/Performance Shares granted under the Plan shall be available during the Participant’s lifetime only to such Participant or the Participant’s legal representative.

**ARTICLE 8**  
**Other Awards**

The Committee shall have the right to grant other Awards which may include, without limitation, the grant of fully vested Shares (subject to [Article 15](#)), the grant of Shares based on attainment of Performance Goals established by the Committee, the payment of Shares in lieu of cash, the payment of cash based on attainment of Performance Goals established by the Committee, and the payment of Shares in lieu of cash under other Company incentive or bonus programs. Payment under or settlement of any such Awards shall be made in such manner and at such times as the Committee may determine.

**ARTICLE 9**  
**Beneficiary Designation**

Each Participant under the Plan may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any benefit under the Plan is to be paid in case of his or her death before he or she receives any or all of such benefit. Each such designation shall revoke all prior designations by the same Participant, shall be in a form prescribed by the Company, and will be effective only when filed by the Participant in writing with the Company during the Participant's lifetime. In the absence of any such designation, benefits remaining unpaid at the Participant's death shall be paid to the Participant's estate.

The spouse of a married Participant domiciled in a community property jurisdiction shall join in any designation of beneficiary or beneficiaries other than the spouse.

**ARTICLE 10**  
**Deferrals**

The Committee may permit a Participant to defer the Participant's receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant under the Plan. If any such deferral election is permitted, the Committee shall, in its sole discretion, establish rules and procedures for such payment deferrals.

**ARTICLE 11**  
**Rights of Employees**

11.1 Employment. Nothing in the Plan shall interfere with or limit in any way the right of the Company to terminate any Participant's employment or services at any time, for any reason or no reason in the Company's sole discretion, nor confer upon any Participant any right to continue in the employ of the Company or any right to be retained as a service provider of the Company or any Subsidiary in any capacity.

11.2 Participation. No Eligible Participant shall have the right to be selected to receive an Award under the Plan, or, having been so selected, to be selected to receive a future Award.

**ARTICLE 12**  
**Change in Control**

The terms of this Article 12 shall immediately become operative, without further action or consent by any person or entity, upon a Change in Control, and once operative shall supersede and take control over any other provisions of this Plan.

Upon a Change in Control, unless otherwise provided in the applicable Award Agreement,

- (a) Any restriction periods and restrictions imposed on Restricted Stock, Restricted Stock Units or Awards granted pursuant to Article 8 (if not performance-based) shall be deemed to have expired and such Restricted Stock, Restricted Stock Units or Awards shall become immediately vested in full; and
- (b) The target payout opportunity attainable under all outstanding Awards of Performance Units, Performance Shares and Awards granted pursuant to Article 8 (if performance-based) shall be deemed to have been fully earned for the entire Performance Period(s) as of the effective date of the Change in Control, and shall be paid out promptly in Shares or cash pursuant to the terms of the Award Agreement, or in the absence of such designation, as the Committee shall determine.

Notwithstanding the foregoing or any other provision of the Plan or any Award Agreement, with respect to any Award that constitutes “nonqualified deferred compensation” within the meaning of Section 409A, a Change in Control shall not constitute a settlement or distribution event with respect to such Award, or an event that otherwise changes the timing of settlement or distribution of such Award, unless the Change in Control also constitutes an event described in Section 409A(a)(2)(v) of the Code and the regulations thereto. For the avoidance of doubt, this paragraph shall have no bearing on whether an Award vests pursuant to the terms of the Plan or the applicable Award Agreement.

**ARTICLE 13**  
**Amendment, Modification and Termination**

13.1 Amendment, Modification and Termination. The Board may, at any time and from time to time, alter, amend, suspend or terminate the Plan, in whole or in part; provided that no amendment shall be made which shall increase the total number of Shares that may be issued under the Plan, materially modify the requirements for participation in the Plan, or materially increase the benefits accruing to Participants under the Plan, in each case unless such amendment is approved by the stockholders to the extent such approval is required by the listing standards of the New York Stock Exchange.

13.2 Awards Previously Granted. No termination, amendment or modification of the Plan shall adversely affect in any material way any Award previously granted under the Plan, without the written consent of the Participant holding such Award, unless such termination, modification or amendment is required by applicable law (including Section 409A, applicable New York Stock Exchange listing standards or accounting rules) and except as otherwise provided herein.

**ARTICLE 14**  
**Withholding**

14.1 Tax Withholding. The Company shall have the power and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy Federal, state and local taxes (including the Participant's FICA obligation) required by law to be withheld with respect to an Award made under the Plan.

14.2 Share Withholding. Unless otherwise determined by the Committee, with respect to withholding required upon the lapse of restrictions on Restricted Stock, or upon any other taxable event arising out of or as a result of Awards granted hereunder, Participants may elect to satisfy the withholding requirement, in whole or in part, by tendering previously-owned Shares or by having the Company withhold Shares having a value on the date the tax is to be determined equal to the statutory total tax which could be imposed on the transaction, in each case, in accordance with such procedures as the Committee establishes. All elections shall be irrevocable, made in writing and signed by the Participant.

**ARTICLE 15**  
**Minimum Vesting**

Notwithstanding any other provision of the Plan to the contrary, (a) the minimum vesting period for Full Value Awards with no performance-based vesting characteristics must be at least three years (vesting may occur ratably each month, quarter or anniversary of the grant date over such vesting period); (b) the minimum vesting period for Full Value Awards with performance-based vesting characteristics must be at least one year; and (c) the Committee shall not have discretion to accelerate vesting of Full Value Awards except in the event of a Change in Control or similar transaction, or the death, disability, or termination of employment of a Participant; provided, however, that the Committee may grant a "de minimis" number of Full Value Awards that do not comply with the foregoing minimum vesting standards. For this purpose "de minimis" means 5% Shares available for issuance as Full Value Awards under the Plan, subject to adjustment under Section 4.2.

**ARTICLE 16**  
**Assumed Spin-Off Awards.**

Notwithstanding anything in this Plan to the contrary, each Assumed Spin-Off Award shall be subject to the terms and conditions of the equity compensation plan and award agreement to which such Award was subject immediately prior to the Spin-Off, subject to the adjustment of such Award by the Compensation Committee of MDU Resources Group, Inc. and the terms of the Employee Matters Agreement; provided that following the date of the Spin-Off, each such Award shall relate solely to Shares and shall be administered by the Committee in accordance with the administrative procedures in effect under this Plan.

**ARTICLE 17**  
**Successors**

All obligations of the Company under the Plan, with respect to Awards granted hereunder, shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation or otherwise, of all or substantially all of the business and/or assets of the Company.

**ARTICLE 18**  
**Legal Construction**

18.1 Gender and Number. Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine, the plural shall include the singular and the singular shall include the plural.

18.2 Severability. In the event that any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

18.3 Requirements of Law. The granting of Awards and the issuance of Shares under the Plan shall be subject to all applicable laws, rules and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

18.4 Governing Law. To the extent not preempted by Federal law, the Plan, and all agreements hereunder, shall be construed in accordance with, and governed by, the laws of the State of Delaware.

**ARTICLE 19**  
**Accounting Restatements**

This Article 19 shall apply to Awards granted to all Participants in the Plan. Notwithstanding anything in the Plan or in any Award Agreement to the contrary, if the Company is required to prepare an accounting restatement due to material noncompliance with any financial reporting requirements under the securities laws, the Company or the Committee may, or shall if required, take action to recover incentive-based compensation from specific executive officers in accordance with the Company's guidelines or policies, as they may be amended or substituted from time to time, and in accordance with applicable law and applicable rules of the Securities and Exchange Commission and the New York Stock Exchange.

**ARTICLE 20**  
**Section 409A Compliance**

This Plan and the Awards hereunder are intended to comply with the requirements of Section 409A of the Code or an exemption or exclusion therefrom and, with respect to amounts that are subject to Section 409A of the Code, it is intended that this Plan be administered in all respects in accordance with Section 409A of the Code. Each payment under any Award shall be treated as a separate payment for purposes of Section 409A of the Code. In no event may a Participant, directly or indirectly, designate the calendar year of any payment to be made under any Award that constitutes nonqualified deferred compensation subject to Section 409A of the Code. Notwithstanding any other provision of this Plan or any Award Agreement to the contrary, if a Participant is a "specified employee" within the meaning of Section 409A of the Code (as determined in accordance with the methodology established by the Company), amounts that constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code that otherwise would be payable by reason of a Participant's "separation from service" within the meaning of Section 409A of the Code ("Separation from Service") during the six-month period immediately following such Separation from Service shall instead be paid or provided on the first business day following the date that is six months following the Participant's Separation from Service or any earlier date permitted by Section 409A of the Code. If the Participant dies following the Separation from Service and prior to the payment of any amounts delayed on account of Section 409A of the Code, such amounts shall be paid to the personal representative of the Participant's estate within 30 days following the date of the Participant's death.



**KNIFE RIVER CORPORATION**  
**EXECUTIVE INCENTIVE COMPENSATION PLAN**

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I. ESTABLISHMENT AND PURPOSE

The Executive Incentive Compensation Plan (the "Plan") was adopted by the Board of Directors of Knife River Corporation (formerly known as Knife River Holding Company) ("KRC") in connection with the distribution of 80.1% or more of the outstanding shares of KRC's common stock to the stockholders of MDU Resources Group, Inc. in 2023, pursuant to the Separation and Distribution Agreement between the Company and MDU Resources Group, Inc. entered into in connection with such distribution (the "Spin-Off") and is effective as of the date on which the Spin-Off occurs. In connection with the Spin-Off and pursuant to the Employee Matters Agreement, KRC is assuming liability for certain awards deferred under the MDU Resources Group, Inc. Executive Incentive Compensation Plan by current and former KRC employees in respect of the 2021 Plan Year and prior Plan Years (as such amounts are adjusted from time to time to reflect crediting of interest, the "Grandfathered Deferred Amounts"), and such Grandfathered Deferred Amounts will be administered from and after the Spin-Off by KRC pursuant to this Plan and the Rules and Regulations (as defined below).

The purpose of the Plan is to provide an incentive for key executives of KRC and its segments and/or subsidiaries to focus their efforts on the achievement of performance objectives. The Plan is designed to reward successful performance as measured against specified performance measures. When performance reaches or exceeds the target performance measures, incentive compensation awards, in conjunction with salaries, provide a level of compensation which recognizes the skills and efforts of the key executives.

II. DEFINITIONS

Capitalized terms not otherwise defined herein shall have the meanings given them in the Rules and Regulations.

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### III. BASIC PLAN CONCEPT

The Plan provides an opportunity to earn annual incentive compensation based on the achievement of specified annual performance measures. A target incentive award for each Participant within the Plan is established based on the approved salary grade structure. The target incentive award represents the amount to be paid, subject to the achievement of the performance measures established for each Plan Year. Larger incentive awards than target may be authorized when performance exceeds targets; lesser or no amounts may be paid when performance is below target.

It is recognized that during a Plan Year major unforeseen changes in economic and environmental conditions or other significant factors beyond the control of management may substantially affect the ability of the Participants to achieve the specified performance measures. Therefore, in its review of performance the Administrator may modify the performance measure targets. However, it is contemplated that such modifications to the performance measure target will be necessary only in years of unusually adverse or favorable external conditions or other unforeseen significant factors beyond the control of management.

### IV. ADMINISTRATION

The Plan shall be administered by the Compensation Committee of the Board of Directors of KRC, with respect to employees who are subject to Section 16 of the Securities Exchange Act of 1934, as amended (the "Administrator"). With respect to employees who are not subject to Section 16 of the Securities Exchange Act of 1934, as amended, the Chief Executive Officer of KRC shall be the Administrator. The Board of Directors of KRC or its Compensation Committee shall adopt Rules and Regulations for the administration of the Plan (the "Rules and Regulations").

The Administrator shall approve the list of eligible Participants and the target incentive award level for each Participant within the Plan. It is contemplated that the Plan's performance measure targets for the year shall be approved by the Administrator no later than 90 days after the beginning of that Plan Year. The Administrator shall have final discretion to determine actual award payment levels, method of payment, and whether or not payments shall be made for any Plan Year.

The Board of Directors of KRC may, at any time and from time to time, alter, amend, supersede or terminate the Plan in whole or in part, provided that no termination, amendment or modification of the Plan shall adversely affect in any material way an award that has met all requirements for payment without the written consent of the Participant holding such award, unless such termination, modification or amendment is required by applicable law.

V. ELIGIBILITY

Executives who are determined by the Administrator to have a key role in both the establishment and achievement of their company's objectives shall be eligible to participate in the Plan.

Nothing in the Plan shall interfere with or limit in any way the right of an employer to terminate any Participant's employment at any time, for any reason or no reason in its sole discretion, or confer upon any Participant any right to remain employed by the employer. No employee shall have the right to be selected to receive an award under the Plan, or, having been so selected, to be selected to receive a future award.

VI. PLAN PERFORMANCE MEASURES

Performance measures shall be established that consider stakeholder interests and shall be evaluated annually based on achievement of specified objectives.

The performance measures will be determined by the Administrator. These measures may be applied at the KRC level or subsidiary level. The Administrator may assign different performance measures and/or different weights to performance measures for each Participant.

The Administrator may establish threshold, target and maximum or other award levels annually for some or all of the performance measures. The Administrator will retain the right to make all interpretations as to the actual attainment of the desired performance measure and will determine whether any circumstances beyond the control of management need to be considered.

VII. TARGET INCENTIVE AWARDS

Target incentive awards are expressed as a percentage of each Participant's Salary. These percentages may vary by position and reflect larger reward opportunity for positions having greater effect on the establishment and accomplishment of the performance objectives. A schedule showing the target awards as a percentage of Salary for eligible positions will be prepared for each Plan Year.

VIII. INCENTIVE FUND DETERMINATION

The target incentive fund is the sum of the individual target incentive awards for all eligible Participants. Once the incentive targets have been determined by the Administrator, a target incentive fund shall be established and accrued ratably by KRC and each of its segments and/or subsidiaries, as applicable. The incentive fund and accruals may be adjusted during the year.

At the close of each Plan Year, the Chief Executive Officer of KRC will cause an analysis to be prepared showing the actual performance results in relation to each of the target performance measures. This will be provided to the Administrator for review and comparison to threshold, target and maximum or other performance levels, if applicable. In addition, any recommendations of the Chief Executive Officer of KRC or the Administrator will be presented at this time. The Administrator will then determine the amount of each Participant's incentive award and the total target incentive fund earned.

IX. INDIVIDUAL AWARD DETERMINATION

Each Participant's award will be based upon the level of actual performance achieved relative to the established performance measures, as determined by a percentage from 0 percent to a maximum of 250 percent, as determined by the Administrator.

X. PAYMENT OF AWARDS

Except as provided below or as otherwise determined by the Administrator, in order to receive an award payment under the Plan, the Participant must remain in the employment of KRC or one of its subsidiaries for the entire Service Year. If a Participant terminates employment after the Participant's 65<sup>th</sup> birthday and if the employment termination occurs during the Service Year, determination of whether the performance measures have been met will be made at the end of the Service Year, and to the extent met, payment of the award will be made to the Participant, prorated. Proration of awards shall be based upon the number of full months elapsed from and including January to and including the month in which the employment termination occurs. The prorated award shall be paid as soon as practicable in the year following the Service Year, but in all events between January 1 and March 10.

A Participant who transfers between KRC and one of its subsidiaries during the plan year may receive a prorated award at the discretion of the Administrator.

Payments made under the Plan will not be considered part of compensation for 401k Plan employer matching purposes. Payments will be made in cash as soon as practicable in the year following the Service Year, but in all events between January 1 and March 10.

To the extent approved by the Administrator of the Plan with respect to executives of KRC or its subsidiaries, as applicable, incentive awards may be deferred. Except as otherwise provided in the Rules and Regulations with respect to Grandfathered Deferred Amounts, deferred amounts shall comply with and be subject to the terms of the KRC Deferred Compensation Plan.

XI. ACCOUNTING RESTATEMENTS

This Section XI shall apply to incentive awards granted to all Participants in the Plan. Notwithstanding anything in the Plan or the Rules and Regulations to the contrary, if KRC is required to prepare an accounting restatement due to material noncompliance with any financial reporting requirements under the securities laws, KRC or the Administrator may, or shall if required, take action to recover incentive-based compensation from specific executive officers in accordance with its guidelines and policies, as they may be amended or substituted from time to time, and in accordance with applicable law and applicable rules of the Securities and Exchange Commission and the New York Stock Exchange.

**KNIFE RIVER CORPORATION**

**EXECUTIVE INCENTIVE COMPENSATION PLAN**

**RULES AND REGULATIONS**

The Board of Directors of Knife River Corporation (formerly known as Knife River Holding Company) (“KRC”) adopted these Rules and Regulations for the administration of the Executive Incentive Compensation Plan (the “Plan”), following adoption of the Plan by the Board of Directors of KRC. These Rules and Regulations, together with the Plan, were adopted in connection with the distribution of 80.1% or more of the outstanding shares of KRC’s common stock to the stockholders of MDU Resources Group, Inc. in 2023, pursuant to the Separation and Distribution Agreement between the Company and MDU Resources Group, Inc. entered into in connection with such distribution (the “Spin-Off”) and are effective as of the date on which the Spin-Off occurs (the “Effective Date”).

I. **DEFINITIONS**

The following definitions shall be used for purposes of these Rules and Regulations and for the purpose of administering the Plan:

1. The “Administrator” shall be the Compensation Committee of the Board of Directors of KRC with respect to employees subject to Section 16 of the Securities Exchange Act of 1934, as amended. With respect to other employees, the Chief Executive Officer of KRC shall be the Administrator.

2. "Change in Control" shall mean the occurrence of any of the following transactions or events: (a) any person (which shall not include KRC, any subsidiary of KRC or any employee benefit plan of KRC or of any subsidiary of KRC) ("Person") or group (as that term is defined in Treasury Regulation Section 1.409A-3(i)(5)(v)(B)), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such Person or Persons) ownership of stock of KRC possessing 30% or more of the total voting power of the stock of KRC; (b) any Person or group (as that term is defined in Treasury Regulation Section 1.409A-3(i)(5)(v)(B)), acquires ownership of the stock of KRC that, together with stock held by such Person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of KRC (this part (b) applies only when there is a transfer of stock of KRC and KRC's stock remains outstanding after the transaction); (c) a majority of the members of the Board of Directors of KRC is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of KRC; or (d) any Person or group (as that term is defined in Treasury Regulation Section 1.409A-3(i)(5)(v)(B)), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such Person or Persons) assets from KRC that have a gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of KRC immediately before such acquisition or acquisitions.

Notwithstanding anything contained herein to the contrary, no transaction or event shall constitute a Change in Control for purposes of the Plan unless the transaction or event constitutes a change in the ownership of a corporation (as defined in Treasury Regulation Section 1.409A-3(i)(5)(v)), a change in effective control of a corporation (as defined in Treasury Regulation Section 1.409A-3(i)(5)(vi)) or a change in the ownership of a substantial portion of the assets of a corporation (as defined in Treasury Regulation Section 1.409A-3(i)(5)(vii)) and the term Change in Control shall be interpreted in a manner consistent with the proper interpretation of the similar provisions in the Section 409A Treasury Regulations.

3. The "Code" shall mean the Internal Revenue Code of 1986, as amended.
4. The "Compensation Committee" shall be the Compensation Committee of the Board of Directors of KRC.
5. The "HQM Rate" is the number that results from adding the daily Treasury High Quality Corporate Bond Yield Curve for the last business day of each month for the 12-month period ending September 30 and dividing by 12. The Treasury High Quality Corporate Bond Yield Curve corresponds to United States corporate bonds whose credit quality is a market-weighted average of the top three qualities – AAA, AA, and A.
6. "KRC" shall refer to Knife River Corporation alone and shall not refer to any of its segments or subsidiaries.
7. "Participants" for any Plan Year shall be those employees who have been approved by the Administrator as eligible for participation in the Plan for such Plan Year.
8. "Payment Date" shall be the date set by the Administrator for payment of awards pursuant to Section X of the Plan, other than those awards deferred pursuant to Section X of the Plan and Section VIII of these Rules and Regulations.

9. The "Plan" shall refer to the Executive Incentive Compensation Plan, as it has been and may be amended.
10. The "Plan Year" shall be the calendar year.
11. "Service Year" means the Plan Year during which the services giving rise to the incentive award are performed.
12. "Specified Employee" means an employee who, as of the date the employee separates from service, is a "specified employee" (as that term is used in Section 409A(a)(2)(B) of the Code), as determined under KRC's policy for determining specified employees.

II. ADMINISTRATION

1. The Compensation Committee shall have the full power to construe and interpret the Plan and to establish and to amend these Rules and Regulations for its administration.
2. The Administrator shall not participate in a decision as to the Administrator's eligibility for, or award of, an incentive award payment.
3. For each Plan Year, the Administrator shall approve a list of eligible employees and notify those so approved that they are eligible to participate in the Plan for such Plan Year.
4. The Administrator shall approve the Plan's performance measures, performance targets and target incentive award levels for the Participants for the Plan Year.
5. The Administrator shall have final discretion to determine actual award payment levels, method of payment, and whether or not payments shall be made for any Plan Year.

III. PLAN PERFORMANCE MEASURES

1. The Administrator shall establish the performance measures reflecting company performance objectives and may establish more or fewer performance measures as it deems necessary.



2. The performance measures may be established for KRC or any of its subsidiaries as deemed appropriate by the Administrator. The Administrator may assign different performance measures and/or different weights to performance measures for each Participant.
3. The Administrator shall cause to be prepared a list of Participants to whom the Plan performance measures will be applied and shall identify the applicable performance measures for each Participant, which may vary among Participants.
4. The Administrator may set threshold, target, maximum and other award levels for some or all of the performance measures, and those levels shall be included on the list referred to in paragraph 3 above.
5. The Administrator will retain the authority to determine whether or not the actual attainment of these measures has been made.

IV. TARGET INCENTIVE AWARDS

1. Target incentive awards are expressed as a percentage of each Participant's Salary and may vary by position, as defined in the Plan.
2. Target incentive awards shall be set by the Administrator annually and will be included on the list referred to above.

V. INCENTIVE FUND DETERMINATION

1. The target incentive fund is the sum of the individual target incentive awards for all eligible Participants.
2. Once individual incentive targets have been determined, a target incentive fund shall be established and accrued ratably by KRC and each of its subsidiaries, as applicable. The incentive fund and accruals may be adjusted during the year.
3. As soon as practicable following the close of each Plan Year, the Chief Executive Officer of KRC will cause an analysis to be prepared showing the actual performance results in relation to the target performance measures. The Administrator will review the analysis and determine, in its sole discretion, the amount of each Participant's incentive award and the actual total incentive fund.
4. In determining the actual incentive fund, any recommendations of the Chief Executive Officer of KRC or the Administrator will be considered.

VI. INDIVIDUAL AWARD DETERMINATION

1. The Administrator shall have the sole discretion to determine each Participant's award. The Administrator's decision will be based upon the level of actual performance achieved.
2. Each Participant's award will be based upon the level of actual performance achieved relative to the established performance measures, as determined by a percentage from 0 percent to a maximum of 250 percent, as determined by the Administrator.

VII. PAYMENT OF AWARDS

1. On the date the Administrator determines the awards to be made to individual Participants, it shall also establish the Payment Date which in all events shall be between January 1 and March 10.
2. Except as provided below or in the Plan or as the Administrator otherwise determines, in order to receive an award under the Plan, a Participant must remain in the employment of KRC or its subsidiaries for the entire Service Year.
3. If a Participant terminates employment after the Participant's 65<sup>th</sup> birthday and the termination occurs during the Service Year, determination of whether the performance measures have been met will be made at the end of the Service Year, and to the extent met, payment of the award will be made to the Participant, prorated. Proration of awards shall be based upon the number of full months elapsed from and including January to and including the month in which the Participant's employment termination occurs.
4. Payment of the awards shall be made in cash. Payments shall be made on the Payment Date unless the Participant has deferred, in whole or in part, the receipt of the award by making an election on the deferral form provided by the KRC Human Resources department, prior to the beginning of the Service Year. Deferral elections may not be changed or revoked after the Service Year begins.

VIII. DEFERRAL OF ANNUAL INCENTIVE

1. If a Participant elects to defer the receipt of all or a portion of an award after the Spin-Off, the deferral shall comply with and be subject to the KRC Deferred Compensation Plan.
2. The following provisions will apply solely with respect to Grandfathered Deferred Amounts (as defined in the Plan):
  - a. With respect to each Grandfathered Deferred Amount, KRC or one of its business segments, divisions or subsidiaries, as applicable shall establish an account in the Participant's name (a "Grandfathered Account"). The amount of the Grandfathered Deferred Amount as of immediately prior to the Effective Date will be credited to the Participant's Grandfathered Account effective as of the Effective Date.
  - b. The balance credited to each Grandfathered Account from time to time will be an unsecured, unfunded obligation of KRC or one of its subsidiaries, as applicable.
  - c. Interest shall accrue on the balance of each Grandfathered Account and shall be compounded and credited to the Grandfathered Account on a daily basis. The rate of interest for each Plan Year shall be the HQM Rate calculated as of September 30 of the prior year.
  - d. For Participants who previously elected to have payments of their Grandfathered Deferred Amounts made or commence on the Payment Date of the year following the year of their termination of employment in accordance with Article VIII of the MDU Resources Group, Inc. Executive Incentive Compensation Plan Rules and Regulations (the "MDU EICP Rules and Regulations"), their payments will be made or commence between January 1 and March 10 of the year following the year of their termination of employment. For Participants who previously elected to have payments of their Grandfathered Deferred Amounts made or commence on the Payment Date of the fifth year following the year in which the award may be made in accordance with Article VIII of the MDU EICP Rules and Regulations, their payments will be made or commence between January 1 and March 10 of the fifth year following the year in which the award would have been paid had it not been deferred.
  - e. For a Participant who previously elected to receive the Grandfathered Deferred Amount in monthly installments (not to exceed 120) in accordance with Article VIII of the MDU EICP Rules and Regulations, such amount will be paid in such monthly installments. In the event a Participant previously elected to receive the Grandfathered Deferred Amount in more than one installment, interest shall continue to accrue on the balance remaining in his or her Grandfathered Account at the applicable rate set forth in paragraph 6 of this Section VIII.

- f. Notwithstanding anything contained herein, if a Specified Employee's employment terminates, to the extent required by Section 409A(a)(2)(B) of the Code, except as otherwise provided in paragraph (g) below of this Section VIII, payment of any Grandfathered Deferred Amount that is to be paid during the 6-month period following the Specified Employee's termination of employment shall not be paid or provided until the first business day after the date that is 6 months following the Specified Employee's termination of employment. Any payment that is made pursuant to the prior sentence shall include the cumulative amount of any amounts that could not be paid during the 6-month period following the Specified Employee's termination of employment. To the extent payments are deferred pursuant to the prior sentence, such deferred amounts shall continue to accrue interest pursuant to paragraph 6 of this Section VIII until payment occurs.

For all purposes for the payment of any Grandfathered Deferred Amount, references to termination of employment and similar terms shall be interpreted to mean "separation from service," as that term is used in Section 409A of the Code, and the Participant's employment shall not be deemed to have terminated for purposes of the the payment of any Grandfathered Deferred Amount unless and until a separation from service shall have occurred for purposes of Section 409A of the Code.

- g. In the event of the death of a Participant in whose name a Grandfathered Account has been established, KRC or one of its subsidiaries, as applicable, shall, within 90 days thereafter, pay to the Participant's estate or the designated beneficiaries the Grandfathered Deferred Amount.
- h. In the event of a "Change in Control" (within the meaning of Treasury Regulation § 1.409A-3(i)(5)), then the Grandfathered Deferred Amount shall become immediately payable to a Participant. In the event the Participant files suit to collect his or her Grandfathered Deferred Amount then all of the Participant's court costs, other expenses of litigation, and attorneys' fees shall be paid by KRC or one of its subsidiaries, as applicable, in the event the Participant prevails upon any of his or her claims for payment.

KNIFE RIVER CORPORATION  
DEFERRED COMPENSATION PLAN  
PLAN DOCUMENT

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THE KNIFE RIVER CORPORATION DEFERRED COMPENSATION PLAN

**Section 1. Purpose**

By execution of the Adoption Agreement, the Company has adopted the Plan set forth herein, and in the Adoption Agreement, to provide a means by which certain management Employees or Independent Contractors of the Employer may elect to defer receipt of current Compensation from the Employer to provide retirement and other benefits on behalf of such Employees or Independent Contractors of the Employer, as selected in the Adoption Agreement. The Plan is intended to be a nonqualified deferred compensation plan that complies with the provisions of Section 409A of the Internal Revenue Code (the "Code"). The Plan is also intended to be an unfunded plan maintained primarily for the purpose of providing deferred compensation benefits for a select group of management or highly compensated employees under Sections 201(2), 301(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA") or independent contractors. Notwithstanding any other provision of this Plan, this Plan shall be interpreted, operated and administered in a manner consistent with these intentions.

**Section 2. Definitions**

2.0 "401(k) Refund Offset" means a deferral of the Participant's base salary equal to the gross amount of a 401(k)-refund caused by Average Deferral Percentage (ADP) testing failures in the qualified plan. The 401(k) refund itself shall be paid to the Participant from the 401(k) plan and reported on Form 1099-R. This deferral shall not apply to Roth 401(k) refunds or any other refund not generated due to failed testing.

2.1 "Active Participant" means, with respect to any day or date, a Participant who is in Service on such day or date; provided, that a Participant shall cease to be an Active Participant (i) immediately upon a determination by the Committee that the Participant has ceased to be an Employee or Independent Contractor, or (ii) at the end of the Plan Year that the committee determines the Participant no longer meets the eligibility requirements of the Plan.

2.2 “Adoption Agreement” means the written agreement pursuant to which the Company adopts the Plan. The Adoption Agreement is a part of the Plan as applied to the Company.

2.3 “Beneficiary” means the person, persons, entity or entities designated or determined pursuant to the provisions of Section 13 of the Plan.

2.4 “Board” means the Board of Directors of the Company.

2.5 “Change in Control Event” means an event described in Section 409A(a)(2)(A)(v) of the Code (or any successor provision thereto) and the regulations thereunder with respect to a Participant’s direct Employer.

2.6 “Committee” means the Compensation Committee of the Company’s Board of Directors, or any other person or persons as designated by the Compensation Committee, in its discretion, to perform responsibilities of the Committee under the Plan, or any other person or persons noted in the Adoption Agreement. The Recordkeeper is not the Committee.

2.7 “Company” means the company designated in the Adoption Agreement.

2.8 “Compensation” shall have the meaning designated in the Adoption Agreement.

2.9 “Crediting Date” means the date any corresponding asset payment used to informally finance the Plan, if applicable, is credited to the Employer’s corporate owned investment account or any other day directed by the Employer. Otherwise, all Credits shall be credited on any business day as specified by the Company.

2.10 “Deferred Compensation Account” means the account maintained with respect to each Participant under the Plan. The Deferred Compensation Account shall be credited with Participant Deferral Credits and Employer Credits, credited or debited for deemed investment gains or losses, and adjusted for payments in accordance with the rules and elections in effect under Section 8. As permitted in the Adoption Agreement, the Deferred Compensation Account of a Participant may consist of one or more accounts. A Participant may elect payment options for each account as described in Section 7.1 and deemed investments for each account as described in Section 8.2.

2.11 “Disabled or Disability” means Disabled or Disability within the meaning of Section 409A of the Code and the regulations thereunder. Generally, this means that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering Employees of the Employer.

2.12 [Reserved].

2.13 “Effective Date” shall be the date designated in the Adoption Agreement.

2.14 “Employee” means an individual in the Service of the Employer if the relationship between the individual and the Employer is the legal relationship of employer and employee. An individual shall cease to be an Employee upon the Employee’s Separation from Service.

2.15 “Employer” means the Company, as identified in the Adoption Agreement, and its subsidiaries.

2.16 “Employer Credits” means the amounts credited to the Participant’s Deferred Compensation Account by the Employer pursuant to the provisions of Section 4.2.

2.17 [Reserved]

2.18 “Independent Contractor” means an individual in the Service of the Employer if the relationship between the individual and the Employer is not the legal relationship of employer and employee. An individual shall cease to be an Independent Contractor upon the termination of the Independent Contractor’s Service. An Independent Contractor shall include a director of the Company who is not an Employee.

2.19 “In-Service Account” means a separate account to be kept for each Participant that has elected to take in-service distributions as described in Section 5.4. The In-Service Account shall be adjusted in the same manner and at the same time as the Deferred Compensation Account under Section 8 and in accordance with the rules and elections in effect under Section 8.

2.20 “Normal Retirement Age”, which may also be called “Full Vesting Age”, of a Participant means the age designated in the Adoption Agreement.

2.21 “Participant” means with respect to any Plan Year an Employee or Independent Contractor who has been designated by the Committee as a Participant and who has entered the Plan or who has a Deferred Compensation Account under the Plan; provided that if the Participant is an Employee, the individual must be a member of a select group of management or highly compensated employee of the Employer within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA.

2.22 “Participant Deferral Credits” means the amounts credited to the Participant’s Deferred Compensation Account pursuant to the provisions of Section 4.1.



2.23 “Participating Employer” means any subsidiary of Company with employees who are Participants.

2.24 “Participation Agreement” means a written agreement, including electronic submissions by the Participant or at the Participant’s direction, entered into between a Participant and the Employer pursuant to the provisions of Section 4.1

2.25 “Performance-Based Compensation” means compensation where the amount of, or entitlement to, the compensation is contingent on the satisfaction of preestablished organizational or individual performance criteria relating to a performance period of at least twelve months. Organizational or individual performance criteria are considered preestablished if established in writing within 90 days after the commencement of the period of service to which the criteria relates, provided that the outcome is substantially uncertain at the time the criteria are established. Performance-based compensation may include payments based upon subjective performance criteria as provided in regulations and administrative guidance promulgated under Section 409A of the Code.

2.26 “Plan” means the name of the Plan as designated in the Adoption Agreement.

2.27 “Plan-Approved Domestic Relations Order” shall mean a judgment, decree, or order (including the approval of a settlement agreement) which is:

2.27.1 Issued pursuant to a State’s domestic relations law;

2.27.2 Relates to the provision of child support, alimony payments or marital property rights to a Spouse, former Spouse, child or other dependent of the Participant;

2.27.3 Creates or recognizes the right of a Spouse, former Spouse, child or other dependent of the Participant to receive all or a portion of the Participant’s benefits under the Plan;

2.27.4 Requires payment to such person of an interest in the Participant’s benefits in a lump sum payment or any other form of payment allowed under the Plan at a specific time; and

2.27.5 Meets such other requirements established by the Committee.

2.28 “Plan Year” means the twelve-month period ending on the last day of December, unless otherwise noted in the Adoption Agreement.

2.29 “Recordkeeper” means the individual or entity responsible for keeping records of Plan activity including the tracking of Participant Deferred Compensation Account balances. As to applicable tax and regulatory rules, the actions of the Recordkeeper are limited to executing the decisions and directions of the Committee. The Recordkeeper does not make plan administration decisions.

2.30 “Qualifying Distribution Event” means (i) the Separation from Service of the Participant, (ii) the date the Participant becomes Disabled, (iii) the death of the Participant, (iv) the time specified by the Participant for an In-Service Distribution, (v) a Change in Control Event, or (vi) an Unforeseeable Emergency, each to the extent provided in Section 5.

2.31 “Seniority Date” which may also be called “Installment Eligibility Date” shall have the meaning designated in the Adoption Agreement and shall apply to both the initial deferral election described in Section 4 and the Subsequent deferral election described in Section 7.5.

2.32 “Separation from Service” or “Separates from Service” means a “separation from service” within the meaning of Section 409A of the Code.

2.33 “Service” as an Employee means employment by the Employer and, for a KRC Employee (as defined in the Adoption Agreement), shall include any Service credited for such KRC Employee under the MDU DCP (as defined in the Adoption Agreement) as in effect immediately prior to the Effective Date. For purposes of the Plan, the employment relationship is treated as continuing intact while the Employee is on military leave, sick leave, or other bona fide leave of absence if the period of such leave does not exceed six months, or if longer, so long as the Employee’s right to reemployment is provided either by statute or contract. If the Participant is an Independent Contractor, “Service” shall mean the period during which the contractual relationship exists between the Employer and the Participant. The contractual relationship is not terminated if the Participant anticipates a renewal of the contract or becomes an Employee. A Participant who has a Deferred Compensation Account which contains amounts deferred or contributed as an Employee and a member of the Board (Dual Status), Services performed in those capacities will be looked at independently when determining if a Separation from Service has occurred. Services as a member of the Board and Independent Contractor (in a capacity not on the Board) will be looked collectively when determining if a Separation from Service has occurred.

2.34 “Service Bonus” means any bonus that does not meet the definition of Performance-Based Compensation that is paid to a Participant by the Employer as noted in the Adoption Agreement.

2.35 “Specified Employee” means an Employee who meets the requirements for key employee treatment under Section 416(i)(1)(A)(i), (ii) or (iii) of the Code (applied in accordance with the regulations thereunder and without regard to Section 416(i)(5) of the Code) at any time during the twelve-month period ending on December 31 of each year (the “identification date”). If the person is a key employee as of any identification date, the person is treated as a Specified Employee for the twelve-month period beginning on the first day of the fourth month following the identification date. Unless binding corporate action is taken to establish different rules for determining Specified Employees for all plans of the Company and its controlled group members that are subject to Section 409A of the Code, the foregoing rules and the other default rules under the regulations of Section 409A of the Code shall apply.

2.36 “Spouse” or “Surviving Spouse” means, except as otherwise provided in the Plan, a person who is the legally married spouse or surviving spouse of a Participant.

2.37 “Unforeseeable Emergency” means an “unforeseeable emergency” within the meaning of Section 409A of the Code.

2.38 “Years of Service” means each Year of Service completed by the Participant.

For vesting purposes, Years of Service shall be calculated from the date designated in the Adoption Agreement and Service shall be based on service with the Company and all Participating Employers and for a KRC Employee (as defined in the Adoption Agreement) shall include Service credited under the MDU DCP (as defined in the Adoption Agreement), as in effect immediately prior to the Effective Date.

**Section 3. Participation**

The Committee in its discretion shall designate each Employee or Independent Contractor who is eligible to participate in the Plan. Each KRC Employee (as defined in the Adoption Agreement) who is a participant in the MDU DCP (as defined in the Adoption Agreement) is hereby designated as eligible to participate in the Plan effective as of the Effective Date. A Participant who Separates from Service with the Employer and who later returns to Service may be eligible consistent with Section 409A of the Code and upon satisfaction of such terms and conditions as the Committee shall establish.

**Section 4. Credits to Deferred Compensation Account**

4.1 Participant Deferral Credits. To the extent provided in the Adoption Agreement, each Active Participant may elect, by entering into a Participation Agreement, to defer the receipt of Compensation from the Employer by a dollar amount or percentage specified in the Participation Agreement. The amount of Compensation the Participant elects to defer, the Participant Deferral Credit, shall be credited to the Deferred Compensation Account maintained for the Participant pursuant to Section 8. The following special provisions shall apply with respect to the Participant Deferral Credits of a Participant:

4.1.1 The Employer shall credit to the Participant's Deferred Compensation Account on each Crediting Date an amount equal to the total Participant Deferral Credit for the period ending on such Crediting Date.

4.1.2 An election pursuant to this Section 4.1 shall be made by the Participant by executing and delivering a Participation Agreement to the Committee. Except as otherwise provided in this Section 4.1, the Participation Agreement shall become effective with respect to such Participant as of the first day of January following the date such Participation Agreement is received by the Committee. A Participant's election may be changed at any time prior to the last permissible date for making the election as permitted in this Section 4.1 and shall thereafter be irrevocable. Any election of a Participant shall continue in effect for the time period as set forth in the Adoption Agreement.

4.1.3 A Participant may execute and deliver a Participation Agreement to the Committee within 30 days after the date the Participant first becomes eligible to participate in the Plan. After the 30-day period expires, or after any shorter time period as agreed to by the Participant and the Committee, the latest election made by the Participant during that period becomes irrevocable. Such election shall then be effective as of the first payroll period commencing following the date the Participation Agreement becomes irrevocable. Whether a Participant is treated as newly eligible for participation under this Section shall be determined in accordance with Section 409A of the Code and the regulations thereunder, including (i) rules that treat all elective deferral account balance plans as one plan, and (ii) rules that treat a previously eligible Employee as newly eligible if the Participant's benefits had been previously distributed or if the Participant has been ineligible for 24 months. For Compensation that is earned based upon a specified performance period (for example, an annual bonus), where a deferral election is made under this Section but after the beginning of the performance period, the election will only apply to the portion of the Compensation equal to the total amount of the Compensation for the service period multiplied by the ratio of the number of days remaining in the performance period after the date the election becomes irrevocable over the total number of days in the performance period.

4.1.4 A Participant may unilaterally modify a Participation Agreement (either to terminate, increase or decrease future Compensation which is subject to deferral within the percentage limits set forth in Section 4.1 of the Adoption Agreement) by providing a written modification of the Participation Agreement to the Committee. The modification shall become effective as of the first day of January following the date such written modification is received by the Committee, or at such later date as required under Section 409A of the Code.

4.1.5 If the Participant performed services continuously from the later of the beginning of the performance period or the date upon which the performance criteria are established through the date upon which the Participant makes an initial deferral election, a Participation Agreement relating to the deferral of Performance-Based Compensation may be executed and delivered to the Committee no later than the date which is 6 months prior to the end of the performance period, provided that in no event may an election to defer Performance-Based Compensation be made after such Compensation has become readily ascertainable.

4.1.6 If the Employer has a fiscal year other than the calendar year, Compensation relating to Service in the fiscal year of the Employer (such as a bonus based on the fiscal year of the Employer), of which no amount is paid or payable during the fiscal year, may be deferred at the Participant's election if the election to defer is made not later than the close of the Employer's fiscal year next preceding the first fiscal year in which the Participant performs any services for which such Compensation is payable.

4.1.7 Compensation payable after the last day of the Participant's taxable year solely for services provided during the final payroll period containing the last day of the Participant's taxable year (i.e., generally December 31) is treated for purposes of this Section 4.1 as Compensation for services performed in the subsequent taxable year.

4.1.8 The Committee may from time to time establish policies or rules consistent with the requirements of Section 409A of the Code to govern the manner in which Participant Deferral Credits may be made.

4.1.9 If a Participant becomes Disabled all currently effective deferral elections for such Participant shall be cancelled. At the time the participant is no longer Disabled, subsequent elections to defer future compensation will be permitted under this Section 4.

4.1.10 If a Participant applies for and receives a distribution on account of an Unforeseeable Emergency, all currently effective deferral elections for such Participant shall be cancelled. Subsequent elections to defer future compensation will be permitted under this Section 4. Furthermore, a Participant may apply to the Committee to cancel all deferral elections due to an Unforeseeable Emergency.

4.2 Employer Credits. The Committee shall credit to the Deferred Compensation Account of each Active Participant an Employer Credit as determined in accordance with the Adoption Agreement. A Participant must make distribution elections with respect to any Employer Credits credited to the Deferred Compensation Account by the deadline that would apply under Section 4.1 for distribution elections with respect to Participant Deferral Credits credited at the same time, on a Participation Agreement that is timely executed and delivered to the Committee pursuant to Section 4.1. If no distribution election is made, vested amounts in the Deferred Compensation Account will be distributed in a lump sum upon the earliest of any Qualifying Distribution Event limited to Separation from Service, Disability, Death or Change in Control.

4.3 Deferred Compensation Account. All Participant Deferral Credits and Employer Credits shall be credited to the Deferred Compensation Account of the Participant as provided in Section 8.

4.4 Forfeiture of Employer Credits. Notwithstanding any provision of the Plan to the contrary, if any Participant is discharged from employment with the Employer for cause due to willful misconduct, dishonesty, or conviction of a crime or felony, all as determined in the sole discretion of the Committee, the rights of such Participant (or any Beneficiary of such Participant) to any Employer Credits accrued to the Participant's account and all income, gains, and losses attributable thereto (whether or not vested) shall be forfeited, to the extent not otherwise prohibited by applicable law.

**Section 5. Qualifying Distribution Events**

5.1 Separation from Service. If the Participant Separates from Service with the Employer, the vested balance in the Deferred Compensation Account shall be paid to the Participant by the Company as provided in Section 7. Notwithstanding the foregoing, no distribution shall be made earlier than six months after the date of Separation from Service (or, if earlier, the date of death) with respect to a Participant who as of the date of Separation from Service is a Specified Employee of a corporation (or a member of such corporation's controlled group) the stock in which is traded on an established securities market (either foreign or domestic) or otherwise. Any payments to which such Specified Employee would be entitled during the first six months following the date of Separation from Service shall be accumulated and paid on the first day of the seventh month following the date of Separation from Service, and shall be adjusted for deemed investment gain and loss incurred during the six month period.

5.2 Disability. If the Adoption Agreement designates that distributions are permitted under the Plan when a Participant becomes Disabled, and the Participant becomes Disabled while in Service, the vested balance in the Deferred Compensation Account shall be paid to the Participant as provided in Section 7.

5.3 Death. If the Participant dies while in Service, the Company shall pay a benefit to the Participant's Beneficiary in the amount of the vested balance in the Deferred Compensation Account and any additional amount designated in the Adoption Agreement. Payment of such benefit shall be made as provided in Section 7.

5.4 In-Service Distributions. If the Adoption Agreement designates that in-service distributions are permitted under the Plan, a Participant may designate in the Participation Agreement to have a specified amount credited to the Participant's In-Service Account for in- service distributions at the date specified by the Participant. In no event may an in- service distribution of an amount be made before the date that is two years after the first day of the year in which any deferral election to such In-Service Account became effective. Notwithstanding the foregoing, if a Participant incurs a Qualifying Distribution Event prior to the date on which the entire balance in the In-Service Account has been distributed, then the vested balance in the In-Service Account on the date of the Qualifying Distribution Event shall be paid as provided under Section 7.1 for payments on such Qualifying Distribution Event.

5.5 Change in Control Event. If the Adoption Agreement designates that distributions are permitted under the Plan upon the occurrence of a Change in Control Event, the Participant may designate in the Participation Agreement to have the vested balance in the Deferred Compensation Account paid to the Participant upon a Change in Control Event by the Employer as provided in Section 7.



5.6 Unforeseeable Emergency. If the Adoption Agreement designates that distributions are permitted under the Plan upon the occurrence of an Unforeseeable Emergency event, a distribution from the Deferred Compensation Account may be made to a Participant in the event of an Unforeseeable Emergency, subject to the following provisions:

5.6.1 A Participant may, make an application to the Committee to cancel all active deferral elections or to cancel deferral elections and receive a distribution in a lump sum of all or a portion of the vested balance in the Deferred Compensation Account (determined as of the date the distribution, if any, is made under this Section 5.6) because of an Unforeseeable Emergency. A distribution because of an Unforeseeable Emergency shall not exceed the amount required to satisfy the Unforeseeable Emergency plus amounts necessary to pay taxes reasonably anticipated as a result of such distribution, after taking into account the extent to which the Unforeseeable Emergency may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship) or by stopping current deferrals under the Plan pursuant to Section 4.1.10.

5.6.2 The Participant's request for a distribution on account of Unforeseeable Emergency must be made in writing to the Committee. The request must specify the nature of the financial hardship, the total amount requested to be distributed from the Deferred Compensation Account, and the total amount of the actual expense incurred or to be incurred on account of the Unforeseeable Emergency.

5.6.3 If a cancellation of deferral elections is approved such cancellation will be effective as soon as practicable. If a distribution under this Section 5.6 is approved by the Committee, such distribution will be made as soon as practicable following the date it is approved. The processing of the request shall be completed as soon as practicable from the date on which the Committee receives the properly completed written request for a distribution on account of an Unforeseeable Emergency. If a Participant's Separation from Service occurs after a request is approved in accordance with this Section 5.6.3, but prior to distribution of the full amount approved, the approval of the request shall be automatically null and void and the benefits which the Participant is entitled to receive under the Plan shall be distributed in accordance with the applicable distribution provisions of the Plan.

5.6.4 The Committee may from time to time adopt additional policies or rules consistent with the requirements of Section 409A of the Code to govern the manner in which such distributions may be made so that the Plan may be conveniently administered.

**Section 6. Vesting**

A Participant shall be fully vested in the portion of the Deferred Compensation Account attributable to Participant Deferral Credits, and all income, gains and losses attributable thereto. A Participant shall become fully vested in the portion of the Deferred Compensation Account attributable to Employer Credits, and income, gains and losses attributable thereto, in accordance with the vesting schedule and provisions designated in the Adoption Agreement. Once a Participant achieves vesting on an Employer Credit, it cannot be reduced or eliminated. If Change in Control was elected as a vesting event in the Adoption Agreement, participants accounts shall be fully vested upon a Change in Control of the Participant's direct employer, however new vesting schedules may be applied to future Employer Credits. If a Participant's Deferred Compensation Account is not fully vested upon Separation from Service, the portion of the Deferred Compensation Account that is not fully vested shall be forfeited.

**Section 7. Distribution Rules**

7.1 Payment Options. The Adoption Agreement designates the payment options which may be elected by the Participant. The Participant may elect a method of payment for Qualifying Distribution Events as specified in the Adoption Agreement. If the Participant is permitted by the Adoption Agreement to elect different payment options and does not make a valid election, the vested balance in the Deferred Compensation Account will be distributed as a lump sum upon the Qualifying Distribution Event.

Notwithstanding the foregoing, if certain Qualifying Distribution Events occur prior to the date on which the vested balance of a Participant's Deferred Compensation Account is completely paid pursuant to this Section 7.1 following the occurrence of certain Qualifying Distribution Events, the following rules apply:

7.1.1 If the currently effective Qualifying Distribution Event is a Separation from Service or Disability, and the Participant subsequently dies, the remaining unpaid vested balance of a Participant's Deferred Compensation Account shall be paid as a lump sum.

7.1.2 If the currently effective Qualifying Distribution Event is a Change in Control Event, and any subsequent Qualifying Distribution Event occurs (except an In-Service Distribution described in Section 2.29(iv)), the remaining unpaid vested balance of a Participant's Deferred Compensation Account shall be paid as provided under Section 7.1 for payments on such subsequent Qualifying Distribution Event.

7.2 Timing of Payments. Payment shall be made in the manner elected by the Participant and shall commence as soon as practicable after the distribution date specified for the Qualifying Distribution Event. Distribution shall be no later than within 60 days following the day after the Qualifying Distribution Event. Such payment shall not be deemed late if the payment is made on or before the later of (i) December 31 of the calendar year in which the Qualifying Distribution Event occurs, or (ii) the date that is 2-1/2 months after the Qualifying Distribution Event occurs. Participants shall not have any influence as to the tax year or timing of the distribution. For each payment, the Committee must specify a date for the Deferred Compensation Account(s) to be valued. In the event the Participant fails to make a valid election of the payment method, the distribution will be made in a single lump sum payment as soon as practicable after the Qualifying Distribution Event. A payment may be further delayed to the extent permitted in accordance with regulations and guidance under Section 409A of the Code.

7.3 Installment Payments. If the Participant elects to receive installment payments upon a Qualifying Distribution Event, the payment of each installment shall be made on the anniversary of the date of the first installment payment, and the amount of the installment shall be adjusted on such anniversary for credits or debits to the Participant's account pursuant to Section 8 of the Plan. Such adjustment shall be made by dividing the balance in the Deferred Compensation Account on such date by the number of installments remaining to be paid hereunder; provided that the last installment due under the Plan shall be the entire amount credited to the Participant's account on the date of payment.

7.4 De Minimis Amounts. Notwithstanding any payment election made by the Participant, if a pre-determined de minimis amount is designated in the Adoption Agreement, the vested balance in all Deferred Compensation Accounts of the Participant will be distributed in a single lump sum payment if at the time of a permitted Qualifying Distribution Event the vested balance does not exceed such pre-determined de minimis amount; provided, however, that such distribution will be made only where the Qualifying Distribution Event is a Separation from Service, death, Disability, or Change in Control Event. In addition, the Company may distribute a Participant's vested balance in all of the Participant's Deferred Compensation Accounts at any time if the balance does not exceed the limit in Section 402(g)(1)(B) of the Code and results in the termination of the Participant's entire interest in the Plan as provided under Section 409A of the Code.

7.5 Subsequent Elections. With the consent of the Committee, a Participant may delay or change the method of payment of the Deferred Compensation Account subject to the following requirements:

7.5.1 The new election may not take effect until at least 12 months after the date on which the new election is made.

7.5.2 If the new election relates to a payment for a Qualifying Distribution Event other than the death of the Participant, the Participant becoming Disabled, or an Unforeseeable Emergency, the new election must provide for the deferral of the payment for a period of at least five years from the date such payment would otherwise have been made.

7.5.3 If the new election relates to a payment from the In-Service Account, the new election must be made at least 12 months prior to the date of the first scheduled payment from such account.

For purposes of this Section 7.5 and Section 7.6, a payment is each separately identified amount to which the Participant is entitled under the Plan; provided, that entitlement to a series of installment payments is treated as the entitlement to a single payment.

7.6 Acceleration Prohibited. The acceleration of the time or schedule of any payment due under the Plan is prohibited except as expressly provided in regulations and administrative guidance promulgated under Section 409A of the Code (such as accelerations for domestic relations orders and employment taxes). It is not an acceleration of the time or schedule of payment if the Company waives or accelerates the vesting requirements applicable to a benefit under the Plan.

7.7 Residual Distributions. If calculation of the amount of any credit to a Participant's Deferred Compensation Account is not administratively practicable due to events beyond the control of the Company, payments may be made to the Participant for residual amounts contributed to or remaining in a Deferred Compensation Account after payments under the provisions of this Section 7 have commenced or been completed. The residual amount shall be credited to the Deferred Compensation Account when the calculation of the amount becomes administratively practicable. Examples of residual amounts include, but are not limited to, additional investment returns credited after payment (due to dividends or pricing changes) or additional contributions made after payment (such as an annual bonus deferral or an Employer Credit). Payments that would have been made had the residual amount been calculable at the benefit commencement date shall be made up as soon as practicable after crediting to the Deferred Compensation Account, in no case later than the end of the year in which calculation of the amount becomes administratively practicable.

7.8 Ineffective Deferrals. If a Participant deferral election under Section 4 to contribute to an In-Service Account carries over to a subsequent year (an evergreen election) and the deferral election is ineffective (i.e., the distribution election would cause payment in the current or prior years), the amount deferred will be credited to a Deferred Compensation Account that is not an In-Service Account. If the Participant only has one account of this type, the amount deferred will be credited to that account. If the Participant has multiple accounts of this type, and one of the accounts has a lump sum at Separation from Service distribution election, the amount deferred will be credited to that account. If the Participant has multiple accounts of this type and does not have an account with a lump sum at Separation from Service distribution election, one will be established with a lump sum at Separation from Service distribution election and the amount deferred will be credited to this account.

**Section 8. Accounts; Deemed Investment; Adjustments to Account**

8.1 Accounts. The Committee shall establish a book reserve account, entitled the "Deferred Compensation Account," on behalf of each Participant. The Committee shall also establish an In-Service Account as a part of the Deferred Compensation Account of each Participant, if applicable. The amount credited to the Deferred Compensation Account shall be adjusted pursuant to the provisions of Section 8.3.

8.2 Deemed Investments. The Deferred Compensation Account of a Participant shall be credited with an investment return determined as if the account were invested in one or more investment funds made available by the Committee. The Participant shall elect the investment funds in which the Participant's Deferred Compensation Account shall be deemed to be invested. Such election shall be made in the manner prescribed by the Committee and shall take effect upon the entry of the Participant into the Plan. The investment election of the Participant shall remain in effect until a new election is made by the Participant. In the event the Participant fails for any reason to make an effective election of the investment return to be credited to the account, the investment return shall be determined by the Committee.

8.3 Adjustments to Deferred Compensation Account. With respect to each Participant who has a Deferred Compensation Account under the Plan, the amount credited to such account shall be adjusted by the following debits and credits, at the times and in the order stated:

8.3.1 The Deferred Compensation Account shall be debited each business day with the total amount of any payments made from such account since the last preceding business day. Unless otherwise specified by the Committee, each deemed investment fund will be debited pro-rata based on the value of the investment funds as of the end of the preceding business day.

8.3.2 The Deferred Compensation Account shall be credited on each Crediting Date with the total amount of any Participant Deferral Credits and Employer Credits to such account since the last preceding Crediting Date.

8.3.3 The Deferred Compensation Account shall be credited or debited on each day securities are traded on a national stock exchange with the amount of deemed investment gain or loss resulting from the performance of the deemed investment funds elected by the Participant in accordance with Section 8.2. The amount of such deemed investment gain or loss shall be determined by the Committee and such determination shall be final and conclusive upon all concerned.

**Section 9. Administration by Committee**

9.1 Membership of Committee. If the Committee consists of individuals appointed by the Board, they will serve at the pleasure of the Board. Any member of the Committee may resign, and any successor shall be appointed by the Board.

9.2 General Administration. The Committee shall be responsible for the operation and administration of the Plan and for carrying out its provisions. The Committee shall have the full authority and discretion to make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this Plan and decide or resolve any and all questions, including interpretations of this Plan, as may arise in connection with this Plan. Any such action taken by the Committee shall be final and conclusive on any party. To the extent the Committee has been granted discretionary authority under the Plan, the Committee's prior exercise of such authority shall not obligate it to exercise its authority in a like fashion thereafter. The Committee shall be entitled to rely conclusively upon all tables, valuations, certificates, opinions and reports furnished by any actuary, accountant, controller, counsel or other person employed or engaged by the Company with respect to the Plan. The Committee may, from time to time, employ agents and delegate to such agents, including Employees of the Employer, such administrative or other duties as it sees fit.

9.3 Indemnification. To the extent not covered by insurance, the Company shall indemnify the Committee, each Employee, officer, director, and agent of the Employer, and all persons formerly serving in such capacities, against any and all liabilities or expenses, including all legal fees relating thereto, arising in connection with the exercise of duties and responsibilities with respect to the Plan, provided however that the Company shall not indemnify any person for liabilities or expenses due to that person's own gross negligence or willful misconduct.

**Section 10. Contractual Liability, Trust**

10.1 Contractual Liability. Unless otherwise elected in the Adoption Agreement, the Company shall be obligated to make all payments hereunder. This obligation shall constitute a contractual liability of the Company to the Participants, and such payments shall be made from the general funds of the Company. The Company shall not be required to establish or maintain any special or separate fund, or otherwise to segregate assets to assure that such payments shall be made, and the Participants shall not have any interest in any particular assets of the Company by reason of its obligations hereunder. To the extent that any person acquires a right to receive payment from the Company under the Plan, such right shall be no greater than the right of an unsecured creditor of the Company.

10.2 Trust. The Employer may establish a trust to assist it in meeting its obligations under the Plan. Any such trust shall conform to the requirements of a grantor trust under Revenue Procedures 92-64 and 92-65 and at all times during the continuance of the trust the principal and income of the trust shall be subject to claims of general creditors of the Employer under federal and state law. The establishment of such a trust would not be intended to cause Participants to realize current income on amounts contributed thereto, and the trust would be so interpreted and administered.

**Section 11. Allocation of Responsibilities**

The persons responsible for the Plan and the duties and responsibilities allocated to each are as follows:

- 11.1 Board.
  - (i) To amend the Plan;
  - (ii) To appoint and remove members of the Committee; and
  - (iii) To terminate the Plan as permitted in Section 14.

11.2 Committee or its designee(s).

- (i) To designate Participants;
- (ii) To interpret the provisions of the Plan and to determine the rights of the Participants under the Plan, except to the extent otherwise provided in Section 16 relating to claims procedure;
- (iii) To administer the Plan in accordance with its terms, except to the extent powers to administer the Plan are specifically delegated to another person or persons as provided in the Plan;
- (iv) To account for the amount credited to the Deferred Compensation Account of a Participant;
- (v) To direct the Employer in the payment of benefits;
- (vi) To file such reports as may be required with the United States Department of Labor, the Internal Revenue Service and any other government agency to which reports may be required to be submitted from time to time; and
- (vii) To administer the claims procedure to the extent provided in Section 16.



**Section 12. Benefits Not Assignable; Facility of Payments**

12.1 Benefits Not Assignable. No portion of any benefit credited or paid under the Plan with respect to any Participant shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor shall any portion of such benefit be in any manner payable to any assignee, receiver or any one trustee.

12.2 Plan-Approved Domestic Relations Orders. The Committee shall establish procedures for determining whether an order directed to the Plan is a Plan- Approved Domestic Relations Order. If the Committee determines that an order is a Plan- Approved Domestic Relations Order, the Committee shall cause the payment of amounts pursuant to or segregate a separate account as provided by (and to prevent any payment or act which might be inconsistent with) the Plan-Approved Domestic Relations Order notwithstanding Section 12.1.

12.3 Payments to Minors and Others. If any individual entitled to receive a payment under the Plan shall be physically, mentally or legally incapable of receiving or acknowledging receipt of such payment, the Committee, upon the receipt of satisfactory evidence of incapacity and satisfactory evidence that another person or institution is maintaining custody of that person and that no guardian or committee has been appointed, may cause any payment otherwise payable to that person to be made to such person or institution so maintaining custody. Payment to such person or institution shall be in full satisfaction of all claims by or through the Participant to the extent of the amount thereof.

**Section 13. Beneficiary**

The Participant's Beneficiary shall be the person, persons, entity or entities designated by the Participant on the Beneficiary designation form provided by and filed with the Committee or its designee. If the Participant does not designate a Beneficiary, the Beneficiary shall be the Surviving Spouse. If the Participant does not designate a Beneficiary and has no Surviving Spouse, the Beneficiary shall be the Participant's estate. The designation of a Beneficiary may be changed or revoked only by filing a new Beneficiary designation form with the Committee or its designee. If a Beneficiary (the "primary Beneficiary") is receiving or is entitled to receive payments under the Plan and dies before receiving all of the payments due, the balance to which the Beneficiary is entitled shall be paid to the contingent Beneficiary, if any, named in the Participant's current Beneficiary designation form. If there is no contingent Beneficiary, the balance shall be paid to the estate of the primary Beneficiary. Any Beneficiary may disclaim all or any part of any benefit to which such Beneficiary shall be entitled hereunder by filing a written disclaimer with the Committee before payment of such benefit is to be made. Such a disclaimer shall be made in a form satisfactory to the Committee and shall be irrevocable when filed. Any benefit disclaimed shall be payable from the Plan in the same manner as if the Beneficiary who filed the disclaimer had predeceased the Participant.

**Section 14. Amendment and Termination of Plan**

The Company may amend any provision of the Plan or terminate the Plan at any time; provided, that in no event shall such amendment or termination reduce the balance in any Participant's Deferred Compensation Account, including reduction in vesting percentage, as of the date of such amendment or termination, nor shall any such amendment materially adversely affect the Participant relating to the payment of such Deferred Compensation Account. Notwithstanding the foregoing, the following special provisions shall apply:

14.1 Termination and liquidation of the Plan in the Discretion of the Company. The Company in its discretion may terminate the Plan and distribute vested benefits in a single lump sum to Participants subject to the following requirements and any others specified under Section 409A of the Code:

- 14.1.1 All arrangements sponsored by the Company that would be aggregated with the Plan under Section 1.409A-1(c) of the Treasury Regulations are terminated.
- 14.1.2 No payments other than payments that would be payable under the terms of the Plan if the termination had not occurred are made within 12 months of the termination date.
- 14.1.3 All benefits under the Plan are paid within 24 months of the termination date.
- 14.1.4 The Company does not adopt a new arrangement that would be aggregated with the Plan under Section 1.409A-1(c) of the Treasury Regulations providing for the deferral of compensation at any time within 3 years following the date of termination of the Plan.
- 14.1.5 The termination does not occur proximate to a downturn in the financial health of the Company.

Distribution of benefits shall occur in the same tax year for all Participants.

14.2 Termination and liquidation of the Plan Upon Change in Control Event of the Company. If the Company terminates the Plan within thirty days preceding or twelve months following a Change in Control Event of the Company, the vested Deferred Compensation Account of each Participant shall become payable to the Participant in a lump sum within twelve months following the date of termination, subject to the requirements of Section 409A of the Code. Distribution of benefits shall occur in the same tax year for all Participants.

14.3 Termination and liquidation of the Plan upon Corporate Dissolution. The Plan may be terminated within 12 months of a corporate dissolution of the Company taxed under Section 331, or with the approval of a bankruptcy court provided the amounts deferred under the plan are included in the Participant's gross income as required under Section 409A of the Code.

**Section 15. Communication to Participants**

The Company shall make a copy of the Plan available for inspection by Participants and Beneficiaries during reasonable hours at the principal office of the Employer.

**Section 16. Claims Procedure**

The following claims procedure shall apply with respect to the Plan:

16.1 Filing of a Claim for Benefits. If a Participant or Beneficiary (the "claimant") believes there is an entitlement to benefits by the claimant under the Plan which is not being paid or which is not being accrued for the claimant's benefit, the claimant shall file a written claim therefore with the Committee.

16.2 Notification to Claimant of Decision. Within 90 days after receipt of a claim by the Committee (or within 180 days if special circumstances require an extension of time), the Committee shall notify the claimant of the decision with regard to the claim. In the event of such special circumstances requiring an extension of time, there shall be furnished to the claimant prior to expiration of the initial 90-day period written notice of the extension, which notice shall set forth the special circumstances and the date by which the decision shall be furnished. If such claim shall be wholly or partially denied, notice thereof shall be in writing and worded in a manner calculated to be understood by the claimant, and shall set forth: (i) the specific reason or reasons for the denial; (ii) specific reference to pertinent provisions of the Plan on which the denial is based; (iii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (iv) an explanation of the procedure for review of the denial and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under ERISA following an adverse benefit determination on review.

16.3 Procedure for Review. Within 60 days following receipt by the claimant of notice of denying a claim, in whole or in part, or, if such notice shall not be given, within 60 days following the latest date on which such notice could have been timely given, the claimant may appeal denial of the claim by filing a written application for review with the Committee. Following such request for review, the Committee shall fully and fairly review the decision denying the claim. Prior to the decision of the Committee, the claimant shall be given an opportunity to review pertinent documents and to submit issues and comments in writing.

16.4 Decision on Review. The decision on review of a claim denied in whole or in part by the Committee shall be made in the following manner:

16.4.1 Within 60 days following receipt by the Committee of the request for review (or within 120 days if special circumstances require an extension of time), the Committee shall notify the claimant in writing of its decision with regard to the claim. In the event of such special circumstances requiring an extension of time, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension.

16.4.2 With respect to a claim that is denied in whole or in part, the decision on review shall set forth specific reasons for the decision, shall be written in a manner calculated to be understood by the claimant, and shall set forth:

- (i) the specific reason or reasons for the adverse determination;
- (ii) specific reference to pertinent Plan provisions on which the adverse determination is based;
- (iii) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits; and
- (iv) a statement describing any voluntary appeal procedures offered by the Plan and the claimant's right to bring an action under ERISA section 502(a).

16.4.3 The decision of the Committee shall be final and conclusive.

16.5 Action by Authorized Representative of Claimant. All actions set forth in this Section 16 to be taken by the claimant may likewise be taken by a representative of the claimant duly authorized by the claimant to act on the claimant's behalf on such matters. The Committee may require such evidence of the authority to act of any such representative as it may reasonably deem necessary or advisable.

16.6 Disability Claims. Notwithstanding any provision of the Plan to the contrary, if a claim for benefits is based on Disability, the following claims procedures shall apply: The Committee shall maintain a procedure under which any Participant or Beneficiary can file a claim for benefits under this Plan based on Disability.

16.6.1 After receiving a claim for benefits, the Committee will notify the Participant or Beneficiary of its claim determination within 45 days of the receipt of the claim. This period may be extended by 30 days if an extension is necessary to process the claim due to matters beyond the control of the Committee. A written notice of the extension, the reason for the extension and when the Committee expects to decide the claim, will be furnished to the Participant or Beneficiary within the initial 45-day period. This period may be extended for an additional 30 days beyond the original extension. A written notice of the additional extension, the reason for the additional extension and when the Committee expects to decide the claim, will be furnished to the Participant or Beneficiary within the first 30-day extension period if an additional extension of time is needed. However, if a period of time is extended due to a Participant or Beneficiary's failure to submit information necessary to decide a claim, the period for making the benefit determination by the Committee will be tolled from the date on which the notification of the extension is sent to the Participant or Beneficiary until the date on which the Participant or Beneficiary responds to the request for additional information.

16.6.2 If a claim for benefits is denied, in whole or in part, a Participant or Beneficiary or an authorized representative, will receive a written notice of the denial. The notice will follow the rules of 29 C.F.R. Sec. 2560.503-1(o) for culturally and linguistically appropriate notices and will be written in a manner calculated to be understood by the Participant or Beneficiary. The notice will include:

- (i) the specific reason(s) for the denial,
- (ii) references to the specific Plan provisions on which the benefit determination was based,
- (iii) a description of any additional material or information necessary to perfect a claim and an explanation of why such information is necessary,
- (iv) a description of the Committee's appeals procedures and applicable time limits, including, to the extent applicable, a statement of the right to bring a civil action under section 502(a) of ERISA following an adverse benefit determination on review,
- (v) a discussion of the decision, including an explanation of the basis for disagreeing with or not following: (i) the views presented by the claimant to the Committee of health care professionals treating the claimant and vocational professionals who evaluated the claimant; (ii) the views of medical or vocational experts whose advice was obtained on behalf of the Committee in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and (iii) a disability determination regarding the claimant presented by the claimant to the Committee made by the Social Security Administration,
- (vi) if the determination is based on medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the relevant medical circumstances, or a statement that such explanation will be provided free of charge upon request,
- (vii) either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Plan relied upon in making the adverse benefit determination, or a statement that such rules, guidelines, protocols, standards, or other similar criteria of the Plan do not exist, and
- (viii) a statement that the Participant or Beneficiary is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim for benefits.

16.6.3 If a claim for benefits is denied, a Participant, Beneficiary, or representative, may appeal the denied claim in writing within 180 days of receipt of the written notice of denial. The Participant or Beneficiary may submit any written comments, documents, records and any other information relating to the claim. Upon request, the Participant or Beneficiary will also have access to, and the right to obtain copies of, all documents, records and information relevant to the claim free of charge.

16.6.4 A full review of the information in the claim file and any new information submitted to support the appeal will be conducted. The claim decision will be made by an appeals committee appointed by the Company. This committee will consist of individuals who were not involved in the initial benefit determination, nor will such individuals be subordinate to any person involved in the initial benefit determination. This review will not afford any deference to the initial benefit determination.

16.6.5 If the initial adverse decision was based in whole or in part on a medical judgment, the appeals committee will consult with a healthcare professional who has appropriate training and experience in the field of medicine involved in the medical judgment, was not consulted in the initial adverse benefit determination and is not a subordinate of the healthcare professional who was consulted in the initial adverse benefit determination.

16.6.6 Before an adverse benefit determination on review is issued, the appeals committee will provide the Participant or Beneficiary, free of charge, with any new or additional evidence considered, relied upon, or generated by the committee or other person making the benefit determination (or at the direction of the committee or such other person) in connection with the claim. Such evidence will be provided as soon as possible and sufficiently in advance of the date on which the notice of adverse benefit determination on review is required to be provided to give the Participant or Beneficiary a reasonable opportunity to respond prior to that date.

16.6.7 Before the appeals committee issues an adverse benefit determination on review based on a new or additional rationale, the committee will provide the Participant or Beneficiary, free of charge, with the rationale. The rationale will be provided as soon as possible and sufficiently in advance of the date on which the notice of adverse benefit determination on review is required to be provided to give the Participant or Beneficiary a reasonable opportunity to respond prior to that date.

16.6.8 The appeals committee will make a determination on an appealed claim within 45 days of the receipt of an appeal request. This period may be extended for an additional 45 days if the committee determines that special circumstances require an extension of time. A written notice of the extension, the reason for the extension and the date that the committee expects to render a decision will be furnished to the Participant or Beneficiary within the initial 45-day period. However, if the period of time is extended due to a Participant's or Beneficiary's failure to submit information necessary to decide the appeal, the period for making the benefit determination will be tolled from the date on which the notification of the extension is sent until the date on which the Participant or Beneficiary responds to the request for additional information.

16.6.9 If the claim on appeal is denied in whole or in part, a Participant or Beneficiary will receive a written notification of the denial. The notice will follow the rules of 29 C.F.R. Sec. 2560.503-1(o) for culturally and linguistically appropriate notices and will be written in a manner calculated to be understood by the claimant. The notice will include:

- (i) the specific reason(s) for the adverse determination,
- (ii) references to the specific Plan provisions on which the determination was based,
- (iii) a statement regarding the right to receive upon request and free of charge reasonable access to, and copies of, all records, documents and other information relevant to the benefit claim,
- (iv) a description of the appeals committee's review procedures and applicable time limits, including a statement of the right to bring a civil action under section 502(a) of ERISA following an adverse benefit determination on review,
- (v) a discussion of the decision, including an explanation of the basis for disagreeing with or not following: (i) the views presented by the claimant to the committee of health care professionals treating the claimant and vocational professionals who evaluated the claimant; (ii) the views of medical or vocational experts whose advice was obtained by or on behalf of the committee in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and (iii) a disability determination regarding the claimant presented by the claimant to the committee made by the Social Security Administration,
- (vi) if the determination is based on medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the relevant medical circumstances, or a statement that such explanation will be provided free of charge upon request, and
- (vii) either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Plan relied upon in making the adverse benefit determination, or a statement that such rules, guidelines, protocols, standards, or other similar criteria of the Plan do not exist.

16.6.10 [Reserved].

16.6.11 [Reserved].

16.6.12 [Reserved].

16.6.13 [Reserved].

16.6.14 [Reserved].

16.6.15 [Reserved].

16.6.16 [Reserved].

16.6.17 A claimant may not commence a judicial proceeding against any person, including the Committee, the Employer, the Board, the appeals review committee(s), or any other person or committee, with respect to a claim for benefits without first exhausting the claims procedures set forth in the preceding paragraphs. No suit or legal action contesting in whole or in part any denial of benefits under the Plan shall be commenced later than the earlier of (i) the first anniversary of (A) the date of the notice of the final decision on appeal, or (B) if the claimant fails to request any level of administrative review within the timeframe permitted under this Section 16.6, the deadline for requesting the next level of administrative review, and (ii) the last date on which such legal action could be commenced under the applicable statute of limitations under ERISA (including, for this purpose, any applicable state statute of limitations that applies under ERISA to such legal action).

16.6.18 A claimant has the right to request a written explanation of any violation of these claims procedures. The Committee will provide an explanation within 10 days of the request.



**Section 17. Miscellaneous Provisions**

17.1 Set off. The Company may at any time offset a Participant's Deferred Compensation Account by an amount up to \$5,000 to collect the amount of any loan, cash advance, extension of other credit or other obligation of the Participant to the Employer that is then due and payable in accordance with the requirements of Section 409A of the Code.

17.2 Notices. Each Participant who is not in Service and each Beneficiary shall be responsible for furnishing the Company with the current address, and direct deposit information if desired, for the mailing of notices and benefit payments. Any notice required or permitted to be given to such Participant or Beneficiary shall be deemed given if directed to such address and mailed by regular United States mail, first class, postage prepaid. If any benefit distribution is rejected or returned to the Company, benefit payments will be suspended until the Participant or Beneficiary furnishes the proper information. This provision shall not be construed as requiring the mailing of any notice or notification otherwise permitted to be given by posting or by other publication.

17.3 Lost Distributees. A benefit shall be deemed forfeited if the Committee is unable to locate the Participant or Beneficiary to whom payment is due by the fifth anniversary of the date payment is to be made or commence; provided, that the deemed investment rate of return pursuant to Section 8.2 shall cease to be applied to the Participant's account following the first anniversary of such date; provided further, however, that such benefit shall be reinstated if a valid claim is made by or on behalf of the Participant or Beneficiary for all or part of the forfeited benefit. The Company will be responsible for determining whether unclaimed property laws are applicable to forfeited benefits.

17.4 Reliance on Data. The Company and the Committee shall have the right to rely on any data provided by the Participant or by any Beneficiary. Representations of such data shall be binding upon any party seeking to claim a benefit through a Participant, and the Company and the Committee shall have no obligation to inquire into the accuracy of any representation made at any time by a Participant or Beneficiary.

17.5 Headings. The headings and subheadings of the Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

17.6 Continuation of Employment. The establishment of the Plan shall not be construed as conferring any legal or other rights upon any Employee or any persons for continuation of employment, nor shall it interfere with the right of the Employer to discharge any Employee without regard to the effect thereof under the Plan.

17.7 Merger or Consolidation; Assumption of Plan. The Company shall not consolidate or merge into or with another corporation or entity, or transfer all or substantially all of its assets to another corporation, partnership, trust or other entity (a "Successor Entity") unless such Successor Entity shall assume the rights, obligations and liabilities of the Company under the Plan and upon such assumption, the Successor Entity shall become obligated to perform the terms and conditions of the Plan. Nothing herein shall prohibit the assumption of the obligations and liabilities of the Company under the Plan by any Successor Entity.

17.8 Construction. The Company shall designate in the Adoption Agreement the state or commonwealth according to whose laws the provisions of the Plan shall be construed and enforced, except to the extent that such laws are superseded by ERISA and the applicable requirements of the Code.

17.9 Taxes. The Employer or other payor may withhold a benefit payment under the Plan or a Participant's wages, or the Company may reduce a Participant's Deferred Compensation Account balance, in order to meet any federal, state, or local or employment tax withholding obligations with respect to Plan benefits, as permitted under Section 409A of the Code. The Employer or other payor shall report Plan payments and other Plan-related information to the appropriate governmental agencies as required under applicable laws.

17.10 Administration Fees. Any Plan or Plan related fees related to the administration of the Plan shall be paid by the Company.

17.11 Savings Clause. To the extent that any of the provisions of the Plan are found by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, such provision shall be deleted, and the balance of the Plan shall not be affected.

THE KNIFE RIVER CORPORATION DEFERRED COMPENSATION PLAN

ADOPTION AGREEMENT

THIS AGREEMENT is the adoption by **Knife River Corporation** (formerly known as Knife River Holding Company) (“KRC” or the “Company”) of the Knife River Corporation Deferred Compensation Plan (“Plan”) in connection with the distribution of 80.1% or more of the outstanding shares of KRC’s common stock to the stockholders of MDU Resources Group, Inc. (“MDU”) in 2023, pursuant to the Separation and Distribution Agreement between the Company and MDU entered into in connection with such distribution (the “Spin-Off”) and is effective as of May 22, 2023 (the “Effective Date”).

WITNESSETH:

WHEREAS, in connection with the Spin-Off and pursuant to the terms of an Employee Matters Agreement entered into by and between the Company and MDU, the Company and the Plan assumed all the obligations and liabilities of MDU and its subsidiaries under the MDU Deferred Compensation Plan (the “MDU DCP”) with respect to SpinCo Group Employees and Former SpinCo Group Employees (as such terms are defined in the Employee Matters Agreement, and collectively referred to herein as “KRC Employees”) so that any benefits due under the MDU DCP with respect to KRC Employees or beneficiaries of KRC Employees will now be the responsibility of the Company and this Plan;

WHEREAS, the Company desires to adopt the Plan as an unfunded, nonqualified deferred compensation plan; and

WHEREAS, the provisions of the Plan are intended to comply with the requirements of Section 409A of the Code and the regulations thereunder and shall apply to amounts subject to section 409A; and

WHEREAS, the Company has been advised by Principal Life Insurance Company to obtain legal and tax advice from its professional advisors before adopting the Plan,

NOW, THEREFORE, the Company hereby adopts the Plan in accordance with the terms and conditions set forth in this Adoption Agreement:

ARTICLE I

Terms used in this Adoption Agreement shall have the same meaning as in the Plan, unless some other meaning is expressly herein set forth. The Company hereby represents and warrants that the Plan has been adopted by the Company upon proper authorization and the Company hereby elects to adopt the Plan for the benefit of its Participants as referred to in the Plan. By the execution of this Adoption Agreement, the Company, for itself and its subsidiaries, hereby agrees to be bound by the terms of the Plan.

Any benefits due under the MDU DCP with respect to KRC Employees or Beneficiaries of KRC Employees will now be the responsibility of the Company and this Plan. All service of a KRC Employee recognized under the MDU DCP shall be recognized under this Plan. All investment and distribution elections and designation of Beneficiaries made under the MDU DCP by a KRC Employee and in effect as of immediately prior to the Effective Date shall continue to apply and shall be administered under the Plan until such election or designation expires or is otherwise changed or revoked in accordance with the terms of the Plan. All valid domestic relations orders filed with the MDU DCP as of immediately prior to the Effective Date with respect to the benefits of a KRC Employee shall continue to apply under the Plan.

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ARTICLE II

The Employer hereby makes the following designations or elections for the purpose of the Plan:

**2.6 Committee:** The duties of the Committee set forth in the Plan shall be satisfied by:

- (a) Company
- (b) The administrative committee appointed by the Board to serve at the pleasure of the Board.
- (c) Board.

XX (d) Other (specify): The Compensation Committee of the Knife River Corporation Board of Directors, or its designee.

**2.8 Compensation:** The "Compensation" of a Participant shall mean all of a Participant's:

XX (a) Base salary.

XX (b) Service Bonus.

XX Service Bonus earned from 1/1 – 12/31, paid on or around first quarter of the following Plan Year.

— Service Bonus earned each calendar quarter, paid on or around the following calendar quarter.

— Service Bonus with no defined earnings period (e.g.: a "spot bonus")

XX (c) Performance-Based Compensation earned in a period of 12 months or more.

XX Performance Based Bonus earned from 1/1 – 12/31, paid on or around first quarter the following Plan Year and whose elections must be made no later than 6/30 of the Plan Year it is earned.

— Performance Based Bonus earned from \_\_\_\_\_, paid on or around the following \_\_\_\_\_ Plan Year and whose elections must be made no later than \_\_\_\_\_ of the Plan Year it is earned.

— (d) Commissions.

XX (e) Compensation received as an Independent Contractor reportable on Form 1099.

— (f) Other:

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**2.9 Crediting Date:** The Deferred Compensation Account of a Participant shall be credited as follows:

Participant Deferral Credits at the time designated below:

- (a) On any business day as specified by the Employer.
- (b) Each pay day as reported by the Employer.
- (c) The last business day of each payroll period during the Plan Year.

Employer Credits at the time designated below:

- (a) On any business day as specified by the Employer.

**2.13 Effective Date:**

- (a) This is a newly-established Plan, and the Effective Date is as defined in the preamble language to this Adoption Agreement.
- (b) This is an amendment of a plan named \_\_\_\_ dated \_\_\_\_ and governing all contributions to the plan through \_\_\_\_\_. The Effective Date of this amended Plan is \_\_\_\_\_.

**2.20 Normal Retirement Age:** The Normal Retirement Age of a Participant shall be:

- (a) Age 65.
- (b) The later of age \_\_ or the \_\_\_\_\_ anniversary of the participation commencement date. The participation commencement date is the first day of the first Plan Year in which the Participant commenced participation in the Plan.
- (c) Other: \_\_\_\_\_.

2.23 **Participating Employer(s):** As of the Effective Date, the following Participating Employer(s) are parties to the Plan:

Name of Employer

EIN

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**Knife River Corporation for itself and its subsidiaries**

92-1008893

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2.26 **Plan:** The name of the Plan is

**Knife River Corporation Deferred Compensation Plan.**

2.28 **Plan Year:** The Plan Year shall end each year on the last day of the month of **December.**

2.30 **Seniority Date:** The date on which a Participant has:

\_\_\_ (a) Attained age \_\_\_.

\_\_\_ (b) Completed \_\_\_ Years of Service from First Date of Service.

\_\_\_ (c) Attained age \_\_ and completed \_\_ Years of Service from First Date of Service.

**XX** (d) Not applicable – distribution elections for Separation from Service are not based on Seniority Date.

**4.1 Participant Deferral Credits:** Subject to the limitations in Section 4.1 of the Plan, a Participant may elect to have his Compensation (as selected in Section 2.8 of this Adoption Agreement) deferred within the annual limits below by the following percentage or amount as designated in writing to the Committee:

(a) Base salary:  
minimum deferral: \_\_\_\_\_ %  
maximum deferral: 80 %

(b) Service Bonus:  
 Service Bonus  
minimum deferral: \_\_\_\_\_ %  
maximum deferral: 100 %

(c) Performance-Based Compensation:  
 Performance Based Bonus  
minimum deferral: \_\_\_\_\_ %  
maximum deferral: 100 %

(d) Commissions:  
minimum deferral: \_\_\_\_\_ %  
maximum deferral: \_\_\_\_\_ %

(e) Form 1099 Compensation:  
minimum deferral: \_\_\_\_\_ %  
maximum deferral: 100 %

(f) Other:  
minimum deferral: \_\_\_\_\_ %  
maximum deferral: \_\_\_\_\_ %

(g) Participant deferrals not allowed.

**4.1.2 Participant Deferral Credits and Employer Credits – Election Period:** Participant elections regarding Participant Deferral Credits and Employer Credits shall be subject to the following effective periods (one must be selected):

- (a) Evergreen election. An election made by the Participant shall continue in effect for subsequent years until modified by the Participant as permitted in Section 4.1 and Section 4.2. (This option is not permitted if source year accounts are elected in Section 4.3).
- (b) Non-Evergreen election. Any election made by the Participant shall only remain in effect for the current election period and will then expire. An election for each subsequent year will be required as permitted in Sections 4.1 and 4.2.

**4.2 Employer Credits:** Employer Credits will be made in the following manner:

- XX (a) **Employer Credits 1 (Employer Discretionary Credits):** The Employer may make discretionary credits to the Deferred Compensation Account of each Active Participant in an amount determined as follows:
- XX (i) An amount determined each Plan Year by the Employer.
  - \_\_\_ (ii) Other:\_\_\_\_\_.
- \_\_\_ (b) **Employer Credits 2 (Other Employer Credits):** The Employer may make other credits to the Deferred Compensation Account of each Active Participant in an amount determined as follows:
- \_\_\_ (i) An amount determined each Plan Year by the Employer.
  - \_\_\_ (ii) Other:\_\_\_\_\_.
- \_\_\_ (c) Employer Credits not allowed.

**4.3 Deferred Compensation Account:** The Participant is permitted to establish the following accounts:

- XX (a) Non-source year account(s). Deferred Compensation Account(s) will not be established on a source year basis:
- \_\_\_ (i) A Participant may establish only one account to be distributed upon Separation from Service. One set of payment options for that account is allowed as permitted in Section 7.1. Additional In-Service or Education accounts may be established as permitted in Section 5.4.
  - XX (ii) A Participant may establish multiple accounts to be distributed upon Separation from Service. Each account may have one set of payment options as permitted in Section 7.1. Additional In-Service or Education accounts may be established as permitted in Section 5.4. If this multiple account option is elected, the Participant will also be required to elect Separation from Service payment options for each In-Service or Education account established.
- \_\_\_ (b) Source year account(s): Annual Deferred Compensation Account(s) will be established each year in which Participant Deferral Credits or Employer Credits are credited to the Participant. Only one account may be established each year for distribution upon Separation from Service. One set of payment options for that account is allowed as permitted in Section 7.1. Additional In-Service or Education accounts may be established for each source year as permitted in Section 5.4. If this option is selected, Evergreen elections as described in Section 4.1.2 are not permitted.



**5.2 Disability of a Participant:**

- XX (a) A Participant's becoming Disabled shall be a Qualifying Distribution Event and the Deferred Compensation Account shall be paid by the Employer as provided in Section 7.1.
- \_\_\_ (b) A Participant becoming Disabled shall not be a Qualifying Distribution Event.

**5.3 Death of a Participant:** If the Participant dies while in Service, the Employer shall pay a benefit to the Beneficiary in an amount equal to the vested balance in the Deferred Compensation Account of the Participant determined as of the date payments to the Beneficiary commence, plus:

- \_\_\_ (a) An amount to be determined by the Committee.
- XX (b) No additional benefits.

**5.4 In-Service or Education Distributions:** In-Service and Education Accounts are permitted under the Plan:

- XX (a) In-Service Accounts are allowed with respect to:
- XX Participant Deferral Credits only.
  - \_\_\_ Employer Credits only.
  - \_\_\_ Participant Deferral and Employer Credits.

In-service distributions may be made in the following manner:

- XX Single lump sum payment.
- XX Annual installments over a term certain not to exceed 5 years.

Education Accounts are allowed with respect to:

- \_\_\_ Participant Deferral Credits only.
- \_\_\_ Employer Credits only.
- \_\_\_ Participant Deferral and Employer Credits.

Education Accounts distributions may be made in the following manner:

- \_\_\_ Single lump sum payment.
- \_\_\_ Annual installments over a term certain not to exceed \_\_\_years.

If applicable, amounts not vested at the time payments due under this Section cease will be:

- \_\_\_ Forfeited
- \_\_\_ Distributed at Separation from Service if vested at that time

- \_\_\_ (b) No In-Service or Education Distributions permitted.

**5.5 Change in Control Event:**

- \_\_\_ (a) Participants may elect upon initial enrollment to have accounts distributed upon a Change in Control Event.
- XX (b) A Change in Control shall not be a Qualifying Distribution Event.

**5.6 Unforeseeable Emergency Event:**

- XX (a) Participants may apply to have accounts distributed upon an Unforeseeable Emergency event.
- \_\_\_ (b) An Unforeseeable Emergency shall not be a Qualifying Distribution Event.

6. **Vesting:** An Active Participant shall be vested in the Employer Credits made to the Deferred Compensation Account upon the first to occur of the following events:

- (a) Normal Retirement Age.
- (b) Full vesting upon Death.
- (c) Full vesting upon Disability.
- (d) Full vesting upon separation from service with the Company (within the meaning of Code Section 409A) after attaining age sixty-five (65) and completing at least ten (10) "years of continuous service" with the Company.
- (e) Involuntary separation from service with the Company within twelve (12) months of a "change in control" of the Participant's direct Employer (within the meaning of Code Section 409A), then such Participant shall have a nonforfeitable (vested) right to 100% of the amounts credited to the Participant's account(s).
- (f) Satisfaction of the vesting requirement as specified below:

- (i) Immediate 100% vesting.
- (ii) 100% vesting after \_\_ Years of Service.
- (iii) 100% vesting at age \_\_.
- (iv) 

Number of Years of Service	Vested Percentage
Less than	1 <u>0</u> %
	1 <u>34</u> %
	2 <u>67</u> %
	3 <u>100</u> %
	4     _____ %
	5     _____ %
	6     _____ %
	7     _____ %
	8     _____ %
	9     _____ %
	10 or more     _____ %

For this purpose, Years of Service of a Participant shall be calculated from the date designated below:

- (1) First day of Service.
- (2) Effective date of Plan participation.
- (3) Each Crediting Date. Under this option (3), each Employer Credit shall vest based on the Years of Service of a Participant from the Crediting Date on which each Employer Discretionary Credit is made to his or her Deferred Compensation Account.

— **Employer Credits 2 (Other Employer Credits):**

- (i) Immediate 100% vesting.
- (ii) 100% vesting after \_\_Years of Service.
- (iii) 100% vesting at age \_\_.

<b><u>XX</u></b>	(iv)	Number of Years of Service	Vested Percentage
		Less than	1
			1
			2
			3
			4
			5
			6

For this purpose, Years of Service of a Participant shall be calculated from the date designated below:

- (1) First day of Service.
- (2) Effective date of Plan participation.
- (3) Each Crediting Date. Under this option (3), each Employer Credit shall vest based on the Years of Service of a Participant from the Crediting Date on which each Employer Discretionary Credit is made to his or her Deferred Compensation Account.

**7.1 Payment Options:** Any benefit payable under the Plan upon a permitted Qualifying Distribution Event may be made to the Participant or his Beneficiary (as applicable) in any of the following payment forms, as selected by the Participant in the Participation Agreement:

(a) Separation from Service (Seniority Date is Not Applicable)

(i) A lump sum.

(ii) Annual installments over a term certain as elected by the Participant not to exceed **10** years.

(b) Separation from Service prior to Seniority Date (If Applicable)

(i) A lump sum.

(ii) Not Applicable

(c) Separation from Service on or After Seniority Date (If Applicable)

(i) A lump sum.

(ii) Annual installments over a term certain as elected by the Participant not to exceed \_\_\_ years.

(iii) Not Applicable

(d) Separation from Service Upon a Change in Control Event

(i) A lump sum.

(e) Death

(i) A lump sum.

(ii) Annual installments over a term certain as elected by the Participant not to exceed \_\_\_ years.

(f) Disability

(i) A lump sum.

(ii) Annual installments over a term certain as elected by the Participant not to exceed **10** years.

(iii) Not applicable.

If applicable, amounts not vested at the time payments due under this Section cease will be:

Forfeited

Distributed at Separation from Service if vested at that time

(g) Change in Control Event

(i) A lump sum.

(ii) Not Applicable

If applicable, amounts not vested at the time payments due under this Section cease will be:

Forfeited

Distributed at Separation from Service if vested at that time

**7.4 De Minimis Amounts.**

- XX (a) Notwithstanding any payment election made by the Participant, the vested balance in all Deferred Compensation Account(s) of the Participant will be distributed in a single lump sum payment at the time designated under the Plan if at the time of a permitted Qualifying Distribution Event that is either a Separation from Service, death, Disability (if applicable) or Change in Control Event (if applicable) the vested balance does not exceed \$50,000. In addition, the Employer may distribute a Participant's vested balance in all Deferred Compensation Account(s) of the Participant at any time if the balance does not exceed the limit in Section 402(g)(1)(B) of the Code and results in the termination of the Participant's entire interest in the Plan and any other Employer plan subject to aggregation under Section 409A of the Code.
- (b) There shall be no pre-determined de minimis amount under the Plan; however, the Employer may distribute a Participant's vested balance at any time if the balance does not exceed the limit in Section 402(g)(1)(B) of the Code and results in the termination of the Participant's entire interest in the Plan and any other Employer plan subject to aggregation under Section 409A of the Code.

**10.1 Contractual Liability:** Liability for payments under the Plan shall be the responsibility of the:

- XX (a) Company.
- (b) There shall be no pre-determined de minimis amount under the Plan; however, the Employer may distribute a Participant's vested balance at any time if the balance does not exceed the limit in Section 402(g)(1)(B) of the Code and results in the termination of the Participant's entire interest in the Plan and any other Employer plan subject to aggregation under Section 409A of the Code.

**14. Amendment and Termination of Plan:** Notwithstanding any provision in this Adoption Agreement or the Plan to the contrary, Section \_\_\_\_ of the Plan shall be amended to read as provided in attached Exhibit \_\_\_\_

XX There are no amendments to the Plan.

**17.8 Construction:** The provisions of the Plan shall be construed and enforced according to the laws of the State of North Dakota, except to the extent that such laws are superseded by ERISA and the applicable provisions of the Code.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year stated below.

**Knife River Corporation**

Name of Employer

By: /s/ Karl A. Liepitz

Authorized Person

Date: May 22, 2023

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KNIFE RIVER CORPORATION  
SUPPLEMENTAL INCOME SECURITY PLAN

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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
ARTICLE I -- DEFINITIONS	2
ARTICLE II -- ELIGIBILITY	5
ARTICLE III -- SUPPLEMENTAL DEATH AND RETIREMENT BENEFITS	7
ARTICLE IV -- [RESERVED.]	17
ARTICLE V -- DISABILITY BENEFITS	17
ARTICLE VI -- MISCELLANEOUS	17
ARTICLE VII -- ADDITIONAL AFFILIATED COMPANIES	26
APPENDIX A AND A-1 SCHEDULE OF RETIREMENT AND SURVIVORS BENEFITS	28
APPENDIX C KNIFE RIVER CORPORATION SPECIFIED EMPLOYEE POLICY REGARDING COMPENSATION	29



## INTRODUCTION

Knife River Corporation (formerly known as Knife River Holding Company) ("KRC" or the "Company") has adopted this Plan in connection with the distribution of 80.1% or more of the outstanding shares of KRC's common stock to the stockholders of MDU Resources Group, Inc. ("MDU"), pursuant to the Separation and Distribution Agreement between the Company and MDU entered into in connection with such distribution (the "Spin-Off"). This Plan is effective as of May 22, 2023 (the "Effective Date").

The objective of the Plan is to provide certain levels of death benefits and retirement income for a select group of management or highly compensated employees and their families. The MDU Resources Group, Inc. Supplemental Income Security Plan as sponsored by MDU (the "MDU SISP") became effective January 1, 1982 and has been amended from time to time thereafter. The Plan is a continuation of the MDU SISP but only with respect to SpinCo Group Employees and Former SpinCo Group Employees (as such terms are defined in the Employee Matters Agreement entered into by MDU and KRC in connection with the Spin-Off, collectively referred to herein as "KRC Employees"). Any benefits due under the MDU SISP with respect to KRC Employees or Beneficiaries of KRC Employees will now be the responsibility of the Company and this Plan. All service of a KRC Employee recognized under the MDU SISP shall be recognized under this Plan. All distribution elections and designation of Beneficiaries made under the MDU SISP by a KRC Employee that were in effect as of immediately prior to the Effective Date shall continue to apply and shall be administered under the Plan until such election or designation expires or is otherwise changed or revoked in accordance with the terms of the Plan. All valid domestic relations orders filed with the MDU SISP as of immediately prior to the Effective Date with respect to the benefits of a KRC Employee shall continue to apply under the Plan.

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The Plan is intended to constitute an unfunded deferred compensation plan maintained by the Company primarily for the purpose of providing non-elective deferred compensation for a select group of management or highly compensated employees.

#### **ARTICLE I – DEFINITIONS**

Unless a different meaning is plainly implied by the context, the following terms as used in this Plan shall have the following meanings:

1.1 “Administrator” means the Compensation Committee of the Board of Directors of the Company or any other person to whom the Compensation Committee has delegated the authority to administer the Plan. The Vice President of Administration of the Company is initially delegated the authority to perform the administrative responsibilities required under the Plan.

1.2 “Affiliated Company” means any current or future corporation which (a) is in a controlled group of corporations (within the meaning of Section 414(b) of the Code) of which the Company is a member and (b) has been approved by the Compensation Committee upon recommendation of the Chief Executive Officer to adopt the Plan for the benefit of its Employees.

1.3 “Beneficiary” means an individual or individuals, any entity or entities (including corporations, partnerships, estates, or trusts) that shall be entitled to receive benefits payable pursuant to the provisions of this Plan by virtue of a Participant’s death; provided, however, that if more than one such person is designated as a Beneficiary hereunder, each such person’s proportionate share of the death benefit hereunder must clearly be set forth in a written statement of the Participant received by and filed with the Administrator prior to the Participant’s death. If such proportionate share for each Beneficiary is not set forth in the designation, each Beneficiary shall receive an equal share of the death benefits provided hereunder.

1.4 [Reserved.]

1.5 “Effective Date” has the meaning set forth in the first paragraph of the Plan.

1.6 “Eligible Retirement Date” means the First Eligible Retirement Date and the last day of each subsequent calendar month.

1.7 “Employee” means each person actively employed by an Employer, as determined by such Employer in accordance with its practices and procedures.

1.8 “Employer” means the Company and any Affiliated Company which shall adopt this Plan with respect to its Employees with the prior approval of the Company as set forth in Article 7 of the Plan; provided that with respect to any period prior to the Effective Date, the term Employer shall have the meaning set forth in the MDU SISP.

1.9 “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

1.10 “First Eligible Retirement Date” for a Participant means the last day of the month during which such Participant is both no longer actively employed by the Employer and has attained at least age 65. For a Key Employee whose employment ceases (for reasons other than death) within six months of becoming age 65 or any time thereafter, the First Eligible Retirement Date that applies to the Monthly Post-Jobs Act Benefit will be six months after the last day of the month during which such Key Employee is both no longer actively employed by the Employer and has attained at least age 65.

1.11 "Frozen" in conjunction with the Pension Plan means that benefit accruals ceased for all participants in these plans as of December 31, 2009.

1.12 "Key Employee" is a Participant determined to be a Specified Employee under the Company's *Specified Employee Policy Regarding Compensation* attached as Appendix C.

1.13 "Limitation on Benefits" shall mean the statutory limitation on the maximum benefit that may be payable to participants under a Pension Plan due to the application of certain provisions contained in the Code.

1.14 "Monthly Post-Jobs Act Benefit" is the Participant's total monthly benefit specified in Section 3.1, minus the Monthly Pre-Jobs Act Benefit.

1.15 "Monthly Pre-Jobs Act Benefit" is the Participant's total monthly vested benefit specified in Section 3.3(a), 3.3(b) or 3.3(c), if any, as of December 31, 2004.

1.16 "Participant" means an Employee or former Employee specified in Section 2.1.

1.17 "Pension Plan" means the Knife River Corporation Salaried Employees' Pension Plan, as in effect on the Effective Date, amended from time to time, and Frozen as of December 31, 2009.

1.18 "Plan" means the Knife River Corporation's Supplemental Income Security Plan, as embodied herein, and any amendments thereto; provided that, where the context requires, with respect to periods prior to the Effective Date, the term Plan shall be deemed to refer to the MDU SISF.

1.19 "Plan Year" means the calendar year. The first Plan Year for the MDU SISF was the 1982 calendar year.

1.20 "Salary" means annual base salary payable by an Employer to a Participant excluding (a) bonuses, (b) incentive compensation, and (c) any other form of supplemental income.

1.21 "Standard Actuarial Factors" means, with respect to a Participant, the actuarial factors and assumptions commonly used for the calculation of actuarial equivalents for retirement plans as determined by the Administrator.

1.22 "Standard Life Insurance" means life insurance that could be purchased from a commercial life insurance company at standard rates without a surcharge assessed, based on an individual's general good health.

1.23 "Standard Underwriting Factors" means life insurance rating factors utilized by a commercial life insurance company selected by the Administrator which are based on the risk assessment classifications utilized by such insurer to determine if an applicant qualifies for insurance at standard rates or if health or other factors might require a surcharge.

1.24 "Year of Participation" means each 12 consecutive months of participation in the Plan by a Participant while actively employed by one or more of the Employers (including while such Participant is qualified as totally disabled as defined in Article IV), as determined at the sole discretion of the Administrator; provided that the term Year of Participation shall include participation recognized under the MDU Plan, as in effect immediately prior to the Effective Date.

## **ARTICLE II – ELIGIBILITY**

2.1 Eligibility for Participation. KRC Employees who were participants in the MDU Plan immediately prior to the Effective Date shall be Participants in the Plan. No employee shall be selected as an additional Participant in the Plan.

2.2 Requirements for Participation. In order to be eligible to participate in the Plan, an Employee selected by the Compensation Committee must (a) be actively at work for one or more of the Employers; (b) have a current state of health and physical condition that would satisfy customary requirements for insurability under Standard Life Insurance; provided, however, that no provision of this Plan shall be construed or interpreted to limit participation in the Plan in contravention of the Americans With Disabilities Act and related federal and state laws; and (c) consent to supply information or to otherwise cooperate as necessary to allow the Company to obtain life insurance on behalf of such Employee (as set forth under Section 6.3 of the Plan).

2.3 Eligibility for Benefits. Subject to the provisions of Article III, Plan benefits may commence as of the earlier to occur of (a) the first day of the month following the date of the Participant's death or (b) the Participant's First Eligible Retirement Date if the Participant elects to receive retirement benefits under Article III hereof.

2.4 Relationship to Other Plans. Participation in the Plan shall not preclude or limit the participation of the Participant in any other benefit plan sponsored by one or more of the Employers for which such Participant otherwise would be eligible. However, any benefits payable under this Plan shall not be deemed salary or compensation to the Participant for purposes of determining benefits under any other employee benefit plan maintained by one or more of the Employers.

2.5 Forfeiture of Benefits. Notwithstanding any provision of this Plan to the contrary, if any Participant is discharged from employment by one or more of the Employers for cause due to willful misconduct, dishonesty, or conviction of a crime or felony, all as determined at the sole discretion of the Compensation Committee, the rights of such Participant (or any Beneficiary of such Participant) to any present or future benefit under this Plan shall be forfeited to the extent not prohibited by applicable law.

**ARTICLE III – SUPPLEMENTAL DEATH AND RETIREMENT BENEFITS**

3.1 Amount of Benefit.

(a) Subject to the vesting requirements of Section 3.2 and provisions of Section 3.3 and 3.4 of the Plan, the monthly supplemental death and/or retirement benefits payable on behalf of (or to) a Participant as of such Participant's date of death (or First Eligible Retirement Date) will be an amount determined by the Compensation Committee upon recommendation of the Chief Executive Officer of the Company (the "Chief Executive Officer") at the time of the Participant's commencement of participation in the Plan, and may be increased from time to time thereafter by the Compensation Committee upon recommendation of the Chief Executive Officer; provided, however, no benefit level increases shall be granted after February 11, 2016. Subject to the discretion of the Compensation Committee upon recommendation of the Chief Executive Officer, a Participant shall generally be entitled to have a monthly supplemental death benefit paid on such Participant's behalf (or be entitled to receive a monthly supplemental retirement benefit) equal to the monthly death benefit or monthly retirement benefit (as applicable) corresponding to the Participant's Salary in effect at the date such initial or revised benefit determination is to be effective, all as set forth herein

- (i) Appendix A for Participants in the MDU SISP before January 1, 2010, and who have not received a benefit level increase after December 31, 2009, or
- (ii) Appendix A-1 for Participants in the MDU SISP before January 1, 2010, and who have received a benefit level increase on or after January 1, 2010, or

(iii) Appendix A-1 for Participants who join the MDU SISP between January 1, 2010 and February 11, 2016.

(b) Participants who died, terminated employment with, or retired from, the Employers prior to January 1, 2002, will receive benefits hereunder in accordance with the terms of the MDU SISP as in effect at the time of the Participant's death, termination of employment or retirement from the Employers.

(c) The benefit amounts determined by the Compensation Committee upon recommendation of the Chief Executive Officer pursuant to Section 3.1(a) above are based on the assumption that each Participant's health and physical condition at the time of such Participant's commencement of participation in the Plan meets customary requirements for Standard Life Insurance. Benefits under the Plan may be reduced by the Compensation Committee upon recommendation of the Chief Executive Officer within a reasonable period following the establishment of such benefit level in accordance with Standard Underwriting Factors, but only with respect to that portion of the monthly death or retirement benefit for which the criteria for health and physical condition are not met. Participants will be notified of any such reduction within a reasonable period following participation in the Plan. Once benefits have been reduced under this Section 3.1, such benefits shall not be further reduced for the remainder of the Participant's participation in the Plan.

(d) Participants who die while actively employed will be considered to be 100% vested for the death benefit, and not subject to the vesting schedule. However, once the participant is no longer actively employed (e.g. resignation, termination, disability, etc.) Section 3.2 applies.



3.2 Vesting.

(a) If a Participant retires or terminates employment with an Employer before the Participant completes at least 10 Years of Participation, the monthly death and/or retirement benefits to which such Participant otherwise would be entitled under the terms of Section 3.1 hereof shall vest as follows:

Vesting Schedule

<u>Years of Participation Completed by the Participant</u>	<u>Percent of Section 3.1 Benefits Payable</u>
1	0%
2	0%
3	20%
4	40%
5	50%
6	60%
7	70%
8	80%
9	90%
10	100%

(b) Participants receiving a benefit increase on or after January 1, 2010 under the MDU SISP, will be subject to an additional vesting period with respect to the benefit level increase. The additional vesting period will be the longer of:

(i) Three Years of Participation, or

(ii) Ten Years of Participation minus the Participant's number of Years of Participation at the time the benefit level increase is granted to the Participant.

If, after receiving a benefit level increase, a Participant's employment terminates, for reasons other than death or being an officer of the Employer who attains age 65 and retires, prior to the end of the additional vesting period associated with the benefit level increase, the benefit level increase will be forfeited. In this case, the Participant's benefit level will revert to the benefit level in effect immediately prior to the benefit level increase.

If, after receiving a benefit level increase, a Participant's employment is terminated due to death, then the additional vesting period is waived and the survivor's benefits will reflect the benefit level increase.

If, after receiving a benefit level increase, the Participant is a) an officer of the Employer, b) attains age 65, and c) retires prior to the end of the additional vesting period associated with the benefit level increase, he or she will vest in the benefit level increase as follows:

<u>"Years of Participation" After Benefit Level Increase</u>	<u>Vesting Percentage of Benefit Level Increase</u>
Less than 1	0%
Between 1 and 2	33%
Between 2 and 3	66%
3 or More	100%

The above vesting schedule under Section 3.2(b) applies only to Participants who are officers of the Employer, attain age 65, retire, and who have satisfied the vesting requirements under Section 3.2(a).

The Compensation Committee, upon recommendation of the Chief Executive Officer, may waive any or all of the additional vesting requirement associated with a benefit level increase.

3.3 Participant's Election of Monthly Pre-Jobs Act Benefit. Upon attainment of age 65 or, as of such Participant's First Eligible Retirement Date (if later), a Participant will be entitled to determine the form of benefit payable under subsection (a) hereof, and the date of commencement of such benefits, subject to the approval of the Administrator, in accordance with the terms of the Plan. The Participant may elect:

(a) to defer any payments and retain a future monthly death benefit in amounts determined pursuant to Section 3.1 hereof, multiplied by the appropriate percentage amount set forth in Section 3.2, or

(b) in lieu of any death benefits under this Plan, a monthly retirement benefit determined in accordance with Section 3.1, multiplied by the appropriate percentage amount set forth in Section 3.2, with no death benefit, or

(c) a percentage of each benefit described in subsections (a) and (b) above. The percentage of each benefit must be in even increments of ten percent (10%).

(i) If a Participant has elected to receive less than one hundred percent (100%) of such Participant's monthly retirement benefit (e.g. 50%), the Participant may subsequently elect to begin receiving an additional percentage retirement benefit (e.g. another 20%). There may be no more than two (2) such additions during the Participant's lifetime, and no more than one (1) such addition during any calendar year.

(ii) Any such addition in retirement benefit payments will result in an equal percentage reduction in death benefits, to the percentage change in retirement benefit.

(iii) Once retirement benefit payments have started, Participants shall not be entitled to subsequently decrease retirement benefit payments.

(d) Elections under this Section 3.3 must be communicated in writing to the Administrator and will be effective as of the first day of the first month following the Administrator's receipt and the approval of such request by the Chief Executive Officer.

3.4 Participant's Election of Monthly Post-Jobs Act Benefit. Upon attainment of age 65, or as of such Participant's First Eligible Retirement Date (if later), the Participant's Monthly Post-Jobs Act Benefit will automatically be designated as a retirement benefit. A Participant may, however, make a one-time written election to avoid the automatic designation of the Monthly Post-Jobs Act Benefit as a retirement benefit, and instead designate such benefit as a death benefit (or a combination of retirement and death benefit). The written election must be made by the Participant on or before the Participant reaches age 64, and once the written election is made it may not be changed. Should a Participant elect a retirement benefit and subsequently die before attaining age 65, the Monthly Post-Jobs Act Benefit will revert to a death benefit. Should a Participant who is a Key Employee elect a retirement benefit and subsequently die before their First Eligible Retirement Date, the Monthly Post-Jobs Act Benefit will revert to a death benefit.

3.5 Payment of Monthly Benefits.

(a) Death Benefits. Any death benefits payable with respect to a Participant pursuant to Sections 3.3(a), (b), or (c) or Section 3.4 shall commence on the first day of the calendar month following the date of the Participant's death and shall be payable in monthly installments for a period of 180 months.

(b) Retirement Benefit for the Monthly Pre-Jobs Act Benefit. The Monthly Pre-Jobs Act Benefit elected as retirement benefits payable under this Plan shall commence on the Eligible Retirement Date selected by the Participant (upon 30 day's written notice to the Administrator) and will be payable to such Participant in monthly installments for a period of 180 months. In the event the Participant dies prior to the completion of such 180-month period, the balance of such retirement benefits shall be paid to the Participant's Beneficiary at such times and in such amounts as if the Participant had not died, such payment being made in addition to any death benefits payable under Section 3.3(c) hereof. To the extent a Participant elects to commence receiving increased retirement benefits pursuant to Section 3.3(c) (i), the amount of increase of retirement benefits shall be in the form of a monthly benefit payable for a separate 180-month period.

(c) Retirement Benefit for the Monthly Post-Jobs Act Benefit. Unless the Participant elects in writing to receive the Monthly Post-Jobs Act Benefit in the form of a monthly death benefit (as specified in Section 3.4), the Monthly Post-Jobs Act Benefit will take the form of a retirement payment and will be payable as follows:

(i) to a Key Employee, payments will begin the later of (I) the First Eligible Retirement Date, or (II) six months after the last day of the month during which such Key Employee is both no longer actively employed by the Employer and has attained at least age 65. If such payments begin on (c) (i) (II), the first monthly payment to the Key Employee will include a total of seven months' payments. Also, such first monthly payment will include an interest credit on the first six months' payments equivalent to one-half of the annual prime interest rate contained in the *Wall Street Journal* on the Key Employee's last day of employment (or the first business day after the Key Employee's last day of employment should the last day of employment be a non-business day). Payments to the Key Employee will last 173 months. Should the Key Employee die prior to the completion of the 173 month period, the balance of such retirement benefits shall be paid to the Participant's Beneficiary at such times and in such amounts as if the Participant had not died, such payment being made in addition to any death benefits payable under Section 3.3(a) hereof.

(ii) to a Participant who is not a Key Employee, payments will begin on the First Eligible Retirement Date and be payable to such Participant in monthly installments for a period of 180 months. In the event the Participant dies prior to the completion of such 180-month period, the balance of such retirement benefits shall be paid to the Participant's Beneficiary at such times and in such amounts as if the Participant had not died, such payment being made in addition to any death benefits payable under Section 3.3(a).

(d) Actuarial Equivalent Alternative Forms for the Monthly Pre-Jobs Act Benefit. The normal form of retirement benefit for the Monthly Pre-Jobs Act Benefit to which a Participant shall be entitled shall be determined under Section 3.4(b). Alternatively, a participant may elect to receive their Monthly Pre-Jobs Act Benefit in the form of a retirement benefit in one of the following actuarially equivalent forms (as determined by the Administrator); provided, however, that each alternative form shall also be payable for a certain period of 180 months: (i) the lifetime of the Participant; (ii) the lifetime of the Participant with the same amount payable to the Participant continued thereafter for the lifetime of the Participant's spouse; or (iii) the lifetime of the Participant with 67% of the amount payable to the Participant continued thereafter for the lifetime of the Participant's spouse. However, in no event will the Company incur more costs in providing the actuarial equivalent alternative form to the Participant than it would otherwise incur in providing the normal form of retirement benefit. Applying the discount rate used by the Company to calculate the FAS 87 expense, the present value of the Participant's retirement benefit will be calculated by the Administrator. The Administrator will then purchase an annuity at a cost no greater than the present value of the retirement benefit.

(e) Actuarial Equivalent Alternative Forms for the Monthly Post-Jobs Act Benefit. There are no Actuarial Equivalent Alternative Forms relating to the Monthly Post-Jobs Act Benefit.

(f) Single Sum Payment. Notwithstanding the provisions of subsections (a), (b), and (c) of this Section 3.5, the Administrator reserves the right to pay the Monthly Pre-Jobs Act Benefit in the form of an actuarially equivalent single sum (as determined by the Administrator) when retirement or death benefits are payable due to termination of employment, excluding disability, or death prior to the Participant's attainment of age 55, or upon the death of the Participant and the primary beneficiary(ies). The Single Sum Payment will not apply to the Monthly Post-Jobs Act Benefits.

### 3.6 Exclusions and Limitations.

(a) No death benefits will be payable with respect to a Participant in the event of such Participant's death by suicide within two (2) years after commencement of participation in the Plan, and no benefit increase will apply in the event of any such Participant's death by suicide within two (2) years after such Participant becomes eligible for an increase in death benefits.

(b) In the event that a Participant misrepresents any health or physical condition at the time of commencement of participation in the Plan or at the time of a retirement or death benefit increase, no retirement or death benefit or retirement or death benefit increase will be payable under the Plan within two (2) years of such misrepresentation.

### 3.7 Death of a Beneficiary.

(a) In the event any Beneficiary predeceases the Participant, is not in existence, is not ascertainable, or is not locatable (see Section 6.11) as of the date benefits under the Plan become payable to such Beneficiary, Plan benefits shall be paid to such contingent Beneficiary or Beneficiaries as shall have been named by the Participant on the Participant's most recent Beneficiary election form that has been received and filed with the Administrator prior to the Participant's death. If no contingent Beneficiary has been named, the contingent Beneficiary shall be the Participant's estate.

(b) In the event any Beneficiary dies after commencing to receive monthly benefits under the Plan but prior to the payment of all monthly benefits to which such Beneficiary is entitled, remaining benefits shall be paid to a beneficiary designated by the deceased Beneficiary (the “Secondary Beneficiary”); provided such designation has been received and filed with the Administrator prior to the death of the Beneficiary. If no such person has been designated by the deceased Beneficiary, the Secondary Beneficiary shall be the estate of the Beneficiary. In the event the Secondary Beneficiary shall die prior to the payment of all benefits to which such Secondary Beneficiary is entitled, the remainder of such payments shall be made to such Secondary Beneficiary’s estate. If the Administrator is in doubt as to the right of any person to receive benefits under the Plan, the Administrator may retain such amount, without liability for any interest thereon, until the rights thereto are determined, or the Administrator may pay a single sum amount in accordance with Section 3.5(f) into any court of competent jurisdiction and such payment shall be a complete discharge of the liability of the Plan and the Employer.

3.8 Discretion As To Benefit Amount. Notwithstanding the foregoing, the Compensation Committee upon recommendation of the Chief Executive Officer of the Company may, with full and complete discretion, disregard Standard Underwriting Factors and customary requirements for Standard Life Insurance in establishing and/or increasing the amount of any Participant’s retirement or death benefit under the Plan.

3.9 Suspension of Benefits Upon Reemployment. Employment with any Employer subsequent to the commencement of Pre-Jobs Act benefits under this Article III may, at the sole discretion of the Compensation Committee upon recommendation of the Chief Executive Officer of the Company, result in the suspension of Pre-Jobs Act benefits for the period of such employment or reemployment.



**ARTICLE IV – [RESERVED]**

**ARTICLE V – DISABILITY BENEFITS**

5.1 Monthly Disability Benefit.

(a) If a Participant becomes totally disabled following commencement of participation in the Plan, the Participant shall continue to receive credit for up to two (2) years of Participation under the Plan for so long as the Participant is totally disabled. Following termination of the participant’s employment with the Employer, the Participant’s monthly retirement benefits under Article III of the Plan shall commence beginning on or after the Participant’s First Eligible Retirement Date.

(b) A Participant is “totally disabled” if such Participant is disabled within the meaning of the applicable long-term disability plan sponsored by such Participant’s Employer, or as determined by Social Security.

(c) If a Participant who is totally disabled dies before attaining age 65, any death benefit payable to the Participant’s Beneficiary will be determined and paid in accordance with the vesting schedule terms of Article III.

**ARTICLE VI – MISCELLANEOUS**

6.1 Amendment and Termination. Any action to amend, modify, suspend or terminate the Plan may be taken at any time, and from time to time, by resolution of the Board of Directors of the Company (or any person or persons duly authorized by resolution of the Board of Directors of the Company to take such action) in its sole discretion and without the consent of any Participant or Beneficiary, but no such action shall retroactively reduce any benefits accrued by any Participant under this Plan prior to the time of such action.

6.2 No Guarantee of Employment. Nothing contained herein shall be construed as a contract of employment between a Participant and any Employer or shall be deemed to give any Participant the right to be retained in the employ of any Employer.

6.3 Funding of Plan and Benefit Payments. This Plan is unfunded within the meaning of ERISA. Each Employer will make Plan benefit payments from its general assets. Each Employer may purchase policies of life insurance on the lives of Plan Participants and to refuse participation in the Plan to any Employee who, if requested to do so, declines to supply information or to otherwise cooperate so that the Employer may obtain life insurance on behalf of such Participant. The Employer will be the owner and the beneficiary of any such policy, and Plan benefits will be neither limited to nor secured by any such policy or its proceeds. Participants and their Beneficiaries shall have no right, title or interest in any such life insurance policies, in any other assets of any Employer or in any investments any Employer may make to assist it in meeting its obligations under the Plan. All such assets shall be solely the property of such Employer and shall be subject to the claims of such Employer's general creditors. There are no assets of any Employer that are identified or segregated for purposes of the payment of any benefits under this Plan. To the extent a Participant or any other person acquires a right to receive payments from an Employer under the Plan, such right shall be no greater than the right of any unsecured general creditor of such Employer and such person shall have only the unsecured promise of the Employer that such payments shall be made.

6.4 Payment Not Assignable. Except in the case of a Qualified Domestic Relations Order described under Code Section 414(p), Participants and their Beneficiaries shall not have the right to alienate, anticipate, commute, sell, assign, transfer, pledge, encumber or otherwise convey the right to receive any payments under the Plan, and any payments under the Plan or rights thereto shall not be subject to the debts, liabilities, contracts, engagements or torts of Participants or their Beneficiaries nor to attachment, garnishment or execution, nor shall they be transferable by operation of law in the event of bankruptcy or insolvency. Any attempt, whether voluntary or involuntary, to effect any such action shall be null, void and of no effect.

6.5 Applicable Law. The Plan and all rights hereunder shall be governed by and construed according to the laws of the State of Delaware, except to the extent such laws are preempted by the laws of the United States of America.

6.6 Claims Procedure.

(a) Right to File a Claim. Participants and Beneficiaries are entitled to file a claim with respect to benefits or other aspects of the operation of the Plan. The claim is required to be in writing and must be made to the Administrator.

(b) Denial of Claim. If the claim is denied by the Administrator, the claimant shall be notified in writing within ninety (90) days after receipt of the claim or within one hundred eighty (180) days after such receipt if special circumstances require an extension of time. If special circumstances require an extension of time in order to review the claim, the claimant will be furnished with a written notice of the extension of time within the initial ninety (90) day period. The notice will include an explanation of the special circumstances that require an extension and the date by which the Administrator expects to make its determination. In no event, however, will the extension of time exceed 180 days from the date of the receipt of the claim by the Administrator. A written notice of denial of the claim shall contain the following information:

(i) Specific reason or reasons for the denial;

(ii) Specific reference to the pertinent provisions of the Plan on which the denial is based;

(iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why the material or information is necessary; and

(iv) A description of the Plan's review procedures and the time limits applicable to the procedures, including a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following a denial upon review of the claim.

(c) Claims Review Procedure.

(i) Participants or Beneficiaries may request that the Administrator review the denial of the claim. Such request must be made within sixty (60) days following the date the claimant received written notice of the denial of the claim. The Administrator shall afford the claimant a full and fair review of the decision denying the claim and shall:

and (A) Provide, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claim;

(B) Permit the claimant to submit written comments, documents, records, and other information relating to the claim.

(ii) The decision on review by the Administrator shall be in writing and shall be issued within sixty (60) days following receipt of the request for review. The period for decision may be extended to a date not later than one-hundred and twenty (120) days after such receipt if the Administrator determines that special circumstances require extension. If special circumstances require an extension of time, the claimant shall be furnished written notice prior to the termination of the initial sixty (60) day period which explains the special circumstances requiring an extension of time and the date by which the Administrator expects to render its decision on review. The decision on review shall include:

(A) Specific reason or reasons for the adverse determination;

(B) References to the specific provisions in the Plan on which the determination is based;

(C) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim; and

(D) A statement of the claimant's right to bring an action under Section 502(e) of ERISA.

(iii) Any action required or authorized to be taken by the claimant pursuant to this Section may be taken by a representative authorized in writing by the claimant to represent the claimant.

6.7 Plan Administration.

(a) The Plan shall be administered by the Administrator. The Administrator shall serve as the final review under the Plan and shall have sole and complete discretionary authority to determine conclusively for all persons, and in accordance with the terms of the documents or instruments governing the Plan, any and all questions arising from the administration of the Plan and interpretation of all Plan provisions. The Administrator shall make the final determination of all questions relating to participation of employees and eligibility for benefits, and the amount and type of benefits payable to any Participant or Beneficiary. In no way limiting the foregoing, the Administrator shall have the following specific duties and obligations in connection with the administration of the Plan:

(i) to promulgate and enforce such rules, regulations and procedures as may be proper for the efficient administration of the Plan;

(ii) to determine all questions arising in the administration, interpretation and application of the Plan, including questions of eligibility and of the status and rights of Participants and any other persons hereunder;

(iii) to decide any dispute arising hereunder; provided, however, that the Administrator shall not participate in any matter involving any questions relating solely to the Administrator's own participation or benefit under this Plan;

(iv) to advise the Boards of Directors of the Employers regarding the known future need for funds to be available for distribution;

(v) to compute the amount of benefits and other payments which shall be payable to any Participant or Beneficiary in accordance with the provisions of the Plan and to determine the person or persons to whom such benefits shall be paid;

(vi) to make recommendations to the Board of Directors of the Company with respect to proposed amendments to the Plan;

(vii) to file all reports with government agencies, Participants and other parties as may be required by law, whether such reports are initially the obligation of the Employers, or the Plan;

(viii) to engage an actuary to the Plan, if necessary, and to cause the liabilities of the Plan to be evaluated by such actuary; and

(ix) to have all such other powers as may be necessary to discharge its duties hereunder.

(b) Decisions by the Administrator shall be final, conclusive and binding on all parties and not subject to further review.

(c) The Administrator may employ attorneys, consultants, accountants or other persons (who may be attorneys, consultants, actuaries, accountants or persons performing other services for, or are employed by, any Employer or any affiliate of any Employer), and the Administrator, the Employers and their other officers and directors shall be entitled to rely upon the advice, opinions or valuations of any such persons. No member of the Board of Directors of any Employer, the Chief Executive Officer, the Administrator, nor any other officer, director or employee of the Company or of any Employer acting on behalf of the Board of Directors of any Employer or the Chief Executive Officer or the Administrator, shall be personally liable for any action, determination or interpretation taken or made in good faith with respect to the Plan, and all members of the Boards of Directors of the Employers, the Chief Executive Officer and the Administrator and each officer or employee of the Company or of an Employer acting on their behalf shall be fully indemnified and protected by the Company for all costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees and court costs) relating to any such action, determination or interpretation.

**6.8 Binding Nature.** This Plan shall be binding upon and inure to the benefit of the Employers and their successors and assigns and to the Participants, their Beneficiaries and their estates. Nothing in this Plan shall preclude any Employer from consolidating or merging into or with, or transferring all or substantially all of its assets to another company or corporation, whether or not such company or corporation assumes this Plan and any obligation of the Employer hereunder.

6.9 Withholding Taxes. The Employers may withhold from any benefits payable under this Plan all federal, state, city or other taxes as shall be required pursuant to any law or governmental regulation or ruling.

6.10 Action Affecting Chief Executive Officer. To the extent any action required to be taken by the Chief Executive Officer of the Company would decrease, increase, accelerate, delay or otherwise materially impact such individual's benefits under the Plan, such action shall be taken instead by the Compensation Committee of the Board of Directors of the Company.

6.11 Payments Due Missing Persons. The Administrator shall make a reasonable effort to locate all persons entitled to benefits (including retirement benefits and death benefits for Beneficiaries) under the Plan; however, notwithstanding any provisions of this Plan to the contrary, if, after a period of five years from the date such benefits first become due, any such persons entitled to benefits have not been located, their rights under the Plan shall stand suspended. Before this provision becomes operative, the Administrator shall send a certified letter to all such persons at their last known address advising them that their benefits under the Plan shall be suspended. Any such suspended amounts shall be held by the Employer for a period of three additional years (or a total of eight years from the time the benefits first became payable) and thereafter such amounts shall be forfeited and non-payable.



6.12 Liability Limited. Neither the Employers, the Administrator, nor any agents, employees, officers, directors or shareholders of any of them, nor any other person shall have any liability or responsibility with respect to this Plan, except as expressly provided herein.

6.13 Incapacity. If the Administrator shall receive evidence satisfactory to it that a Participant or Beneficiary entitled to receive any benefit under the Plan is, at the time when such benefit becomes payable, a minor or is physically or mentally incompetent to receive such benefit and to give a valid release therefore, and that another person or an institution is then maintaining or has custody of such Participant or Beneficiary and that no guardian, committee or other representative of the estate of such Participant or Beneficiary shall have been duly appointed, the Administrator may make payment of such benefit otherwise payable to such Participant or Beneficiary (or to such guardian, committee or other representative of such person's estate) to such other person or institution, and the release of such other person or institution shall be a valid and complete discharge for the payment of such benefit.

6.14 Plurals. Where appearing in the Plan, this singular shall include the plural, and vice versa, unless the context clearly indicates a different meaning.

6.15 Headings. The headings and sub-headings in this Plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

6.16 Severability. In case any provision of this Plan shall be held illegal or void, such illegality or invalidity shall not affect the remaining provisions of this Plan, but shall be fully severable, and the Plan shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

6.17 Payment of Benefits. All amounts payable hereunder may be paid directly by the Employer or pursuant to the terms of the grantor trust, if any, established as a funding vehicle for benefits provided hereunder.

**ARTICLE VII – ADDITIONAL AFFILIATED COMPANIES**

7.1 Participation in the Plan.

(a) Any Affiliated Company may become an Employer with respect to this Plan with the consent of the Compensation Committee upon recommendation of the Chief Executive Officer, upon the following conditions:

(i) such Employer shall make, execute and deliver such instruments as the Company requires; and

(ii) such Employer shall designate the Company, the Chief Executive Officer of the Company and the Administrator, as its agents for purposes of this Plan.

(b) Any such Employer may by action of its Board of Directors withdraw from participation, subject to approval by the Compensation Committee upon recommendation of the Chief Executive Officer.

7.2 Effect of Participation. Each Employer which with the consent of the Compensation Committee upon recommendation of the Chief Executive Officer of the Company complies with Section 7.1(a) shall be deemed to have adopted this Plan for the benefit of its Employees who participate in this Plan.

**KNIFE RIVER CORPORATION**  
**NONQUALIFIED DEFINED CONTRIBUTION PLAN**

**WHEREAS**, the Board of Directors of Knife River Corporation (formerly known as Knife River Holding Company) (the “Company”) established this Knife River Corporation Nonqualified Defined Contribution Plan (the “Plan”) in connection with the distribution of 80.1% or more of the outstanding shares of the Company’s common stock to the stockholders of MDU Resources Group, Inc. (“MDU”), pursuant to the Separation and Distribution Agreement between the Company and MDU entered into in connection with such distribution (the “Spin-Off”). The Plan is effective as of May 22, 2023 (the “Effective Date”);

**WHEREAS**, in connection with the Spin-Off and pursuant to the terms of an Employee Matters Agreement entered into by and between the Company and MDU, the Company and the Plan assumed all the obligations and liabilities of MDU and its subsidiaries under the MDU Nonqualified Defined Contribution Plan (the “MDU NQDC Plan”) with respect to SpinCo Group Employees and Former SpinCo Group Employees (as such terms are defined in the Employee Matters Agreement, and collectively referred to herein as “KRC Employees”) so that any benefits due under the MDU NQDC Plan with respect to KRC Employees or beneficiaries of KRC Employees will now be the responsibility of the Company and this Plan;

**NOW, THEREFORE**, the Plan is hereby adopted as of the Effective Date as follows:

**SECTION 1. PURPOSE OF PLAN; SPECIAL RULES FOR KRC EMPLOYEES**

The Plan is unfunded for purposes of Title I of ERISA and is maintained for the purpose of providing deferred compensation to a select group of management or highly compensated employees of the Company (within the meaning of the United States Code of Federal Regulations Section 2520.104- 23 and Sections 201(2), 301(a)(3) and 401(a)(1) of the ERISA). The Plan shall be administered in accordance with such purpose and in accordance with the provisions of Section 409A of the Code.

Any benefits due under the MDU NQDC Plan with respect to KRC Employees or Beneficiaries of KRC Employees shall now be the responsibility of the Company and this Plan. All service of a KRC Employee recognized under the MDU NQDC Plan shall be recognized under this Plan. All investment and distribution elections and designation of Beneficiaries made under the MDU NQDC Plan by a KRC Employee that were in effect as of immediately prior to the Effective Date shall continue to apply and shall be administered under the Plan until such election or designation expires or is otherwise changed or revoked in accordance with the terms of the Plan. All valid domestic relations orders filed with the MDU NQDC Plan as of immediately prior to the Effective Date with respect to the benefits of a KRC Employee shall continue to apply under the Plan.

**SECTION 2. DEFINITIONS**

“Administrator” means the Compensation Committee of the Board.

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“Beneficiary” means the person or entity determined to be a Participant’s beneficiary pursuant to Section 11.

“Board” means the Board of Directors of the Company.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Company” means Knife River Corporation, and any current or future corporation that (a) is in a controlled group of corporations (within the meaning of Section 414(b) of the Code) of which Knife River Corporation is a member and (b) has been approved by the Compensation Committee of the Board upon recommendation of the Chief Executive Officer to adopt the Plan for the benefit of its eligible employees. For purposes hereof, each such participating affiliate shall be deemed to have appointed the Knife River Corporation as its agent to act on its behalf in all matters relating to administration, amendment or termination of the Plan. Where the context requires, with respect to periods prior to the Effective Date, the term Company shall be deemed to refer to MDU and its participating affiliates pursuant to the MDU NQDC Plan.

“Compensation” means the annualized base salary paid to a Participant as of the first day of the Plan Year.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Participant” means an employee of the Company who has been selected to participate in the Plan pursuant to Section 3.

“Plan” means the Knife River Corporation Nonqualified Defined Contribution Plan, as set forth herein and as amended from time to time; provided that, where the context requires, with respect to periods prior to the Effective Date, the term Plan shall be deemed to refer to the MDU NQDC Plan.

“Plan Year” means the calendar year.

### **SECTION 3. ELIGIBLE EMPLOYEES**

Each KRC Employee who was a participant in the MDU NQDC Plan as of immediately prior to the Effective Date is hereby designated as eligible to participate in the Plan effective as of the Effective Date. No other employee shall be selected as an additional Participant in the Plan.

### **SECTION 4. ACCOUNTS**

The Company shall establish and maintain on its books with respect to each Participant separate hypothetical account(s) which shall record (a) any Company contributions made on behalf of the Participant for a Plan Year pursuant to Section 5 below, and (b) the allocation of any hypothetical investment experience. In this regard, a separate account shall be established on behalf of a Participant for each year in which a contribution is made under the Plan.

## SECTION 5. COMPANY CONTRIBUTIONS

No Participant will receive Company contributions under the Plan.

## SECTION 6. ADJUSTMENTS TO ACCOUNTS AND TAX WITHHOLDING

Each Participant's account(s) shall be reduced by the amount of any distribution to the Participant from the applicable account (including any portion of a distribution that is withheld to satisfy any federal, state, and/or local tax withholding and any social security or Medicare tax withholding obligations). Pursuant to procedures established by the Administrator, each Participant's account(s) shall be adjusted as of each business day the New York Stock Exchange is open to reflect the earnings or losses of any hypothetical investment media as may be designated by the Administrator and, if applicable, elected by the Participant. Any federal, state, and/or local tax withholding and any social security or Medicare tax withholding obligations may be satisfied by deducting or withholding from amounts distributed under the Plan or from other compensation payable to the Participant or by requiring the Participant to remit to the Company an amount sufficient to satisfy the federal, state, and/or local tax withholding and any social security or Medicare tax withholding obligations. Additionally, to the extent social security or Medicare tax withholding is required prior to the date of distribution of an amount under the Plan, to the extent permitted by Code Section 409A, the Company may satisfy such tax withholding obligations (and any additional tax withholding obligations resulting from the deemed distribution of the withheld amounts) and make a corresponding reduction in the Participant's applicable account(s).

## SECTION 7. INVESTMENT OF ACCOUNTS

For purposes of determining the amount of earnings/appreciation and losses/depreciation to be credited to, or debited from, a Participant's account(s), each Participant's account(s) shall be deemed invested in the investment options (designated by the Administrator as available under the Plan) as the Participant may elect from time to time, or, if applicable, in any default investment option designated by the Administrator, in accordance with such rules and procedures as the Administrator may establish. However, no provision of the Plan shall require the Company or the Administrator to actually invest any amounts in any fund or in any other investment vehicle.

## SECTION 8. VESTING

**8.1 Vesting of Accounts Prior to 2017 Plan Year.** Each account of a Participant established for amounts credited to the MDU NQDC Plan for plan years under the MDU NQDC Plan prior to 2017, shall be subject to a separate four (4) year vesting period. With respect to a Participant's first account, if the Participant was selected to participate in the MDU NQDC Plan with respect to a plan Year after January 1 of that plan year, the Participant shall be one hundred percent (100%) vested in the amounts credited to that account after completing four (4) years of participation relating to that account, with the four (4) years of participation commencing on the date of selection as a Participant and ending at midnight on the fourth anniversary of such date of selection. With respect to a Participant's other accounts, a Participant shall be one hundred percent (100%) vested in the amounts credited to the applicable account after completing four (4) years of participation relating to the account, with the four (4) years of participation commencing on January 1 of the plan year in which the contribution was made to the account and ending at midnight on January 1 four (4) years thereafter. Partial or pro rata vesting shall not be permitted with respect to such Participants' accounts.

**8.2 Vesting of Accounts Beginning with 2017 Plan Year.** With respect to any account established for amounts credited to the MDU NQDC Plan or the Plan on behalf of a Participant for Plan Years (including plan years under the MDU NQDC Plan) on and after 2017, the Participant shall become vested in a percentage of the fair market value of such portion of the account(s) as follows:

<b>Years of Participation</b>	<b>Vested Percentage</b>
Less than 1 year	0%
1 year but less than 2	34%
2 years but less than 3	67%
3 years and thereafter	100%

For this purpose, a Participant shall be one hundred percent (100%) vested in the amounts credited to the Participant's account upon completing three (3) years of participation relating to the applicable account, with the three (3) years of participation commencing on January 1 of the Plan Year (including plan years under the MDU NQDC Plan) in which the contribution is made to the account and ending at midnight on January 1 three (3) years thereafter, however, contributions made to a Participant's account after March 31 of a plan year will not commence the three (3) years of participation until January 1 of the following Plan Year (including plan years under the MDU NQDC Plan).

**8.3 Accelerated Vesting Upon Certain Events.** Subject to the provisions of Section 14, and notwithstanding the foregoing provisions of this Section 8, if a Participant (a) dies while employed by the Company, (b) is an officer of the Company, and terminates employment after the Participant's 65th birthday and prior to the end of the vesting period(s) with respect to the Participant's account(s), (c) separates from service with the Company (within the meaning of Code Section 409A) after attaining age sixty (60) and completing at least ten (10) "years of continuous service" with the Company, as measured from the Participant's initial date of hire with the Company and calculated in accordance with rules and procedures established by the Company, or (d) involuntary separates from service with the Company within twelve (12) months of a "change in control" of the Company (within the meaning of Code Section 409A), then such Participant shall have a nonforfeitable (vested) right to 100% of the amounts credited to the Participant's account(s). If a Participant separates from service for any reason other than as described in the prior sentence, such Participant shall have a nonforfeitable (vested) right to the amounts credited to the Participant's account(s) only to the extent such amounts had vested as of the date of the separation from service.

**8.4 Years of Participation.** For a KRC Employee, years of participation shall take into account service recognized for purpose of years of participation under the MDU NQDC Plan.

## SECTION 9. TIME AND MANNER OF DISTRIBUTION

### 9.1 Distribution Elections.

- (a) Any employee of the Company who is eligible to participate in the Plan as described in Section 3 shall elect the time and form of payment for his account(s) in accordance with the rules and procedures prescribed by the Administrator. Beginning with amounts credited to a Participant's account for 2017 under the MDU NQDC Plan or the Plan, the Participant's irrevocable distribution election will be effective only for one Plan Year and will apply to amounts credited to the Participant's account for that Plan Year (or portion of that Plan Year) to which the distribution election relates, regardless of when such amounts are otherwise scheduled to be contributed (including for this purpose a plan year under the MDU NQDC Plan).
- (b) The Administrator may establish election periods during which a Participant's irrevocable election must be received by the Administrator. However, no election may be made or accepted after the December 31 immediately preceding the Plan Year for which the election is to be effective. Notwithstanding the foregoing, in the Plan Year in which an employee of the Company first becomes eligible to participate in the Plan, the Participant may make his distribution election within 30 days after the date upon which he becomes eligible to participate. A distribution election that is not timely made with respect to a Plan Year, as determined by the Administrator, shall have no effect with respect to such Plan Year and shall be considered void.
- (c) In the event that a Participant fails to make a valid distribution election for a Plan Year, the Participant will be deemed to have elected to receive the amounts credited to his account for such Plan Year in a single lump sum payment upon the Participant's "separation from service" with the Company (within the meaning of Code Section 409A).

### 9.2 Form of Distribution.

- (a) Each Participant shall elect to receive the amounts credited to his account for each Plan Year in one of the following modes of distribution:
  - (i) a single lump sum payment; or
  - (ii) annual installments over a period of up to ten (10) years, the amount of each installment to equal the balance of the Participant's vested account(s) immediately prior to the installment divided by the number of installments remaining to be paid. Each subsequent installment shall be made on the first business day of the calendar month following the one (1) year anniversary of the prior payment.

- (b) With respect to any account established for amounts credited to the MDU NQDC Plan on behalf of a Participant for plan years under the MDU NQDC Plan prior to 2017, distribution of such account(s) shall be made in accordance with the Participant's prior election.

**9.3 Time of Distribution.** Subject to the provisions in this Section 9 and the provisions of Sections 10 and 14, distribution of a Participant's vested account(s) shall be made or commence as follows:

- (a) If the Participant elected a single lump sum payment, such lump sum payment shall be made within ninety (90) days following the Participant's "separation from service" with the Company (within the meaning of Code Section 409A); or
- (b) If the Participant elected annual installments:
  - (i) for any account(s) established for amounts credited to the MDU NQDC Plan on behalf of a Participant for plan years under the MDU NQDC Plan prior to 2017, the annual installments shall commence within ninety (90) days following the Participant's "separation from service" with the Company (within the meaning of Code Section 409A) or, if later, the date the Participant attains age sixty-five (65);
  - (ii) for any account(s) established for amounts credited to the MDU NQDC Plan or the Plan on behalf of a Participant for Plan Years on and after 2017 (including plan years under the MDU NQDC Plan), the annual installments shall commence within ninety (90) days following the Participant's "separation from service" with the Company (within the meaning of Code Section 409A) or if later, the date the Participant attains age sixty-five (65), as elected by the Participant in accordance with rules and procedures prescribed by the Administrator.

provided, however that, in either case, if the Participant is a "specified employee" of the Company (as defined under Section 409A(a)(2)(B)(i) of the Code) on the date of separation from service, distribution shall not be made or commence prior to the first business day after the date that is six (6) months after the Participant's separation from service or, if earlier, within ninety (90) days following the date of the Participant's death. "Specified employees" shall be determined in accordance with the Company's *Specified Employee Policy Regarding Compensation*, which is attached as Annex A.

Notwithstanding the foregoing, payment may be delayed under any of the circumstances permitted under said Section 409A. Provided, further, that, if any amounts credited to a Participant's vested account(s) become subject to tax under Section 409A of the Code, the amount required to be included in income as a result of the failure to comply with the requirements of Code Section 409A and related Treasury Regulations shall be immediately distributed to the Participant.



Payment shall be treated as made upon the date specified under the Plan if payment is made on such date or a later date within the same taxable year of the Participant or, if later, by the fifteenth (15th) day of the third (3rd) calendar month following the specified payment date (or, if payment may be made during a specified period of time, the first date in such period), provided the Participant is not permitted, directly or indirectly, to designate the taxable year of the payment.

#### **SECTION 10. DEATH BENEFIT**

In the event of the death of a Participant while in the employ of the Company, vesting in the Participant's account(s) shall be one hundred percent (100%), if not otherwise one hundred percent (100%) vested under Section 8, with the value of the Participant's account(s) being distributed to the Participant's Beneficiary, in a single lump sum payment, within the period from (i) the date of the Participant's death to (ii) December 31 of the year following the year of the Participant's death.

In the event a Participant dies (a) after distribution has commenced under the Plan or (b) after separation from service, but prior to the date distribution is made or commences, the vested balance of the Participant's account(s), if any, shall be distributed to the Participant's Beneficiary, in a single lump sum payment, within the period set forth in the preceding paragraph.

Payment shall be treated as made upon the date specified under the Plan if payment is made at such date or a later date within the same taxable year of the Participant or, if later, by the fifteenth (15th) day of the third (3rd) calendar month following the specified payment date (or, if payment may be made during a specified period of time, the first date in such period), provided neither the Participant nor any Beneficiary is permitted, directly or indirectly, to designate the taxable year of the payment.

#### **SECTION 11. BENEFICIARY DESIGNATION**

A Participant may designate the person or persons to whom the Participant's vested account(s) under the Plan shall be paid in the event of the Participant's death, in accordance with rules and procedures established by the Administrator. If no Beneficiary is designated, or no Beneficiary survives the Participant, payment shall be made to the Participant's surviving spouse, or if none, to the Participant's estate. If a Beneficiary survives the Participant, but dies before the balance payable to the Beneficiary has been distributed, any remaining balance shall be paid to the Beneficiary's estate.

#### **SECTION 12. PLAN ADMINISTRATION**

**12.1 Authority of Administrator.** The Administrator has the discretionary authority to interpret and construe any provision of the Plan and any agreement or instrument entered into under the Plan, to determine eligibility and benefits under the Plan, to prescribe, amend, waive and rescind rules and regulations relating to the Plan, to adopt such forms as it may deem appropriate for the administration of the Plan, to provide for conditions and assurances deemed necessary or advisable to protect the interests of the Company and to make all other determinations necessary or advisable for the administration of the Plan, but only to the extent not contrary to the express provisions of the Plan or the provisions of Section 409A of the Code and the regulations and rulings promulgated thereunder. Determinations, interpretations or other actions made or taken by the Administrator under the Plan shall be final and binding for all purposes and upon all persons.

**12.2 Delegation of Authority by the Board.** Notwithstanding the general authority of the Administrator to select Participants of the Plan and determine the amount of contributions to be credited to Participants' plan account(s), the Board may, by resolution, expressly delegate to one or more executive officers of the Company the authority, solely with respect to employees who are not subject to Section 16 of the Securities Exchange Act of 1934, as amended, to determine, within the parameters set forth in the Plan or established by the Board or the Administrator, the amount of any contributions to be credited to Participants' account(s) as bookkeeping entries.

**12.3 Hold Harmless.** The Company shall indemnify, hold harmless and defend the Administrator (and its delegates) and each executive officer appointed by the Board pursuant to Section 12.2 from any liability which any of them may incur in connection with the performance of its duties in connection with this Plan, so long as the Administrator (or such delegate or executive officer) was acting in good faith and within what the Administrator (or such delegate or executive officer) reasonably understood to be the scope of its duties.

**12.4 Appeal Procedure.**

- (a) Claims for benefits under the Plan made by a Participant or Beneficiary (the "claimant") must be submitted in writing to the Administrator.

If a claim is denied in whole or in part, the Administrator shall notify the claimant within ninety (90) days after receipt of the claim (or within one hundred eighty (180) days, if special circumstances require an extension of time for processing the claim, and provided written notice indicating the special circumstances and the date by which a final decision is expected to be rendered is given to the claimant within the initial ninety (90) day period). If notification is not given in such period, the claim shall be considered denied as of the last day of such period and the claimant may request a review of the claim.

The notice of the denial of the claim shall be written in a manner calculated to be understood by the claimant and shall set forth the following:

- (i) the specific reason or reasons for the denial of the claim;
- (ii) the specific references to the Plan provisions on which the denial is based;

- (iii) a description of any additional material or information necessary to perfect the claim, and an explanation of why such material or information is necessary; and
  - (iv) a statement that any appeal of the denial must be made by giving to the Administrator, within sixty (60) days after receipt of the denial of the claim, written notice of such appeal, such notice to include a full description of the pertinent issues and basis of the claim.
- (b) Upon denial of a claim in whole or part, the claimant (or his duly authorized representative) shall have the right to submit a written request to the Administrator for a full and fair review of the denied claim, to be permitted to review documents pertinent to the denial, and to submit issues and comments in writing. Any appeal of the denial must be given to the Administrator within the period of time prescribed under (a)(iv) above. If the claimant (or his duly authorized representative) fails to appeal the denial to the Administrator within the prescribed time, the Administrator's adverse determination shall be final, binding and conclusive.

The Administrator may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision which shall be binding upon both parties. The Administrator shall advise the claimant of the results of the review within sixty (60) days after receipt of the written request for the review, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible but not later than one hundred twenty (120) days after receipt of the request for review. If such extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the review shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based. The decision of the Administrator shall be final, binding and conclusive.

## SECTION 13. FUNDING

**13.1 Plan Unfunded.** The Plan is unfunded for tax purposes and for purposes of Title I of ERISA. Accordingly, the obligation of the Company to make payments under the Plan constitutes solely an unsecured (but legally enforceable) promise of the Company to make such payments, and no person, including any Participant or Beneficiary shall have any lien, prior claim or other security interest in any property of the Company as a result of this Plan. Any amounts payable under the Plan shall be paid out of the general assets of the Company and each Participant and Beneficiary shall be deemed to be a general unsecured creditor of the Company.

**13.2 Rabbi Trust.** The Company may enter into a grantor trust to pay its obligations hereunder (e.g., a rabbi trust), the assets of which shall be, for all purposes, the assets of the Company. In the event the trustee of such trust is unable or unwilling to make payments directly to Participants and Beneficiaries and such trustee remits payments to the Company for delivery to Participants and Beneficiaries, the Company shall promptly remit such amount, less applicable income and other taxes required to be withheld, to the Participant or Beneficiary.

#### SECTION 14. FORFEITURE OF BENEFITS

Notwithstanding any provision of this Plan to the contrary, if any Participant is discharged from employment with the Company for cause due to willful misconduct, dishonesty, or conviction of a crime or felony, all as determined in the sole discretion of the Administrator, the rights of such Participant (or any Beneficiary of such Participant) to any present or future benefit under the Plan (whether or not vested) shall be forfeited, to the extent not otherwise prohibited by applicable law.

#### SECTION 15. AMENDMENT

The Board shall have the right to amend, suspend or terminate the Plan at any time subject to the provisions of Section 409A of the Code; provided, however, that no such action shall, without the Participant's consent, impair the Participant's right with respect to any existing vested account(s) under the Plan. Subject to the provisions of Section 14, the termination of the Plan, with respect to some or all of the Participants, and any resulting distribution of the account balances of such affected Participants, shall be made in accordance with the provisions of Section 409A of the Code and shall not constitute the impairment of such Participant's rights hereunder.

#### SECTION 16. NO ASSIGNMENT

A Participant's right to the amount credited to his vested account(s) under the Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, or garnishment by creditors of the Participant or the Participant's Beneficiary.

#### SECTION 17. COMPANY-OWNED LIFE INSURANCE ("COLI")

**17.1 Company Owns All Rights.** In the event that, in its discretion, the Company purchases a life insurance policy or policies insuring the life of any Participant to allow the Company to informally finance and/or recover, in whole or in part, the cost of providing the benefits hereunder, neither the Participant nor any Beneficiary shall have any rights whatsoever therein. The Company shall be the sole owner and beneficiary of any such policy or policies and shall possess and may exercise all incidents of ownership therein, except in the event of the establishment of and transfer of said policy or policies to a trust by the Company as described in Section 13.2 hereof.

**17.2 Participant Cooperation.** If the Company decides to purchase a life insurance policy or policies on any Participant, the Company shall so notify such Participant. Such Participant shall take whatever actions may be necessary to enable the Company to timely apply for and acquire such life insurance and to fulfill the requirements of the insurance carrier relative to the issuance thereof as a condition of eligibility to participate in the Plan. Any Participant who declines to supply information or to otherwise cooperate so that the Company may obtain life insurance on behalf of such Participant shall be denied participation in the Plan.

**SECTION 18. SUCCESSORS AND ASSIGNS**

The provisions of this Plan shall be binding upon and inure to the benefit of the Company, its successors and assigns, and the Participant, his Beneficiaries, heirs, legal representatives and assigns.

**SECTION 19. NO CONTRACT OF EMPLOYMENT**

Nothing contained herein shall be construed as a contract of employment between a Participant and the Company, or as a right of the Participant to continue in employment with the Company, or as a limitation of the right of the Company to discharge the Participant at any time, with or without cause.

**SECTION 20. ENFORCEABILITY**

If any term or condition of the Plan shall be invalid or unenforceable to any extent or in any application, then the remainder of the Plan, and such term or condition, except to such extent or in such application, shall not be affected thereby, and each and every term and condition of the Plan shall be valid and enforced to the fullest extent and in the broadest application permitted by law.

**SECTION 21. CONSTRUCTION**

Wherever appropriate, the use of the masculine gender shall be extended to include the feminine and/or neuter, and the singular form of words extended to include the plural, or vice versa.

**SECTION 22. GOVERNING LAW**

This Plan shall be interpreted in a manner consistent with Code Section 409A and the guidance issued thereunder by the Department of the Treasury and the Internal Revenue Service and shall also be subject to and construed in accordance with the provisions of ERISA, where applicable, and otherwise by the laws of the State of North Dakota, without regard to the conflict of law provisions of any jurisdiction.

**KNIFE RIVER CORPORATION**  
**DIRECTOR COMPENSATION POLICY**

This Director Compensation Policy (the “Policy”) was adopted by the Board of Directors (the “Board”) of Knife River Corporation formerly known as Knife River Holding Company (the “Company”) in connection with the distribution of 80.1% or more of the outstanding shares of the Company’s common stock to the stockholders of MDU Resources Group, Inc. in 2023, pursuant to the Separation and Distribution Agreement between the Company and MDU Resources Group, Inc. entered into in connection with such distribution (the “Spin-Off”) and is effective as of the date on which the Spin-Off occurs (the “Effective Date”).

Each member of the Board who is not an employee of the Company or any of its subsidiaries (a “Director”) shall receive compensation made up of annual cash retainers and shares of the Company’s common stock (“Common Stock”), as set forth in this policy.

**Director Compensation**

	<u>Annual Cash Retainers</u>
Base Retainer	\$110,000
Additional Retainers:	
Non-Executive Chair of the Board	\$125,000
Chair of Audit Committee	\$20,000
Chair of Compensation Committee	\$15,000
Chair of Environmental and Sustainability Committee	\$15,000
Chair of Nominating and Governance Committee	\$15,000

Such cash retainers shall be paid in monthly installments.

The Knife River Corporation Deferred Compensation Plan for Directors (the “Plan”) permits a Director to defer all or any portion of the annual cash retainers. The amount deferred is recorded in each participant’s deferred compensation account and credited with income in the manner prescribed in the Plan.

**Common Stock**

Each person, other than the Non-Executive Chair of the Board, who is a Director of the Company at any time during the calendar year shall receive a \$150,000 stock payment, and any person who is the Non-Executive Chair of the Board shall receive a \$175,000 stock payment, on or about the Wednesday following the Board of Directors’ regularly-scheduled November meeting. The stock payment shall be made under the Company’s Long-Term Performance-Based Incentive Plan (the “LTIP”). The stock payment shall be made by providing the Director or Non-Executive Chair with the number of whole shares of Common Stock determined (i) if the shares are original issue or treasury stock, by dividing the amount of the applicable stock payment by the closing price of the Common Stock on the New York Stock Exchange on the grant date and (ii) if the shares are purchased on the open market, by dividing the amount of the applicable stock payment by the weighted average price paid to purchase shares for the Director or Non-Executive Chair for that stock payment, excluding any related brokerage commissions or other service fees. Any fractional shares shall be paid in cash. The stock payment shall be prorated for any Director or Non-Executive Chair who does not serve the entire calendar year by multiplying the applicable stock payment by a fraction, the numerator of which is the number of actual or expected months (with a partial month counted as a full month) of service on the Board during the calendar year and the denominator of which is twelve.

By written election a Director may reduce his or her annual cash retainers and have that amount instead delivered in the form of additional shares of Common Stock under the LTIP. The annual election shall specify the percentage of the annual cash retainers to be applied toward the purchase of additional shares and must be received by the Company by the last business day of the year prior to the year in which the election is to be effective. No election may be changed or revoked for the current year but an election may be changed for a subsequent year. The additional stock payments will be made on the last business day of March, June, September, and December. The stock payment shall be made by providing the Director with the number of whole shares of Common Stock determined (i) if the shares are original issue or treasury stock, by dividing the amount of the applicable stock payment by the closing price of the Common Stock on the New York Stock Exchange on the grant date or (ii) if the shares are purchased on the open market, by dividing the amount of the applicable stock payment by the weighted average price paid to purchase shares for the Director for that stock payment, excluding any related brokerage commissions or other service fees. No fractional shares shall be purchased and cash in lieu of any fractional shares shall be paid to the Director.

#### **Travel Expense Reimbursement**

All Directors will be reimbursed for reasonable travel expenses incurred while serving as a Director, including spouse's expenses, in connection with attendance at meetings of the Company's Board of Directors and its committees. If the travel expense is related to the reimbursement of airfare, such reimbursement will not exceed full-coach rate. Spousal travel expenses paid by the Company are treated as taxable income to the Director. See the paragraph below entitled "Code Section 409A" for further rules relating to travel expense reimbursements.

#### **Life Insurance Coverage**

All Directors are protected by a non-contributory group life insurance policy with coverage of \$100,000. The coverage begins the day the Director is elected to the Board of Directors and terminates when the Director ceases to be a Director. A Summary Plan Description (SPD) will be provided to the Director. The beneficiary of the insurance will be the beneficiary recorded on a beneficiary designation provided by the Company. The group life insurance policy is considered taxable compensation under current tax laws. Consequently, the Company will provide each Director annually on Form 1099 the amount of taxable income related to this coverage.

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**Code Section 409A**

To the extent any reimbursements or in-kind benefits provided to a Director pursuant to this policy constitute “deferred compensation” under Internal Revenue Code Section 409A, any such reimbursement or in-kind benefit shall be paid in a manner consistent with Treasury Regulation Section 1.409A-3(i)(1)(iv), including the requirements that the amount of reimbursable expenses or in-kind benefits provided during a year may not affect the expenses eligible for reimbursement or in-kind benefits provided in any other year and that any reimbursement be made on or before the last day of the calendar year following the calendar year in which the expense was incurred.

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## KNIFE RIVER CORPORATION

## DEFERRED COMPENSATION PLAN FOR DIRECTORS

**I. PURPOSE**

The Board of Directors of Knife River Corporation (the “Company”) established this Deferred Compensation Plan for Directors (the “Plan”) in connection with the distribution of 80.1% or more of the outstanding shares of the Company’s common stock to the stockholders of MDU Resources Group, Inc. (“MDU”) in 2023, pursuant to the Separation and Distribution Agreement between the Company and MDU entered into in connection with such distribution (the “Spin-Off”). The Plan is effective as of the date on which the Spin-Off occurs (the “Distribution Date”) and shall continue until terminated by the Board of Directors of the Company, subject to the provisions of Article XI, below.

The purpose of this Plan is to aid the Company in attracting and retaining as members of the Board of Directors of the Company (“Directors”) persons whose abilities, experience and judgment can contribute to the continued progress of the Company. The Plan will provide a method of deferring compensation to the Directors.

In connection with the Spin-Off and pursuant to the terms of an Employee Matters Agreement entered into by and between the Company and MDU, the Company and the Plan assumed all the obligations and liabilities of MDU and its subsidiaries under the MDU Deferred Compensation Plan for Directors (the “MDU Director DCP”) with respect to Transferred Directors (as such term is defined in the Employee Matters Agreement) so that any benefits due under the MDU DCP with respect to a Transferred Director or beneficiaries of a Transferred Director will now be the responsibility of the Company and this Plan. Any benefits due under the MDU Director DCP with respect to a Transferred Director or Beneficiaries of a Transferred Director will now be the responsibility of the Company and this Plan. All service of a Transferred Director recognized under the MDU Director DCP shall be recognized under this Plan. All distribution elections and designation of Beneficiaries made under the MDU Director DCP by a Transferred Director and in effect as of immediately prior to the Distribution Date shall continue to apply and shall be administered under the Plan until such election or designation expires or is otherwise changed or revoked in accordance with the terms of the Plan. All valid domestic relations orders filed with the MDU Director DCP as of immediately prior to the Distribution Date with respect to the benefits of a Transferred Director shall continue to apply under the Plan.

**II. DEFINITIONS**

A. Beneficiary. “Beneficiary” means the person or persons designated as such in accordance with Article X.

B. Change in Control. “Change in Control” means the earliest of the following to occur: (a) any person (which shall not include the Company, any subsidiary of the Company or any employee benefit plan of the Company or of any subsidiary of the Company) (“Person”) or group (as that term is defined in Treasury Regulations Section 1.409A-3(i)(5)(v)(B)) acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such Person or Persons) ownership of stock of the Company possessing 30% or more of the total voting power of the stock of the Company; (b) any Person or group (as that term is defined in Treasury Regulations Section 1.409A-3(i)(5)(v)(B)) acquires ownership of the stock of the Company that, together with stock held by such Person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of the Company (this part (b) applies only when there is a transfer of stock of the Company and the Company’s stock remains outstanding after the transaction); (c) a majority of the members of the Board of Directors of the Company is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors of the Company; or (d) any Person or group (as that term is defined in Treasury Regulations Section 1.409A-3(i)(5)(v)(B)) acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such Person or Persons) assets from the Company that have a gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of the Company immediately before such acquisition or acquisitions.

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Notwithstanding anything contained herein to the contrary, no transaction or event shall constitute a Change in Control for purposes of the Plan unless the transaction or event constitutes a change in the ownership of a corporation (as defined in Treasury Regulations Section 1.409A-3(i)(5)(v)), a change in effective control of a corporation (as defined in Treasury Regulations Section 1.409A-3(i)(5)(vi)) or a change in the ownership of a substantial portion of the assets of a corporation (as defined in Treasury Regulations Section 1.409A-3(i)(5)(vii)) and the term Change in Control shall be interpreted in a manner consistent with the proper interpretation of the similar provisions in the Section 409A Treasury Regulations.

C. Code. “Code” means the Internal Revenue Code of 1986, as amended.

D. Compensation. “Compensation” means any cash retainer, meeting fees and any other cash compensation payable to Eligible Directors by the Company for services as a Director.

E. Deferral Amount. “Deferral Amount” means the Compensation Participants elect to defer and have credited to their Deferred Compensation Accounts.

F. Deferred Compensation Account. “Deferred Compensation Account” means the account maintained on the books of account of the Company for each Participant pursuant to Article VI.

G. Disability. “Disability” means those circumstances where the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months.

H. Effective Date. “Effective Date” means the Distribution Date, the date on which the amendment and restatement of the Plan became effective.

I. Eligible Director. “Eligible Director” means those Directors of the Company who are not employees of the Company.

J. Investment Units. “Investment Units” has the meaning defined in Article VI.B.

K. Market Price. “Market Price” means the average of the highest and lowest transaction prices for the Company’s common stock on the New York Stock Exchange for a given day.

L. Participant. “Participant” means an Eligible Director participating in the Plan in accordance with the provisions of Article IV and any Transferred Director who participated in the MDU Directors DCP as of immediately prior to the Distribution Date.

M. Separation from Service. “Separation from Service” means a Participant’s separation from service (as that term is used in Section 409A(a)(2)(A)(i) of the Code) with the Company.

### **III. ADMINISTRATION OF THE PLAN**

The Board of Directors shall be the sole administrator of the Plan.

The Board of Directors may from time to time establish rules and regulations for the administration of the Plan.

All determinations of the Board of Directors, irrespective of their character or nature, including, but not limited to, all questions of construction and interpretation, shall be final, binding and conclusive upon all parties. Without limiting the generality of the foregoing, the determination of the Board of Directors as to whether a Participant has had a Separation from Service and the date thereof shall be final, binding and conclusive upon all persons.

The Company and/or the Board of Directors may consult with legal counsel, who may be counsel for the Company or other counsel, with respect to its obligations and duties hereunder or with respect to any claim, action or proceeding or any other matter, and shall not be liable for any action taken or not taken by it in good faith pursuant to the advice of such counsel.

The Chairman, at the direction of the Board of Directors, shall be responsible for maintaining books and records for the Plan and adopting standard forms for such matters as Beneficiary designations and applications for benefits, provided such rules and forms are not inconsistent with the provisions of the Plan. Such books and records shall only be open for examination by a Participant or his duly designated Beneficiary to the extent that they specifically involve the Deferred Compensation Account created for his benefit or any payments which are to be made to him or his Beneficiary hereunder. Each Participant or his duly designated Beneficiary shall be notified no less frequently than annually of the balance in his account.

Neither the Board of Directors nor any member of the Board of Directors nor the Company nor any other person who is acting on behalf of the Board of Directors or the Company shall be liable for any act or failure to act hereunder except for gross negligence or fraud.

#### **IV. PARTICIPATION**

All Eligible Directors, including any person who becomes a Director after the Effective Date, shall be Participants in the Plan.

Each Participant in the Plan shall have the right to elect to defer the payment of all or any part of his Compensation, with such Deferral Amount to be payable at the time or times and in the manner hereinafter stated.

Each Participant who elects to defer the payment of all or any part of his Compensation shall execute and deliver to the Board of Directors a "Notice of Election." Such Notice will specify the percentage of Compensation to be deferred and, if a Beneficiary designation has not been made or the Participant wishes to change an existing Beneficiary designation, the Beneficiary designations of the Director.

Except as provided in the last sentence of this paragraph, a Notice of Election shall be valid only if it is delivered prior to the first day of the calendar year in which the services giving rise to the Compensation being deferred are to be performed. A Participant's Notice of Election shall become irrevocable as of the last date the Notice of Election could be delivered or such earlier date as may be established by the Board of Directors. A Participant may revoke or change a Notice of Election at any time prior to the date the election becomes irrevocable, subject to such restrictions as the Board of Directors may establish from time to time. Any such revocation or change shall be made in a form and manner determined by the Board of Directors. In the first calendar year in which a Participant becomes eligible to participate in the Plan, the Participant may execute and deliver a Notice of Election within thirty (30) days of the date the Participant first becomes eligible to participate in the Plan, with respect to Compensation that would be paid for services to be performed after the election.

#### **V. VESTING OF DEFERRED COMPENSATION ACCOUNT**

A Participant's interest in his Deferred Compensation Account shall vest immediately with regard to Deferral Amounts and earnings thereon.

#### **VI. ACCOUNTS AND VALUATIONS**

A. Deferred Compensation Accounts. The Board of Directors shall establish and maintain a separate Deferred Compensation Account for each Participant. The Participant's Deferral Amount shall be credited to the Participant's Deferred Compensation Account quarterly on the last business day of March, June, September, and December in amounts as nearly equal as possible.

B. Conversion to Investment Units. At the time a Deferral Amount or dividend equivalent under Article VII is credited to the Deferred Compensation Account, it shall be converted to Investment Units, by dividing the amount credited by the Market Price of the Company's stock on the last trading day immediately preceding the date the amount is credited. Fractional share Investment Units will be maintained in the Account. The Investment Units initially credit to the Deferred Compensation Account of a Transferred Director on the Distribution Date shall be determined by adjusting the investment units credited to the Transferred Director's deferred compensation account under the MDU Directors DCP immediately prior to the Distribution Date in accordance with the adjustment methodology set forth in the Employee Matters Agreement.

## **VII. DIVIDEND EQUIVALENTS**

If a dividend is paid on the common stock of the Company, an equivalent amount shall be credited to the Participant's Deferred Compensation Account for each Investment Unit in the Participant's Deferred Compensation Account on the dividend record date. Crediting of any such dividend equivalents shall occur on the dividend payment date. Such amounts shall be converted to additional Investment Units, pursuant to Article VI.B.

## **VIII. DISTRIBUTION**

A. Conversion of Investment Units to Dollars. When a Participant has a Separation from Service, dies, or experiences a Disability, Investment Units in the Participant's Deferred Compensation Account shall be converted into dollars, on the dates set forth below, based on the Market Price of the Company's common stock on the date of conversion. If the New York Stock Exchange is not open that day, then it shall be the Market Price on the next day the New York Stock Exchange is open. Participants shall remain eligible to receive dividend equivalents pursuant to Article VII with respect to any Investment Units that have not been converted into dollars as of the dividend record date.

B. Payment. During the first week (the "Payment Commencement Week") of the first full month that begins at least six months after the date of the Participant's Separation from Service, death or Disability (the "Payment Commencement Month"), 20 percent of the value of the Investment Units credited to the Participant's Deferred Compensation Account shall be converted to dollars and paid to the Participant in equal monthly payments over a one-year period, with the first such monthly payment made during the Payment Commencement Week and the following monthly payments made during the first week of each of the next 11 months. During the first week of the 12<sup>th</sup> month following the Payment Commencement Month, 25 percent of the remaining value of the Investment Units credited to the Participant's Deferred Compensation Account shall be converted to dollars and paid to the Participant in equal monthly payments over a one-year period, with the first such monthly payment made during that week and the following monthly payments made during the first week of each of the next 11 months. During the first week of the 24<sup>th</sup> month following the Payment Commencement Month, 33 1/3 percent of the remaining value of the Investment Units credited to the Participant's Deferred Compensation Account shall be converted to dollars and paid to the Participant in equal monthly payments over a one-year period, with the first such monthly payment made during that week and the following monthly payments made during the first week of each of the next 11 months. During the first week of the 36<sup>th</sup> month following the Payment Commencement Month, 50 percent of the remaining value of the Investment Units credited to the Participant's Deferred Compensation Account shall be converted to dollars and paid to the Participant in equal monthly payments over a one-year period, with the first such monthly payment made during that week and the following monthly payments made during the first week of each of the next 11 months. During the first week of the 48<sup>th</sup> month following the Payment Commencement Month, the remaining balance of the Participant's Deferred Compensation Account shall be converted to dollars and paid to the Participant in equal monthly payments over a one-year period, with the first such monthly payment made during that week and the following monthly payments made during the first week of each of the next 11 months. For avoidance of doubt, if a dividend is paid on the common stock of the Company, an equivalent amount shall be credited to Participants' Deferred Compensation Accounts pursuant to Article VII with respect to any Investment Units that have not been converted into dollars as of the dividend record date. No interest will be paid on amounts in the Deferred Compensation Accounts.

C. Change in Control. The terms of this Article VIII.C shall immediately become operative, without further action or consent by any person or entity, upon a Change in Control, and once operative shall supersede and take control over any other provisions of the Plan.

Upon a Change in Control, all Investment Units in a Participant's Deferred Compensation Account shall be multiplied by the Market Price of the Company's common stock on such day. If the New York Stock Exchange is not open on that day, then it shall be the Market Price on the next day the New York Stock Exchange is open. The dollar value of the Investment Units contained in each Participant's Deferred Compensation Account shall be paid out immediately thereafter to the Participant (a "Change in Control Payment").

**IX. TAX WITHHOLDING UPON DISTRIBUTION**

To the extent required by law, the Company shall withhold from payments made hereunder any taxes required to be withheld by the federal or any state or local government.

**X. BENEFICIARY DESIGNATION**

Each Participant shall have the right at any time to designate any person or persons as Beneficiary or Beneficiaries (both principal and contingent) to whom payment under this Plan shall be paid in the event of death prior to complete distribution of the deferred amounts under the Plan. Each Beneficiary designation shall become effective only when filed in writing with the Board of Directors during the Participant's lifetime on a form provided by the Board of Directors.

The filing of a new Beneficiary designation form will cancel all Beneficiary designations previously filed. Any finalized divorce of a Participant subsequent to the date of filing of a Beneficiary designation form shall revoke such designation. The spouse of a married Participant domiciled in a community property jurisdiction shall join in any designation of Beneficiary or Beneficiaries other than the spouse.

If a Participant fails to designate a Beneficiary as provided above or if the Beneficiary designation is revoked by divorce, or otherwise, without execution of a new designation, or if all designated Beneficiaries predecease the Participant or die prior to complete distribution of the Participant's benefits, then the distribution of such benefits shall be made to the Participant's estate.

**XI. AMENDMENT AND TERMINATION OF PLAN**

A. Amendment. The Company may at any time amend the Plan in whole or in part, provided, however, that except as provided in Article XI.B., no amendment shall act to reduce the benefits under the Plan payable to any Participant with respect to any Deferral Amount credited to the Participant's Deferred Compensation Account prior to the date of the amendment. Written notice of any amendments shall be given to each Participant.

**B. Termination of Plan.**

1. Company's Right to Terminate. The Board of Directors may at any time terminate the Plan.

2. Payments Upon Termination. To the extent consistent with the rules relating to plan terminations and liquidations in Treasury Regulations Section 1.409A-3(j)(4)(ix) or otherwise consistent with Section 409A of the Code, the Board of Directors may provide that, without the prior written consent of Participants, the Investment Units recorded in the Participants' Deferred Compensation Accounts shall be converted into dollars pursuant to Article VIII.A and all of the Participants' Deferred Compensation Accounts shall be distributed in a lump sum upon (or as soon as is permitted following) termination of the Plan. Unless so distributed, in the event of a Plan termination, the Company shall continue to maintain the Deferred Compensation Accounts until distributed pursuant to the terms of the Plan and Participants shall remain 100% vested in all amounts credited to their Deferred Compensation Accounts.

**XII. MISCELLANEOUS**

A. Unsecured General Creditor. Participants and their beneficiaries, heirs, successors, and assigns shall have no legal or equitable rights, interests, or other claims in any property or assets of the Company, nor shall they be beneficiaries of, or have any rights, claims, or interests in any specified assets of the Company. Any and all of the Company's assets shall be and remain general, unpledged, unrestricted assets of the Company. The Company's obligation under the Plan shall be that of an unfunded and unsecured promise of Company to pay money in the future.

B. No Right to Nomination or Reelection. Establishment of this Plan and the participation by any person shall not be construed to confer any right on the part of such person to be nominated for reelection, or to be reelected, to the Board of Directors of the Company.

C. Nonassignability. Neither a Participant nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage, or otherwise encumber, transfer, hypothecate, or convey in advance of actual receipt the amounts, if any, payable hereunder, or any part thereof, which are, and all rights to which are, expressly declared to be unassignable and nontransferable. No part of the amounts payable shall, prior to actual payment, be subject to seizure or sequestration for the payment of any debts, judgments, alimony or separate maintenance owed by a Participant or any other person, nor be transferable by operation of law in the event of a Participant's or any other person's bankruptcy or insolvency.

D. Protective Provisions. A Participant will cooperate with the Company by furnishing any and all information requested by the Company in order to facilitate the payment of any amounts hereunder. If a Participant refuses to cooperate, the Company shall have no further obligation to the Participant under the Plan.

E. Gender, Singular and Plural. Wherever the context so requires, words in the masculine include the feminine and words in the feminine include the masculine and the definition of any term in the singular may include the plural.

F. Captions. The captions to the articles, sections, and paragraphs of this Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

G. Applicable Law. This Plan shall be construed, administered and governed in accordance with the laws of the State of North Dakota.

H. Validity. In the event any provision of this Plan is held invalid, void, or unenforceable, the same shall not affect, in any respect whatsoever, the validity of any other provision of this Plan.

I. Notice. Any notice or filing required or permitted to be given to the Board of Directors shall be sufficient if in writing and hand delivered, or sent by registered or certified mail, to the principal office of the Company, directed to the attention of the Secretary of the Company. Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.

J. Section 409A. It is intended that this Plan will comply with Section 409A of Code and any regulations and guidelines issued thereunder, to the extent the Plan is subject thereto, and the Plan shall be interpreted accordingly.





1150 W. Century Ave.  
Bismarck, ND 58503

### Knife River Corporation Completes Spinoff from MDU Resources

**BISMARCK, N.D. — June 1, 2023** — Knife River Corporation (NYSE: KNF) today announced the successful completion of its spinoff from MDU Resources Group, Inc. (NYSE: MDU). As a result of the spinoff, Knife River is now an independent, public company that will begin “regular way” trading this morning on the New York Stock Exchange.

“The opportunity to ring the opening bell at the New York Stock Exchange this morning, representing nearly 6,000 dedicated Knife River team members, is truly an honor and is an exciting moment in our company’s history,” said Brian R. Gray, president and CEO of Knife River. “Our team is well-established and well prepared to be on our own as a pure-play construction materials and contracting services company. We are focused on building America’s infrastructure and delivering long-term value for our shareholders.”

As previously announced, the separation of Knife River Corporation occurred through a pro rata distribution of approximately 90% of the outstanding shares of KNF common stock to MDU Resources’ stockholders. In connection with the spinoff, MDU Resources’ stockholders retained their shares of MDU common stock and received one share of KNF common stock on May 31 for every four shares of MDU common stock held on May 22, 2023, the record date for the distribution. MDU Resources retained approximately 10% of Knife River’s common stock. Additional details about the distribution and Knife River’s management and business can be found in the information statement attached to Knife River’s Registration Statement on Form 10 as Exhibit 99.1, which can be found at <https://investors.kniferiver.com>.

In connection with the completion of the spinoff, effective today, the company changed its name from Knife River Holding Company to Knife River Corporation.

#### About Knife River

*Knife River Corporation, a member of the S&P MidCap 400 index, mines aggregates and markets crushed stone, sand, gravel and related construction materials, including ready-mix concrete, asphalt and other value-added products. It also distributes cement and asphalt oil. It performs integrated contracting services. For more information about Knife River, visit [www.kniferiver.com](http://www.kniferiver.com).*

#### Advisors

*J.P. Morgan Securities LLC and PJT Partners are serving as financial advisors for the transaction; Wachtell, Lipton, Rosen & Katz is serving as legal advisor.*

#### Forward-Looking Statement

*The information in this release includes certain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. The forward-looking statements contained in this release, including statements about the future state and value of Knife River, are expressed in good faith and are believed by Knife River to have a reasonable basis. Nonetheless, actual results may differ materially from the projected results expressed in the forward-looking statements. There can be no assurance that the actual results or developments anticipated by Knife River will be realized or, even if substantially realized, that they will have the expected consequences to or effects on Knife River or its business or operations. For a discussion of important factors that could cause actual results to differ materially from those expressed in the forward-looking statements, refer to Item 1A-Risk Factors in Knife River’s Form 10 and most recent Form 10-Q.*

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