



## STANDARD TERMS AND CONDITIONS FOR XCLAIM TRANSFER OF CLAIM AGREEMENT

The following are the Standard Terms and Conditions applicable to agreements for the transfer of claims on the XCLAIM Marketplace, the Transfer Terms in respect of which incorporate these Standard Terms and Conditions by reference. All references herein to the “Agreement” shall mean, collectively, the applicable XCLAIM Transfer of Claim Agreement – Transfer Terms executed by the parties (the “Transfer Terms”) and these Standard Terms and Conditions. Capitalized terms used but not otherwise defined in these Standard Terms and Conditions shall have the meanings set forth in the Transfer Terms.

### 1. PURCHASE AND SALE

SELLER, for good and valuable consideration, does hereby irrevocably sell, convey, transfer and assign unto BUYER, and BUYER does hereby irrevocably purchase and acquire from SELLER, in each case as of the Closing Date, all of SELLER’s right, title and interest in, to and under the Claim, including, without limitation, “claims” as defined in Section 101(5) of Title 11 of the United States Code, as amended, any and all right to receive principal, interest and other amounts in respect of the Claim in each case whether accruing prior to, on or after the date of this Agreement and, to the extent relating to the Claim, all accounts, accounts receivable and other rights and interest of SELLER against the Debtor, including, without limitation, all of SELLER’s right, title and interest in, to and under:

- (a) the Proof of Claim;
- (b) all exhibits, attachments and/or supporting documentation relating to the Proof of Claim;
- (c) each of the documents, agreements, bills and/or other documents (whether now existing or hereafter arising) that evidence, create and/or give rise to or affect in any material way the Claim (such documents, agreements, bills and/or other documents collectively hereinafter referred to as the “Claim Documents”);
- (d) all rights to receive any cash, interest, fees, expenses, damages penalties and/or other amounts or property in respect of or in connection with the Claim, including, without limitation, any securities and/or other distributions made by the Debtor in respect of the Claim under or pursuant to any plan of reorganization or liquidation in the Bankruptcy Case or otherwise;
- (e) all causes of action or other rights held by SELLER, whether against the Debtor or against any other party, in connection with the Claim and/or any of the foregoing, including, without limitation, under or in connection with any of the Claim Documents;
- (f) all cash, securities or other property (“Distributions”) distributed or payable on account of, or exchanged in return for, any of the foregoing;
- (g) any and all proceeds of any of the foregoing (including proceeds of proceeds);

all of the foregoing, whether against the Debtor, any affiliate of the Debtor, any guarantor or any other third party liable in respect thereof, being collectively referred to herein as the “Assigned Rights”. For the avoidance of doubt, BUYER does not assume, and SELLER shall retain, shall remain responsible for, and shall duly perform, any and all obligations and liabilities of SELLER under or relating to the Claim, the Claim Documents, and the other Assigned Rights.

The consideration to be paid by BUYER to SELLER for the Assigned Rights, the sufficiency of which is hereby acknowledged by SELLER, is the purchase price (the “Purchase Price”) set forth and calculated on Schedule I to the Transfer Terms. Upon the execution and delivery by SELLER and BUYER of this Agreement and the Evidence of Transfer of Claim attached hereto as Annex A to the Transfer Terms (the “Evidence of Transfer of Claim”), BUYER shall pay the Purchase Price to SELLER by wire transfer or ACH transfer to SELLER’s account set forth on Schedule II to the Transfer Terms (the date of such payment, the “Closing Date”).

BUYER shall be obligated to cause the timely filing of the Evidence of Transfer of Claim in the Bankruptcy Case promptly after the Closing Date. SELLER understands that XCLAIM may file the Evidence of Transfer of Claim in the Bankruptcy Case to satisfy this obligation.

### 2. MUTUAL REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other as of the Effective Date and the Closing Date that:

- (a) such Party is duly authorized and empowered to execute, deliver and perform this Agreement and the Evidence of Transfer of Claim, and each of this Agreement and the Evidence of Transfer of Claim constitutes such Party’s valid, legal and binding agreement, enforceable against such Party in accordance with its terms;
- (b) neither the execution, delivery or performance of this Agreement and the Evidence of Transfer of Claim, nor consummation of the transactions contemplated hereby and thereby, will violate or contravene any law, rule, regulation or agreement affecting such Party (or, in the case of SELLER, the Assigned Rights)
- (c) it has agreed to the Purchase Price based on its own independent investigation and credit determination, has consulted with such advisors (if any) as it believes appropriate, and has not relied on any representations made by the other Party;



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- (d) it is aware that information which may be pertinent to its decision to sell or purchase (as applicable) the Assigned Rights can be obtained from the Bankruptcy Court's docket or other publicly available sources;
- (e) it is aware that the Purchase Price may differ both in kind and amount from any distributions in respect of the Claim made pursuant to any plan or reorganization or liquidation confirmed or approved by the Bankruptcy Court in the Bankruptcy Case; and
- (f) with respect to the sale or purchase (as applicable) of the Assigned Rights, it (i) is a sophisticated person or entity, (ii) is able to bear the associated economic risk, and (iii) has adequate information concerning the business and financial condition of the Debtor and the status of the Bankruptcy Case to make an informed decision.
- (g) If the Claim is allowed (within the meaning of Section 502 of the U.S. Bankruptcy Code) pursuant to an Order of the Bankruptcy Court, in an amount greater than the Claim Amount, then BUYER shall notify SELLER in writing (such notice, the "**Excess Claim Notice**") of the amount so allowed in excess of the Claim Amount (such excess, the "**Excess Claim Amount**"), and BUYER shall be obligated to purchase the Excess Claim Amount at the Purchase Rate. BUYER and SELLER shall execute an amendment hereto to effect the assignment of the Excess Claim Amount to BUYER and to incorporate such Excess Claim Amount into the XCLAIM Transfer of Claim Agreement between BUYER and SELLER.

### **3. SELLER REPRESENTATIONS AND WARRANTIES**

SELLER represents and warrants to BUYER as of the Effective Date and as of the Closing Date that:

- (a) (i) the Proof of Claim has been duly and timely filed by SELLER against the Debtor in the Bankruptcy Case in an amount equal to the Claim Amount, (ii) SELLER has provided to BUYER a true and complete copy of the Proof of Claim, (iii) the Proof of Claim has not been revoked, withdrawn, amended or modified, and no rights thereunder have been waived, (iv) all statements in such Proof of Claim are true and correct as of the date hereof, and (v) the basis for the Claim is accurately set forth in the Proof of Claim;
- (b) no payment or other distribution has been received by or on behalf of SELLER in full or partial satisfaction of the Claim;
- (c) no portion of the Claim has been sold, assigned, or pledged by SELLER to any third party;
- (d) SELLER has provided to BUYER true and complete copies of the Claim Documents, and other than the Claim Documents provided by SELLER to BUYER, there are no other contracts, documents, stipulations, or orders that will materially and adversely affect the Assigned Rights or BUYER's rights hereunder;
- (e) SELLER owns and has, and has the power to convey, good and marketable title to the Assigned Rights, free and clear of (i) any legal, statutory or contractual restriction on transfer or resale, (ii) any lien, claim, charge, security interest, participation, factoring arrangement, or encumbrance, or any similar claim of any nature and (iii) any and all taxes, imposts, and duties of any kind;
- (f) SELLER has fulfilled all of its obligations to the Debtor under, and did not breach any terms or provisions of, the Claim Documents, and BUYER will assume no obligations or liabilities in respect of the Claim or the Claim Documents;
- (g) the Claim is a valid, allowable, enforceable, non-contingent, liquidated, unsubordinated, and non-disputed claim against the Debtor, in an amount not less than the Claim Amount;
- (h) the Assigned Rights are not subject to any counterclaim, defense, or claim or right of setoff, reduction, recoupment, impairment, avoidance, disallowance, subordination or equitable subordination;
- (i) SELLER does not, and did not on the Petition Date, hold any funds or property of or owe any amounts or property to the Debtor, and has not effected or received, and shall not effect or receive, the benefit of any setoff against the Debtor;
- (j) SELLER is not, and has never been, an insider of the Debtor within the meaning of 11 U.S.C. § 101(31), or an affiliate of the Debtor within the meaning of 11 U.S.C. § 101(2), and is not, and has not been, a member of any official or unofficial creditors' committee in the Bankruptcy Case; and
- (k) SELLER has not engaged in any act, conduct or omission, or had any relationship with the Debtor, that will result in BUYER receiving proportionately less in payments or distributions under, or less favorable treatment (including the timing of payments or distributions) for, the Assigned Rights than is received by other creditors in respect of general unsecured claims against the Debtor in the Bankruptcy Case generally.

### **4. RIGHT TO SUBSEQUENT DISTRIBUTIONS**

SELLER agrees that, from and after the Closing Date, if SELLER shall receive any Distributions or any notices or other documents on account or in respect of the Assigned Rights, SELLER shall accept and hold the same on behalf of and in trust for BUYER, and shall use its best efforts to



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deliver the same forthwith to BUYER in the same form received, with the endorsement of SELLER (without recourse) where necessary or appropriate, within three (3) business days in the case of cash Distributions and six (6) business days in the case of non-cash Distributions. If SELLER does not deliver any cash Distribution to BUYER within three (3) business days, SELLER shall pay to BUYER interest on such Distribution at a rate equal to the Federal Funds Rate, from the date three (3) business days after SELLER's receipt of such Distribution to the date of BUYER's receipt of payment of such Distribution. SELLER acknowledges and agrees that all Distributions are the property of BUYER. As used herein, "**Federal Funds Rate**" means, for any date, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates set by the Federal Reserve Bank of New York on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding business day in The Wall Street Journal (Eastern Edition), or, if such rate is not so published for any day that is a business day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the parties hereto from three federal funds brokers of recognized standing selected by the Parties.

### 5. CLAIM IMPAIRMENT AND REPURCHASE OBLIGATION

If:

- (a) all or any portion of the Claim is disallowed, reduced or subordinated such that the total amount of the Claim would be less than the Claim Amount, distributions are made on the Claim that are, per dollar of claim, less in amount or different in nature or timing than distributions on allowed general unsecured claims against the Debtor in the Bankruptcy Case generally, or a motion, complaint, application, plan of reorganization or other pleading is filed seeking any of the foregoing;
- (b) all or any portion of the Claim is scheduled by the debtor as unliquidated, contingent or disputed, the Claim is scheduled in an amount less than the Claim Amount, or the Claim shall not have been listed as an allowed general unsecured claim in an amount no less than the Claim Amount in the Debtor's schedule of liabilities by the effective date of a plan of reorganization or liquidation of the Debtor; or
- (c) BUYER is not substituted for SELLER to the extent of the Claim (any of the foregoing events is referred to herein as an "**Impairment**") with respect to the portion so affected,

then SELLER shall repurchase such portion by paying immediately on demand of BUYER cash in an amount equal to the Purchase Price multiplied by a fraction, the numerator of which shall be the portion of the Claim Amount that is subject to the Impairment, and the denominator of which shall be the Claim Amount, together with interest thereon from the Closing Date to the date of such repayment at a rate equal to the Federal Funds Rate. BUYER's demand for such payment shall not be deemed an election of remedies or a limitation on any other rights that BUYER may have hereunder or under applicable law. In the event that SELLER repurchases all or any portion of the Claim from BUYER, then BUYER shall execute and deliver all documents reasonably requested by SELLER to effectuate such repurchase.

### 6. PARTIES' INFORMATION

Each of BUYER and SELLER acknowledges that the other may possess material non-public information concerning the Assigned Rights and/or the Debtor(s). Each further acknowledges that it has not requested to receive such information and has nevertheless determined to proceed with the transaction contemplated herein, and neither shall have any liability to the other, and each waives and releases any claims that it might have against the other (whether under applicable securities laws or otherwise), arising out of the non-disclosure of such information; provided, however, that nothing in this paragraph shall limit, contradict or render untrue any representation or warranty made by SELLER or BUYER in Section 2 hereof or by SELLER in Section 3 hereof.

### 7. AUTHORITY; ACTIONS

SELLER hereby irrevocably appoints BUYER as its true and lawful attorney-in-fact with respect to the Claim and authorizes BUYER to act in SELLER's name, place and stead, to demand, sue for, compromise and recover all such sums of money which are, or may hereafter become due and payable for or on account of the Claim, to vote the Claim, to file proofs of claim with respect thereto or to otherwise effectuate the intent of this Agreement. SELLER hereby grants unto BUYER full authority to do all things necessary to enforce the Claim and SELLER's rights thereunder. SELLER agrees that the powers granted in this section are discretionary in nature and exercisable at the sole option of BUYER. BUYER shall have no obligation to prove, defend, or take any affirmative action with respect to proving the validity of the Claim. SELLER agrees to execute and deliver, or to cause to be executed and delivered, all such instruments and documents, and to take all such action, as BUYER may reasonably request, promptly upon the request of BUYER, in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement, and to cause BUYER to become the legal and beneficial owner and holder of the Assigned Rights. Without limiting the generality of the foregoing, to the extent that SELLER shall have the right to take any action or exercise any voting or other right (each an "**Action**") in respect of the Claim, SELLER shall take or refrain from taking such Action in accordance, and only in accordance, with BUYER's instructions.

### 8. INDEMNIFICATION BY SELLER

SELLER agrees to indemnify and hold BUYER and its officers, directors, employees, agents and controlling persons harmless from and against



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any and all losses, claims, damages, costs, expenses and liabilities, including, without limitation, reasonable attorneys' fees and expenses, which result from (i) any act or omission by SELLER in connection with or in any way related to the Claim, (ii) SELLER's breach of any of SELLER's representations, warranties, covenants or agreements set forth herein or (iii) any obligation of SELLER or BUYER to disgorge, in whole or in part, or otherwise reimburse (by setoff or otherwise) the Debtor or any other person or entity for any payments, distributions, property, setoffs or recoupments received, applied or effected by or for the account of SELLER under or in connection with the Claim.

### 9. SELLER WAIVER OF NOTICE

SELLER HEREBY WAIVES ANY NOTICE REQUIREMENT IMPOSED BY BANKRUPTCY RULE 3001(e), AND CONSENTS TO THE SUBSTITUTION OF BUYER FOR SELLER FOR ALL PURPOSES IN THE BANKRUPTCY CASE WITH RESPECT TO THE CLAIM, INCLUDING, WITHOUT LIMITATION, FOR VOTING AND DISTRIBUTION PURPOSES. SELLER AND BUYER AGREE THAT BUYER MAY FILE THIS AGREEMENT, THE EVIDENCE OF TRANSFER OF CLAIM OR OTHER APPROPRIATE NOTICE WITH THE BANKRUPTCY COURT PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3001(e).

### 10. GENERAL PROVISIONS

- (a) This Agreement and the Evidence of Transfer of Claim set forth the entire agreement between SELLER and BUYER with respect to the subject matter hereof and fully supersede any and all prior agreements, understandings, or representations between the parties.
- (b) All representations, warranties, covenants and agreements contained herein shall survive the execution and delivery of this Agreement and shall inure to the benefit of the successors and assigns of each Party hereto, and the obligations of SELLER and BUYER contained herein shall continue and remain in full force and effect until fully paid, performed and satisfied. From and after the Closing Date, BUYER may assign or otherwise transfer all or any portion of its rights (but not its obligations) under this Agreement to any person without the consent of SELLER.
- (c) All payments to be made hereunder shall be made by wire transfer or ACH transfer of immediately available funds pursuant to the payment instructions for the applicable recipients set forth on Schedule II to the Transfer Terms, free and clear of any set-off, deduction or withholding of any kind.
- (d) This Agreement may be waived, amended or modified only by a written agreement signed by both parties hereto (or, in the case of a waiver, by the Party waiving compliance).
- (e) Any and all notices in connection with this Agreement shall be delivered in writing to the applicable Party at its address and by such means as listed in Schedule II to the Transfer Terms or at such address as such Party may designate in writing to the other from time to time. Each Party hereto consents to service of process by certified mail at its address listed in Schedule II to the Transfer Terms.
- (f) This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but all of which, together constitute one and the same instrument, and this Agreement, any such counterpart, and/or any signature page hereto may be delivered by e-mail, facsimile, the facilities of XCLAIM, or any other form of electronic delivery, with the same effect as if an original had been delivered.
- (g) This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to any choice-of-law provision that would result in the application of the laws of any other jurisdiction). Each Party submits to the jurisdiction of the federal or state courts located in the City of New York, State of New York, and agrees that any litigation relating to this Agreement shall be brought only in such courts.
- (h) Each of BUYER and SELLER hereby releases XCLAIM and each of its officers, directors, employees, agents, and counsel from any and all losses and liabilities resulting from the use of the XCLAIM Marketplace, as more fully set forth in the XCLAIM Marketplace Trading Terms and Conditions.
- (i) Each of BUYER and SELLER agrees that, without the prior written consent of the other Party hereto, it will not disclose the contents of this Agreement to any person or entity, except that any Party may make any such disclosure (a) as set forth in Section 9, (b) if required to do so by any law, court, or regulation, (c) to any banking, regulatory, self-regulatory, or examining authority having or asserting jurisdiction over it, (d) to its affiliates, employees, professional advisors, and auditors (provided that each such person or entity shall be instructed to keep such disclosed information confidential on the same terms as provided in this Agreement), or (e) in the case of BUYER, to any actual or prospective transferee, assignee, participant, or other entity proposing to enter into contractual relations with BUYER in respect of the Assigned Rights or any portion thereof (provided that BUYER shall not disclose Schedule I to the Transfer Terms to any such entity).