UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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): November 1, 2021

Kyndryl Holdings, Inc.
(Exact Name of Registrant as Specified in Charter)

Delaware	001-40853	86-1185492
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

One Vanderbilt Avenue, 15th Floor
New York, New York 10017
(Address of principal executive offices, and Zip Code)

(212) 896-2098
(Registrant's telephone number, including area code)

N/A
(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 (*see* General Instruction A.2. below):

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value $0.01 per share	KD	New York Stock Exchange

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

Emerging growth company ☐

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

Item 1.01. Entry into a Material Definitive Agreement.

On November 3, 2021 (the "Distribution Date"), International Business Machines Corporation ("IBM") completed the previously announced complete legal and structural separation and distribution to its stockholders of all of the outstanding shares of Kyndryl Holdings, Inc. ("Kyndryl" and, together with its consolidated subsidiaries, "we," "us," "our" or the "Company") in a tax free spin-off (the "Spin-Off"). The distribution was made in the amount of one share of the Company's common stock for every five shares of IBM common stock (the "Distribution") owned by IBM's holders of common stock as of the close of business on October 25, 2021 (the "Record Date").

On November 2, 2021, in connection with the Spin-Off, the Company entered into several agreements with IBM that set forth the principal actions taken or to be taken in connection with the Spin-Off and that govern the relationship of the parties following the Spin-Off, including the following:

- a Separation and Distribution Agreement;
- a Transition Services Agreement;
- a Tax Matters Agreement;
- an Employee Matters Agreement;
- an Intellectual Property Agreement;
- a Real Estate Matters Agreement;
- an IBM International Client Relationship Agreement;
- a Master Subcontracting Framework Agreement; and
- a Stockholder and Registration Rights Agreement.

The descriptions included below of the Separation and Distribution Agreement, Tax Matters Agreement, Transition Services Agreement, Employee Matters Agreement, Intellectual Property Agreement, Real Estate Matters Agreement, IBM International Client Relationship Agreement, Master Subcontracting Framework Agreement and Stockholder and Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of such agreements, which are filed as Exhibits 2.1, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7 and 10.8, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Separation and Distribution Agreement

We entered into a Separation and Distribution Agreement with IBM in advance of the Distribution. The Separation and Distribution Agreement sets forth our agreements with IBM regarding the principal actions to be taken in connection with the Spin-Off. It also sets forth other agreements that govern aspects of our relationship with IBM following the Spin-Off.

Transfer of Assets and Assumption of Liabilities

The Separation and Distribution Agreement identifies certain transfers of assets and assumptions of liabilities that were necessary in advance of our separation from IBM so that we and IBM retain the assets of, and the liabilities associated with, our respective businesses. The Separation and Distribution Agreement generally provides that the assets comprising our business consist of those exclusively related to our current business and operations (except for intellectual property assets, which are allocated as further described below under Intellectual Property Agreements or otherwise allocated to the business through a process of dividing shared assets). The liabilities assumed in connection with the Spin-Off generally consist of those related to the assets comprising our business or to the past and future operations of our business, including our locations used in our current operations. The Separation and Distribution Agreement also provides for the settlement or extinguishment of certain liabilities and other obligations between us and IBM.

Reorganization Transactions

The Separation and Distribution Agreement describes certain actions related to our separation from IBM that occurred prior to the Distribution such as the formation of our subsidiaries and certain other internal restructuring actions taken by us and IBM, including the contribution by IBM to us of the assets and liabilities that comprise our business.

Intercompany Arrangements

All agreements, arrangements, commitments and understandings, including most intercompany accounts payable or accounts receivable, between us, on the one hand, and IBM, on the other hand, terminated and/or were repaid effective as of the Distribution Date or shortly thereafter, except specified agreements and arrangements that are intended to survive the Distribution.

Credit Support

We agreed to use reasonable best efforts to arrange, on or prior to the Distribution, for the replacement of all guarantees, covenants, indemnities, surety bonds, letters of credit or similar assurances of credit support, other than certain specified credit support instruments, currently provided by or through IBM or any of its subsidiaries for the benefit of us or any of our subsidiaries.

Representations and Warranties

In general, neither we nor IBM made any representations or warranties regarding any assets or liabilities transferred or assumed, any consents or approvals required in connection with these transfers or assumptions, the value or freedom from any lien or other security interest of any assets transferred, the absence of any defenses relating to any claim of either party or the legal sufficiency of any conveyance documents. Except as expressly set forth in the Separation and Distribution Agreement, all assets have been transferred on an “as-is,” “where-is” basis.

Further Assurances

The parties will use reasonable best efforts to effect any transfers contemplated by the Separation and Distribution Agreement that have not been consummated prior to the Distribution. In addition, the parties will use reasonable best efforts to effect any transfer or re-transfer of any asset or liability that was improperly transferred or retained.

The Distribution

The Separation and Distribution Agreement governs IBM’s and our respective rights and obligations regarding the proposed Distribution. On or prior to the Distribution Date, IBM delivered 80.1% of the issued and outstanding shares of our common stock to the distribution agent. On or as soon as practicable following the Distribution Date, the distribution agent will electronically deliver the shares of our common stock to IBM stockholders based on the distribution ratio. The IBM board of directors, in its sole and absolute discretion, determined the Record Date, the Distribution Date and the terms of the Spin-Off, including the amount of the shares of our common stock it retained. In addition, IBM, at any time until the Distribution, could have decided to abandon the Distribution or modify or change the terms of the Distribution.

Conditions

The Separation and Distribution Agreement also provided that several conditions must have been satisfied or, to the extent permitted by law, waived by IBM, in its sole and absolute discretion, before the Distribution could occur.

Exchange of Information

We and IBM agreed to provide each other with information reasonably necessary to comply with reporting, disclosure, filing or other requirements of any national securities exchange or governmental authority, for use in judicial, regulatory, administrative and other proceedings and to satisfy audit, accounting, litigation and other similar requests. We and IBM also agreed to use reasonable best efforts to retain such information in accordance with our respective record retention policies applicable to our own information or such longer period as required by law. Each party also agreed to use its reasonable best efforts to assist the other with its financial reporting and audit obligations.

Termination

The IBM board of directors, in its sole and absolute discretion, could have terminated the Separation and Distribution Agreement at any time prior to the Distribution.

Release of Claims

We and IBM each agreed to release the other and its affiliates, successors and assigns, and all persons that prior to the Distribution had been the other's stockholders, directors, officers, members, agents and employees, and their respective heirs, executors, administrators, successors and assigns, from any and all liabilities that such party is taking on in connection with the Spin-Off, whether at law or in equity (including any right of contribution), whether arising under any contract, by operation of law or otherwise, existing or arising from any acts or events occurring, or failing to occur, or alleged to have occurred, or to have failed to occur, or any conditions existing or alleged to have existed on or before the Distribution, including in connection with the Spin-Off and all other activities to implement the Spin-Off. These releases are subject to exceptions set forth in the Separation and Distribution Agreement.

Indemnification

We and IBM each agreed to indemnify the other and each of the other's current and former directors, officers and employees, and each of the heirs, executors, successors and assigns of any of them, against certain liabilities incurred in connection with the Spin-Off and our and IBM's respective businesses. The amount of either IBM's or our indemnification obligations will be reduced by any net insurance proceeds the party being indemnified receives. The Separation and Distribution Agreement also specifies procedures regarding claims subject to indemnification.

Transition Services Agreement

We entered into a Transition Services Agreement pursuant to which IBM will provide us with certain specified services for a limited time to ensure an orderly transition following the Distribution. The services IBM will provide predominately consist of information technology services, among others. The services are generally intended to be provided for a period no longer than two years following the Distribution. Each party may terminate the agreement in its entirety in the event of a material breach of the agreement by the other party that is not cured within a specified time period. We may also terminate the services on an individual basis upon prior written notice to IBM, provided that a partial termination of a service will require mutual agreement between us and IBM. The Transition Services Agreement provides for customary indemnification and limits on liability. Given the short-term nature of the Transition Services Agreement, we are in the process of increasing our internal capabilities to eliminate reliance on IBM for the transition services it will provide us as quickly as possible following the Spin-Off.

Tax Matters Agreement

We entered into a Tax Matters Agreement with IBM that governs the respective rights, responsibilities and obligations of IBM and us after the Distribution with respect to all tax matters (including tax liabilities, tax attributes, tax returns and tax contests).

The Tax Matters Agreement generally provides that we are responsible and will indemnify IBM for all taxes, including income taxes, sales taxes, VAT and payroll taxes, relating to our business for all periods following the Distribution; IBM is responsible and will indemnify us for all taxes relating to our business for all periods preceding the Distribution, except as otherwise provided in the Tax Matters Agreement. In addition, the Tax Matters Agreement addresses the allocation of liability for taxes that were incurred as a result of restructuring activities undertaken to effectuate the Spin-Off.

In addition, the Tax Matters Agreement provides that we are required to indemnify IBM for any taxes (and reasonable expenses) resulting from the failure of the Spin-Off and related internal transactions to qualify for their intended tax treatment under U.S. federal, state and local income tax law, as well as foreign tax law, where such taxes result from (a) breaches of covenants and representations we made and agreed to in connection with the Spin-Off, (b) the application of certain provisions of U.S. federal income tax law to these transactions or (c) any other action or omission (other than actions expressly required or permitted by the Separation and Distribution Agreement, the Tax Matters Agreement or other ancillary agreements) we take after the Distribution that gives rise to these taxes. IBM has the exclusive right to control the conduct of any audit or contest relating to these taxes, but we have the right to review and comment on IBM's conduct of any such audit or contest, to the extent that we could be liable for taxes under the Tax Matters Agreement as a result of such audit or contest.

The Tax Matters Agreement imposes certain restrictions on us and our subsidiaries (including restrictions on share issuances, redemptions or repurchases, mergers or other business combinations, sales of assets and similar transactions) that are designed to address compliance with Section 355 and related provisions of the Internal Revenue Code of 1986, as amended, as well as state, local and foreign tax law, and are intended to preserve the tax-free nature of the Spin-Off and related transactions. Under the Tax Matters Agreement, these restrictions apply for two years following the Distribution, unless IBM obtains a private letter ruling from the IRS or we obtain an opinion of counsel, in each case acceptable to IBM in its discretion, that the restricted action would not impact the non-recognition treatment of the Spin-Off or other transaction, or unless IBM otherwise gives its consent for us to take a restricted action in its discretion. Even if such a private letter ruling or opinion is obtained, or IBM does otherwise consent to our taking an otherwise restricted action, we will remain liable to indemnify IBM in the event such restricted action gives rise to an otherwise indemnifiable liability. These restrictions may limit our ability to pursue strategic transactions or engage in new businesses or other transactions that may maximize the value of our business, and might discourage or delay a strategic transaction that our stockholders may consider favorable.

Employee Matters Agreement

We entered into an Employee Matters Agreement with IBM that addresses employment and employee compensation and benefits matters. The Employee Matters Agreement addresses the allocation and treatment of assets and liabilities relating to employees and compensation and benefit plans and programs in which our employees participated prior to the Spin-Off. Except as specifically provided in the Employee Matters Agreement, we are generally responsible for all employment and employee compensation and benefits-related liabilities relating to our employees, former employees and other service providers. In particular, we assumed certain assets and liabilities with respect to our current employees under certain of IBM's non-U.S. defined benefit pension plans (with assets and liabilities allocated based on formulas specified in the Employee Matters Agreement for each pension plan). Generally, except as may be provided in a transition services agreement, each of our employees ceased active participation in IBM compensation and benefit plans as of the Spin-Off. The Employee Matters Agreement also provides that we establish certain compensation and benefit plans for the benefit of our employees following the Spin-Off, including a 401(k) savings plan, which accepts direct rollovers of account balances from the IBM 401(k) savings plan for any of our employees who elects to do so. Generally, following the Spin-Off, we assume and are responsible for any annual bonus payments, including with respect to the year in which the Spin-Off occurs, and any other cash-based incentive or retention awards to our current and former employees. IBM long-term incentive compensation awards, including restricted share units, performance share units, stock options and restricted stock, held by Kyndryl employees are treated as described in "Compensation Discussion and Analysis—Treatment of IBM Equity Awards Held by Kyndryl Employees in the Spin-Off" in the Information Statement filed as Exhibit 99.1 to Amendment No. 1 to the Company's Registration Statement on Form 10 (File No. 001-40853), filed with the Securities and Exchange Commission (the "Commission") on October 12, 2021 (the "Information Statement"). The Employee Matters Agreement incorporates the indemnification provisions contained in the Separation and Distribution Agreement and described above.

In addition, the Employee Matters Agreement provides that we indemnify IBM for certain employee-related liabilities associated with the failure to establish benefit plans or in connection with joint-employer liability claims by our employees.

Intellectual Property Agreement

We entered into an Intellectual Property Agreement with IBM, pursuant to which IBM granted us perpetual and irrevocable, non-exclusive, royalty-free licenses to certain proprietary software and documentation, databases, trade secrets, and certain other intellectual property rights (excluding patents and trademarks) that are used in our business but are being retained by IBM. The foregoing licenses exclude IBM's commercial software, which is subject to IBM's standard commercial terms if we choose to use it in our business. Additionally, we granted to IBM perpetual and irrevocable, non-exclusive, royalty-free licenses to certain proprietary software and documentation, databases, trade secrets, and certain other intellectual property rights (excluding patents and trademarks) that were allocated to us (other than certain restricted software and research assets, to which IBM was granted limited or no rights). The field of use for the licenses granted to us is generally our business as conducted immediately prior to the Spin-Off, with natural extensions and evolutions. The field of use for the licenses granted to IBM is generally all businesses, operations, products and services. The licenses are generally transferable with any sale or transfer of an entity or line of business that utilizes the relevant intellectual property, and the transferred license is limited to the business, products and services as conducted by the transferred entity or line of business as of the date of the transfer, with natural extensions and evolutions. In addition, pursuant to the Intellectual Property Agreement, we are permitted to continue using certain of IBM's trademarks, trade names and service marks with respect to the "IBM" brands in connection with certain limited transitional uses. The permitted transitional uses generally do not exceed one to two years. The Intellectual Property Agreement also provides that we will use commercially reasonable efforts to cease using such IBM trademarks as soon as reasonably practicable.

Real Estate Matters Agreement

We entered into a Real Estate Matters Agreement with IBM that governs the allocation and transfer of real estate between IBM and Kyndryl and the colocation of IBM and Kyndryl following the Spin-Off. Real estate assets are predominantly allocated such that properties with greater than 50% occupancy by one company are allocated in full to such company and the non-majority company moves to another location, except that the non-majority company is not required to vacate earlier than the expiration date of any applicable lease or sublease entered into pursuant to the Real Estate Matters Agreement (the "Allocation Principles"). Certain sites will need to be transferred from one company to the other to ensure conformity with the Allocation Principles. Certain sites are occupied by both IBM and Kyndryl employees following the Spin-Off pursuant to a lease, occupancy agreement or sublease. IBM bears all costs relating to (i) the transfer of owned real property (e.g., transfer taxes and recording fees), (ii) the transfer of leased real property (e.g., the costs of obtaining consents) and (iii) except as stated otherwise in the applicable lease form, sublease form or split lease, any alterations or improvements reasonably required to separate IBM from Kyndryl employees with respect to all properties.

IBM International Client Relationship Agreement

We entered into an IBM International Client Relationship Agreement with IBM that governs transactions by which we may order from IBM its branded programs, services and products and third-party products and services for use in our internal business and to service our customers.

Master Subcontracting Framework Agreement

We entered into a Master Subcontracting Framework Agreement with IBM that governs relationships where either we or IBM can serve as the prime contractor or subcontractor with respect to a particular customer. The Master Subcontracting Framework Agreement (i) sets forth the general principles by which we and IBM may establish subcontracting relationships, (ii) provides a template for developing the subcontract for each particular engagement and (iii) establishes standard terms and approaches to be applied in the ordinary course of subcontracting between us and IBM.

Stockholder Registration Rights Agreement

We entered into a Stockholder and Registration Rights Agreement with IBM pursuant to which we agreed that, upon the request of IBM, subject to certain limitations, we will use our reasonable best efforts to effect the registration under applicable federal or state securities laws of any shares of our common stock retained by IBM. If we intend to file on our behalf or on behalf of any of our other security holders a registration statement in connection with a public offering of any of our securities in a manner that would permit the registration for offer and sale of our common stock held by IBM, IBM will have the right to include its shares of our common stock in that offering. We are generally responsible for all registration expenses in connection with the performance of our obligations under the registration rights provisions in the agreement, and IBM will be responsible for its own internal fees and expenses, any applicable underwriting discounts or commissions and any stock transfer taxes. The agreement also contains customary indemnification and contribution provisions by us for the benefit of IBM and, in limited situations, by IBM for the benefit of us with respect to the information provided by IBM included in any registration statement, prospectus or related document. If IBM transfers shares covered by the agreement, it will be able to transfer the benefits of the Stockholder's and Registration Rights Agreement to transferees of 5% or more of the shares of our common stock outstanding immediately following the Distribution, provided that each transferee agrees to be bound by the terms of the Stockholder and Registration Rights Agreement. In addition, IBM agreed to vote any shares of our common stock that it retains immediately after the Distribution in proportion to the votes cast by our other stockholders. In connection with such agreement, IBM will grant us a proxy to vote its shares of our retained common stock in such proportion. As a result, IBM will not be able to exert any control over us through the shares of our common stock it retains. Any such proxy, however, will be automatically revoked as to a particular share upon any sale or transfer of such share from IBM to a person other than IBM, and neither the Stockholder and Registration Rights Agreement nor proxy will limit or prohibit any such sale or transfer.

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

As previously reported, on October 18, 2021, the Company entered into a $500 million senior unsecured Term Loan Credit Agreement (the "Term Loan Credit Agreement"). On November 1, 2021, the Company drew down the full $500 million available under the Term Loan Credit Agreement.

The description of the Term Loan Credit Agreement is set forth under Item 1.01 in the Company's Current Report on Form 8-K filed on October 22, 2021 (the "Prior 8-K"), which description is incorporated herein by reference. In addition, the Term Loan Credit Agreement was filed as Exhibit 10.1 to the Prior 8-K and is incorporated herein by reference.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth under Item 5.03 below is incorporated into this Item 3.03 by reference.

Item 5.01. Changes in Control of Registrant.

The information set forth under Item 1.01 above is incorporated into this Item 5.01 by reference.

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

Director and Officer Appointments

As previously reported in the Information Statement, on or prior to November 3, 2021, the persons set forth in the table below assumed their positions as directors on the Company's Board of Directors (our "Board"). Also, on or prior to November 3, 2021, Dominic J. Caruso (Chair), Denis Machuel and Rahul N. Merchant assumed positions as members of the Audit Committee of the Board; Jana Schreuder (Chair), Janina Kugel and Howard I. Ungerleider assumed positions as members of the Compensation Committee of the Board; and Stephen A. M. Hester (Chair), John D. Harris II and Shirley Ann Jackson assumed positions as members of the Nominating and Governance Committee of the Board. Each director designated as a Class I director has been elected for a term expiring at our first annual meeting of stockholders following the Distribution, which we expect to hold in 2022; each director designated as a Class II director has been elected for a term expiring at our second annual meeting of stockholders following the Distribution, which we expect to hold in 2023; and each director designated as a Class III director has been elected for a term expiring at our third annual meeting of stockholders following the Distribution, which we expect to hold in 2024.

Name	Age	Committee Appointment	Class
Dominic J. Caruso	64	Audit Committee (Chair)	III
John D. Harris II	60	Nominating and Governance Committee	II
Stephen A. M. Hester	60	Nominating and Governance Committee (Chair)	III
Shirley Ann Jackson	75	Nominating and Governance Committee	III
Janina Kugel	51	Compensation Committee	I
Denis Machuel	57	Audit Committee	I
Rahul N. Merchant	65	Audit Committee	I
Jana Schreuder	63	Compensation Committee (Chair)	II
Martin Schroeter	57	None	III
Howard I. Ungerleider	53	Compensation Committee	II

As previously reported in the Information Statement, effective on November 3, 2021, the following persons were appointed as executive officers of the Company serving in the offices of the Company set forth beside each person's name:

Name	Age	Position(s)
Maryjo Charbonnier	51	Chief Human Resources Officer
Elly Keinan	57	Group President
Vineet Khurana	48	Vice President and Controller
Martin Schroeter	57	Chief Executive Officer
Edward Sebold	56	General Counsel and Secretary
David Wyshner	54	Chief Financial Officer and Treasurer

Information regarding the background of the directors and executive officers of the Company is included in the Information Statement under the caption "Management," on pages 96 through 102, which pages are incorporated herein by reference.

2021 Long-Term Performance Plan and the Kyndryl Excess Plan

The Company has adopted the 2021 Long-Term Performance Plan (the "LTPP"), which became effective as of immediately prior to the Distribution, and the Kyndryl Excess Plan (the "Excess Plan"), which will be effective as of January 1, 2022. Summaries of the LTPP and Excess Plan are included in the Information Statement under the caption "Compensation Discussion and Analysis," on pages 111 through 114, which pages are incorporated herein by reference. The foregoing descriptions of these plans set forth under this Item 5.02 do not purport to be complete and are qualified in their entirety by reference to the full text of such plans, which together with the related forms of awards, are filed as Exhibits 10.9, 10.10, 10.11, 10.12 and 10.13 to this Current Report on Form 8-K, and are incorporated herein by reference.

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

In connection with the Distribution, the Company filed an Amended and Restated Certificate of Incorporation ("Charter") with the Secretary of State of the State of Delaware, which became effective as of 5:00 p.m. Eastern time on November 3, 2021. The Amended and Restated Bylaws of the Company (the "Bylaws") also became effective as of 5:00 p.m. Eastern time on November 3, 2021. The Charter and Bylaws were previously approved by our Board and IBM's board of directors and the Charter was previously approved by IBM as the Company's sole stockholder.

A summary of the material provisions of the Charter and Bylaws can be found in the section titled "Description of Our Capital Stock" on pages 127 through 131 of the Information Statement, which pages are incorporated herein by reference. This summary does not purport to be complete and is qualified in its entirety by reference to the full text of the Charter and Bylaws, which are filed as Exhibits 3.1 and 3.2 to this Current Report on Form 8-K, and incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On November 4, 2021, the Company issued a press release announcing the completion of the Spin-Off from IBM and the beginning of regular-way trading of the Company's common stock on the New York Stock Exchange. The information in this Item 7.01, including the corresponding Exhibit 99.1, is being furnished with the Commission and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
2.1	Separation and Distribution Agreement, dated November 2, 2021, between International Business Machines Corporation and Kyndryl Holdings, Inc.
3.1	Amended and Restated Certificate of Incorporation
3.2	Amended and Restated Bylaws
10.1	Transition Services Agreement, dated as of November 2, 2021, between International Business Machines Corporation and Kyndryl Holdings, Inc. *
10.2	Tax Matters Agreement, dated as of November 2, 2021, between International Business Machines Corporation and Kyndryl Holdings, Inc.
10.3	Employee Matters Agreement, dated as of November 2, 2021, between International Business Machines Corporation and Kyndryl Holdings, Inc.
10.4	Intellectual Property Agreement, dated as of November 2, 2021, between International Business Machines Corporation and Kyndryl, Inc.
10.5	Real Estate Matters Agreement, dated as of November 2, 2021, between International Business Machines Corporation and Kyndryl Holdings, Inc.
10.6	IBM International Client Relationship Agreement, dated as of November 2, 2021, between International Business Machines Corporation and Kyndryl, Inc. *
10.7	Master Subcontracting Framework Agreement, dated as of November 2, 2021, between International Business Machines Corporation and Kyndryl, Inc. *
10.8	Stockholder and Registration Rights Agreement, dated as of November 2, 2021, between International Business Machines Corporation and Kyndryl Holdings, Inc.
10.9	Kyndryl 2021 Long-Term Performance Plan
10.10	Forms of LTPP equity award agreements for (i) stock options, restricted stock, restricted stock units, cash-settled restricted stock units and (ii) retention restricted stock unit awards
10.11	Form of LTPP equity award agreement for performance share units
10.12	Form of Terms and Conditions of LTPP equity award agreements
10.13	Kyndryl Excess Plan
99.1	Press Release, dated November 4, 2021, issued by the Company

* Certain portions of this exhibit have been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K. The Company agrees to furnish supplementally an unredacted copy of the exhibit to the Commission upon its request.

SIGNATURE

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

Date: November 4, 2021

KYNDRYL HOLDINGS, INC.

By: /s/ Edward Sebold
Name: Edward Sebold
Title: General Counsel and Secretary

Exhibit 2.1

Execution Version

SEPARATION AND DISTRIBUTION AGREEMENT

by and between

International Business Machines Corporation

and

Kyndryl Holdings, Inc.

Dated as of November 2, 2021

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Schedules:

SEPARATION AND DISTRIBUTION AGREEMENT, dated as of November 2, 2021, by and between International Business Machines Corporation, a New York corporation ("Parent"), and Kyndryl Holdings, Inc., a Delaware corporation ("SpinCo"). Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to them in Article I.

R E C I T A L S

WHEREAS, the board of directors of Parent has determined that it is in the best interests of Parent and its stockholders to create a new publicly traded company that will operate the SpinCo Business (as defined below);

WHEREAS, in furtherance of the foregoing, the board of directors of Parent has determined that it is appropriate and desirable to effect the Separation Transactions (as defined below);

WHEREAS, pursuant to the Separation Step Plan (as defined below) and the terms of this Agreement (as defined below), among other things (i) Parent (A) has effected or will effect certain restructuring transactions described in the Separation Step Plan for purposes of aggregating the SpinCo Business in the Parent Group (as defined below) prior to the Distribution (as defined below) and in connection therewith (B) will contribute, convey, and otherwise transfer the SpinCo Assets (as defined below) to SpinCo in exchange for (a) the assumption by one or more members of the SpinCo Group (as defined below) of the SpinCo Liabilities (as defined below), (b) the actual or deemed issuance by SpinCo to Parent of SpinCo Common Stock (as defined below), and (c) the SpinCo Debt Proceeds Distribution (as defined below) (collectively, the "Contribution") and (ii) Parent will make the Distribution;

WHEREAS, following the Distribution, Parent may retain up to 19.9% of the outstanding SpinCo Common Stock (the "Retained Stock") and intends to, within 12 months of the Distribution, effect one or more exchanges of the Retained Stock for Parent debt held by Parent creditors, or, if Parent determines that market and general economic conditions and sound business judgment do not support such exchanges, distributions of the Retained Stock to holders of Parent Common Stock as dividends or in exchange for outstanding shares of Parent Common Stock (a "Subsequent Disposition");

WHEREAS, if any portion of the Retained Stock has not been disposed of pursuant to a Subsequent Disposition within the 12-month period, Parent will dispose of such Retained Stock in all events within five years of the Distribution (a "Remaining Disposition");

WHEREAS, SpinCo has been incorporated solely for these purposes and has not engaged in activities except in preparation for the Spin-Off (as defined below);

WHEREAS, Parent and SpinCo have prepared, and SpinCo has filed with the Commission (as defined below), the Form 10 (as defined below), which includes the Information Statement (as defined below) and sets forth appropriate disclosure concerning SpinCo and the Distribution;

WHEREAS, Parent and SpinCo intend (i) that the Spin-Off qualify for its Intended Tax Treatment, (ii) that the other Separation Transactions qualify for the applicable Intended Tax Treatment set forth in a Tax Opinion or IRS Ruling (each as defined below) (or if not so described in a Tax Opinion or IRS Ruling, in the Separation Step Plan (as defined below)) and (iii) for this Agreement to constitute a plan of reorganization within the meaning of Sections 1.368-1(c) and 1.368-2(g) of the Treasury Regulations (as defined below) with respect to the Spin-Off referred to in clause (i) and the applicable steps referred to in clause (ii) and a plan of liquidation within the meaning of Section 332 of the Internal Revenue Code of 1986, as amended, with respect to the applicable steps referred to in clause (ii); and

WHEREAS, it is appropriate and desirable to set forth the principal corporate transactions required to effect the Spin-Off and certain other agreements that will govern certain matters relating to the Spin-Off and the relationship of Parent, SpinCo and their respective Subsidiaries following the Distribution.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, the Parties (as defined below), intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. For the purposes of this Agreement, the following terms shall have the following meanings:

"AAA" has the meaning set forth in Section 11.03.

"Action" means any claim, complaint, petition, hearing, charge, demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority or any federal, state, local, foreign or international court or arbitration or mediation tribunal.

"Adversarial Action" means (i) an Action by a member of the Parent Group, on the one hand, against a member of the SpinCo Group, on the other hand, or (ii) an Action by a member of the SpinCo Group, on the one hand, against a member of the Parent Group, on the other hand.

"Affiliate" of any Person means a Person that controls, is controlled by or is under common control with such Person. As used herein, "control" of any entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such entity, whether through ownership of voting securities or other interests, by Contract or otherwise; provided, however, that (i) SpinCo and the other members of the SpinCo Group shall not be considered Affiliates of Parent or any of the other members of the Parent Group and (ii) Parent and the other members of the Parent Group shall not be considered Affiliates of SpinCo or any of the other members of the SpinCo Group.

"Agent" means the distribution agent appointed by Parent to distribute to the Record Holders, pursuant to the Distribution, the shares of SpinCo Common Stock held by Parent.

"Agreement" means this Separation and Distribution Agreement, including the Schedules hereto.

"Ancillary Agreements" means the TMA, the EMA, the IPA, the PCLA, the REMA, the TSA, the Reverse TSA and any other instruments, assignments, documents and agreements executed in connection with the implementation of the transactions contemplated by this Agreement (including any Real Estate Separation Document, any Local Transfer Agreement and any other agreement or instrument executed by the members of the Parent Group and the SpinCo Group for the purpose of transferring Assets and Liabilities in order to effect the transactions contemplated hereby, but excluding any agreement entered into between one or more members of the Parent Group, on the one hand, and of the SpinCo Group, on the other, governing commercial relationships between the two Groups following the Distribution Date, including those listed on Schedule I).

"Arbitral Tribunal" has the meaning set forth in Section 11.03(a).

"Assets" means all assets, properties and rights of every kind and nature (including goodwill), wherever located (including in the possession of vendors or other third parties or elsewhere), whether real, personal or mixed, tangible or intangible, or accrued 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 any Person, including the following:

(a) accounting and other books, records and files, whether in paper, microfilm, microfiche, computer tape or disc, magnetic tape, electronic recording or any other form;

(b) apparatus, computers and other electronic data processing equipment, fixtures, machinery, furniture, office and other equipment, including hardware systems, circuits and other computer and telecommunication assets and equipment, automobiles, trucks, aircraft, rolling stock, vessels, motor vehicles and other transportation equipment, special and general tools, test devices, prototypes and models and other tangible personal property;

(c) inventories of materials, parts, raw materials, supplies, work-in-process and finished goods and products;

(d) interests in real property of whatever nature, including buildings, land, structures, improvements and fixtures thereon, and easements and rights-of-way appurtenant thereto, and leasehold interests, whether as owner, mortgagee or holder of a Security Interest in real property, lessor, sublessor, lessee, sublessee or otherwise;

(e) interests in any capital stock or other equity interests; bonds, notes, debentures or other securities; loans, advances or other extensions of credit or capital contributions; other investments in securities of any Person; and rights as a partner, joint venturer or participant;

(f) license agreements, leases of personal property, open purchase orders for raw materials, supplies, parts or services, unfilled orders for the manufacture and sale of products and other Contracts and rights arising thereunder;

(g) deposits, letters of credit, performance bonds and other surety bonds;

(h) written technical information, data, specifications, research and development information, engineering drawings, operating and maintenance manuals and materials and analyses prepared by consultants and other third parties;

(i) Intellectual Property, and attorney opinions or reports related thereto concerning freedom-to-practice, technology due diligence and technology landscapes (whether held internally or by external counsel);

(j) Contracts pursuant to which any license, option or similar right relating to Intellectual Property has been granted or the use of Intellectual Property is restricted (excluding, for the avoidance of doubt, contracts terminated pursuant to the terms of this Agreement or any Ancillary Agreement);

(k) websites, databases, content, text, graphics, images, audio, video, data and other copyrightable works or other works of authorship including translations, adaptations, derivations and combinations thereof, in each case to the extent not included in clause (i) of this definition;

(l) cost information, sales and pricing data, customer prospect lists, supplier records, customer and supplier lists, subscriber, customer and vendor data, correspondence and lists, product literature and other advertising and promotional materials, artwork, design, development and manufacturing files, vendor and customer drawings, formulations and specifications, server and traffic logs, quality records and reports and other books, records, studies, surveys, reports, plans, business records and documents, in each case to the extent not included in clause (i) of this definition;

(m) prepaid expenses, trade accounts and other accounts and notes receivable (whether current or non-current);

(n) rights under insurance policies and all rights in the nature of insurance, indemnification or contribution;

(o) licenses (including radio and similar licenses), permits, consents, approvals and authorizations that have been issued by any Governmental Authority and pending applications therefor;

(p) cash, bank accounts, lockboxes and other deposit arrangements;

(q) interest rate, currency, commodity or other swap, collar, cap or other hedging or similar agreements or arrangements; and

(r) goodwill as a going concern and other intangible properties.

"Assumed Actions" has the meaning set forth in Section 6.11(a).

"Business" means the Parent Business or the SpinCo Business, as applicable.

"Cash" means cash, cash equivalents, bank deposits and marketable securities, whether denominated in United States dollars or otherwise.

"Cash Management Arrangements" means all cash management arrangements pursuant to which Parent or its Subsidiaries automatically or manually sweep cash from, or automatically or manually transfer cash to, accounts of SpinCo or any member of the SpinCo Group.

"Commission" means the Securities and Exchange Commission.

"Consents" means any consents, waivers, authorizations, ratifications, permissions, exemptions or approvals from, or notification requirements to, any Person.

"Contract" means any oral or written contract, agreement or other legally binding instrument, including any note, bond, mortgage, deed, indenture, commitment, lease, sublease, license or sublicense or joint venture.

"Contribution" has the meaning set forth in the recitals.

"Credit Support Instruments" has the meaning set forth in Section 3.01(a).

"D&O Policies" has the meaning set forth in Section 8.05.

"Decision on Interim Relief" has the meaning set forth in Section 11.03(d).

"Dispute" has the meaning set forth in Section 11.02.

"Dispute Notice" has the meaning set forth in Section 11.02.

"Distribution" means the distribution by Parent to the Record Holders, on a pro rata basis, of at least 80.1% of the outstanding shares of SpinCo Common Stock held by Parent.

"Distribution Date" means the date, determined by Parent in accordance with Section 5.03, on which the Distribution occurs.

"EMA" means the Employee Matters Agreement dated as of the date of this Agreement by and between Parent and SpinCo.

"Emergency Arbitrator" has the meaning set forth in Section 11.03(d).

"Exchange" means the New York Stock Exchange.

"Exchange Act" means the Securities Exchange Act of 1934, together with the rules and regulations promulgated thereunder.

"Excluded Actions" has the meaning set forth in Section 6.11(b).

"Final Determination" has the meaning set forth in the TMA.

"First Post-Distribution Report" has the meaning set forth in Section 11.12.

"Form 10" means the registration statement on Form 10 filed by SpinCo with the Commission to effect the registration of SpinCo Common Stock pursuant to the Exchange Act in connection with the Distribution, as such registration statement may be amended or supplemented from time to time.

"GAAP" means United States generally accepted accounting principles.

"Governmental Approvals" means any notices, reports or other filings to be given to or made with, or any Consents, registrations or permits to be obtained from, any Governmental Authority.

"Governmental Authority" means any federal, state, local, foreign, international or multinational court, government, quasi-government, department, commission, board, bureau, agency, official or other legislative, judicial, tribunal, commission, regulatory, administrative or governmental authority.

"Group" means either the Parent Group or the SpinCo Group, or both, as the context requires.

"Hazardous Materials" means (i) any natural or artificial substance (whether solid, liquid, gas or other form of matter) that could cause harm to human health through exposure or to the environment, including petroleum, petroleum products and byproducts, asbestos-containing materials, perfluoroalkyl substances, urea formaldehyde foam insulation, carcinogens, endocrine disrupters, lead-based paint, polychlorinated biphenyls, radioactive substances, greenhouse gases and ozone-depleting substances and (ii) any other chemical, material, substance or waste that could result in Liability under, or that is prohibited, limited or regulated by or pursuant to, any HSE Law.

"HSE Law" means any Law or Governmental Approvals, or any standard used by a Governmental Authority pursuant to any Law or Governmental Approvals, relating to (i) pollution, or protection of the environment, natural resources or, with respect to exposure to Hazardous Materials, human health and safety, (ii) the transportation, treatment, storage or Release of, or exposure to, hazardous or toxic materials or (iii) the registration, manufacturing, sale, labeling or distribution of hazardous or toxic materials or products containing such materials.

"HSE Liabilities" means all Liabilities relating to Hazardous Materials or relating to, arising out of or resulting from any applicable HSE Law or Governmental Approvals required or issued thereunder (including in either case any such Liability for corrective actions, removal, remediation or cleanup costs, investigation, monitoring or sampling obligations or costs, response costs, financial assurance obligations or costs, natural resources damages, medical and other costs related to personal injuries, property damage, costs, fines, penalties or other sanctions).

"Indemnifying Party" has the meaning set forth in Section 6.04(a).

"Indemnitee" has the meaning set forth in Section 6.04(a).

"Indemnity Payment" has the meaning set forth in Section 6.04(a).

"Information" means information, whether or not patentable, copyrightable or protectable as a trade secret, in written, oral, electronic or other tangible or intangible forms, stored in any medium now known or yet to be created, including studies, reports, records, books, Contracts, instruments, surveys, analyses, 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 (including those by or to attorneys (whether or not subject to the attorney-client privilege)), memos and other materials (including those prepared by attorneys or under their direction (whether or not constituting attorney work product)) and other technical, financial, employee or business information or data, documents, correspondence, materials and files, in each case excluding any Intellectual Property rights therein.

"Information Statement" means the Information Statement sent to the holders of Parent Common Stock in connection with the Distribution, as such Information Statement may be amended from time to time.

"Insurance Proceeds" means those monies:

(a) received by an insured (or its successor-in-interest) from an insurance carrier;

(b) paid by an insurance carrier on behalf of the insured (or its successor-in-interest); or

(c) received (including by way of setoff) from any third party in the nature of insurance, contribution or indemnification in respect of any Liability;

in any such case net of (i) any applicable premium adjustments (including reserves and retrospectively rated premium adjustments), (ii) any costs or expenses incurred in the collection thereof, (iii) any reimbursement obligations under "fronted" or similar insurance policies and (iv) any Taxes resulting from the receipt thereof.

"Intellectual Property" has the meaning set forth in the IPA.

"Intended Tax Treatment" has the meaning set forth in the TMA.

"Intercompany Accounts" has the meaning set forth in Section 2.03(a).

"Intercompany Agreements" has the meaning set forth in Section 2.03(a).

"Intercompany Deeds" means the deeds (or similar instruments) conveying a fee simple interest (or local equivalent) in real property, together with any applicable transfer tax forms and other documents required under applicable Law, (i) delivered by a member of the Parent Group, as grantor, to a member of the SpinCo Group, as grantee, or (ii) delivered by a member of the SpinCo Group, as grantor, to a member of the Parent Group, as grantee, in each case in accordance with the REMA.

"Intercompany Leases" means the real property leases by and between (i) a member of the Parent Group, as lessor, and a member of the SpinCo Group, as lessee, or (ii) a member of the SpinCo Group, as lessor, and a member of the Parent Group, as lessee, in each case in accordance with the REMA.

"Intercompany Subleases" means the real property subleases (i) by and between a member of the Parent Group, as sublessor, and a member of the SpinCo Group, as sublessee, or (ii) by and between a member of the SpinCo Group, as sublessor, and a member of the Parent Group, as sublessee (if any), in each case in accordance with the REMA.

"Interim Relief" has the meaning set forth in Section 11.03(d).

"Investigation" means any inquiry, investigation, probe, audit or inspection conducted by a member of the Parent Group or the SpinCo Group.

"IPA" means the Intellectual Property Agreement dated as of the date of this Agreement by and between Parent and Kyndryl, Inc.

"IRS Ruling" has the meaning set forth in the TMA.

"Joint Actions" has the meaning set forth in Section 6.11(c).

"Known Counsel" has the meaning set forth in Section 7.10.

"Law" means any statute, law, regulation, ordinance, rule, judgment, rule of common law, order, decree, Governmental Approval, concession, grant, franchise, license, agreement, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereinafter in effect and, in each case, as amended.

"Lease Assignments" means the assignments of real property leases and subleases by and between (i) a member of the Parent Group, as assignor, and a member of the SpinCo Group, as assignee, or (ii) a member of the SpinCo Group, as assignor, and a member of the Parent Group, as assignee (if any), in each case with respect to the properties as set forth on Schedule XII under the caption "Real Estate Separation Agreements."

"Liabilities" means any and all claims, debts, demands, actions, causes of action, suits, damages, fines, penalties, obligations, prohibitions, accruals, accounts payable, bonds, indemnities and similar obligations, agreements, promises, guarantees, make-whole agreements and similar obligations, and other liabilities and requirements, including all contractual obligations, whether absolute or contingent, matured or unmatured, liquidated or unliquidated, accrued or unaccrued, known or unknown, whenever arising, and including those arising under any Law, Action, threatened or contemplated Action or any award of any arbitrator or mediator of any kind, and those arising under any Contract, including those arising under this Agreement or any Ancillary Agreement, 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 any Person. For the avoidance of doubt, Liabilities shall include attorneys' fees, the costs and expenses of all assessments, judgments, settlements and compromises, and any and all other costs and expenses whatsoever reasonably incurred in connection with anything contemplated by the preceding sentence (including costs and expenses incurred in investigating, preparing or defending against any such Actions or threatened or contemplated Actions).

"Local Transfer Agreement" means any agreement entered into for the purpose of effecting the Separation Transactions in accordance with the Laws of an applicable jurisdiction, including those set forth on Schedule XXI.

"Managing Party" has the meaning set forth in Section 6.11(e).

"Mixed Action" means (x) any Action identified on Schedule XVI or (y) any other Action in respect of which an Indemnifying Party may be obligated to provide indemnification pursuant to this Agreement that involves both Parent Assets or Parent Liabilities, on the one hand, and SpinCo Assets or SpinCo Liabilities, on the other hand.

"Negotiation Period" has the meaning set forth in Section 11.02.

"Non-Managing Party" has the meaning set forth in Section 6.11(e).

"PAA" means the Patent Assignment Agreements, entered into by and between Parent and Kyndryl, Inc.

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

"Parent Account" means any bank, brokerage or similar account owned by Parent or any other member of the Parent Group, including the Parent Accounts listed or described on Schedule XI.

"Parent Assets" means (a) all Assets of the Parent Group other than the SpinCo Assets, (b) the Parent Retained Assets, (c) any Assets held by a member of the SpinCo Group that are determined by Parent, in good faith, to be primarily related to or used primarily in connection with the business or operations of the Parent Business (unless otherwise expressly provided in connection with this Agreement or any Ancillary Agreement), (d) all interests in the capital stock of, or other equity interests in, the members of the Parent Group (other than Parent), (e) the rights related to the Parent Portion of any Shared Contract and (f) the Parent IP.

"Parent Business" means the businesses and operations as currently or formerly conducted by Parent and its predecessors and its Subsidiaries other than the SpinCo Business.

"Parent Common Stock" means the common stock, $0.20 par value per share, of Parent.

"Parent Credit Support Instruments" has the meaning set forth in Section 3.01(a).

"Parent Disclosure Sections" means all information set forth in or omitted from the Form 10 or Information Statement to the extent relating to (a) the Parent Group, (b) the Parent Liabilities, (c) the Parent Assets or (d) the substantive disclosure set forth in the Form 10 relating to Parent's board of directors' consideration of the Spin-Off, including the section entitled "Reasons for the Spin-Off."

"Parent Group" means Parent and each of its Subsidiaries, but excluding any member of the SpinCo Group.

"Parent HSE Liabilities" means any HSE Liability, whether occurring or arising prior to, on or after the Distribution Date, to the extent (a) relating to, arising out of or resulting from (i) any compliance or non-compliance with any HSE Law in connection with the operation of the Parent Business or any Parent Asset, (ii) any Release of any Hazardous Material at, on, under, from or to any real property constituting a Parent Asset, (iii) any Release, transportation, storage, disposal, treatment or recycling (or arrangement for such activities) of Hazardous Material in connection with the operation of the Parent Business or (iv) any alleged personal or property exposure to Hazardous Materials (including those contained in any products currently or formerly manufactured, sold, distributed or marketed) in connection with clauses (i) through (iii) or the operation of the Parent Business or any Parent Asset or (b) otherwise relating to, arising out of or resulting from the Parent Business or Parent Asset.

"Parent Indemnitees" has the meaning set forth in Section 6.02.

"Parent IP" has the meaning set forth in the IPA.

"Parent Liabilities" means, without duplication, the following Liabilities:

(a) all Liabilities of the Parent Group other than SpinCo Liabilities;

(b) all Liabilities to the extent relating to, arising out of or resulting from:

(i) the operation or conduct of the Parent Business as conducted at any time prior to the Distribution (including any such Liability to the extent relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority), which act or failure to act relates to the Parent Business);

(ii) the operation or conduct of the Parent Business or any other business conducted by Parent or any other member of the Parent Group at any time after the Distribution (including any such Liability to the extent relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority)); or

(iii) the Parent Assets;

(c) all Liabilities of the Parent Group for accounts payable (including trade payables and employee-related withholding payables), and payables due from the Parent Group relating to or arising out of the Parent Assets, in each case other than any item otherwise covered by clause (c) of the definition of "SpinCo Liabilities";

(d) the Parent Retained Liabilities;

(e) all Parent HSE Liabilities;

(f) any obligations to the extent relating to, arising out of or resulting from the Parent Portion of any Shared Contract;

(g) any Liabilities to the extent they are determined by Parent, in good faith prior to the Distribution, to relate to, arise out of or result from the business or operations of the Parent Business (unless otherwise expressly provided in this Agreement or any Ancillary Agreement); and

(h) all Liabilities to the extent relating to, arising out of or resulting from 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 the Parent Disclosure Sections.

Notwithstanding the foregoing, the Parent Liabilities shall not include the SpinCo Liabilities.

"Parent Policy Pre-Separation Insurance Claim" means any (a) claim made against the SpinCo Group or Parent Group and reported to the applicable insurer(s) prior to the Distribution Date in respect of an act or omission occurring prior to the Distribution Date that results in a Liability under a "claims-made-based" insurance policy of the Parent Group in effect prior to the Distribution Date or any extended reporting period thereof or (b) Action (whether made prior to, on or following the Distribution Date) in respect of a Liability occurring prior to the Distribution Date under an "occurrence-based" insurance policy of any member of the Parent Group in effect prior to the Distribution Date; provided, that with respect to director's and officer's liability, fiduciary liability, employment practice liability, wage and hour, professional errors and omissions or crime insurance policies, no claim made against the SpinCo Group or the Parent Group and reported to the applicable insurer(s) after the Distribution Date shall constitute a Parent Policy Pre-Separation Insurance Claim hereunder.

"Parent Portion" has the meaning set forth in Section 2.04(a).

"Parent Retained Assets" means the Assets to be retained by the Parent Group as set forth on Schedule III.

"Parent Retained Liabilities" means the Liabilities to be retained by the Parent Group as set forth on Schedule IV.

"Party" means either party hereto, and "Parties" means both parties hereto.

"PCLA" means the Patent Cross License Agreement dated as of the date of this Agreement by and between Parent and Kyndryl, Inc.

"Person" means an individual, a general or limited partnership, a corporation, an association, a trust, a joint venture, an unincorporated organization, a limited liability company, any other entity and any Governmental Authority.

"Real Estate Separation Documents" means the Intercompany Deeds, the Intercompany Leases, the Intercompany Subleases, the Lease Assignments and the Split Leases (as such term is defined in the REMA).

"Record Date" means the close of business on the date determined by the Parent board of directors as the record date for determining the shares of Parent Common Stock in respect of which shares of SpinCo Common Stock will be distributed pursuant to the Distribution.

"Record Holders" has the meaning set forth in Section 5.01(b).

"Release" means any actual or threatened release, spill, emission, discharge, flow, leaking, pumping, pouring, dumping, injection, deposit, disposal, dispersal, leaching or migration into or through the indoor or outdoor environment.

"REMA" means the Real Estate Matters Agreement dated as of the date of this Agreement by and between Parent and SpinCo.

"Remaining Distribution" has the meaning set forth in the Recitals.

"Representation Letters" has the meaning set forth in the TMA.

"Representative" has the meaning set forth in Section 7.09(a).

"Retained Stock" has the meaning set forth in the Recitals.

"Reverse TSA" means the Transition Services Agreement dated as of the date of this Agreement between Parent and SpinCo, providing for the provision of certain services to Parent.

"Rules" has the meaning set forth in Section 11.03.

"Security Interest" means 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 Step Plan" means the global step plan setting forth the specific transactions undertaken in anticipation and in furtherance of the Spin-Off, attached as Schedule II hereto, as subsequently adjusted or revised by the Parties (including to set forth the Intended Tax Treatment of relevant transactions).

"Separation Transactions" means the Contribution, the Distribution and the other transactions contemplated by this Agreement and the Separation Step Plan.

"Shared Contract" means any Contract of any member of either Group with a third party that relates in any material respect to both the SpinCo Business and the Parent Business, in each case that is set forth on Schedule IX.

"Specified Confidential Information" has the meaning set forth in Section 7.09(a).

"Spin-Off" means the Contribution and the Distribution, taken together.

"SpinCo" has the meaning set forth in the preamble.

"SpinCo Account" means any bank, brokerage or similar account owned by SpinCo or any other member of the SpinCo Group, including the SpinCo Accounts listed or described on Schedule X.

"SpinCo Assets" means, without duplication, the following Assets:

(a) all Assets (other than Intellectual Property, Joint Venture Agreements, SpinCo Joint Venture Interests or other equity interests) of Parent and its Subsidiaries that relate exclusively to the SpinCo Business;

(b) all Assets (other than Intellectual Property) held by the SpinCo Group as of immediately before the Distribution; provided that, with respect to Transferred SpinCo Group Members, no Asset will be a SpinCo Asset solely by virtue of this clause (b);

(c) all interests in the capital stock of, or other equity interests in, the members of the SpinCo Group (other than SpinCo) and all other equity, partnership, membership, joint venture and similar interests set forth on Schedule V under the captions "SpinCo Joint Ventures Interests," "Other Equity Interests," or "Subsidiaries," as applicable;

(d) accounts receivable (other than intercompany accounts receivable between members of the Parent Group and/or any other Affiliate of Parent), inventory and other current assets that relate exclusively to the SpinCo Business;

(e) the Assets listed or described on Schedule VI;

(f) the SpinCo Contracts;

(g) the rights related to the SpinCo Portion of any Shared Contract;

(h) the SpinCo Real Property;

(i) the SpinCo IP;

(j) office equipment, trade fixtures and furnishings located at SpinCo Real Property (in each case excluding any office equipment, trade fixtures and furnishings owned by Persons other than Parent and its Subsidiaries and/or scheduled as excluded property under any Real Estate Separation Document); provided that personal computers and other personal equipment shall be retained by the Group that, following the Distribution, retains the services of the applicable individual who, prior to the Distribution, used such personal computer or other personal equipment;

(k) all claims or rights against any Person, all Actions, judgments or similar rights, all rights under express or implied warranties, all rights of recovery and all rights of setoff of any kind and demands of any nature, in each case whether accrued or contingent, whether in tort, contract or otherwise and whether arising by way of counterclaim or otherwise, in each case exclusively arising from the ownership of any SpinCo Asset; and

(l) all other Assets that are expressly provided by this Agreement or any Ancillary Agreement as Assets to be assigned to or retained by, or allocated to, any member of the SpinCo Group.

Notwithstanding the foregoing, the SpinCo Assets shall not include (i) any Parent Retained Assets; (ii) any Assets that are determined by Parent, in good faith prior to the Distribution, to primarily relate to or to be used primarily in the business or operations of the Parent Business (unless otherwise expressly provided in this Agreement or any Ancillary Agreement); or (iii) any Intellectual Property other than SpinCo IP.

"SpinCo Business" means the business of the Managed Infrastructure Services unit of Parent's Global Technology Services (GTS) segment, including the Security, Regulatory and Risk Management Services and the Identity Management Services offerings of the Security Services unit of Parent's Cloud & Cognitive Software segment, but excluding the Public Cloud Platform offering of the Managed Infrastructure Services unit, in each case as such business has been conducted prior to the Distribution.

"SpinCo Common Stock" means the common stock, $0.01 par value per share, of SpinCo.

"SpinCo Contracts" means the following Contracts to which Parent or any of its Subsidiaries is a party or by which Parent or any of its Subsidiaries or any of their respective Assets is bound, whether or not in writing, in each case, immediately prior to the Distribution, except for any such Contract or part thereof that is expressly contemplated to be assigned to or retained by, or allocated to, any member of the Parent Group pursuant to any provision of this Agreement or any other Ancillary Agreement:

(a) (i) any Contract listed or described on Schedule VI(a)(i) and (ii) any other Contract (other than any joint venture agreement) that relates exclusively to the SpinCo Business;

(b) the SpinCo Joint Venture Agreements; and

(c) any Contract or part thereof that is otherwise expressly contemplated pursuant to this Agreement or any of the other Ancillary Agreements to be assigned to or retained by, or allocated to, any member of the SpinCo Group.

"SpinCo Credit Support Instruments" has the meaning set forth in Section 3.02(a).

"SpinCo Debt Proceeds Distribution" means the distribution by SpinCo to Parent of all or a portion of the net proceeds from SpinCo's issuance of debt securities and/or incurrence of term loans.

"SpinCo Group" means (a) SpinCo, (b) each Person that will be a Subsidiary of SpinCo immediately prior to the Distribution, including the entities set forth on Schedule V under the caption "Subsidiaries" and (c) each Person that becomes a Subsidiary of SpinCo after the Distribution, including in each case any Person that is merged or consolidated with or into SpinCo or any Subsidiary of SpinCo.

"SpinCo HSE Liabilities" means any HSE Liability, whether occurring or arising prior to, on or after the Distribution Date, (x) of the SpinCo Group or (y) to the extent (a) relating to, arising out of or resulting from (i) any compliance or non-compliance with any HSE Law in connection with the operation of the SpinCo Business or any SpinCo Real Property, (ii) any Release of any Hazardous Material at, on, under, from or to any SpinCo Real Properties, (iii) any Release, transportation, storage, disposal, treatment or recycling (or arrangement for such activities) of Hazardous Material in connection with the operation of the SpinCo Business or (iv) any exposure to Hazardous Materials with respect to clauses (i) through (iii) or otherwise in connection with the SpinCo Business or any SpinCo Asset or (b) otherwise relating to, arising out of or resulting from the SpinCo Business or any SpinCo Asset.

"SpinCo Indemnitees" has the meaning set forth in Section 6.03.

"SpinCo IP" has the meaning set forth in the IPA.

"SpinCo Joint Venture Agreements" means those Contracts governing the rights and obligations associated with the ownership of the SpinCo Joint Venture Interests.

"SpinCo Joint Venture Interests" means the equity interests in joint ventures identified as SpinCo Joint Venture Interests on Schedule V.

"SpinCo Liabilities" means, without duplication, the following Liabilities:

(a) all Liabilities of the SpinCo Group; provided that, with respect to Transferred SpinCo Group Members, no Liability will be a SpinCo Liability solely by virtue of this clause (a);

(b) all Liabilities to the extent relating to, arising out of or resulting from:

(i) the operation or conduct of the SpinCo Business as conducted at any time prior to the Distribution (including any such Liability to the extent relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority), which act or failure to act relates to the SpinCo Business);

(ii) the operation or conduct of the SpinCo Business or any other business conducted by SpinCo or any other member of the SpinCo Group at any time after the Distribution (including any such Liability to the extent relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority)); or

(iii) the SpinCo Assets;

(c) accounts payable (other than intercompany accounts payable between members of the Parent Group and/or any other Affiliate of Parent) and other current Liabilities that relate exclusively to the SpinCo Business;

(d) all SpinCo HSE Liabilities;

(e) the Liabilities listed or described on Schedule VII;

(f) any obligations to the extent arising from the SpinCo Portion of any Shared Contract;

(g) all other Liabilities that are expressly provided by this Agreement or any Ancillary Agreement as Liabilities to be assumed or retained by, or allocated to, any member of the SpinCo Group; and

(h) all Liabilities to the extent relating to, arising out of or resulting from 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, or incorporated by reference into, the Form 10 and any other documents filed with the Commission in connection with the Spin-Off or as contemplated by this Agreement, other than with respect to the Parent Disclosure Sections.

Notwithstanding the foregoing, the SpinCo Liabilities shall not include any Parent Retained Liabilities.

"SpinCo Portion" has the meaning set forth in Section 2.04(a).

"SpinCo Real Property" means the real property and real property interests identified on Schedule VIII, and any fixtures or appurtenances associated therewith.

"Subsequent Disposition" has the meaning set forth in the Recitals.

"Subsidiary" of any Person means any corporation or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization, is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

"Tax" or "Taxes" has the meaning set forth in the TMA.

"Tax Opinion" has the meaning set forth in the TMA.

"Third-Party Claim" means any written 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 the commencement by any such Person, of any Action, against any member of the Parent Group or the SpinCo Group.

"Third-Party Proceeds" has the meaning set forth in Section 6.04(a).

"TMA" means the Tax Matters Agreement dated as of the date of this Agreement by and between Parent and SpinCo.

"Transferred SpinCo Group Member" means any member of the SpinCo Group that was not formed in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

"Treasury Regulations" has the meaning set forth in the TMA.

"TSA" means the Transition Services Agreement dated as of the date of this Agreement between Parent and SpinCo, providing for the provision of certain services to SpinCo.

ARTICLE II

THE SEPARATION

Section 2.01 Transfer of Assets and Assumption of Liabilities.

(a) In accordance with, and in the manner contemplated by, the Separation Step Plan and to the extent not effected prior to the date of this Agreement, subject to Section 2.01(d), prior to the Distribution, the Parties shall, and shall cause their respective Group members to, execute such instruments of assignment or transfer and take such other corporate actions as are necessary to:

(i) transfer and convey to one or more members of the SpinCo Group all of the right, title and interest of the Parent Group in, to and under all SpinCo Assets not already owned by the SpinCo Group;

(ii) transfer and convey to one or more members of the Parent Group all of the right, title and interest of the SpinCo Group in, to and under all Parent Assets not already owned by the Parent Group;

(iii) cause one or more members of the SpinCo Group to assume all of the SpinCo Liabilities to the extent such Liabilities would otherwise remain obligations of any member of the Parent Group; and

(iv) cause one or more members of the Parent Group to assume all of the Parent Liabilities to the extent such Liabilities would otherwise remain obligations of any member of the SpinCo Group.

Notwithstanding anything to the contrary, neither Party shall be required to transfer any Information except as required by Article VII, any Ancillary Agreement or any insurance policies (which are the subject of Article VIII).

(b) In the event that it is discovered in the twelve (12) month period after the Distribution that there was an omission of (i) the transfer or conveyance by SpinCo (or a member of the SpinCo Group) to, or the acceptance or assumption by, Parent (or a member of the Parent Group) of any Parent Asset or Parent Liability, as the case may be or (ii) the transfer or conveyance by Parent (or a member of the Parent Group) to, or the acceptance or assumption by, SpinCo (or a member of the SpinCo Group) of any SpinCo Asset or SpinCo Liability, as the case may be, the Parties shall use reasonable best efforts to promptly effect such transfer, conveyance, acceptance or assumption of such Asset or Liability, as the case may be. Any transfer, conveyance, acceptance or assumption made pursuant to this Section 2.01(b) shall be treated by the Parties for all purposes as if it had occurred prior to the Distribution, except as otherwise required by applicable Law or a Final Determination.

(c) In the event that it is discovered in the twelve (12) month period after the Distribution that there was a transfer or conveyance (i) by SpinCo (or a member of the SpinCo Group) to, or the acceptance or assumption by, Parent (or a member of the Parent Group) of any SpinCo Asset or SpinCo Liability, as the case may be, or (ii) by Parent (or a member of the Parent Group) to, or the acceptance or assumption by, SpinCo (or a member of the SpinCo Group) of any Parent Asset or Parent Liability, as the case may be, the Parties shall use reasonable best efforts to promptly transfer or convey such Asset or Liability back to the transferring or conveying Party or to rescind any acceptance or assumption of such Asset or Liability, as the case may be. Any transfer or conveyance made or acceptance or assumption rescinded pursuant to this Section 2.01(c) shall be treated by the Parties for all purposes as if such Asset or Liability had never been originally transferred, conveyed, accepted or assumed, as the case may be, except as otherwise required by applicable Law or a Final Determination.

(d) To the extent that any transfer or conveyance of any Asset (other than Shared Contracts, which are governed solely by Section 2.04; or the fee interests (or local equivalent), leasehold interests, subleasehold interests or other real property interests under the Real Estate Separation Documents, which are governed by the REMA); or acceptance or assumption of any Liability (other than Shared Contracts, which are governed solely by Section 2.04; or the fee interests (or local equivalent), leasehold interests, subleasehold interests or other real property interests under the Real Estate Separation Documents, which are governed by the REMA) required by this Agreement to be so transferred, conveyed, accepted or assumed shall not have been completed prior to the Distribution during the 12-month period following the Distribution, the Parties shall use reasonable best efforts to effect such transfer, conveyance, acceptance or assumption as promptly following the Distribution as shall be practicable. Nothing in this Agreement shall be deemed to require the transfer or conveyance of any Assets or the acceptance or assumption of any Liabilities which by their respective terms (or the terms of any Contract relating to such Asset or Liability) or operation of Law cannot be so transferred, conveyed, accepted or assumed; provided, however, that the Parties shall use reasonable best efforts to obtain any necessary Governmental Approvals and other Consents for the transfer, conveyance, acceptance or assumption (as applicable) of all Assets and Liabilities required by this Agreement to be so transferred, conveyed, accepted or assumed; provided, further, that neither Party nor any member of its Group shall be required to contribute capital, pay or grant any consideration or concession in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Person in order to cause such Governmental Approval or other Consent to be obtained (other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, all of which shall be reimbursed by the Party or the member of the Party's Group entitled to such Asset or intended to assume such Liability, as applicable, as promptly as reasonably practicable). In the event that any such transfer, conveyance, acceptance or assumption (as applicable) has not been completed effective as of the Distribution, the Party retaining such Asset or Liability (or the member of the Party's Group retaining such Asset or Liability) shall thereafter hold such Asset for the use and benefit of the Party entitled thereto (at the expense of the Party entitled thereto) and retain such Liability for the account, and at the expense, of the Party by whom such Liability should have been assumed or accepted pursuant to this Agreement, and take such other actions as may be reasonably requested by the Party to which (or to the Group of which) such Asset should have been transferred or conveyed, or by whom (or by the Group of whom) such Liability should have been assumed or accepted, as the case may be, in order to place such Party or the member of its Group, insofar as reasonably possible, in the same position as would have existed had such Asset or Liability been transferred, conveyed, accepted or assumed (as applicable) as and when contemplated by this Agreement, including in respect of possession, use, risk of loss, potential for gain and control over such Asset or Liability, as the case may be. As and when any such Asset or Liability becomes transferable or assumable, as the case may be, each Party shall, and shall cause the members of its Group to, use reasonable best efforts to promptly effect such transfer, conveyance, acceptance or assumption (as applicable). Any transfer, conveyance, acceptance or assumption made pursuant to this Section 2.01(d) shall be treated by the Parties for all purposes as if it had occurred immediately prior to the Distribution, except as otherwise required by applicable Law or a Final Determination.

(e) The Party retaining any Asset or Liability due to the deferral of the transfer and conveyance of such Asset or the deferral of the acceptance and assumption of such Liability pursuant to this Section 2.01 or otherwise shall not be obligated by this Agreement, in connection with this Section 2.01, to expend any money or take any action that would require the expenditure of money unless and to the extent the Party or the member of the Party's Group entitled to receive such Asset or intended to assume such Liability, as applicable, advances or agrees to reimburse it for the applicable expenditures.

(f) Without limiting any other provision hereof, each of Parent and SpinCo will take, and will cause each member of its respective Group to take, such actions as are reasonably necessary to consummate the transactions contemplated by the Separation Step Plan (whether prior to, at or after the Distribution). The Parties agree that the steps described in the Separation Step Plan shall be effected in the order and manner prescribed in the Separation Step Plan.

(g) In the event that Parent determines to seek novation with respect to any SpinCo Liability, SpinCo shall reasonably cooperate with, and shall cause the members of the SpinCo Group to reasonably cooperate with, Parent and the members of the Parent Group (including, where necessary, entering into appropriate instruments of assumption and, where necessary, SpinCo providing parent guarantees in support of the obligations of other members of the SpinCo Group) to cause such novation to be obtained, on terms reasonably acceptable to SpinCo, and to have Parent and the members of the Parent Group released from all liability to third parties arising after the date of such novation and, in the event SpinCo determines to seek novation with respect to any Parent Liability, Parent shall reasonably cooperate with, and shall cause the members of the Parent Group to reasonably cooperate with, SpinCo and the members of the SpinCo Group (including, where necessary, entering into appropriate instruments of assumption and, where necessary, Parent providing parent guarantees in support of the obligations of other members of the Parent Group) to cause such novation to be obtained, on terms reasonably acceptable to Parent, and to have SpinCo and the members of the SpinCo Group released from all liability to third parties arising after the date of such novation; provided that neither Party nor any member of its Group shall be required to contribute capital, pay or grant any consideration or concession in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Person in order to cause such novation to be obtained (other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, all of which shall be reimbursed by the Party or the member of the Party's Group entitled to such Asset or intended to assume such Liability, as applicable, as promptly as reasonably practicable).

Section 2.02 Certain Matters Governed Exclusively by Ancillary Agreements. Each of Parent and SpinCo agrees on behalf of itself and the members of its Group that, except as explicitly provided in this Agreement or any Ancillary Agreement (including clause (l) of the definition of SpinCo Assets and clause (g) of the definition of SpinCo Liabilities), (a) the TMA shall exclusively govern all matters relating to Taxes between such parties (except to the extent that tax matters relating to employee and employee benefits-related matters are addressed in the EMA), (b) the EMA shall exclusively govern the allocation of Assets and Liabilities related to employee and employee compensation and benefits-related matters, including the outstanding awards (equity- and cash-based) under existing equity plans with respect to employees and former employees of members of both the Parent Group and the SpinCo Group (except to the extent that employee compensation and benefits-related reimbursements are addressed in the TSA or the Reverse TSA), (c) the IPA, PAA and other Intellectual Property assignment agreements shall exclusively govern the recordation of the transfers of any registrations or applications of Parent IP and SpinCo IP that is allocated hereunder, as applicable, and the use and licensing of certain Intellectual Property identified therein between members of the Parent Group and members of the SpinCo Group, (d) the PCLA and PAA shall exclusively govern all matters relating to the use and licensing of certain patents identified therein between members of the Parent Group and the SpinCo Group, (e) the TTMA shall exclusively govern all matters relating to the use and licensing of certain trademarks identified therein between members of the Parent Group and the SpinCo Group, (f) the TSA and the Reverse TSA shall exclusively govern all matters relating to the provision of certain services identified therein to be provided by each Party to the other on a transitional basis following the Distribution, and (g) the REMA shall exclusively govern all matters relating to the Real Estate Separation Documents, including the allocation and transfer of interests in real property. Except as set forth in this Section 2.02, in the event and to the extent that there shall be a conflict between the provisions of this Agreement and the provisions of any Ancillary Agreement, the provisions of this Agreement shall control (unless this Agreement or the Ancillary Agreement explicitly provides otherwise).

Section 2.03 Termination of Agreements.

(a) Except as set forth in Section 2.03(b) or Section 2.03(c) or as otherwise provided by the Separation Step Plan, in furtherance of the releases and other provisions of Section 6.01, effective as of the Distribution, SpinCo and each other member of the SpinCo Group, on the one hand, and Parent and each other member of the Parent Group, on the other hand, hereby terminate any and all Contracts, arrangements, commitments and understandings, oral or written between such parties and in existence as of the Distribution Date ("Intercompany Agreements"), including all intercompany accounts payable or accounts receivable in effect or accrued as of the Distribution Date ("Intercompany Accounts"). No such terminated Intercompany Agreement or Intercompany Account (including any provision thereof that purports to survive termination) shall be of any further force or effect after the Distribution Date. 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. The Parties, on behalf of the members of their respective Groups, hereby waive any advance notice provision or other termination requirements with respect to any Intercompany Agreement.

(b) The provisions of Section 2.03(a) and Section 2.03(c) shall not apply to any of the following Intercompany Agreements or Intercompany Accounts (or to any of the provisions thereof): (i) this Agreement and the Ancillary Agreements (and each other Intercompany Agreement or Intercompany Account expressly contemplated by this Agreement or any Ancillary Agreement to be entered into by either Party or any other member of its Group, including any Real Estate Separation Document and any Local Transfer Agreement or created by any Ancillary Agreement); (ii) any Intercompany Agreements to which any third party is a party, including any Shared Contracts; (iii) any other Intercompany Agreements or Intercompany Accounts created by any Ancillary Agreement or that this Agreement, any Ancillary Agreement or such Intercompany Agreement expressly contemplates will survive the Distribution Date; (iv) any Intercompany Agreement entered into in connection with the transactions contemplated hereby for the purpose of surviving the Distribution and governing commercial matters between Parent Group and the SpinCo Group following the Distribution; and (v) those Intercompany Agreements and Intercompany Accounts set forth on Schedule XIII.

(c) In connection with the termination of Intercompany Accounts described in Section 2.03(a), each of Parent and SpinCo shall cause each Intercompany Account between a member of the SpinCo Group, on the one hand, and a member of the Parent Group, on the other hand, outstanding as of the close of business on the business day immediately prior to the date of the Distribution to be settled in the manner provided on Schedule XX.

(d)

(i) Parent and SpinCo each agree to take, or cause the respective members of their respective Groups to take, prior to the Distribution (or as promptly as reasonably practicable thereafter), all actions necessary to amend all contracts or agreements governing (x) the Parent Accounts so that such Parent Accounts, if linked (whether by automatic withdrawal, automatic deposit or any other authorization to transfer funds from or to, hereinafter "linked") to any SpinCo Account, are de-linked from such SpinCo Accounts and (y) the SpinCo Accounts so that such SpinCo Accounts, if linked to any Parent Account, are de-linked from such Parent Accounts.

(ii) With respect to any outstanding checks issued by, or payments made by, Parent, SpinCo or any of their respective Subsidiaries prior to the Distribution, such outstanding checks shall be honored from and after the Distribution by the Person or Group owning the account on which the check is drawn, without limiting the ultimate allocation of Liability for such amounts under this Agreement or any Ancillary Agreement.

(iii) As between Parent and SpinCo (and the members of their respective Groups), except to the extent prohibited by applicable Law or a Final Determination, all payments and reimbursements received after the Distribution by either Party (or a member of its Group) to which the other Party (or a member of its Group) is entitled under this Agreement, shall be held by such Party (or the applicable member of its Group) in trust for the use and benefit of the Person entitled thereto and, within sixty (60) days of receipt by such Party (or the applicable member of its Group) of any such payment or reimbursement, such Party shall pay over, or shall cause the applicable member of its Group to pay over to the other Party (or the applicable member of its Group), the amount of such payment or reimbursement without right of setoff unless otherwise determined by Parent and SpinCo (or the applicable members of each of their respective Groups).

(e) The Parties shall take the actions set forth on Schedule XXIV.

Section 2.04 Shared Contracts.

(a) Except as set forth on Schedule IX, the Parties shall, and shall cause the members of their respective Groups to, use their respective reasonable best efforts to work together in an effort to divide, partially assign, modify or replicate (in whole or in part) the respective rights and obligations under and in respect of any Shared Contract, such that (i) a member of the SpinCo Group is the beneficiary of the rights and is responsible for the obligations related to that portion of such Shared Contract relating to the SpinCo Business (the "SpinCo Portion"), which rights shall be a SpinCo Asset and which obligations shall be a SpinCo Liability, and (ii) a member of the Parent Group is the beneficiary of the rights and is responsible for the obligations related to such Shared Contract not relating to the SpinCo Business (the "Parent Portion"), which rights shall be a Parent Asset and which obligations shall be a Parent Liability. Nothing in this Agreement shall require the division, partial assignment, modification or replication of a Shared Contract unless and until any necessary Consents are obtained or made, as applicable. If the Parties, or their respective Group members, as applicable, are not able to enter into an arrangement to formally divide, partially assign, modify or replicate such Shared Contract prior to the Distribution as contemplated by the previous sentence, and subject to the other provisions of this Section 2.04, then the Parties shall, and shall cause their respective Group members to, cooperate in any reasonable and permissible arrangement as determined by Parent to provide that, following the Distribution, a member of the SpinCo Group shall receive the interest in the benefits and obligations of the SpinCo Portion under such Shared Contract and a member of the Parent Group shall receive the interest in the benefits and obligations of the Parent Portion under such Shared Contract, it being understood that no Party shall have Liability to the other Party for the failure of any third party to perform its obligations under any such Shared Contract.

(b) Nothing in this Section 2.04 shall require either Party or any member of each of their respective Groups to contribute capital, pay or grant any consideration or concession in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Person (other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, all of which shall be reimbursed by the Party or the member of the Party's Group entitled to such Asset or intended to assume such Liability, as applicable, as promptly as reasonably practicable). For the avoidance of doubt, reasonable out-of-pocket expenses and recording or similar fees shall not include any purchase price, license fee, or other payment or compensation for the procurement of any asset secured to replace an Asset in the course of a Party's obligation under Section 2.04(a).

Section 2.05 Disclaimer of Representations and Warranties. Each of Parent (on behalf of itself and each other member of the Parent Group) and SpinCo (on behalf of itself and each other member of the SpinCo Group) understands and agrees that, except as expressly set forth in this Agreement, in any Ancillary Agreement or in the Representation Letters, no party to this Agreement, any Ancillary Agreement or any other agreement or document contemplated by this Agreement or any Ancillary Agreement is representing or warranting in any way as to any Assets or Liabilities transferred or assumed as contemplated hereby or thereby, as to the sufficiency of the Assets or Liabilities transferred or assumed hereby or thereby for the conduct and operations of the SpinCo Business or the Parent Business, as applicable, as to any Governmental Approvals or other Consents required in connection therewith or in connection with any past transfers of the Assets or assumptions of the Liabilities, as to the value or freedom from any Security Interests of, or any other matter concerning, any Assets or Liabilities of such party, or as to the absence of any defenses or rights of setoff or freedom from counterclaim with respect to any claim or other Asset, including any accounts receivable, of any such party, or as to 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, and each of Parent (on behalf of itself and each other member of the Parent Group) and SpinCo (on behalf of itself and each other member of the SpinCo Group) has relied only on the representations and warranties expressly contained in Section 11.01(c), in any Ancillary Agreement or in the Representation Letters. Except as may expressly be set forth herein or in any Ancillary Agreement, any such Assets are being transferred on an "as is," "where is" basis and the respective transferees shall bear the economic and legal risks that (a) any conveyance shall prove to be insufficient to vest in the transferee good and marketable title, free and clear of any Security Interest and (b) any necessary Governmental Approvals or other Consents are not obtained or that any requirements of Laws or judgments are not complied with. To the extent any Local Transfer Agreement has included representations, warranties, covenants, indemnities or other provisions inconsistent with the purpose of this Section 2.05, each of SpinCo, on behalf of itself and the SpinCo Group, and Parent, on behalf of itself and the Parent Group, hereby waives and agrees not to enforce such provisions.

Section 2.06 Waiver of Bulk-Sale and Bulk-Transfer Laws. 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. 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.

ARTICLE III

CREDIT SUPPORT

Section 3.01 Replacement of Parent Credit Support.

(a) SpinCo shall use reasonable best efforts to arrange, at its sole cost and expense and effective on or prior to the Distribution Date, the termination or replacement of all guarantees, covenants, indemnities, surety bonds, letters of credit or similar assurances of credit support ("Credit Support Instruments") provided by, through or on behalf of Parent or any other member of the Parent Group for the benefit of SpinCo or any other member of the SpinCo Group or providing credit support for a SpinCo Contract ("Parent Credit Support Instruments"), with alternate arrangements that do not require any credit support from Parent or any other member of the Parent Group, and shall use reasonable best efforts to obtain from the beneficiaries of such Credit Support Instruments written releases (which in the case of a letter of credit or bank guarantee would be effective upon surrender of the original Parent Credit Support Instrument to the originating bank and such bank's confirmation to Parent of cancelation thereof) indicating that Parent or such other member of the Parent Group will, effective upon the consummation of the Distribution, have no liability with respect to such Credit Support Instruments, in each case, reasonably satisfactory to Parent.

(b) In furtherance of Section 3.01(a), to the extent required to obtain a removal or release from a Parent Credit Support Instrument, SpinCo or an appropriate member of the SpinCo Group shall execute an agreement substantially in the form of such existing Parent Credit Support Instrument or such other form as is agreed to by the relevant parties to such agreement, except to the extent that such existing Parent Credit Support Instrument contains representations, covenants or other terms or provisions (i) with which SpinCo or the appropriate member of the SpinCo Group would be reasonably unable to comply or (ii) which would be reasonably expected to be breached by SpinCo or the appropriate member of the SpinCo Group.

(c) If SpinCo is unable to obtain, or to cause to be obtained, all releases from Parent Credit Support Instruments pursuant to Sections 3.01(a) and 3.01(b) on or prior to the Distribution, (i) without limiting SpinCo's obligations under Article VI, SpinCo shall cause the relevant member of the SpinCo Group that has assumed the Liability with respect to such Parent Credit Support Instrument to indemnify and hold harmless the guarantor or obligor for any Liability arising out of, resulting from or relating thereto in accordance with the provisions of Article VI and, as agent or subcontractor for such guarantor or obligor, to pay, perform and discharge fully all the obligations or other Liabilities of such guarantor or obligor thereunder and (ii) with respect to such Credit Support Instruments that are in the form of a letter of credit or bank guarantee, SpinCo shall provide Parent with letters of credit or guarantees, in each case issued by a bank reasonably acceptable to Parent, against losses arising from all such Credit Support Instruments or, if Parent agrees in writing, cash collateralize the full amount of any outstanding Credit Support Instrument with respect to which such release has not been obtained and (iii) except as set forth on Schedule XIV, with respect to such Credit Support Instrument, each of Parent and SpinCo, on behalf of themselves and the members of each of their respective Groups, agree, except as otherwise expressly required by the terms of a Contract with a third party in effect as of the Distribution, not to renew or extend the term of, increase its obligations under or transfer to a third Person, any loan, guarantee, lease, sublease, license, Contract or other obligation for which the other Party or any member of the other Party's Group is or may be liable under such Credit Support Instrument unless all obligations of the other Party and the other members of the other Party's Group with respect thereto are thereupon terminated by documentation reasonably satisfactory in form and substance to the other Party.

(d) Notwithstanding anything to the contrary in this Section 3.01, the Parent Credit Support Instruments listed on Schedule XIV shall be addressed in the manner provided on such Schedule XIV.

Section 3.02 Replacement of SpinCo Credit Support.

(a) Parent shall use reasonable best efforts to arrange, at its sole cost and expense and effective on or prior to the Distribution Date, the termination or replacement of all Credit Support Instruments provided by, through or on behalf of SpinCo or any other member of the SpinCo Group for the benefit of Parent or any other member of the Parent Group or providing credit support for a Contract of Parent or its Subsidiary other than a SpinCo Contract ("SpinCo Credit Support Instruments"), with alternate arrangements that do not require any credit support from SpinCo or any other member of the SpinCo Group, and shall use reasonable best efforts to obtain from the beneficiaries of such Credit Support Instruments written releases (which in the case of a letter of credit or bank guarantee would be effective upon surrender of the original SpinCo Credit Support Instrument to the originating bank and such bank's confirmation to SpinCo of cancelation thereof) indicating that SpinCo or such other member of the SpinCo Group will, effective upon the consummation of the Distribution, have no liability with respect to such Credit Support Instruments, in each case reasonably satisfactory to SpinCo.

(b) In furtherance of Section 3.02(a), to the extent required to obtain a removal or release from a SpinCo Credit Support Instrument, Parent or an appropriate member of the Parent Group shall execute an agreement substantially in the form of the existing SpinCo Credit Support Instrument or such other form as is agreed to by the relevant parties to such agreement, except to the extent that such existing SpinCo Credit Support Instrument contains representations, covenants or other terms or provisions (i) with which Parent or the appropriate member of the Parent Group would be reasonably unable to comply or (ii) which would be reasonably expected to be breached by Parent or the appropriate member of the Parent Group.

(c) If Parent is unable to obtain, or to cause to be obtained, all releases from SpinCo Credit Support Instruments pursuant to Sections 3.02(a) and 3.02(b) on or prior to the Distribution, (i) without limiting Parent's obligations under Article VI, Parent shall cause the relevant member of the Parent Group that has assumed the Liability with respect to such Credit Support Instrument to indemnify and hold harmless the guarantor or obligor for any Liability arising from or relating thereto in accordance with the provisions of Article VI and, as agent or subcontractor for such guarantor or obligor, to pay, perform and discharge fully all the obligations or other Liabilities of such guarantor or obligor thereunder, (ii) with respect to such Credit Support Instruments that are in the form of a letter of credit or bank guarantee, Parent shall provide SpinCo with letters of credit or guarantees, in each case issued by a bank reasonably acceptable to SpinCo, against losses arising from all such Credit Support Instruments or, if SpinCo agrees in writing, cash collateralize the full amount of any outstanding Credit Support Instrument with respect to which such release has not been obtained and (iii) except as set forth on Schedule XV, with respect to such Credit Support Instrument, each of Parent and SpinCo, on behalf of themselves and the members of each of their respective Groups, agree, except as otherwise expressly required by the terms of a Contract with a third party in effect as of the Distribution, not to renew or extend the term of, increase its obligations under or transfer to a third Person, any loan, guarantee, lease, sublease, license, Contract or other obligation for which the other Party or any member of the other Party's Group is or may be liable under such Credit Support Instrument unless all obligations of the other Party and the other members of the other Party's Group with respect thereto are thereupon terminated by documentation reasonably satisfactory in form and substance to the other Party.

(d) Notwithstanding anything to the contrary in this Section 3.02, the SpinCo Credit Support Instruments listed on Schedule XV shall be addressed in the manner provided on such Schedule XV.

ARTICLE IV

ACTIONS PENDING THE DISTRIBUTION

Section 4.01 Actions Prior to the Distribution.

(a) Subject to the conditions specified in Section 4.02 and subject to Section 5.03, Parent and SpinCo shall use reasonable best efforts to consummate the Distribution. Such efforts shall include taking the actions specified in this Section 4.01.

(b) Prior to the Distribution, Parent shall mail the Notice of Internet Availability of the Information Statement or the Information Statement to the Record Holders.

(c) SpinCo shall prepare, file with the Commission and use its reasonable best efforts to cause to become effective any registration statements or amendments thereto required to effect the establishment of, or amendments to, any employee benefit and other plans necessary or appropriate in connection with the transactions contemplated by this Agreement or any of the Ancillary Agreements.

(d) Parent and SpinCo shall take all such action as may be necessary or appropriate under the securities or blue sky laws of the states or other political subdivisions of the United States or of other foreign jurisdictions in connection with the Distribution.

(e) SpinCo shall prepare and file, and shall use reasonable best efforts to have approved prior to the Distribution, an application for the listing of the SpinCo Common Stock to be distributed in the Distribution on the Exchange, subject to official notice of distribution.

(f) Prior to the Distribution, Parent, in its capacity as sole stockholder of SpinCo, shall have duly elected to the SpinCo board of directors the individuals listed as members of the SpinCo board of directors in the Information Statement, and such individuals shall be the members of the SpinCo board of directors effective as of immediately after the Distribution; provided, however, that to the extent required by any Law or requirement of the Exchange or any other national securities exchange, as applicable, one independent director shall be appointed by the existing board of directors of SpinCo prior to the date on which "when-issued" trading of the SpinCo Common Stock begins on the Exchange and begin his or her term prior to the Distribution and shall serve on SpinCo's Audit Committee, Compensation Committee and Nominating and Governance Committee.

(g) Prior to the Distribution, Parent shall deliver or cause to be delivered to SpinCo resignations, effective as of immediately after the Distribution, of each individual who will be an employee of any member of the Parent Group after the Distribution and who is an officer or director of any member of the SpinCo Group immediately prior to the Distribution.

(h) Immediately prior to the Distribution, the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws of SpinCo, each in substantially the form filed as an exhibit to the Form 10, shall be in effect.

(i) Parent and SpinCo shall, subject to Section 5.03, take all reasonable steps necessary and appropriate to cause the conditions set forth in Section 4.02 to be satisfied and to effect the Distribution on the Distribution Date.

(j) Prior to the Distribution, SpinCo shall make capital and other expenditures and operate its cash management, accounts payable and receivables collection systems in the ordinary course of business consistent with prior practice except as required in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 4.02 Conditions Precedent to Consummation of the Distribution. Subject to Section 5.03, as soon as practicable after the date of this Agreement, the Parties shall use reasonable best efforts to satisfy the following conditions prior to the consummation of the Distribution. The obligations of the Parties to consummate the Distribution shall be conditioned on the satisfaction, or waiver by Parent, of the following conditions:

(a) The board of directors of Parent shall have authorized and approved the Contribution and Distribution and not withdrawn such authorization and approval, and shall have declared the dividend of SpinCo Common Stock to holders of Parent Common Stock.

(b) Each Ancillary Agreement shall have been executed by each party to such agreement.

(c) The SpinCo Common Stock shall have been accepted for listing on the Exchange or another national securities exchange approved by Parent, subject to official notice of issuance.

(d) The Commission shall have declared effective the Form 10, no stop order suspending the effectiveness of the Form 10 shall be in effect and no proceedings for that purpose shall be pending before or threatened by the Commission.

(e) Parent shall have received the written opinion of Paul, Weiss, Rifkind, Wharton & Garrison LLP, which shall remain in full force and effect, that, subject to the accuracy of and compliance with the relevant Representation Letters, the Distribution will qualify for its Intended Tax Treatment.

(f) The Separation Transactions shall have been completed in accordance with the Separation Step Plan (other than those steps that are expressly contemplated to occur at or after the Distribution).

(g) No order, injunction or decree issued by any Governmental Authority of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Distribution shall be in effect, and no other event outside the control of Parent shall have occurred, or failed to occur, that prevents the consummation of the Distribution.

(h) No other events or developments shall have occurred prior to the Distribution that, in the judgment of the board of directors of Parent, would result in the Distribution having a material adverse effect on Parent or the stockholders of Parent.

(i) The actions set forth in Sections 4.01(b), (f), (g) and (h) shall have been completed.

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 of directors to waive, or not waive, such conditions or in any way limit the right of Parent to terminate this Agreement as set forth in Article X or alter the consequences of any such termination from those specified in such Article. Any determination made by the Parent board of directors prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in this Section 4.02 shall be conclusive.

ARTICLE V

THE DISTRIBUTION, SUBSEQUENT DISPOSITION AND REMAINING DISPOSITION

Section 5.01 The Distribution, Subsequent Disposition and Remaining Disposition.

(a) SpinCo shall cooperate with Parent to accomplish the Distribution, Subsequent Disposition and/or Remaining Disposition, as applicable, and shall, at the direction of Parent, use its reasonable best efforts to promptly take any and all actions necessary or desirable to effect the Distribution, Subsequent Disposition and/or Remaining Disposition, as applicable. Parent shall select any investment bank or manager in connection with the Distribution, Subsequent Disposition and/or Remaining Disposition, as applicable, as well as any financial printer, solicitation, exchange and/or distribution agent and financial, legal, accounting, tax and other advisors for Parent. Parent or SpinCo, as the case may be, will provide, or cause the applicable member of its Group to provide, to the Agent all share certificates and any information required in order to complete the Distribution, Subsequent Disposition and/or Remaining Disposition, as applicable.

(b) Subject to the terms and conditions set forth in this Agreement, (i) after completion of the Separation Transactions (other than those steps that are expressly contemplated to occur at or after the Distribution) and on or prior to the Distribution Date, for the benefit of and distribution to the holders of Parent Common Stock as of the Record Date ("Record Holders"), Parent will deliver to the Agent at least 80.1% of the issued and outstanding shares of SpinCo Common Stock held by Parent and book-entry authorizations for such shares and (ii) on the Distribution Date, Parent shall instruct the Agent to distribute, by means of a pro rata dividend based on the aggregate number of shares of Parent Common Stock held by each applicable Record Holder, to each Record Holder (or such Record Holder's bank or brokerage firm on such Record Holder's behalf) electronically, by direct registration in book-entry form, the number of shares of SpinCo Common Stock to which such Record Holder is entitled based on a distribution ratio determined by Parent in its sole discretion. The Distribution shall be effective at 5:00 p.m. New York City time on the Distribution Date. On or as soon as practicable after the Distribution Date, the Agent will mail to each Record Holder (or otherwise transmit in accordance with the Agent's regular practices) an account statement indicating the number of shares of SpinCo Common Stock that have been registered in book-entry form in the name of such Record Holder.

Section 5.02 Fractional Shares. Record Holders holding a number of shares of Parent Common Stock on the Record Date that would entitle such holders to receive less than one whole share of SpinCo Common Stock in the Distribution will receive cash in lieu of such fractional share. Fractional shares of SpinCo Common Stock will not be distributed in the Distribution nor credited to book-entry accounts. Parent shall cause the Agent to, as soon as practicable after the date on which "when-issued" trading of the SpinCo Common Stock begins on the Exchange, (a) determine the number of whole shares and fractional shares of SpinCo Common Stock allocable to each Record Holder and (b) aggregate all fractional shares into whole shares and sell the whole shares obtained thereby in open market transactions at then prevailing trading prices on behalf of holders who would otherwise be entitled to fractional share interests. Parent shall cause the Agent to, as soon as practicable after the Distribution Date, distribute to each such holder, or for the benefit of each beneficial owner, such holder's or owner's ratable share of the net proceeds of such sale, based upon the average gross selling price per share of SpinCo Common Stock after making appropriate deductions for any amount required to be withheld under applicable Tax Law and less any brokers' charges, commissions or transfer Taxes. The Agent, in its sole discretion, will determine the timing and method of selling such fractional shares, the selling price of such fractional shares and the broker-dealer through which such fractional shares will be sold; provided, however, that the designated broker-dealer is not an Affiliate of Parent or SpinCo. Neither Parent nor SpinCo will pay any interest on the proceeds from the sale of fractional shares.

Section 5.03 Sole Discretion of Parent. Parent shall, in its sole and absolute discretion, determine the Record Date, the Distribution Date and all terms of the Distribution, Subsequent Disposition and/or Remaining Disposition, as applicable, including the form, structure and terms of any transactions or offerings to effect the Distribution, Subsequent Disposition and/or Remaining Disposition, as applicable, and the timing of and conditions to the consummation thereof. In addition, and notwithstanding anything to the contrary set forth below, Parent may at any time and from time to time until the Distribution, Subsequent Disposition or Remaining Disposition, as applicable, decide to abandon the Distribution, Subsequent Disposition and/or Remaining Disposition, as applicable, or modify or change the terms of the Distribution, Subsequent Disposition and/or Remaining Disposition, as applicable, including by accelerating or delaying the timing of the consummation of all or part of the Distribution, Subsequent Disposition and/or Remaining Disposition, as applicable.

ARTICLE VI

MUTUAL RELEASES; INDEMNIFICATION

Section 6.01 Release of Pre-Distribution Claims.

(a) Except as provided in Section 6.01(c) or elsewhere in this Agreement or the Ancillary Agreements effective as of the Distribution, SpinCo does hereby, for itself and each other member of the SpinCo Group, their respective Affiliates, and to the extent it may legally do so, its successors and assigns, and all Persons who at any time on or prior to the Distribution have been stockholders, directors, officers, members, agents or employees of any member of the SpinCo Group (in each case, in their respective capacities as such), remise, release and forever discharge Parent and the other members of the Parent Group, their respective Affiliates, successors and assigns, and all Persons who at any time on or prior to the Distribution have been stockholders, directors, officers, members, agents or employees of any member of the Parent Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all SpinCo Liabilities whatsoever, whether at Law or in equity (including any right of contribution), whether arising under any Contract, by operation of Law or otherwise, existing or arising from any acts or events occurring, or failing to occur, or alleged to have occurred, or to have failed to occur, or any conditions existing or alleged to have existed on or before the Distribution, including in connection with the Spin-Off and all other activities to implement the Spin-Off. The Liabilities addressed by this Section 6.01(a) shall include Parent's indemnification obligations with respect to Liabilities arising on or before the Distribution Date under Article XI of its Amended and Restated Certificate of Incorporation and Section 6 of Article VI of its Amended and Restated Bylaws, to the extent relating to the SpinCo Business, which for the avoidance of doubt shall constitute SpinCo Liabilities.

(b) Except as provided in Section 6.01(c) or elsewhere in this Agreement or the Ancillary Agreements, effective as of the Distribution, Parent does hereby, for itself and each other member of the Parent Group, their respective Affiliates, and to the extent it may legally do so, its successors and assigns, and all Persons who at any time on or prior to the Distribution 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 SpinCo, the other members of the SpinCo Group, their respective Affiliates, successors and assigns, and all Persons who at any time on or prior to the Distribution have been stockholders, directors, officers, agents or employees of any member of the SpinCo Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all Parent Liabilities whatsoever, whether at Law or in equity (including any right of contribution), whether arising under any Contract, by operation of Law or otherwise, existing or arising from any acts or events occurring, or failing to occur, or alleged to have occurred, or to have failed to occur, or any conditions existing, or alleged to have existed, on or before the Distribution, including in connection with the Spin-Off and all other activities to implement the Spin-Off.

(c) Nothing contained in Section 6.01(a) or (b) shall impair any right of any Person to enforce this Agreement, any Ancillary Agreement or any Intercompany Agreement or Intercompany Account that is specified in Section 2.03(b) not to terminate as of the Distribution, in each case in accordance with its terms. Nothing contained in Section 6.01(a) or (b) shall release:

(i) any Person from any Liability provided in or resulting from any Contract among any members of the Parent Group or the SpinCo Group that is specified in Section 2.03(b) as not to terminate as of the Distribution, or any other Liability specified in such Section 2.03(b) as not to terminate as of the Distribution;

(ii) any Person from 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 Person from any Liability provided in or resulting from any other Contract or agreement that is entered into after the Distribution between one Party (or a member of such Party's Group), on the one hand, and the other Party (or a member of such Party's Group), on the other hand;

(iv) any Person from any Liability that the Parties may have with respect to indemnification or contribution pursuant to this Agreement or any Ancillary Agreement for claims brought against the Parties, the members of their respective Groups or any of their respective directors, officers, employees or agents, by third Persons, which Liability shall be governed by the provisions of this Article VI or, if applicable, the appropriate provisions of the relevant Ancillary Agreement; or

(v) any Person from any Liability the release of which would result in the release of any Person not otherwise intended to be released pursuant to this Section 6.01.

(d) 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 6.01(a), with respect to any Liabilities released pursuant to Section 6.01(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 6.01(b), with respect to any Liabilities released pursuant to Section 6.01(b).

Section 6.02 Indemnification by SpinCo. Subject to Section 6.04, SpinCo shall indemnify, defend and hold harmless Parent, each other member of the Parent Group and each of their respective former and current directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "Parent Indemnitees"), from and against any and all Liabilities of the Parent Indemnitees to the extent relating to, arising out of or resulting from any of the following items (without duplication):

(a) the SpinCo Liabilities, including the failure of SpinCo or any other member of the SpinCo Group or any other Person to pay, perform or otherwise promptly discharge any SpinCo Liability in accordance with its terms;

(b) any breach by SpinCo or any other member of the SpinCo Group of this Agreement, or any Ancillary Agreement, unless such Ancillary Agreement expressly provides for separate indemnification therein (which shall be controlling); and

(c) any breach by SpinCo of any of the representations and warranties made by SpinCo on behalf of itself and the members of the SpinCo Group in Section 11.01(c).

Section 6.03 Indemnification by Parent. Subject to Section 6.04, Parent shall indemnify, defend and hold harmless SpinCo, each other member of the SpinCo Group and each of their respective former and current directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "SpinCo Indemnitees"), from and against any and all Liabilities of the SpinCo Indemnitees to the extent relating to, arising out of or resulting from any of the following items (without duplication):

(a) the Parent Liabilities, including the failure of Parent or any other member of the Parent Group, or any other Person, to pay, perform or otherwise promptly discharge any Parent Liability in accordance with its terms;

(b) any breach by Parent or any other member of the Parent Group of this Agreement or any Ancillary Agreement unless such Ancillary Agreement expressly provides for separate indemnification therein (which shall be controlling); and

(c) any breach by Parent of any of the representations and warranties made by Parent on behalf of itself and the members of the Parent Group in Section 11.01(c).

Section 6.04 Indemnification Obligations Net of Insurance Proceeds and Third-Party Proceeds.

(a) The Parties intend that any Liability subject to indemnification or reimbursement pursuant to this Agreement will be net of (i) Insurance Proceeds that actually reduce the amount of, or are paid to the applicable Indemnitee in respect of, such Liability and (ii) other amounts recovered from any third party (net of any out-of-pocket costs or expenses incurred in, or Taxes imposed with respect to, the collection thereof and net of any reimbursements) that actually reduce the amount of, or are paid to the applicable Indemnitee in respect of, such Liability ("Third-Party Proceeds"). Accordingly, the amount that either Party (an "Indemnifying Party") is required to pay to any Person entitled to indemnification or reimbursement pursuant to this Agreement (an "Indemnitee") will be reduced by any Insurance Proceeds or Third-Party Proceeds theretofore actually recovered by or on behalf of the Indemnitee from a third party in respect of the related Liability. If an Indemnitee receives a payment required by this Agreement from an Indemnifying Party in respect of any Liability (an "Indemnity Payment") and subsequently receives Insurance Proceeds or Third-Party Proceeds in respect of such Liability, then 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 such Insurance Proceeds or Third-Party Proceeds had been received, realized or recovered before the Indemnity Payment was made; provided, that for the avoidance of doubt, such amount shall not exceed the amount of the Indemnity Payment.

(b) An insurer that would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or have any subrogation rights with respect thereto by virtue of the indemnification provisions hereof, it being expressly understood and agreed that no insurer or any other third party shall be entitled to a "windfall" (*i.e.*, a benefit it would not be entitled to receive in the absence of the indemnification provisions) by virtue of the indemnification provisions hereof. Subject to Section 6.10, each member of the Parent Group and SpinCo Group shall use reasonable best efforts to collect or recover any Insurance Proceeds and any Third-Party Proceeds to which such Person is entitled in connection with any Liability for which such Person seeks indemnification pursuant to this Article VI; provided, however, that such Person's inability to collect or recover any such Insurance Proceeds or Third-Party Proceeds shall not limit the Indemnifying Party's obligations hereunder.

(c) The calculation of any Indemnity Payments required by this Agreement shall be subject to Section 5.2(c) of the TMA.

Section 6.05 Procedures for Indemnification of Third-Party Claims.

(a) If an Indemnitee shall receive notice or otherwise learn of a Third-Party Claim with respect to which an Indemnifying Party may be obligated to provide indemnification to such Indemnitee pursuant to this Agreement (including Article III), such Indemnitee shall give such Indemnifying Party written notice thereof as soon as reasonably practicable, but no later than thirty (30) days after becoming aware of such Third-Party Claim. Any such notice shall describe the Third-Party Claim in reasonable detail and shall include: (i) the basis for, and nature of, such Third-Party Claim, including the facts constituting the basis for such Third-Party Claim; (ii) the estimated amount of losses (to the extent so estimable) that have been or may be sustained by the Indemnitee in connection with such Third-Party Claim; and (iii) copies of all notices and documents (including court papers) received by the Indemnitee relating to the Third-Party Claim; provided, however, that any such notice need only specify such information to the knowledge of the Indemnitee as of the date of such notice and shall not limit or prejudice any of the rights or remedies of any Indemnitee on the basis of any limitations on the information included in such notice, including any such limitations made in good faith to preserve the attorney-client privilege, work product doctrine or any other similar privilege or doctrine. Notwithstanding the foregoing, the failure of any Indemnitee or other Person to give notice as provided in this Section 6.05(a) shall not relieve the related Indemnifying Party of its obligations under this Article VI, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice in accordance with this Section 6.05(a).

(b) The Indemnifying Party shall have the right, exercisable by written notice to the Indemnitee within thirty (30) calendar days after receipt of notice from an Indemnitee in accordance with Section 6.05(a), to assume and conduct the defense of such Third-Party Claim in accordance with the limits set forth in this Agreement with counsel selected by the Indemnifying Party and reasonably acceptable to the Indemnitee; provided, however, that (x) SpinCo shall not be entitled to control the defense of any Third-Party Claim in respect of a Mixed Action (and, for the avoidance of doubt, Parent shall control any such defense), (y) the Indemnifying Party shall not have the right to control the defense of any Third-Party Claim (i) to the extent such Third-Party Claim seeks criminal penalties or injunctive or other equitable relief (other than any such injunctive or other equitable relief that is solely incidental to the granting of money damages) or (ii) if the Indemnitee has reasonably determined in good faith that the Indemnifying Party controlling such defense will affect the Indemnitee or its Group in a materially adverse manner and (z) if the Indemnitee determines in good faith that the proper defense of the Third-Party Claim requires that the election to assume the defense of such claim be made in fewer than thirty (30) days, the Indemnitee may request that such election be made in such shorter period as the Indemnitee may reasonably determine.

(c) If the Indemnifying Party elects not to assume the defense of a Third-Party Claim (or is not permitted to assume the defense of such Third-Party Claim) in accordance with this Agreement, or fails to notify an Indemnitee of its election as provided in Section 6.05(b), such Indemnitee may defend such Third-Party Claim. If the Indemnifying Party elects (and is permitted) to assume the defense of a Third-Party Claim in accordance with the terms of this Agreement, the Indemnitee shall, subject to the terms of this Agreement, cooperate with the Indemnifying Party with respect to the defense of such Third-Party Claim.

(d) If the Indemnifying Party elects (and is permitted) to assume the defense of a Third-Party Claim in accordance with the terms of this Agreement, the Indemnifying Party will not be liable for any additional legal expenses subsequently incurred by the Indemnitee in connection with the defense of the Third-Party Claim; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Third-Party Claim, or the nature of such Third-Party Claim changes such that the Indemnifying Party would no longer be entitled to assume the defense of such Third-Party Claim pursuant to Section 6.05(b), the Indemnitee may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses paid or incurred in connection with such defense. The Indemnifying Party or the Indemnitee, as the case may be, shall have the right to participate in (but, subject to the prior sentence, not control), at its own expense, the defense of any Third-Party Claim that the other is defending as provided in this Agreement. In the event, however, that such Indemnitee reasonably determines that representation by counsel to the Indemnifying Party of both such Indemnifying Party and the Indemnitee could reasonably be expected to present such counsel with a conflict of interest, then the Indemnitee may employ separate counsel to represent or defend it in any such action or proceeding and the Indemnifying Party will pay the reasonable fees and expenses of such counsel.

(e) No Indemnifying Party shall consent to entry of any judgment or enter into any settlement of any Third-Party Claim without the consent of the applicable Indemnitee or Indemnitees (not to be unreasonably withheld, conditioned or delayed); provided, however, that such consent shall not be required if the judgment or settlement: (i) contains no finding or admission of liability with respect to any such Indemnitee or Indemnitees; (ii) involves only monetary relief which the Indemnifying Party has agreed to pay, other than the imposition of *de minimis* equitable relief incidental to the granting of monetary relief; and (iii) includes a full and unconditional release of the Indemnitee or Indemnitees. Notwithstanding the foregoing, the consent of an Indemnitee shall be required for any entry of judgment or settlement if the effect thereof is to permit any injunction, declaratory judgment, other order or other non-monetary relief to be entered, directly or indirectly, against such Indemnitee, other than the imposition of *de minimis* equitable relief incidental to the granting of monetary relief (such consent not to be unreasonably withheld, conditioned or delayed).

(f) Whether or not the Indemnifying Party assumes the defense of a Third-Party Claim, no Indemnitee shall admit any liability with respect to, or settle, compromise or discharge, such Third-Party Claim without the Indemnifying Party's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

Section 6.06 Additional Matters.

(a) Any claim on account of a Liability that does not result from a Third-Party Claim shall be asserted by written notice given by the Indemnitee to the related Indemnifying Party. Any failure by an Indemnitee to give notice shall not relieve the Indemnifying Party's indemnification obligations under this Agreement, except to the extent that the Indemnifying Party shall have been actually prejudiced by such failure.

(b) 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.

Section 6.07 Remedies Cumulative. The remedies provided in this Article VI shall be cumulative and, subject to the provisions of Section 6.01, Section 6.10, and Article X, shall not preclude assertion by any Indemnitee of any other rights or the seeking of any and all other remedies against any Indemnifying Party.

Section 6.08 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 or defense against any Person, including before any court, arbitrator, mediator or administrative agency anywhere in the world, and further (on behalf of itself, the members of such Party's Group, and any other Person claiming through it) waives and releases any claim or defense against any Person, alleging that: (a) the assumption or retention of any SpinCo Liabilities by SpinCo or a member of the SpinCo Group on the terms and conditions set forth in this Agreement or the Ancillary Agreements is unlawful, a breach of a fiduciary or other duty, void, unenforceable, unconscionable, inequitable, or otherwise improper for any reason; (b) the assumption or retention of any Parent Liabilities by Parent or a member of the Parent Group on the terms and conditions set forth in this Agreement or the Ancillary Agreements is unlawful, a breach of a fiduciary or other duty, void, unenforceable, unconscionable, inequitable, or otherwise improper for any reason; or (c) the provisions of this Agreement (including this Article VI) or any Ancillary Agreement are unlawful, a breach of a fiduciary or other duty, void, unenforceable, unconscionable, inequitable, or otherwise improper for any reason.

Section 6.09 Survival of Indemnities. The rights and obligations of each of Parent and SpinCo and their respective Indemnitees under this Article VI shall survive the sale or other transfer by any Party or its Affiliates of any Assets or businesses or the assignment by it of any Liabilities.

Section 6.10 Limitation on Liability. Except as may expressly be set forth in this Agreement or any Ancillary Agreement, none of Parent, SpinCo or any other member of either Group shall in any event have any Liability to the other or to any other member of the other's Group, or to any other Parent Indemnitee or SpinCo Indemnitee, as applicable, under this Agreement for any indirect, special, punitive or consequential damages, whether or not caused by or resulting from negligence or breach of obligations hereunder and whether or not informed of the possibility of the existence of such damages; provided, however, that the provisions of this Section 6.10 shall not limit an Indemnifying Party's indemnification obligations hereunder with respect to any Liability any Indemnitee may have to any third party not affiliated with any member of the Parent Group or the SpinCo Group for any indirect, special, punitive or consequential damages.

Section 6.11 Management of Existing Actions and Investigations. Notwithstanding the procedures set forth in Section 6.05, this Section 6.11 shall govern the management and direction of certain pending Actions and Investigations involving both members of the Parent Group and the SpinCo Group, but shall not alter the allocation of Liabilities set forth in Article II. In the event of any conflict between the provisions of this Section 6.11 and Section 6.05 in respect of an Assumed Action or Excluded Action, the provisions of this Section 6.11 shall govern.

(a) From and after the Distribution, the SpinCo Group shall direct the defense or prosecution of any Actions and Investigations described on Schedule XVII (the "Assumed Actions"), including the development and implementation of the legal strategy for each Assumed Action, the filing of any motions, pleadings or briefs, the conduct of discovery and related fact finding, the conduct of any trial, any decision to appeal or not to appeal any decisions, judgment or order, and, subject to Section 6.11(e) below, any decision or consent to a settlement, compromise or discharge of any Assumed Action or any aspect thereof. SpinCo (or the applicable member of the SpinCo Group) is responsible for selecting its own counsel in connection with the conduct and control of the Assumed Action.

(b) From and after the Distribution, the Parent Group shall direct the defense or prosecution of any Actions and Investigations set forth on Schedule XVIII (the "Excluded Actions"), including the development and implementation of the legal strategy for each Excluded Action, the filing of any motions, pleadings or briefs, the conduct of discovery and related fact finding, the conduct of any trial, any decision to appeal or not to appeal any decisions, judgment or order, and, subject to Section 6.11(e) below, any decision or consent to a settlement, compromise or discharge of any Excluded Action or any aspect thereof. Parent (or the applicable member of the Parent Group) is responsible for selecting its own counsel in connection with the conduct and control of the Excluded Action.

(c) From and after the Distribution, the Parties shall separately but cooperatively manage any Actions or Investigations set forth on Schedule XIX ("Joint Actions"). The Parties shall cooperate in good faith and take all reasonable actions to provide for any appropriate joinder or change in named parties to such Joint Actions such that the appropriate member of each Party or Group is party thereto. The Parties shall reasonably cooperate and consult with each other and, to the extent feasible, maintain a joint defense in a manner that would preserve for both Parties and their respective Affiliates any attorney-client privilege, joint defense or other privilege with respect to any Joint Action. Notwithstanding anything to the contrary herein, and except as set forth on Schedule XIX, the Parties may jointly retain counsel (in which case the cost of counsel shall be shared equally by the Parties) or retain separate counsel (in which case each Party will bear the cost of its separate counsel) with respect to any Joint Action; provided that the Parties shall share equally joint litigation costs but shall, without limiting the indemnification obligations under this Agreement, otherwise bear their own costs, including but not limited to discovery costs. In any Joint Action, each of Parent and SpinCo may pursue separate defenses, claims, counterclaims or settlements to those claims relating solely, to the Parent Business or the SpinCo Business, respectively; provided that each Party shall in good faith make reasonable best efforts to avoid adverse effects on the other Party.

(d) To the maximum extent permitted by applicable Law, the rights to recovery of each Party's Subsidiaries in respect of any past, present or future Action are hereby delegated to such Party. It is the intent of the Parties that the foregoing delegation shall satisfy any Law requiring such delegation to be effected pursuant to a power of attorney or similar instrument. The Parties and their respective Subsidiaries shall execute such further instruments or documents as may be necessary to effect such delegation.

(e) No Party managing an Action (the "Managing Party") pursuant to this Section 6.11 shall consent to entry of any judgment or enter into any settlement of any such Action without the prior written consent of the other Party (the "Non-Managing Party") (not to be unreasonably withheld, conditioned or delayed); provided, however, that such Non-Managing Party, including, in the case of a Joint Action, any co-defendant, shall be required to consent to such entry of judgment or to such settlement that the Managing Party or other co-defendant may recommend with respect to any claim for which such Non-Managing Party (or co-defendant) is the defendant if the judgment or settlement: (i) contains no finding or admission of liability with respect to such Non-Managing Party's (or co-defendant's) Group or its applicable related Persons; (ii) involves only monetary relief which the Managing Party or proposing co-defendant has agreed to pay (other than the imposition of *de minimis* equitable relief incidental to the granting of monetary relief); and (iii) includes a full and unconditional release of the Non-Managing Party or co-defendant and its applicable related Persons. Notwithstanding the foregoing, the consent of the Non-Managing Party or co-defendant shall be required for any entry of judgment or settlement if the effect thereof is to permit any injunction, declaratory judgment, other order or other non-monetary relief to be entered, directly or indirectly, against the Non-Managing Party's Group or its applicable related Persons (other than the imposition of *de minimis* equitable relief incidental to the granting of monetary relief) (such consent not to be unreasonably withheld, conditioned or delayed).

ARTICLE VII

ACCESS TO INFORMATION; PRIVILEGE; CONFIDENTIALITY

Section 7.01 Agreement for Exchange of Information; Archives.

(a) Except in the case of an Adversarial Action or threatened Adversarial Action, and subject to Section 7.01(b), each of Parent and SpinCo, on behalf of its respective Group, shall provide, or cause to be provided, to the other Party, at any time after the Distribution, as soon as reasonably practicable after written request therefor, or by a date certain if required for measuring Parent's environmental performance pursuant to clause (iii) below, any Information relating to time periods on or prior to the Distribution Date in the possession or under the control of such respective Group, which Parent or SpinCo, or any member of its respective Group, as applicable, reasonably needs: (i) to comply with reporting, disclosure, filing or other requirements imposed on Parent or SpinCo, or any member of its respective Group, as applicable (including under applicable securities Laws), by any national securities exchange or any Governmental Authority having jurisdiction over Parent or SpinCo, or any member of its respective Group, as applicable; (ii) for use in any other judicial, regulatory, administrative or other proceeding or Investigation or in order to satisfy audit, accounting, regulatory, litigation or other similar requirements; (iii) for the purpose of measuring Parent's environmental performance or environmental regulatory compliance prior to the Distribution with such Information being formatted so that it may be accepted by Parent's software systems (including data such as, but not limited to, energy use, waste generation, Product End-of-Life Management (PELM) - processing of used and end-of-life equipment parts and components, water use and conservation, groundwater quality monitoring and remediation data, air emissions, regulatory inspections and results, data required in support of Parent's Environmental Management System, liquid storage and handling systems, costs and savings associated with environmental programs, or non-intrusive due diligence); (iv) to comply with its obligations under this Agreement or any Ancillary Agreement; or (v) in connection with Parent's consideration of the timing or manner in which it will effect the Subsequent Disposition or the Remaining Disposition; provided that any request for information pursuant to this Section 7.01 shall be made in good faith and limited to the extent reasonable to satisfy the good faith basis for such request. The receiving Party shall use any Information received pursuant to this Section 7.01(a) solely to the extent reasonably necessary to satisfy the applicable obligations or requirements described in clause (i), (ii), (iii) or (iv) of the immediately preceding sentence.

(b) In the event that either Parent or SpinCo determines that the disclosure of any Information pursuant to Section 7.01(a) could be commercially detrimental, violate any Law or Contract or waive or jeopardize any attorney-client privilege, attorney work product protection or other similar privilege or doctrine, such Party shall not be required to provide access to or furnish such Information to the other Party; provided, however, that both Parent and SpinCo shall take all commercially reasonable measures to permit compliance with Section 7.01(a) in a manner that avoids any such harm or consequence. Both Parent and SpinCo intend that any provision of access to or the furnishing of Information pursuant to this Section 7.01 that would otherwise be within the ambit of any legal privilege is being undertaken because of the Parties' common legal interests and shall not operate as waiver of such privilege.

Section 7.02 Ownership of Information. Any Information owned by one Group that is provided to the requesting Party hereunder shall be deemed to remain the property of the providing Party. Except as specifically set forth herein or in any Ancillary Agreement, nothing herein shall be construed as granting or conferring rights of license or otherwise in any such Information.

Section 7.03 Compensation for Providing Information. Parent and SpinCo shall reimburse each other for the reasonable costs, if any, in complying with a request for Information pursuant to this Article VII (whether or not such Information was a SpinCo Asset or a Parent Asset). Except as may be otherwise specifically provided elsewhere in this Agreement, such costs shall be computed in accordance with SpinCo's or Parent's, as applicable, standard methodology and procedures, but shall not include any markup above actual costs.

Section 7.04 Record Retention. To facilitate the possible exchange of Information pursuant to this Article VII and other provisions of this Agreement, each Party shall use its reasonable best efforts to retain all Information in such Party's possession relating to the other Party or its businesses, Assets or Liabilities, this Agreement or the Ancillary Agreements in accordance with its respective record retention policies applicable to its own Information or such longer period as required by Law, this Agreement or the Ancillary Agreements. Each of Parent and SpinCo shall use their reasonable best efforts to maintain and continue their respective Group's compliance with all "litigation holds" applicable to any Information in its possession for the pendency of the applicable matter.

Section 7.05 Accounting Information. Without limiting the generality of Section 7.01 but subject to Section 7.01(b):

(a) Until the end of the first full fiscal year occurring after the Distribution Date (and for a reasonable period of time afterwards or as required by Law for Parent to prepare consolidated financial statements or complete a financial statement audit for any period during which the financial results of the SpinCo Group were consolidated with those of Parent), SpinCo shall use its reasonable best efforts to enable Parent to meet its timetable for dissemination of its financial statements and to enable Parent's auditors to timely complete their annual audit and quarterly reviews of financial statements. As part of such efforts, to the extent reasonably necessary for the preparation of financial statements or completing an audit or review of financial statements or an audit of internal control over financial reporting, (i) SpinCo shall authorize and direct its auditors to make available to Parent's auditors, within a reasonable time prior to the date of Parent's auditors' opinion or review report, both (x) the personnel who performed or will perform the annual audits and quarterly reviews of SpinCo and (y) work papers to the extent related to such annual audits and quarterly reviews, to enable Parent's auditors to perform any procedures they consider reasonably necessary to take responsibility for the work of SpinCo's auditors as it relates to Parent's auditors' opinion or report and (ii) until all governmental audits are complete, SpinCo shall provide reasonable access during normal business hours for Parent's internal auditors, counsel and other designated representatives to (x) the premises of SpinCo and its Subsidiaries and all Information (and duplicating rights) within the knowledge, possession or control of SpinCo and its Subsidiaries and (y) the officers and employees of SpinCo and its Subsidiaries, so that Parent may conduct reasonable audits relating to the financial statements provided by SpinCo and its Subsidiaries; provided, however, that such access shall not be unreasonably disruptive to the business and affairs of the SpinCo Group; provided, further, that, subject to Section 7.05(b), any request for access pursuant to this Section 7.05(a) shall be made in good faith and limited to the extent reasonable to satisfy the good faith basis for such request.

(b) Until the end of the first full fiscal year occurring after the Distribution Date (and for a reasonable period of time afterwards or as required by Law), Parent shall use its reasonable best efforts to enable SpinCo to meet its timetable for dissemination of its financial statements and to enable SpinCo's auditors to timely complete their annual audit and quarterly reviews of financial statements. As part of such efforts, to the extent reasonably necessary for the preparation of financial statements or completing an audit or review of financial statements or an audit of internal control over financial reporting, (i) Parent shall authorize and direct its auditors to make available to SpinCo's auditors, within a reasonable time prior to the date of SpinCo's auditors' opinion or review report, both (x) the personnel who performed or will perform the annual audits and quarterly reviews of Parent and (y) work papers to the extent related to such annual audits and quarterly reviews, to enable SpinCo's auditors to perform any procedures they consider reasonably necessary to take responsibility for the work of Parent's auditors as it relates to SpinCo's auditors' opinion or report and (ii) until all governmental audits are complete, Parent shall provide reasonable access during normal business hours for SpinCo's internal auditors, counsel and other designated representatives to (x) the premises of Parent and its Subsidiaries and all Information (and duplicating rights) within the knowledge, possession or control of Parent and its Subsidiaries and (y) the officers and employees of Parent and its Subsidiaries, so that SpinCo may conduct reasonable audits relating to the financial statements provided by Parent and its Subsidiaries; provided, however, that such access shall not be unreasonably disruptive to the business and affairs of the Parent Group.

(c) In order to enable the principal executive officer(s) and principal financial officer(s) (as such terms are defined in the rules and regulations of the Commission) of Parent to make any certifications required of them under Section 302 or 906 of the Sarbanes-Oxley Act of 2002, SpinCo shall, within a reasonable period of time following a request from Parent in anticipation of filing such reports, cause its principal executive officer(s) and principal financial officer(s) to provide Parent with certifications of such officers in support of the certifications of Parent's principal executive officer(s) and principal financial officer(s) required under Section 302 or 906 of the Sarbanes-Oxley Act of 2002 with respect to (i) Parent's Quarterly Report on Form 10-Q filed with respect to the fiscal quarter during which the Distribution Date occurs (unless such quarter is Parent's fourth fiscal quarter), (ii) to the extent applicable, each subsequent fiscal quarter through the third fiscal quarter of the year in which the Distribution Date occurs and (iii) Parent's Annual Report on Form 10-K filed with respect to the fiscal year during which the Distribution Date occurs. Such certifications shall be provided in substantially the same form and manner as such SpinCo officers provided prior to the Distribution (reflecting any changes in certifications necessitated by the Spin-Off or any other transactions related thereto) or as otherwise agreed upon between Parent and SpinCo.

Section 7.06 Limitations of Liability.

(a) Each of Parent (on behalf of itself and each other member of the Parent Group) and SpinCo (on behalf of itself and each other member of the SpinCo Group) understands and agrees that neither Party is representing or warranting in any way as to the accuracy or sufficiency of any Information exchanged or disclosed under this Agreement, including any Information that constitutes an estimate or forecast or is based upon an estimate or forecast.

(b) Neither Parent nor SpinCo shall have any Liability to the other Party if any Information is destroyed after reasonable best efforts by SpinCo or Parent, as applicable, to comply with the provisions of Section 7.04.

Section 7.07 Production of Witnesses; Records; Cooperation.

(a) Without limiting any of the rights or obligations of the Parties pursuant to Section 7.01 or Section 7.04, after the Distribution Date, except in the case of an Adversarial Action or threatened or contemplated Adversarial Action, and subject to Section 7.01(b), each of Parent and SpinCo shall use their reasonable best efforts to make available, upon written request: (i) the former, current and future directors, officers, employees, other personnel and agents of the Persons in its respective Group (whether as witnesses or otherwise); and (ii) subject to Section 7.01(b), Information contemplated by Section 7.01(a), in each case to the extent that 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, Investigation, Commission comment or review or threatened or contemplated Action, Investigation, Commission comment or review (including preparation for any such Action, Commission comment or review) in which either Parent or SpinCo or any Person or Persons in its Group, as applicable, may from time to time be involved, regardless of whether such Action, Investigation, Commission comment or review or threatened or contemplated Action, Investigation, Commission comment or review is a matter with respect to which indemnification may be sought hereunder. The requesting Party shall bear all reasonable out-of-pocket costs and expenses in connection therewith.

(b) Without limiting the foregoing, Parent and SpinCo shall use their reasonable best efforts to cooperate and consult with each other to the extent reasonably necessary with respect to any Actions, Investigations or threatened or contemplated Actions or Investigations (including in connection with preparation for any such Action or Investigation), other than an Adversarial Action or threatened or contemplated Adversarial Action.

(c) The obligation of Parent and SpinCo, pursuant to this Section 7.07, to use their reasonable best efforts to make available former, current and future directors, officers, employees and other personnel and agents or provide witnesses and experts, except in the case of an Adversarial Action or threatened or contemplated Adversarial Action, is intended to be interpreted in a manner so as to facilitate cooperation and shall include the obligation to make available employees and other officers without regard to whether such individual or the employer of such individual could assert a possible business conflict. Without limiting the foregoing, each of Parent and SpinCo agrees that neither it nor any Person or Persons in its respective Group will take any adverse action against any employee of its Group based on such employee's provision of assistance or information to each other pursuant to this Section 7.07.

Section 7.08 Privileged Matters.

(a) Solely for purposes of asserting privileges which may be asserted under applicable law, and without limiting the provisions of Section 7.10: (x) the Parties recognize that legal and other professional services that have been and will be provided prior to the Distribution (whether by outside counsel, in-house counsel or other legal professionals) have been and will be rendered for the collective benefit of Parent and its Subsidiaries (in such capacity) and (y) each of the members of the Parent Group and the SpinCo Group shall be deemed to have been the client in connection with such services with respect to periods prior to the Distribution. The Parties recognize that legal and other professional services will be provided following the Distribution, which services will be rendered solely for the benefit of the Parent Group or the SpinCo Group, as the case may be.

(b) 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 or the Distribution and not to the operations of 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 Assets or Parent Liabilities, and not any SpinCo Assets or SpinCo Liabilities, in connection with 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.

(c) 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 operations of the SpinCo Business and not to the Parent Business or the Distribution, 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 Assets or SpinCo Liabilities and not any Parent Assets or Parent Liabilities in connection with 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.

(d) Subject to the remaining provisions of this Section 7.08, the Parties agree that Parent shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities not allocated pursuant to Section 7.10 in connection with any Actions, or threatened or contemplated Actions, or other matters that involve both Parties (or one or more members of their respective Groups) and in respect of which both Parties have Liabilities under this Agreement.

(e) If any dispute arises between the Parties or any members of their respective Group regarding whether a privilege or immunity should be waived to protect or advance the interests of either Party 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 the members of its Group; and (iii) not unreasonably withhold, delay or condition consent to any request for waiver by the other Party.

(f) Upon receipt by either Party, or by any member of its respective Group, of any subpoena, discovery or other request (or of written notice that it will receive or has received such 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 the other Party has the sole right hereunder to assert a privilege or immunity, or if either Party obtains knowledge or becomes aware 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 (or have received written notice that they will receive or have received such 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 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 7.08 or otherwise, to prevent the production or disclosure of such privileged Information; provided that if such Party is prohibited by applicable Law from disclosing the existence of such subpoena, discovery or other request, such Party shall provide written notice of such related information for which disclosure is not prohibited by applicable Law and use reasonable best efforts to inform the other Party of any related information such Party reasonably determines is necessary or appropriate for the other Party to be informed of to enable the other Party to review the privileged Information and to assert its rights, under this Section 7.08 or otherwise, to prevent the production or disclosure of such privileged Information.

(g) 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 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. The Parties further agree that: (i) the exchange by one Party to the other Party of any Information that should not have been exchanged pursuant to the terms of Section 7.09 shall not be deemed to constitute a waiver of any privilege or immunity that has been or may be asserted under this Agreement or otherwise with respect to such privileged Information; and (ii) the Party receiving such privileged Information shall promptly return such privileged Information to the Party who has the right to assert the privilege or immunity.

Section 7.09 Confidential Information.

(a) Each of Parent and SpinCo, on behalf of itself and each Person in its respective Group, shall hold, and cause its respective directors, officers, employees, agents, accountants, subcontractors, counsel and other advisors and representatives (each, a "Representative") to hold, in strict confidence, not release or disclose and protect with at least the same degree of care, but no less than a reasonable degree of care, that it applies to its own confidential and proprietary information pursuant to policies in effect as of the Distribution Date, all confidential or proprietary Information concerning the Parent Business or the Parent Group (in the case of SpinCo) or the SpinCo Business or the SpinCo Group (in the case of Parent) (other than such Information that also relates to the Business of such first Party or its Group) (such Group's "Specified Confidential Information") that is either in its possession (including such Specified Confidential Information in its possession prior to the Distribution) or furnished by the other Group or its respective Representatives at any time pursuant to this Agreement or any Ancillary Agreement, and shall not use any such Specified Confidential Information other than for such purposes as shall be expressly permitted hereunder or thereunder, except, in each case, to the extent that such Specified Confidential Information is: (x) in the public domain through no fault of any member of the Parent Group or the SpinCo Group, as applicable, or any of its respective Representatives; (y) later lawfully acquired from other sources by any of Parent, SpinCo or its respective Group or Representatives, as applicable, which sources are not themselves bound by a confidentiality obligation to the knowledge of any of Parent, SpinCo or Persons in its respective Group, as applicable; or (z) independently generated after the date hereof without reference to any Specified Confidential Information of the Parent Group or the SpinCo Group, as applicable. Notwithstanding the foregoing, each of Parent and SpinCo may release or disclose, or permit to be released or disclosed, any such Specified Confidential Information of the other Group (i) to their respective Representatives who need to know such Specified Confidential Information (who shall be advised of the obligations hereunder with respect to such Specified Confidential Information), (ii) to any nationally recognized statistical rating organization as it reasonably deems necessary, solely for the purpose of obtaining a rating of securities or other debt instruments upon normal terms and conditions, (iii) if such Party or its respective Group is required or compelled to disclose any such Specified Confidential Information by judicial or administrative process or by other requirements of Law or stock exchange rule or is advised by outside counsel in connection with a proceeding brought by a Governmental Authority that is advisable to do so, (iv) as required in connection with any legal or other proceeding by one Party against the other Party or in respect of claims by one Party against the other Party brought in a proceeding, (v) as necessary in order to permit a Party to prepare and disclose its financial statements, tax returns or other required disclosures, (vi) as necessary for a Party to enforce its rights or perform its obligations under this Agreement or any Ancillary Agreement, (vii) to Governmental Authorities in accordance with applicable procurement regulations and contract requirements; provided, however, that, with respect to clause (i) hereof: (A) such Representatives shall keep such Specified Confidential Information confidential and will not disclose such Specified Confidential Information to any other Person and (B) each Party agrees that it is responsible to the other Party for any action or failure to act that would constitute a breach or violation of this Section 7.09(a) by any such Representative; with respect to clause (ii) hereof, the Party whose Specified Confidential Information is being disclosed or released to such rating organization is promptly notified thereof; and, with respect to clauses (iii) and (iv) hereof, that the Person required to disclose such Specified Confidential Information gives the applicable Person prompt and, to the extent reasonably practicable and legally permissible, prior notice of such disclosure and an opportunity to contest such disclosure and shall use reasonable best efforts to cooperate, at the expense of the requesting Person, in seeking any reasonable protective arrangements requested by such Person. In the event that such appropriate protective order or other remedy is not obtained, the Person that is required to disclose such Specified Confidential Information of the other Group shall furnish, or cause to be furnished, only that portion of such Specified Confidential Information that is legally required to be disclosed and shall use reasonable best efforts to ensure that confidential treatment is accorded such Specified Confidential Information.

(b) Each Party acknowledges that it or members of its Group may presently have and, after the Distribution, may gain access to or possession of confidential or proprietary Information of, or legally protected personal Information relating to, third parties: (i) that was received under 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 Distribution or (ii) that, as between the two Parties, was originally collected by the other Party or such other Party's Group and that may be subject to and protected by privacy, data protection or other applicable Laws. Each Party agrees that it shall hold, protect and use, and shall cause the members of its Group and its and their respective Representatives to hold, protect and use, in strict confidence the confidential and proprietary Information of, or legally protected personal Information relating to, third parties in accordance with privacy, data protection or other applicable Laws and the terms of any Contracts that were either entered into before the Distribution or affirmative commitments or representations that were made before the Distribution 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.

(c) Notwithstanding anything in this Agreement to the contrary, the receiving Party may disclose, disseminate, or use the ideas, concepts, know-how and techniques, in each case that are related to the receiving Party's business activities and that are contained in the disclosing Party's Specified Confidential Information and retained in the unaided memories of the receiving Party's employees who have had access to the disclosing Party's Specified Confidential Information, who have not intentionally memorized such Specified Confidential Information, and in each case without the specific intent to use or disclose such Specified Confidential Information. For the avoidance of doubt, nothing in this Section 7.09(c) grants either Party any right or license in or to any Patents or Copyrights (as each such term is defined in the IPA).

Section 7.10 Conflicts Waiver. Each of the Parties acknowledges, on behalf of itself and each other member of its Group, notwithstanding anything to the contrary contained herein or imposed by operation of law, that Parent has retained Paul, Weiss, Rifkind, Wharton & Garrison LLP and Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses (collectively, the "Known Counsel") to act as its counsel in connection with this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby. SpinCo hereby agrees on behalf of itself and each member of its Group that, notwithstanding anything to contrary contained herein or imposed by operation of law, in the event that a dispute (whether or not related to this Agreement, the Ancillary Agreements, or the transactions contemplated hereby and thereby) arises between or among (x) any member of the SpinCo Group, any SpinCo Indemnitee or any of their respective Affiliates, on the one hand, and (y) any member of the Parent Group, any Parent Indemnitee or any of their respective Affiliates, on the other hand, any Known Counsel may represent any member of the Parent Group, any Parent Indemnitee or any of their respective Affiliates in such dispute even though the interests of such Person may be directly adverse to, or conflict with the legal or economic interests of, any Person described in clause (x), and even though such Known Counsel may have represented or provided advice to a Person described in clause (x) in a matter substantially related to such dispute, or may be handling ongoing matters for a Person described in clause (x), and even though such Known Counsel may have or previously have had confidential or privileged information of a Person described in clause (x) that may be related to such dispute, and SpinCo hereby waives, on behalf of itself and each other Person described in clause (x), as applicable, any conflict of interest or claim to confidentiality in connection with such representation by such Known Counsel, and SpinCo hereby agrees, on behalf of itself and each other Person described in clause (x), as applicable, not to seek to disqualify such Known Counsel in connection with such representation. SpinCo, on behalf of itself and each other member of its Group, irrevocably authorizes any Known Counsel to disclose or provide any of its confidential or privileged information existing as of the date hereof to Parent or any other member of Parent's Group, and to otherwise use or disclose that information in accordance with Parent's direction. Each of SpinCo and Parent, on behalf of itself and each other member of its Group, agrees to take, and to cause their respective then-Affiliates to take, all steps necessary to implement the intent of this Section 7.10. Each of SpinCo and Parent, on behalf of itself and each other member of its Group, further agrees that each Known Counsel and its respective partners and employees are third-party beneficiaries of this Section 7.10, and may seek to enforce, without limitation, this Section 7.10.

ARTICLE VIII

INSURANCE

Section 8.01 Maintenance of Insurance. Until the Distribution Date, Parent shall (i) cause the members of the SpinCo Group and their respective employees, officers and directors to continue to be covered as insured parties under Parent's policies of insurance in a manner which is no less favorable than the coverage provided for the Parent Group and (ii) permit the members of the SpinCo Group and their respective employees, officers and directors to submit claims relating to, arising out of or resulting from facts, circumstances, events or matters that occurred prior to the Distribution Date to the extent permitted under such policies. Except as otherwise expressly permitted in this Article VIII, Parent and SpinCo acknowledge that, as of immediately prior to the Distribution Date, Parent intends to take such action as it may deem necessary or desirable to remove the members of the SpinCo Group and their respective employees, officers and directors as insured parties under any policy of insurance issued to any member of the Parent Group by any insurance carrier effective immediately prior to the Distribution Date. Except as provided in Section 8.02, the SpinCo Group will not be entitled on or following the Distribution Date, absent mutual agreement otherwise, to make any claims for insurance thereunder to the extent such claims are based upon facts, circumstances, events or matters occurring on or after the Distribution Date. No member of the Parent Group shall be deemed to have made any representation or warranty as to the availability of any coverage under any such insurance policy.

Section 8.02 Claims under Parent Insurance Policies.

(a) On and after the Distribution Date, the members of each of the Parent Group and the SpinCo Group shall, subject to the terms of this Section 8.02, have the right to assert Parent Policy Pre-Separation Insurance Claims and the members of the SpinCo Group shall have the right to participate with Parent to resolve Parent Policy Pre-Separation Insurance Claims under the applicable Parent insurance policies up to the full extent of the applicable and available limits of liability of such policy. Parent shall have primary control over Parent Policy Pre-Separation Insurance Claims. If a member of the SpinCo Group is unable to assert a Parent Policy Pre-Separation Insurance Claim because it is no longer an "insured" under a Parent insurance policy, then Parent shall, at the written request of SpinCo, to the extent permitted by applicable Law and the terms of such insurance policy and, subject to the terms of this Section 8.02, assert such claim in its own name and deliver the Insurance Proceeds to SpinCo, provided that SpinCo shall bear the out-of-pocket expenses of Parent in asserting such claim (in addition to the obligations of SpinCo in Section 8.02(b)).

(b) With respect to Parent Policy Pre-Separation Insurance Claims, whether or not known or reported on or prior to the Distribution Date, SpinCo shall, or shall cause the applicable member of the SpinCo Group to, report such claims arising from the SpinCo Business as soon as practicable to each of Parent and the applicable insurer(s), and SpinCo shall, or shall cause the applicable member of SpinCo Group to, individually, and not jointly, assume and be responsible (including, upon the request of Parent, by reimbursement to Parent for amounts paid or payable by it) for the out-of-pocket expenses of Parent in asserting such claim and for any reimbursement liability (including any deductible, coinsurance or retention payment or reimbursement obligations under "fronted" or similar policies) related to its portion of the liability, unless otherwise agreed in writing by Parent. Each of Parent and SpinCo shall, and shall cause each member of the Parent Group and SpinCo Group, respectively, to, cooperate with and assist the applicable member of the SpinCo Group and the Parent Group, as applicable, with respect to such claims. The applicable member of the SpinCo Group shall provide to Parent any collateral (or a letter of credit in an amount equal to the value of such collateral) in respect of the reimbursement obligations as may reasonably be requested by the insurers and, upon the request of Parent, any other collateral required by the insurers in respect of insurance policies under which Parent Policy Pre-Separation Insurance Claims may be recoverable based upon Parent's reasonable estimate of the proportion of the requested collateral attributable to claims that may be made by the SpinCo Group. Parent agrees that Parent Policy Pre-Separation Insurance Claims of members of the SpinCo Group shall receive the same priority as Parent Policy Pre-Separation Insurance Claims of members of the Parent Group and be treated equitably in all respects, including in connection with deductibles, retentions and coinsurance. For the avoidance of doubt, except to the extent expressly set forth in this Section 8.03, following the Distribution the SpinCo Group shall have no rights with respect to Parent insurance policies and, as between the Parent Group and the SpinCo Group, any claims made by the SpinCo Group shall be made against insurance policies of the SpinCo Group.

Section 8.03 Insurance Proceeds. Except as set forth on Schedule XXII, any Insurance Proceeds, net of costs and reimbursements as contemplated by Section 8.02, received by the Parent Group for members of the SpinCo Group or by the SpinCo Group for members of the Parent Group shall be for the benefit, respectively, of the SpinCo Group (in the former case) or the Parent Group (in the latter case). Any Insurance Proceeds, net of costs and reimbursements as contemplated by Section 8.02, received for the benefit of both the Parent Group and the SpinCo Group shall be distributed pro rata based on the respective share of the underlying loss.

Section 8.04 Claims Not Reimbursed. Parent shall not be liable to SpinCo for claims, or portions of claims, not reimbursed by insurers under any policy for any reason, including coinsurance provisions, deductibles, quota share deductibles, self-insured retentions, reimbursement obligations (including under "fronted" or similar insurance policies), bankruptcy or insolvency of any insurance carrier(s), policy limitations or restrictions (including exhaustion of limits), any coverage disputes, any failure to timely file a claim by any member of the Parent Group or any member of the SpinCo Group or any defect in such claim or its processing. Nothing in this Section 8.04 shall be construed to limit or otherwise alter in any way the obligations of the Parties, including those created by this Agreement, by operation of Law or otherwise.

Section 8.05 D&O Policies. On and after the Distribution Date, Parent shall not, and shall cause the members of the Parent Group not to, take any action that would limit the coverage of the individuals who acted as directors or officers of SpinCo (or members of the SpinCo Group) prior to the Distribution Date under any directors and officers liability insurance policies or fiduciary liability insurance policies (collectively, "D&O Policies") maintained by the members of the Parent Group in respect of claims made prior to the Distribution Date. Parent shall, and shall cause the members of the Parent Group to, reasonably cooperate with the individuals who acted as directors or officers of SpinCo (or members of the SpinCo Group) prior to the Distribution Date in their pursuit of any coverage claims under such D&O Policies made prior to the Distribution Date. Except as provided in this Section 8.05, the Parent Group may, at any time, without liability or obligation to the SpinCo Group, amend, commute, terminate, buy out, extinguish liability under or otherwise modify any "occurrence-based" insurance policy or "claims-made-based" insurance policy (and such claims will be subject to any such amendments, commutations, terminations, buy-outs, extinguishments and modifications); provided, however, that Parent will notify SpinCo of any termination of any insurance policy under which SpinCo is entitled to make claims pursuant to this Article VIII.

ARTICLE IX

FURTHER ASSURANCES

Section 9.01 Further Assurances.

(a) In addition to the actions specifically provided for elsewhere in this Agreement, but subject to the express limitations of this Agreement and of the Ancillary Agreements, each of the Parties shall, subject to Section 5.03, use reasonable best efforts, prior to, on and after the Distribution Date, 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 and agreements to consummate, and make effective, the transactions contemplated by this Agreement.

(b) Without limiting the foregoing, but subject to the express limitations of this Agreement and of the Ancillary Agreements, prior to, on and after the Distribution Date, each Party shall cooperate with the other Party, without any further consideration, but at the expense of the requesting Party: (i) to execute and deliver, or use reasonable best efforts to execute and deliver, or cause to be executed and delivered, all instruments, including any instruments of conveyance, assignment and transfer as such Party may reasonably be requested to execute and deliver by the other Party; (ii) to make, or cause to be made, all filings with, and to obtain, or cause to be obtained, all Consents of any Governmental Authority or any other Person under any permit, license, Contract, indenture or other instrument; (iii) to obtain, or cause to be obtained, any Governmental Approvals or other Consents required to effect the Spin-Off; and (iv) to take, or cause to be taken, 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, the Ancillary Agreements and any transfers of Assets or assignments and assumptions of Liabilities hereunder and the other transactions contemplated hereby.

(c) On or prior to the Distribution Date, Parent and SpinCo, in their respective capacities as direct and indirect stockholders of their respective Subsidiaries, shall each ratify any actions that are reasonably necessary or desirable to be taken by SpinCo or any other Subsidiary of Parent, as the case may be, to effectuate the transactions contemplated by this Agreement.

(d) Prior to the Distribution, if either Party identifies any commercial or other service that is needed to ensure a smooth and orderly transition of its business in connection with the consummation of the transactions contemplated hereby, and that is not otherwise governed by the provisions of this Agreement or any Ancillary Agreement, the Parties will cooperate in good faith to determine whether there is a mutually acceptable arm's-length basis on which the other Party will provide such service.

ARTICLE X

TERMINATION

Section 10.01 Termination. This Agreement may be terminated by Parent at any time, in its sole discretion, prior to the Distribution.

Section 10.02 Effect of Termination. In the event of any termination of this Agreement prior to the Distribution, neither Party (nor any member of their Group or any of their respective directors or officers) shall have any Liability or further obligation to the other Party or any member of its Group under this Agreement or the Ancillary Agreements.

ARTICLE XI

MISCELLANEOUS

Section 11.01 Counterparts; Entire Agreement; Corporate Power.

(a) This Agreement may be executed in one or more counterparts, all of which counterparts shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each Party and delivered to the other Party. This Agreement may be executed by facsimile or PDF signature and scanned and exchanged by electronic mail, and such facsimile or PDF signature or scanned and exchanged copies shall constitute an original for all purposes.

(b) This Agreement, the Ancillary Agreements and the Appendices, Exhibits and Schedules hereto and thereto 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 the subject matter hereof other than those set forth or referred to herein or therein. In the event of conflict or inconsistency between the provisions of this Agreement or any Ancillary Agreement, on the one hand, and the provisions of any Local Transfer Agreement (including any provision of a Local Transfer Agreement providing for dispute resolution mechanisms inconsistent with those provided herein), on the other hand, the provisions of this Agreement and any such Ancillary Agreement shall prevail and remain in full force and effect. Each Party hereto shall, and shall cause each of its Subsidiaries to, implement the provisions of and the transactions contemplated by the Local Transfer Agreement in accordance with the immediately preceding sentence.

(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 each of 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 (or, in the case of any Ancillary Agreement, will be on or prior to the Distribution Date) duly executed and delivered by it and constitutes, or will constitute, a valid and binding agreement of it enforceable in accordance with the terms thereof.

Section 11.02 Negotiation. In the event of any claim, controversy, demand or request for relief of any kind arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity or breach of this Agreement or any Ancillary Agreement (unless such Ancillary Agreement expressly provides that disputes thereunder will not be subject to the resolution procedures set forth in this Article XI) or otherwise arising out of or related to this Agreement or any such Ancillary Agreement or the transactions contemplated hereby or thereby, including any Action based on contract, tort, equity, statute, regulation or constitution (collectively, "Disputes"), the Party raising the Dispute shall give written notice of the Dispute (a "Dispute Notice"), and the general counsels of the Parties (or such other individuals designated by the respective general counsels) and/or the executive officers designated by the Parties shall negotiate for a reasonable period of time to settle such Dispute; provided, that such reasonable period shall not, unless otherwise agreed by the Parties in writing, exceed ninety (90) days (the "Negotiation Period") from the time of receipt of the Dispute Notice; provided, further, that in the event of any arbitration in accordance with Section 11.03 hereof, (x) the Parties shall not assert the defenses of statute of limitations, laches or any other defense, in each such case based on the passage of time during the Negotiation Period, and (y) any contractual time period or deadline under this Agreement or any Ancillary Agreement relating to such Dispute occurring after the Dispute Notice is received shall not be deemed to have passed until such Arbitration has been resolved.

Section 11.03 Arbitration. If the Dispute has not been resolved for any reason after the Negotiation Period, such Dispute may be submitted by either Party to final and binding arbitration administered in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect (the "Rules"), except as modified herein.

(a) The arbitration shall be conducted by a three-member arbitral tribunal (the "Arbitral Tribunal"). The claimant shall nominate one arbitrator in accordance with the Rules, and the respondent shall nominate one arbitrator in accordance with the Rules within twenty-one days (21) after the appointment of the first arbitrator. The third arbitrator, who shall serve as chair of the Arbitral Tribunal, shall be jointly nominated by the two party-nominated arbitrators within twenty-one (21) days of the confirmation of the appointment of the second arbitrator. If any arbitrator is not appointed within the time limit provided herein, such arbitrator shall be appointed by the AAA in accordance with the listing, striking and ranking procedure in the Rules. With respect to any disputes relating to HSE Liabilities, the arbitrators shall be attorneys with experience in HSE Laws or technical or scientific experts whose work relates to environmental science, remediation or pollution control issues, as appropriate to the specific disputes.

(b) The arbitration shall be held, and the award shall be rendered, in New York, New York, in the English language.

(c) For the avoidance of doubt, by submitting their Dispute to arbitration under the Rules, the Parties expressly agree that all issues of arbitrability, including all issues concerning the propriety and timeliness of the commencement of the arbitration, the jurisdiction of the Arbitral Tribunal (including the scope of this agreement to arbitrate and the extent to which a Dispute is within that scope), and the procedural conditions for arbitration, shall be finally and solely determined by the Arbitral Tribunal.

(d) Without derogating from Section 11.03(e) below, the Arbitral Tribunal shall have the full authority to grant any pre-arbitral injunction, pre-arbitral attachment, interim or conservatory measure or other order in aid of arbitration proceedings ("Interim Relief"). The Parties shall exclusively submit any application for Interim Relief to only: (A) the Arbitral Tribunal; or (B) prior to the constitution of the Arbitral Tribunal, an emergency arbitrator appointed in the manner provided for in the Rules (the "Emergency Arbitrator"). Any Interim Relief so issued shall, to the extent permitted by applicable Law, be deemed a final arbitration award for purposes of enforceability, and, moreover, shall also be deemed a term and condition of this Agreement subject to specific performance in Section 11.04 below. The foregoing procedures shall constitute the exclusive means of seeking Interim Relief, provided, however, that (i) the Arbitral Tribunal shall have the power to continue, review, vacate or modify any Interim Relief granted by an Emergency Arbitrator; and (ii) in the event an Emergency Arbitrator or the Arbitral Tribunal issues an order granting, denying or otherwise addressing Interim Relief (a "Decision on Interim Relief"), any Party may apply to enforce or require specific performance of such Decision on Interim Relief in any court of competent jurisdiction.

(e) The Arbitral Tribunal shall have the power to grant any remedy or relief that is in accordance with the terms of this Agreement or the applicable Ancillary Agreement, including specific performance and temporary or final injunctive relief, provided, however, that the Arbitral Tribunal shall have no authority or power to limit, expand, alter, amend, modify, revoke or suspend any condition or provision of this Agreement or any Ancillary Agreement, nor any right or power to award punitive, exemplary, enhanced or treble damages.

(f) The Arbitral Tribunal shall have the power to allocate the costs and fees of the arbitration, including reasonable attorneys' fees and costs as well as those costs and fees addressed in the Rules, between the Parties in the manner it deems fit.

(g) Arbitration under this Article XI shall be the sole and exclusive remedy for any Dispute, and any award rendered thereby shall be final and binding upon the Parties as from the date rendered. Judgment on the award rendered by the Arbitral Tribunal may be entered in any state or federal court within the state of Delaware (which the parties hereby agree have jurisdiction over them to enforce any such award) and any other court having jurisdiction thereof, including any court having jurisdiction over the relevant Party or its Assets.

Section 11.04 Specific Performance. Subject to Section 11.02 and Section 11.03, except as provided below, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the affected Party shall have the right to specific performance, declaratory relief and injunctive or other equitable relief (on a permanent, emergency, temporary, preliminary or interim basis) of its rights under this Agreement, in addition to any and all other rights and remedies at Law or in equity, and all such rights and remedies shall be cumulative. The other Party shall not oppose the granting of such relief on the basis that money damages are an adequate remedy. The Parties agree that the remedies at Law for any breach or threatened breach hereof, 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 or similar security with such remedy are waived. For the avoidance of doubt, the rights pursuant to this Section 11.04 shall be pursued in arbitration under Section 11.03.

Section 11.05 Treatment of Arbitration. The Parties agree that any arbitration hereunder shall be kept confidential, and that the existence of the proceeding and all of its elements (including any pleadings, briefs or other documents or evidence submitted or exchanged, any testimony or other oral submissions, and any awards) shall be deemed confidential, and shall not be disclosed beyond the Arbitral Tribunal, the Parties, their counsel, and any Person necessary to the conduct of the proceeding, except as and to the extent required by law and to defend or pursue any legal right. In the event any Party makes application to any court in connection with this Section 11.05 (including any proceedings to enforce a final award or any Interim Relief), that party shall take all steps reasonably within its power to cause such application, and any exhibits (including copies of any award or decisions of the Arbitral Tribunal or Emergency Arbitrator) to be filed under seal, shall oppose any challenge by any third party to such sealing, and shall give the other Party immediate notice of such challenge.

Section 11.06 Continuity of Service and Performance. Unless otherwise agreed in writing, the Parties shall continue to provide services and honor all other commitments under this Agreement and each Ancillary Agreement during the course of dispute resolution pursuant to the provisions of Section 11.02, Section 11.03, Section 11.04 or Section 11.05 with respect to all matters not subject to such dispute resolution.

Section 11.07 Governing Law. This Agreement and any disputes relating to, arising out of or resulting from this Agreement, including to its execution, performance, or enforcement, shall be governed by, and construed in accordance with, the Laws of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of Laws thereof.

Section 11.08 Assignability. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of Law or otherwise by either Party without the prior written consent of the other Party. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns. Notwithstanding the foregoing, if any Party to this Agreement (or any of its successors or permitted assigns) (a) shall enter into a consolidation or merger transaction in which such Party is not the surviving entity and the surviving entity acquires or assumes all or substantially all of such Party's Assets or (b) shall transfer all or substantially all of such Party's Assets to any Person, then, in each such case, the assigning Party (or its successors or permitted assigns, as applicable) shall ensure that the assignee or successor-in-interest expressly assumes in writing all of the obligations of the assigning Party under this Agreement, and the assigning Party shall not be required to seek consent, but shall provide written notice and evidence of such assignment, assumption or succession to the non-assigning Party. No assignment permitted by this Section 11.08 shall release the assigning Party from liability for the full performance of its obligations under this Agreement.

Section 11.09 Third-Party Beneficiaries. Except as expressly set forth in Section 7.10 and for the indemnification rights under this Agreement of any Parent Indemnitee or SpinCo Indemnitee in his, her or its respective capacities as such, (a) the provisions of this Agreement are solely for the benefit of the Parties hereto and are not intended to confer upon any Person except the Parties hereto 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, cause of action or other right in excess of those existing without reference to this Agreement.

Section 11.10 Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given (a) when delivered in person, (b) on the date received, if sent by a nationally recognized delivery or courier service, (c) upon written confirmation of receipt after transmittal by electronic mail or (d) upon the earlier of confirmed receipt or the fifth (5th) business day following the date of mailing if sent by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to Parent, to:

International Business Machines Corporation
One New Orchard Road
Armonk, NY 10504
Attn: General Manager, Corporate Development and Strategy

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attn: Scott A. Barshay
Steven J. Williams
Laura C. Turano
Email: sbarshay@paulweiss.com
swilliams@paulweiss.com
lturano@paulweiss.com
Facsimile: 212-492-0040

If to SpinCo, to:

Kyndryl Holdings, Inc.
One Vanderbilt Avenue, 15th Floor
New York, NY 10017
Attn: Thomas P. Hagen, Associate General Counsel

Either Party may, by notice to the other Party, change the address and identity of the Person to which such notices and copies of such notices are to be given. Each Party agrees that nothing in this Agreement shall affect the other Party's right to serve process in any other manner permitted by Law (including pursuant to the rules for foreign service of process authorized by the Hague Convention).

Section 11.11 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court or arbitrator 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, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon any such determination, any such provision, to the extent determined to be invalid, void or unenforceable, shall be deemed replaced by a provision that such court determines is valid and enforceable and that comes closest to expressing the intention of the invalid, void or unenforceable provision.

Section 11.12 Publicity. Each of Parent and SpinCo shall consult with the other and shall, subject to the requirements of Section 7.09, provide the other Party the opportunity to review and comment upon any press releases or other public statements in connection with the Spin-Off or any of the other transactions contemplated hereby and any filings with any Governmental Authority or national securities exchange with respect thereto, in each case prior to the issuance or filing thereof, as applicable (including the Information Statement, the Parties' respective Current Reports on Form 8-K to be filed on the Distribution Date, the Parties' respective Quarterly Reports on Form 10-Q filed with respect to the fiscal quarter during which the Distribution Date occurs, or if such quarter is the fourth fiscal quarter, the Parties' respective Annual Reports on Form 10-K filed with respect to the fiscal year during which the Distribution Date occurs (each such Quarterly Report on Form 10-Q or Annual Report on Form 10-K, a "First Post-Distribution Report")). Each Party's obligations pursuant to this Section 11.12 shall terminate on the date on which such Party's First Post-Distribution Report is filed with the Commission.

Section 11.13 Expenses. Except as set forth on Schedule XXIII, as otherwise expressly provided in this Agreement or in any Ancillary Agreement, (a) all third-party fees, costs and expenses incurred by either the Parent Group or the SpinCo Group in connection with effecting the Spin-Off prior to or on the Distribution Date (but excluding, for the avoidance of doubt, any financing fees or interest payable in respect of any indebtedness incurred by SpinCo in connection with the Spin-Off), will be borne and paid by Parent and (b) all third-party fees, costs and expenses incurred by either the Parent Group or the SpinCo Group in connection with effecting the Spin-Off following the Distribution Date, will be borne and paid by the Party incurring such fee, cost or expense. For the avoidance of doubt, this Section 11.13 shall not affect each Party's responsibility to indemnify Parent Liabilities or SpinCo Liabilities, as applicable, arising from the transactions contemplated by the Distribution.

Section 11.14 Headings. The article, section and paragraph headings contained in this Agreement, including in the table of contents of this Agreement, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 11.15 Survival of Covenants. Except as expressly set forth in this Agreement, the covenants in this Agreement and the Liabilities for the breach of any obligations in this Agreement shall survive the Spin-Off and shall remain in full force and effect.

Section 11.16 Waivers of Default. No failure or delay of any Party (or the applicable member of its Group) in exercising any right or remedy under this Agreement or any Ancillary Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. 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.

Section 11.17 Amendments. No provisions of this Agreement shall be deemed waived, amended, supplemented or modified by any Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of each Party.

Section 11.18 Interpretation. Words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires. The terms “hereof,” “herein,” “herewith” and words of similar import, unless otherwise stated, shall be construed to refer to this Agreement as a whole (including all of the schedules hereto) and not to any particular provision of this Agreement. Article, Section or Schedule references are to the articles, sections and schedules of or to this Agreement unless otherwise specified. Any capitalized terms used in any Schedule to this Agreement or to any Ancillary Agreement but not otherwise defined therein shall have the meaning as defined in this Agreement or the Ancillary Agreement to which such Schedule is attached, as applicable. Any definition of or reference to any agreement, instrument or other document herein (including any reference herein to this Agreement) shall, unless otherwise stated, be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein, including in Section 11.17 above). The word “including” and words of similar import when used in this Agreement shall mean “including, without limitation,” unless the context otherwise requires or unless otherwise specified. The word “or” shall not be exclusive. 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.” All references to “$” or dollar amounts are to the lawful currency of the United States of America. References herein to any Law shall be deemed to refer to such law as amended, reenacted, supplemented or superseded in whole or in part and in effect from time to time and also to all rules and regulations promulgated thereunder. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any provisions hereof.

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

INTERNATIONAL BUSINESS MACHINES CORPORATION

By: /s/ Frank Sedlarcik
Name: Frank Sedlarcik
Title: Vice President, Assistant General Counsel and Secretary

KYNDRYL HOLDINGS, INC.

By: /s/ Simon Beaumont
Name: Simon Beaumont
Title: President

[Signature Page to Separation and Distribution Agreement]

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF KYNDRYL HOLDINGS, INC.

The undersigned authorized officer, in order to form a corporation under the General Corporation Law of the State of Delaware (the "DGCL"), certifies as follows:

FIRST: The present name of the corporation is Kyndryl Holdings, Inc. (the "Corporation"). The Corporation was incorporated under the name "IBM Ocean Holdings US, Inc." by the filing of its original Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on December 4, 2020 (the "Original Certificate of Incorporation").

SECOND: This Amended and Restated Certificate of Incorporation (this "Certificate of Incorporation"), which restates and integrates and also further amends the provisions of the Corporation's Original Certificate of Incorporation, as amended, was duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL and by the written consent of its stockholders in accordance with Section 228 of the DGCL, and shall be effective as of 5:00 P.M., eastern time on November 3, 2021.

THIRD: The Corporation's Original Certificate of Incorporation, as heretofore amended, is hereby amended, integrated and restated to read in its entirety as follows:

ARTICLE I

Name

The name of the corporation is Kyndryl Holdings, Inc. (the "Corporation").

ARTICLE II

Address; Registered Office and Agent

The address of the Corporation's registered office in the State of Delaware is Kyndryl Holdings, Inc. c/o Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801 and the name of the registered agent of the Corporation for service of process in the State of Delaware at such address is The Corporation Trust Company.

ARTICLE III

Purposes

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

ARTICLE IV

Capital Stock

4.1 Authorized Stock. The total number of shares of all classes of stock that the Corporation shall have authority to issue is 1,100,000,000 shares, divided into (a) 1,000,000,000 shares of Common Stock, with the par value of $0.01 per share (the "Common Stock"), and (b) 100,000,000 shares of Preferred Stock, with the par value of $0.01 per share (the "Preferred Stock"). The authorized number of shares of any class or series of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the stock of the Corporation entitled to vote, and no separate vote of such class or series of stock the authorized number of which is to be increased or decreased shall be necessary to effect such change.

The Board (as defined below) is hereby authorized, by resolution or resolutions thereof, to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designations, powers, preferences, rights, qualifications, limitations and restrictions in respect of the shares of such series. The powers, designations, preferences and relative, participating, optional or other rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, may differ from those of any and all other series at any time outstanding.

4.2 Voting. Except as may otherwise be provided in this Certificate of Incorporation or by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Except as may otherwise be provided in this Certificate of Incorporation (including any certificate filed with the Office of the Secretary of State of the State of Delaware establishing the terms of a series of Preferred Stock in accordance with the second paragraph of Section 4.1 (such certificate, a "Preferred Stock Designation")) or by applicable law, no holder of any series of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.

4.3 Dividends. Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock, dividends may be declared and paid on the Common Stock out of funds legally available therefor at such times and in such amounts as the Board in its discretion shall determine;

4.4 Dissolution, Liquidation or Winding Up. Upon the dissolution, liquidation or winding up of the Corporation, subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the holders of the Common Stock shall be entitled to receive the assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares of Common Stock held by them.

4.5 No Stockholder Actions by Written Consent. 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.

4.6 Special Meetings. Special meetings of stockholders of the Corporation may only be called by the Chair of the Board of Directors or the Board of Directors pursuant to a resolution approved by a majority of the entire Board of Directors (the entire Board of Directors being the total number of authorized directors, whether or not there exist any vacancies or unfilled previously authorized directorships) or as otherwise provided in the Bylaws of the Corporation (the "Bylaws").

ARTICLE V

Board of Directors

5.1 General. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors (the "Board"). Except as otherwise provided for or fixed pursuant to the terms of any Preferred Stock Designation relating to the rights of the holders of any series of Preferred Stock to elect additional directors, the total number of directors constituting the entire Board shall be not less than 6 nor more than 20, with the then-authorized number of directors being fixed from time to time by the Board. Unless and except to the extent that the Bylaws shall so require, the election of directors need not be by written ballot.

5.2 Classified Board. The Board (other than those directors elected by the holders of any series of Preferred Stock pursuant to the terms of any Preferred Stock Designation (the "Preferred Stock Directors")) shall be divided into three classes, as nearly equal in number as possible, designated Class I, Class II and Class III. If the number of directors has changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class. The initial assignment of directors to each such class shall be made by the Board of Directors. The term of office of the initial Class I directors shall expire at the 2022 annual meeting of stockholders, the term of office of the initial Class II directors shall expire at the 2023 annual meeting of stockholders and the term of office of the initial Class III directors shall expire at the 2024 annual meeting of stockholders. Each director elected at the 2022, 2023 or 2024 annual meeting of stockholders shall belong to the same class as the director whose term shall have then expired and who is being succeeded by such director and shall hold office for a three-year term and until his or her successor shall have been duly elected and qualified or until his or her earlier resignation or removal. Commencing with the 2025 annual meeting of stockholders and at each annual meeting thereafter, each director up for election at such meeting shall be elected annually and shall hold office until the next annual meeting of stockholders and until his or her respective successor shall have been duly elected and qualified or until his or her earlier resignation or removal. Pursuant to such procedures, effective as of the conclusion of the 2027 annual meeting of stockholders, the Board of Directors will no longer be classified under Section 141(d) of the DGCL and directors shall no longer be divided into three classes. The election of directors need not be by written ballot.

5.3 Removal of Directors. Prior to the conclusion of the 2027 annual meeting of stockholders, except for Preferred Stock Directors, any director or the entire Board may be removed from office at any time, but only for cause. After the conclusion of the 2027 annual meeting of stockholders, except for Preferred Stock Directors, any director or the entire Board may be removed from office at any time, with or without cause. In either case, removal may only occur by the affirmative vote of at least a majority of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

5.4 Vacancies and Newly Created Directorships. Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board, or by a sole remaining director. Any director so chosen shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified.

5.5 Adoption, Amendment or Repeal of Bylaws. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to adopt, amend and repeal Bylaws, subject to the power of the Stockholders of the Corporation to adopt, amend and repeal any Bylaws whether adopted by them or otherwise.

ARTICLE VI

Limitation of Liability

To the fullest extent permitted under the DGCL, as amended from time to time, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any amendment or repeal of this ARTICLE VI shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment or repeal.

ARTICLE VII

Indemnification

7.1 Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another entity or enterprise, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement (except for judgments, fines and amounts paid in settlement in any action or suit by or in the right of the Corporation to procure a judgment in its favor) actually and reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 7.3, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized by the Board.

7.2 Prepayment of Expenses. To the extent not prohibited by applicable law, the Corporation shall pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any Proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this ARTICLE VII or otherwise.

7.3 Claims. If a claim for indemnification or advancement of expenses under this ARTICLE VII is not paid in full within 30 days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

7.4 Nonexclusivity of Rights. The rights conferred on any Covered Person by this ARTICLE VII shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, the Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

7.5 Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another entity or enterprise shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other entity or enterprise.

7.6 Amendment or Repeal. Any amendment or repeal of the foregoing provisions of this ARTICLE VII shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such amendment or repeal.

7.7 Other Indemnification and Prepayment of Expenses. This ARTICLE VII shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VIII

Certificate Amendments

The Corporation reserves the right at any time, and from time to time, to amend or repeal any provision contained in this Certificate of Incorporation, and add other provisions authorized by the laws of the State of Delaware at the time in force, in the manner now or hereafter prescribed by applicable law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation (as amended) are granted subject to the rights reserved in this ARTICLE VIII.

ARTICLE IX

Exclusive Forum

Unless the Corporation consents in writing to the selection of an alternative forum, and subject to applicable jurisdictional requirements, the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, and to the fullest extent permitted by applicable law, (b) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL, this Certificate of Incorporation or the Bylaws, or (d) any action asserting a claim governed by the internal affairs doctrine shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware lacks jurisdiction over such action or proceeding, then another court of the State of Delaware or, if no court of the State of Delaware has jurisdiction, then the United States District Court for the District of Delaware).

Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Kyndryl Holdings, Inc. has caused this Amended and Restated Certificate of Incorporation to be executed by its duly authorized officer this 2nd day of November 2021.

KYNDRYL HOLDINGS, INC.

By: /s/ Frank Sedlarcik
Name: Frank Sedlarcik
Title: Vice President, Secretary

Exhibit 3.2

AMENDED AND RESTATED BYLAWS

of

KYNDRYL HOLDINGS, INC.

(A Delaware Corporation)

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ARTICLE I

DEFINITIONS

As used in these Bylaws, unless the context otherwise requires, the term:

1.1. "Board" means the Board of Directors of the Corporation.

1.2. "Bylaws" means these Amended and Restated Bylaws of the Corporation, as amended from time to time.

1.3. "Certificate of Incorporation" means the Certificate of Incorporation of the Corporation, as amended from time to time (including by any Preferred Stock Designation (as defined in the Certificate of Incorporation of the Corporation filed with the Office of the Secretary of State of the State of Delaware on November 2 , 2021)).

1.4. "Chair" means the Chair of the Board.

1.5. "Chief Executive Officer" means the Chief Executive Officer of the Corporation.

1.6. "Corporation" means Kyndryl Holdings, Inc.

1.7. "DGCL" means the General Corporation Law of the State of Delaware, as amended from time to time.

1.8. "Directors" means the directors of the Corporation.

1.9. "Exchange Act" means the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, each as amended from time to time.

1.10. "Law" means any U.S. or non-U.S., federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a governmental authority (including any department, court, agency or official, or non-governmental self-regulatory organization, agency or authority and any political subdivision or instrumentality thereof).

1.11. "Lead Director" means, at any given time, the lead, independent member (if any) elected as such by the Board and occupying such position.

1.12. "Listing Date" means the first such date on which the Corporation has a class of equity securities registered under the Exchange Act and listed or admitted to trading on a national securities exchange (as defined under the Exchange Act).

1.13. "Office of the Corporation" means the principal executive office of the Corporation, the Corporation's registered office in the State of Delaware or any other offices at any other place or places designated from time to time by the Board as an Office of the Corporation for purposes of these Bylaws.

1.14. "President" means the President of the Corporation.

1.15. "Public Disclosure" of any date or other information means disclosure thereof by a press release reported by the Dow Jones News Services, Associated Press or comparable U.S. national news service or in a document publicly filed by the Corporation with the SEC pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

1.16. "SEC" means the U.S. Securities and Exchange Commission.

1.17. "Secretary" means the Secretary of the Corporation.

1.18. "Stockholder Associated Person" means, with respect to any Stockholder, (i) any other beneficial owner of stock of the Corporation that are owned by such Stockholder and (ii) any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Stockholder or such beneficial owner. For purposes of this definition, the terms "controls," "controlled by" and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

1.19. "Stockholders" means the stockholders of the Corporation as set forth on its stock ledger.

1.20. "Treasurer" means the Treasurer of the Corporation.

1.21. "Vice President" means a Vice President of the Corporation.

ARTICLE II

STOCKHOLDERS

2.1. Place of Meetings. Meetings of Stockholders may be held at such place, if any, either within or without the State of Delaware, or by means of remote communication, as may be designated by the Board from time to time.

2.2. Annual Meeting.

(a) A meeting of Stockholders for the election of Directors and such other business as may be properly brought before the meeting in accordance with these Bylaws shall be held annually at such date and time as may be designated by the Board from time to time.

(b) At an annual meeting of the Stockholders, only business (other than business relating to the nomination or election of Directors which is governed by Section 3.3) that has been properly brought before the Stockholder meeting in accordance with the procedures set forth in this Section 2.2 shall be conducted. To be properly brought before a meeting of Stockholders, such business must be brought before the meeting (i) by or at the direction of the Board or any committee thereof or (ii) by a Stockholder who (A) was a Stockholder when the notice required by this Section 2.2 is delivered to the Secretary and at the time of the meeting, (B) is entitled to vote at the meeting and (C) complies with the notice and other provisions of this Section 2.2. Subject to Section 2.2(i), and except with respect to the calling of special meetings of Stockholders (which is governed by Section 2.3) and nominations or elections of Directors (which are governed by Section 3.3), Section 2.2(b)(ii) is the exclusive means by which a Stockholder may bring business before an annual meeting of Stockholders. Any business brought before a meeting in accordance with Section 2.2(b)(ii) is referred to as "Stockholder Business."

(c) Subject to Section 2.2(i), at any annual meeting of Stockholders, all proposals of Stockholder Business must be made by timely written notice given by or on behalf of a Stockholder (the "Notice of Business") and must otherwise be a proper matter for Stockholder action under applicable Law. To be timely, the Notice of Business must be delivered personally or mailed to, and received at the Office of the Corporation, addressed to the Secretary, by no earlier than 120 days and no later than 90 days before the first anniversary of the date of the prior year's annual meeting of Stockholders; provided, however, that if (A) the annual meeting of Stockholders is advanced by more than 30 days, or delayed by more than 60 days, from the first anniversary of the prior year's annual meeting of Stockholders or (B) no annual meeting was held during the prior year, the notice by the Stockholder to be timely must be received (x) no earlier than 120 days before such annual meeting and (y) no later than the later of 90 days before such annual meeting and the tenth day after the earlier of the day on which the notice of such annual meeting was first made by mail or the day such annual meeting is announced by Public Disclosure. In no event shall an adjournment, postponement or deferral, or Public Disclosure of an adjournment, postponement or deferral, of a Stockholder meeting commence a new time period (or extend any time period) for the giving of the Notice of Business.

(d) The Notice of Business must set forth:

(i) the name and address of each Stockholder proposing Stockholder Business (the "Proponent"), as they appear on the Corporation's books;

(ii) the name and address of any Stockholder Associated Person;

(iii) as to each Proponent and any Stockholder Associated Person, (A) the class or series and number of shares of stock directly or indirectly held of record and beneficially by the Proponent or Stockholder Associated Person, (B) a description of any agreement, arrangement or understanding, direct or indirect, with respect to such Stockholder Business between or among the Proponent, any Stockholder Associated Person or any others (including their names) acting in concert with any of the foregoing, (C) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, hedging transactions and borrowed or loaned shares) that has been entered into, directly or indirectly, by the Proponent or any Stockholder Associated Person and that remains in effect, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of the Proponent or any Stockholder Associated Person with respect to shares of stock of the Corporation (a "Derivative"), (D) a description in reasonable detail of any proxy (including revocable proxies), contract, arrangement, understanding or other relationship pursuant to which the Proponent or any Stockholder Associated Person has a right to vote any shares of stock of the Corporation and (E) any profit-sharing or any performance-related fees (other than an asset-based fee) that any Proponent, any Stockholder Associated Person is entitled to, based on any increase or decrease in the value of stock of the Corporation or Derivatives thereof, if any, as of the date of such notice;

(iv) all other information that would be required to be filed with the SEC if the Proponents or Stockholder Associated Persons were participants in a solicitation subject to Section 14 of the Exchange Act (the information specified in Section 2.2(d)(i) to (iv) is referred to herein as "Stockholder Information");

(v) a representation that each Proponent is a Stockholder entitled to vote at the meeting and intends to appear in person or by a qualified representative (as defined in Section 2.2(h)) at the meeting to propose such Stockholder Business;

(vi) a brief description of the Stockholder Business desired to be brought before the annual meeting, the text of the proposal (including the text of any resolutions proposed for consideration and, if such business includes a proposal to amend the Bylaws, the language of the proposed amendment) and the reasons for conducting such Stockholder Business at the meeting;

(vii) any material interest of each Proponent and any Stockholder Associated Person in such Stockholder Business;

(viii) a representation as to whether the Proponent intends (A) 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 such Stockholder Business or (B) otherwise to solicit proxies from Stockholders in support of such Stockholder Business; and

(ix) a representation that the Proponents shall provide all other information and affirmations, updates and supplements required pursuant to these Bylaws.

(e) The Proponents shall also provide any other information reasonably requested from time to time by the Corporation within 10 business days after each such request.

(f) In addition, the Proponent shall affirm as true and correct the information provided to the Corporation in the Notice of Business or at the Corporation's request pursuant to Section 2.2(e) (and shall update or supplement such information as needed so that such information shall be true and correct) as of (i) the record date for the meeting and (ii) the date that is 10 business days before the meeting and, if applicable, before reconvening any adjournment or postponement thereof. Such affirmation, update and/or supplement must be delivered personally or mailed to, and received at the Office of the Corporation, addressed to the Secretary, by no later than (x) five business days after the applicable date specified in clause (i) of the foregoing sentence (in the case of the affirmation, update and/or supplement required to be made as of those dates), and (y) not later than seven business days before the date for the meeting (in the case of the affirmation, update and/or supplement required to be made as of 10 business days before the meeting or reconvening any adjournment or postponement thereof).

(g) Except to the extent otherwise determined by the Board, the person presiding over the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the procedures set forth in this Section 2.2. Any such business not properly brought before the meeting shall not be transacted.

(h) Except to the extent otherwise determined by the Board, if the Proponent (or a qualified representative of the Proponent) does not appear at the meeting of Stockholders to present the Stockholder Business, such business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.2, to be considered a "qualified representative" of the Proponent, a person must be a duly authorized officer, manager or partner of such Stockholder or must be authorized by a writing executed by such Stockholder or an electronic transmission delivered by such Stockholder to act for such Stockholder as proxy at the meeting of Stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of Stockholders.

(i) The notice requirements of this Section 2.2 shall be deemed satisfied with respect to shareholder proposals that have been properly brought under Rule 14a-8 of the Exchange Act and that are included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

2.3. Special Meetings.

(a) Special meetings of Stockholders may be called at any time by, and only by, (i) the Board or (ii) solely to the extent required by Section 2.3(b), the Secretary. Business transacted at any special meeting of Stockholders shall be limited to the purposes stated in the Corporation's notice of the meeting.

(b) Subject to Section 2.3(d)-(h), a special meeting of Stockholders shall be called by the Secretary upon proper written request or requests (each, a "Meeting Request") given by or on behalf of one or more Stockholders (each, a "Requesting Stockholder") who hold at least 25% of the voting power of all outstanding shares of Common Stock (as defined in the Certificate of Incorporation) (the "Required Percent"). The record date for determining Stockholders entitled to request a special meeting shall be the date on which the first Meeting Request for such special meeting was received by the Secretary in the manner required by the preceding sentence.

(c) To be in proper form, a Meeting Request shall be signed by the Requesting Stockholder or Requesting Stockholders submitting such Meeting Request, shall be delivered to and received by the Secretary at the Office of the Corporation by hand or by certified or registered mail, return receipt requested, and shall set forth:

(i) a statement of the specific purpose or purposes of the meeting and the matters proposed to be acted on at the meeting, the reasons for conducting such business at the meeting, and any material interest in such business of each such Requesting Stockholder;

(ii) the name and address of each such Requesting Stockholder as it appears on the Corporation's stock ledger;

(iii) the number of shares of the Corporation's Common Stock owned of record and beneficially by each such Requesting Stockholder;

(iv) as to each such Requesting Stockholder, the Stockholder Information (except that references to the "Proponent" and "Stockholder Business" in Section 2.2(d)(i) to (iv) shall instead refer, respectively, to each "Requesting Stockholder" and "the matters proposed to be acted on at the special meeting" for purposes of this paragraph);

(v) any material interest of each Requesting Stockholder in the matters proposed to be acted on at the special meeting;

(vi) a representation as to whether each Requesting Stockholder intends (A) 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 matters proposed to be acted on at the special meeting or (B) otherwise to solicit proxies from Stockholders in support of the matters proposed to be acted on at the special meeting; and

(vii) a representation that each Requesting Stockholder shall provide all other information and affirmations, updates and supplements required pursuant to these Bylaws.

The requirement set forth in clause (iv) of the immediately preceding sentence shall not apply to (A) any Stockholder, or beneficial owner, as applicable, who has provided a written request solely in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Exchange Act Schedule 14A or (B) any Stockholder that is a broker, bank or custodian (or similar entity) and is acting solely as nominee on behalf of a beneficial owner.

(d) The Requesting Stockholders shall also provide any other information reasonably requested from time to time by the Corporation within 10 business days after each such request.

(e) The Requesting Stockholders shall affirm as true and correct the information provided to the Corporation in the Meeting Request or at the Corporation's request pursuant to Section 2.3(d) (and shall update or supplement such information as needed so that such information shall be true and correct) as of (i) the record date for the meeting, and (ii) the date that is 10 business days before the date of the meeting and, if applicable, before reconvening any adjournment or postponement thereof. Such affirmation, update and/or supplement must be delivered personally or mailed to, and received at the Office of the Corporation, addressed to the Secretary, by no later than (1) five business days after the applicable date specified in clause (i) of the foregoing sentence (in the case of the affirmation, update and/or supplement required to be made as of those dates), and (2) not later than seven business days before the date for the meeting (in the case of the affirmation, update and/or supplement required to be made as of 10 business days before the meeting or reconvening any adjournment or postponement thereof).

(f) A Requesting Stockholder may revoke its Meeting Request at any time by written revocation delivered to the Secretary, and if, following such revocation, there are unrevoked Meeting Requests from less than the Required Percent, the Board, in its discretion, may cancel the special meeting of the Stockholders.

(g) A special meeting requested by Stockholders shall be held at such date, time and place, if any, either within or without the state of Delaware or by means of remote communication, as may be fixed by the Board; provided, however, that the date of any such special meeting shall be not more than 90 days after the receipt by the Secretary in the manner required by Section 2.3(c) of Meeting Requests from the Required Percent.

(h) Notwithstanding anything to the contrary in this Section 2.3:

(i) A special meeting requested by Stockholders shall not be held if (A) the Meeting Requests from the Required Percent do not comply with these Bylaws or the Certificate of Incorporation; (B) the action relates to an item of business that is not a proper subject for stockholder action under applicable Law; (C) the Meeting Request is received by the Secretary during the period commencing 90 days prior to the date of, and ending on the date of adjournment of, the next annual meeting of Stockholders; (D) an identical or substantially similar item of business, as determined in good faith by the Board, was presented at a meeting of Stockholders held not more than 90 days before the Meeting Requests from the Required Percent are received by the Secretary or (E) the Meeting Requests from the Required Percent were made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable Law; and

(ii) Nothing herein shall prohibit the Board from including in the Corporation's notice of any special meeting of Stockholders called by the Secretary additional matters to be submitted to the Stockholders at such meeting not included in the Meeting Request(s) in respect of such meeting.

2.4. Record Date.

(a) For the purpose of determining the Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, unless otherwise required by the Certificate of Incorporation or applicable Law, the Board may fix a record date, which record date shall not precede the date on which the resolution fixing the record date was adopted by the Board and shall not be more than 60 or less than 10 days before the date of such meeting. For the purposes of determining the Stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, exercise any rights in respect of any change, conversion or exchange of stock or take any other lawful action, unless otherwise required by the Certificate of Incorporation or applicable Law, the Board may fix a record date, which record date shall not precede the date on which the resolution fixing the record date was adopted by the Board and shall not be more than 60 days prior to such action.

(b) if no such record date is fixed by the Board:

(i) The record date for determining Stockholders entitled to notice of and to vote at a meeting of Stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and

(ii) The record date for the purposes of determining the Stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, exercise any rights in respect of any change, conversion or exchange of stock or take any other lawful action shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

(c) When a determination of Stockholders entitled to notice of or to vote at any meeting of Stockholders has been made as provided in this Section 2.4, such determination shall apply to any adjournment thereof, unless the Board fixes a new record date for the adjourned meeting, in which case the Board shall also fix such record date or a date earlier than such date as the new Notice Record Date for the adjourned meeting.

2.5. Notice of Meetings of Stockholders. Whenever under the provisions of applicable Law, the Certificate of Incorporation or these Bylaws Stockholders are required or permitted to take any action at a meeting, a notice of the meeting in the form of a writing or electronic transmission shall be given stating the place, if any, date and hour of the meeting, the means of remote communication, if any, by which Stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date, and, in the case of a special meeting, the purposes for which the meeting is called. Unless otherwise provided by these Bylaws or applicable Law, notice of any meeting shall be given, not less than 10 nor more than 60 days before the date of the meeting, to each Stockholder entitled to vote at such meeting as of the record date. If mailed, such notice shall be deemed to be given when deposited in the U.S. mail, with postage prepaid, directed to the Stockholder at his or her address as it appears on the records of the Corporation. If given by electronic mail, such notice shall be deemed to be given when directed to such Stockholder's electronic mail address unless the Stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited pursuant to the terms of the DGCL. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation. An affidavit of the Secretary or the transfer agent of the Corporation that the notice required by this Section 2.5 has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein. If a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communication, if any, by which Stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. Any business that might have been transacted at the meeting as originally called may be transacted at the adjourned meeting. If, however, the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Stockholder entitled to vote at the meeting.

2.6. Waivers of Notice. Whenever the giving of any notice to Stockholders is required by applicable Law, the Certificate of Incorporation or these Bylaws, a written waiver, signed by the Stockholder entitled to notice, or a waiver by electronic transmission by such Stockholder, whether before or after the event as to which such notice is required, shall be deemed equivalent to notice. Attendance by a Stockholder at a meeting shall constitute a waiver of notice of such meeting except when the Stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Neither the business to be transacted at, nor the purposes of, any regular or special meeting of the Stockholders need be specified in any waiver of notice.

2.7. List of Stockholders. The Secretary shall prepare and make, at least 10 days before every meeting of Stockholders, a complete, alphabetical list of the Stockholders entitled to vote at the meeting, and showing the address of each Stockholder and the number of shares registered in the name of each Stockholder. Such list may be examined by any Stockholder, at the Stockholder's expense, for any purpose germane to the meeting, for a period of at least 10 days prior to the meeting, during ordinary business hours at the principal place of business of the Corporation or on a reasonably accessible electronic network or other electronic means as permitted by applicable Law. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any Stockholder who is present. If the meeting is held solely by means of remote communication, the list shall also be open for inspection as provided by applicable Law. Except as provided by applicable Law, the stock ledger shall be the only evidence as to who are the Stockholders entitled to examine the list of Stockholders or to vote in person or by proxy at any meeting of Stockholders.

2.8. Quorum of Stockholders; Adjournment. At each meeting of Stockholders, the presence, in person or represented by proxy, of the holders of a majority of the voting power of all outstanding shares of stock entitled to vote at the meeting of Stockholders shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by one or more classes or series of stock voting as a separate class, the holders of a majority of the voting power of the shares of such classes or series shall constitute a quorum of such separate class for the transaction of such business. The person presiding over the meeting in accordance with Section 2.11 or, in the absence of such person, the holders of a majority of the voting power of the shares of stock present in person or represented by proxy at any meeting of Stockholders, including an adjourned meeting, even if such holders do not constitute a quorum, may adjourn such meeting to another time or place. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity. 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.

2.9. Voting; Proxies.

(a) At any meeting of Stockholders, all matters other than the election of directors, and except as otherwise provided by the Certificate of Incorporation, these Bylaws or any applicable Law, shall be decided by the affirmative vote of a majority of the voting power of shares of stock present in person or represented by proxy and entitled to vote thereon. At all meetings of Stockholders for the election of Directors, each Director shall be elected by a majority of the votes cast with respect to the Director; provided that if as of the record date for the applicable meeting of Stockholders the number of nominees exceeds the number of Directors to be elected, the Directors shall be elected by the vote of a plurality of the votes cast. For purposes of this Section 2.9, a "majority of the votes cast" means that (a) the number of votes cast "for" a Director must exceed the number of votes cast "against" that Director and (b) abstentions and broker non-votes are not counted as votes cast. Any Director who is not so elected shall offer to tender his or her resignation to the Board in accordance with Section 3.7. The independent directors of the Board, giving due consideration to the best interests of the Corporation and its stockholders, shall evaluate the relevant facts and circumstances, and shall make a decision, within 90 days after the election, on whether to accept the tendered resignation. Any Director who tenders a resignation pursuant to this provision shall not participate in the Board's decision. The Board will promptly disclose publicly its decision and, if applicable, the reasons for rejecting the tendered resignation.

(b) Each Stockholder entitled to vote at a meeting of Stockholders may authorize another person or persons to act for such Stockholder by proxy but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in Law to support an irrevocable power. A Stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a revocation of the proxy or by delivering a new duly authorized proxy bearing a later date.

2.10. Voting Procedures and Inspectors at Meetings of Stockholders. The Board, in advance of any meeting of Stockholders, shall appoint one or more inspectors, who may be employees of the Corporation, to act at the meeting and make a written report thereof. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting, the person presiding at the meeting may appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of 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 (a) ascertain the number of shares outstanding and the voting power of each, (b) determine the shares represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and (e) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties. Unless otherwise provided by the Board, the date and time of the opening and the closing of the polls for each matter upon which the Stockholders will vote at a meeting shall be determined by the person presiding at the meeting and shall be announced at the meeting. No ballot, proxy, vote or any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery of the State of Delaware upon application by a Stockholder shall determine otherwise. In determining the validity and counting of proxies and ballots cast at any meeting of Stockholders, the inspectors may consider such information as is permitted by applicable Law. No person who is a candidate for office at an election may serve as an inspector at such election.

2.11. Conduct of Meetings; Adjournment. The Board may adopt such rules and procedures for the conduct of Stockholder meetings as it deems appropriate. At each meeting of Stockholders, the Chair, or in the absence of the Chair, the Chief Executive Officer, or if the Chair and the Chief Executive Officer are absent, any officer of the Corporation designated by the Board (or in the absence of any such designation, the President, or in the absence of the President, the most senior Vice President present), shall preside over the meeting. Except to the extent inconsistent with the rules and procedures as adopted by the Board, the person presiding over the meeting of Stockholders shall have the right and authority to convene, adjourn and reconvene the meeting from time to time, to prescribe such additional rules and procedures and to do all such acts as, in the judgment of such person, are appropriate for the proper conduct of the meeting. Such rules and procedures, whether adopted by the Board or prescribed by the person presiding over the meeting, may include (a) the establishment of an agenda or order of business for the meeting, (b) rules and procedures for maintaining order at the meeting and the safety of those present, (c) limitations on attendance at or participation in the meeting to Stockholders, their duly authorized and constituted proxies or such other persons as the person presiding over the meeting shall determine, (d) restrictions on entry to the meeting after the time fixed for the commencement thereof and (e) limitations on the time allotted to questions or comments by participants. Subject to any prior, contrary determination by the Board, the person presiding over any meeting of Stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, may determine and declare to the meeting that a matter or business was not properly brought before the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of Stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The Secretary shall act as secretary of the meeting. If none of the officers above designated to act as the person presiding over the meeting or as secretary of the meeting shall be present, a person presiding over the meeting or a secretary of the meeting, as the case may be, shall be designated by the Board and, if the Board has not so acted, in the case of the designation of a person to act as secretary of the meeting, designated by the person presiding over the meeting.

ARTICLE III

DIRECTORS

3.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board. The Board may adopt such rules and procedures, not inconsistent with the Certificate of Incorporation, these Bylaws or applicable Law, as it may deem proper for the conduct of its meetings and the management of the Corporation.

3.2. Number; Term of Office. The Board shall consist of six to twenty members, the number thereof to be determined in accordance with the Certificate of Incorporation. Each Director shall hold office until a successor is duly elected and qualified or until the Director’s earlier death, resignation, disqualification or removal.

3.3. Nominations of Directors.

(a) Subject to Section 3.3(k) and Section 3.5, only persons who are nominated in accordance with the procedures set forth in this Section 3.3 are qualified for election as Directors.

(b) Nominations of persons for election to the Board may only be made at a meeting properly called for the election of Directors and only (i) by or at the direction of the Board or any committee thereof or (ii) by a Stockholder who (A) was a Stockholder when the notice required by this Section 3.3 is delivered to the Secretary and at the time of the meeting, (B) is entitled to vote for the election of Directors at the meeting and (C) complies with the notice and other provisions of this Section 3.3. Subject to Section 3.3(k) and Section 3.5, Section 3.3(b)(ii) is the exclusive means by which a Stockholder may nominate a person for election to the Board. Persons nominated in accordance with Section 3.3(b)(ii) are referred to as "Stockholder Nominees." A Stockholder nominating persons for election to the Board is referred to as the "Nominating Stockholder."

(c) Subject to Section 3.3(k), all nominations of Stockholder Nominees must be made by timely written notice given by or on behalf of a Stockholder (the "Notice of Nomination"). To be timely, the Notice of Nomination must be delivered personally or mailed to and received at the Office of the Corporation, addressed to the attention of the Secretary, by the following dates:

(i) in the case of the nomination of a Stockholder Nominee for election to the Board at an annual meeting of Stockholders, no earlier than 120 days and no later than 90 days before the first anniversary of the date of the prior year's annual meeting of Stockholders; provided, however, that if (A) the annual meeting of Stockholders is advanced by more than 30 days, or delayed by more than 60 days, from the first anniversary of the prior year's annual meeting of Stockholders or (B) no annual meeting was held during the prior year, the notice by the Stockholder to be timely must be received (1) no earlier than 120 days before such annual meeting and (2) no later than the later of 90 days before such annual meeting and the tenth day after the earlier of the day on which the notice of such annual meeting was first made by mail or the day such annual meeting is announced by Public Disclosure; and

(ii) in the case of the nomination of a Stockholder Nominee for election to the Board at a special meeting of Stockholders, no earlier than 120 days before and no later than the later of 90 days before such special meeting and the tenth day after the earlier of the day on which the notice of such special meeting was first made by mail or the day such special meeting is announced by Public Disclosure; provided, that nominations of persons for elections to the Board may be made at a special meeting at which directors are to be elected pursuant to the Corporation's notice of meeting only (x) by or at the direction of the Board or any committee thereof or (y) in the event the Board has determined that directors shall be elected at such meeting, by any Stockholder who (A) is a stockholder of record at the time the notice provided for in this Section 3.3 is delivered to the Secretary, (B) is entitled to vote at the meeting and upon such election and (C) complies with the notice and other provisions set forth in this Section 3.3.

(d) Notwithstanding anything to the contrary, if the number of Directors to be elected to the Board at a meeting of Stockholders is increased and there is no Public Disclosure by the Corporation naming the nominees for the additional directorships or specifying the increased size of the Board at least 100 days before the first anniversary of the preceding year's annual meeting (in the case of an annual meeting) or before such special meeting (in the case of a special meeting), a Notice of Nomination shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered personally and received at the Office of the Corporation, addressed to the attention of the Secretary, no later than the close of business on the tenth day following the day on which such Public Disclosure is first made by the Corporation.

(e) In no event shall an adjournment, postponement or deferral, or Public Disclosure of an adjournment, postponement or deferral, of an annual or special meeting commence a new time period (or extend any time period) for the giving of the Notice of Nomination.

(f) The Notice of Nomination shall set forth:

(i) the Stockholder Information with respect to each Nominating Stockholder and Stockholder Associated Person (except that references to the "Proponent" in Section 2.2(d)(i)-(iv) shall instead refer to the "Nominating Stockholder," and the disclosure required by Section 2.2(d)(iii)(B) may be omitted, for purposes of this Section 3.3(f)(i));

(ii) a representation that each Nominating Stockholder is a Stockholder entitled to vote at the meeting and intends to appear in person or by a qualified representative (as defined in Section 3.3(j)) at the meeting to propose such nomination;

(iii) all information regarding each Stockholder Nominee and Stockholder Associated Person that would be required to be disclosed in a solicitation of proxies subject to Section 14 of the Exchange Act, the written consent of each Stockholder Nominee to being named in a proxy statement as a nominee and to serve if elected and a completed signed questionnaire, representation and agreement required by Section 3.4;

(iv) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among a Nominating Stockholder, Stockholder Associated Person or their respective associates, or others acting in concert therewith, including all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the Nominating Stockholder, Stockholder Associated Person or any person acting in concert therewith were the "registrant" for purposes of such rule and the Stockholder Nominee were a director or executive of such registrant;

(v) a representation as to whether the Nominating Stockholders intend (A) 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 the nomination or (B) otherwise to solicit proxies from stockholders in support of such nomination; and

(vi) a representation that the Nominating Stockholders shall provide all other information and affirmations, updates and supplements required pursuant to these Bylaws.

(g) The Nominating Stockholders shall also provide any other information reasonably requested from time to time by the Corporation within 10 business days after each such request.

(h) The Nominating Stockholder shall affirm as true and correct the information provided to the Corporation in the Notice of Nomination or at the Corporation's request pursuant to Section 3.3(g) (and shall update or supplement such information as needed so that such information shall be true and correct) as of (i) the record date for the meeting, and (ii) the date that is 10 business days before the date of the meeting and, if applicable, before reconvening any adjournment or postponement thereof. Such affirmation, update and/or supplement must be delivered personally or mailed to, and received at the Office of the Corporation, addressed to the Secretary, by no later than (1) five business days after the applicable date specified in clause (i) of the foregoing sentence (in the case of the affirmation, update and/or supplement required to be made as of those dates), and (2) seven business days before the date for the meeting (in the case of the affirmation, update and/or supplement required to be made as of 10 business days before the meeting or reconvening any adjournment or postponement thereof).

(i) The person presiding over the meeting shall, if the facts warrant, determine and declare to the meeting that the nomination was not made in accordance with the procedures set forth in this Section 3.3. Any such defective nomination shall be disregarded.

(j) If the Nominating Stockholder (or a qualified representative of the Nominating Stockholder) does not appear at the applicable Stockholder meeting to nominate the Stockholder Nominees, such nomination shall be disregarded and such Stockholder Nominees shall not be qualified for election as Directors, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 3.3, to be considered a "qualified representative" of the Nominating Stockholder, a person must be a duly authorized officer, manager or partner of such Nominating Stockholder or must be authorized by a writing executed by such Nominating Stockholder or an electronic transmission delivered by such Nominating Stockholder to act for such Nominating Stockholder as proxy at the meeting of Stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of Stockholders.

(k) Nothing in this Section 3.3 shall be deemed to affect any rights of the holders of any series of preferred stock of the Corporation pursuant to any applicable provision of the Certificate of Incorporation.

3.4. Nominee Qualifications. To be qualified to be a nominee for election or reelection as a Director, the nominee must deliver (in accordance with the time periods prescribed for delivery of a Notice of Nomination under Section 3.3 or a Proxy Access Notice under Section 3.5 (in the case of a Stockholder Nominee or Proxy Access Nominee, respectively) or upon request of the Secretary from time to time (in the case of a person nominated by or at the direction of the Board or any committee thereof)) to the Secretary at the Office of the Corporation:

(a) a completed and signed written questionnaire (in the form provided by the Secretary) with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made;

(b) information as necessary to permit the Board to determine if such nominee (i) is independent under, and satisfies the audit, compensation or other board committee independence requirements under, the applicable rules and listing standards of the principal national securities exchanges upon which the stock of the Corporation is listed or traded, any applicable rules of the SEC or any other regulatory body with jurisdiction over the Corporation, or any publicly disclosed standards used by the Board in determining and disclosing the independence of the Directors and Board committee members, (ii) is not or has not been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended from time to time, or (iii) is not a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding within the past 10 years ((i) through (iii) collectively, the "Independence Standards");

(c) a written representation and agreement (in the form provided by the Secretary) that such person (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person will act or vote as a Director on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such person's ability to comply with such person's fiduciary duties as a Director under applicable Law, (ii) is not and will not become a party to any agreement, arrangement or understanding 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 to the Corporation, (iii) will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading and other policies and guidelines of the Corporation that are applicable to Directors and (iv) currently intends to serve as a Director for the full term for which he or she is standing for election; and

(d) such person's written consent to being named as a nominee for election as a Director and to serving as a Director if elected.

The Secretary shall provide any Stockholder the forms of the written questionnaire, representation and agreement referred to in this Section 3.4 upon written request therefor.

3.5. Proxy Access for Director Nominations.

(a) Information to be Included in the Corporation's Proxy Materials. Subject to the provisions of this Section 3.5, for an annual meeting of Stockholders, the Corporation shall include in its proxy statement and in its form of proxy for such annual meeting, in addition to any persons nominated for election by or at the direction of the Board (or any committee thereof), the name of and the Required Information (as defined below) in respect of any person nominated for election to the Board who satisfies the eligibility requirements in this Section 3.5 (a "Proxy Access Nominee") and who is identified in a proper written notice (the "Proxy Access Notice") that complies with, and is timely delivered pursuant to, this Section 3.5 by an Eligible Stockholder (as defined below). Notwithstanding anything to the contrary contained in this Section 3.5, the Corporation may omit from its proxy materials any information or Supporting Statement (as defined below) (or portions thereof) that it, in good faith, believes (i) would violate any applicable Law or (ii) 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 person or entity. Nothing in this Section 3.5 shall limit the Corporation's ability to solicit against or for, and include in its proxy materials its own statements relating to, any Eligible Stockholder or Proxy Access Nominee.

(b) Definition of Required Information. For the purposes of this Section 3.5, the "Required Information" that the Corporation shall include in its proxy statement is (i) the information concerning the Proxy Access Nominee and the Eligible Stockholder that the Corporation determines is required to be disclosed in the Corporation's proxy statement by the applicable requirements of the Exchange Act and (ii) if the Eligible Stockholder so elects, a Supporting Statement.

(c) Definition of Supporting Statement. For each of its Proxy Access Nominees, the Eligible Stockholder may, at its option, provide to the Secretary, at the time the Proxy Access Notice is delivered, one written statement, not to exceed 500 words, in support of such Proxy Access Nominee's candidacy (a "Supporting Statement"). Only one Supporting Statement may be submitted by an Eligible Stockholder for each Proxy Access Nominee.

(d) Definition of Eligible Stockholder. For the purposes of this Section 3.5, an "Eligible Stockholder" is one or more persons who:

(i) own and have owned (in each case, as defined in Section 3.5(f)) continuously at least three years prior to the date the Proxy Access Notice is received at the Office of the Corporation (the "Minimum Holding Period") a number of shares of stock of the Corporation that represents at least 3% of the voting power of all shares of stock of the Corporation issued and outstanding and entitled to vote in the election of directors as of the most recent date for which such amount is set forth in any Public Disclosure made by the Corporation prior to the date the Proxy Access Notice is received at the Office of the Corporation (the "Required Shares");

(ii) continues to own the Required Shares through the date of the annual meeting of Stockholders; and

(iii) satisfies all other requirements of, and complies with all applicable procedures set forth in, this Section 3.5;

provided, that the aggregate number of record stockholders and beneficial owners whose stock ownership is counted for the purposes of satisfying the foregoing ownership requirement shall not exceed 20. Two or more funds that are part of the same Qualifying Fund Group (as defined in Section 3.5(e)) shall be treated as one record stockholder or beneficial owner for purposes of determining the aggregate number of record stockholders and beneficial owners in this paragraph and shall be treated as one person for the purpose of determining "ownership" as defined in Section 3.5(f). No record stockholder (other than a Custodian Holder (as defined below)) or beneficial owner may be a member of more than one group constituting an Eligible Stockholder with respect to any annual meeting of Stockholders, and no shares may be attributed to more than one Eligible Stockholder or group constituting an Eligible Stockholder. If any person (other than a Custodian Holder) purports to be a member of more than one group constituting an Eligible Stockholder, such person shall only be deemed to be a member of the group that has the largest ownership position (as reflected in the applicable Proxy Access Notice). "Custodian Holder," with respect to any Eligible Stockholder, means any broker, bank or custodian (or similar nominee) who (i) is acting solely as a nominee on behalf of a beneficial owner and (ii) does not own (as defined in Section 3.5(f)) any of the shares comprising the Required Shares of the Eligible Stockholder. For the avoidance of doubt, Required Shares will qualify as such if and only if the beneficial owner of such shares as of the date of the Proxy Access Notice has itself beneficially owned such shares continuously for the Minimum Holding Period and through the date of the annual meeting of Stockholders (in addition to the other applicable requirements being met).

Whenever the Eligible Stockholder consists of a group of persons (including a group of funds that are part of the same Qualifying Fund Group), each provision in this Section 3.5 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each such person (including each individual fund) that is a member of such group (other than a Custodian Holder) to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate the shares that each member has owned continuously for the Minimum Holding Period in order to meet the 3% ownership requirement of the "Required Shares" definition).

(e) Definition of Qualifying Fund Group. For the purposes of this Section 3.5, a "Qualifying Fund Group" means two or more funds that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer or (iii) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended from time to time.

(f) Definition of Ownership. For the purposes of this Section 3.5, a person shall be deemed to "own" only those outstanding shares of stock of the Corporation as to which the person:

(i) possesses full voting and investment rights; and

(ii) possesses full economic interest (including the opportunity for profit and risk of loss);

provided that the number of shares calculated in accordance with the foregoing clauses (i) and (ii) shall not include any shares:

(A) sold by such person or any of its affiliates in any transaction that has not been settled or closed;

(B) borrowed by such person or any of its affiliates for any purpose or purchased by such person or any of its affiliates pursuant to an agreement to resell; or

(C) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such person 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 shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised would have, the purpose or effect of:

(1) reducing in any manner, to any extent or at any time in the future such person's or any of its affiliates' full right to vote or direct the voting of any such shares; or

(2) hedging, offsetting or altering to any degree gain or loss arising from the full economic ownership of such shares by such person or any of its affiliates.

For avoidance of doubt, a person shall "own" shares held of record in the name of a nominee (including a Custodian Holder) or other intermediary so long as the person retains the right to instruct how the shares are voted with respect to the election of Directors and the right to direct the disposition thereof and possesses the full economic interest therein, and a person's ownership of shares shall be deemed to continue during any period in which the person has:

(i) delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the person without condition; or

(ii) loaned such shares; provided that the person has the power to recall such loaned shares on not more than five business days' notice.

For the purposes of this Section 3.5, the terms "owned," "owning" and other variations of the word "own" shall have correlative meanings, and the term "affiliate" shall have the meaning ascribed thereto in the rules and regulations promulgated under the Exchange Act. Whether outstanding shares of common stock of the Corporation are "owned" for these purposes shall be determined by the Board.

(g) Notice Period. To be timely under this Section 3.5, the Proxy Access Notice must be delivered to the Office of the Corporation, addressed to the Secretary, no earlier than 150 days and no later than 120 days before the first anniversary of the filing date of the Corporation's definitive proxy statement for the prior year's annual meeting of Stockholders; provided, however, that if the date of the annual meeting is advanced by more than 30 days prior to, or delayed by more than 60 days after, the first anniversary of the prior year's annual meeting of Stockholders, or if no annual meeting was held in the preceding year, then, for the Proxy Access Notice to be timely, it must be delivered to the Office of the Corporation, addressed to the Secretary, (i) no earlier than 120 days before such annual meeting and (ii) no later than the close of business on the later of 90 days before such annual meeting and the tenth day after the earlier of the day on which the notice of such annual meeting was first made by mail or the day such annual meeting is announced by Public Disclosure. In no event shall an adjournment, postponement or deferral, or Public Disclosure of an adjournment, postponement or deferral, of an annual meeting of Stockholders commence a new time period (or extend any time period) for the giving of the Proxy Access Notice pursuant to this Section 3.5.

(h) Form of Notice. To be in proper written form, the Proxy Access Notice must include or be accompanied by the following:

(i) a written statement by the Eligible Stockholder certifying as to the number of shares it owns and has owned continuously for the Minimum Holding Period, and the Eligible Stockholder's agreement to provide (a) within five business days following the later of the record date for the annual meeting of Stockholders or the date on which notice of the record date is first publicly disclosed, a written statement by the Eligible Stockholder certifying as to the number of shares it owns and has owned continuously through the record date and (b) prompt notice if the Eligible Stockholder ceases to own a number of shares at least equal to the Required Shares prior to the date of the annual meeting;

(ii) if the Eligible Stockholder is not a record holder of the Required Shares, proof that the Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, in a form that would be deemed by the Corporation to be acceptable pursuant to Rule 14a-8(b)(2) under the Exchange Act (or any successor rule) for purposes of a shareholder proposal under such rule;

(iii) a copy of the Schedule 14N that has been or is concurrently being filed with the SEC as required by Rule 14a-18 under the Exchange Act;

(iv) as to the Eligible Stockholder and each Proxy Access Nominee, the information required by Section 2.2(d)(iii)(C)-(D) (except that the references to the "Proponent" and to "any Stockholder Associated Person" in such clauses shall instead refer, respectively, to the "Eligible Stockholder" and "each Proxy Access Nominee" for purposes of this paragraph);

(v) as to each Proxy Access Nominee:

(A) the items specified in Section 3.3(f)(iii) (including the questionnaire, representation and agreement required by Section 3.4) (except that the references to "Stockholder Nominee" in such section shall instead refer to "Proxy Access Nominee," and the reference to the "Stockholder Associated Person" may be disregarded, for purposes of this paragraph) and an executed agreement, in a form deemed satisfactory by the Board or its designee (which form shall be provided by the Corporation reasonably promptly upon written request therefor), pursuant to which such Proxy Access Nominee agrees not to be named in any other person's proxy statement or form of proxy;

(B) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among the Eligible Stockholder, such Proxy Access Nominee or their respective associates (as defined in Rule 14a-1 under the Exchange Act), or others acting in concert therewith, including all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the Eligible Stockholder or its affiliates or any person acting in concert therewith were the "registrant" for purposes of such rule and the person were a director or executive of such registrant; and

(C) any other information relating to the Proxy Access Nominee that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

(vi) an executed agreement, in a form deemed satisfactory by the Board or its designee (which form shall be provided by the Corporation reasonably promptly upon written request therefor), pursuant to which the Eligible Stockholder:

(A) represents that it intends to continue to hold the Required Shares through the date of, and to vote the Required Shares at, the annual meeting of Stockholders;

(B) represents that it acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the Corporation, and does not presently have such intent;

(C) represents and agrees that it has not nominated and will not nominate for election to the Board at the annual meeting of Stockholders any person other than the Proxy Access Nominee(s) it is nominating pursuant to this Section 3.5;

(D) represents and agrees that it is not currently engaged as of the date of the agreement, and will not engage, in, and is not currently as of the date of the agreement, and will not be, a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Proxy Access Nominee(s) or a nominee of the Board;

(E) represents and agrees that it has not distributed and will not distribute to any Stockholder or beneficial owner of the Corporation's stock any form of proxy for the annual meeting other than the form distributed by the Corporation;

(F) represents and agrees that it is currently in compliance as of the date of the agreement, and will comply, with all Laws and regulations (including, without limitation, Rule 14a-9(a) under the Exchange Act) applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting;

(G) agrees to assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the Stockholders or beneficial owners of the Corporation's stock or out of the information that the Eligible Stockholder provided to the Corporation, in each case, in connection with the nomination or election of Proxy Access Nominee(s) at the annual meeting;

(H) agrees to indemnify and hold harmless the Corporation and each of its 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 directors, officers or employees arising out of any legal or regulatory violation referenced in clause (G) above or any failure or alleged failure of the Eligible Stockholder or its Proxy Access Nominee(s) to comply with, or any breach or alleged breach by the Eligible Stockholder or its Proxy Access Nominee(s) of, the requirements of this Section 3.5; and

(I) agrees to file with the SEC any written solicitation of the Stockholders or beneficial owners of the Corporation's stock relating to the meeting at which its Proxy Access Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act;

(vii) in the case of a nomination by a group of persons together constituting an Eligible Stockholder, the designation by all group members (other than a Custodian Holder) of one member of the group that is authorized to receive communications, notices and inquiries from the Corporation and to act on behalf of the Eligible Stockholder group with respect to all matters relating to the nomination under this Section 3.5 (including withdrawal of the nomination); and

(viii) in the case of a nomination by a group of persons together constituting an Eligible Stockholder in which two or more funds that are part of the same Qualifying Fund Group are counted as one record stockholder or beneficial owner for purposes of qualifying as an Eligible Stockholder, documentation reasonably satisfactory to the Corporation that demonstrates that the funds are part of the same Qualifying Fund Group.

(i) Additional Required Information. In addition to the information required pursuant to Section 3.5(h) or any other provision of these Bylaws, (i) the Corporation from time to time may require any proposed Proxy Access Nominee to furnish any other information (a) that may reasonably be required by the Corporation to determine whether the Proxy Access Nominee would be independent under the Independence Standards (as defined in Section 3.4), (b) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such Proxy Access Nominee, (c) that may reasonably be required by the Corporation to determine the eligibility of such Proxy Access Nominee to serve as a Director or (d) as may otherwise be reasonably requested, and (ii) the Corporation from time to time may require the Eligible Stockholder to furnish any other information that may reasonably be required by the Corporation to verify the Eligible Stockholder's continuous ownership of the Required Shares for the Minimum Holding Period or other compliance with this Section 3.5.

(j) Exclusion From Proxy Materials. Notwithstanding anything to the contrary contained in this Section 3.5, the Corporation shall not be required pursuant to this Section 3.5 to include a Proxy Access Nominee in its proxy materials for any annual meeting of Stockholders, or, if the proxy statement already has been filed, to allow the nomination of a Proxy Access Nominee, notwithstanding that proxies in respect of such vote may have been received by the Board, if the Board determines that:

(i) such Proxy Access Nominee would not satisfy the Independence Standards;

(ii) the election of such Proxy Access Nominee as a member of the Board would cause the Corporation to be in violation of its Certificate of Incorporation, these Bylaws, the rules or listing standards of the principal national securities exchanges upon which the stock of the Corporation is listed or traded, or any applicable Law, rule or regulation;

(iii) such Proxy Access Nominee is, or has been within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended from time to time;

(iv) such Proxy Access 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 10 years;

(v) such Proxy Access Nominee is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended from time to time (the "Securities Act");

(vi) such Proxy Access Nominee otherwise becomes ineligible for inclusion in the Corporation's proxy materials pursuant to this Section 3.5 or otherwise becomes ineligible, not qualified or unavailable for election at the annual meeting of Stockholders, in each case as determined by the Board or the person presiding over the annual meeting;

(vii) such Proxy Access Nominee or the applicable Eligible Stockholder (or any member of any group of persons that together is such Eligible Stockholder) provided information to the Corporation in connection with such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make any statement made, in light of the circumstances under which it was made, not misleading;

(viii) such Proxy Access Nominee or the applicable Eligible Stockholder (or any member of any group of persons that together is such Eligible Stockholder) otherwise breaches or fails to comply with its representations, undertakings or obligations pursuant to these Bylaws, including, without limitation, this Section 3.5; or

(ix) the Eligible Stockholder ceases to be an Eligible Stockholder for any reason, including, but not limited to, not owning the Required Shares through the date of the applicable annual meeting.

For the purpose of this subsection (j), the occurrence of clauses (i) through (vi) and, to the extent related to a breach or failure by the Proxy Access Nominee, clauses (vii) and (viii) will result in the exclusion from the proxy materials pursuant to this Section 3.5 of the specific Proxy Access Nominee to whom the ineligibility applies and any related Supporting Statement or, if the proxy statement for the applicable annual meeting of Stockholders already has been filed, will result in such Proxy Access Nominee not being eligible or qualified for election at such annual meeting of Stockholders, and, in either case, no other nominee may be substituted by the Eligible Stockholder that nominated such Proxy Access Nominee. The occurrence of clause (ix) and, to the extent related to a breach or failure by an Eligible Stockholder (or any member of any group of persons that together is such Eligible Stockholder), clauses (vii) and (viii) will result in the shares owned by such Eligible Stockholder (or such member of any group of persons that together is such Eligible Stockholder) being excluded from the Required Shares and, if as a result the persons who together nominated the Proxy Access Nominee shall no longer constitute an Eligible Stockholder, will result in the exclusion from the proxy materials pursuant to this Section 3.5 of all of such persons' Proxy Access Nominees and any related Supporting Statements or, if the proxy statement for the applicable annual meeting of Stockholders already has been filed, will result in such Proxy Access Nominees not being eligible or qualified for election at such annual meeting of Stockholders.

(k) Permitted Number of Proxy Access Nominees.

(i) The maximum number of Proxy Access Nominees nominated by all Eligible Stockholders that will appear in the Corporation's proxy materials with respect to an annual meeting of Stockholders shall not exceed the greater of (i) two and (ii) 20% of the number (as of the last day on which a Proxy Access Notice may be delivered pursuant to this Section 3.5 with respect to the annual meeting) of directors to be elected by the holders of Common Stock at the annual meeting of Stockholders, or if the number of directors calculated in this clause (ii) is not a whole number, the closest whole number below 20% (such number, determined pursuant to clause (i) or clause (ii), as applicable, the "Permitted Number"); provided, however, that if the number of Directors to be elected by the holders of Common Stock at the annual meeting is reduced after the deadline in Section 3.5(g) for delivery of the Proxy Access Notice and before the date of the applicable annual meeting of Stockholders for any reason (including if the Board resolves to reduce the size of the Board before or effective at the annual meeting), the Permitted Number shall be calculated based on the number of Directors to be elected as so reduced. The Permitted Number shall also be reduced by (a) the number of directors in office or director candidates that in either case will be included in the Corporation's proxy materials with respect to such annual meeting as an unopposed (by the Corporation) nominee pursuant to any agreement, arrangement or other understanding with any Shareholder or group of Shareholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of Common Stock, by such Shareholder or group of Shareholders, from the Corporation); (b) the number of incumbent director candidates who were previously elected to the Board as Proxy Access Nominees at any of the preceding two annual meetings of stockholders pursuant to this Section 3.5 and who remain members of the Board as of the deadline in Section 3.5(g) for delivery of the Proxy Access Notice and (c) the number of director candidates whose names were submitted for inclusion in the Corporation's proxy materials pursuant to this Section 3.5 for the upcoming annual meeting of Stockholders, but who were thereafter nominated for election at such meeting by the Board.

(ii) If the number of Proxy Access Nominees submitted by Eligible Stockholders pursuant to this Section 3.5 exceeds the Permitted Number, each Eligible Stockholder will select one Proxy Access Nominee for inclusion in the Corporation's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of Common Stock of the Corporation each Eligible Stockholder disclosed as owned in its Proxy Access Notice submitted to the Corporation. If the Permitted Number is not reached after each Eligible Stockholder has selected one Proxy Access Nominee, this selection process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached. After reaching the Permitted Number of Proxy Access Nominees, if any Proxy Access Nominee who satisfies the eligibility requirements in this Section 3.5 thereafter (a) is nominated by the Board for election at the upcoming annual meeting of Stockholders, (b) is not submitted for election as a Director for any reason (including the failure to comply with or satisfy the eligibility requirements in this Section 3.5) other than due to a failure by the Corporation to include such Proxy Access Nominee in the Corporation's proxy materials in violation of this Section 3.5, (c) withdraws his or her nomination (or his or her nomination is withdrawn by the applicable Eligible Stockholder) or (d) becomes unwilling or otherwise unable to serve on the Board if elected, then, in each such case, no other nominee or nominees shall be included in the Corporation's proxy materials or otherwise submitted for election as a Director pursuant to this Section 3.5 in substitution for such Proxy Access Nominee with respect to the annual meeting of Stockholders.

(iii) Notwithstanding anything to the contrary contained in this Section 3.5, the Corporation shall not be required to include any Proxy Access Nominees in its proxy materials pursuant to this Section 3.5 for any annual meeting of Stockholders for which the Secretary receives a notice that a stockholder intends to nominate one or more persons for election to the Board pursuant to clause (ii) of the first sentence of Section 3.3(b).

(l) Attendance of Eligible Stockholder at Annual Meeting. Notwithstanding the foregoing provisions of this Section 3.5, unless otherwise required by Law or otherwise determined by the Board or the person presiding over the meeting, if none of (i) the Eligible Stockholder or (ii) a Qualified Representative (as defined below) of the Eligible Stockholder appears at the annual meeting of Stockholders to present such Eligible Stockholder's Proxy Access Nominee(s), such nomination or nominations shall be disregarded and conclusively deemed withdrawn, notwithstanding that proxies in respect of the election of the Proxy Access Nominee(s) may have been received by the Corporation. A "Qualified Representative" of an Eligible Stockholder means a person that is a duly authorized officer, manager or partner of such Eligible Stockholder or is authorized by a writing (i) executed by such Eligible Stockholder, (ii) delivered (or a reliable reproduction or electronic transmission of the writing is delivered) by such Eligible Stockholder to the Corporation prior to the taking of the action taken by such person on behalf of such Eligible Stockholder and (iii) stating that such person is authorized to act for such Eligible Stockholder with respect to the action to be taken.

(m) Restrictions on Re-nominations. Any Proxy Access Nominee who is included in the Corporation's proxy materials for a particular annual meeting of Stockholders but either (i) withdraws his or her nomination (or his or her nomination is deemed to have withdrawn pursuant to this Section 3.5), becomes ineligible or unavailable for election at that annual meeting, or is unwilling or otherwise unable to serve on the Board, or (ii) does not receive a number of votes cast in favor of his or her election at least equal to 25% of the votes present in person or represented by proxy and entitled to vote in the election of directors, will be ineligible to be a Proxy Access Nominee pursuant to this Section 3.5 for the next two annual meetings of stockholders.

(n) Duty to Update, Supplement and Correct. Any information required by this Section 3.5 to be provided to the Corporation must be updated and supplemented by the Eligible Stockholder or Proxy Access Nominee, as applicable, by delivery to the Office of the Corporation, addressed to the Secretary, (i) no later than 10 days after the record date for determining the stockholders entitled to vote at the annual meeting of Stockholders, of such information as of such record date and (ii) no later than five days before the annual meeting of Stockholders, of such information as of the date that is 10 days before the annual meeting of Stockholders. Further, in the event that any information or communications provided (pursuant to this Section 3.5 or otherwise) by the Eligible Stockholder or the Proxy Access Nominee to the Corporation or its stockholders ceases to be true and correct in any respect or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, each Eligible Stockholder or Proxy Access Nominee, as the case may be, shall promptly notify the Secretary of any such inaccuracy or omission in such previously provided information and of the information that is required to make such information or communication true and correct. For the avoidance of doubt, the requirement to update, supplement and correct such information shall not permit any Eligible Stockholder or other person to change or add any proposed Proxy Access Nominee or be deemed to cure any defects or limit the remedies (including without limitation under these Bylaws) available to the Corporation relating to any defect (including any inaccuracy or omission).

(o) Exclusive Method. This Section 3.5 shall be the exclusive method for stockholders to include nominees for director election in the Corporation's proxy materials.

3.6. Newly Created Directorships and Vacancies. Subject to the rights of holders of any series of Preferred Stock to elect Directors under specific circumstances, any newly created directorships resulting from an increase in the authorized number of Directors and any vacancies occurring in the Board may be filled by a majority of the Directors then in office, although less than a quorum, or a sole remaining Director. A Director so elected shall be elected to hold office until the earlier of the expiration of the term of office of the Director whom he or she has replaced, a successor is elected and qualified or the Director's earlier death, resignation, disqualification or removal. When one or more Directors shall resign, effective at a future time, a majority of the Directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office as provided in this Section 3.6 in the filling of other vacancies.

3.7. Resignation. Any Director may resign at any time by notice given in writing or by electronic transmission to the Board, the Chair or the Secretary. Such resignation shall take effect at the time of receipt of such notice or at such later time, or such later time determined upon the happening of an event, as is therein specified.

3.8. Regular Meetings. Regular meetings of the Board may be held without notice at such times and at such places as may be determined from time to time by the Board.

3.9. Special Meetings. Special meetings of the Board may be held at such times and at such places, if any, as may be determined by the Chair on at least 24 hours' notice to each Director given by one of the means specified in Section 3.12 other than by mail or on at least three days' notice if given by mail. Special meetings shall be called by the Chair or Secretary in like manner and on like notice on the written request of any two or more Directors.

3.10. Telephone Meetings. Board or Board committee meetings may be held by means of telephone conference or other communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by a Director in a meeting pursuant to this Section 3.10 shall constitute presence in person at such meeting.

3.11. Adjourned Meetings. A majority of the Directors present at any meeting of the Board, including an adjourned meeting, whether or not a quorum is present, may adjourn and reconvene such meeting to another time and place. At least 24 hours' notice of any adjourned meeting of the Board shall be given to each Director whether or not present at the time of the adjournment; provided, however, that notice of the adjourned meeting need not be given if (a) the adjournment is for 24 hours or less and (b) the time, place, if any, and means of remote communication, if any, are announced at the meeting at which the adjournment is taken. Any business may be transacted at an adjourned meeting that might have been transacted at the meeting as originally called.

3.12. Notice Procedure. Subject to Sections 3.11 and 3.13, whenever notice is required to be given to any Director by applicable Law, the Certificate of Incorporation or these Bylaws, such notice shall be deemed given effectively if given in person or by telephone, mail addressed to such Director at such Director's address as it appears on the records of the Corporation, telecopy or by electronic mail or other means of electronic transmission. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice of such meeting.

3.13. Waiver of Notice. Whenever the giving of any notice to Directors is required by applicable Law, the Certificate of Incorporation or these Bylaws, a written waiver signed by the Director, or a waiver by electronic transmission by such Director, whether before or after such notice is required, shall be deemed equivalent to notice. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting except when the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special Board or committee meeting need be specified in any waiver of notice.

3.14. Chair. The Board shall annually elect from among its members a Chair. The Chair shall preside at all meetings of the Board and shall exercise such powers and perform such other duties as shall be determined from time to time by the Board. Only Directors shall be eligible to be the Chair. The Chair may be an officer of the Company.

3.15. Organization. At each meeting of the Board, the Chair or, in the Chair's absence, the Lead Director, or in the case of the Lead Director's absence therefrom, another director chosen by a majority of directors present, shall act as chair of the meeting and preside thereat. The Secretary shall act as secretary at each meeting of the Board. If the Secretary is absent from any meeting of the Board, the person presiding at the meeting may appoint any person to act as secretary of the meeting.

3.16. Quorum of Directors. The presence of a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board; provided, however, that in no case shall a quorum consist of less than one-third of the total number of Directors that the Corporation would have if there were no vacancies on the Board. The Directors present at a meeting at which a quorum has been established may continue to transact business until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum.

3.17. Action by Majority Vote. Except as otherwise expressly required by these Bylaws or the Certificate of Incorporation, the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

3.18. Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all Directors or members of such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writings or electronic transmissions are filed with the minutes of proceedings of the Board or committee.

ARTICLE IV

COMMITTEES OF THE BOARD

The Board may designate one or more committees in accordance with Section 141(c) of the DGCL. Unless the Board provides otherwise, at all meetings of such committee, a majority of the then authorized number of members of the committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the committee present at any meeting at which there is a quorum shall be the act of the committee. Each committee shall keep regular minutes of its meetings. Unless the Board provides otherwise, each committee designated by the Board may make, alter and repeal rules and procedures for the conduct of its business. In the absence of such rules and procedures each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article III.

ARTICLE V

OFFICERS

5.1. Positions; Election. The offices of the Corporation shall include a Chief Executive Officer, a President, a Secretary, a Treasurer and any other officers as the Board may elect from time to time, who shall exercise such powers and perform such duties as shall be determined by the Board from time to time. Any number of offices may be held by the same person.

5.2. Term of Office. Each officer of the Corporation shall hold office until such officer's successor is elected and qualified or until such officer's earlier death, resignation or removal. Any officer may resign at any time upon written notice to the Corporation. Such resignation shall take effect at the time of receipt of such notice or at such later time, or at such later time determined upon the happening of an event, as is therein specified. The resignation of an officer shall be without prejudice to the contract rights of the Corporation, if any. Any officer may be removed at any time with or without cause by the Board. Any vacancy occurring in any office of the Corporation may be filled by the Board. The election or appointment of an officer shall not of itself create contract rights, and any resignation or removal of an officer shall be without prejudice to the contract rights, if any, of such officer, the Corporation or any other person.

5.3. Chief Executive Officer. The Chief Executive Officer shall have general supervision over the business of the Corporation and other duties incident to the office of Chief Executive Officer, and any other duties as may from time to time be assigned to the Chief Executive Officer by the Board and subject to the control of the Board in each case. The Chief Executive Officer may sign and execute in the name of the Corporation deeds, mortgages, bonds, contracts and other instruments, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation, or shall be required by applicable Law otherwise to be signed or executed.

5.4. President. The President shall perform all such duties as from time to time may be assigned by the Board, the Chair or the Chief Executive Officer. The President may sign and execute in the name of the Corporation deeds, mortgages, bonds, contracts and other instruments, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation, or shall be required by applicable Law otherwise to be signed or executed.

5.5. Vice Presidents. Vice Presidents shall have the duties incident to the office of Vice President and any other duties that may from time to time be assigned to the Vice President by the Chief Executive Officer, the President or the Board. Any Vice President may sign and execute in the name of the Corporation deeds, mortgages, bonds, contracts or other instruments, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation, or shall be required by applicable Law otherwise to be signed or executed.

5.6. Secretary. The Secretary shall attend all meetings of the Board and of the Stockholders, record all the proceedings of the meetings of the Board and of the Stockholders in a book to be kept for that purpose and perform like duties for committees of the Board, when required. The Secretary shall give, or cause to be given, notice of all special meetings of the Board and all meetings of the Stockholders and perform such other duties as may be prescribed by the Board, the Chief Executive Officer or the President. The Secretary shall have custody of the corporate seal of the Corporation, if any, and shall have authority to affix the same on any instrument that may require it, and when so affixed, the seal may be attested by the signature of the Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the same by such officer's signature. The Secretary may also attest all instruments signed by the Chief Executive Officer, the President or any Vice President. The Secretary shall have charge of all the books, records and papers of the Corporation relating to its organization and management, see that the reports, statements and other documents required by applicable Law are properly kept and filed and, in general, perform all duties incident to the office of secretary of a corporation and such other duties as may from time to time be assigned to the Secretary by the Board, the Chief Executive Officer or the President.

5.7. Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds, securities and notes of the Corporation, receive and give receipts for moneys due and payable to the Corporation from any sources whatsoever; deposit all such moneys and valuable effects in the name and to the credit of the Corporation in such depositaries as may be designated by the Board, against proper vouchers, cause such funds to be disbursed by checks or drafts on the authorized depositaries of the Corporation signed in such manner as shall be determined by the Board and be responsible for the accuracy of the amounts of all moneys so disbursed, regularly enter or cause to be entered in books or other records maintained for the purpose full and adequate account of all moneys received or paid for the account of the Corporation, have the right to require from time to time reports or statements giving such information as the Treasurer may desire with respect to any and all financial transactions of the Corporation from the officers or agents transacting the same, render to the Chief Executive Officer, the President or the Board, whenever the Chief Executive Officer, the President or the Board shall require the Treasurer so to do, an account of the financial condition of the Corporation and of all financial transactions of the Corporation, disburse the funds of the Corporation as ordered by the Board and, in general, perform all duties incident to the office of Treasurer of a corporation and such other duties as may from time to time be assigned to the Treasurer by the Board, Chief Executive Officer or the President.

5.8. Actions with Respect to Securities of Other Entities. All stock and other securities of other entities owned or held by the Corporation for itself, or for other parties in any capacity, shall be voted (including by written consent), and all proxies with respect thereto shall be executed, by the person or persons authorized to do so by resolution of the Board or, in the absence of such authorization, by the Chair, the Chief Executive Officer, the President, the Secretary or the Treasurer.

ARTICLE VI

INDEMNIFICATION

6.1. Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable Law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another entity or enterprise, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement (except for judgments, fines and amounts paid in settlement in any action or suit by or in the right of the Corporation to procure a judgment in its favor) actually and reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.3, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized by the Board.

6.2. Prepayment of Expenses. To the extent not prohibited by applicable Law, the Corporation shall pay the reasonable expenses (including attorneys' fees) incurred by a Covered Person in defending any Proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable Law, such payment of reasonable expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

6.3. Claims. If a claim for indemnification or advancement of expenses under this Article VI is not paid in full within 30 days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable Law.

6.4. Nonexclusivity of Rights. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, provision of these Bylaws, the Certificate of Incorporation, agreement, vote of stockholders or disinterested directors or otherwise.

6.5. Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another entity or enterprise shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other entity or enterprise.

6.6. Amendment or Repeal. Any amendment or repeal of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such amendment or repeal.

6.7. Other Indemnification and Prepayment of Expenses. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable Law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VII

GENERAL PROVISIONS

7.1. Certificates Representing Shares. The shares of stock of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. If shares are represented by certificates (if any) such certificates shall be in the form approved by the Board. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Corporation by any two authorized officers of the Corporation. Any or all such signatures may be facsimiles. Although any officer, transfer agent or registrar whose manual or facsimile signature is affixed to such a certificate ceases to be such officer, transfer agent or registrar before such certificate has been issued, it may nevertheless be issued by the Corporation with the same effect as if such officer, transfer agent or registrar were still such at the date of its issue.

7.2. Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agents and registry offices or agents at such place or places as may be determined from time to time by the Board.

7.3. Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or his legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

7.4. Form of Records. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases); provided that the records so kept can be converted into clearly legible paper form within a reasonable time, and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in Sections 219 and 220 of the DGCL, (ii) record the information specified in Sections 156, 159, 217(a) and 218 of the DGCL and (iii) record transfers of stock as governed by Article 8 of the Uniform Commercial Code as enacted in the State of Delaware, 6 *Del. C.* §§8-101 *et seq*. The Corporation shall convert any records so kept into clearly legible paper form upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL.

7.5. Seal. The Corporation may have a corporate seal, which shall be in such form as may be approved from time to time by the Board. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

7.6. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board.

7.7. Time Periods. In applying any provision of these Bylaws which require that an act be done or not done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used unless otherwise specified, the day of the doing of the act shall be excluded, and the day of the event shall be included.

7.8. Amendments. These Bylaws may be amended or repealed and new Bylaws may be adopted by the Board, but the Stockholders may make additional Bylaws and may alter and repeal any Bylaws whether such Bylaws were originally adopted by them or otherwise.

7.9. Conflict with Applicable Law or Certificate of Incorporation. These Bylaws are adopted subject to any applicable Law and the Certificate of Incorporation. Whenever these Bylaws may conflict with any applicable Law or the Certificate of Incorporation, such conflict shall be resolved in favor of such Law or the Certificate of Incorporation.

Exhibit 10.1

EXECUTION VERSION

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

TRANSITION SERVICES AGREEMENT

by and between

INTERNATIONAL BUSINESS MACHINES CORPORATION

and

KYNDRYL, INC.

November 2, 2021

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TRANSITION SERVICES AGREEMENT (this "TSA"), effective as of November 3, 2021 (the "Effective Date"), by and between **International Business Machines Corporation,** a New York corporation ("IBM" or "Seller"), and **Kyndryl, Inc.**, a Delaware corporation ("Buyer") (each a Party and, collectively, the "Parties").

R E C I T A L S

WHEREAS, the board of directors of IBM have determined that it is in the best interests of IBM and its stockholders to create a new publicly traded company to operate the SpinCo Business (as defined in the Separation Agreement);

WHEREAS, in furtherance of the foregoing, Seller and Buyer have entered into a Separation and Distribution Agreement, dated as of November 2, 2021 (the "Separation Agreement"); and

WHEREAS, Seller and Buyer contemplate that Seller and its Affiliates shall provide certain transition services to Buyer and its Affiliates.

NOW, THEREFORE, in consideration of the premises set forth above and the respective covenants, agreements, representations and warranties hereinafter set forth, Buyer and Seller hereby agree as follows:

Article I Definitions

1.1 **Defined Terms**. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in Article 1 of the Separation Agreement.

Article II Services and Deliverables

2.1 **Service Descriptions**. Seller and its Affiliates will provide to Buyer and its Affiliates such services (the "Services") and materials (the "Deliverables") as are described in the service descriptions (each, a "Service Description Attachment" or "SDA"), which are attachments to this TSA that describe the Services and Deliverables to be provided. The Services and Deliverables will be provided and accepted in accordance with the terms and conditions set forth herein and in the applicable SDA. The Services do not include any of the items set forth on Exhibit 1, Excluded Services, to this TSA.

2.2 **Copyrights**. Unless specified otherwise in an SDA, Seller will own the copyright in any Deliverables created as part of the Services and Seller will grant to Buyer a nonexclusive, worldwide, paid-up license to use, execute, reproduce, and display copies of the Deliverables. Buyer agrees to reproduce the copyright notice and any other legend of ownership on any copies of Deliverables. Seller will deliver the Deliverables, if any, as set forth in the applicable SDA.

2.3 **TSA Documents**. Additional terms, as applicable, may be included within documents called "TSA Documents." TSA Documents are incorporated into this TSA by reference (an initial list of TSA Documents is attached as Schedule 1 to this TSA). For the purposes of this TSA, each SDA, change authorization, addendum and amendment, will function as a TSA Document, provided such SDA, change authorization, addendum or amendment is fully executed by the Parties. In order to be effective, a TSA Document must be approved and executed by both Parties. Notwithstanding the foregoing, any SDA, change authorization, addendum or amendment listed on Schedule 1 to this TSA on the Effective Date shall be deemed to be executed concurrently with the execution of this TSA. If there is a conflict among the terms of this TSA and any TSA Document, the terms of such TSA Document prevail over those of this TSA.

2.4 **Standard of Performance**. All Services shall be provided on a basis consistent in all material respects with Seller's practice and service commitments immediately prior to the Effective Date except as set forth in an SDA or, if not heretofore provided by Seller, shall be provided in a commercially reasonable manner and on a timely basis. Seller shall perform the Services with at least the same level of skill, quality, care, timeliness, and cost-effectiveness as performed by Seller immediately prior to the Effective Date. Except as may be set forth herein or in a SDA, Seller and Buyer shall agree on any substantial changes in the Services prior to implementation of such changes.

2.5 **Materials and Access**. Buyer shall make available on a timely basis to Seller and any applicable service providers, and hereby grants a non-exclusive, worldwide, royalty-free license with respect thereto, such information and materials required by Seller to enable Seller or such service provider, as applicable, to provide the Services. Buyer shall provide Seller, or its applicable service provider, reasonable access to the premises of Buyer (including the systems, software and networks located therein), to the extent necessary to permit Seller to provide the Services.

2.6 **Control Environment**. The Parties will define the control environment related to the Services. Seller will perform the Services in accordance with Seller's policies and procedures, except as specifically required otherwise herein or as modified in an SDA. If required by Buyer, the Parties will develop reasonable and mutually agreed upon procedures to test the processes used by Seller to perform the Services by Seller on behalf of Buyer, in order to support Buyer's audit and Sarbanes-Oxley management assertion requirements. These agreed upon procedures shall be performed by Buyer's third party designated accounting firm, at Buyer's sole cost and expense, and a report shall be delivered to both Parties on a timeline that is reasonable and acceptable to both Parties.

2.7 **Local Agreements**. Where it is determined by Seller that an Affiliate of Seller is required to invoice Buyer or one of its Affiliates for fees for the Services and associated Indirect Taxes, the Parties shall enter into one or more Local Agreement(s), forms of which are attached hereto as Exhibit 3 (Local Settlement) and Exhibit 4 (Global Settlement), which will incorporate by reference this TSA and any relevant TSA Document without modification. Buyer or its Affiliate shall make payments according to the terms of the applicable Local Agreement(s).

Article III Migration and Migration Support

3.1 **Mitigate Dependency**. Buyer shall use commercially reasonable efforts to reduce or eliminate Buyer's and its Affiliates' dependency on the Services and Seller agrees to use commercially reasonable efforts to support and assist the Buyer in that migration process including, to the extent set forth in an SDA, assisting Buyer in developing of cloned systems, processes, or service environments to assist Buyer to migrate to other service providers.

3.2 **Migration Plan**. The Parties will jointly develop a proposed migration plan for the Services (the "Migration Plan"). Unless otherwise mutually agreed, the Migration Plan will include: (a) a draft schedule of migration steps (which shall include data, skill and knowledge transfer to Buyer), (b) the timing of completion for each migration step, and (c) the responsibilities of Seller and Buyer and any third-party service provider, with the objective of completing the separation within the term of this TSA. Each Party will bear its own costs in connection with the creation of the Migration Plan. The Parties recognize that the Migration Plan will serve only as guidance on the Parties' migration efforts and will not commit either Party to specific migration activities.

3.3 **Implementing Migration Plan**. Each Party will perform the migration steps for which it is responsible and pursuant to the schedule mutually agreed to under the Migration Plan and Seller will provide Buyer with commercially reasonable assistance in the implementation of the Migration Plan and will use commercially reasonable efforts to cooperate with Buyer's reasonable requests as they relate thereto. Buyer will bear (and will reimburse Seller for) the costs of such cooperation and assistance by Seller, unless otherwise agreed in writing in the Migration Plan.

Article IV Interruption of Services

4.1 **Suspension of Services**. Seller may suspend, revoke or limit Buyer's use of a Service if Seller determines that Buyer has breached any of its material obligations under this TSA or any TSA Document or that Buyer's actions or failures to act have caused or will cause, in Seller's reasonable judgment, a security breach or violation of any Law; provided that such breach or such actions or failures to act that have caused or will cause a breach are not successfully remedied within sixty (60) days from notice of such breach or violation. If the cause of the suspension, revocation, or limitation can reasonably be remedied, Seller will provide notice of the actions Buyer must take to reinstate the Service. If Buyer fails to take such actions within sixty (60) days, Seller may terminate the Service.

4.2 **Scheduled Maintenance**. Scheduled maintenance for applicable Services will be agreed upon and set forth in the applicable SDA. In the event of emergency maintenance or other unplanned disruption that impacts the Services, Seller will notify Buyer as soon as reasonably practicable. Seller may suspend Services for any scheduled maintenance set forth in the applicable SDA or emergency maintenance.

4.3 **Interruption**. In the event of any interruption of Service allowed under Sections 4.1 or 4.2, Seller's obligations for the affected Service, and Buyer's obligation to pay for the affected Service, are postponed for the time the performance is suspended or delayed due to such interruption.

Article V Personnel; Project Managers; Joint Steering Committee

5.1 **Subcontractors**. Upon Buyer's prior written consent on a Service-by-Service basis (not to be unreasonably withheld, conditioned or delayed), and only for Services that Seller intends to be materially outsourced, to the extent consistent with Seller's practices during the 180 days immediately prior to its entry into the Separation Agreement, Seller may engage subcontractors to provide or assist in providing the Services; provided, however, that Seller remains responsible for the fulfillment of all of its obligations under this TSA and for the performance of the Services.

5.2 **Access and Use of Facilities**. Seller will ensure that all personnel of Seller, its Affiliates and any subcontractors having access to Buyer's or its Affiliates' premises in connection with the performance or delivery of a Service will comply with all reasonable applicable security guidelines (including physical security, network access, internet security, confidentiality and personal data security guidelines, policies, standards and similar requirements) of Buyer and its Affiliates, which guidelines shall have been communicated in writing and in advance by Buyer to Seller.

5.3 **Personnel.** Buyer and Seller:

(a) are independent contractors and this TSA does not create an agency, partnership or joint venture relationship between Buyer and Seller or Seller personnel. Neither Party assumes any liability or responsibility for the other Party's personnel;

(b) agree to provide, to the extent necessary and required by applicable law, (i) confirmation that their respective personnel have requisite work authorizations, and (ii) for export evaluation purposes, confirm country of origin;

(c) agree that each Party has the right to refuse to accept the other Party's personnel made available to perform Services hereunder and may request the removal of the other Party's personnel from assignment under this TSA for any lawful reason in such Party's sole and reasonable discretion;

(d) will ensure that their respective personnel assigned to work hereunder will not use the other Party's confidential information that such Party may be exposed to or have access to while working pursuant to this TSA and will not share such information or disclose it by publication or otherwise to any other person during the term of this TSA and for a period of three (3) years thereafter, except as required by law;

(e) shall instruct their personnel that employment related issues should be brought forward to their respective companies;

(f) shall remain responsible for the day to day supervision, control, terms and conditions, hiring, verification of eligibility to work, discipline, performance management, termination, counseling, scheduling, compensation, benefits and other activities, withholdings, health and safety of their respect personnel, and shall ensure their respective personnel do not seek to obtain the same from the other Party. To avoid any confusion, Buyer remains the employer of Buyer personnel and Seller remains the employer of Seller personnel at all times. Further, this TSA does not create an employment relationship between Buyer, Seller and their respective personnel; and

(g) are responsible for the actions and inactions of their respective personnel, including compliance with the requirements of this TSA.

5.4 **Project Managers**. Each Party will designate a person called its "Project Manager" who will be the focal point for communications relative to this TSA and will have the authority to act on behalf of such Party regarding this TSA. The responsibilities of each Party's Project Manager include:

(a) manage its personnel and responsibilities for this TSA;

(b) serve as the interface between the other Party and all of its departments participating in this TSA;

(c) communicate and confirm any changes with the other Party's Project Manager;

(d) participate in status meetings;

(e) obtain and provide information, data, and decisions within a reasonable time after the other Party's request, unless a specific time for delivery is otherwise agreed;

(f) help resolve issues and escalate issues within its organization, as necessary; and

(g) review with the other Party's Project Manager any invoice, entitlement or billing issues.

5.5 **Joint Steering Committee**. No later than ten (10) business days after the Distribution Date, the Parties will establish a joint steering committee (the "Joint Steering Committee") to weekly (or such other duration as may be agreed to by the Parties:

(a) review the status of, discuss, manage, and perform (or caused to be performed) the tasks required to provide the Services and the tasks required to migrate any Services;

(b) review and seek agreement with respect to matters associated with employees providing the Services;

(c) review plans to phase out or migrate any Services;

(d) review resolution of any outstanding unresolved issues under this TSA;

(e) review and address performance deficiencies;

(f) review amendments, issues, Migration Plans, Service interruptions and any other issues which may arise under this TSA;

(g) prepare and review periodic budgets for the Services;

(h) review and seek agreement with respect to any change request or additional services proposed for an SDA or to be incorporated into this TSA;

(i) discuss any third-party contractors for which approval is sought;

(j) review any actual or potential non-compliance with applicable data privacy Laws as related to the Services, and if necessary, make amendments to this TSA as necessary to address such actual or potential non-compliance;

(k) review, discuss, and seek resolution of any disputes or disagreements with respect to the foregoing; and

(l) perform such other functions as appropriate to further the intents and purposes of this TSA. Approval of TSA Documents, Migration Plans, Service interruptions and any other issues which may arise under this TSA will be addressed by the Joint Steering Committee.

Article VI Fees and Taxes

6.1 **Fees**. The fees for the Services and, if applicable, the Deliverables will be specified in the SDAs. The amounts payable for the Services will be based on one or more of the following types of fees: one-time setup, recurring, third-party licenses, time and materials, fixed price. To the extent expressly set forth in an SDA or this TSA, additional out-of-pocket fees may apply, such as travel-related expenses. The SDAs will specify payment amounts and, if applicable, the process for approving and reimbursing expenses. Invoices will reference the TSA and the applicable SDA. Seller will deliver to Buyer an invoice at the beginning of each month for Services provided to Buyer during the preceding month. Buyer agrees to pay all applicable fees that are accurate and specified by Seller on the invoice, including any applicable late payment fees. Certain fees may be billed by an Affiliate of Seller pursuant to a Local Agreement.

6.2 **Payment Terms**. Unless specified otherwise in an SDA or Local Agreement, amounts payable hereunder will be paid in U.S. Dollars. [***] Payments not made within the time required hereunder may be subject to late fees as set forth in the applicable invoice. Seller's delay in providing an invoice shall not relieve Buyer of its obligation to pay the fees and/or Taxes described in the invoice. Neither Party may set-off, or attempt to set-off, any payments due to the other Party under this TSA or any TSA Documents by any amounts the first Party may owe the other under any other agreements between the Parties. If either Party disputes an amount due, such Party will pay the total amount due when payable, inclusive of any disputed amount, and the Parties will resolve such dispute in accordance with Section 12.3 (Dispute Resolution). In the event of any failure to pay any amount when due by either Party or its Affiliates under this TSA or any TSA Document (such party, the "Non-Paying Party"), the other party (the "Other Party") (or its Affiliates) shall be entitled to suspend payment, without prior notice or demand of any kind, of up to an equivalent amount due from such Other Party or its Affiliates to the Non-Paying Party under this TSA or the TSA Documents until such time as the Non-Paying Party or its Affiliates shall have paid all amounts due to the Other Party (including any interest or late fees). Payments so suspended by the Other Party or its Affiliates shall not be subject to any interest, late fees or similar charges.

6.3 **Taxes**. All fees referred to in this TSA are expressed as exclusive of all applicable value added, indirect, goods and services, consumption, sales, use, revenue, excise, stamp and personal property Taxes or any similar levies, imposts, duties, charges, surcharges or contributions, in each case imposed, collected or assessed by, or payable to, a Tax authority ("Indirect Taxes"). If any Indirect Taxes are payable by Seller or an Affiliate of Seller in relation to any Services, Deliverables, goods, services or other supplies made under or in connection with this TSA or any TSA Document, including the provisioning and fulfilment of such supplies:

(a) Seller or its applicable Affiliate will properly add the applicable Indirect Taxes to any fees payable;

(b) Seller or its applicable Affiliate will include the applicable Indirect Taxes on its invoices to Buyer in accordance with applicable Laws, and issue an invoice or other billing documentation to Buyer that complies with applicable Tax Laws; and

(c) Buyer or its applicable Affiliate will pay or reimburse the amounts of such Indirect Taxes to Seller or its applicable Affiliate on or before the payment date of the applicable invoice.

In the event that any Indirect Tax is assessed on the provision of any of the goods and services, the Parties shall work together to segregate the charges under this agreement into two (2) separate streams, (i) those for taxable goods and services; and (ii) those for nontaxable goods and services. In the event that local laws or regulations could require Seller to register for Indirect Taxes in overseas countries, Buyer agrees to execute local agreements with Seller's local affiliates in the applicable overseas country where Seller makes supplies under this TSA and/or Buyer or Buyer's affiliate receives the supplies. Buyer may designate which Buyer entity (namely, Buyer or a local Buyer affiliate) shall execute the local service agreement with the local Seller affiliate.

6.4 **Reimbursement or Indemnity**. If Seller or any of its Affiliates is entitled to payment of any costs or expenses by way of reimbursement or indemnity, Seller or its applicable Affiliate will add any Indirect Taxes that Seller or its applicable Affiliate is unable to recover on the aforementioned costs or expenses, to the payment due from Buyer.

6.5 **Tax Exemption Certificates**. To the extent that Seller and Buyer agree that no Indirect Tax is chargeable by Seller or its applicable Affiliate on any Services, Deliverables, goods, services or other supplies, the Parties will provide one another with all necessary exemption certificates as may be provided under applicable Law to evidence the non-charging of Indirect Taxes.

6.6 **Withholding**. In the event that any withholding or deduction for or on account of tax is required under any law or regulation of any governmental entity or authority, domestic or foreign to be made by Buyer in respect of any charge, Buyer will pay the charge to Seller net of the required withholding or deduction and shall account for the amount so deducted or withheld to the relevant tax authority. Buyer will supply to Seller evidence to the reasonable satisfaction of Seller that Buyer has accounted to the relevant tax authority for the amount withheld or deducted and will provide all such reasonable assistance as may be requested by Seller in recovering the amount withheld or deducted. In the event that a double taxation treaty applies which provides for a reduced withholding tax rate (including a complete exemption from withholding tax), Buyer shall take all reasonable steps to ensure that such reduced withholding is applied.

6.7 **Tax Collection**. Buyer agrees to collect and remit, and to cause its Affiliates to collect and remit, Taxes imposed, collected or assessed by, or payable to, any Tax authority in connection with this TSA or the TSA Documents or the transactions contemplated thereby, to the extent required by applicable Laws or where applicable Laws provide for Buyer or any of its Affiliates to account for Taxes on the supply if Seller is not registered for Taxes in Buyer's country. Buyer agrees to indemnify and hold harmless Seller and its Affiliates and their respective officers, directors, employees and agents, against all liabilities, damages, losses, costs and expenses if Buyer fails to pay timely all Taxes due on Seller's supply to Buyer in accordance with such Laws. In the event that local laws or regulations could require the Seller contracting entity to register for Indirect Taxes in any overseas jurisdiction/jurisdictions, Buyer and Seller will discuss an alternative charge construct, or appropriate next steps. For the avoidance of doubt, nothing in this clause shall be construed to imply that either Party is a general tax advisor to the other Party.

6.8 **Parties' Other Tax Obligations**. Except as otherwise provided, each Party shall be responsible for any personal property Taxes on property it owns or leases, for franchise and privilege Taxes on its business and for Taxes based on its net income.

Article VII Representations and Warranties

7.1 **Seller Infrastructure**. In the event Buyer, or its employees, agents, contractors, or others acting for or on behalf of Buyer, utilizes any Seller facilities, networks or Seller materials (collectively, the "Seller Infrastructure") pursuant to any SDA, Buyer will comply with all applicable Seller policies and requirements regarding the use of such Seller Infrastructure that are disclosed to Buyer, including the execution of documents as may reasonably be requested by Seller (e.g., Computer Use and Security Measures Agreement). As used above, "networks" include those IT systems, platforms, applications, networks, and the like that Seller uses or otherwise relies upon for or in connection with its business, including those located on or accessible through Seller's intranet (i.e., behind Seller's firewall), the Internet, or otherwise.

7.2 **Warranty**. Seller warrants that it will perform the Services using reasonable care and skill, according to its current description contained in the applicable SDA. Buyer agrees to provide timely written notice of any failure to comply with this warranty so that Seller can take corrective action. Deliverables are provided AS IS without warranties of any kind.

7.3 **Warranty Disclaimer**. The warranty set forth in this Section is the exclusive warranty from Seller relating to the Services and replaces all other such warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. SELLER PROVIDES DELIVERABLES WITHOUT WARRANTIES OF ANY KIND. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS TSA OR ANY TSA DOCUMENT ENTERED IN CONNECTION HEREWITH SHALL MODIFY OR AMEND SELLER'S OR ITS AFFILIATES' REPRESENTATIONS AND WARRANTIES SET FORTH IN ANY OTHER AGREEMENT BETWEEN THE PARTIES.

Article VIII Indemnification; Limitation on Liability

8.1 **Indemnification**.

(a) Buyer shall indemnify, defend and hold harmless Seller from and against any and all third party claims, losses, damages and liabilities incurred by Seller or any of its Affiliates to the extent relating to, arising out of or resulting from any Services or Deliverables provided by Seller or any of its Affiliates, except to the extent resulting from Seller's or Affiliates' (i) breach of this TSA or (ii) gross negligence or willful misconduct in providing the Services or Deliverables.

(b) Seller shall indemnify, defend and hold harmless Buyer from and against any and all third party claims, losses, damages and liabilities incurred by Buyer or any of its Affiliates to the extent resulting from Seller's or Affiliates' (i) breach of this TSA or (ii) gross negligence or willful misconduct in providing the Services or Deliverables.

8.2 **Indemnification Procedures**. The provisions of Section 6.05 of the Separation Agreement shall govern claims for indemnification under this TSA, provided that, for purposes of this Section 8.2, in the event of any conflict between the provisions of Section 6.05 of the Separation Agreement and this Article 8, the provisions of this TSA shall control.

8.3 **Other Indemnification Obligations Unaffected**. For the avoidance of doubt, this Article 8 applies solely to the specific matters and activities covered by this TSA (and not to matters specifically covered by the Separation Agreement or the other Ancillary Agreements).

8.4 **Limitation on Liability**. Seller, and Seller's service providers' and Affiliates', entire liability to the other for all claims related to this TSA and the TSA Documents will not exceed the amount of any actual direct damages incurred by Buyer up to the amounts paid or payable (if recurring fees, up to 12 months' fees apply) for the Service and/or Deliverable that is subject of the claim, regardless of the basis of the claim. Except as otherwise provided herein, no Party, and no Party's service providers, subcontractors or Affiliates, will be liable for (a) loss of or damage to data or (b) special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, impairment of goodwill, or anticipated savings. The following amounts, if a Party is legally liable for them, are not subject to the limitations in the preceding two sentences: (i) damages for bodily injury (including death); (ii) damages to real property and tangible personal property; (iii) Buyer's obligation to make payment of undisputed fees to Seller for Services performed and/or Deliverables delivered in compliance with the terms of this TSA; (iv) damages arising from Buyer's violation of Seller policies or requirements regarding Buyer's use of Seller Infrastructure and (v) damages that cannot be limited under applicable Law. Without limiting the rights under Section 11.04 of the Separation Agreement, the provisions of Section 8.1 shall, to the maximum extent permitted by applicable Law, be the Parties' and their Affiliates' sole and exclusive remedy with respect to all claims, whether arising from statute, principle of common or civil law, principles of strict liability, tort, contract or otherwise under or relating to this TSA or any TSA Document.

Article IX Term and Termination

9.1 **Termination for Convenience**. Buyer may terminate an SDA (in whole or in part), provided however, that any partial termination of an SDA shall require mutual agreement by Buyer and Seller.

9.2 **Termination for Breach**. Either Party may terminate this TSA or any TSA Document in the event the other Party fails to remedy a material breach within sixty (60) days of its receipt of written notice. In the event Seller terminates this TSA or any TSA Document for any reason, Seller shall provide Buyer, at Buyer's expense, with commercially reasonable assistance to transfer or migrate any Services performed under the TSA or a TSA document to a third party

9.3 **Survival**. Any terms of this TSA which by their nature extend beyond its expiration or termination remain in effect until fulfilled and apply to respective successors and assignees.

9.4 **Termination upon Expiration**. The term of this TSA shall continue until the earlier of (i) all of the outstanding SDAs either expire or are terminated, and (ii) the 2nd anniversary of the Effective Date. On the occurrence of such expirations and/or terminations, this TSA shall automatically terminate without further notice. Notwithstanding anything to the contrary, in no event shall any Services or SDAs be extended to a date past the second (2nd) anniversary of the Effective Date.

Article X Compliance with Law

Each Party is responsible for complying with Laws applicable to its business, such as data protection Laws and import, export and economic sanction Laws, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. If any provision of this TSA or any TSA Document is invalid or unenforceable, the remaining provisions remain in full force and effect. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under this TSA.

Article XI Data Processing

If, and to the extent, the European General Data Protection Regulation (EU/2016/679) (GDPR); or any other data protection laws identified at http://ibm.com/dpa/dpl apply to personal data processed by Seller under an SDA, Seller's Data Processing Addendum at http://ibm.com/dpa and any applicable Data Processing Addendum exhibit(s) attached to this TSA will apply and prevail over any conflicting terms in this TSA or the TSA Documents.

Seller and its Affiliates, and their contractors and subprocessors, may, in connection with the performance of this TSA or any TSA Document wherever they do business, store and otherwise process business contact information ("BCI") of Buyer, its personnel and authorized users, for example, name, business telephone, address, email and user IDs, for business dealings with them. Where notice to or consent by the individuals is required for such processing, Buyer will notify and obtain such consent.

The Seller Privacy Statement at https://www.ibm.com/privacy provides additional details with respect to BCI.

Article XII General

12.1 **Trademarks**. Neither Party grants the other the right to use its trademarks, trade names, or other designations in any promotion or publication without prior written consent.

12.2 **Confidential Information**. The exchange of any confidential information pursuant to this TSA will be governed by the Agreement for the Exchange of Confidential Information effective as of November 3, 2021, by and between Seller and Buyer.

12.3 **Dispute Resolution**. In the event of any claim, controversy, demand or request for relief of any kind arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity or breach of this TSA or otherwise arising out of or related to this TSA or the transactions contemplated hereby or thereby, including any Action based on contract, tort, equity, statute, regulation or constitution (collectively, "Disputes"), the Party raising the Dispute shall give written notice of the Dispute (a "Dispute Notice"), and the general counsels of the Parties (or such other individuals designated by the respective general counsels) and/or the executive officers designated by the Parties shall negotiate for a reasonable period of time to settle such Dispute; provided, that such reasonable period shall not, unless otherwise agreed by the Parties in writing, exceed ninety (90) days (the "Negotiation Period") from the time of receipt of the Dispute Notice; provided, further, that in the event of any arbitration in accordance with Section 12.13 hereof, (x) the Parties shall not assert the defenses of statute of limitations, laches or any other defense, in each such case based on the passage of time during the Negotiation Period, and (y) any contractual time period or deadline under this TSA relating to such Dispute occurring after the Dispute Notice is received shall not be deemed to have passed until such Arbitration has been resolved. As used in this Section 12.3, "Action" means any claim, complaint, petition, hearing, charge, demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority or any federal, state, local, foreign or international arbitration or mediation tribunal; and "Governmental Authority" means any federal, state, local, foreign, international or multinational court, government, quasi-government, department, commission, board, bureau, agency, official or other legislative, judicial, tribunal, commission, regulatory, administrative or governmental authority.

12.4 **No Third Party Beneficiaries, Statute of Limitations**. No right or cause of action for any third party is created by this TSA or any transaction hereunder. Neither Party will bring a legal action arising out of or related to this TSA more than two years after the cause of action arose.

12.5 **Assignment**. Neither Party may assign this TSA, in whole or in part, without the prior written consent of the other; any attempt to assign without consent is void. Notwithstanding the foregoing, assignment of Seller's rights to receive payments or assignment by Seller in conjunction with the sale of the portion of Seller's business that provides Services or Deliverables under this TSA or the TSA Documents is not restricted.

12.6 **Independent Contractors**. Each Party is an independent contractor, and each Party is responsible for the supervision, direction and control of its respective personnel.

12.7 **No Agency**. Neither Party may represent or act on behalf of the other, unless otherwise agreed to in writing.

12.8 **Waivers**. An effective waiver under this TSA must be in writing and signed by the Party waiving its right. A waiver by either Party of any instance of the other Party's noncompliance with any obligation or responsibility under this TSA will not be deemed a waiver of subsequent instances.

12.9 **Approvals**. Where approval, acceptance, consent or similar action by either Party is required under this TSA, such action will not be unreasonably delayed or withheld.

12.10 **Third Parties**. Buyer shall cooperate with Seller in the process to procure rights from third parties necessary for Seller to provide the Services, such as rights to use third party software for the benefit of Buyer. This cooperation may include entering into separate agreements with the third parties. Buyer shall be responsible for any fees payable to these third parties. Seller shall provide Buyer advance notice of any such fees, which shall then be invoiced under the applicable SDA(s). For the avoidance of doubt, the rights listed in and related to this Section 12.10 are solely related to Seller performing the Services.

12.11 **Force Majeure**. Neither Party is responsible or liable for failure to fulfill any obligations for thirty (30) days due to war, fire, explosion, flood, strike, epidemics, pandemics and other public health conditions (including COVID-19), act of governmental authority, act of God, act of terror or other similar event beyond the reasonable control of such Party (each a "force majeure event"), provided the affected Party (a) promptly and timely notifies the other Party stating the date and extent of such failure or delay and the cause thereof and continues to use commercially reasonable efforts to perform notwithstanding the force majeure event and (b) will promptly begin performing its obligations on cessation of such force majeure event; provided, however, that until the force majeure event has been cured and the affected Services have been restored to the levels required by this TSA, Seller shall pro-rate the fees to account for the period of time during which a reduced level of Services were provided.

12.12 **Cooperation.** Without limiting any obligation expressly set forth in this TSA or a TSA Document, Seller and Buyer each hereby agrees to reasonably co-operate in good faith with one another to make effective the transactions contemplated by this TSA and the TSA Documents.

12.13 [Intentionally Left Blank]

12.14 **Governing Law.** All matters arising from or relating in any manner to the subject matter of this TSA shall be interpreted, and the rights and liabilities of the Parties determined, in accordance with the Laws of the State of New York applicable to agreements executed, delivered, and performed within such State, without regard to the principles of conflicts of laws thereof.

12.15 **Binding Arbitration**. If any Disputes have not been resolved for any reason after the Negotiation Period set forth in Section 12.3, then to the fullest extent permitted by applicable law such Dispute may be submitted by either Party to final and binding arbitration administered in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect (the "Rules"), except as modified herein.

(a) The arbitration shall be conducted by a three-member arbitral tribunal (the "Arbitral Tribunal"). The claimant shall nominate one arbitrator in accordance with the Rules, and the respondent shall nominate one arbitrator in accordance with the Rules within twenty-one days (21) after the appointment of the first arbitrator. The third arbitrator, who shall serve as chair of the Arbitral Tribunal, shall be jointly nominated by the two party-nominated arbitrators within twenty-one (21) days of the confirmation of the appointment of the second arbitrator. If any arbitrator is not appointed within the time limit provided herein, such arbitrator shall be appointed by the AAA in accordance with the listing, striking and ranking procedure in the Rules.

(b) The arbitration shall be held, and the award shall be rendered, in New York, New York, in the English language.

(c) For the avoidance of doubt, by submitting their Dispute to arbitration under the Rules, the Parties expressly agree that all issues of arbitrability, including all issues concerning the propriety and timeliness of the commencement of the arbitration, the jurisdiction of the Arbitral Tribunal (Including the scope of this agreement to arbitrate and the extent to which a Dispute is within that scope), and the procedural conditions for arbitration, shall be finally and solely determined by the Arbitral Tribunal.

(d) Without derogating from Section 12.15(e) below, the Arbitral Tribunal shall have the full authority to grant any pre-arbitral injunction, pre-arbitral attachment, interim or conservatory measure or other order in aid of arbitration proceedings ("Interim Relief"). The Parties shall exclusively submit any application for Interim Relief to only: (A) the Arbitral Tribunal; or (B) prior to the constitution of the Arbitral Tribunal, an emergency arbitrator appointed in the manner provided for in the Rules (the "Emergency Arbitrator"). Any Interim Relief so issued shall, to the extent permitted by applicable Law, be deemed a final arbitration award for purposes of enforceability. The foregoing procedures shall constitute the exclusive means of seeking Interim Relief, provided, however, that the Arbitral Tribunal shall have the power to continue, review, vacate or modify any Interim Relief granted by an Emergency Arbitrator.

(e) The Arbitral Tribunal shall have the power to grant any remedy or relief that is in accordance with the terms of this TSA, including temporary or final injunctive relief, provided, however, that the Arbitral Tribunal shall have no authority or power to limit, expand, alter, amend, modify, revoke or suspend any condition or provision of this TSA, nor any right or power to award punitive, exemplary, enhanced or treble damages.

(f) The Arbitral Tribunal shall have the power to allocate the costs and fees of the arbitration, including reasonable attorneys' fees and costs as well as those costs and fees addressed in the Rules, between the Parties in the manner it deems fit.

(g) Arbitration under this Section 12.15 shall be the sole and exclusive remedy for any Dispute, and any award rendered thereby shall be final and binding upon the Parties as from the date rendered. Judgment on the award rendered by the Arbitral Tribunal may be entered in any court having jurisdiction thereof, including any court having jurisdiction over the relevant Party.

(h) The Parties agree that any arbitration hereunder shall be kept confidential, and that the existence of the proceeding and all of its elements (including any pleadings, briefs or other documents or evidence submitted or exchanged, any testimony or other oral submissions, and any awards) shall be deemed confidential, and shall not be disclosed beyond the Arbitral Tribunal, the Parties, their counsel, and any person necessary to the conduct of the proceeding, except as and to the extent required by law and to defend or pursue any legal right. In the event any Party makes application to any court in connection with this Section 12.15 (h) (including any proceedings to enforce a final award or any Interim Relief), that party shall take all steps reasonably within its power to cause such application, and any exhibits (including copies of any award or decisions of the Arbitral Tribunal or Emergency Arbitrator) to be filed under seal, shall oppose any challenge by any third party to such sealing, and shall give the other Party immediate notice of such challenge.

(i) Unless otherwise agreed in writing, the Parties shall continue to provide Services and honor all other commitments under this TSA during the course of dispute resolution pursuant to Section 12.03 with respect to all matters not subject to such dispute resolution.

12.16 **Notices**. Any notice required or permitted under this TSA shall be in writing sent to the following representatives:

(a) if to Seller, to:

International Business Machines Corporation
P.O. Box 41, North Harbour
Portsmouth
Hampshire, PO6 3AU
United Kingdom

Attention: Jason Hughes

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

International Business Machines Corporation
75 Binney Street
Cambridge, MA 02412

Attention: Peter Anderson

(b) if to Buyer, to:

Kyndryl UK Limited
PO Box 41
Western Road, North Harbour
Portsmouth
Hampshire, PO6 3AU
United Kingdom
Attention: Amanda Brumpton, Kyndryl Operations Executive

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

Kyndryl, Inc.
One Vanderbilt Avenue
15th Floor
New York, NY. 10017

Attention: Thomas P. Hagen, Associate General Counsel

Each Party shall promptly notify the other if its representative changes. Notices will be effective upon receipt as demonstrated by reliable confirmation. The Parties consent to the use of electronic means and facsimile transmissions to send and receive communications and notices in connection with the business relationship arising out of this TSA, and such communications are acceptable as a signed writing.

12.17 **Counterparts**. Each Party accepts the terms of this TSA and the TSA Documents referenced in Section 2.3 by signing the TSA (including by digital or other electronic means) in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same agreement. Any copy of this TSA made by reliable means (for example, photocopy or facsimile) is considered an original.

12.18 **Entire Agreement**. This TSA and the TSA Documents contain the entire agreement and understanding between the Parties thereto with respect to the subject matter thereof and supersede all prior agreements and understandings relating to such subject matter.

[*Remainder of this page intentionally left blank*]

IN WITNESS WHEREOF, the Parties have caused this TSA to be executed by their duly authorized signatories as of the Effective Date.

INTERNATIONAL BUSINESS MACHINES CORPORATION

By /s/ Frank Sedlarcik
Authorized signature

Name: Frank Sedlarcik

Title: Vice President, Assistant General Counsel and Secretary

IN WITNESS WHEREOF, the Parties have caused this TSA to be executed by their duly authorized signatories as of the Effective Date.

KYNDRYL, INC.

By /s/ Simon Beaumont
Authorized signature

Name: Simon Beaumont

Title: President

Exhibit 10.2

EXECUTION VERSION

TAX MATTERS AGREEMENT

by and between

INTERNATIONAL BUSINESS MACHINES CORPORATION

and

KYNDRYL HOLDINGS, INC.

Dated as of November 2, 2021

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TAX MATTERS AGREEMENT

This TAX MATTERS AGREEMENT (including the Schedules hereto, this "Agreement"), is entered into as of November 2, 2021 between International Business Machines Corporation, a New York corporation ("Parent"), and Kyndryl Holdings, Inc., a Delaware corporation ("SpinCo" and, together with Parent, the "Parties").

R E C I T A L S

WHEREAS, the board of directors of Parent has determined that it is appropriate, desirable and in the best interests of Parent and its stockholders to separate the Parent Business from the SpinCo Business in the manner described in the Separation and Distribution Agreement, dated as of November 2, 2021, between the Parties (such agreement, the "Separation Agreement" and such separation the "Separation") and, following the Separation, to undertake the Distribution;

WHEREAS, SpinCo has been incorporated for these purposes and has not engaged in activities except those incidental to its formation and in preparation for the Distribution;

WHEREAS, Parent has effected certain restructuring transactions described in the Separation Step Plan for the purpose of aggregating the SpinCo Business in the Parent Group prior to the Distribution (collectively, the "Reorganization") and in connection therewith, shall undertake the Contribution pursuant to which, SpinCo shall (i) issue to Parent shares of SpinCo Common Stock and (ii) pay to Parent the SpinCo Debt Proceeds Distribution;

WHEREAS, following the Distribution, Parent may retain up to 19.9% of the outstanding SpinCo Common Stock (the "Retained Stock") and transfer all or a portion of such Retained Stock to Parent creditors in satisfaction of certain Parent third-party debt (any such transfer, a "Debt-for-Equity Exchange") within twelve (12) months of the Distribution and, if market and general economic conditions and sound business judgment do not support such Debt-for-Equity Exchanges during the twelve (12) month period following the Distribution, in the case of any remaining Retained Stock, may (i) distribute such Retained Stock within twelve (12) months of the Distribution pro rata to its public common shareholders (a "Clean-Up Spin"), or pursuant to an exchange offer in redemption of public common shares (a "Clean-Up Split" and a Clean-Up Split or a Clean-Up Spin, a "Subsequent Distribution"), or (ii) sell the Retained Stock in one or more public or private sales within five (5) years of the Distribution;

WHEREAS, Parent intends to effect the Spin-Off Transaction in a transaction that is intended to qualify as tax-free for U.S. federal income tax purposes under Sections 368(a)(1)(D), 355 and 361(c) of the Code;

WHEREAS, certain members of the Parent Group, on the one hand, and certain members of the SpinCo Group, on the other hand, file certain Tax Returns on a consolidated, combined or unitary basis for certain federal, state, local and non-U.S. Tax purposes; and

WHEREAS, the Parties desire to (a) provide for the payment of Tax Liabilities and entitlement to refunds thereof, allocate responsibility for, and cooperation in, the filing of Tax Returns, and provide for certain other matters relating to Taxes and (b) set forth certain covenants and indemnities relating to the preservation of the Intended Tax Treatment of the Transactions.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I - DEFINITIONS

1.1 General. For the purposes of this Agreement, the following terms shall have the following meanings:

"Accounting Firm" shall have the meaning set forth in Section 9.1.

"Active Business" shall mean any business relied on to satisfy (i) the active trade or business requirement of Section 355(b) of the Code (taking into account Section 355(b)(3) of the Code) or (ii) the continuity of business enterprise requirements under Treasury Regulations Section 1.355-3 and Treasury Regulations Section 1.368-1(d), to the extent identified as such in the Tax Materials.

"Adjustment" shall mean an adjustment of any item of income, gain, loss, deduction, credit or any other item affecting Taxes of a taxpayer pursuant to a Final Determination.

"Affiliate" shall have the meaning set forth in the Separation Agreement.

"Agreement" shall have the meaning set forth in the preamble hereto.

"Ancillary Agreements" shall have the meaning set forth in the Separation Agreement.

"Business Day" shall have the meaning set forth in the Separation Agreement.

"Capital Stock" shall mean classes or series of capital stock of a Person, including (i) common stock, (ii) all options, warrants and other rights to acquire such capital stock and (iii) all instruments properly treated as stock in such Person for U.S. federal income tax purposes.

"Chosen Court Claim" shall have the meaning set forth in Section 9.5.

"Chosen Courts" shall have the meaning set forth in Section 9.5.

"Clean-Up Spin" shall have the meaning set forth in the recitals hereto.

"Clean-Up Split" shall have the meaning set forth in the recitals hereto.

"Code" shall mean the U.S. Internal Revenue Code of 1986.

"Controlling Party" shall mean, with respect to a Tax Contest, the Party entitled to control such Tax Contest pursuant to Section 6.2, Section 6.3 or Section 6.4.

"Contribution" shall have the meaning set forth in the Separation Agreement.

"Debt-for-Equity Exchange" shall have the meaning set forth in the recitals hereto.

"Dispute" shall have the meaning set forth in Section 9.2.

"Distribution" shall have the meaning set forth in the Separation Agreement.

"Distribution Date" shall have the meaning set forth in the Separation Agreement.

"Distribution Taxes" shall mean any Taxes incurred solely as a result of the failure of any of the Transactions to qualify for the Intended Tax Treatment of such Transaction.

"Due Date" shall mean (a) 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 Tax Law and (b) with respect to a payment of Taxes, the date on which such payment is required to be made, which shall in any case be no later than the payment date required to avoid the incurrence of interest, penalties and additions to Tax.

"EMA" shall have the meaning set forth in the Separation Agreement.

"Employment Tax" shall mean those Liabilities (as defined in the Separation Agreement) for Taxes which are allocable pursuant to the provisions of the EMA.

"Final Determination" shall mean the final resolution of any Tax Liability, 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 non-U.S. 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 Taxing 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 Section 7121 or Section 7122 of the Code, or a comparable agreement under the Laws of a state, local or non-U.S. taxing jurisdiction; (d) by any allowance of a Refund, 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 competent authority proceeding or 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.

"Gain Recognition Agreement" shall mean any agreement to recognize gain that is described in Treasury Regulations Section 1.367(a)-8 (i) which is entered into in connection with the Transactions and (ii) to which any member of the Parent Group or the SpinCo Group is a party.

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

"Indemnifying Party" shall have the meaning set forth in Section 5.2.

"Indemnitee" shall have the meaning set forth in Section 5.2.

"Intended Tax Treatment" shall mean (x) the qualification of (i) the Contribution (and Parent's receipt or deemed receipt of the SpinCo Common Stock and SpinCo Debt Proceeds Distribution in connection therewith), the Distribution and any Subsequent Distributions, taken together, as a reorganization described in Sections 368(a)(1)(D) and 355(a) of the Code, with each of Parent and SpinCo being a party to the reorganization, in which no income or gain is recognized by Parent, SpinCo, the Parent Group, the SpinCo Group or the holders of Parent Common Stock pursuant to Sections 355, 361 and 1032 of the Code, other than intercompany items or excess loss accounts taken into account pursuant to the Treasury Regulations promulgated pursuant to Section 1502 of the Code, (ii) the Distribution and any Subsequent Distributions as transactions in which the stock distributed thereby is "qualified property" for purposes of Sections 355(c) and 361(c) of the Code (and neither Section 355(d) nor Section 355(e) of the Code causes such stock to be treated as other than "qualified property" for such purposes) and (iii) any Debt-for-Equity Exchange as a transfer of "qualified property" to creditors of Parent in connection with the reorganization within the meaning of Section 361(c) of the Code and (y) the qualification of (i) each of the Transactions described on Schedule B attached hereto as either a "distribution" under Section 355 of the Code or as a "reorganization" under Sections 368(a), 361 and 355 of the Code, as applicable, and (ii) any other Transaction (or combination of Transactions) undertaken pursuant to the Separation Step Plan for tax-free treatment (including mitigation or minimization of Tax) under applicable Tax Law, as determined by Parent in its reasonable discretion and in accordance with the Separation Step Plan. The term "Intended Tax Treatment" will, as applicable, also include the qualification of each transaction described in clauses (x) and (y) above under comparable provisions of state or local Tax Law, or, in the case of clause (y)(ii), non-U.S. Tax Law.

"IRS" shall mean the United States Internal Revenue Service or any successor thereto, including, but not limited to its agents, representatives, and attorneys.

"IRS Ruling" shall mean any U.S. federal income tax ruling and any supplements thereto issued to Parent by the IRS in connection with the Transactions.

"IRS Ruling Request" shall mean the letter filed by Parent with the IRS requesting a ruling regarding certain tax consequences of the Transactions and any amendment or supplement to such ruling request letter.

"Joint Return" shall mean any Tax Return that includes, by election or otherwise, one or more members of the Parent Group together with one or members of the SpinCo Group.

"Law" shall have the meaning set forth in the Separation Agreement.

"Negotiation Period" shall have the meaning set forth in Section 9.1.

"Non-Controlling Party" shall mean, with respect to a Tax Contest, the Party that is not entitled to control such Tax Contest pursuant to Section 6.2, Section 6.3 or Section 6.4.

"Non-U.S. Tax" shall mean any Tax imposed by any non-U.S. country or any possession of the United States, or by any political subdivision of any non-U.S. country or United States possession.

"Notified Action" shall have the meaning set forth in Section 4.3(a).

"Parent" shall have the meaning set forth in the preamble hereto.

"Parent Business" shall have the meaning set forth in the Separation Agreement.

"Parent Common Stock" shall have the meaning set forth in the Separation Agreement.

"Parent Group" shall have the meaning set forth in the Separation Agreement.

"Parent Separate Return" shall mean any Tax Return of or including any member of the Parent Group (including any consolidated, combined, or unitary return) that does not include any member of the SpinCo Group.

"Parties" shall have the meaning set forth in the preamble hereto.

"Past Practices" shall have the meaning set forth in Section 3.5.

"Person" shall have the meaning set forth in the Separation Agreement.

"Post-Distribution Period" shall mean any Tax Period (or portion thereof) beginning after the Distribution Date, including for the avoidance of doubt, the portion of any Straddle Period with respect to the Distribution Date beginning after the Distribution Date.

"Post-Distribution Ruling" shall have the meaning set forth in Section 4.2(c).

"Pre-Distribution Period" shall mean any Tax Period (or portion thereof) ending on or before the Distribution Date, including for the avoidance of doubt, the portion of any Straddle Period with respect to the Distribution Date ending at the end of the day on the Distribution Date.

"Preparing Party" shall have the meaning set forth in Section 3.3.

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

"Prohibited Acts" shall mean any act or failure to act by SpinCo described in Section 4.2(a) or Section 4.2(b) (regardless of whether the conditions set forth in Section 4.2(c) are satisfied).

"Proposed Acquisition Transaction" shall mean a transaction or series of transactions (or any agreement, understanding or arrangement within the meaning of Section 355(e) of the Code and Treasury Regulations Section 1.355-7, or any other 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 (or any successor thereto) would merge or consolidate with any other Person or as a result of which one or more Persons would (directly or indirectly) acquire, or have the right to acquire, from SpinCo (or any successor thereto) and/or one or more holders of SpinCo Capital Stock, respectively, any amount of stock of SpinCo, that would, when combined with any other direct or indirect changes in ownership of the stock of SpinCo pertinent for purposes of Section 355(e) of the Code and the Treasury Regulations promulgated thereunder, comprise forty percent (40%) or more of (i) the value of all outstanding shares 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 (ii) the total combined voting power of all outstanding shares of voting stock of SpinCo as of the date of such transaction, or in the case of a series of transactions, the date of the last transaction of such series. Notwithstanding the foregoing, a Proposed Acquisition Transaction shall not include (i) the adoption by SpinCo of a customary shareholder rights plan or (ii) issuances by SpinCo that satisfy Safe Harbor VIII (relating to acquisitions in connection with a person's performance of services) or Safe Harbor IX (relating to acquisitions by a retirement plan of an employer) of Treasury Regulations Section 1.355-7(d). For purposes of determining whether a transaction constitutes an indirect acquisition, any recapitalization resulting in a shift of voting power or any redemption of shares of stock shall be treated as an indirect acquisition of shares of stock by the non-exchanging shareholders. This definition and the application thereof are intended to monitor compliance with Section 355(e) of the Code and the Treasury Regulations promulgated thereunder 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.

"Refund" shall mean any refund, reimbursement, offset, credit or other similar benefit in respect of Taxes (including any overpayment of Taxes that can be refunded or, alternatively, applied against other Taxes payable), including any interest paid on or with respect to such refund of Taxes; provided, however, that the amount of any refund of Taxes shall be net of any costs and expenses (including Taxes imposed by any Taxing Authority) related to, or attributable to, the receipt of or accrual of such refund (including any Taxes imposed by way of withholding or offset).

"Reorganization" shall have the meaning set forth in the recitals hereto.

"Representation Letters" shall mean the representation letters of officers of Parent and/or SpinCo provided to any Law or accounting firm in connection with any Tax Opinion issued in connection with the Transactions.

"Responsible Party" shall mean, with respect to any Tax Return, the Party having responsibility for preparing and filing such Tax Return pursuant to this Agreement.

"Restricted Period" shall mean the period beginning on the Distribution Date and ending on the two (2)-year anniversary of the day after the Distribution Date.

"Retained Stock" shall have the meaning set forth in the recitals hereto.

"Reviewing Party" shall have the meaning set forth in Section 3.3.

"Section 4.2(b)(v) Acquisition Transaction" shall have the meaning set forth in Section 4.2(b)(v).

"Separate Return" shall mean a Parent Separate Return or a SpinCo Separate Return, as the case may be.

"Separation" shall have the meaning set forth in the recitals hereto.

"Separation Agreement" shall have the meaning set forth in the recitals hereto.

"Separation Step Plan" shall mean have the meaning set forth in the Separation Agreement.

"Spin-Off Transaction" shall mean the Contribution, the Distribution, any Subsequent Distributions and any Debt-for-Equity Exchange, taken together.

"SpinCo" shall have the meaning set forth in the preamble hereto.

"SpinCo Business" shall have the meaning set forth in the Separation Agreement.

"SpinCo Capital Stock" means the Capital Stock of SpinCo, including the SpinCo Common Stock.

"SpinCo Common Stock" shall have the meaning set forth in the Separation Agreement.

"SpinCo Debt Proceeds Distribution" shall have the meaning set forth in the Separation Agreement.

"SpinCo Disqualifying Action" shall mean (a) any action (or the failure to take any action) by any member of the SpinCo Group after the Distribution (including entering into any agreement, understanding or arrangement or any negotiations with respect to any transaction or series of transactions), (b) any event (or series of events) after the Distribution involving the SpinCo Capital Stock or any stock or assets of any member of the SpinCo Group or (c) any breach by any member of the SpinCo Group after the Distribution of any representation, warranty or covenant made by them in this Agreement, that, in each case, would adversely affect, jeopardize or prevent the Intended Tax Treatment; provided, however, that the term "SpinCo Disqualifying Action" shall not include any action required by the Separation Agreement or any Ancillary Agreement (other than this Agreement) or that is undertaken pursuant to the Separation or the Distribution.

"SpinCo Group" shall have the meaning set forth in the Separation Agreement.

"SpinCo Separate Return" shall mean any Tax Return of or including any member of the SpinCo Group (including any consolidated, combined, or unitary return) that does not include any member of the Parent Group.

"State Tax" shall mean any Tax imposed by any State of the United States or by any political subdivision of any such State.

"Straddle Period" shall mean any Tax Period beginning on or before the Distribution Date and ending after the Distribution Date.

"Subsequent Distribution" shall have the meaning set forth in the recitals hereto.

"Subsidiary" shall have the meaning set forth in the Separation Agreement.

"Tax" or "Taxes" shall mean (i) all taxes, charges, fees, duties, levies, imposts, rates or other assessments or charges of any kind imposed by any Taxing Authority, including, without limitation, income, gross income, gross receipts, profits, employment, estimated, excise, severance, stamp, occupation, premium, windfall profits, environmental, custom duties, property, sales, use, license, lease, capital stock, transfer, import, export, franchise, registration, payroll, withholding, social security, workers' compensation, unemployment, disability, ad valorem, service, value-added, alternative or add-on minimum, estimated, unclaimed property or escheat, or other taxes, whether disputed or not, and including any fee, assessment, duty, or other charge in the nature of or in lieu of any tax, and including any interest, penalties, charges or additions to tax or additional amounts in respect of the foregoing, (ii) liability for the payment of any amount of the type described in clause (i) above arising as a result of being (or having been) a member of any group or being (or having been) included or required to be included in any Tax Return related thereto and (iii) liability for the payment of any amount of the type described in clause (i) or (ii) above as a result of any express or implied obligation to indemnify or otherwise assume or succeed to the liability of any other Person. For the avoidance of doubt, Tax includes any increase in Tax as a result of a Final Determination.

"Tax Advisor" shall mean a U.S. Tax counsel or other Tax advisor of recognized national standing acceptable to Parent, in its sole discretion.

"Tax Advisor Dispute" shall have the meaning set forth in Section 9.1.

"Tax Advisor Dispute Notice" shall have the meaning set forth in Section 9.1.

"Tax Attribute" shall mean net operating losses, capital losses, research and experimentation credit carryovers, investment tax credit carryovers, earnings and profits, foreign tax credit carryovers, overall foreign losses, overall domestic losses, previously taxed earnings and profits, separate limitation losses and any other losses, deductions, credits or other comparable items that could affect a Tax Liability for a past or future Tax Period.

"Tax Benefit" shall mean any reduction in Taxes paid or payable actually realized by a Person as a result of any loss, deduction, Refund, credit, offset or other Tax Item. For purposes of this Agreement, the amount of any Tax Benefit actually realized by a Person as a result of any such Tax Item shall be determined on a "with and without basis" as the excess of (a) the hypothetical liability of such Person for the relevant Tax for the relevant Tax Period, calculated as if such Tax Item had not been utilized but with all other facts unchanged, over (b) the actual liability of such Person for such Tax for such Tax Period, calculated taking into account such Tax Item (and, for this purpose, treating a Refund as a reduction in Tax Liability).

"Tax Contest" shall have the meaning set forth in Section 6.1.

"Tax Item" shall mean any item of income, gain, loss, deduction, or credit.

"Tax Law" shall mean the law of any Taxing Authority or political subdivision thereof relating to any Tax.

"Tax Liability" shall mean any liability or obligation for Taxes.

"Tax Materials" shall have the meaning set forth in Section 4.1(a).

"Tax Matter" shall have the meaning set forth in Section 7.1(a).

"Tax Opinion" shall mean any written opinion of any Law or accounting firm, regarding certain tax consequences of certain transactions executed as part of the Transactions.

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

"Tax Records" shall have the meaning set forth in Section 8.1.

"Tax Related Losses" shall mean, with respect to any Taxes, (i) all accounting, legal and other professional fees, and court costs incurred in connection with such Taxes, as well as any other out-of-pocket costs incurred in connection with such Taxes and (ii) all costs, expenses and damages associated with stockholder litigation or controversies and any amount paid by Parent (or any of its Affiliates) or SpinCo (or any of its Affiliates) in respect of the liability of shareholders, whether paid to shareholders or to the IRS or any other Taxing Authority, in each case, resulting from the failure of any of the Transactions to qualify for the Intended Tax Treatment or the defense against any challenge by the IRS or any other Taxing Authority to the Intended Tax Treatment of any Transaction, even if such Transaction ultimately is determined to so qualify.

"Tax Return" shall mean any return, report, certificate, form or similar statement or document (including any related supporting information or schedule attached thereto and any information return, amended tax return, claim for refund or declaration of estimated tax) supplied to or filed with, or required to be supplied to or filed with, a Taxing Authority, or any bill for or notice related to ad valorem or other similar Taxes received from a Taxing Authority, in each case, in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

"Taxing Authority" shall mean any governmental authority or any subdivision, agency, commission or entity thereof or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).

"Transaction Related Tax Contest" shall mean any Tax Contest in which the IRS, another Taxing Authority or any other party asserts a position that could reasonably be expected to (a) adversely affect, jeopardize or prevent (i) the Intended Tax Treatment of the Spin-Off Transaction or (ii) the Intended Tax Treatment of any other Transaction as set forth in a Tax Opinion or an IRS Ruling (or, if not set forth in a Tax Opinions or an IRS Ruling, in the Separation Step Plan) or (b) otherwise affect the amount of Taxes imposed with respect to any of the Transactions, as determined in each case by Parent, in its discretion.

"Transaction Taxes" shall mean all Taxes (including Taxes imposed on any member of the Parent Group under Sections 951 or 951A of the Code) imposed on or with respect to the Transactions other than any Taxes resulting from the failure of any of the Transactions to qualify for the Intended Tax Treatment.

"Transactions" shall mean the Separation (including the Reorganization and the Contribution), the Distribution, any Subsequent Distribution, any Debt-for-Equity Exchange and any related transactions.

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

"Unqualified Tax Opinion" shall mean an unqualified "will" opinion of a Tax Advisor, and on which Parent may rely, to the effect that a transaction will not affect the Intended Tax Treatment or otherwise cause any Transaction to fail to qualify for the Intended Tax Treatment; provided, that, any tax opinion obtained in connection with a proposed acquisition of SpinCo Capital Stock entered into during the Restricted Period shall not qualify as an Unqualified Tax Opinion unless such tax opinion concludes that such proposed acquisition will not be treated as "part of a plan (or series of related transactions)," within the meaning of Section 355(e) of the Code and the Treasury Regulations promulgated thereunder, that includes the Distribution; provided, further, that any such opinion must assume that the Contribution and the Distribution, taken together, would have qualified for the Intended Tax Treatment if the transaction in question did not occur.

ARTICLE II – PAYMENTS AND TAX REFUNDS

2.1 Responsibility for SpinCo Group Taxes. Except as otherwise expressly provided in this Agreement:

(a) Parent shall be responsible for all Taxes (i) of the SpinCo Group for any Pre-Distribution Period; provided, that, in the case of any Straddle Period, only to the extent allocated to Parent pursuant to Section 2.3; (ii) imposed under Treasury Regulations Section 1.1502-6 or under any comparable or similar provision of state, local or non-U.S. Law on any member of the SpinCo Group solely as a result of such company being a member of a consolidated, combined, affiliated or unitary group with, or as a successor to, any member of the Parent Group during any Tax Period; or (iii) imposed on any member of the SpinCo Group for any Pre-Distribution Period as a result of any express or implied obligation to indemnify any other Person, or any successor or transferee liability; provided, that, solely for purposes of this Section 2.1(a), "SpinCo Group" shall not include any Person that becomes a Subsidiary of SpinCo after the Distribution.

(b) SpinCo shall be responsible for all Taxes of the SpinCo Group which are not the responsibility of Parent pursuant to Section 2.1(a) (including Taxes for Post-Distribution Periods of any member of the SpinCo Group).

2.2 Transaction Taxes. Notwithstanding anything to the contrary in Section 2.1, Parent shall pay and be responsible for any Transaction Taxes, as determined by Parent in its reasonable discretion.

2.3 Allocation of Taxes.

(a) If any member of a Group is permitted but not required under applicable U.S. federal, state, local or non-U.S. Tax Law to treat the Distribution Date as the last day of a Tax Period with respect to any member of the SpinCo Group, then the Parties and their Affiliates shall treat such day as the last day of the applicable Tax Period under such applicable Law, and shall file any elections necessary or appropriate for such treatment; provided, that, for the avoidance of doubt, this Section 2.3 shall not be construed to require Parent to change its taxable year or treat the Distribution Date as the last day of a Tax Period of any member of the Parent Group.

(b) Any transactions occurring, or actions taken, on the Distribution Date but after the Distribution outside the ordinary course of business by, or with respect to, any member of the SpinCo Group shall be deemed subject to the "next day rule" of Treasury Regulations Section 1.1502-76(b)(1)(ii)(B) (and under any comparable or similar provision under state, local or non-U.S. Laws or regulations; provided, that, if there is no comparable or similar provision under state, local or non-U.S. Laws or regulations, then the transaction will be deemed subject to the "next day rule" of Treasury Regulations Section 1.1502-76(b)(1)(ii)(B)) and as such shall for purposes of this Agreement be treated (and consistently reported by the Parties and their Affiliates) as occurring in a Post-Distribution Period of the SpinCo Group, as appropriate.

(c) Any Taxes for a Straddle Period with respect to the SpinCo Group (or entities in which any member of the SpinCo Group has an ownership interest) shall, for purposes of this Agreement, be allocated between the portion of the period ending on and including the Distribution Date and the portion of the period beginning after the Distribution Date by means of a closing of the books and records of the SpinCo Group as of the close of business on the Distribution Date; provided, that, (i) Parent may elect to allocate Tax Items (other than any extraordinary Tax Items) ratably in the month in which the Distribution occurs (and if Parent so elects, SpinCo shall so elect) as described in Treasury Regulations Section 1.1502-76(b)(2)(iii) and corresponding provisions of state, local, and non-U.S. Law; (ii) whenever it is necessary to determine the liability for Taxes of a United States shareholder (within the meaning of Section 951(b) of the Code) of a controlled foreign corporation (within the meaning of Section 957 of the Code) attributable to amounts included in the income of such United States shareholder under Sections 951 or 951A of the Code for the taxable year or period of such controlled foreign corporation that begins on or before and ends after the Distribution Date, the determination of liability for any such Taxes shall be made by assuming that the taxable year or period of the controlled foreign corporation consisted of two (2) taxable years or periods, one which ended at the close of the Distribution Date and the other of which began at the beginning of the day following the Distribution Date and relevant items of income, gain, deduction, loss or credit of the controlled foreign corporation shall be allocated between such two (2) taxable years or periods on a closing of the books basis by assuming that the books of the controlled foreign corporation were closed at the close of the Distribution Date; provided, however, that Subpart F income (within the meaning of Section 952 of the Code) of the controlled foreign corporation shall be determined without regard to Section 952(c) of the Code; and (iii) subject to clauses (i) and (ii), exemptions, allowances or deductions that are calculated on an annual basis, and not on a closing of the books method (including depreciation and amortization deductions) shall be allocated between the period ending on and including the Distribution Date and the period beginning after the Distribution Date based on the number of days for the portion of the Straddle Period ending on and including the Distribution Date, on the one hand, and the number of days for the portion of the Straddle Period beginning after the Distribution Date, on the other hand. The foregoing provisions in this Section 2.3(c) shall be applied as determined by Parent in its reasonable discretion.

2.4 Allocation of Employment Taxes. Liability for Employment Taxes and any related Tax Benefits shall be determined pursuant to the EMA.

2.5 Tax Refunds.

(a) Parent shall be entitled to all Refunds related to Taxes the liability for which is allocated to Parent pursuant to this Agreement (taking into account Section 2.3(b) and Section 2.3(c)). SpinCo shall be entitled to all Refunds related to Taxes the liability for which is allocated to SpinCo pursuant to this Agreement (taking into account Section 2.3(b) and Section 2.3(c)).

(b) SpinCo shall pay to Parent any Refund received by SpinCo or any member of the SpinCo Group that is allocable to Parent pursuant to this Section 2.5 no later than thirty (30) Business Days after the receipt of such Refund. Parent shall pay to SpinCo any Refund received by Parent or any member of the Parent Group that is allocable to SpinCo pursuant to this Section 2.5 no later than thirty (30) Business Days after the receipt of such Refund. For purposes of this Section 2.5, any Refund that arises as a result of an offset, credit, or other similar benefit in respect of Taxes other than a receipt of cash shall be deemed to be received on the earlier of (i) the date on which a Tax Return is filed claiming such offset, credit, or other similar benefit and (ii) the date on which payment of the Tax which would have otherwise been paid absent such offset, credit, or other similar benefit is due (determined without taking into account any applicable extensions).

2.6 Tax Benefits. If Parent determines, in its reasonable discretion, that: (i) one Party is responsible for a Tax pursuant to this Agreement or under applicable Law and (ii) the other Party is entitled to a Tax Benefit relating to such Tax, then the Party entitled to such Tax Benefit shall pay to the Party responsible for such Tax the amount of the Tax Benefit, as determined by Parent in its reasonable discretion.

2.7 Prior Agreements. Except as set forth in this Agreement and in consideration of the mutual indemnities and other obligations of this Agreement, any and all prior Tax sharing or allocation agreements or practices between any member of the Parent Group and any member of the SpinCo Group shall be terminated with respect to the SpinCo Group and the Parent Group as of the Distribution Date. No member of either the SpinCo Group or the Parent Group shall have any continuing rights or obligations under any such agreement.

2.8 Specified Matters. Notwithstanding anything to the contrary in this Article II, the matters specified in Schedule A shall in addition be subject to the provisions of Schedule A, which shall govern in the event of any conflict between the provisions of Schedule A and this Article II.

ARTICLE III – PREPARATION AND FILING OF TAX RETURNS

3.1 Parent's Responsibility. Parent shall prepare and file when due (taking into account any applicable extensions), or shall cause to be prepared and filed, all Joint Returns, all Tax Returns pursuant to which there is a claim to group relief by one or more members of the SpinCo Group in respect of losses generated by one or more members of the Parent Group, and all Parent Separate Returns, including any amendments to such Tax Returns.

3.2 SpinCo's Responsibility. SpinCo shall prepare and file when due (taking into account any applicable extensions), or shall cause to be prepared and filed, all Tax Returns, including any amended 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 to prepare and file under Section 3.1. The Tax Returns required to be prepared and filed by SpinCo under this Section 3.2 shall include any SpinCo Separate Returns and any amended SpinCo Separate Returns. For the avoidance of doubt, SpinCo shall prepare any transfer pricing documentation required to be prepared with respect to a Tax Return required to be prepared and filed under this Section 3.2 and Parent shall be entitled to review and comment on any such transfer pricing documentation in a manner consistent with Section 3.3.

3.3 Right to Review Tax Returns. To the extent that the positions taken on any Tax Return would reasonably be expected to materially adversely affect the Tax position of the Party other than the Party that is required to prepare and file any such Tax Return pursuant to Section 3.1 or Section 3.2 (the "Reviewing Party"), as determined by Parent in its reasonable discretion, the Party required to prepare and file such Tax Return (the "Preparing Party") shall prepare the portions of such Tax Return that relates to the business of the Reviewing Party (the Parent Business or the SpinCo Business, as the case may be), shall provide a draft of such portion of such Tax Return to the Reviewing Party for its review and comment at least thirty (30) days prior to the Due Date for such Tax Return, and shall consider in good faith any comments with respect to items that would reasonably be expected to materially adversely affect the Tax position of the Reviewing Party.

3.4 Cooperation. The Parties shall provide, and shall cause their Affiliates to provide, assistance and cooperation to one another in accordance with Article VII with respect to the preparation and filing of Tax Returns, including providing information required to be provided under Article VIII. Notwithstanding anything to the contrary in this Agreement, Parent shall not be required to disclose to SpinCo any consolidated, combined, unitary or other similar Joint Return of which a member of the Parent Group is the common parent or any information related to such a Joint Return other than information relating solely to the SpinCo Group; provided, that, Parent shall provide such additional information that is reasonably required in order for SpinCo to determine the Taxes attributable to the SpinCo Business. If an amended Separate Return for State Taxes for which SpinCo is responsible under this Article III is required to be filed as a result of an amendment made to a Joint Return for U.S. federal income taxes pursuant to an audit Adjustment, then the Parties shall cooperate to ensure that such amended Separate Return can be prepared and filed in a manner that preserves confidential information including through the use of third party preparers.

3.5 Tax Reporting Practices. Except as provided in Section 3.6, any Tax Return for any Pre-Distribution Period or Straddle Period, to the extent it relates to members of the SpinCo Group, shall be prepared in accordance with practices, accounting methods, elections, conventions, transfer pricing and Tax positions used with respect to the Tax Return in question for periods prior to the Distribution ("Past Practices"), and, in the case of any item the treatment of which is not addressed by Past Practices, in accordance with generally acceptable Tax accounting practices. Notwithstanding the foregoing, for any Tax Return described in the preceding sentence, (i) a Party will not be required to follow Past Practices with either the written consent of the other Party (not to be unreasonably withheld, delayed or conditioned) or a "more likely than not" (or stronger) level opinion from a Tax Advisor that reporting in accordance with Past Practices is not correct and (ii) Parent shall have the right to determine which entities will be included in any consolidated, combined, affiliated or unitary Tax Return that it is responsible for filing.

3.6 Reporting of Separation.

(a) The Tax treatment of any step in or portion of the Transactions shall be reported on each applicable Tax Return consistently with the Intended Tax Treatment, taking into account the jurisdiction in which such Tax Returns are filed.

(b) If Parent determines, in its sole discretion, that a protective election under Section 336(e) of the Code shall be made with respect to the Distribution, SpinCo agrees to take any such action that is necessary to effect such election, including any corresponding election with respect to any of its Subsidiaries, as determined by Parent. If such a protective election is made, this Agreement shall be amended in such a manner as is determined by Parent in its reasonable discretion to compensate Parent for any Tax Benefits realized by SpinCo as a result of such election.

3.7 Payment of Taxes.

(a) With respect to any Tax Return required to be filed pursuant to this Agreement, the Responsible Party shall remit or cause to be remitted to the applicable Taxing Authority in a timely manner any Taxes due in respect of any such Tax Return.

(b) In the case of any Tax Return for which the Party that is not the Responsible Party is obligated pursuant to this Agreement to pay all or a portion of the Taxes reported as due on such Tax Return, the Responsible Party shall notify the other Party, in writing, of its obligation to pay such Taxes and, in reasonably sufficient detail, its calculation of the amount due by such other Party and the Party receiving such notice shall pay such amount to the Responsible Party upon the later of thirty (30) Business Days prior to the Due Date for such payment and thirty (30) Business Days after the receipt of such notice.

(c) With respect to any estimated Taxes, the Party that is or will be the Responsible Party with respect to any Tax Return that will reflect (or otherwise give credit for) such estimated Taxes shall remit or cause to be remitted to the applicable Taxing Authority in a timely manner any estimated Taxes due. In the case of any estimated Taxes for which the Party that is not the Responsible Party is obligated pursuant to this Agreement to pay all or a portion of the Taxes that will be reported as due on any Tax Return that will reflect (or otherwise give credit for) such estimated Taxes, the Responsible Party shall notify the other Party, in writing, of its obligation to pay such estimated Taxes and, in reasonably sufficient detail, its calculation of the amount due by such other Party and the Party receiving such notice shall pay such amount to the Responsible Party upon the later of thirty (30) Business Days prior to the Due Date for such payment and thirty (30) Business Days after the receipt of such notice.

3.8 Amended Returns and Carrybacks.

(a) SpinCo shall not, and shall not permit any member of the SpinCo Group to, file or allow to be filed any request for an Adjustment for any Pre-Distribution Period without the prior written consent of Parent, such consent to be exercised in Parent's sole discretion.

(b) SpinCo shall, and shall cause each member of the SpinCo Group to, make any available elections to waive the right to carry back any Tax Attribute from a Post-Distribution Period to a Pre-Distribution Period.

(c) SpinCo shall not, and shall cause each member of the SpinCo Group not to, without the prior written consent of Parent, make any affirmative election to carry back any Tax Attribute from a Post-Distribution Period to a Pre-Distribution Period, including by filing a claim for a refund or making any other filing with any Taxing Authority with respect to such carryback, such consent to be exercised in Parent's sole discretion.

(d) Receipt of consent by SpinCo or a member of the SpinCo Group from Parent pursuant to the provisions of this Section 3.8 shall not limit or modify SpinCo's continuing indemnification obligation pursuant to Article V.

3.9 Tax Attributes. Parent shall in good faith advise SpinCo in writing of the amount (if any) of any Tax Attributes, which Parent determines, in its sole discretion, shall be allocated or apportioned to the SpinCo Group under applicable Law. SpinCo and all members of the SpinCo Group shall prepare all Tax Returns in accordance with such written notice. SpinCo agrees that it shall not dispute Parent's determination of Tax Attributes. For the avoidance of doubt, Parent shall not be required in order to comply with this Section 3.9 to create or cause to be created any books and records or reports or other documents based thereon (including, without limitation, "earnings & profits studies," "basis studies" or similar determinations) that it does not maintain or prepare in the ordinary course of business.

3.10 Gain Recognition Agreements. SpinCo will not take any action (including the sale or disposition of any stock, securities or other assets), or permit its Affiliates to take any such action, and SpinCo will not fail to take any action, or permit its Affiliates to fail to take any action, that would cause Parent or any of its Affiliates or SpinCo or any of its Affiliates to recognize gain under any Gain Recognition Agreement.

3.11 Specified Matters. Notwithstanding anything to the contrary in this Article III, the matters specified in Schedule A shall in addition be subject to the provisions of Schedule A, which shall govern in the event of any conflict between the provisions of Schedule A and this Article III.

ARTICLE IV – INTENDED TAX TREATMENT OF THE DISTRIBUTION

4.1 Representations and Warranties.

(a) Parent, on behalf of itself and all other members of the Parent Group, hereby represents and warrants that (i) it has examined the IRS Ruling Request, the Tax Opinions, the Representation Letters and any other materials delivered or deliverable in connection with the issuance of any IRS Ruling and the rendering of the Tax Opinions, in each case, as they exist as of the date hereof (collectively, the "Tax Materials") and (ii) the facts presented and representations made therein, to the extent descriptive of or otherwise relating to Parent or any member of the Parent Group or the Parent Business, were at the time presented or represented and from such time until and including the Distribution Date, true, correct and complete in all material respects. Parent, on behalf of itself and all other members of the Parent Group, hereby confirms and agrees to comply with any and all covenants and agreements in the Tax Materials applicable to Parent or any member of the Parent Group or the Parent Business.

(b) SpinCo, on behalf of itself and all other members of the SpinCo Group, hereby represents and warrants that (i) it has examined the Tax Materials and (ii) the facts presented and representations made therein, to the extent descriptive of or otherwise relating to SpinCo or any member of the SpinCo Group or the SpinCo Business, were or will be, at the time presented or represented and from such time until and including the Distribution Date, true, correct and complete in all material respects. SpinCo, on behalf of itself and all other members of the SpinCo Group, hereby confirms and agrees to comply with any and all covenants and agreements in the Tax Materials applicable to SpinCo or any member of the SpinCo Group or the SpinCo Business.

(c) Each of Parent, on behalf of itself and all other members of the Parent Group, and SpinCo, on behalf of itself and all other members of the SpinCo Group, represents and warrants that it knows of no fact (after due inquiry) that may cause the Tax treatment of any of the Transactions to be other than the Intended Tax Treatment.

(d) Each of Parent, on behalf of itself and all other members of the Parent Group, and SpinCo, on behalf of itself and all other members of the SpinCo Group, represents and warrants that it has no plan or intent to take any action which is inconsistent with any statements or representations made in the Tax Materials.

4.2 Restrictions Relating to the Distribution.

(a) SpinCo, on behalf of itself and all other members of the SpinCo Group, hereby covenants and agrees that no member of the SpinCo Group will take, fail to take, or permit to be taken: (i) any action where such action or failure to act would be inconsistent with or cause to be untrue any statement, information, covenant or representation in the Tax Materials or (ii) any action which constitutes a SpinCo Disqualifying Action.

(b) During the Restricted Period, SpinCo:

(i) shall continue and cause to be continued and not approve or allow, or enter into any agreement, understanding or arrangement with respect to, the discontinuance, cessation, or sale or other transfer (to an Affiliate or otherwise) of, or a material change in or sale of the material assets of, any Active Business, other than sales in the ordinary course of business;

(ii) shall not voluntarily dissolve or liquidate or partially liquidate itself, approve or allow any liquidation, or partial liquidation of any of its Affiliates (including any action that is a liquidation for U.S. federal income tax purposes), or enter into any agreement, understanding or arrangement with respect to the foregoing;

(iii) shall not (1) enter into any Proposed Acquisition Transaction or, to the extent SpinCo has the right or ability to prevent or prohibit any Proposed Acquisition Transaction, permit any Proposed Acquisition Transaction to occur, (2) redeem or otherwise repurchase (directly or through an Affiliate) any stock, or rights to acquire stock, except to the extent such repurchases satisfy Section 4.05(1)(b) of Revenue Procedure 96-30 (as in effect prior to the amendment of such Revenue Procedure by Revenue Procedure 2003-48), (3) amend its certificate of incorporation (or other organizational documents), issue a new class of non-voting stock, or take any other action, whether through a stockholder vote or otherwise, affecting the relative voting rights of its Capital Stock (including through the conversion of any Capital Stock into another class of Capital Stock), (4) merge or consolidate with any other Person or allow any of its Affiliates to merge or consolidate with any other Person or (5) take any other action or actions (including any action or transaction that would be reasonably likely to be inconsistent with any representation made in the Tax Materials) which in the aggregate would, when combined with any other direct or indirect changes in ownership of SpinCo Capital Stock pertinent for purposes of Section 355(e) of the Code, 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 forty percent (40%) or greater interest in SpinCo or would reasonably be expected to result in a failure to preserve, achieve or maintain the Intended Tax Treatment, or enter into any agreement, understanding or arrangement with respect to any of the foregoing;

(iv) shall not and shall not permit any member of the SpinCo Group, to sell, transfer or otherwise dispose of (including in any transaction treated for U.S. federal income tax purposes as a sale, transfer or disposition) assets (including any shares of Capital Stock of a Subsidiary) that, in the aggregate, constitute more than twenty percent (20%) of the consolidated gross assets of SpinCo or the SpinCo Group, or enter into (or permit any member of the SpinCo Group to enter into) any agreement, understanding or arrangement with respect to the foregoing. The foregoing sentence shall not apply to (1) sales, transfers or dispositions of assets in the ordinary course of business, (2) any cash paid to acquire assets from an unrelated Person in an arm's-length transaction, (3) any assets transferred to a Person that is disregarded as an entity separate from the transferor for U.S. federal income tax purposes or (4) any mandatory or optional repayment (or pre-payment) of any indebtedness of SpinCo or any member of the SpinCo Group. The percentages of gross assets or consolidated gross assets of SpinCo or the SpinCo Group, as the case may be, sold, transferred or otherwise disposed of, shall be based on the fair market value of the gross assets of SpinCo and the members of the SpinCo Group as of the Distribution Date. For purposes of this Section 4.2(b)(iv), a merger of SpinCo or one of its Subsidiaries with and into any Person that is not a wholly owned Subsidiary of SpinCo shall constitute a disposition of all of the assets of SpinCo or such Subsidiary;

(v) shall, if any member of the SpinCo Group proposes to enter into 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 thirty percent (30%) instead of forty percent (40%) (a "Section 4.2(b)(v) Acquisition Transaction") or, to the extent SpinCo has the right or ability to prevent or prohibit any Section 4.2(b)(v) Acquisition Transaction, proposes to permit any Section 4.2(b)(v) Acquisition Transaction to occur, in each case, provide Parent, no later than ten (10) Business Days following the signing of any written agreement with respect to the Section 4.2(b)(v) Acquisition Transaction, a written description of such transaction (including the type and amount of stock of SpinCo to be issued in such transaction) and a certificate of the board of directors of SpinCo to the effect that the Section 4.2(b)(v) Acquisition Transaction is not a Proposed Acquisition Transaction; and

(vi) shall not cause or permit any member of the SpinCo Group that was a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(b) of the Code) in any Transaction other than the Distribution to take any action or enter into any transaction described in clauses (2), (3), (4) or (5) of Section 4.2(b)(iii) or in Section 4.2(b)(iv) (in each case, substituting references therein to "SpinCo", the "SpinCo Group" and "SpinCo Capital Stock" with references to the relevant corporation, the relevant corporation and its Subsidiaries and the Capital Stock of such corporation, respectively).

(c) Notwithstanding the restrictions imposed by Section 4.2(b), SpinCo or a member of the SpinCo Group may take any of the actions or transactions described therein if (i) SpinCo shall have requested that Parent obtain a private letter ruling (including a supplemental ruling, if applicable) from the IRS (a "Post-Distribution Ruling") in accordance with Section 4.3(b) to the effect that such transaction will not affect the Intended Tax Treatment, and Parent shall have received such a Post-Distribution Ruling and shall have notified SpinCo in writing that Parent has determined that such Post-Distribution Ruling is in form and substance satisfactory to Parent in its sole and absolute discretion or (ii) both (A) SpinCo obtains an Unqualified Tax Opinion with respect thereto and (B) Parent notifies SpinCo in writing that Parent has determined that such Unqualified Tax Opinion is in form and substance satisfactory to Parent in its sole and absolute discretion. Parent's evaluation of a Post-Distribution Ruling or an Unqualified Tax Opinion may consider, among other factors, the appropriateness of any underlying assumptions, representations and covenants made in connection with such ruling or opinion as well as any other factors, circumstances, considerations or concerns that Parent determines in its sole and absolute discretion are relevant. SpinCo shall bear all costs and expenses of securing any such Post-Distribution Ruling or Unqualified Tax Opinion and shall, as set forth in Section 4.3(b) below, reimburse Parent for all reasonable out-of-pocket expenses that Parent or any of its Affiliates may incur in good faith in seeking to obtain or evaluate any such Post-Distribution Ruling or Unqualified Tax Opinion. None of the obtaining of a Post-Distribution Ruling, the delivery of an Unqualified Tax Opinion or Parent's waiver of SpinCo's obligation to deliver a Post-Distribution Ruling or an Unqualified Tax Opinion shall limit or modify SpinCo's continuing indemnification obligation pursuant to Article V.

4.3 Additional Procedures Regarding Post-Distribution Rulings and Unqualified Tax Opinions.

(a) If SpinCo determines that it desires to take one of the actions described in Section 4.2(b) (a "Notified Action"), SpinCo shall notify Parent of this fact in writing.

(b) Post-Distribution Rulings or Unqualified Tax Opinions at SpinCo's Request. Unless Parent shall have waived the requirement to obtain such Post-Distribution Ruling or Unqualified Tax Opinion, upon the reasonable request of SpinCo pursuant to Section 4.2(c)(i), Parent shall use commercially reasonable efforts in cooperating with SpinCo and in seeking to obtain, as expeditiously as possible, a Post-Distribution Ruling from the IRS (and/or any other applicable Taxing Authority) or an Unqualified Tax Opinion for the purpose of permitting SpinCo to take the Notified Action, subject in all respects to the provisions of Section 4.2. Notwithstanding the foregoing, Parent shall not be required to file or cooperate in the filing of any request for a Post-Distribution Ruling under this Section 4.3(b) unless SpinCo represents that (A) it has reviewed such request for a Post-Distribution Ruling, and (B) all statements, information and representations relating to any member of the SpinCo Group contained in such request for a Post-Distribution Ruling are (subject to any qualifications therein) true, correct and complete. SpinCo shall reimburse Parent for all reasonable costs and expenses, including out-of-pocket expenses and expenses relating to the utilization of Parent personnel, incurred by the Parent Group in obtaining a Post-Distribution Ruling or Unqualified Tax Opinion requested by SpinCo within thirty (30) Business Days after receiving an invoice from Parent therefor.

(c) Post-Distribution Rulings or Unqualified Tax Opinions at Parent's Request. Parent shall have the right to obtain a Post-Distribution Ruling or an Unqualified Tax Opinion at any time in its sole and absolute discretion. If Parent determines to obtain a Post-Distribution 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 Post-Distribution Ruling or Unqualified Tax Opinion (including, without limitation, by making any representation or covenant or providing any materials or information requested by the IRS, any other applicable Taxing Authority or a 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 matters or events it has no control). Parent shall reimburse SpinCo for all reasonable costs and expenses, including out-of-pocket expenses and expenses relating to the utilization of SpinCo personnel, incurred by the Parent Group in connection with such cooperation within thirty (30) Business Days after receiving an invoice from SpinCo therefor.

(d) Parent shall have sole and exclusive control over the process of obtaining any Post-Distribution Ruling, and only Parent shall be permitted to apply for a Post-Distribution Ruling. In connection with obtaining a Post-Distribution Ruling, Parent shall (A) keep SpinCo informed in a timely manner of all material actions taken or proposed to be taken by Parent in connection therewith; (B) (1) reasonably in advance of the submission of any request for any Post-Distribution Ruling provide SpinCo with a draft copy thereof, (2) reasonably consider SpinCo comments on such draft copy, and (3) provide SpinCo with a final copy of such Post-Distribution Ruling; and (C) provide SpinCo with notice reasonably in advance of, and SpinCo shall have the right to attend, any formally scheduled meetings with the IRS or other applicable Taxing Authority (subject to the approval of the IRS or such Taxing Authority) that relate to such Post-Distribution Ruling. Neither SpinCo nor any Affiliate of SpinCo directly or indirectly controlled by SpinCo shall seek any guidance from the IRS or any other Taxing Authority (whether written, oral or otherwise) at any time concerning the Transactions (including the impact of any transaction on the Transactions).

(e) Any Post-Distribution Ruling or Unqualified Tax Opinion obtained in accordance with Section 4.2(c) and Section 4.3 shall be deemed included in the definition of Tax Materials from and after the obtaining thereof for all purposes of this Agreement.

ARTICLE V – INDEMNITY OBLIGATIONS

5.1 Indemnity Obligations.

(a) Parent shall indemnify and hold harmless SpinCo from and against, and will reimburse SpinCo for, (i) all liability for Taxes allocated to Parent pursuant to Article II, (ii) all Taxes and Tax Related Losses to the extent arising out of, based upon, or relating or attributable to any breach of or inaccuracy in, or failure to perform, as applicable, any representation, covenant or obligation of any member of the Parent Group pursuant to this Agreement and (iii) the amount of any Refund received by any member of the Parent Group that is allocated to SpinCo pursuant to Section 2.5(a).

(b) Without regard to whether a Post-Distribution Ruling or an Unqualified Tax Opinion may have been provided or whether any action is permitted or consented to hereunder and notwithstanding anything to the contrary in this Agreement, SpinCo shall indemnify and hold harmless Parent from and against, and will reimburse Parent for, (i) all liability for Taxes allocated to SpinCo pursuant to Article II, (ii) all liability for Taxes and Tax Related Losses arising out of, based upon, or relating or attributable to any breach of or inaccuracy in, or failure to perform, as applicable, any representation, covenant or obligation of any member of the SpinCo Group pursuant to this Agreement, (iii) the amount of any Refund received by any member of the SpinCo Group that is allocated to Parent pursuant to Section 2.5(a) and (iv) any Distribution Taxes and Tax Related Losses attributable to a Prohibited Act, or otherwise attributable to a SpinCo Disqualifying Action (regardless of whether the conditions set forth in Section 4.2(c) are satisfied). To the extent that any Tax or Tax Related Loss is subject to indemnity pursuant to both Section 5.1(a) and Section 5.1(b), responsibility for such Tax or Tax Related Loss shall be shared by Parent and SpinCo according to relative fault as determined by Parent in its reasonable discretion.

5.2 Indemnification Payments.

(a) Except as otherwise provided in this Agreement, if either Party (the "Indemnitee") is required to pay to a Taxing Authority a Tax or to another Person a payment in respect of a Tax or Tax Related Loss that the other Party (the "Indemnifying Party") is liable for under this Agreement, including as the result of a Final Determination, the Indemnitee shall notify the Indemnifying Party, in writing, of its obligation to pay such Tax or Tax Related Loss and, in reasonably sufficient detail, its calculation of the amount due by such Indemnifying Party to the Indemnitee. The Indemnifying Party shall pay such amount, including any Tax Related Losses, to the Indemnitee no later than the later of (i) thirty (30) Business Days prior to the Due Date for such payment to the applicable Taxing Authority or (ii) thirty (30) Business Days after the receipt of notice from the other Party.

(b) If, as a result of any change or redetermination, any amount previously allocated to and borne by one Party pursuant to the provisions of Article II is thereafter allocated to the other Party, then, no later than thirty (30) Business Days after such change or redetermination, such other Party shall pay to such Party the amount previously borne by such Party which is allocated to such other Party as a result of such change or redetermination.

(c) If a Party incurs a Tax Liability as a result of its receipt of a payment pursuant to this Agreement or the Separation Agreement, such payment shall be appropriately adjusted so that the amount of such payment, reduced by the amount of all Taxes payable with respect to the receipt thereof (but taking into account all correlative Tax Benefits resulting from the payment of such Taxes), shall equal the amount of the payment which the Party receiving such payment would otherwise be entitled to receive.

5.3 Payment Mechanics.

(a) All payments under this Agreement shall be made by Parent directly to SpinCo and by SpinCo directly to Parent; provided, however, that if the Parties 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. All indemnification payments shall be treated in the manner described in Section 5.4.

(b) In the case of any payment of Taxes made by a Responsible Party or Indemnitee pursuant to this Agreement for which such Responsible Party or Indemnitee, as the case may be, has received a payment from the other Party, such Responsible Party or Indemnitee shall provide to the other Party a copy of any official government receipt received with respect to the payment of such Taxes to the applicable Taxing Authority (or, if no such official governmental receipts are available, executed bank payment forms or other reasonable evidence of payment).

5.4 Treatment of Payments. The Parties agree that any payment made among the Parties pursuant to this Agreement shall be treated, to the extent permitted by Law, for all U.S. federal income tax purposes as either (i) a non-taxable contribution by Parent to SpinCo or (ii) a distribution by SpinCo to Parent, and, with respect to any payment made among the Parties pursuant to this Agreement after the Distribution, such payment shall be treated as having been made immediately prior to the Distribution. Notwithstanding the foregoing, Parent shall notify SpinCo if it determines that any payment made pursuant to this Agreement is to be treated, for any Tax purposes, as a payment made by one Party acting as an agent of one of such Party's Subsidiaries to the other Party acting as an agent of one of such other Party's Subsidiaries, and the Parties agree to treat any such payment accordingly.

ARTICLE VI – TAX CONTESTS

6.1 Notice. Each Party shall notify the other Party in writing within ten (10) days after receipt by such Party or any member of its Group of a written communication from any Taxing Authority with respect to any pending or threatened audit, claim, dispute, suit, action, proposed assessment or other proceeding (a "Tax Contest") concerning any Taxes for which the other Party may be liable pursuant to this Agreement, and thereafter shall promptly forward or make available to such Party copies of notices and communications relating to such Tax Contest.

6.2 Separate Returns.

(a) In the case of any Tax Contest with respect to any Separate Return other than a Separate Return in respect of a Straddle Period, the Party having the liability for the Tax pursuant to Article II hereof shall have the sole responsibility and right to control the prosecution of such Tax Contest, including the exclusive right to communicate with agents of the applicable Taxing Authority and to control, resolve, settle or agree to any deficiency, claim or adjustment proposed, asserted or assessed in connection with or as a result of such Tax Contest.

(b) In the case of any Tax Contest with respect to any Separate Return in respect of a Straddle Period, the Party having the greatest amount at risk pursuant to Section 2.3(c), as determined by Parent in its reasonable discretion, shall have the responsibility and right to control the prosecution of such Tax Contest; provided, that, the other Party shall have the right to participate, at its own expense, and the controlling Party shall not have the right to resolve, settle or agree to any deficiency, claim or adjustment proposed, asserted or assessed in connection with or as a result of such Tax Contest without the consent of the other Party, not to be unreasonably withheld, delayed or conditioned.

6.3 Joint Return. In the case of any Tax Contest with respect to any Joint Return, Parent shall have the sole responsibility and right to control the prosecution of such Tax Contest, including the exclusive right to communicate with agents of the applicable Taxing Authority and to control, resolve, settle or agree to any deficiency, claim or adjustment proposed, asserted, or assessed in connection with or as a result of such Tax Contest. Notwithstanding the foregoing, to the extent a portion of any such Tax Contest with respect to a Joint Return with respect to Non-U.S. Taxes relates to a matter which was customarily controlled by a member of the SpinCo Group, as determined by Parent in its sole discretion, then Parent may elect that SpinCo shall be responsible for conduct of such portion of such Tax Contest and any expenses related thereto, including expenses relating to supporting transfer pricing analysis.

6.4 Transaction Related Tax Contests. Notwithstanding anything to the contrary in Section 6.2 or Section 6.3, in the case of any Transaction Related Tax Contest, Parent shall have the sole responsibility and right to control the prosecution of such Tax Contest, including the exclusive right to communicate with agents of the applicable Taxing Authority and to control, resolve, settle or agree to any deficiency, claim or adjustment proposed, asserted, or assessed in connection with or as a result of such Tax Contest. Notwithstanding anything to the contrary in Section 6.6, the final determination of the positions taken, including with respect to settlement or other disposition, in any Transaction Related Tax Contest shall be made in the sole discretion of Parent and shall be final and not subject to the dispute resolution provisions of Section 9.1 or Section 9.2 of this Agreement or Section 11.02, Section 11.03 or Section 11.05 of the Separation Agreement.

6.5 Obligation of Continued Notice. During the pendency of any Tax Contest or threatened Tax Contest, each of the Parties shall provide prompt notice to the other Party of any written communication received by it or a member of its respective Group from a Taxing Authority regarding any Tax Contest for which it is indemnified by the other Party hereunder or for which it may be required to indemnify the other Party hereunder. Such notice shall attach copies of the pertinent portion of any written communication from a Taxing 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 Taxing Authority in respect of any such matters. Such notice shall be provided in a reasonably timely fashion; provided, however, that in the event that timely notice is not provided, a Party shall be relieved of its obligation to indemnify the other Party only to the extent that such delay results in actual increased costs or actual prejudice to such other Party.

6.6 Settlement Rights.

(a) 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 to the Controlling Party under this Agreement: (i) 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; (ii) the Controlling Party shall timely provide the Non-Controlling Party with copies of any correspondence or filings submitted to any Taxing Authority or judicial authority in connection with such potential adjustment in such Tax Contest; and (iii) the Controlling Party shall defend such Tax Contest diligently and in good faith. 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 and/or obligation which it may have to the Controlling Party under this Agreement, 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.

(b) Consistent Treatment. Unless and until there has been a Final Determination to the contrary, each Party agrees not to take any position on any Tax Return, in connection with any Tax Contest or otherwise that is inconsistent with (i) the treatment of payments between the Parent Group and the SpinCo Group as set forth in Section 5.4, (ii) the Tax Materials or (iii) the Intended Tax Treatment.

ARTICLE VII – COOPERATION

7.1 General.

(a) Each Party shall fully cooperate, and shall cause all members of such Party's Group to fully cooperate, with all reasonable requests in writing from the other Party, or from an agent, representative or advisor to such Party, in connection with the preparation and filing of any Tax Return, claims for Refunds, the conduct of any Tax Contest, and calculations of amounts required to be paid pursuant to this Agreement, in each case, related or attributable to or arising in connection with Taxes of either Party or any member of either Party's Group covered by this Agreement or otherwise relating to the SpinCo Business for any Pre-Distribution Period and the establishment of any reserve required in connection with any financial reporting (a "Tax Matter"). Such cooperation shall include making available, upon reasonable notice, all information and documents in their possession relating to the other Party and its respective Affiliates as provided in this Article VII and Article VIII. Each Party shall make its employees, advisors and facilities available, without charge, on a reasonable and mutually convenient basis in connection with the foregoing matters in a manner that does not interfere with the ordinary business operations of such Party. The Parties shall use commercially reasonable efforts to provide any information or documentation requested by the other Party in a manner that permits the other Party (or its Affiliates) to comply with Tax Return filing deadlines or other applicable timing requirements.

(b) Any information or documents provided under this Section 7.1 shall be kept confidential by the Party receiving the 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) no Party or any of its Affiliates shall be required to provide another Party or any Affiliate thereof 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 reasonably relate to the Taxes (including any Taxes for which the first Party is liable under this Agreement), business or assets of the first Party or any of its Affiliates or are necessary to prepare Tax Returns for which the first Party is responsible for preparing the applicable Tax Return in accordance with the terms of this Agreement and (ii) in no event shall any Party or its Affiliates be required to provide another Party, any of its Affiliates or any other Person access to or copies of any information if such action could reasonably be expected to result in the waiver of any Privilege. In addition, in the event that a Party determines that the provision of any information to another Party or any of its Affiliates could be commercially detrimental, violate any Law or agreement or waive any Privilege, the first Party shall use reasonable best efforts to permit compliance with its obligations under this Section 7.1 in a manner that avoids any such harm or consequence.

7.2 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 7.1 or this Section 7.2. Each Party shall provide to the other Parties information and documents relating to its Group reasonably required by the other Parties to prepare Tax Returns. Any information or documents a Party responsible for preparing a Tax Return in accordance with the terms of this Agreement requires to prepare such Tax Returns shall be provided in such form as such Party reasonably requests and in sufficient time for such Party to prepare such Tax Returns on a timely basis.

ARTICLE VIII – RETENTION OF RECORDS; ACCESS

8.1 Retention of Records. For so long as the contents thereof may become material in the administration of any matter under applicable Tax Law, but in any event until the later of (i) sixty (60) days after the expiration of any applicable statutes of limitation (including any waivers or extensions thereof) and (ii) twenty (20) years after the Distribution Date, the Parties shall retain records, documents, accounting data and other information (including computer data) necessary for the preparation and filing of all Tax Returns (collectively, "Tax Records") in respect of Taxes of any member of either the Parent Group or the SpinCo Group for any Pre-Distribution Period or Post-Distribution Period or for any Tax Contests relating to such Tax Returns. At any time after the Distribution Date when the Parent Group proposes to destroy any Tax Records, Parent shall first notify SpinCo in writing at least sixty (60) days prior to the destruction of such Tax Records and the SpinCo Group shall be entitled to receive such records or documents proposed to be destroyed. At any time after the Distribution Date when the SpinCo Group proposes to destroy any Tax Records, SpinCo shall first notify Parent in writing at least sixty (60) days prior to the destruction of such Tax Records and the Parent Group shall be entitled to receive such records or documents proposed to be destroyed. The Parties will notify each other in writing of any waivers or extensions of the applicable statute of limitations that may affect the period for which the foregoing records or other documents must be retained.

8.2 Access to Tax Records. The Parties and their respective Affiliates shall make available to each other for inspection and copying during normal business hours upon reasonable notice all Tax Records (including, for the avoidance of doubt, any pertinent underlying data accessed or stored on any computer program or information technology system) in their possession and shall permit the other Party and its Affiliates, authorized agents and representatives and any representative of a Taxing Authority or other Tax auditor direct access, during normal business hours upon reasonable notice to any computer program or information technology system used to access or store any Tax Records, in each case to the extent reasonably required by the other Party in connection with the preparation of Tax Returns or financial accounting statements, audits, litigation or the resolution of items pursuant to this Agreement. The Party seeking access to the records of the other Party shall bear all costs and expenses associated with such access, including any professional fees.

ARTICLE IX – DISPUTE RESOLUTION

9.1 Tax Disputes. Subject to Section 9.3, Section 9.4 and Section 9.5, this Section 9.1 shall govern the resolution of any dispute between the Parties as to any matter covered by this Agreement that primarily relates to the interpretation of Tax Law, as determined by Parent in its reasonable discretion (a "Tax Advisor Dispute"). The Party raising the Tax Advisor Dispute shall give written notice of the Tax Advisor Dispute (a "Tax Advisor Dispute Notice"), and the general counsels of the Parties (or such other individuals designated by the respective general counsels) and/or the executive officers designated by the Parties shall negotiate for a reasonable period of time to settle such Tax Advisor Dispute; provided, that, such reasonable period shall not, unless otherwise agreed by the Parties in writing, exceed thirty (30) days (the "Negotiation Period") from the time of receipt of the Tax Advisor Dispute Notice; provided, further, that (x) the Parties shall not assert the defenses of statute of limitations, laches or any other defense, in each such case based on the passage of time during the Negotiation Period, and (y) any contractual time period or deadline under this Agreement relating to such Tax Advisor Dispute occurring after the Tax Advisor Dispute Notice is received shall not be deemed to have passed until the procedures described in this Section 9.1 have been resolved. If the Tax Advisor Dispute has not been resolved for any reason after the Negotiation Period, the Parties shall appoint a nationally recognized independent public accounting firm (the "Accounting Firm") to resolve such dispute. In the event that the Parties are unable to agree on an Accounting Firm, the accounting firm principally responsible for auditing SpinCo's financial statements in connection with its filings under the securities laws and the accounting firm principally responsible for auditing Parent's financial statements in connection with its filings under the securities laws shall agree on and appoint the Accounting Firm. In this regard, the Accounting Firm shall make determinations with respect to the Tax Advisor Dispute based solely on representations made by Parent, SpinCo and their respective representatives, and not by independent review, and shall function only as an expert and not as an arbitrator and shall be required to make a determination in favor of one Party only. The Parties shall require the Accounting Firm to resolve all Tax Advisor Disputes no later than thirty (30) days after the submission of such Tax Advisor Dispute to the Accounting Firm, but in no event later than the Due Date of Taxes or the filing of the applicable Tax Return, if applicable, and agree that all decisions by the Accounting Firm with respect thereto shall be final and conclusive and binding on the Parties. The Accounting Firm shall resolve all Tax Advisor Dispute in a manner consistent with this Agreement and, to the extent not inconsistent with this Agreement, in a manner consistent with the Past Practices of Parent and its Subsidiaries, except as otherwise required by applicable Law. The Parties shall require the Accounting Firm to render all determinations in writing and to set forth, in reasonable detail, the basis for such determination. The fees and expenses of the Accounting Firm shall be borne equally by the Parties, and the parties agree to waive any objection to the naming of the Accounting Firm or the determination of the Accounting Firm based on actual or alleged conflicts of interest.

9.2 Legal Disputes. Subject to Section 9.1, Section 9.3, Section 9.4 and Section 9.5, in the event of any claim, controversy, demand or request for relief of any kind arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity or breach of this Agreement or otherwise arising out of or related to this Agreement (a "Dispute"), then the Party raising the Dispute shall give written notice of the Dispute, and the Parties shall work together in good faith to resolve any such Dispute within thirty (30) days of such notice. If any Dispute is not so resolved, then a senior executive of each Party shall, in good faith, attempt to resolve any such Dispute within the following thirty (30) days of the referral of the matter to the senior executives. If no resolution is reached with respect to any such Dispute, the Dispute shall be resolved in accordance with the procedures contained in Section 11.03, Section 11.04 and Section 11.05 of the Separation Agreement.

9.3 Injunctive Relief. Nothing in this Article IX shall prevent Parent from seeking injunctive relief to enforce the procedures provided for in Section 9.1 if any delay resulting from the efforts to resolve the Tax Advisor Dispute through the Accounting Firm could result in serious and irreparable injury to Parent. Notwithstanding anything to the contrary in this Agreement or the Separation Agreement (or any Ancillary Agreement), Parent and SpinCo are the only members of their respective Groups entitled to commence a dispute resolution procedure under this Agreement, and each of Parent and SpinCo will cause its respective Group members not to commence any dispute resolution procedure other than through Parent or SpinCo, as applicable, as provided in this Article IX.

9.4 Specific Performance. Notwithstanding anything to the contrary in this Agreement or the Separation Agreement (or any Ancillary Agreement), in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of Section 4.1(b), Section 4.2(a) or Section 4.2(b) by SpinCo, Parent shall have the right, without first pursuing the procedures provided for in Section 9.1 and Section 9.2, to specific performance, declaratory relief and injunctive or other equitable relief (on a permanent, emergency, temporary, preliminary or interim basis) of its rights under this Agreement, in addition to any and all other rights and remedies at Law or in equity, and all such rights and remedies shall be cumulative. SpinCo shall not oppose the granting of such relief on the basis that money damages are an adequate remedy. SpinCo agrees that the remedies at Law for any breach or threatened breach hereof, including monetary damages, are inadequate compensation for any loss, and waives any defense in any action by Parent for specific performance that a remedy at Law would be adequate. SpinCo also waives any requirements that Parent secure or post any bond or similar security with respect to such remedy.

9.5 Venue for Injunctive Relief and Specific Performance Claims by Parent. Notwithstanding anything to the contrary in this Agreement or the Separation Agreement (or any Ancillary Agreement), Parent may bring any claim for specific performance, declaratory relief and injunctive or other equitable relief (on a permanent, emergency, temporary, preliminary or interim basis) under Section 9.3 or Section 9.4 of this Agreement (a "Chosen Court Claim") either (a) pursuant to the procedures contained in Section 11.03, Section 11.04 and Section 11.05 of the Separation Agreement or (b) at Parent's sole discretion, in the Delaware Court of Chancery (or, if the Delaware Court of Chancery shall be unavailable, any Delaware State court or the federal court sitting in the State of Delaware) (the "Chosen Courts"). SpinCo irrevocably consents and agrees, on behalf of itself and each SpinCo Group member, to the jurisdiction, forum and venue of the Chosen Courts for a Chosen Court Claim, and agrees that it shall not assert, and shall hereby waive, any claim or right or defense that it is not subject to the jurisdiction of the Chosen Courts, that the venue is improper, that the forum is inconvenient, that the Chosen Court Claim should instead be arbitrated by agreement of the Parent or operation of law, or any similar objection, claim or argument.

ARTICLE X – MISCELLANEOUS PROVISIONS

10.1 Conflicting Agreements. In the event and to the extent that there shall be a conflict between the provisions of this Agreement and the provisions of the Separation Agreement, this Agreement shall control with respect to the subject matter thereof.

10.2 Interest on Late Payments. With respect to any payment between the Parties pursuant to this Agreement not made by the due date set forth in this Agreement for such payment, the outstanding amount will accrue interest at a rate per annum equal to the rate in effect for underpayments under Section 6621 of the Code from such due date to and including the payment date.

10.3 Counterparts. This Agreement may be executed in one or more counterparts, all of which counterparts shall be considered one and the same agreement. This Agreement may be executed by facsimile or PDF signature and scanned and exchanged by electronic mail, and such facsimile or PDF signature or scanned and exchanged copies shall constitute an original for all purposes.

10.4 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, to the same extent as if such successor had been an original party to this Agreement.

10.5 Application to Present and Future Subsidiaries. This Agreement is being entered into by Parent and SpinCo on behalf of themselves and the members of their respective Group. This Agreement shall constitute a direct obligation of each such Party and shall be deemed to have been readopted and affirmed on behalf of any entity that becomes a Subsidiary of Parent or SpinCo in the future.

10.6 Governing Law. This Agreement and any disputes relating to, arising out of or resulting from this Agreement, including to its execution, performance, or enforcement, shall be governed by and construed in accordance with, the Laws of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of Laws thereof.

10.7 Assignability. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of Law or otherwise by either Party without the prior written consent of the other Party. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns. Notwithstanding the foregoing, if any Party to this Agreement (or any of its successors or permitted assigns) (a) shall enter into a consolidation or merger transaction in which such Party is not the surviving entity and the surviving entity acquires or assumes all or substantially all of such Party's assets or (b) shall transfer all or substantially all of such Party's assets to any Person, then, in each such case, the assigning Party (or its successors or permitted assigns, as applicable) shall ensure that the assignee or successor-in-interest expressly assumes in writing all of the obligations of the assigning Party under this Agreement, and the assigning Party shall not be required to seek consent, but shall provide written notice and evidence of such assignment, assumption or succession to the non-assigning Party. No assignment permitted by this Section 10.7 shall release the assigning Party from liability for the full performance of its obligations under this Agreement.

10.8 Further Assurances. Subject to the provisions hereof, the Parties hereto shall make, execute, acknowledge and deliver, or cause to be made, executed, acknowledged and delivered, such other instruments and documents, and take or do, or cause to be taken or done, all such other actions and all things reasonably necessary, proper or advisable under applicable Laws and agreements to effectuate the provisions and purposes of this Agreement and to consummate and make effective the transactions contemplated hereby.

10.9 Survival. Notwithstanding anything to the contrary in this Agreement, all representations, covenants and obligations contained in this Agreement shall survive until the expiration of the applicable statute of limitations with respect to any such matter (including extensions thereof).

10.10 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court or arbitrator 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, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon any such determination, any such provision, to the extent determined to be invalid, void or unenforceable, shall be deemed replaced by a provision that such court determines is valid and enforceable and that comes closest to expressing the intention of the invalid, void or unenforceable provision.

10.11 Amendments. No provisions of this Agreement shall be deemed waived, amended, supplemented or modified by any Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of each Party. Any decision by any Party to waive or to not waive any provision of this Agreement is in such Party's sole and absolute discretion.

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

10.13 Waivers of Default. No failure or delay of any Party (or the applicable member of its Group) in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. 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.

10.14 Continuity of Service and Performance. Unless otherwise agreed in writing, the Parties shall continue to provide services and honor all other commitments under this Agreement during the course of dispute resolution pursuant to the provisions of Article IX with respect to all matters not subject to such dispute resolution.

10.15 Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given (a) when delivered in person, (b) on the date received, if sent by a nationally recognized delivery or courier service, (c) upon written confirmation of receipt after transmittal by electronic mail or (d) upon the earlier of confirmed receipt or the fifth (5th) business day following the date of mailing if sent by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to Parent, to:

International Business Machines Corporation
One New Orchard Road
Armonk, NY 10504
Attn: General Manager, Corporate Development and Strategy

with a copy to:

International Business Machines Corporation
Tax Department
One North Castle Drive
Armonk, NY 10504
Attn: Vice President & Senior Tax Counsel

and with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attn: Jeffrey B. Samuels
Scott A. Barshay
Steven J. Williams
Laura C. Turano
Email: jsamuels@paulweiss.com
sbarshay@paulweiss.com
swilliams@paulweiss.com
lturano@paulweiss.com

If to SpinCo, to:

Kyndryl Holdings, Inc.
One Vanderbilt Avenue, 15th Floor
New York, NY 10017
Attn: Thomas P. Hagen, Associate General Counsel

Either Party may, by notice to the other Party, change the address and identity of the Person to which such notices and copies of such notices are to be given. Each Party agrees that nothing in this Agreement shall affect any other Party's right to serve process in any other manner permitted by Law (including pursuant to the rules for foreign service of process authorized by the Hague Convention).

10.16 Interpretation. Words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires. The terms "hereof," "herein," "herewith" and words of similar import, unless otherwise stated, shall be construed to refer to this Agreement as a whole (including all of the schedules hereto) and not to any particular provision of this Agreement. Article, Section or Schedule references are to the articles, sections and schedules of or to this Agreement unless otherwise specified. Any capitalized terms used in this Agreement but not otherwise defined therein shall have the meaning as defined in the Separation Agreement. Any definition of or reference to any agreement, instrument or other document herein (including any reference herein to this Agreement) shall, unless otherwise stated, be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein, including in Section 10.11). The word "including" and words of similar import when used in this Agreement shall mean "including, without limitation," unless the context otherwise requires or unless otherwise specified. The word "or" shall not be exclusive. 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." All references to "$" or dollar amounts are to the lawful currency of the United States of America. References herein to any Law shall be deemed to refer to such law as amended, reenacted, supplemented or superseded in whole or in part and in effect from time to time and also to all rules and regulations promulgated thereunder. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any provisions hereof.

10.17 Distribution Date. This Agreement shall become effective only upon the Distribution Date.

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

INTERNATIONAL BUSINESS MACHINES CORPORATION

By: /s/ Frank Sedlarcik
Name: Frank Sedlarcik
Title: Vice President, Assistant General Counsel and Secretary

KYNDRYL HOLDINGS, INC.

By: /s/ Simon Beaumont
Name: Simon Beaumont
Title: President

[*Tax Matters Agreement Signature Page*]

Exhibit 10.3

EXECUTION VERSION

EMPLOYEE MATTERS AGREEMENT

By and Between

INTERNATIONAL BUSINESS MACHINES CORPORATION

and

KYNDRYL HOLDINGS, INC.

Dated as of November 2, 2021

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SCHEDULES

EMPLOYEE MATTERS AGREEMENT (this "Agreement"), dated as of November 2, 2021, by and between International Business Machines Corporation, a New York corporation ("Parent"), and Kyndryl Holdings, Inc., a Delaware corporation ("SpinCo" and, together with Parent, the "Parties").

R E C I T A L S:

WHEREAS, the Parties have entered into the Separation and Distribution Agreement (the "Separation Agreement"), dated as of November 2, 2021, pursuant to which Parent intends to effect the Distribution; and

WHEREAS, the Parties wish to set forth their agreements as to certain matters regarding employment, compensation and employee benefits.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. Definitions. For purposes of this Agreement, the following terms shall have the following meanings. All capitalized terms used but not defined herein shall have the meanings assigned to them in the Separation Agreement unless otherwise indicated.

"Aggregate Pre-Transfer Date Contributions" has the meaning set forth in Section 7.07.

"Aggregate Pre-Transfer Date Disbursements" has the meaning set forth in Section 7.07.

"Applicable 401(k) Date" has the meaning set forth in Section 10.01.

"Automatic Transfer Employees" means those Transferring Employees whose employment transfers by operation of Law (including the Transfer Regulations) in connection with the transfer of a business or part of a business.

"Benefit Plan" means any plan, program, policy, agreement, arrangement or understanding that is an employment, consulting, deferred compensation, executive compensation, incentive bonus or other bonus, employee pension, profit sharing, savings, retirement, supplemental retirement, stock option, stock purchase, stock appreciation right, restricted stock, restricted stock unit, deferred stock unit, other equity-based compensation, severance pay, retention, change in control, salary continuation, life, death benefit, health, hospitalization, workers' compensation, sick leave, vacation pay, disability or accident insurance or other employee compensation or benefit plan, program, policy, agreement, arrangement or understanding, including any "employee benefit plan" (as defined in Section 3(3) of ERISA, whether or not subject to ERISA), sponsored or maintained by an entity or to which such entity is a party.

"Blue Sky Employee" means any individual who is or was employed by, or provides or provided services to, Modis or any of its Affiliates, and who has applied for reinstatement in his or her jobs with the Parent Group, and which claims are still pending as of the Local Transfer Date.

"Closing Plan Year" means the calendar year in which the Distribution occurs.

"COBRA" means the U.S. Consolidated Omnibus Budget Reconciliation Act of 1985, as amended from time to time, and any applicable similar state or local Laws.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Collective Bargaining Agreements" has the meaning set forth in Section 2.07.

"Continuing Retiree Medical Jurisdictions" means Argentina, Austria, Belgium, Portugal, Taiwan and Turkey.

"Delayed Transfer Date" has the meaning set forth in Section 2.03.

"Delayed Transfer Employee" means any Transferring Employee whose employment cannot transfer to Parent or SpinCo or their Subsidiaries as of the Local Transfer Date, whether due to (a) legal or regulatory requirements, (b) the timing for obtaining the relevant consent or release in order to transfer a SpinCo Contract to SpinCo in accordance with the Separation Agreement if SpinCo is prohibited from performing the services associated with such SpinCo Contract prior to the transfer of such contract, (c) the need to obtain any required approval from any works council or other labor authority or Governmental Authority prior to transferring the employment of such Transferring Employee, (d) providing services to the SpinCo Group under the TSA and whose employment is intended by Parent to transfer to the SpinCo Group following the completion of the applicable TSA service, (e) providing services to the Parent Group under the TSA and whose employment is intended by Parent to transfer to the Parent Group following the completion of the applicable TSA service, and with respect to such Delayed Transfer Employees described in clauses (d) and (e), the Parties shall use commercially reasonable efforts to ensure that such Delayed Transfer Employees become employed by the Destination Employer as soon as practicable following the completion of the applicable TSA service or (f) such other circumstance as Parent and SpinCo shall mutually agree.

"Destination Employer" means, with respect to a Transferring Employee, (a) a member of the SpinCo Group or (b) a member of the Parent Group, in either case, to which such Transferring Employee transfers as of the Local Transfer Date or Delayed Transfer Date.

"Eligible Retiree Medical Employees" means, with respect to each relevant jurisdiction other than the Continuing Retiree Medical Jurisdictions, each SpinCo Employee who, immediately prior to the Local Transfer Date, is eligible to participate in Parent's post-retirement health and life insurance plans and has satisfied the eligibility criteria to receive benefits under such plans as in effect on the Local Transfer Date and, with respect to SpinCo Employees located in the United States, any such individual who, as of the Local Transfer Date, is eligible for the "Bridge Leave Program" under Parent's Personal Pension Plan, completes a bridge to retirement under such program and, on or before the last date of such bridge to retirement, satisfies the eligibility criteria to receive benefits under Parent's U.S. post-retirement health and life insurance plans.

"Employment Taxes" means all fees, Taxes, social insurance payments and similar contributions to a Governmental Authority or a fund of a Governmental Authority with respect to wages or other compensation of an employee or other service provider.

"ERISA" means the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time.

"Former Parent Employee" means a former employee of any member of the Parent Group or the SpinCo Group, any of their respective members or any of their respective predecessors, in each case, prior to the Local Transfer Date, who is not a Former SpinCo Employee.

"Former SpinCo Employee" means each individual who (a) as of the Local Transfer Date, is not employed by any member of the Parent Group or the SpinCo Group, any of their respective members or any of their respective predecessors, and (b) as of immediately prior to such individual's termination of employment, (x) was employed by a member of the SpinCo Group or (y) would have been a SpinCo Employee pursuant to clause (a), (b) or (c) of the definition of SpinCo Employee, or as otherwise reasonably determined by Parent.

"Insured Transferee Defined Benefit Plan" means a defined benefit pension plan sponsored or maintained by the SpinCo Group that is assuming Liabilities that relate to benefits accrued prior to the applicable Non-U.S. DB Transfer Date by SpinCo Employees under an Insured Transferor Defined Benefit Plan.

"Insured Transferor Defined Benefit Plan" means any defined benefit pension plan sponsored or maintained by the Parent Group for the benefit of employees principally employed in the jurisdictions designated as such on Schedule 9.02.

"Local Agreement" means an agreement describing the implementation of the matters described in this Agreement (including, without limitation, matters regarding employment, compensation and employee benefits) with respect to Parent Employees, Former Parent Employees, SpinCo Employees and Former SpinCo Employees in a specified jurisdiction in accordance with applicable Law in the custom of the applicable jurisdiction.

"Local Transfer Date" means, as applicable, the earliest of (a) the applicable scheduled "transfer of employment" (or ToE) date on which transfers of employment occurred for the SpinCo Employees in the applicable jurisdiction, (b) the date prior to the Distribution Date on which an individual became a SpinCo Employee and (c) the date with respect to a SpinCo Employee otherwise determined by Parent. For the avoidance of doubt, the Local Transfer Date may not be the same for every SpinCo Employee located in a single jurisdiction.

"Non-Transferor Defined Benefit Plan" means any defined benefit pension plan of the Parent Group maintained for employees who are principally employed outside the United States and that is not an Insured Transferor Defined Benefit Plan, Subsidiary Defined Benefit Plan, Transferor Defined Benefit Plan or Unfunded Transferor Defined Benefit Plan.

"Non-U.S. DB Transfer Date" means the Local Transfer Date or such other date as agreed to between Parent and SpinCo, which need not be the same for each plan; provided that, except with respect to any Transferor Defined Benefit Plan in Germany and the Netherlands, the Non-U.S. DB Transfer Date shall not occur later than the first anniversary of the Distribution Date.

"Non-U.S. DC Plan" has the meaning set forth in Section 10.05.

"Non-U.S. Employees" has the meaning set forth in Section 14.01.

"Offering Period" has the meaning set forth in the Parent ESPP.

"Parent 401(k) Plan" has the meaning set forth in Section 10.01.

"Parent Benefit Plan" means any Benefit Plan sponsored, maintained or, unless such Benefit Plan is exclusively sponsored or maintained by a member of the SpinCo Group, contributed to by any member of the Parent Group or to which any member of the Parent Group is a party.

"Parent Compensation Committee" means the Executive Compensation and Management Resources Committee of Parent or such other committee designated by the Parent Board to administer the Parent Equity Plans.

"Parent Employee" means (a) each individual who is an employee of any member of the Parent Group as of immediately prior to or on the Local Transfer Date, including any such individual who is not actively at work due to a leave of absence (including vacation, holiday, illness, injury and short-term and long-term disability) from which such employee is permitted to return to active employment in accordance with the Parent Group's personnel policies, as in effect from time to time, or applicable Law, (b) each individual who becomes an active employee of any member of the Parent Group following the Local Transfer Date but, in each case of clauses (a) and (b), excluding any SpinCo Employee or Former SpinCo Employee, and (c) each individual who is intended by Parent to be a Parent Employee.

"Parent Equity Award Ratio" means the quotient obtained by dividing (a) the Parent Pre-Separation Stock Value by (b) the Parent Post-Separation Stock Value, carried out to six decimal places.

"Parent Equity Awards" means the Parent Options, Parent Restricted Stock Units and Parent Performance Share Units.

"Parent Equity Plans" means the Parent 1997 Long-Term Performance Plan, the Parent 1999 Long-Term Performance Plan, the Parent 2001 Long-Term Performance Plan, the Parent PWCC Acquisition Long-Term Performance Plan and the Parent Red Hat Acquisition Long-Term Performance Plan, each as amended from time to time, and any other stock option or stock incentive compensation plan or arrangement, including any equity award agreement, that is a Parent Benefit Plan or is a plan of an entity acquired by Parent, in each case, as in effect as of the time relevant to the applicable provision of this Agreement.

"Parent ESPP" means the Parent 2014 Employees Stock Purchase Plan.

"Parent Individual Agreement" means any individual (a) employment contract or offer letter, (b) retention, severance or change in control agreement, (c) expatriate (including any international assignee) contract or agreement (including agreements and obligations regarding repatriation, relocation or equalization of Taxes and living standards in the host country) or (d) other agreement containing restrictive covenants (including confidentiality, non-competition and non-solicitation provisions) between a member of a Group, on the one hand, and (i) a Parent Employee or (ii) a Former Parent Employee, on the other hand, as in effect immediately prior to the Local Transfer Date.

"Parent LTD Plan" means any long-term disability insurance plan that is a Parent Benefit Plan.

"Parent Nonqualified Deferred Compensation Plans" means the Amended and Restated Parent Excess 401(k) Plus Plan (f/k/a the Parent Executive Deferred Compensation Plan) and the Deferred Compensation and Equity Award Plan, each as amended from time to time, and any other nonqualified deferred compensation plan or arrangement (including individual arrangements) that is a Parent Benefit Plan, as in effect as of the time relevant to the applicable provision of this Agreement.

"Parent Option" means an option to purchase Parent Common Stock that is outstanding as of immediately prior to the Distribution under any of the Parent Equity Plans.

"Parent Performance Share Unit" means a performance share unit award relating to Parent Common Stock that is outstanding as of immediately prior to the Distribution under any of the Parent Equity Plans.

"Parent Post-Separation Stock Value" means the opening per share price of Parent Common Stock on the New York Stock Exchange on the first trading day that occurs immediately following the Distribution Date.

"Parent Pre-Separation Stock Value" means the closing per share price of Parent Common Stock trading "regular way with due bills" on the New York Stock Exchange on the last trading day that occurs on or prior to the Distribution Date.

"Parent Reverse Transfer Defined Benefit Plan" means a defined benefit pension plan sponsored or maintained by the Parent Group that is assuming Liabilities that relate to benefits accrued prior to the applicable Subsidiary DB Transfer Date under a Reverse Transfer Defined Benefit Plan.

"Parent Reimbursement Account Plan" has the meaning set forth in Section 7.07.

"Parent Restricted Stock Award" means a restricted stock award relating to Parent Common Stock that is outstanding as of immediately prior to the Distribution under any of the Parent Equity Plans.

"Parent Restricted Stock Unit" means a restricted stock unit or retention restricted stock unit award relating to Parent Common Stock that is outstanding as of immediately prior to the Distribution under any of the Parent Equity Plans.

"Parent U.S. Pension Plan" has the meaning set forth in Section 9.01.

"Parent Welfare Plan" means each Welfare Plan that is a Parent Benefit Plan.

"Participating Transferor Defined Benefit Plans" means any Transferor Defined Benefit Plan in the jurisdictions designated as such on Schedule 9.02.

"Pension Asset Transfer Date" has the meaning set forth in Section 9.02(c)(i).

"Performance Share Unit Conversion Amount" means the number of shares of Parent Common Stock to which a Parent Performance Share Unit relates immediately prior to the Distribution Date assuming (i) for Parent Performance Share Units related to performance periods that began prior to January 1, 2021, actual achievement of the relevant performance goals as of immediately prior to the Distribution as determined by the Parent Compensation Committee, or (ii) for Parent Performance Share Units related to the 2021 to 2023 performance period, target-level achievement of the relevant performance goals.

"Pre-Transfer Service" has the meaning set forth in Section 4.02.

"Retained LTD Employee" means each applicable employee of the SpinCo Group who is identified by Parent as a Retained LTD Employee, in a Local Agreement or otherwise.

"Retention Bonus Programs" means retention bonus programs for the benefit of SpinCo Employees, including any individual agreement entered into with any SpinCo Employee.

"Reverse Transfer Defined Benefit Plan" means any Subsidiary Defined Benefit Plan designated as such on Schedule 9.02.

"Specified Period" shall mean the period set forth on Schedule 1.01.

"SpinCo 401(k) Plan" has the meaning set forth in Section 10.01.

"SpinCo Award Agreement" has the meaning set forth in Section 13.01.

"SpinCo Benefit Plan" means any Benefit Plan sponsored, maintained or, unless such Benefit Plan is exclusively sponsored or maintained by a member of the Parent Group, contributed to by any member of the SpinCo Group or to which any member of the SpinCo Group is a party.

"SpinCo Employee" means (a) each individual who is an employee of any member of the SpinCo Group as of immediately prior to or on the Local Transfer Date, including any individual who is not actively at work due to a leave of absence (including vacation, holiday, illness, injury and short-term disability, and any SpinCo LTD Employee, but excluding any Retained LTD Employee) from which such employee is permitted to return to active employment in accordance with the Parent Group's or SpinCo Group's personnel policies, as in effect from time to time, or applicable Law, (b) each individual who becomes an active employee of the SpinCo Group following the Local Transfer Date but, in each case of clauses (a) and (b), excluding any Former SpinCo Employee, (c) each individual listed on Schedule 1.01(a) or listed in a Local Agreement as a SpinCo Employee and (d) each individual who is intended by Parent to be a SpinCo Employee; provided, however, that, unless otherwise required by applicable Law, each individual listed on Schedule 1.01(b) or listed in a Local Agreement as a Parent Employee shall be a Parent Employee for all purposes of this Agreement.

"SpinCo Equity Award Ratio" means the quotient obtained by dividing (a) the Parent Pre-Separation Stock Value by (b) the SpinCo Stock Value, carried out to six decimal places.

"SpinCo Equity Incentive Plan" has the meaning set forth in Section 13.01.

"SpinCo Incentive Payments" has the meaning set forth in Section 3.01.

"SpinCo Individual Agreement" means any individual (a) employment contract or offer letter, (b) retention, severance or change in control agreement, (c) expatriate (including any international assignee) contract or agreement (including agreements and obligations regarding repatriation, relocation or equalization of Taxes and living standards in the host country) or (d) other agreement containing restrictive covenants (including confidentiality, non-competition and non-solicitation provisions) between a member of a Group, on the one hand, and (i) a SpinCo Employee or (ii) a Former SpinCo Employee, on the other hand, in each case, as in effect immediately prior to the Distribution Date.

"SpinCo LTD Employee" means each applicable employee of the SpinCo Group who, as of immediately prior to the Local Transfer Date, is receiving long-term disability benefits under the Parent LTD Plan and who is not a Retained LTD Employee.

"SpinCo Nonqualified Deferred Compensation Plans" has the meaning set forth in Section 11.01.

"SpinCo Option" means an option to purchase SpinCo Common Stock.

"SpinCo Reimbursement Account Plan" has the meaning set forth in Section 7.07.

"SpinCo Restricted Stock Award" means a restricted stock award relating to SpinCo Common Stock.

"SpinCo Restricted Stock Unit" means a restricted stock unit or retention restricted stock award relating to SpinCo Common Stock.

"SpinCo Retiree Medical Plans" has the meaning set forth in Section 7.09.

"SpinCo Stock Value" means the opening per share price of SpinCo Common Stock on the New York Stock Exchange on the first trading day that occurs immediately following the Distribution Date.

"SpinCo Welfare Plans" has the meaning set forth in Section 7.01.

"Subsidiary DB Transfer Date" has the meaning set forth in Section 9.02(b)(i).

"Subsidiary Defined Benefit Plan" means any defined benefit pension plan sponsored or maintained solely by the subsidiaries designated as such on Schedule 9.02.

"Taxes" shall have the meaning set forth in the Tax Matters Agreement dated as of the date of this Agreement by and between Parent and SpinCo.

"Transfer Regulations" means the European Council Directive of March 12, 2001 (2001/23/EC), relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses and any legislation implementing such Directive, or any other similar Law where there are SpinCo Employees.

"Transferee Defined Benefit Plan" means a defined benefit pension plan sponsored or maintained by the SpinCo Group that is assuming Liabilities that relate to benefits accrued prior to the applicable Non-U.S. DB Transfer Date by SpinCo Employees under a Transferor Defined Benefit Plan.

"Transferor Defined Benefit Plan" means any defined benefit pension plan sponsored or maintained by the Parent Group for the benefit of employees principally employed in the jurisdictions designated as such on Schedule 9.02.

"Transferring Employee" means (a) each SpinCo Employee who transfers to a member of the SpinCo Group and (b) each Parent Employee who transfers to a member of the Parent Group.

"TSA" means the Transition Services Agreement dated as of the date of this Agreement by and between Parent and SpinCo.

"Unfunded Transferee Defined Benefit Plan" means a defined benefit pension plan sponsored or maintained by the SpinCo Group that is assuming Liabilities that relate to benefits accrued prior to the applicable Non-U.S. DB Transfer Date by SpinCo Employees under an Unfunded Transferor Defined Benefit Plan.

"Unfunded Transferor Defined Benefit Plan" means any defined benefit pension plan sponsored or maintained by the Parent Group for the benefit of SpinCo Employees principally employed in the jurisdictions designated as such on Schedule 9.02.

"U.S. GAAP" means United States generally accepted accounting principles.

"WARN Act" means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any applicable similar state or local Laws.

"Welfare Plan" means each Benefit Plan that provides life insurance, health care, dental care, accidental death and dismemberment insurance, disability, severance, vacation or other group welfare or fringe benefits.

"Welfare Plan Date" has the meaning set forth in Section 7.01.

"Workers' Compensation Claim Date" has the meaning set forth in Section 7.03.

"Workers' Compensation Event" means the event, injury, illness or condition giving rise to a workers' compensation claim with respect to a SpinCo Employee or Former SpinCo Employee.

ARTICLE 2
GENERAL PRINCIPLES

Section 2.01. SpinCo Employees. Except as provided in Section 2.03, all SpinCo Employees shall continue to be employees of the SpinCo Group immediately following the Local Transfer Date. Except as required by applicable Law, the Parties agree that none of the transactions contemplated by the Separation Agreement or any of the Ancillary Agreements, including this Agreement, shall cause any SpinCo Employee or Former SpinCo Employee to be deemed to have incurred an involuntary termination of employment or to be eligible to receive severance benefits solely as a result of the transfers of employment contemplated by this Agreement or the Distribution.

Section 2.02. Prepositioning of Transferring Employees. Effective no later than the Local Transfer Date or Delayed Transfer Date, and except as otherwise agreed by the Parties or as provided in Section 2.03, the applicable members of the SpinCo Group and the Parent Group shall have taken such actions as are necessary to ensure that (i) each SpinCo Employee is employed by a member of the SpinCo Group and (ii) each Parent Employee is employed by a member of the Parent Group. 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.

Section 2.03. Delayed Transfer Employees. With respect to each Delayed Transfer Employee, the Parties shall use commercially reasonable efforts to ensure that (a) such Delayed Transfer Employee becomes employed by the Destination Employer at the earliest time permitted by the applicable transfer restriction (the "Delayed Transfer Date") and (b) the Destination Employer receives the benefit of such Delayed Transfer Employee's services from and after the Local Transfer Date, including under the TSA or by entering into an employee leasing or similar arrangement. From and after the commencement of a Delayed Transfer Employee's employment with the Destination Employer, such Delayed Transfer Employee shall be treated for all purposes of this Agreement, including Section 4.02, as if such Delayed Transfer Employee commenced employment with the Destination Employer as of the Local Transfer Date as contemplated by Section 2.01. Notwithstanding the foregoing, the Destination Employer shall reimburse the other Party and its Subsidiaries and Affiliates for any Liabilities of such other Party and its Subsidiaries and Affiliates arising with respect to the Delayed Transfer Employees.

Section 2.04. Work Visas. If any SpinCo Employee requires a visa, work permit, employment pass or other approval for his or her employment with the Destination Employer, the Parties shall use commercially reasonable efforts to see that any necessary visa, permit, employment pass or other approval has been obtained on or prior to the Local Transfer Date or Delayed Transfer Date.

Section 2.05. Employment of SpinCo Employees.

(a) Effective upon the Local Transfer Date or Delayed Transfer Date, as applicable, SpinCo agrees that it shall, or shall cause the applicable member of the SpinCo Group to, until the end of the Specified Period, employ each SpinCo Employee (i) in an equivalent position (including, without limitation, in terms of job duties and functions as well as status as a regular employee or fixed-term hire), (ii) at a location that is within a reasonable proximity (i.e., no more than forty (40) miles) to the location worked at prior to the Local Transfer Date or Delayed Transfer Date or, in the case of a SpinCo Employee who works remotely, SpinCo shall provide such resources as will enable such individual to maintain such arrangement, (iii) at the same or higher base salary and eligibility for the same or higher additional earnings opportunity (i.e., variable pay/bonus and/or commissions and/or equity and equity-based compensation) and (iv) with other benefit plans and arrangements (including medical, dental, life insurance, post-retirement health and life insurance, disability, a separation practice or policy and other welfare benefits and qualified and nonqualified retirement plans) or the cash equivalent, that are comparable in the aggregate to those provided to such SpinCo Employee by Parent or any member of the Parent Group on the Local Transfer Date or Delayed Transfer Date. If SpinCo and Parent dispute any matter under this Agreement, and any such dispute is not resolved to the satisfaction of SpinCo and Parent within five (5) days of notification of the dispute by one Party to the other Party, a vice president (or higher-level executive) of each Party shall endeavor to resolve the dispute during the five (5)-day period that follows the end of such five (5)-day period. If any such dispute remains unresolved at the end of such subsequent five (5)-day period, either Party may elect to have the terms submitted for arbitration by an independent consultant or actuary mutually acceptable to SpinCo and Parent to determine whether the terms are satisfied. The determination of such consultant or actuary shall be conclusive, final and binding and have the force and effect of an arbitral award. The fees and expenses of such independent consultant or actuary shall be shared equally by the Parties.

(b) Automatic Transfer Employees shall not be terminated upon the Local Transfer Date or Delayed Transfer Date, as applicable; rather, such employees and the rights, powers, duties, liabilities and obligations of the current employer with respect to such employees in respect of the terms of employment with the employees in force immediately before the Local Transfer Date or Delayed Transfer Date, as applicable, shall be transferred to the applicable member of the SpinCo Group but only to the extent required by, and only then in accordance with, applicable Law. To the extent required by the Transfer Regulations and applicable Law, SpinCo shall maintain for a period, if any, not less than that provided for by applicable Law the same terms and conditions of employment that relate to the SpinCo Employees as of immediately prior to the Local Transfer Date or Delayed Transfer Date; provided, however, that if the period required by applicable Law for any such SpinCo Employee expires prior to the expiration of the period provided for in Section 2.05(a), then SpinCo shall, and shall cause the SpinCo Group to, comply with this Section 2.05(b) for a period commencing on the expiration of the period required by applicable Law and ending on the expiration of the period required under Section 2.05(a).

(c) In addition to the provisions set forth in Section 2.05(a) and (b), with respect to the SpinCo Employees who are not subject to a mandatory transfer in accordance with the Transfer Regulations and whose employment will not automatically continue with the SpinCo Group after the Local Transfer Date or Delayed Transfer Date or otherwise in connection with the Separation Agreement and Ancillary Agreements, except as specifically provided in the applicable Local Agreement, the applicable member of the SpinCo Group shall offer employment to, or continue the employment of, such SpinCo Employees as of the Local Transfer Date or Delayed Transfer Date under their previous terms and conditions of employment (except for their physical work location), but only to the extent that (i) such SpinCo Employees are located in a jurisdiction in which the Transfer Regulations are applicable and (ii) such terms and conditions of employment are required to be provided pursuant to the Transfer Regulations to SpinCo Employees in such jurisdiction whose employment contracts are subject to transfer pursuant to the Transfer Regulations.

Section 2.06. Individual Agreements. Effective as of no later than the Local Transfer Date or Delayed Transfer Date, SpinCo and Parent, as applicable, shall assign, or cause an applicable member of the respective Parent Group or SpinCo Group to assign, (a) the SpinCo Individual Agreements to a member of the SpinCo Group and SpinCo shall agree, or cause an applicable member of the SpinCo Group to agree, to accept and be bound by the provisions of the SpinCo Individual Agreements and (b) the Parent Individual Agreements to a member of the Parent Group and Parent shall agree or cause an applicable member of the Parent Group to accept and be bound by the provisions of the Parent Individual Agreements; provided, however, that to the extent that assignment of any such agreement is not permitted by the terms of such agreement or by applicable Law, effective as of the Local Transfer Date or Delayed Transfer Date, each member of the SpinCo Group (in the case of each SpinCo Individual Agreement) or the Parent Group (in the case of each Parent Individual Agreement) shall be considered to be a successor to each member of the SpinCo Group or Parent Group, as applicable, for purposes of, and a third-party beneficiary with respect to, such agreement, such that each member of the SpinCo Group or Parent Group, as applicable, shall enjoy all of the rights and benefits under such agreement (including rights and benefits as a third-party beneficiary) as well as assume the potential associated liabilities, with respect to the business operations of the SpinCo Group or Parent Group, as applicable; provided, further, that in no event shall any Party be permitted to enforce (i) any SpinCo Individual Agreement (including any agreement containing non-competition or non-solicitation covenants) against a SpinCo Employee for action taken in such individual's capacity as a SpinCo Employee other than on behalf of the SpinCo Group as requested by the SpinCo Group in its capacity as a third-party beneficiary and (ii) any Parent Individual Agreement (including any agreement containing non-competition or non-solicitation covenants) against a Parent Employee for action taken in such individual's capacity as a Parent Employee other than on behalf of the Parent Group as requested by the Parent Group in its capacity as a third-party beneficiary; provided, further, that with respect to any SpinCo Employee or Former SpinCo Employee who was employed by a member of the Parent Group within twenty-four (24) months prior to the Distribution Date, Parent shall retain the right to enforce, and shall be a third-party beneficiary with respect to, any non-competition covenant as applied to the business of the Parent Group contained in any SpinCo Individual Agreement against such SpinCo Employee for a period of twenty-four (24) months after the Distribution Date.

Section 2.07. Collectively Bargained Employees. All provisions contained in this Agreement providing for the treatment of compensation and benefits in connection with the Distribution shall apply equally to each employee who is covered by a collective bargaining, works council or other labor union agreement, contract or labor arrangement (collectively, "Collective Bargaining Agreements"), except to the extent that any such agreement specifically provides for the terms, conditions, compensation or benefits contemplated by such provision and, in each such case, such agreement shall apply rather than the terms of this Agreement.

Section 2.08. Collective Bargaining Agreements. As of the Local Transfer Date, SpinCo shall, and shall cause the members of the SpinCo Group, as appropriate, to (a) adopt and assume each Collective Bargaining Agreement covering any of the SpinCo Employees in such jurisdiction immediately prior to the Local Transfer Date, subject to any agreed-upon changes required by the transition of such Collective Bargaining Agreement to the applicable member of the SpinCo Group or by applicable Law, (b) unless otherwise provided in this Agreement, assume and honor any obligations of the Parent Group under any Collective Bargaining Agreements as such obligations relate to SpinCo Employees and Former SpinCo Employees and (c) recognize the works councils, labor unions and other employee representatives that are parties to such Collective Bargaining Agreements, and the Parent Group shall have no further liability thereunder with respect to the SpinCo Employees and Former SpinCo Employees; provided that any compensation or benefits that were, prior to the Local Transfer Date, provided to SpinCo Employees in such jurisdiction under the Collective Bargaining Agreements through the Parent Benefit Plans shall, to the extent that such compensation and benefits are still required to be provided under the Collective Bargaining Agreements on and after the Local Transfer Date, be provided as mutually agreed with such works councils, labor unions and other employee representatives through the SpinCo Benefit Plans as set forth in this Agreement.

Section 2.09. Liabilities Generally. From and after the Local Transfer Date or such other date agreed by Parent and SpinCo, except as expressly provided in this Agreement, in each applicable jurisdiction (a) SpinCo and the SpinCo Group shall assume or retain, as applicable, and SpinCo hereby agrees to pay, perform, fulfill and discharge, in due course in full, and be solely responsible for, all Liabilities with respect to the employment or termination of employment of all SpinCo Employees, Former SpinCo Employees, their dependents and beneficiaries and other service providers and all other Liabilities expressly assigned to SpinCo or any member of the SpinCo Group under this Agreement and (b) Parent and the Parent Group shall assume or retain, as applicable, and Parent hereby agrees to pay, perform, fulfill and discharge, in due course in full, and be solely responsible for, all Liabilities with respect to the employment or termination of employment of all Parent Employees, Former Parent Employees, their dependents and beneficiaries and other service providers and all other Liabilities expressly assigned to Parent or any member of the Parent Group under this Agreement. To the extent that this Agreement does not address particular Liabilities under any Benefit Plan and the Parties later determine that they should be allocated in connection with the Distribution, the Parties shall agree in good faith on the allocation, taking into account the handling of comparable Liabilities under this Agreement. For the avoidance of doubt, it is the intent of the Parties that, as between Parent and SpinCo, the provisions of this Section 2.09 with respect to the allocation of the Liabilities described in this Section 2.09 shall apply notwithstanding the terms of any Local Agreement or the application of local Law. Notwithstanding anything in this Agreement or any Local Agreement to the contrary, the SpinCo Group shall assume and hereby agrees to pay, perform, fulfill and discharge, in due course in full, and be solely responsible for, all Liabilities with respect to Blue Sky Employees.

Section 2.10. Benefit Plans. Except as otherwise explicitly provided in this Agreement or as may otherwise be provided in accordance with the TSA, as of the Local Transfer Date or such other date agreed by Parent and SpinCo, each SpinCo Employee (and each of his or her respective dependents and beneficiaries) in the applicable jurisdiction shall cease active participation in, and each applicable member of the SpinCo Group shall cease to be a participating employer in, all Parent Benefit Plans, and as of no later than such time, SpinCo shall, or shall cause the applicable member of the SpinCo Group to, have in effect such corresponding SpinCo Benefit Plans as are necessary to comply with its obligations pursuant to this Agreement. Effective upon the Local Transfer Date or such other date agreed by Parent and SpinCo, except as otherwise explicitly provided in this Agreement or a Local Agreement, (a) SpinCo shall, or shall cause one of the members of the SpinCo Group to, retain, pay, perform, fulfill and discharge, in due course in full, and be solely responsible for, all Liabilities arising out of or relating to all SpinCo Benefit Plans, taking into account a corresponding assumption of Liabilities by the SpinCo Benefit Plans with respect to SpinCo Employees and Former SpinCo Employees that were originally the Liabilities of the corresponding Parent Benefit Plan with respect to periods prior to the Local Transfer Date, and (b) Parent shall, or shall cause one or more members of the Parent Group to, retain, pay, perform, fulfill and discharge, in due course in full, and be solely responsible for, all Liabilities arising out of or relating to all Parent Benefit Plans, taking into account the SpinCo Benefit Plan's assumption of Liabilities with respect to SpinCo Employees and Former SpinCo Employees that were originally the Liabilities of the corresponding Parent Benefit Plan with respect to periods prior to the Local Transfer Date. All assets held in trust to fund the Parent Benefit Plans and all insurance policies funding the Parent Benefit Plans shall be Parent Assets, except to the extent explicitly provided otherwise in this Agreement or a Local Agreement.

Section 2.11. Payroll Services. Except as may otherwise be provided in accordance with a Local Agreement or the TSA, on and after the Local Transfer Date or such other date agreed by Parent and SpinCo, the applicable members of the SpinCo Group shall be solely responsible for all payroll services, Tax withholding and reporting obligations, and associated government audit assessments and receivables with respect to the SpinCo Employees and Former SpinCo Employees in the applicable jurisdiction.

Section 2.12. No Change in Control. The Parties hereto agree that none of the transactions contemplated by the Separation Agreement or any of the Ancillary Agreements, including this Agreement, constitutes a "change in control," "change of control" or transaction having a similar name, as applicable, within the meaning of any Parent Benefit Plan or SpinCo Benefit Plan.

Section 2.13. Inadvertent Transfers. If Parent determines following the Local Transfer Date that an individual whom Parent intended to be a Parent Employee or a SpinCo Employee has inadvertently become employed by the SpinCo Group or the Parent Group, respectively, the Parties shall cooperate in good faith and take such actions as may be reasonably necessary in order to cause the employment of such individual to be promptly transferred to a member of the Parent Group or the SpinCo Group, as applicable, as intended by Parent, and such individual shall be treated for all purposes of this Agreement, including Section 4.02, as if such individual commenced employment with the intended Destination Employer as of the Local Transfer Date of the jurisdiction in which the individual is employed.

Section 2.14. Non-Solicit; No Hire. Except as otherwise agreed by the Parties, for a period beginning on the Distribution Date and ending two (2) years following the Distribution Date, (a) SpinCo and the SpinCo Group shall not solicit for employment or hire (as an employee, consultant or otherwise) any Parent Employee who (i) was employed by Parent or a member of the Parent Group as of the applicable Local Transfer Date or (ii) became an employee of a member of the Parent Group following the Local Transfer Date and was involved in commercial contracts (including a TSA) with the SpinCo Group, and (b) Parent and the Parent Group shall not solicit for employment or hire (as an employee, consultant or otherwise) any (i) SpinCo Employee who was employed by a member of the SpinCo Group as of the Local Transfer Date, (ii) SpinCo Employee who became an employee of the SpinCo Group following the Local Transfer Date and was involved in commercial contracts (including a TSA) with the Parent Group or (iii) Former SpinCo Employee who rejected an offer from the SpinCo Group, objected to an automatic transfer to the SpinCo Group or who terminated employment with the Parent Group before receiving an offer letter or transfer letter from the SpinCo Group, in each case, subject to applicable Law. Notwithstanding any of the foregoing provisions of this Section 2.14 to the contrary, (A) Parent and the Parent Group shall not be restricted from soliciting for employment or hiring (as an employee, consultant or otherwise) any SpinCo Employee that was terminated by the SpinCo Group in accordance with the exceptions to the covenant not to sever SpinCo Employees described in Section 2.15 and (B) the Parties shall not be restricted from soliciting for employment or hiring (as an employee, consultant or otherwise) any SpinCo Employee or Parent Employee, as applicable, who was terminated from employment with the applicable Party as a result of a resource action that was not a result of such employee rejecting an offer from the SpinCo Group. This Section 2.14 is not intended to restrict an individual's right of employment, nor does it restrict general, customary employment advertisements and recruiting efforts. Rather, it restricts targeted solicitation of such employees of the other Party. Employees of either Party may pursue employment opportunities with the other Party on their own initiative. If a final and non-appealable judicial determination is made that any provision of this Section 2.14 constitutes an unreasonable or otherwise unenforceable restriction with respect to any particular jurisdiction, the provisions of this Section 2.14 will not be rendered void but will be deemed to be modified solely with respect to the applicable jurisdiction to the minimum extent necessary to remain in force and effect for the greatest period and to the greatest extent that such court determines constitutes a reasonable restriction under the circumstances.

Section 2.15. Termination of SpinCo Employees. SpinCo and the SpinCo Group shall not sever a SpinCo Employee transferred pursuant to this Agreement for a period of one (1) year following the Distribution Date; provided, however, that nothing contained in this Agreement shall be construed in any way to limit or prevent the SpinCo Group from terminating any SpinCo Employee (a) transferred pursuant to this Agreement at any time for "cause" or for reasons related to poor performance or conditions of employment; (b) who received a notice of termination from the Parent Group prior to the Local Transfer Date; (c) who (i) is 100% dedicated to a SpinCo Contract with a third party that is terminated by the third party, or in the event of a breach of the SpinCo Contract by the third party, or (ii) is less than 100% dedicated to such a terminated SpinCo Contract with a third party, but only to reflect a proportionate reduction in the number of SpinCo Employees who service such SpinCo Contract that is approximately commensurate to the aggregate reduction in resource requirements under such SpinCo Contract; provided that this clause (c) shall not apply with respect to any SpinCo Employee located in Europe or any other jurisdiction in which a mandatory transfer of employment occurs; or (d) who is already covered by a termination protection covenant pursuant to another agreement or arrangement with the SpinCo Group as of the Local Transfer Date or under applicable Law.

ARTICLE 3
NON-EQUITY INCENTIVES

Section 3.01. SpinCo Employee Incentives. On and after the Local Transfer Date, the SpinCo Group shall assume and be solely responsible for all Liabilities with respect to any annual bonus or other cash-based incentive awards under any Benefit Plan to any SpinCo Employee or Former SpinCo Employee in the applicable jurisdiction, including, for the avoidance of doubt, any such awards with respect to the Parent fiscal year ending prior to the Distribution (the "SpinCo Incentive Payments"). The SpinCo Group shall be responsible for determining the amounts of all SpinCo Incentive Payments that have not been determined prior to the Local Transfer Date, including the extent to which established performance criteria (as interpreted by SpinCo, in its sole discretion) have been met, and shall pay all SpinCo Incentive Payments no later than the times provided for under the applicable Benefit Plan. For the avoidance of doubt, any determinations made prior to the Distribution regarding the amounts of any SpinCo Incentive Payments shall be subject to Parent's prior written approval.

Section 3.02. Retention Bonus Programs. On and after the Local Transfer Date, the SpinCo Group shall assume and be solely responsible for all Liabilities with respect to any amounts owed to a SpinCo Employee under the Retention Bonus Programs, and shall pay all amounts under the Retention Bonus Programs no later than the times provided for under the applicable Retention Bonus Programs. For the avoidance of doubt, any determinations made prior to the Distribution regarding the amounts of any payments under the Retention Bonus Programs shall be subject to Parent's prior written approval.

ARTICLE 4
SERVICE CREDIT

Section 4.01. Parent Benefit Plans. Except as may otherwise be provided in accordance with the TSA or as required by applicable Law or the terms of the applicable Parent Benefit Plan, service of SpinCo Employees and Former SpinCo Employees in each applicable jurisdiction on and after the Local Transfer Date, or such other date agreed by Parent and SpinCo, with any member of the SpinCo Group or any other employer, as applicable, other than any member of the Parent Group, shall not be taken into account for any purpose under any Parent Benefit Plan.

Section 4.02. SpinCo Benefit Plans. From and after the Local Transfer Date, SpinCo shall, and shall cause the applicable member of the SpinCo Group to, give each SpinCo Employee full credit for all purposes (including for purposes of eligibility to participate, level of benefits, early retirement eligibility and early retirement subsidies, vacation days and other paid time off, severance or separation benefits, vesting and benefit accrual) under any Benefit Plans, Collective Bargaining Agreements and employment-related entitlements (including under any applicable pension, 401(k), savings, medical, dental, life insurance, vacation, long-service leave or other leave entitlements, post-retirement health and life insurance, termination indemnity, notice period, severance or separation pay plans) provided, sponsored, maintained or contributed to by any member of the SpinCo Group for such SpinCo Employee's service with any member of the SpinCo Group or the Parent Group, and with any predecessor employer, prior to the Local Transfer Date to the same extent recognized by the Parent Group ("Pre-Transfer Service"), except to the extent such credit would result in the duplication of benefits for the same period of service. Notwithstanding the foregoing, to the extent permitted under applicable Law, the SpinCo Group shall not be required to provide credit for such service for benefit accrual purposes under any SpinCo Benefit Plan that is a defined benefit pension plan unless such plan has assumed any assets and/or liabilities pursuant to this Agreement, a Local Agreement or applicable Law relating to benefits accrued by such SpinCo Employee under a Parent Benefit Plan that is a defined benefit pension plan. The SpinCo Group shall recognize each SpinCo Employee's Pre-Transfer Service for any additional benefit introduced by SpinCo after the Local Transfer Date that is based on length or duration of employment.

Section 4.03. No Expansion of Participation. Unless otherwise expressly provided in this Agreement, as otherwise determined or agreed to by the Parties, as required by applicable Law or as explicitly set forth in a SpinCo Benefit Plan, each SpinCo Employee shall be entitled to participate in a given SpinCo Benefit Plan only to the extent that such SpinCo Employee was entitled to participate in the corresponding Parent Benefit Plan as in effect immediately prior to the Local Transfer Date, with it being the intent of the Parties that this Agreement does not result in any expansion of the number of SpinCo Employees participating or the participation rights therein that they had prior to the Local Transfer Date.

ARTICLE 5
SEVERANCE

Section 5.01. Severance. The SpinCo Group shall be solely responsible for all Liabilities, including all statutory or common law severance or other separation benefits, any contractual or other termination indemnity, any retirement indemnity, any severance or separation benefits or any other legally or contractually mandated payments (including any compensation or benefits payable during a termination notice period and any payments pursuant to a judgment of a court having jurisdiction over the parties) relating to the termination or alleged termination of any SpinCo Employee's or Former SpinCo Employee's employment, whether occurring prior to, on or after the Local Transfer Date. For the avoidance of doubt, such Liabilities shall include any employer-paid portion of any Employment Taxes and shall be treated as Liabilities of SpinCo and the SpinCo Group. For the avoidance of doubt, in the event of any conflict between the provisions of this Section 5.01 and Article 9, the provisions of this Section 5.01 shall control.

ARTICLE 6
WARN ACT

Section 6.01. WARN Act. SpinCo shall provide any required notice under the WARN Act, and otherwise comply with the WARN Act, in each case, with respect to any "plant closing" or "mass layoff" (as defined in the WARN Act) or group termination or similar event occurring on and after 11:59 p.m. on the Local Transfer Date, and SpinCo shall not take any action after the Local Transfer Date that would cause any terminations of employment of any SpinCo Employees that occur before 11:59 p.m. on the Local Transfer Date to constitute a "plant closing" or "mass layoff" or group termination, or to create any liability or penalty to Parent under Law.

ARTICLE 7
CERTAIN WELFARE BENEFIT PLAN MATTERS; WORKERS' COMPENSATION CLAIMS

Section 7.01. SpinCo Welfare Plans. Without limiting the generality of Section 2.10, effective as of the Local Transfer Date or such other date as agreed to between Parent and SpinCo, which need not be the same for each Welfare Plan (such applicable date, the "Welfare Plan Date"), the SpinCo Group shall establish Welfare Plans (collectively, the "SpinCo Welfare Plans") to provide welfare benefits to the SpinCo Employees (and their dependents and beneficiaries) in each applicable jurisdiction and, as of the applicable Welfare Plan Date, each SpinCo Employee (and his or her dependents and beneficiaries) shall cease active participation in the corresponding Parent Welfare Plan. For the avoidance of doubt, for purposes of this Article 7, the term "SpinCo Employee" shall be deemed to include each Former SpinCo Employee who was receiving welfare benefits in connection with his or her termination of employment from a member of the Parent Group or the SpinCo Group as of the applicable Welfare Plan Date.

Section 7.02. Allocation of Welfare Benefit Claims. (a) The members of the Parent Group shall retain and be solely responsible for all Liabilities in accordance with the applicable Parent Welfare Plan for all reimbursement claims (such as medical and dental claims) and for all non-reimbursement claims (such as life insurance claims), in each case, as incurred and reported by SpinCo Employees and Former SpinCo Employees (and each of their respective dependents and beneficiaries) under such plans prior to the applicable Welfare Plan Date and (b) the members of the SpinCo Group shall retain and be solely responsible for (i) all Liabilities in accordance with the applicable Parent Welfare Plan for all reimbursement claims (such as medical and dental claims) and for all non-reimbursement claims (such as life insurance claims), in each case, that were incurred by SpinCo Employees and Former SpinCo Employees (and each of their respective dependents and beneficiaries) under such plans prior to the applicable Welfare Plan Date but not yet reported as of the applicable Welfare Plan Date and (ii) all Liabilities in accordance with the SpinCo Welfare Plans for all reimbursement claims (such as medical and dental claims) and for all non-reimbursement claims (such as life insurance claims), in each case, as incurred by SpinCo Employees and Former SpinCo Employees (and each of their respective dependents and beneficiaries) on or after the applicable Welfare Plan Date; provided that SpinCo shall reimburse Parent for Liabilities incurred under clause (a) between the Local Transfer Date and the applicable Welfare Plan Date. For purposes of this Section 7.02, a benefit claim shall be deemed to be incurred as follows: (i) for health, dental, vision, employee assistance program and prescription drug benefits (including in respect of any hospital admission), upon the provision of such services, materials or supplies and (ii) for life, accidental death and dismemberment, and business travel accident insurance benefits, upon the death, cessation of employment or other event by Parent giving rise to such benefits.

Section 7.03. 6055/6056 Reporting. The SpinCo Group shall comply with the reporting obligations under Section 6056 of the Code (Reporting of Offers of Coverage) with respect to SpinCo Employees and Former SpinCo Employees for the Closing Plan Year (including while SpinCo was owned by Parent) and periods after the Local Transfer Date, for which SpinCo has a reporting obligation; provided that the Parent Group shall be responsible for complying with all reporting obligations with respect to the year prior to the Closing Plan Year. In this regard, the SpinCo Group shall be solely responsible for distributing IRS Form 1095-C to applicable individuals and filing IRS Forms 1094-C and 1095-C with the IRS, all according to the applicable rules and regulations governing such forms. SpinCo shall also be solely responsible for ensuring that the SpinCo Group complies with the reporting obligations under Section 6055 of the Code (Reporting of Enrollment in Minimum Essential Coverage) with respect to all SpinCo Employees and Former SpinCo Employees who are enrolled in a self-insured medical plan under the Parent Welfare Plan. SpinCo may meet this obligation either through IRS Forms 1094-C and 1095-C or IRS Forms 1094-B and 1095-B, all in accordance with applicable rules and regulations.

Section 7.04. Credit for Benefits. The SpinCo Group shall (a) waive for each SpinCo Employee and Former SpinCo Employee and his or her dependents, each waiting period provision, payment requirement to avoid a waiting period, preexisting condition limitation, actively at work requirement and any other restriction that would prevent immediate or full participation under the SpinCo Welfare Plan (or was previously satisfied by) such SpinCo Employee or Former SpinCo Employee to the extent that such waiting period, preexisting condition limitation, actively at work requirement or other restriction would not have been applicable to such SpinCo Employee or Former SpinCo Employee under the terms of the applicable Parent Benefit Plan immediately prior to the Local Transfer Date and (b) give full credit under the SpinCo Welfare Plans applicable to each SpinCo Employee and Former SpinCo Employee and his or her dependents, for all out-of-pocket expenses, including co-payments and deductibles, satisfied prior to the Local Transfer Date in the Closing Plan Year, and for any lifetime maximums, as if there had been a single continuous employer.

Section 7.05. Workers' Compensation Claims. In the case of any workers' compensation claim of any SpinCo Employee or Former SpinCo Employee in respect of his or her employment with the Parent Group or the SpinCo Group, such claim shall be covered (a) by the SpinCo Group's workers' compensation coverage for the applicable jurisdiction if the claim relating to the Workers' Compensation Event is submitted after the date on which SpinCo has established workers' compensation coverage (the "Workers' Compensation Claim Date") and (b) by the Parent Group's workers' compensation coverage if the claim relating to the Workers' Compensation Event is submitted prior to the Workers' Compensation Claim Date; provided that SpinCo shall reimburse Parent for Liabilities actually incurred by the Parent Group under clause (b).

Section 7.06. COBRA. If a SpinCo Employee or Former SpinCo Employee (or his or her eligible dependents) was receiving, prior to the applicable Welfare Plan Date, or is eligible to receive, on or following the applicable Welfare Plan Date, continuation health coverage pursuant to COBRA, the SpinCo Group and the SpinCo Welfare Plans shall be solely responsible for all Liabilities to such employee (or his or her eligible dependents) in respect of COBRA. The SpinCo Group shall indemnify, defend and hold harmless the members of the Parent Group from and against any and all Liabilities relating to, arising out of or resulting from COBRA provided by the SpinCo Group, or the failure of the SpinCo Group to meet its COBRA obligations, to SpinCo Employees, Former SpinCo Employees and their respective eligible dependents.

Section 7.07. Flexible Spending Accounts. Effective as of the applicable Welfare Plan Date, the SpinCo Group shall have established a health care and dependent care reimbursement account plan (the "SpinCo Reimbursement Account Plan") with features that are comparable to those contained in the relevant health care and dependent care reimbursement account plan sponsored and maintained by Parent (the "Parent Reimbursement Account Plan"). With respect to applicable SpinCo Employees and Former SpinCo Employees, effective as of the applicable Welfare Plan Date, the SpinCo Group shall assume and be solely responsible for administering all reimbursement claims of SpinCo Employees and Former SpinCo Employees with respect to the plan year in which the applicable Welfare Plan Date occurs, whether arising before, on or after the applicable Welfare Plan Date, under the SpinCo Reimbursement Account Plan and, for the avoidance of doubt, on and after the applicable Welfare Plan Date, no additional claims shall be reimbursed with respect to SpinCo Employees and Former SpinCo Employees under the Parent Reimbursement Account Plan. Parent shall, as soon as practicable following the applicable Welfare Plan Date, determine (a) the sum of all contributions to the Parent Reimbursement Account Plan made with respect to such plan year by or on behalf of all SpinCo Employees and Former SpinCo Employees, as a whole, prior to the applicable Welfare Plan Date (the "Aggregate Pre-Transfer Date Contributions") and (b) the sum of all claims incurred in such plan year and paid by the Parent Reimbursement Account Plan with respect to such SpinCo Employees and Former SpinCo Employees, as a whole, prior to the applicable Welfare Plan Date (the "Aggregate Pre-Transfer Date Disbursements"). If the Aggregate Pre-Transfer Date Contributions exceed the Aggregate Pre-Transfer Date Disbursements, Parent shall, as soon as practicable following Parent's determination of the Aggregate Pre-Transfer Date Contributions and Aggregate Pre-Transfer Date Disbursements, transfer to SpinCo an amount in cash equal to such difference. If the Aggregate Pre-Transfer Date Disbursements exceed the Aggregate Pre-Transfer Date Contributions, SpinCo shall, upon Parent's reasonable request and the presentation of such substantiating documentation as SpinCo shall reasonably request, transfer to Parent an amount in cash equal to such difference.

Section 7.08. Continuation of Elections. With respect to applicable SpinCo Employees, as of the applicable Welfare Plan Date, the SpinCo Group shall cause the SpinCo Welfare Plans to recognize and maintain all elections and designations (including, without limitation, all coverage and contribution elections and beneficiary designations) made by SpinCo Employees under, or with respect to, the Parent Welfare Plans and apply such elections and designations under the SpinCo Welfare Plans for the remainder of the period or periods for which such elections or designations are by their original terms applicable, to the extent that such elections or designations are available under the corresponding SpinCo Welfare Plan. As of the applicable Welfare Plan Date, the SpinCo Group shall cause any SpinCo Welfare Plan that constitutes a cafeteria plan under Section 125 of the Code to recognize and give effect to all non-elective employer contributions payable and paid toward coverage of a SpinCo Employee under the corresponding Parent Welfare Plan that constitutes a cafeteria plan under Section 125 of the Code for the applicable cafeteria plan year.

Section 7.09. Post-Retirement Health and Life Insurance. The Parent Group agrees to allow its Eligible Retiree Medical Employees to participate in, and receive benefits from, the Parent Group's applicable post-retirement health and life insurance plans upon their eligibility to enroll, unless otherwise required by applicable Law; provided that nothing herein shall prohibit Parent or any member of the Parent Group from amending, modifying or terminating such plans or prevent the application of any such amendment, modification or termination to any Eligible Retiree Medical Employee. With respect to any SpinCo Employees and Former SpinCo Employees in the Continuing Retiree Medical Jurisdictions who, immediately prior to the Local Transfer Date, are eligible to participate in the Parent Group's post-retirement health and life insurance plans and have satisfied the eligibility criteria to receive benefits under such plans as in effect on the Local Transfer Date, the SpinCo Group shall establish, as of the applicable Welfare Plan Date, a SpinCo Benefit Plan that provides post-retirement health and life insurance benefits that are comparable to the applicable Parent Benefit Plan (the "SpinCo Retiree Medical Plans"), and SpinCo and the members of the SpinCo Group shall assume and be solely responsible for all Liabilities in accordance with the SpinCo Retiree Medical Plans with respect to all such SpinCo Employees and Former SpinCo Employees in the Continuing Retiree Medical Jurisdictions.

ARTICLE 8
LONG-TERM DISABILITY EMPLOYEES

Section 8.01. SpinCo LTD Employees. Except as otherwise specifically provided in this Agreement, as required by applicable Law or as agreed to between Parent and SpinCo, on and after the Local Transfer Date, the SpinCo LTD Employees shall be deemed to be employees of the SpinCo Group for all purposes of this Agreement.

Section 8.02. Retained LTD Employees. Except as otherwise specifically provided in this Agreement and subject to Section 8.03, on and after the Distribution, the Retained LTD Employees shall be deemed to be employees of the Parent Group for purposes of this Agreement, including participation in the Parent LTD Plans. Notwithstanding the foregoing, SpinCo shall reimburse Parent for any Liabilities of the Parent Group arising with respect to the Retained LTD Employees.

Section 8.03. Return to Work. To the extent required by applicable Parent Group or SpinCo Group policies, as in effect from time to time, or applicable Law, SpinCo shall, or shall cause the applicable member of the SpinCo Group to, employ any SpinCo LTD Employee or Retained LTD Employee at such time, if any, as such SpinCo LTD Employee or Retained LTD Employee is ready to return to active employment, and, with respect to any Retained LTD Employee, from and after such time, such employee shall no longer be deemed an employee of the Parent Group and shall be deemed a SpinCo Employee for purposes of this Agreement; provided that, if such SpinCo LTD Employee or Retained LTD Employee presents himself or herself for active employment and is not employed by a member of the SpinCo Group due to applicable SpinCo Group policies, and if such SpinCo LTD Employee's or Retained LTD Employee's employment is terminated by a member of the Parent Group within a reasonable time thereafter, SpinCo shall indemnify the Parent Group for all Liabilities incurred in connection with such termination. Notwithstanding the foregoing, SpinCo or the applicable member of the SpinCo Group shall only be required to employ a Retained LTD Employee in accordance with this Section 8.03 if such Retained LTD Employee is ready to return to active employment within one (1) year following the Distribution Date or such greater period as required by applicable Law.

ARTICLE 9
DEFINED BENEFIT PENSION PLANS

Section 9.01. U.S. Pension Plans. Except as otherwise provided in any of Parent's tax-qualified or nonqualified defined benefit pension plans maintained for employees principally employed in the United States (each, a "Parent U.S. Pension Plan"), as of the Local Transfer Date or such other date as agreed to between Parent and SpinCo, each SpinCo Employee shall cease active participation in the relevant Parent U.S. Pension Plan, and service performed for, and compensation earned from, any employer, other than the Parent Group, and, to the extent service is recognized under the relevant Parent U.S. Pension Plan, their predecessors, shall not be taken into account for any purpose under the Parent U.S. Pension Plans. Prior to the Local Transfer Date, Parent shall provide SpinCo with a list of SpinCo Employees and Former SpinCo Employees who are participants in the nonqualified Parent U.S. Pension Plans. Upon and following the Local Transfer Date, if a SpinCo Employee on such list terminates employment with the SpinCo Group, SpinCo shall, or shall cause a member of the SpinCo Group to, provide written notice to Parent of such employee's termination of employment within twenty (20) days of such employee's termination of employment; provided that following the Distribution Date, SpinCo or the applicable member of the SpinCo Group shall only be required to provide such notice with respect to SpinCo Employees who participate in a nonqualified Parent U.S. Pension Plan. Notwithstanding the foregoing, SpinCo shall be liable and solely responsible, and shall reimburse Parent, for any Liabilities of the Parent Group arising with respect to the Parent U.S. Pension Plans as a result of any failure by a member of the SpinCo Group to provide proper notice of an employment termination that results in the inability of Parent to administer the Parent U.S. Pension Plans in compliance with Section 409A of the Code to the extent applicable with respect to any SpinCo Employee or Former SpinCo Employee who participated thereunder.

Section 9.02. Non-U.S. Pension Plans.

(a) Non-Transferor Defined Benefit Plans. Except as set forth in any Local Agreement and, in any case, with respect to each Non-Transferor Defined Benefit Plan, the Parent Group shall retain or shall cause to be retained all Assets and Liabilities under such plan (and, to the extent applicable, under the insurance company contracts maintained to fund such plan) and shall make payments to SpinCo Employees and Former SpinCo Employees with vested rights thereunder in accordance with the terms of such plan and applicable Law; provided that unvested rights thereunder shall be treated in accordance with the terms of such plan and applicable Law. Except as otherwise provided in any Non-Transferor Defined Benefit Plan, as of the Local Transfer Date or such other date as agreed to between Parent and SpinCo, each SpinCo Employee shall cease active participation in the relevant Non-Transferor Defined Benefit Plan, and service performed for, and compensation earned from, any employer, other than the Parent Group, and, to the extent service is recognized under the relevant Non-Transferor Defined Benefit Plan, their predecessors, shall not be taken into account for any purpose under the Non-Transferor Defined Benefit Plans.

(b) Subsidiary Defined Benefit Plans.

(i) Assumption of Subsidiary Defined Benefit Plans. Except to the extent set forth in Section 9.02(b)(ii), with respect to the Subsidiary Defined Benefit Plans, as of the Local Transfer Date or such other date as agreed to between Parent and SpinCo (the "Subsidiary DB Transfer Date"), the SpinCo Group shall assume and retain all Assets and Liabilities under such plan (and, to the extent applicable, under the insurance company contracts maintained to fund such plan) and shall make payments to SpinCo Employees and Former SpinCo Employees with vested rights thereunder (and unvested rights thereunder to the extent such rights vest) in accordance with the terms of such plan and applicable Law.

(ii) Establishment of Parent Reverse Transfer Defined Benefit Plans. Effective as of the applicable Subsidiary DB Transfer Date, in connection with the transfer of Assets and Liabilities to a Parent Reverse Transfer Defined Benefit Plan from a Subsidiary Defined Benefit Plan that is a Reverse Transfer Defined Benefit Plan, the Parent Group shall establish a trust or other vehicle to accept such transfer of pension Assets that relate to Parent Employees, Former Parent Employees, and to the extent specified on Schedule 9.02, Former SpinCo Employees, unless the Parent Group is prohibited from establishing a trust or other vehicle under applicable Law or the transfer of such Assets to a trust or other vehicle would result in adverse Tax consequences to a substantial portion of the Parent Employees, Former Parent Employees or, if applicable, Former SpinCo Employees, in each case, who participated in the relevant Reverse Transfer Defined Benefit Plan immediately prior to the Subsidiary DB Transfer Date. As soon as practicable following the applicable Subsidiary DB Transfer Date, but in any event no later than the later of (1) 30 days following the date that the trust or other vehicle that will accept the transferred Assets with respect to the applicable Reverse Transfer Defined Benefit Plan has been established or designated (unless no such trust or other vehicle is required) and (2) 30 days following the earliest date permitted by applicable Law, the SpinCo Group shall cause each Reverse Transfer Defined Benefit Plan to transfer (A) the Liabilities of the Parent Reverse Transfer Defined Benefit Plan with respect the Parent Employees, Former Parent Employees and, if applicable, Former SpinCo Employees and (B) pension Assets (including, to the extent applicable, any insurance company contracts maintained to fund such plan) having a value sufficient to satisfy any requirements under applicable Law from such Reverse Transfer Defined Benefit Plan to the trust or other vehicle established or designated with respect to the applicable Parent Reverse Transfer Defined Benefit Plan or, where no trust or other vehicle exists, provide payment of an equivalent amount to Parent or the applicable member of the Parent Group; provided that if there is no such requirement under applicable Law, the applicable Reverse Transfer Defined Benefit Plan shall transfer to the Parent Reverse Transfer Defined Benefit Plan an aggregate amount of pension Assets that bears the same proportion as (x) the aggregate amount of Liabilities of such Reverse Transferor Defined Benefit that relate to Parent Employees, Former Parent Employees and, if applicable, Former SpinCo Employees relative to (y) the aggregate amount of all Liabilities of such Reverse Transfer Defined Benefit, in each case, as determined in accordance with U.S. GAAP.

(c) Transferor Defined Benefit Plans.

(i) Establishment of Transferee Defined Benefit Plans. Without limiting the generality of Section 2.11, effective as of the applicable Non-U.S. DB Transfer Date, in connection with the transfer of Assets and Liabilities from a Transferor Defined Benefit Plan to a Transferee Defined Benefit Plan, the SpinCo Group shall establish a trust or other vehicle to accept such transfer of pension Assets, unless the SpinCo Group is prohibited from establishing a trust or other vehicle under applicable Law or the transfer of such Assets to a trust or other vehicle would result in adverse Tax consequences to a substantial portion of the SpinCo Employees who participated in the relevant Transferor Defined Benefit Plan immediately prior to the applicable Closing Date. As soon as practicable following the applicable Non-U.S. DB Transfer Date, but in any event no later than the later of (1) 30 days following the date that the trust or other vehicle that will accept the transferred Assets with respect to the applicable Transferee Defined Benefit Plan has been established or designated (unless no such trust or other vehicle is required) and (2) 30 days following the earliest date permitted by applicable Law (the "Pension Asset Transfer Date"), the Parent Group shall cause each Transferor Defined Benefit Plan to transfer pension Assets (including, to the extent applicable, any insurance company contracts maintained to fund such plan) that have been allocated to SpinCo in accordance with clause (b)(2) below (as adjusted for appreciation or depreciation that occurs after the Local Transfer Date but prior to the Pension Asset Transfer Date) or such greater value sufficient to satisfy any requirements under applicable Law from such Transferor Defined Benefit Plan, to the trust or other vehicle established or designated with respect to the applicable Transferee Defined Benefit Plan or, where no trust or other vehicle exists, provide payment of an equivalent amount to SpinCo or the applicable member of the SpinCo Group. In all events in which a transfer is made by the Parent Group or any Transferor Defined Benefit Plan to a Transferee Defined Benefit Plan, the SpinCo Group shall not take any direct or indirect action to cause a reversion of pension Assets for a period of five years following the applicable Non-U.S. DB Transfer Date. At all times following the applicable Non-U.S. DB Transfer Date, the SpinCo Group shall not take any action to reduce any benefits accrued under any Transferor Defined Benefit Plan prior to the applicable Non-U.S. DB Transfer Date.

(ii) Assets and Liabilities of Transferor Defined Benefit Plans. With respect to each Transferor Defined Benefit Plan, the Parent Group shall, or shall cause the applicable Transferor Defined Benefit Plan to, (1) as of the Local Transfer Date, allocate the aggregate pension Liabilities that relate to SpinCo Employees to the SpinCo Group and the aggregate pension Liabilities that relate to all other participants to the Parent Group, in each case, as determined in accordance with U.S. GAAP, (2) as of the Local Transfer Date, allocate the pension Assets to the SpinCo Group or the Parent Group, as applicable, as required by applicable Law; provided that if there is no such requirement under applicable Law, the applicable Transferor Defined Benefit Plan shall allocate to the SpinCo Group or the Parent Group, as applicable, an aggregate amount of pension Assets that bears the same proportion to the aggregate amount of Liabilities of such Transferor Defined Benefit Plan that are allocated to such Party pursuant to clause (1) of this Section 9.02(c)(ii), (3) retain the pension Assets and Liabilities for accrued benefits under such Transferor Defined Benefit Plan with respect to the SpinCo Employees through the applicable Non-U.S. DB Transfer Date and (4) manage the pension Assets for accrued benefits under such Transferor Defined Benefit Plan with respect to the SpinCo Employees through such Non-U.S. DB Transfer Date; provided that nothing herein shall be deemed to prohibit or restrict the Parent Group from amending or terminating the applicable Transferor Defined Benefit Plan. SpinCo agrees that as of the Local Transfer Date, SpinCo or a member of the SpinCo Group shall be solely responsible for the Liabilities allocated to the SpinCo Group pursuant to clause (1) of this Section 9.02(c)(ii).

(iii) Continued Participation in Participating Transferor Defined Benefit Plans. With respect to each Participating Transferor Defined Benefit Plan, the Parent Group shall, or shall cause the applicable Participating Transferor Defined Benefit Plan to, (A) permit the applicable member of the SpinCo Group to become a participating employer and (B) permit the SpinCo Employees to continue to participate in such Transferor Defined Benefit Plan in accordance with its terms; provided that nothing herein shall be deemed to prohibit or restrict the Parent Group from amending or terminating the applicable Transferor Defined Benefit Plan. Notwithstanding the foregoing, prior to the applicable Non-U.S. DB Transfer Date, the SpinCo Group shall timely make all contributions to the applicable Transferor Defined Benefit Plan that are required to be made by the SpinCo Group pursuant to the terms of such Transferor Defined Benefit Plan and its most recent actuarial valuation, this Agreement, any Local Funding Agreement and applicable Law.

(iv) Pension-Related Indemnification. In the event that the Non-U.S. DB Transfer Date occurs after the applicable Local Transfer Date with respect to any country, the SpinCo Group shall indemnify, defend and hold harmless the members of the Parent Group and the applicable Transferor Defined Benefit Plan from and against any and all Liabilities relating to, arising out of or resulting from such arrangement, including, without limitation, (1) the administrative costs and expenses incurred by the Parent Group or the Transferor Defined Benefit Plan relating to each SpinCo Employee's participation in the Transferor Defined Benefit Plan after the applicable Local Transfer Date, (2) other Liabilities incurred by the Parent Group or the Transferor Defined Benefit Plan as a result of the Parent Group permitting the SpinCo Employees to participate in the Transferor Defined Benefit Plan after the applicable Local Transfer Date, (3) Liabilities incurred by the Parent Group or the Transferor Defined Benefit Plan as a result of the termination of employment of, or changes to the employment terms of, any SpinCo Employee by the SpinCo Group after the applicable Local Transfer Date and (4) in the event that any transaction contemplated by such arrangement requires the consent of any SpinCo Employee, any payments or benefits that the Parent Group makes or provides to such SpinCo Employee in order to obtain such consent, as reasonably determined by the Parent Group after consultation with the SpinCo Group.

(d) Insured Transferor Defined Benefit Plans. Without limiting the generality of Section 2.11, effective as of the applicable Non-U.S. DB Transfer Date, in connection with the transfer of Liabilities from an Insured Transferor Defined Benefit Plan to an Insured Transferee Defined Benefit Plan, the SpinCo Group shall (1) establish an Insured Transferee Defined Benefit Plan to administer the Liabilities of the applicable Insured Transferor Defined Benefit Plan and (2) execute insurance contracts with a reputable insurance company to fund the Liabilities assumed by such Insured Transferee Defined Benefit Plan and pay the benefits to the applicable SpinCo Employees, which contracts shall be effective no later than the applicable Non-U.S. DB Transfer Date; provided, however, in lieu of the SpinCo Group executing an insurance contract described in this Section 9.02(d)(2), the Parent Group may, in its discretion, assign insurance contracts to the SpinCo Group in respect of Liabilities assumed by such Insured Transferee Defined Benefit Plan. As of the applicable Non-U.S. DB Transfer Date, the Parent Group shall cause each Insured Transferor Defined Benefit Plan to transfer the Liabilities of the Insured Transferor Defined Benefit Plan with respect the SpinCo Employees to the applicable Insured Transferee Defined Benefit Plan.

(e) Unfunded Transferor Defined Benefit Plans. Without limiting the generality of Section 2.11, effective as of the applicable Non-U.S. DB Transfer Date, in connection with the transfer of Liabilities from an Unfunded Transferor Defined Benefit Plan to an Unfunded Transferee Defined Benefit Plan, the SpinCo Group shall establish an Unfunded Transferee Defined Benefit Plan to administer the Liabilities of the applicable Unfunded Transferor Defined Benefit Plan and pay the benefits to the applicable SpinCo Employees. As of the applicable Non-U.S. DB Transfer Date, the Parent Group shall cause each Unfunded Transferor Defined Benefit Plan to transfer the Liabilities of the Unfunded Transferor Defined Benefit Plan with respect the SpinCo Employees to the applicable Unfunded Transferee Defined Benefit Plan.

(f) Acknowledgments of Pension Liabilities. Following the completion of the transfer of Assets and/or Liabilities from a Transferor Defined Benefit Plan to a Transferee Defined Benefit Plan, from an Insured Transferor Defined Benefit Plan to an Insured Transferee Defined Benefit Plan and from a Unfunded Transferor Defined Benefit Plan to an Unfunded Transferee Defined Benefit Plan, and the transfer of a Subsidiary Defined Benefit Plan to the SpinCo Group as provided in this Section 9.02, the Parent Group shall have no further Liability (either under this Agreement or otherwise) to provide the SpinCo Employees (or Former SpinCo Employees for the Subsidiary Defined Benefit Plans, other than the applicable Reverse Transfer Defined Benefit Plans) who participated in such plan with benefits under a Transferor Defined Benefit Plan, Insured Transferor Defined Benefit Plan, Unfunded Transferor Defined Benefit Plan or Subsidiary Defined Benefit Plan, and the SpinCo Group shall be solely responsible for all Liabilities with respect to any amounts owed to a SpinCo Employee (or Former SpinCo Employees for the Subsidiary Defined Benefit Plans, other than the applicable Reverse Transfer Defined Benefit Plans) under such plans. For the avoidance of doubt, the Parent Group shall retain all Assets and Liabilities under any defined benefit pension plans covering SpinCo Employees or Former SpinCo Employees, except as expressly provided in Sections 9.02(b) through (e).

(g) No Reduction in Benefits. At all times following the applicable Non-U.S. DB Transfer Date, the SpinCo Group shall not take any action to reduce any benefits accrued under any Subsidiary Defined Benefit Plan, Transferor Defined Benefit Plan, Insured Transferor Defined Benefit Plan or Unfunded Transferor Defined Benefit Plan prior to the applicable Non-U.S. DB Transfer Date.

ARTICLE 10
DEFINED CONTRIBUTION PLANS

Section 10.01. SpinCo 401(k) Plan. Effective as of the Local Transfer Date or such other date as agreed to between Parent and SpinCo, which need not be the same for each retirement plan (the "Applicable 401(k) Date"), SpinCo or the applicable member of the SpinCo Group shall establish a defined contribution plan that includes a qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code (the "SpinCo 401(k) Plan") providing benefits to the SpinCo Employees participating in any qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code sponsored by any member of the Parent Group (collectively, the "Parent 401(k) Plan") as of the Local Transfer Date; provided, however, that SpinCo or the applicable member of the SpinCo Group shall not be required to provide SpinCo Employees with an option to invest in SpinCo Common Stock under the SpinCo 401(k) Plan.

Section 10.02. 401(k) Plan Rollovers. SpinCo or the applicable member of the SpinCo Group shall permit each SpinCo Employee and Former SpinCo Employee participating in the Parent 401(k) Plan to effect, and SpinCo or the applicable member of the SpinCo Group shall cause the SpinCo 401(k) Plan to accept, in accordance with applicable Law, a "direct rollover" (within the meaning of Section 401(a)(31) of the Code) of his or her account balances (including earnings thereon through the date of transfer and promissory notes evidencing all outstanding loans in accordance with the terms of the SpinCo 401(k) Plan) under the Parent 401(k) Plan if such rollover to the SpinCo 401(k) Plan is elected in accordance with applicable Law by such SpinCo Employee and Former SpinCo Employee, subject to each of Parent's and SpinCo's reasonable satisfaction that the Parent 401(k) Plan or the SpinCo 401(k) Plan, as applicable, is in compliance with all applicable Laws and that such plan continues to satisfy the requirements for a qualified plan under Section 401(a) of the Code and that the trust that forms a part of such plan is exempt from Tax under Section 501(a) of the Code. Upon completion of a direct rollover of a SpinCo Employee's and Former SpinCo Employee's account balances, as described in this Section 10.02, SpinCo, the SpinCo Group and the SpinCo 401(k) Plan shall be solely responsible for all benefits relating to past service of such SpinCo Employee and Former SpinCo Employee, as applicable, and none of Parent, the Parent Group and the Parent 401(k) Plan shall have any liability whatsoever with respect to such benefits.

Section 10.03. Employer 401(k) Plan Contributions. The Parent Group shall remain responsible for making all employer contributions under the Parent 401(k) Plan with respect to any SpinCo Employees or Former SpinCo Employees relating to periods prior to the Applicable 401(k) Date. In the event that the Applicable 401(k) Date occurs after the Local Transfer Date, SpinCo shall reimburse Parent for any employer contributions made under this Section 10.03 with respect to any SpinCo Employees or Former SpinCo Employees relating to the period beginning on the Local Transfer Date and ending on the Applicable 401(k) Date. On and after the Applicable 401(k) Date, the SpinCo Group shall be solely responsible for all employer contributions under the SpinCo 401(k) Plan with respect to any SpinCo Employees or Former SpinCo Employees.

Section 10.04. Limitation of Liability. For the avoidance of doubt, Parent shall have no responsibility for any failure of SpinCo to properly administer the SpinCo 401(k) Plan in accordance with its terms and applicable Law, including any failure to properly administer the accounts of SpinCo Employees and their respective beneficiaries, including accounts transferred over in accordance with Section 10.02, in such SpinCo 401(k) Plan.

Section 10.05. Non-U.S. Defined Contribution Plans. The treatment of each Parent Benefit Plan that is a defined contribution plan for the benefit of employees outside of the United States and in which any SpinCo Employee or Former SpinCo Employee participates (each, a "Non-U.S. DC Plan") shall be governed by the applicable Local Agreement; provided that if a Local Agreement does not address the treatment of an applicable Non-U.S. DC Plan, then Parent and SpinCo shall use commercially reasonable efforts to cause such Non-U.S. DC Plan to be treated in a manner that is consistent with applicable Law and, to the extent practicable, the general principles of this Article 10.

ARTICLE 11
NONQUALIFIED DEFERRED COMPENSATION

Section 11.01. SpinCo Nonqualified Deferred Compensation Plans. Notwithstanding Section 2.09 or any other provision of this Agreement to the contrary, following the Local Transfer Date, the Parent Group shall retain sponsorship of the Parent Nonqualified Deferred Compensation Plans and all assets and Liabilities arising out of or relating to the Parent Nonqualified Deferred Compensation Plans. Without limiting the generality of Section 2.10, effective as of the Distribution Date or such other date as agreed to between Parent and SpinCo, SpinCo shall establish a new nonqualified deferred compensation plan (or plans) sponsored by SpinCo (together, the "SpinCo Nonqualified Deferred Compensation Plans"). The SpinCo Nonqualified Deferred Compensation Plans shall honor all deferral elections by SpinCo Employees for the plan year in which the Distribution occurs, and for the 2021 plan year, the SpinCo Nonqualified Deferred Compensation Plans shall also honor terms and conditions that are substantially similar to the terms and conditions of the corresponding Parent Nonqualified Deferred Compensation Plan (including matching and automatic employer contributions). The Parties hereto agree that none of the transactions contemplated by the Separation Agreement or any of the Ancillary Agreements, including this Agreement, will trigger a payment or distribution of compensation under the Parent Nonqualified Deferred Compensation Plans or the SpinCo Nonqualified Deferred Compensation Plans to any SpinCo Employee or Former SpinCo Employee (and their respective beneficiaries) and, consequently, that the payment or distribution of any compensation to which any SpinCo Employee or Former SpinCo Employee (and their respective beneficiaries) is entitled under the Parent Nonqualified Deferred Compensation Plans will occur upon the time or times provided for under the applicable Parent Nonqualified Deferred Compensation Plans and such SpinCo Employee's or Former SpinCo Employee's deferral elections. Without limiting the generality of Section 4.01 and subject to Section 17.09, Parent and SpinCo shall use commercially reasonable efforts to cooperate in administering the Parent Nonqualified Deferred Compensation Plans for purposes of satisfying any obligations relating to the participation of any SpinCo Employee or Former SpinCo Employee, including by exchanging any necessary participant records and engaging recordkeepers, administrators, providers, insurers and other third parties. Prior to the Local Transfer Date, Parent shall provide SpinCo with a list of SpinCo Employees and Former SpinCo Employees who are participants in the Parent Nonqualified Deferred Compensation Plans. If a SpinCo Employee on such list terminates employment with the SpinCo Group, SpinCo shall, or shall cause a member of the SpinCo Group to, provide written notice to Parent of such employee's termination of employment within twenty (20) days of such employee's termination of employment. Notwithstanding the foregoing, SpinCo shall be liable and solely responsible, and shall reimburse Parent, for any Liabilities of the Parent Group arising with respect to the Parent Nonqualified Deferred Compensation Plans as a result of any failure by a member of the SpinCo Group to provide proper notice of an employment termination that results in the inability of Parent to administer the Parent Nonqualified Deferred Compensation Plans in compliance with Section 409A of the Code with respect to any SpinCo Employee or Former SpinCo Employee who participated thereunder. For the avoidance of doubt, each SpinCo Nonqualified Deferred Compensation Plan shall be a SpinCo Benefit Plan.

Section 11.02. No Transfer of Assets. Except as required by applicable Law, nothing in this Agreement shall require any member of the Parent Group or the Parent Nonqualified Deferred Compensation Plans to transfer assets or reserves with respect to the Parent Nonqualified Deferred Compensation Plans to any member of the SpinCo Group or the SpinCo Nonqualified Deferred Compensation Plans.

Section 11.03. Employer Nonqualified Deferred Compensation Plan Contributions. The Parent Group shall remain responsible for making all employer contributions under the Parent Nonqualified Deferred Compensation Plans with respect to any SpinCo Employees or Former SpinCo Employees relating to periods prior to the Distribution Date. SpinCo shall reimburse Parent for any employer contributions made under this Section 11.03 under the Parent Nonqualified Deferred Compensation Plans with respect to any SpinCo Employees or Former SpinCo Employees relating to the period beginning on the Local Transfer Date and ending on the Distribution Date. Any such contributions that are unvested as of the Local Transfer Date shall continue to vest in accordance with their terms. On and after the Local Transfer Date, the SpinCo Group shall be responsible for all employer contributions under the Parent Nonqualified Deferred Compensation Plans and SpinCo Nonqualified Deferred Compensation Plans with respect to any SpinCo Employees or Former SpinCo Employees.

Section 11.04. Limitation of Liability. Parent shall have no responsibility for any failure of the SpinCo Group to properly administer the SpinCo Nonqualified Deferred Compensation Plans in accordance with their terms and applicable Law, including any failure to properly administer the accounts of SpinCo Employees or Former SpinCo Employees and their respective beneficiaries in such SpinCo Nonqualified Deferred Compensation Plans.

ARTICLE 12
ACCRUED LEAVE

Section 12.01. Vacation, Holidays, Annual Leave and Other Leaves. On the Local Transfer Date, the SpinCo Group shall assume and be solely responsible for all Liabilities for vacation, holiday, annual leave and/or other leave accruals and benefits with respect to each SpinCo Employee. In addition, (a) for purposes of determining the number of vacation, holiday, annual leave or other leave days to which such employee shall be entitled following the Local Transfer Date, SpinCo and the applicable members of the SpinCo Group shall assume and honor all such days accrued or earned but not yet taken by such employee, if any, as of the Local Transfer Date and (b) to the extent that such employee is entitled under any applicable Law or any policy of his or her respective employer that is a member of the Parent Group, as the case may be, to be paid for any vacation, holiday, annual leave or other leave days accrued or earned but not yet taken by such employee as of the Local Transfer Date, the SpinCo Group shall assume and be solely responsible for the Liability to pay for such days.

ARTICLE 13
EQUITY COMPENSATION

Section 13.01. SpinCo Equity Incentive Plan. Prior to the Distribution, Parent shall cause SpinCo to adopt an equity incentive plan or program, to be effective immediately prior to the Distribution (the "SpinCo Equity Incentive Plan"), and Parent shall approve the SpinCo Equity Incentive Plan and forms of award agreements for use thereunder (the "SpinCo Award Agreement") as the sole stockholder of SpinCo.

Section 13.02. Treatment of Outstanding Parent Equity Awards. The Parties shall, and shall cause their respective Subsidiaries to, use commercially reasonable efforts to take all actions necessary or appropriate so that each outstanding Parent Equity Award granted under any Parent Equity Plan shall be adjusted as set forth in this Section 13.02 as of immediately prior to the Distribution.

(a) Parent Restricted Stock Units Held by Parent Employees, Former Parent Employees or Former SpinCo Employees. Each Parent Restricted Stock Unit held by a Parent Employee, Former Parent Employee or Former SpinCo Employee that is outstanding as of immediately prior to the Distribution Date shall be subject to the same terms and conditions after the Distribution Date as the terms and conditions applicable to such Parent Restricted Stock Unit immediately prior to the Distribution Date; provided, however, that from and after the Distribution Date, the number of shares of Parent Common Stock to which such Parent Restricted Stock Unit relates shall be equal to the product, rounded up to the nearest whole number of shares, obtained by multiplying (i) the number of shares of Parent Common Stock to which such Parent Restricted Stock Unit related immediately prior to the Distribution Date by (ii) the Parent Equity Award Ratio.

(b) Parent Restricted Stock Units Held by SpinCo Employees. Each Parent Restricted Stock Unit held by a SpinCo Employee that is outstanding as of immediately prior to the Distribution Date shall be converted into a SpinCo Restricted Stock Unit and shall otherwise be subject to the same terms and conditions (including the applicable vesting schedule) after the Distribution Date as the terms and conditions applicable to such Parent Restricted Stock Unit immediately prior to the Distribution Date; provided, however, that from and after the Distribution Date, the number of shares of SpinCo Common Stock to which such SpinCo Restricted Stock Unit relates shall be equal to the product, rounded up to the nearest whole number of shares, obtained by multiplying (i) the number of shares of Parent Common Stock to which such Parent Restricted Stock Unit related immediately prior to the Distribution Date by (ii) the SpinCo Equity Award Ratio.

(c) Parent Performance Share Units Held by Parent Employees, Former Parent Employees or Former SpinCo Employees. Each Parent Performance Share Unit held by a Parent Employee, Former Parent Employee or Former SpinCo Employee that is outstanding as of immediately prior to the Distribution Date shall be subject to the same terms and conditions (including the applicable vesting schedule and any performance conditions) after the Distribution Date as the terms and conditions applicable to such Parent Performance Share Unit immediately prior to the Distribution Date; provided, however, that from and after the Distribution Date (i) the target number of shares of Parent Common Stock to which such Parent Performance Share Unit relates shall be equal to the product, rounded up to the nearest whole number of shares, obtained by multiplying (A) the target number of shares of Parent Common Stock to which such Parent Performance Share Unit related immediately prior to the Distribution Date by (B) the Parent Equity Award Ratio; and (ii) the performance conditions applicable to each such Parent Performance Share Unit may be equitably adjusted, as determined by the Parent Compensation Committee, to reflect the Distribution.

(d) Parent Performance Share Units Held by SpinCo Employees. Each Parent Performance Share Unit held by a SpinCo Employee that is outstanding as of immediately prior to the Distribution Date shall be converted into a SpinCo Restricted Stock Unit subject solely to time-based vesting conditions and subject to the same terms and conditions (including the applicable vesting schedule, but not any performance conditions) after the Distribution Date as the terms and conditions applicable to such Parent Performance Share Unit immediately prior to the Distribution Date; provided, however, that from and after the Distribution Date the number of shares of SpinCo Common Stock to which such SpinCo Restricted Stock Unit relates shall be equal to the product, rounded up to the nearest whole number of shares, obtained by multiplying (i) the applicable Performance Share Unit Conversion Amount by (ii) the SpinCo Equity Award Ratio.

(e) Parent Options Held by Parent Employees, Former Parent Employees or Former SpinCo Employees. Each Parent Option, whether vested or unvested, held by a Parent Employee, Former Parent Employee or Former SpinCo Employee that is outstanding and unexercised as of immediately prior to the Distribution Date shall be subject to the same terms and conditions after the Distribution Date as the terms and conditions applicable to such Parent Option immediately prior to the Distribution Date; provided, however, that from and after the Distribution Date: (i) the number of shares of Parent Common Stock subject to such Parent Option shall be equal to the product, rounded down to the nearest whole number of shares, obtained by multiplying (A) the number of shares of Parent Common Stock subject to such Parent Option immediately prior to the Distribution Date by (B) the Parent Equity Award Ratio; and (ii) the per share exercise price of such Parent Option shall be equal to the quotient, rounded up to the nearest whole cent, obtained by dividing (A) the per share exercise price of such Parent Option immediately prior to the Distribution Date by (B) the Parent Equity Award Ratio.

(f) Parent Options Held by SpinCo Employees. Each Parent Option, whether vested or unvested, held by a SpinCo Employee that is outstanding as of immediately prior to the Distribution Date shall be converted into a SpinCo Option, and shall otherwise be subject to the same terms and conditions (including the applicable vesting schedule) after the Distribution Date as the terms and conditions applicable to such Parent Option immediately prior to the Distribution Date; provided, however, that from and after the Distribution Date: (i) the number of shares of SpinCo Common Stock subject to such SpinCo Option shall be equal to the product, rounded down to the nearest whole number of shares, obtained by multiplying (A) the number of shares of Parent Common Stock subject to such Parent Option immediately prior to the Distribution Date by (B) the SpinCo Equity Award Ratio; and (ii) the per share exercise price of such SpinCo Option shall be equal to the quotient, rounded up to the nearest whole cent, obtained by dividing (A) the per share exercise price of such Parent Option immediately prior to the Distribution Date by (B) the SpinCo Equity Award Ratio.

(g) Parent Restricted Stock Awards Held by Parent Employees, Former Parent Employees or Former SpinCo Employees. Each Parent Restricted Stock Award held by a Parent Employee, Former Parent Employee or Former SpinCo Employee that is outstanding as of immediately prior to the Distribution Date shall be subject to the same terms and conditions after the Distribution Date as the terms and conditions applicable to such Parent Restricted Stock Award immediately prior to the Distribution Date; provided, however, that from and after the Distribution Date, the number of shares of Parent Common Stock to which such Parent Restricted Stock Award relates shall be equal to the product, rounded up to the nearest whole number of shares, obtained by multiplying (i) the number of shares of Parent Common Stock to which such Parent Restricted Stock Award related immediately prior to the Distribution Date by (ii) the Parent Equity Award Ratio. Following the Distribution Date, Parent shall be responsible for the payment or settlement of any accrued dividends with respect to Parent Restricted Stock Awards held by Parent Employees, Former Parent Employees or Former SpinCo Employees, in accordance with the terms of the applicable Parent Restricted Stock Award.

(h) Parent Restricted Stock Awards Held by SpinCo Employees. Each Parent Restricted Stock Award held by a SpinCo Employee that is outstanding as of immediately prior to the Distribution Date shall be converted into a SpinCo Restricted Stock Award and shall otherwise be subject to the same terms and conditions (including the applicable vesting schedule) after the Distribution Date as the terms and conditions applicable to such Parent Restricted Stock Award immediately prior to the Distribution Date; provided, however, that from and after the Distribution Date, the number of shares of SpinCo Common Stock to which such SpinCo Restricted Stock Award relates shall be equal to the product, rounded up to the nearest whole number of shares, obtained by multiplying (i) the number of shares of Parent Common Stock to which such Parent Restricted Stock Award related immediately prior to the Distribution Date by (ii) the SpinCo Equity Award Ratio. Following the Distribution Date, SpinCo shall be responsible for the payment or settlement of any accrued dividends with respect to Parent Restricted Stock Awards (or the SpinCo Restricted Stock Awards into which they were converted) held by SpinCo Employees, in accordance with the terms of the applicable Parent Restricted Stock Award.

Section 13.03. Parent ESPP. The administrator of the Parent ESPP shall take all actions necessary and appropriate to provide that (a) SpinCo Employees who participate in the Parent ESPP shall not be eligible to participate in any future Offering Periods that begin following the Local Transfer Date and (b) any cash remaining in the Parent ESPP account of any SpinCo Employee after the Local Transfer Date shall be refunded to such SpinCo Employee without interest as soon as administratively practicable.

Section 13.04. Tax Reporting and Withholding for Equity-Based Awards. Unless otherwise required by applicable Law, (a) Parent (or one of its Subsidiaries) will be responsible for all income, payroll, fringe benefit, social security, payment-on-account and other Tax reporting relating to income of or otherwise owed by Parent Employees or Former Parent Employees from equity-based awards granted to such employees by Parent, (b) SpinCo (or one of its Subsidiaries) will be responsible for all income, payroll, fringe benefit, social security, payment-on-account and other Tax reporting related to or otherwise owed on income of SpinCo Employees or Former SpinCo Employees from equity-based awards granted to such employees by SpinCo, including equity-based awards described in this Article 13, (c) Parent (or one of its Subsidiaries) shall be responsible for remitting applicable Tax withholdings and related payments for equity awards granted by Parent and held by Parent Employees or Former Parent Employees to each applicable taxing authority and (d) SpinCo (or one of its Subsidiaries) shall be responsible for remitting applicable Tax withholdings and related payments for equity awards granted by SpinCo and held by SpinCo Employees or Former SpinCo Employees, including equity-based awards described in this Article 13 to each applicable taxing authority. In all cases, Parent and SpinCo (and any applicable Parent Subsidiary and SpinCo Subsidiary) agree to cooperate to ensure that such obligations are met. Parent and SpinCo agree to enter into any necessary agreements regarding the subject matter of this Section 13.04 to enable Parent and SpinCo (and any applicable Parent and SpinCo Subsidiaries) to fulfill their respective obligations hereunder and under applicable Law.

Section 13.05. Parent and SpinCo Income Tax Deductions in Respect of Certain Equity Awards and Compensation. Unless otherwise required by applicable Law, solely the member of the Group for which the relevant individual is currently employed or, if such individual is not currently employed by a member of the Group, was most recently employed, in either case, at the time of the vesting, exercise, disqualifying disposition, payment or other relevant taxable event, as appropriate, in respect of equity awards and other compensation shall be entitled to claim any income tax deduction in respect of such equity awards and other compensation on its respective tax return associated with such event.

Section 13.06. Compliance. For purposes of this Article 13, and notwithstanding the use of the phrase “same terms” or anything else to the contrary throughout this article, Parent and SpinCo reserve the right to impose other requirements or different terms and conditions on any Parent or SpinCo equity awards and Parent or SpinCo stock incentive compensation plans, or to treat the equity awards in a different manner, to the extent that either of them determines it is necessary or advisable for legal or administrative reasons, including for compliance with non-U.S. laws and regulations and to mitigate the potential impact of non-U.S. tax consequences on the equity awards.

ARTICLE 14
NON-U.S. EMPLOYEES

Section 14.01. Treatment of Non-U.S. Employees. Except as otherwise agreed by the Parties or as set forth in this Agreement, Parent Employees and SpinCo Employees who reside outside of the United States or are otherwise subject to non-U.S. Law ("Non-U.S. Employees") and their related benefits and Liabilities shall be treated under this Agreement in the same manner as the Parent Employees and SpinCo Employees, respectively, who are residents of the United States and are not subject to non-U.S. Law; provided that, notwithstanding anything to the contrary in this Agreement, all actions taken with respect to such Non-U.S. Employees shall be subject to and accomplished in accordance with applicable Law in the custom of the applicable jurisdictions and may be effectuated by implementation of a Local Agreement.

ARTICLE 15
COOPERATION; ACCESS TO INFORMATION; LITIGATION; CONFIDENTIALITY

Section 15.01. Cooperation. Following the date of this Agreement, the Parties shall, and shall cause their respective Subsidiaries to, use commercially reasonable efforts to cooperate with respect to any employee compensation or benefits matters that either Party reasonably determines require the cooperation of the other Party in order to accomplish the objectives of this Agreement. Without limiting the generality of the preceding sentence, the Parent Group and the SpinCo Group shall cooperate in connection with (a) any audits of any Benefit Plan with respect to which such Party may have Information, (b) any audits of their respective payroll services (whether by a Governmental Authority in the United States or otherwise) in connection with the services provided by one Party to the other Party and (c) the notification and consultation with labor unions and other employee representatives of employees of the Parent Group and the SpinCo Group. With respect to each Benefit Plan, the obligations of the Parent Group and the SpinCo Group to cooperate pursuant to this Section 15.01 or any other provision of this Agreement shall remain in effect until the latest of (i) the date on which all audits of such Benefit Plan with respect to which a Party may have Information have been completed, (ii) the date the applicable statute of limitations with respect to such audits has expired and (iii) the date on which the Parent Group discharges all obligations to SpinCo Employees, Former SpinCo Employees and their respective beneficiaries under such Benefit Plan.

Section 15.02. Access to Information; Privilege; Confidentiality. Except as would be inconsistent with Section 15.01 or any other provision of this Agreement relating to cooperation, Article VII of the Separation Agreement is hereby incorporated into this Agreement *mutatis mutandis*.

ARTICLE 16
TERMINATION

Section 16.01. Termination. This Agreement may be terminated by Parent at any time, in its sole discretion, prior to the Distribution; provided, however, that this Agreement shall automatically terminate upon the termination of the Separation Agreement in accordance with its terms.

Section 16.02. Effect of Termination. In the event of any termination of this Agreement prior to the Distribution, none of the Parties (or any of its directors or officers) shall have any Liability or further obligation to any other Party under this Agreement.

ARTICLE 17
MISCELLANEOUS

Section 17.01. Incorporation of Indemnification Provisions of Separation Agreement. In addition to the specific indemnification provisions in this Agreement, Article VI of the Separation Agreement is hereby incorporated into this Agreement *mutatis mutandis*.

Section 17.02. Additional Indemnification. If the Parties determine that the SpinCo Group is unable to establish any SpinCo Benefit Plan as of the Local Transfer Date (or the applicable Welfare Plan Date or such other date specified in this Agreement, if applicable) that it is required under this Agreement to establish by such date, then the SpinCo Group shall indemnify, defend and hold harmless each of the Parent Indemnitees from and against any and all Liabilities of the Parent Indemnitees relating to, arising out of or resulting from participation by any SpinCo Employee or Former SpinCo Employee on or after the Local Transfer Date (or the applicable Welfare Plan Date) in any such Parent Benefit Plan due to the failure to timely establish such SpinCo Benefit Plan or Plans. In addition, the SpinCo Group shall indemnify, defend and hold harmless each of the Parent Indemnitees from and against any and all Liabilities of the Parent Indemnitees relating to, arising out of or resulting from any claim by any SpinCo Employee or Former SpinCo Employee that Parent or any other member of the Parent Group is a "joint employer" or "co-employer" (or term of similar meaning under applicable Law) with SpinCo or any other member of the SpinCo Group or any such SpinCo Employee or Former SpinCo Employee on or after the Local Transfer Date (including, except as otherwise specifically provided in this Agreement or the TSA, with respect to a claim that any of the foregoing are entitled to participate in any Parent Benefit Plan at any time on or after the Local Transfer Date), except to the extent that any member of the Parent Group has taken affirmative and substantial action to treat a SpinCo Employee as a Parent Employee under the terms of this Agreement.

Section 17.03. Further Assurances. Article IX of the Separation Agreement is hereby incorporated into this Agreement *mutatis mutandis*.

Section 17.04. Administration. SpinCo hereby acknowledges that Parent has provided or will provide administration services for certain SpinCo Benefit Plans, and SpinCo agrees to assume sole responsibility for the administration and administration costs of such plans and each other SpinCo Benefit Plan. The Parties shall cooperate in good faith to complete such transfer of responsibility on commercially reasonable terms and conditions effective no later than the Local Transfer Date, the applicable Welfare Plan Date or the Workers' Compensation Claim Date.

Section 17.05. Third-Party Beneficiaries. Except as otherwise may be provided in the Separation Agreement with respect to the rights of any Parent Indemnitee or SpinCo Indemnitee, (a) no provisions of this Agreement shall be construed as a limitation on the right of the Parent Group or the SpinCo Group to amend any Benefit Plan or terminate its participation therein that the Parent Group or the SpinCo Group would otherwise have under the terms of such Benefit Plan or otherwise, (b) the provisions of this Agreement are solely for the benefit of the Parties and are not intended to confer any rights or remedies hereunder upon any Person except the Parties and (c) there are no third-party beneficiaries of this Agreement, and this Agreement shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right. Notwithstanding anything to the contrary set forth in this Agreement, no provisions of this Agreement shall be deemed to guarantee employment for any period of time for, or preclude the ability of Parent or any member of the Parent Group or SpinCo or any member of the SpinCo Group to terminate any employee or individual service provider for any reason.

Section 17.06. Employment Tax Reporting Responsibility. To the extent applicable, the Parties hereby agree to follow the standard procedure for U.S. employment tax withholding as provided in Section 5 of Rev. Proc. 2004-53, I.R.B. 2004-35.

Section 17.07. Data Privacy. The Parties agree that any applicable data privacy Laws and any other obligations of the SpinCo Group and the Parent Group to maintain the confidentiality of any Information relating to employees in accordance with applicable Law shall govern the disclosure of Information relating to employees among the Parties under this Agreement. Parent and SpinCo shall use commercially reasonable efforts to ensure that they each have in place appropriate technical and organizational security measures to protect the personal data of the SpinCo Employees and Former SpinCo Employees. Additionally, each Party shall sign any documentation as may be required to comply with applicable data privacy Laws.

Section 17.08. Section 409A. The Parent Group and the SpinCo Group shall cooperate in good faith and use commercially reasonable efforts to ensure that the transactions contemplated by the Separation Agreement and the Ancillary Agreements, including this Agreement, will not result in adverse tax consequences under Section 409A of the Code to any Parent Employee, Former Parent Employee, SpinCo Employee or Former SpinCo Employee (or any of their respective beneficiaries) in respect of their respective benefits under any Benefit Plan.

Section 17.09. Confidentiality. Section 7.09 of the Separation Agreement is hereby incorporated into this Agreement *mutatis mutandis*.

Section 17.10. Employment Records. As of the Local Transfer Date, the Parent Group shall provide to the SpinCo Group employment records for SpinCo Employees and Former SpinCo Employees or copies thereof to the extent such records or copies are required to be provided to the SpinCo Group under applicable Law or the terms of this Agreement or the applicable Local Agreement or as otherwise agreed between the Parties, and the SpinCo Group shall accept and take delivery of such records or copies as of the Local Transfer Date. The SpinCo Group shall indemnify and hold harmless the Parent Group from and against any and all losses incurred as a result of claims or threatened claims by any SpinCo Employee or Former SpinCo Employee relating to the disclosure or use of the employment records for any non-employment-related purpose.

Section 17.11. Additional Provisions. Article XI of the Separation Agreement is hereby incorporated into this Agreement *mutatis mutandis*.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

International Business Machines Corporation

By: /s/ Frank Sedlarcik
Name: Frank Sedlarcik
Title: Vice President, Assistant General Counsel and Secretary

Kyndryl Holdings, Inc.

By: /s/ Simon Beaumont
Name: Simon Beaumont
Title: President

Exhibit 10.4

EXECUTION VERSION

INTELLECTUAL PROPERTY AGREEMENT

by and between

International Business Machines Corporation

and

Kyndryl, Inc.

Dated as of November 2, 2021

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RECITALS

WHEREAS, in connection with the contemplated Spin-Off and concurrently with the execution of this Agreement, Parent and Kyndryl Holdings, Inc. are entering into a Separation and Distribution Agreement (the "Separation Agreement");

WHEREAS, pursuant to the Separation Agreement and the other Ancillary Agreements, as of the Distribution Date, the Parent IP has been allocated to the Parent Group and the SpinCo IP has been allocated to the SpinCo Group;

WHEREAS, the Parties wish to record the transfers of any registrations or applications of Parent IP and SpinCo IP, as applicable, to the extent the ownership thereof has transferred from a member of the Parent Group to a member of the SpinCo Group, or vice versa, pursuant to the Separation Agreement or any other Ancillary Agreement;

WHEREAS, it is the intent of the Parties that Parent grant to the SpinCo Group certain licenses to Intellectual Property as set forth herein, subject to the terms and conditions set forth in this Agreement; and

WHEREAS, it is the intent of the Parties that SpinCo grant to the Parent Group certain licenses to Intellectual Property as set forth herein, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01. Definitions. As used in this Agreement, the following terms have the meanings set forth below and herein, and the terms defined in Exhibits, Schedules and Annexes shall have the meanings set forth therein. Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to such terms in the Separation Agreement or any other Ancillary Agreement, as applicable.

"Bankruptcy Code" has the meaning set forth in Section 10.06.

"Copyrights" means all works of authorship, including common law rights and related registrations therefor, together with any moral rights related thereto.

"Divested Entity" has the meaning set forth in Section 8.02.

"Domain Names" means a unique string of characters or numbers used to identify a particular internet protocol address or uniform resource locator.

"Intellectual Property Assignment Agreements" has the meaning set forth in the US Contribution Agreement.

"Intellectual Property" means any of the following, as they exist anywhere in the world, whether registered or unregistered: (i) Patents, (ii) Trademarks, (iii) Domain Names, (iv) Copyrights, (v) Database Rights and (vi) Trade Secrets, including any intellectual property or proprietary rights similar to any of the foregoing prongs (i)-(vi). For the avoidance of doubt, "Intellectual Property" shall not include Contracts or other contractual rights (including license grants to or from Third Parties).

"Other Parent IP" means all Copyrights (other than Copyrights in Software, Databases and Documentation) and all Trade Secrets, in each case, owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution and used in the SpinCo Business, other than the Other SpinCo IP.

"Other SpinCo IP" means all Copyrights (other than Copyrights in Software, Databases and Documentation) and all Trade Secrets, in each case, owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution and exclusively related to the SpinCo Business.

"Parent Domain Names" means all Domain Names owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution, other than the SpinCo Domain Names.

"Parent Field of Use" means any and all businesses, operations, products and services.

"Parent IDs" means all invention disclosures owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution, other than the SpinCo IDs.

"Parent IP" means all Intellectual Property owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution, other than the SpinCo IP, including all (i) Parent Patents, (ii) the right to pursue and obtain Patent protection under the Parent IDs, (iii) Parent Trademarks, (iv) Parent Domain Names, (v) Copyrights in Parent Software and Licensed Documentation, (vi) Database Rights in Parent Databases and (vii) Other Parent IP.

"Parent Patents" means all Patents owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution, other than the SpinCo Patents. For the avoidance of doubt, "Parent Patents" includes the Patents identified on Schedule C and any other Patent that claims, or is entitled to claim, priority from any of the foregoing Patents.

"Parent Trademarks" means all Trademarks owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution, other than the SpinCo Trademarks.

"Party" means either party hereto, and "Parties" means both parties hereto.

"Patent Assignment Agreement" has the meaning set forth in the US Contribution Agreement.

"Patent Cross License Agreement" means that certain Patent Cross License Agreement, dated as of the date hereof, by and between Parent and SpinCo.

"Patents" means all patents and patent applications throughout the world, including reissues, continuations, divisionals and continuations-in-part, utility models and design patents and registrations, including typeface design patents and registrations.

"SpinCo Domain Names" means the Domain Names identified on Schedule A.

"SpinCo Field of Use" means the conduct of the SpinCo Business as conducted immediately prior to the Distribution, together with natural extensions and evolutions thereof.

"SpinCo IDs" means the Delayed Transfer IDs (as such term is defined in the US Contribution Agreement).

"SpinCo IP" means (i) the SpinCo Patents, (ii) the right to pursue and obtain Patent protection under the SpinCo IDs, (iii) the SpinCo Trademarks, (iv) the SpinCo Domain Names, (v) Copyrights in the Assigned Software and Assigned Documentation, (vi) Database Rights in the Assigned Databases and (vii) the Other SpinCo IP.

"SpinCo Patents" means (i) the Closing Date Patents (as such term is defined in the US Contribution Agreement) and (ii) the Delayed Transfer Patents (as such term is defined in the US Contribution Agreement).

"SpinCo Trademarks" means the Trademarks identified on Schedule B.

"Third Party" means any Person (including any Governmental Authority) who is not a member of the Parent Group or the SpinCo Group.

"Trade Secrets" means rights in information and data that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

"Trademarks" means a word, name, symbol, color, sound, or other device (or any combination thereof) used to indicate the source or origin of goods or services and to distinguish the goods or services of one party from those of another, including any brand names, logos, certification marks, collective marks, trade dress, tradenames and other indications of origin, all registrations in any jurisdiction of, and applications in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or application, together with all goodwill associated therewith.

"US Contribution Agreement" means that certain Agreement relating to the contribution of certain assets and assumption of certain liabilities of International Business Machines Corporation, dated as of September 1, 2021, by and between Parent and SpinCo.

ARTICLE II
INTELLECTUAL PROPERTY ASSIGNMENT

Section 2.01. Intellectual Property Assignment Agreements. In order to carry out the intent of the Parties with respect to the recordation of the transfers of any registrations or applications of SpinCo IP, to the extent the ownership thereof has transferred from a member of the Parent Group to a member of the SpinCo Group, pursuant to the Separation Agreement, the US Contribution Agreement or any other Ancillary Agreement, the Parties have executed intellectual property assignment agreements in the forms substantially similar to the Intellectual Property Assignment Agreements.

Section 2.02. Recordation. The relevant assignee Party shall have the sole responsibility, at its sole cost and expense, to file any Intellectual Property Assignment Agreements, including any short form intellectual property assignments attached thereto or such additional case specific assignments as deemed appropriate or necessary under applicable Laws, with the appropriate Governmental Authorities as required to record the transfer of any registrations or applications of SpinCo IP that is allocated under the Separation Agreement or any other Ancillary Agreement (including, for clarity, the US Contribution Agreement), as applicable, and the relevant assignor Party hereby consents to such recordation.

Section 2.03. Further Assurances.

(a) In addition to the actions specifically provided for elsewhere in this Agreement, each of the Parties shall use reasonable best efforts, prior to, on and after the Distribution Date, 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 and agreements to consummate, and make effective, the transactions contemplated by this Agreement.

(b) Without limiting the foregoing, prior to, on and after the Distribution Date, each Party shall cooperate with the other Party, without any further consideration, but at the expense of the requesting Party, (i) to execute and deliver, or use reasonable best efforts to execute and deliver, or cause to be executed and delivered, all instruments, including any instruments of conveyance, assignment and transfer as such Party may reasonably be requested to execute and deliver by the other Party, and (ii) to take, or cause to be taken, 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, in order to effectuate the provisions and purposes of this Agreement.

ARTICLE III
LICENSES FROM PARENT TO SPINCO

Section 3.01. License Grants.

(a) Patents. No licenses to Patents are granted under this Agreement (including, for the avoidance of doubt, under Exhibit A hereto). The Parties acknowledge and agree that certain licenses with respect to the use by the SpinCo Group of certain Parent Patents shall be set forth in the Patent Cross License Agreement.

(b) Software and Databases. The Parties acknowledge and agree that certain licenses with respect to the use by the SpinCo Group of certain Parent Software and Parent Databases are set forth in Exhibit A hereto.

(c) Trademarks and Domain Names. No licenses to Domain Names are granted under this Agreement. The Parties acknowledge and agree that certain terms and conditions with respect to the SpinCo Group's transitional use of certain Parent Trademarks are set forth in Exhibit B.

(d) Other Parent IP.

(i) License Grant. Subject to the other terms and conditions of this Agreement, Parent, on behalf of itself and the Parent Group, hereby grants to SpinCo and the members of the SpinCo Group, under the Parent Group's Copyrights and Trade Secrets, a perpetual, irrevocable, sublicensable (subject to Section 3.01(d)(ii)), worldwide, non-exclusive, royalty-free, fully paid-up right and license to use, copy, reproduce, modify, display, perform, distribute, translate into any language or form, combine, transmit, and prepare and distribute Derivative Works, copies, reproductions, translations, combinations, and modifications of the Other Parent IP, solely as and to the extent such Other Parent IP is used by the SpinCo Group in the SpinCo Field of Use.

(ii) Sublicensing. The license granted in Section 3.01(d)(i) to the SpinCo Group includes the right to grant sublicenses within the scope of such license only to members of the SpinCo Group, and, without any further right to sublicense (except as necessary to provide products and services to customers of the SpinCo Group within the SpinCo Field of Use, solely for the benefit of such customers), to their respective (i) contractors, distributors, manufacturers, resellers, and other service providers, in each case solely within the SpinCo Field of Use, and (ii) End Users and customers, in each case solely in connection with the use of products and services within the SpinCo Field of Use or otherwise as necessary to provide products and services to customers of the SpinCo Business within the SpinCo Field of Use, for the benefit of such customers; provided, however, that the SpinCo Group may only sublicense such rights pursuant to terms and conditions as protective as those under which it licenses its own Intellectual Property of a similar nature and value, and in any event under terms and conditions that provide for commercially reasonable protection for the confidential and proprietary elements of the Other Parent IP. SpinCo shall cause all members of the SpinCo Group to comply with the terms set forth in this Section 3.01(d)(ii). The SpinCo Group shall remain liable for any breach or default of the applicable terms and conditions of this Agreement by any of its sublicensees.

(e) Internet Protocol Addresses. No licenses to internet protocol addresses are granted under this Agreement. The Parties acknowledge and agree that certain terms and conditions with respect to the SpinCo Group's transitional use of certain internet protocol addresses are set forth in Exhibit D.

ARTICLE IV
LICENSES FROM SPINCO TO PARENT

Section 4.01. License Grants.

(a) Patents. No licenses to Patents are granted under this Agreement (including, for the avoidance of doubt, under Exhibit A hereto). The Parties acknowledge and agree that certain licenses with respect to the use by the Parent Group of certain SpinCo Patents shall be set forth in the Patent Cross License Agreement.

(b) Software and Databases. The Parties acknowledge and agree that certain licenses with respect to the use and retention of rights by the Parent Group of certain Assigned Software, Assigned Databases and Assigned Documentation are set forth in Exhibit A hereto.

(c) Trademarks and Domain Names. The Parties acknowledge and agree that no licenses are granted to the Parent Group in this Agreement with respect to any Trademarks or Domain Names.

(d) Other SpinCo IP.

(i) License Grant. Subject to the other terms and conditions of this Agreement, SpinCo, on behalf of itself and the SpinCo Group, hereby grants to Parent and the other members of the Parent Group, under the SpinCo Group's Copyrights and Trade Secrets, a perpetual, irrevocable, sublicensable (subject to Section 4.01(d)(ii)), worldwide, non-exclusive, royalty-free, fully paid-up right and license to use, copy, reproduce, modify, display, perform, distribute, translate into any language or form, combine, transmit, and prepare and distribute Derivative Works, copies, reproductions, translations, combinations, and modifications of the Other SpinCo IP, solely as and to the extent such Other SpinCo IP is used by the Parent Group in the Parent Field of Use.

(ii) Sublicensing. The license granted in Section 4.01(d)(i) to the Parent Group includes the right to grant sublicenses within the scope of such license only to members of the Parent Group, and, without any further right to sublicense (except as necessary to provide products and services to customers of the Parent Group within the Parent Field of Use, solely for the benefit of such customers), to their respective (i) contractors, distributors, manufacturers, resellers, and other service providers, in each case solely within the Parent Field of Use, and (ii) End Users and customers, in each case solely in connection with the use of products and services within the Parent Field of Use or otherwise as necessary to provide products and services to customers of the Parent Business within the Parent Field of Use, for the benefit of such customers; provided, however, that the Parent Group may only sublicense such rights pursuant to terms and conditions as protective as those under which it licenses its own Intellectual Property of a similar nature and value, and in any event under terms and conditions that provide for commercially reasonable protection for the confidential and proprietary elements of the Other SpinCo IP. Parent shall cause all members of the Parent Group to comply with the terms set forth in this Section 4.01(d)(ii). The Parent Group shall remain liable for any breach or default of the applicable terms and conditions of this Agreement by any of its sublicensees.

(e) Internet Protocol Addresses. The Parties acknowledge and agree that no licenses are granted to the Parent Group in this Agreement with respect to any internet protocol addresses.

ARTICLE V
ADDITIONAL INTELLECTUAL PROPERTY RELATED MATTERS

Section 5.01. Ownership. The Party receiving the license hereunder acknowledges and agrees that the Party (or the applicable member of its Group) granting the license is the sole and exclusive owner of the Intellectual Property rights so licensed.

Section 5.02. Licenses. Any license of Intellectual Property by either Party or any member of its Group to the other Party or any member of its Group pursuant to ARTICLE III, ARTICLE IV or Exhibit A hereto, respectively, shall be subject to the applicable licenses, covenants and restrictions set forth herein or therein.

Section 5.03. No License. No license, immunity or other right is granted pursuant to this Agreement by either Party to the other Party, either directly or by implication, estoppel, or otherwise, under any Intellectual Property right, other than as expressly set forth in this Agreement, and all other rights under any Intellectual Property licensed to a Party or the members of its Group hereunder are expressly reserved by the Party granting the license.

Section 5.04. Corrections to Schedules and Annexes. The Parties acknowledge and agree that, in the event that either Party notifies the other Party within twelve (12) months following the Distribution that there was an inadvertent omission or inclusion of any item in any Schedule or Annex to this Agreement (including any Schedule or Annex to an Exhibit hereto), the Parties agree to promptly work in good faith to modify such Schedule or Annex so that it accurately reflects the intent of the Parties as of the Distribution. Any such modification to any Schedule or Annex made pursuant to this Section 5.04 shall be treated by the Parties for all purposes as if it had been included on such Schedule or Annex as of the Distribution, except as otherwise required by applicable Law.

Section 5.05. No Obligation To Prosecute, Maintain or Enforce Intellectual Property. Except as expressly set forth in this Agreement, no Party or any member of its Group shall have any obligation to seek, perfect or maintain any protection for any of its Intellectual Property. Without limiting the generality of the foregoing, except as expressly set forth in this Agreement, no Party or any member of its Group shall have any obligation to file any Patent application, to prosecute any Patent, or secure any Patent rights or to maintain any Patent in force. Neither Party shall have any obligation hereunder to institute any action or suit against Third Parties for infringement of any of its Intellectual Property or to defend any action or suit brought by a Third Party which challenges or concerns the validity of any of its Intellectual Property. Neither Party shall have any right to institute any action or suit against Third Parties for infringement of any of the other Party's Intellectual Property.

Section 5.06. Improvements. Neither Party nor any member of its Group shall have any obligation under this Agreement to disclose or license to the other Party any Derivative Works or other improvements made by or on behalf of such Party or any member of its Group (i) to any Intellectual Property owned by such Party or its Group or (ii) to the extent permitted under this Agreement, to any Intellectual Property licensed to such Party or its Group hereunder.

Section 5.07. No Technical Assistance. Neither Party or any member of its Group shall be required under this Agreement to furnish, disclose, deliver or otherwise provide copies of or access to any Software, Databases, Documentation, Trade Secrets, or embodiments of any other Intellectual Property. Neither Party or any member of its Group shall be required under this Agreement to provide (i) any support or maintenance to the other Party or its customers, (ii) any technical assistance, consultation, training, or other support for installation, enhancement or maintenance or (iii) any assistance with respect to adding, creating or modifying any encryption functionality.

Section 5.08. Data Privacy and Security Terms. SpinCo (on behalf of itself and each other member of the SpinCo Group) acknowledges and agrees that any use of or access to any information or data assigned or licensed to SpinCo or any member of its Group hereunder, or to which SpinCo or any member of its Group has access to hereunder, shall comply with the requirements set forth in Exhibit C.

ARTICLE VI
CONFIDENTIAL INFORMATION

Section 6.01. Confidentiality. All confidential Information of a Party disclosed to the other Party under this Agreement shall be deemed Specified Confidential Information (as that term is defined in the Separation Agreement), shall be subject to the provisions of Section 7.09 of the Separation Agreement, and may be used by the receiving Party pursuant to this Agreement for the sole and express purpose of effecting the licenses granted herein.

ARTICLE VII
LIMITATION ON LIABILITY AND WARRANTY DISCLAIMER

Section 7.01. Limitation on Liability. Without limiting the terms set forth in Section 6.10 of the Separation Agreement, none of Parent, SpinCo or any other member of either Group shall in any event have any Liability to the other or to any other member of the other's Group under this Agreement for any indirect, special, punitive or consequential damages, whether or not caused by or resulting from negligence or breach of obligations hereunder and whether or not informed of the possibility of the existence of such damages.

Section 7.02. Disclaimer of Representations and Warranties. Each of Parent (on behalf of itself and each other member of the Parent Group) and SpinCo (on behalf of itself and each other member of the SpinCo Group) understands and agrees that, except as expressly set forth in Section 10.01(c), no Party is representing or warranting in any way, including any implied warranties of merchantability, fitness for a particular purpose, title, registerability, allowability, enforceability or non-infringement, (i) as to any Intellectual Property licensed or assigned hereunder, (ii) as to the sufficiency of the Intellectual Property licensed or assigned hereunder for the conduct and operations of the SpinCo Business or the Parent Business, as applicable, (iii) as to the value or freedom from any Security Interests of, or any other matter concerning, any Intellectual Property licensed or assigned hereunder, (iv) as to the absence of any defenses or rights of setoff or freedom from counterclaim with respect to any claim or other Intellectual Property of any such Party, (v) as to the legal sufficiency of any assignment, document or instrument delivered hereunder to convey title to any Intellectual Property or thing of value upon the execution, delivery and filing hereof or thereof or (vi) as to whether the other Party will or will not require a license under other Intellectual Property to make, use, import, offer for sale, sell or otherwise transfer products or to otherwise operate under the licenses or rights granted herein. All Intellectual Property is being licensed or assigned on an "as is," "where is" basis and the respective licensees shall bear the economic and legal risks related to the use of the Parent IP in the SpinCo Business or the SpinCo IP in the Parent Business, as applicable.

ARTICLE VIII
TRANSFERABILITY AND ASSIGNMENT

Section 8.01. No Assignment or Transfer Without Consent. Except as expressly set forth in this Agreement, neither this Agreement nor any of the rights, interests or obligations under this Agreement, including the licenses granted pursuant to this Agreement, shall be assigned, in whole or in part, by operation of Law or otherwise by either Party without the prior written consent of the other Party. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns. Notwithstanding the foregoing, if any Party to this Agreement (or any of its successors or permitted assigns) (a) shall enter into a consolidation or merger transaction in which such Party is not the surviving entity and the surviving entity acquires or assumes all or substantially all of such Party's Assets, (b) shall transfer all or substantially all of such Party's Assets to any Person or (c) shall assign this Agreement to such Party's Affiliates, then, in each such case, the assigning Party (or its successors or permitted assigns, as applicable) shall ensure that the assignee or successor-in-interest expressly assumes in writing all of the obligations of the assigning Party under this Agreement, and the assigning Party shall not be required to seek consent, but shall provide written notice and evidence of such assignment, assumption or succession to the non-assigning Party. No assignment permitted by this Section 8.01 shall release the assigning Party from liability for the full performance of its obligations under this Agreement. For the avoidance of doubt, in no event will the licenses granted in this Agreement extend to products, services or other activities of the assignee existing on or before the date of the transaction described in clauses (a) or (b) of the preceding sentence, except to the extent that they were licensed under the terms of this Agreement prior to such transaction.

Section 8.02. Divested Businesses. In the event a Party divests a line of business or line of products or services by (a) spinning off a member of its Group, including by its sale or other disposition to a Third Party or by its public offering, (b) reducing ownership or control in a member of its Group so that it no longer qualifies as a member of its Group under this Agreement, (c) selling or otherwise transferring such line of business, products or services to a Third Party or (d) forming a joint venture with a Third Party with respect to such line of business, products or services (each such divested entity or line of business, products or services, a "Divested Entity"), the Divested Entity shall retain those licenses granted to it under this Agreement; provided, however, that the license shall be limited to the business, products or services (as applicable) of the Divested Entity as of the date of divestment and such natural extensions and evolutions thereof within the SpinCo Field of Use or the Parent Field of Use, as applicable. The retention of any license grants are subject to the Divested Entity's and, in the event it is acquired by a Third Party, such Third Party's execution and delivery to the non-transferring Party, within ninety (90) days of the effective date of such divestment, of a duly authorized, written undertaking, agreeing to be bound by the applicable terms of this Agreement. For the avoidance of doubt, (i) in no event will the licenses retained by a Divested Entity extend to products, services or other activities of a Third Party acquirer existing on or before the date of the divestment, except to the extent that they were licensed under the terms of this Agreement prior to such divestment and (ii) in the event that a Divested Entity owns any Intellectual Property licensed to the other Party under this Agreement, such Intellectual Property may be transferred or assigned with such Divested Entity subject to the terms and conditions of this Agreement.

ARTICLE IX
TERMINATION OF AGREEMENT

Section 9.01. Termination of Agreement by Both Parties. Subject to Section 9.02, this Agreement may not be terminated except by an agreement in writing signed by a duly authorized officer of each of the Parties.

Section 9.02. Termination of Agreement Prior to the Distribution. This Agreement may be terminated by Parent at any time, in its sole discretion, prior to the Distribution; provided, however, that this Agreement (and all licenses herein) shall automatically terminate upon the termination of the Separation Agreement in accordance with its terms.

Section 9.03. Effect of Termination of Agreement; Survival. In the event of any termination of this Agreement prior to the Distribution, neither Party (nor any member of their Group or any of their respective directors or officers) shall have any Liability or further obligation to the other Party or any member of its Group under this Agreement. Except with respect to termination of the Agreement under Section 9.02, notwithstanding anything in this Agreement to the contrary, ARTICLE I, ARTICLE III, ARTICLE IV, ARTICLE VI, ARTICLE VII, this Section 9.03, ARTICLE X and Exhibit A shall survive any termination of this Agreement.

ARTICLE X
MISCELLANEOUS

Section 10.01. Counterparts; Entire Agreement; Corporate Power.

(a) This Agreement may be executed in one or more counterparts, all of which counterparts shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each Party and delivered to the other Party. This Agreement may be executed by facsimile or PDF signature and scanned and exchanged by electronic mail, and such facsimile or PDF signature or scanned and exchanged copies shall constitute an original for all purposes.

(b) The Exhibits, Schedules and Annexes to this Agreement, whether attached hereto or referred to in this Agreement, are incorporated herein and made a part hereof. This Agreement and the Exhibits, Schedules and Annexes hereto and thereto 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 the subject matter hereof other than those set forth or referred to herein or therein. In the event of conflict or inconsistency between the provisions of this Agreement or the Separation Agreement, the provisions of this Agreement shall prevail and remain in full force and effect.

(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, or will constitute, a valid and binding agreement of it enforceable in accordance with the terms thereof.

Section 10.02. Additional Provisions. Sections 11.02 – 11.07 of the Separation Agreement are hereby incorporated into this Agreement *mutatis mutandis*.

Section 10.03. Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given (a) when delivered in person, (b) on the date received, if sent by a nationally recognized delivery or courier service, (c) upon written confirmation of receipt after transmittal by electronic mail or (d) upon the earlier of confirmed receipt or the fifth (5^{th}) business day following the date of mailing if sent by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to Parent, to:

International Business Machines Corporation
One New Orchard Road
Armonk, NY 10504
Attn: General Manager, Corporate Development and Strategy

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attn: Scott A. Barshay
Steven J. Williams
Laura C. Turano
Jonathan Ashtor
Email: sbarshay@paulweiss.com
swilliams@paulweiss.com
lturano@paulweiss.com
jashtor@paulweiss.com
Facsimile: 212-492-0040

If to SpinCo, to:

Kyndryl, Inc.
One Vanderbilt Avenue, 15th Floor
New York, NY 10017
Attn: Steve Kurlowecz, Chief IP Counsel

Either Party may, by notice to the other Party, change the address and identity of the Person to which such notices and copies of such notices are to be given. Each Party agrees that nothing in this Agreement shall affect the other Party's right to serve process in any other manner permitted by Law (including pursuant to the rules for foreign service of process authorized by the Hague Convention).

Section 10.04. Third Party Beneficiaries. Except as otherwise expressly set forth herein or as otherwise may be provided in the Separation Agreement with respect to the rights of any Parent Indemnitee or SpinCo Indemnitee, in his, her or its respective capacities as such, (a) the provisions of this Agreement are solely for the benefit of the Parties hereto and are not intended to confer upon any Person except the Parties hereto 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, cause of action or other right in excess of those existing without reference to this Agreement.

Section 10.05. Import and Export Control. Each Party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to certain countries, or for certain end uses or end users.

Section 10.06. Bankruptcy. The Parties acknowledge and agree that all rights and licenses granted by the other under or pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, as amended (the "Bankruptcy Code"), licenses of rights to "intellectual property" as defined under Section 101 of the Bankruptcy Code. The Parties agree that, notwithstanding anything else in this Agreement, Parent and the members of the Parent Group and SpinCo and the members of the SpinCo Group, as licensees of such Intellectual Property under this Agreement, shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code (including Parent's and the Parent Group members' and SpinCo's and the SpinCo Group members' right to the continued enjoyment of the rights and licenses respectively granted under this Agreement).

Section 10.07. Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court or arbitrator 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, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon any such determination, any such provision, to the extent determined to be invalid, void or unenforceable, shall be deemed replaced by a provision that such court determines is valid and enforceable and that comes closest to expressing the intention of the invalid, void or unenforceable provision.

Section 10.08. Expenses. Except as set forth on Schedule XXII to the Separation Agreement, as otherwise expressly provided in this Agreement or the Separation Agreement, (i) all Third Party fees, costs and expenses incurred by either the Parent Group or the SpinCo Group in connection with effecting the Spin-Off prior to or on the Distribution Date (but excluding, for the avoidance of doubt, any financing fees or interest payable in respect of any indebtedness incurred by SpinCo in connection with the Spin-Off), will be borne and paid by Parent and (ii) all Third Party fees, costs and expenses incurred by either the Parent Group or the SpinCo Group in connection with effecting the Spin-Off following the Distribution Date, will be borne and paid by the Party incurring such fee, cost or expense. For the avoidance of doubt, this Section 10.08 shall not affect each Party's responsibility to indemnify Parent Liabilities or SpinCo Liabilities, as applicable, arising from the transactions contemplated by the Distribution.

Section 10.09. Headings. The article, section and paragraph headings contained in this Agreement, including in the table of contents of this Agreement, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.10. Survival of Covenants. Except as expressly set forth in this Agreement, the covenants in this Agreement and the Liabilities for the breach of any obligations in this Agreement shall survive the Spin-Off and shall remain in full force and effect.

Section 10.11. Waivers of Default. No failure or delay of any Party (or the applicable member of its Group) in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. 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.

Section 10.12. Amendments. No provisions of this Agreement shall be deemed waived, amended, supplemented or modified by any Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of each Party.

Section 10.13. Interpretation. Words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires. The terms “hereof,” “herein,” “herewith” and words of similar import, unless otherwise stated, shall be construed to refer to this Agreement as a whole (including all of the Exhibits, Schedules and Annexes hereto) and not to any particular provision of this Agreement. Article, Section, Schedule or Annex references are to the articles, sections, schedules and annexes of or to this Agreement or the applicable Exhibit, unless otherwise specified. Any capitalized terms used in any Exhibit, Schedule or Annex to this Agreement but not otherwise defined therein shall have the meaning as defined in this Agreement. Any definition of or reference to any agreement, instrument or other document herein (including any reference herein to this Agreement) shall, unless otherwise stated, be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein, including in Section 10.12 above). The word “including” and words of similar import when used in this Agreement shall mean “including, without limitation,” unless the context otherwise requires or unless otherwise specified. The word “or” shall not be exclusive. 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.” All references to “$” or dollar amounts are to the lawful currency of the United States of America. References herein to any Law shall be deemed to refer to such law as amended, reenacted, supplemented or superseded in whole or in part and in effect from time to time and also to all rules and regulations promulgated thereunder. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any provisions hereof.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Intellectual Property Agreement to be executed by their duly authorized representatives.

INTERNATIONAL BUSINESS MACHINES CORPORATION

By: /s/ Frank Sedlarcik
Name: Frank Sedlarcik
Title: Vice President, Assistant General Counsel and Secretary

KYNDRYL, INC.

By: /s/ Simon Beaumont
Name: Simon Beaumont
Title: President

EXHIBIT A

SOFTWARE AND DATABASE LICENSE TERMS

ARTICLE I
DEFINITIONS

Section 1.01. Definitions. The following terms shall have the following meanings and, unless stated otherwise, all references to "Section," "Article" or "Annex" herein shall be to such Section, Article or Annex of this Exhibit A.

"Assigned Databases" means (i) the Databases set forth in Annex A and (ii) any other Databases owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution that were solely developed in the conduct of, or acquired solely for use in, the SpinCo Business at any time prior to the Distribution Date. For the avoidance of doubt, "Assigned Databases" shall not include any Third Party Commercial Databases.

"Assigned Documentation" means the Documentation (or portions thereof) owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution and exclusively used in conjunction with the Assigned Software or the Assigned Databases, including the folders set forth in Annex B.

"Assigned Restricted Research Assets" has the meaning set forth in Annex J.

"Assigned Restricted Software" has the meaning set forth in Annex J.

"Assigned Software" means (i) the SpinCo Software Programs, (ii) the SpinCo Research Assets and (iii) any other Software owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution that was solely developed in the conduct of, or acquired solely for use in, the SpinCo Business at any time prior to the Distribution Date, in each case, excluding Common Code, Parent JDK, Parent JRE, Parent Commercial Programs, or Internal Tools. A list containing registered Copyrights relating to the Assigned Software is set forth in Annex C. For the avoidance of doubt, "Assigned Software" shall not include any Third Party Commercial Software or OSS.

"Assigned Unrestricted Research Assets" means the SpinCo Research Assets that are identified in Annex H as "Unrestricted."

"Code Fragment" means a portion or portions of the Assigned Software that have been incorporated by the Parent Group or the SpinCo Group, prior to the Distribution Date, into Software other than the Assigned Software and (i) do not constitute the primary functionality of the Assigned Software and (ii) cannot, either separately or in aggregate, be used to reconstruct the Assigned Software.

"Commercial License Agreement" means Parent's standard license or support agreement for the Parent Commercial Programs.

"Common Code" means any Software library, package or module that is used by or in conjunction with both (i) any Parent Software (other than such library, package or module itself) and (ii) any Assigned Software, including the items set forth in Annex D. For the avoidance of doubt, "Common Code" shall not include any Third Party Commercial Software, or OSS.

"Database" means all databases, datasets, and collections and compilations of data, in any form or medium (including knowledge databases, customer lists and customer databases).

"Database Rights" means all Copyrights in Databases and any other statutory and common law rights in Databases under the laws of any jurisdiction, whether registered or unregistered, and any applications for registration therefor.

"Derivative Work" has the meaning ascribed to such term under the United States Copyright statute, 17 USC sec. 101.

"Documentation" means the tangible and electronic documentary materials, including marketing materials, used in conjunction with any Software or Database.

"End User" means an entity that uses a product or service for its own productive use or solely for its internal purposes and which does not remarket, sell, license, or lease the product or service to other Persons.

"Internal Tools" means any Software program that is (i) used to build, test, or develop both (x) any Parent Software (other such program itself) and (y) any Assigned Software or (ii) used internally in the conduct of the businesses of both the Parent Group and the SpinCo Group, in each case (i) and (ii), including the items set forth in Annex E. For the avoidance of doubt, "Internal Tools" shall not include any Third Party Commercial Software, or OSS.

"Licensed Databases" means the Parent Databases used in the SpinCo Business. For the avoidance of doubt, "Licensed Databases" shall not include any Third Party Commercial Databases.

"Licensed Documentation" means any Documentation owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution that is used in the SpinCo Business, other than the Assigned Documentation.

"Object Code" means computer programming code, substantially or entirely in binary form, which is intended to be directly executable by a computer after suitable processing but without the intervening steps of compilation or assembly, including byte code. For computer software written in non-compiled or scripting languages, such as JavaScript, the Object Code includes those files in the form in which they are distributed to End Users under a Commercial License Agreement.

"Open Source Software" or "OSS" means any Software of which: (i) the Source Code is available to the public for inspection and use by others and (ii) the terms and conditions of the applicable license agreement permit recipients of the program freely (and without the subsequent payment of any fee or royalty) to copy, modify and distribute the program's Source Code.

"Other Licensed Software" means the non-commercial Parent Software used in the SpinCo Business, other than any Common Code, Parent JDK, Parent JRE, Parent Commercial Programs, or Internal Tools. For the avoidance of doubt, "Other Licensed Software" shall not include any Third Party Commercial Software or OSS.

"Parent Commercial Programs" means any commercially available Software developed, marketed, offered or supported by the Parent Group at any time prior to the Distribution, including the items set forth in Annex F.

"Parent Databases" means all Databases owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution Date, other than the Assigned Databases.

"Parent JDK" means Parent's versions of the Java Development Kit derived from code originally provided by Sun Microsystems or Oracle America, Inc., which have been, as of the Distribution Date, used in the development of the Assigned Software.

"Parent JRE" means Parent's versions of the Java Runtime Environment derived from code originally provided by Sun Microsystems or Oracle America, Inc., which have been, as of the Distribution Date, used in conjunction with the Assigned Software.

"Parent Licensed Materials" means the Common Code, Other Licensed Software, Internal Tools, Licensed Databases and Licensed Documentation.

"Parent Software" means all Software owned by the Parent Group or the SpinCo Group as of immediately prior to the Distribution Date, other than the Assigned Software.

"PCP Requirements" has the meaning set forth in Section 4.04(a).

"Software" means any set of instructions that controls the operation of a computer or similar electronic device, including firmware embedded in hardware devices, code (including Source Code and Object Code), programs, operating systems, subroutines, and interfaces, including APIs, protocols and algorithm. For the avoidance of doubt, "Software" shall not include Databases or Documentation.

"Source Code" means computer programming code other than Object Code and includes code that may be displayed in a form readable and understandable by a programmer of ordinary skill, including any related code level system documentation, comments and procedural code, such as job control language.

"SpinCo Commercial Programs" means the commercially available SpinCo Software Programs identified in Annex G.

"SpinCo Licensed Materials" means the Assigned Software, including any Code Fragments therein, Assigned Documentation and Assigned Databases.

"SpinCo Research Assets" means the Software identified in Annex H.

"SpinCo Software Programs" means the Software identified in Annex I.

"Third Party Commercial Database" means any Database licensed to the Parent Group or the SpinCo Group by a Third Party as of immediately prior to the Distribution and used in the SpinCo Business.

"Third Party Commercial Software" means the Software to which any Third Party owns Intellectual Property rights, excluding OSS. Third Party Commercial Software also includes documents or logos (collectively, when used in regards to Third Party Commercial Software, "materials") to which one or more Third Parties own the Intellectual Property rights.

ARTICLE II
LICENSES FROM PARENT TO SPINCO

Section 2.01. Licenses to SpinCo Group. Subject to the other terms and conditions of this Agreement, Parent, on behalf of itself and the Parent Group, hereby grants to SpinCo and the members of the SpinCo Group, in each case solely within the SpinCo Field of Use:

(a) Common Code and Other Licensed Software. Under the Parent Group's Copyrights, a perpetual, irrevocable, sublicensable (subject to Section 2.02), worldwide, non-exclusive, royalty-free, fully paid-up right and license to use, copy, reproduce, modify, display, perform, distribute, translate into any language or form, combine with other Software or hardware, transmit, and prepare and distribute Derivative Works of the Common Code and the Other Licensed Software, in each case, solely as and to the extent such Common Code or such Other Licensed Software is used by the SpinCo Group in the SpinCo Field of Use; provided, however, that with respect to Common Code or Other Licensed Software for which the SpinCo Group is granted access to or possession of Object Code only, (i) the foregoing license shall not include any rights to modify, or prepare or distribute Derivative Works of, any Source Code of such Common Code or such Other Licensed Software and (ii) such Common Code and such Other Licensed Software shall not be distributed independently of the Assigned Software by or in conjunction with which it is used;

(b) Internal Tools. Under the Parent Group's Copyrights, a perpetual, irrevocable, sublicensable (subject to Section 2.02), worldwide, non-exclusive, royalty-free, fully paid-up right and license to:

(i) with respect to the Internal Tools for which the SpinCo Group is granted access to or possession of Source Code, use, copy, reproduce, modify, display, perform, distribute, translate into any language or form, combine with other Software or hardware, transmit, and prepare and distribute Derivative Works of such Internal Tools in each case, solely as and to the extent such Internal Tools are used by the SpinCo Group in the SpinCo Field of Use, and

(ii) with respect to all other Internal Tools, use, internally, reproduce, perform and display such Internal Tools in Object Code form only, (x) for the purpose of further building, testing and developing the Assigned Software or any other Software developed by the SpinCo Group after the Distribution within the SpinCo Field of Use or (y) for internal use by the SpinCo Group in the SpinCo Field of Use, in each case as applicable for such Internal Tool and without the right to prepare or distribute Derivative Works of such Internal Tool.

(c) Licensed Databases. Under the Parent Group's Database Rights, a perpetual, irrevocable, sublicensable (subject to Section 2.02), worldwide, non-exclusive, royalty-free, fully paid-up right and license to (i) use, copy, reproduce, modify, display, perform, distribute, translate into any language or form, combine with Software or hardware, transmit, and prepare and distribute Derivative Works of the Licensed Databases, solely as and to the extent such Licensed Databases are used by the SpinCo Group in the SpinCo Field of Use and (ii) extract data from the Licensed Databases and to re-utilize such data, solely as and to the extent such data is used by the SpinCo Group in the SpinCo Field of Use; and

(d) Licensed Documentation. Under the Parent Group's Copyrights, a perpetual, irrevocable, sublicensable (subject to Section 2.02), worldwide, non-exclusive, royalty-free, fully paid-up right and license to use, reproduce, distribute, perform, display, and prepare and distribute Derivative Works of the Licensed Documentation, solely as and to the extent such Licensed Documentation is used by the SpinCo Group in the SpinCo Field of Use; provided, however, that the Licensed Documentation associated with the Assigned Software or Assigned Databases, or any Derivative Works thereof shall not be used or distributed independently of products, services or releases that incorporate the Assigned Software, Assigned Databases or such Derivative Works thereof.

Section 2.02. Sublicensing. The licenses granted in Section 2.01 to the SpinCo Group include the right to grant sublicenses within the scope of such licenses only to members of the SpinCo Group, and, without any further right to sublicense (except as necessary to provide products and services to customers of the SpinCo Group within the SpinCo Field of Use, solely for the benefit of such customers), to their respective (i) contractors, distributors, manufacturers, resellers, and other service providers, in each case solely within the SpinCo Field of Use and (ii) End Users and customers, in each case solely in connection with the use of products and services within the SpinCo Field of Use or otherwise as necessary to provide products and services to customers of the SpinCo Business within the SpinCo Field of Use, for the benefit of such customers; provided, however, that the SpinCo Group may only sublicense such rights pursuant to terms and conditions as protective as those under which it licenses its own Software or Databases of a similar nature and value, and in any event terms and conditions that provide for commercially reasonable protection for the Source Code, structure and other confidential and proprietary elements of the Parent Licensed Materials. SpinCo shall cause all members of the SpinCo Group to comply with the terms set forth in this Section 2.02. The SpinCo Group shall remain liable for any breach or default of the applicable terms and conditions of this Exhibit A by any of its sublicensees.

Section 2.03. License Restrictions. The licenses granted in Section 2.01 are subject to the following additional restrictions:

(a) the SpinCo Group shall make no representations or warranties about or on behalf of the Parent Group;

(b) distribution and providing End Users access to SpinCo Group products or services shall comply with all applicable Laws, including those related to privacy, export and import, including those of the United States and those that prohibit or restrict distributions for certain end uses or End Users;

(c) the SpinCo Group shall not perform any actions with regard to the Parent Licensed Materials that could require the Source Code of the Parent Licensed Materials to be licensed under any OSS license or be disclosed to any Third Party;

(d) for any component of the Parent Licensed Materials that is provided or licensed in Object Code, the SpinCo Group shall not, and shall not allow any Third Party to, reverse assemble, reverse compile, decompile, translate, or otherwise attempt to discover the Source Code of such component, except as permitted by Law, without the possibility of contractual waiver and shall include such requirements in all downstream licenses;

(e) notwithstanding any other provision of this Agreement to the contrary, the SpinCo Group shall maintain the Parent copyright notice and all other Parent Group proprietary notices (if any) as provided in the Parent Licensed Materials;

(f) all distributions of SpinCo Group products or services incorporating Common Code, Other Licensed Software, Licensed Databases or Licensed Documentation, or access thereto by End Users, as the case may be, shall be under a written license agreement that will include the provisions set out below or their legal equivalent. For SpinCo's reference, the phrase "the third party" in subsections (i) – (ix) below, refers to Parent (or another member of the Parent Group, as applicable), although the SpinCo Group shall use the phrase "the third party" and not identify any member of the Parent Group:

(i) the product or service contains materials licensed from a third party, and SpinCo or customer has assumed responsibility for these materials and their use in the product or service;

(ii) the third party Software, Database, or Documentation in the product or service is licensed, and not sold, and neither the third party nor SpinCo passes any title to such Software, Database, or Documentation;

(iii) the End User is prohibited from copying any part or portion of the third party Software, Database, or Documentation or from preparing any Derivative Work thereof, or otherwise modifying the third party Software, Database, or Documentation;

(iv) the End User may not assign, sublicense, distribute, lease, rent, or otherwise transfer the third party Software, Database or Documentation;

(v) the End User may neither distribute the product or service nor offer the product or service as a cloud service or software-as-a-service;

(vi) the End User is prohibited from reverse assembling, reverse compiling, translating or otherwise trying to discover the Source Code form of any Software provided in Object Code form, except as permitted by the national or regional law of the places where the End User does business (without the opportunity for contractual waiver), and then only with respect to the particular copy of Object Code incorporated into that particular product or service;

(vii) warranties, including any implied warranties, are provided solely by SpinCo and not by the third party;

(viii) in such written license agreements, SpinCo will include a provision limiting liability and terms excluding all consequential damages effective to limit the Parent Group's liability, and an audit provision sufficient to enable SpinCo to fulfill its obligations under this Agreement; and

(ix) in such written license agreements, SpinCo will also include the following statement, or other legally sufficient and wholly comparable terms: "The limitation of liabilities described in this agreement also applies to the third party supplier. Such third party supplier is an intended beneficiary of this agreement, and any rights of indemnification also apply to any third party supplier described in this agreement. A list of such third party beneficiaries will be provided on written request";

(g) Any action that breaches Section 2.01, Section 2.02 or this Section 2.03 is beyond the scope of the licenses granted in this Agreement. Any distribution of Common Code, Other Licensed Software, Licensed Databases or Licensed Documentation permitted under Section 2.01 may be through multiple tiers of distribution in the SpinCo Group's channel; and

(h) SpinCo shall cause all members of the SpinCo Group to comply with each of the restrictions set forth in this Section 2.03.

Section 2.04. Suspension of Licenses to Parent Licensed Materials. The licenses to the Parent Licensed Materials granted hereunder are irrevocable, even in the event of a material breach; provided, however, that any such license may be suspended by the Parent Group only in the event of a material breach thereof, including unauthorized use or distribution, by any SpinCo Group member that remains uncured for thirty (30) days following SpinCo's receipt of written notice from a member of the Parent Group specifying such breach. Upon suspension of the SpinCo Group's licenses, the SpinCo Group shall immediately cease all use of the specific Parent Licensed Materials that are the subject of such material breach until such material breach or unauthorized use or distribution by the SpinCo Group is cured and SpinCo certifies to Parent in writing as to such cure.

Section 2.05. Reservation of Rights. Parent Licensed Materials are licensed and not sold, and nothing in this Agreement grants the SpinCo Group any ownership right, title, or interest in or to the Parent Licensed Materials. The SpinCo Group shall use the Parent Licensed Materials only for the purposes expressly permitted by this Agreement.

ARTICLE III
LICENSES FROM SPINCO TO PARENT

Section 3.01. Licenses to Parent Group. Notwithstanding the provisions of Section 2.01, SpinCo, on behalf of itself and the SpinCo Group, hereby grants to Parent and the other members of the Parent Group, in each case solely within the Parent Field of Use:

(a) Assigned Software. Under the SpinCo Group's Copyrights, a perpetual, irrevocable, sublicensable (subject to Section 3.04), worldwide, non-exclusive, royalty-free, fully paid-up right and license to use, copy, reproduce, modify, display, perform, distribute, translate into any language or form, combine with other Software or hardware, transmit, and prepare and distribute Derivative Works of the Assigned Software (other than Assigned Unrestricted Research Assets) solely as and to the extent such Assigned Software is used by the Parent Group in the Parent Field of Use; provided, however, that with respect to Assigned Software (other than Assigned Unrestricted Research Assets) for which the Parent Group is granted access to or possession of Object Code only, the foregoing license shall not include any rights to modify, or prepare or distribute Derivative Works of, any Source Code of such Assigned Software;

(b) Assigned Databases. Under the SpinCo Group's Database Rights, a perpetual, irrevocable, sublicensable (subject to Section 3.04), worldwide, non-exclusive, royalty-free, fully paid-up right and license to (i) use, copy, reproduce, modify, display, perform, distribute, translate into any language or form, combine with Software or hardware, transmit, and prepare and distribute Derivative Works of the Assigned Databases, solely as and to the extent such Assigned Databases are used by the Parent Group in the Parent Field of Use and (ii) extract data from the Assigned Databases and to re-utilize such data, solely as and to the extent such data is used by the Parent Group in the Parent Field of Use; and

(c) Assigned Documentation. Under the SpinCo Group's Copyrights, a perpetual, irrevocable, sublicensable (subject to Section 3.04), worldwide, non-exclusive, royalty-free, fully paid-up right and license to use, reproduce, distribute, perform, display, and prepare and distribute Derivative Works of the Assigned Documentation solely as and to the extent such Assigned Documentation is used by the Parent Group in the Parent Field of Use.

Section 3.02. Assigned Unrestricted Research Assets. Notwithstanding the provisions of Section 2.01, SpinCo, on behalf of itself and the SpinCo Group, hereby grants to Parent and the other members of the Parent Group, under the SpinCo Group's Copyrights, a perpetual, irrevocable, freely sublicensable (through multiple tiers of sublicenses), freely transferable in whole or in part (notwithstanding Article VIII of the Agreement), worldwide, non-exclusive, royalty-free, fully paid-up right and license to use, copy, reproduce, modify, display, perform, distribute, translate into any language or form, combine with other Software or hardware, transmit, and prepare and distribute Derivative Works of the Assigned Unrestricted Research Assets.

Section 3.03. Code Fragments. Notwithstanding the provisions of Section 2.01 and without limiting Section 3.01, SpinCo, on behalf of itself and the SpinCo Group, hereby grants to Parent and the other members of the Parent Group, under the SpinCo Group's Copyrights, a perpetual, irrevocable, freely sublicensable (through multiple tiers of sublicenses), freely transferable in whole or in part (notwithstanding Article VIII of the Agreement), worldwide, non-exclusive, royalty-free, fully paid-up right and license to use, copy, reproduce, modify, display, perform, distribute, translate into any language or form, combine with other Software or hardware, transmit, and prepare and distribute Derivative Works of any Code Fragments.

Section 3.04. Sublicensing. The rights and licenses set forth in Section 3.01 include the right to grant sublicenses within the scope of such rights and licenses only to members of the Parent Group, and, without any further right to sublicense (except as necessary to provide products and services to customers of the Parent Group within the Parent Field of Use, solely for the benefit of such customers), to their respective (i) contractors, distributors, manufacturers, resellers, and other service providers, in each case solely within the Parent Field of Use, and (ii) End Users and customers, in each case solely in connection with the use of products and services within the Parent Field of Use or otherwise as necessary to provide products and services to customers of the Parent Business within the Parent Field of Use, for the benefit of such customers; provided, however, that the Parent Group may only sublicense such rights pursuant to terms and conditions as protective as those under which it licenses its own Software of a similar nature and value, and in any event terms and conditions that provide for commercially reasonable protection for the Source Code, structure and other confidential and proprietary elements of the Assigned Software and Assigned Documentation. Parent shall cause all members of the Parent Group to comply with the terms set forth in this Section 3.04. The Parent Group shall remain liable for any breach or default of the applicable terms and conditions of this Agreement by any of its sublicensees.

Section 3.05. License Restrictions. The licenses granted in Section 3.01 are subject to the following additional restrictions:

(a) the Parent Group shall make no representations or warranties about or on behalf of the SpinCo Group;

(b) distribution and providing End Users access to Parent Group products or services shall comply with all applicable Laws, including privacy, export and import Laws, including those of the United States and those that prohibit or restrict distributions for certain end uses or End Users;

(c) the Parent Group shall not perform any actions with regard to the SpinCo Licensed Materials that could require the Source Code of the SpinCo Licensed Materials to be licensed under any OSS license or be disclosed to any Third Party;

(d) for any component of the SpinCo Licensed Materials that is provided or licensed in Object Code, the Parent Group shall not, and shall not allow any Third Party to, reverse assemble, reverse compile, decompile, translate, or otherwise attempt to discover the Source Code of such component, except as permitted by Law, without the possibility of contractual waiver and shall include such requirements in all downstream licenses;

(e) notwithstanding any other provision of this Agreement to the contrary, the Parent Group shall maintain the SpinCo copyright notice and all other SpinCo Group proprietary notices (if any) as provided in the SpinCo Licensed Materials;

(f) all distributions of Parent Group products or services incorporating Assigned Software, Assigned Databases or Assigned Documentation, or access thereto by End Users, as the case may be, shall be under a written license agreement that will include the provisions set out below or their legal equivalent. For Parent's reference, the phrase "the third party" in subsections (i) – (ix) below, refers to SpinCo (or another member of the SpinCo Group, as applicable), although the Parent Group shall use the phrase "the third party" and not identify any member of the SpinCo Group:

(i) the product or service contains materials licensed from a third party, and Parent or customer has assumed responsibility for these materials and their use in the product or service;

(ii) the third party Software, Database or Documentation in the product or service is licensed, and not sold, and neither the third party nor Parent passes any title to such Software, Database or Documentation;

(iii) the End User is prohibited from copying any part or portion of the third party Software, Database or Documentation, from preparing any Derivative Work thereof, or otherwise modifying the third party Software, Database or Documentation;

(iv) the End User may not assign, sublicense, distribute, lease, rent, or otherwise transfer the third party Software, Database or Documentation;

(v) the End User may neither distribute the product or service nor offer the product or service as a cloud service or software-as-a-service;

(vi) the End User is prohibited from reverse assembling, reverse compiling, translating or otherwise trying to discover the Source Code form of any Software provided in Object Code form, except as permitted by the national or regional law of the places where the End User does business (without the opportunity for contractual waiver), and then only with respect to the particular copy of Object Code incorporated into that particular product or service;

(vii) warranties, including any implied warranties, are provided solely by Parent and not by the third party;

(viii) in such written license agreements, Parent will include a provision limiting liability and terms excluding all consequential damages effective to limit the SpinCo Group's liability, and an audit provision sufficient to enable Parent to fulfill its obligations under this Agreement; and

(ix) in such written license agreements, Parent will also include the following statement, or other legally sufficient and wholly comparable terms: "The limitation of liabilities described in this agreement also applies to the third party supplier. Such third party supplier is an intended beneficiary of this agreement, and any rights of indemnification also apply to any third party supplier described in this agreement. A list of such third party beneficiaries will be provided on written request";

(g) The Parties acknowledge and agree that certain provisions with respect to the Assigned Restricted Software and Assigned Restricted Research Assets are set forth in Annex J hereto.

(h) Any action that breaches Section 3.01, Section 3.04 or this Section 3.05 is beyond the scope of the licenses granted in this Agreement. Any distribution of Assigned Software, Assigned Databases, or Assigned Documentation permitted under Section 3.01 may be through multiple tiers of distribution in the Parent Group's channel; and

(i) Parent shall cause all members of the Parent Group to comply with each of the restrictions set forth in this Section 3.05.

Section 3.06. Suspension of Licenses to SpinCo Licensed Materials. The licenses to the SpinCo Licensed Materials granted hereunder are irrevocable, even in the event of a material breach; provided, however, that any such license may be suspended by the SpinCo Group only in the event of a material breach thereof, including unauthorized use or distribution, by any Parent Group member that remains uncured for thirty (30) days following Parent's receipt of written notice from a member of the SpinCo Group specifying such breach. Upon suspension of the Parent Group's licenses, the Parent Group shall immediately cease all use of the specific SpinCo Licensed Materials that are the subject of the material breach until such material breach or unauthorized use or distribution by the Parent Group is cured and Parent certifies to SpinCo in writing as to such cure.

Section 3.07. Reservation of Rights. SpinCo Licensed Materials are licensed and not sold, and nothing in this Agreement grants the Parent Group any ownership right, title, or interest in or to the SpinCo Licensed Materials. The Parent Group shall use the SpinCo Licensed Materials only for the purposes expressly permitted by this Agreement.

ARTICLE IV
ADDITIONAL SOFTWARE AND DATABASE RELATED MATTERS

Section 4.01. Open Source Software. With regard to any OSS that is contained within or used in conjunction with the Assigned Software, SpinCo (on behalf of itself and each other member of the SpinCo Group) acknowledges that the SpinCo Group's rights with respect to OSS shall be governed by the respective license associated with each such OSS program. Parent will have no obligations whatsoever to the SpinCo Group with respect to the OSS contained within or used in conjunction with the Assigned Software pertaining to its usage after the Distribution Date.

Section 4.02. Parent JDK/Parent JRE. Parent JDK and Parent JRE or any licenses thereto are not being assigned or licensed to the SpinCo Group under this Agreement. Any licenses to the Parent JDK and Parent JRE that may be provided, as applicable, will be specified in a separate Parent Java OEM Agreement and Parent Java OEM Transaction Document, as applicable.

Section 4.03. Third Party Commercial Software and Third Party Commercial Databases. SpinCo (on behalf of itself and each other member of the SpinCo Group) acknowledges that the Assigned Software, Assigned Databases, and computer hardware or servers within the SpinCo Assets being provided to the SpinCo Group, may include various Software packages, Databases and materials, including Third Party Commercial Software and Third Party Commercial Databases. No license rights to any Third Party Commercial Software or Third Party Commercial Databases are being assigned or licensed to the SpinCo Group under this Agreement. Subject to the terms and conditions of the TSA, as applicable: (i) SpinCo is solely responsible for, and shall without delay obtain and maintain, its own licenses to such Third Party Commercial Software or such Third Party Commercial Databases, (ii) time is of the essence in regard to SpinCo's obligations to obtain its own licenses and (iii) the SpinCo Group shall not make any use of such Third Party Commercial Software or Third Party Commercial Databases prior to obtaining licenses thereto.

Section 4.04. Parent Commercial Programs.

(a) SpinCo (on behalf of itself and each other member of the SpinCo Group) acknowledges that the Assigned Software, or computer hardware or servers within the SpinCo Assets, may include or require various Parent Commercial Programs. No license rights to any Parent Commercial Programs are being assigned or licensed to the SpinCo Group under this Agreement. Subject to the terms and conditions of the TSA, as applicable: (i) SpinCo is solely responsible for, and shall without delay obtain and maintain, its own licenses to such Parent Commercial Programs, (ii) time is of the essence in regard to SpinCo's obligations to obtain its own licenses and (iii) the SpinCo Group shall not make any use of such Parent Commercial Programs prior to obtaining licenses thereto (the "PCP Requirements"). Following the Distribution Date, in the event that Parent reasonably believes that the SpinCo Group is violating the PCP Requirements existing as of the Distribution Date, Parent shall promptly notify SpinCo thereof, identifying the relevant PCP Requirement and specifying reasonable details of such violation, and the Parties shall engage in the following procedures:

(i) Within thirty (30) days following such notice to SpinCo, each Party shall promptly nominate a senior executive with experience in the relevant business or product line to investigate the matter, and the senior executives shall meet and confer (telephonically or in person) regarding such alleged violation. Within thirty (30) days following such meeting, SpinCo Group's senior executive shall conduct an investigation of the matter to determine whether there is any ongoing use of such Parent Commercial Program, without a commercial license from the Parent Group.

(ii) Promptly following completion of such investigation, the SpinCo Group's senior executive shall report the findings thereof to the Parent Group's senior executive. If the senior executives mutually agree that the SpinCo Group is using such Parent Commercial Program without a commercial license, Parent will offer the SpinCo Group a commercial license on reasonable terms for the SpinCo Group's continued use of the applicable Parent Commercial Program. The SpinCo Group shall have the option, in its sole discretion, to either (i) reasonably negotiate and enter into a commercial license for the applicable Parent Commercial Program or (ii) wind down and cease use of such Parent Commercial Program in a reasonable period of time, as agreed by the senior executives in good faith.

(iii) In the event the senior executives are unable to resolve the matter as set forth in the foregoing clause (ii), the matter shall be escalated to the general managers of such senior executives, who shall promptly attempt to resolve the matter. If such general managers are unable to resolve the matter within thirty (30) days of such escalation, either Party may submit the matter to the dispute resolution process in Section 10.02 of the Agreement.

(iv) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that no violation of the PCP Requirements shall constitute a breach of this Agreement or give rise to any liability of the SpinCo Group, without limiting the SpinCo Group's obligation to enter into a commercial license or wind down and cease such use of the Parent Commercial Programs to the extent required by this Section 4.04(a).

Exhibit 10.5

EXECUTION VERSION

REAL ESTATE MATTERS AGREEMENT

This REAL ESTATE MATTERS AGREEMENT (this "Agreement") is entered into on November 2, 2021, by and between International Business Machines Corporation, a New York corporation ("Parent"), and Kyndryl Holdings, Inc., a Delaware corporation ("SpinCo").

R E C I T A L S:

WHEREAS, in accordance with that certain Separation and Distribution Agreement dated as of November 2, 2021, by and between Parent and SpinCo (the "Separation Agreement"), the Parent Group has transferred or conveyed or will transfer or convey to the SpinCo Group, certain assets related to the SpinCo Business;

WHEREAS, in accordance with the Separation Agreement, the SpinCo Group has transferred or conveyed or will transfer or convey to the Parent Group certain assets related to the Parent Business; and

WHEREAS, the parties desire to set forth certain agreements regarding the transfer of real estate assets and other real estate matters pertaining to the SpinCo Business and the Parent Business.

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements set forth below and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. The following terms, as used herein, shall have the meanings stated below. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Separation Agreement.

(a) "Actual Completion Date" means, with respect to each Parent Property and each SpinCo Property, the date upon which completion of the transfer, assignment, lease, sublease and/or replacement leases with respect to that Property actually takes place.

(b) "Allocation Principle" means the principle that: (1) any Property that is Majority Occupied by one party will be allocated in full to such party; and (2) the other party (the "Minority Occupant") is generally expected to relocate (either to a different Property or elsewhere) to enable consolidation of operations by the parties, but in no event shall the Minority Occupant be required to vacate earlier than the expiration date of any applicable lease or sublease entered into pursuant to this Agreement unless such action is agreed upon in the manner set forth in Section 2.13; it being understood that for substantially all of the Sublease Properties, the Minority Occupant will sublease a portion of such Property for the duration of the underlying lease.

(c) "Casualty" has the meaning ascribed to such term in Section 2.15(a).

(d) "Colocation Sites Schedule" means Schedule 2 attached hereto, as updated from time to time prior to the Real Estate Separation Date pursuant to Section 2.19.

(e) "Damaged Property" has the meaning ascribed to such term in Section 2.15(a).

(f) "Excluded Personal Property" means that certain equipment, office equipment, trade fixtures, furniture and any other personal property located at each Property which is scheduled as excluded personal property under any lease and/or sublease entered into between Parent and SpinCo.

(g) "Landlord" means the third-party landlord or sublandlord under a Parent Lease or SpinCo Lease, and its successors and assigns, and includes the holder of any other interest that is superior to the interest of the landlord or sublandlord under such Parent Lease or SpinCo Lease.

(h) "Lease Assignment Form" means the form of lease assignment attached to this Agreement as Exhibit 1, subject to commercially reasonable changes necessary to reflect Property-specific provisions negotiated in good faith by the parties and to conform to requirements of the jurisdiction in which the applicable Property is located in accordance with Article III hereof.

(i) "Lease Consents" means, as applicable (i) all consents or waivers required from the Landlord or other third parties under the Required Consent Leases to assign the Required Consent Leases to SpinCo or Parent, as applicable, or to sublease the Sublease Properties to SpinCo or Parent, as applicable, or to lease or sublease the Leaseback Properties to SpinCo or Parent, as applicable, and (ii) all consents or waivers required from the Landlord or other third parties under Pre-Split Leases and all agreements with the Landlord or other third parties with respect to the Pre-Split Leases to terminate the Pre-Split Leases and to enter into the Split Leases with SpinCo or Parent, as applicable, including, for the avoidance of doubt, any consents or waivers required to permit the Distribution or Merger.

(j) "Lease" means a Parent Lease or a Spinco Lease, as the case may be.

(k) "Lease Form" means the form of lease attached hereto as Exhibit 3, subject to commercially reasonable changes necessary to reflect Property-specific provisions negotiated in good faith by the parties and to conform to requirements of the jurisdiction in which the applicable Property is located in accordance with Article III hereof.

(l) "Leaseback Properties" means collectively, the SpinCo Leaseback Properties and the Parent Leaseback Properties.

(m) "Leased Properties" means collectively, the Parent Leased Properties and the SpinCo Leased Properties.

(n) "Majority Occupied" means as of the date of Real Estate Separation Date, without taking into account temporary remote working requirements related to the COVID-19 pandemic either (i) maintaining operations on more than 50% of the usable square footage of a particular Property, or (ii) employing more than 50% of the employees and contractors, taken as a whole, at such Property; whichever method is more commercially reasonable in determining the proper allocation of the Property as reasonably determined by the parties in good faith.

(o) "Minority Occupant" has the meaning ascribed to such term in the definition of the term "Allocation Principle."

(p) "New Lease Properties" means collectively, the SpinCo New Lease Properties and the Parent New Lease Properties.

(q) "Notice Date" has the meaning ascribed to such term in Section 2.13(c).

(r) "Owned and Leased Properties Schedule" means Schedule 1 attached hereto, as updated from time to time prior to the Real Estate Separation Date pursuant to Section 2.19.

(s) "Parent Lease" means, in relation to each Parent Property, the lease(s) or sublease(s) and any related supplemental agreements under which Parent or its applicable Subsidiary leases such Parent Leased Property from a Landlord prior to the Real Estate Separation Date.

(t) "Parent Leaseback Properties" means each of (a) those Parent Owned Properties identified as "Parent Owned Properties" and identified as "Leaseback Properties" on the Owned and Leased Properties Schedule, with respect to part of which SpinCo has leased or shall lease back to Parent and (b) those Parent Leased Properties identified as "Parent Leased Properties" and identified as "Leaseback Properties" on the Owned and Leased Properties Schedule, with respect to part of which SpinCo is to sublease back or has subleased back to Parent. Parent Leaseback Properties are to be transferred through deed transfer or lease assignment (as applicable) by Parent (or its Subsidiaries) to SpinCo (or its Subsidiaries) and a portion of which will then be leased or subleased (as applicable) back to Parent (or its Subsidiaries) prior to or as of the Real Estate Separation Date.

(u) "Parent Leased Properties" means those Properties identified as "Parent Leased Properties" on the Owned and Leased Properties Schedule, which Properties are or were leased by Parent pursuant to a lease with a Landlord and will be or have been, in accordance with this Agreement (i) transferred by lease assignment from Parent (or its Subsidiaries) to SpinCo (or its Subsidiaries) or (ii) terminated and for which SpinCo (or its Subsidiaries) have entered or will enter into a new lease with such third-party for Property, in each case prior to or as of the Real Estate Separation Date subject to obtaining the necessary Lease Consent.

(v) "Parent New Lease Properties" means those Properties identified as "Parent New Lease Properties" on the Colocation Sites Schedule, which Properties are owned by Parent (or its Subsidiaries) in fee and a portion of which will be or has been leased to SpinCo (or its Subsidiaries) prior to or as of the Real Estate Separation Date.

(w) "Parent Owned Properties" means those Properties identified as "Parent Owned Properties" on the Owned and Leased Properties Schedule, which Properties are or were owned by Parent (or its Subsidiaries) in fee and will be conveyed or have been conveyed by deed to SpinCo (or its Subsidiaries) prior to or as of the Real Estate Separation Date.

(x) "Parent Properties" means the Parent Owned Properties, the Parent Leased Properties, the Parent Sublease Properties, the Parent New Lease Properties, the Parent Leaseback Properties and the Parent Split Lease Properties.

(y) "Parent Split Lease Properties" means those Properties demised or to be demised unto Parent (or one of its Subsidiaries) as tenant pursuant to any Parent Split Lease.

(z) "Parent Split Leases" means those new leases to be entered into by Parent (or its Subsidiaries) as tenant pursuant to Section 2.9.

(aa) "Parent Sublease Properties" means those Properties identified as "Parent Sublease Properties" on the Colocation Sites Schedule, which Properties are leased by Parent (or its Subsidiaries) and a portion of which will be or has been subleased by Parent or a Subsidiary to SpinCo (or its Subsidiaries) prior to or as of the Real Estate Separation Date subject to obtaining the necessary Lease Consents.

(bb) "Pre-Split Leases" means those Parent Leases or SpinCo Leases pursuant to which Parent (or its Subsidiaries) or SpinCo (or its Subsidiaries), as applicable, occupies the Split Lease Properties prior to the Real Estate Separation Date and which Pre-Split Leases are contemplated to be terminated on or prior to the Real Estate Separation Date pursuant to Section 2.9 hereof.

(cc) "Properties" means the Parent Properties and the SpinCo Properties.

(dd) "Real Estate Separation Date" means September 1, 2021, as such date may be modified in certain countries in accordance with the Separation Agreement and the Separation Step Plan (as defined in the Separation Agreement).

(ee) "Required Consent Leases" means those Parent Leases and SpinCo Leases with respect to which the Landlord's consent is required for (x) assignment or sublease to a member of the Parent Group or a member of the SpinCo Group, as applicable, as contemplated by the Separation Agreement or hereunder, or (y) any of the other transactions contemplated by the Separation Agreement or the other Ancillary Agreements.

(ff) "Retained Part" means each of those parts of (i) the Parent Owned Properties and the Parent Leased Properties which, following transfer or assignment to SpinCo, are intended to be leased or subleased to Parent, (ii) the SpinCo Owned Properties and the SpinCo Leased Properties which, following the transfer or assignment to Parent, are intended to be leased or subleased to SpinCo, (iii) those parts of the Sublease Properties and the Parent New Lease Properties which will not, and which are not intended to, be leased or subleased to SpinCo in accordance with this Agreement and (iv) those parts of the Sublease Properties and the SpinCo New Lease Properties which will not, and which are not intended to, be leased or subleased to Parent in accordance with this Agreement.

(gg) "SpinCo Lease" means, in relation to each SpinCo Property, the lease(s) or sublease(s) and any related supplemental agreements under which SpinCo or its applicable Subsidiary leases from a Landlord such SpinCo Property completed prior to the Real Estate Separation Date.

(hh) "SpinCo Leaseback Properties" means each of (a) those SpinCo Owned Properties identified as "SpinCo Owned Properties" and identified as "Leaseback Properties" on the Owned and Leased Properties Schedule, with respect to part of which Parent has leased or shall lease back to SpinCo and (b) those SpinCo Leased Properties identified as "SpinCo Leased Properties" and identified as "Leaseback Properties" on the Owned and Leased Properties Schedule, with respect to part of which Parent is to sublease back or has subleased back to SpinCo. SpinCo Leaseback Properties are to be transferred through deed transfer or lease assignment (as applicable) by SpinCo (or its Subsidiaries) to Parent (or its Subsidiaries) and a portion of which will then be leased or subleased (as applicable) back to SpinCo (or its Subsidiaries) prior to or as of the Real Estate Separation Date, subject to obtaining the necessary Lease Consents.

(ii) "SpinCo Leased Properties" means those Properties identified as "SpinCo Leased Properties" on the Owned and Leased Properties Schedule, which Properties are or were leased by SpinCo (or its Subsidiaries) from a Landlord and will be or have been in accordance with this Agreement (i) transferred by lease assignment to Parent (or its Subsidiaries) or (ii) terminated and for which Parent (or its Subsidiaries) have entered into a new lease with such third-party for such Property, in each case prior to or as of the Real Estate Separation Date subject to obtaining the necessary Lease Consents.

(jj) "SpinCo New Lease Properties" means those Properties identified as "SpinCo New Lease Properties" on the Colocation Sites Schedule, which Properties are owned by SpinCo (or its Subsidiaries) in fee and a portion of which will be or have been leased to Parent (or its Subsidiaries) prior to or as of the Real Estate Separation Date.

(kk) "SpinCo Owned Properties" means those Properties identified as "SpinCo Owned Properties" on the Owned and Leased Properties Schedule, which Properties are or were owned by SpinCo (or its Subsidiaries) in fee and will transfer or have been transferred by deed to Parent (or its Subsidiaries) in fee prior to or as of the Real Estate Separation Date.

(ll) "SpinCo Properties" means the SpinCo Owned Properties, the SpinCo Leased Properties, the SpinCo Sublease Properties, the SpinCo New Lease Properties, the SpinCo Leaseback Properties, and the SpinCo Split Lease Properties.

(mm) "SpinCo Split Lease Properties" means those Properties demised or to be demised unto SpinCo (or one of its Subsidiaries) as tenant pursuant to any SpinCo Split Lease.

(nn) "SpinCo Split Leases" means those new leases to be entered into by SpinCo (or its Subsidiaries) as tenant pursuant to Section 2.9.

(oo) "SpinCo Sublease Properties" means those Properties identified as "SpinCo Sublease Properties" on the Colocation Sites Schedule, which Properties are leased by SpinCo (or its Subsidiaries) and a portion of which will be or has been subleased by Spinco or a Subsidiary to Parent (or its Subsidiaries) prior to or as of the Real Estate Separation Date subject to obtaining the necessary Lease Consents.

(pp) "Split Lease Properties" means those Properties identified as "Split Lease Properties" on the Colocation Sites Schedule, which Properties are or were leased by one of SpinCo (or its Subsidiaries) or Parent (or its Subsidiaries) pursuant to a Pre-Split Lease, which Pre-Split Lease will be terminated on or prior to the Real Estate Separation Date subject to obtaining the necessary Lease Consents and, following such termination, which Properties will be or have been demised in part pursuant to a SpinCo Split Lease and in part pursuant to a Parent Split Lease, in each case subject to Section 2.9.

(qq) "Split Leases" means the Parent Split Leases and the SpinCo Split Leases.

(rr) "Sublease Form" means the form of sublease attached hereto as Exhibit 2, subject to commercially reasonable changes necessary to reflect Property-specific provisions negotiated in good faith by the parties and to conform to requirements of the jurisdiction in which the applicable Property is located in accordance with Article III hereof.

(ss) "Sublease Properties" means the SpinCo Sublease Properties and the Parent Sublease Properties.

ARTICLE II
PROPERTY IN THE UNITED STATES

Section 2.1 Parent Owned Property.

(a) Parent shall convey or cause its applicable Subsidiary to convey each of the Parent Owned Properties (together with all improvements thereon and all rights and easements appurtenant thereto) to SpinCo or its applicable Subsidiary, subject to the other provisions of this Agreement and (to the extent not inconsistent with the provisions of this Agreement) the terms of the Separation Agreement and the Ancillary Agreements. Such conveyance shall be completed on or before the Real Estate Separation Date.

(b) Subject to the conveyance to SpinCo or its applicable Subsidiary of the relevant Parent Owned Property, with respect to each Parent Owned Property that is a Parent Leaseback Property, SpinCo shall lease to Parent or its applicable Subsidiary that part of the relevant Parent Owned Property identified on the Colocation Sites Schedule and Parent or its applicable Subsidiary shall accept the same. Such lease shall be on the Lease Form, as reasonably adjusted and agreed to by Parent and SpinCo to account for local law requirements and site specific issues, and completed on or before the Real Estate Separation Date.

Section 2.2 SpinCo Owned Property.

(a) SpinCo shall convey or cause its applicable Subsidiary to convey each of the SpinCo Owned Properties (together with all improvements thereon and all rights and easements appurtenant thereto) to Parent or its applicable Subsidiary, subject to the other provisions of this Agreement and (to the extent not inconsistent with the provisions of this Agreement) the terms of the Separation Agreement and the Ancillary Agreements. Such conveyance shall be completed on or before the Real Estate Separation Date.

(b) Subject to the conveyance to Parent or its applicable Subsidiary of the relevant SpinCo Owned Property, with respect to each SpinCo Owned Property that is a SpinCo Leaseback Property, Parent shall lease to SpinCo or its applicable Subsidiary that part of the relevant SpinCo Owned Property identified on the Colocation Sites Schedule and SpinCo or its applicable Subsidiary shall accept the same. Such lease shall be on the Lease Form, as reasonably adjusted and agreed to by Parent and SpinCo to account for local law requirements and site specific issues, and completed before the Real Estate Separation Date.

Section 2.3 Parent Leased Property.

(a) Parent shall assign or cause its applicable Subsidiary to assign, and SpinCo or its applicable Subsidiary shall accept and assume, Parent's or its Subsidiary's interest in the Parent Leased Properties, subject to the other provisions of this Agreement and (to the extent not inconsistent with the provisions of this Agreement) the terms of the Separation Agreement and the other Ancillary Agreements. Such assignment shall be completed on or before the Real Estate Separation Date; provided if Lease Consent is required but not obtained prior to the Real Estate Separation Date for any assignment, the assignment shall be completed on the earlier of (A) the tenth (10th) Business Day after the relevant Lease Consent has been granted and (B) the date agreed upon by the parties in accordance with Section 2.13(a).

(b) Subject to the completion of the assignment to SpinCo or its applicable Subsidiary of the relevant Parent Leased Property, with respect to each Parent Leased Property that is also a Parent Leaseback Property, SpinCo or its applicable Subsidiary shall sublease to Parent or its applicable Subsidiary that part of the relevant Parent Leased Property identified on the Colocation Sites Schedule and Parent or its applicable Subsidiary shall accept the same. Such sublease shall be on the Sublease Form, as reasonably adjusted and agreed to by Parent and SpinCo to account for local law requirements and site specific issues, and completed as soon as practical following completion of the transfer of the relevant Parent Leased Property to SpinCo or its applicable Subsidiary subject to obtaining the necessary Lease Consents. Such sublease shall be completed on or before the Real Estate Separation Date; provided if Lease Consent is required but not obtained prior to the Real Estate Separation Date for any sublease, the sublease shall be completed on the earlier of (A) the tenth (10th) Business Day after the relevant Lease Consent has been granted and (B) the date agreed upon by the parties in accordance with Section 2.13(a).

Section 2.4 SpinCo Leased Property.

(a) SpinCo shall assign or cause its applicable Subsidiary to assign, and Parent or its applicable Subsidiary shall accept and assume, SpinCo's or its Subsidiary's interest in the SpinCo Leased Properties, subject to the other provisions of this Agreement and (to the extent not inconsistent with the provisions of this Agreement) the terms of the Separation Agreement and the other Ancillary Agreements. Such assignment shall be completed on or before the Real Estate Separation Date; provided if Lease Consent is required but not obtained prior to the Real Estate Separation Date for any assignment, the assignment shall be completed on the earlier of (A) the tenth (10th) Business Day after the relevant Lease Consent has been granted and (B) the date agreed upon by the parties in accordance with Section 2.13(a).

(b) Subject to the completion of the assignment to Parent or its applicable Subsidiary of the relevant SpinCo Leased Property, with respect to each SpinCo Leased Property that is also a SpinCo Leaseback Property, Parent or its applicable Subsidiary shall grant sublease to SpinCo or its applicable Subsidiary that part of the relevant SpinCo Leased Property identified on the Colocation Sites Schedule and SpinCo or its applicable Subsidiary shall accept the same. Such sublease shall be on the Sublease Form, as reasonably adjusted and agreed to by Parent and SpinCo to account for local law requirements and site specific issues, and completed as soon as practical following completion of the transfer of the relevant SpinCo Leased Property to Parent or its applicable Subsidiary subject to obtaining the necessary Lease Consents. Such sublease shall be completed on or before the Real Estate Separation Date; provided if Lease Consent is required but not obtained prior to the Real Estate Separation Date for any sublease, the sublease shall be completed on the earlier of (A) the tenth (10th) Business Day after the relevant Lease Consent has been granted and (B) the date agreed upon by the parties in accordance with Section 2.13(a).

Section 2.5 Parent Sublease Properties. Parent shall sublease or cause its applicable Subsidiary to sublease to SpinCo or its applicable Subsidiary that part of the relevant Parent Sublease Property identified on the Colocation Sites Schedule and SpinCo or its applicable Subsidiary shall accept the same, subject to the other provisions of this Agreement and (to the extent not inconsistent with the provisions of this Agreement) the terms of the Separation Agreement and the Ancillary Agreements. Such sublease shall be on the Sublease Form, as reasonably adjusted and agreed to by Parent and SpinCo to account for local law requirements and site specific issues, and completed on or before the Real Estate Separation Date; provided if Lease Consent is required but not obtained prior to the Real Estate Separation for any sublease, the sublease shall be completed on the earlier of (i) the tenth (10th) Business Day after the relevant Lease Consent has been granted and (ii) the date agreed upon by the parties in accordance with Section 2.13(a). Furthermore, subsequent to the commencement date of each such sublease, (x) the sublandlord and subtenant thereunder shall cooperate (reasonably and in good faith) to estimate the amount of time required for any necessary restoration work at the end of the term of the applicable lease and the cost thereof (“Restoration Costs”) and (y) the sublandlord thereunder will make reasonable efforts to cause the applicable Landlord to agree to accept payment in lieu of such restoration work(“Restoration Buy Out”). In any instance where the Landlord refuses to agree to a Restoration Buy Out, the sublandlord, at its option upon notice delivered to the subtenant not less than one hundred and eighty(180) days prior to the scheduled sublease expiration date, may shorten the term of the sublease by changing the scheduled sublease expiration date to a date which is the earlier of: (x) thirty(30) days prior to the scheduled sublease expiration date; or (y) that date which would enable sublandlord in its commercially reasonable judgment to perform the sublandlord’s restoration obligations as tenant under the lease but in no event shall such date be sooner than ninety(90)days prior to the scheduled expiration date ((x) or (y) as applicable, the “Early Expiration Date”); provided however, that the sublandlord’s right to modify the sublease term so as to expire on the Early Expiration Date shall be available solely in order to enable the sublandlord to perform the sublandlord’s restoration obligations as tenant under the lease and for no other reason. Other than obligations which expressly survive the expiration date of the sublease or as may be stated herein, all other obligations(including, but not limited to, payment of rent) between the sublandlord and subtenant under the sublease shall end of as of the Early Expiration Date. Should the subtenant fail to timely vacate and surrender the subleased premises on or before the Early Expiration Date in the condition required under the applicable sublease, the subtenant shall be liable to the sublandlord for the Restoration Costs and all holdover and other damages the sublandlord suffers as a result of the subtenant’s failure to surrender the subleased premises on or before the Early Expiration Date.

Section 2.6 SpinCo Sublease Properties. SpinCo shall sublease or cause its applicable Subsidiary to sublease to Parent or its applicable Subsidiary that part of the relevant SpinCo Sublease Property identified on the Colocation Sites Schedule and Parent or its applicable Subsidiary shall accept the same, subject to the other provisions of this Agreement and (to the extent not inconsistent with the provisions of this Agreement) the terms of the Separation Agreement and the other Ancillary Agreements. Such sublease shall be on the Sublease Form, as reasonably adjusted and agreed to by Parent and SpinCo to account for local law requirements and site specific issues, and completed on or before the Real Estate Separation Date; provided if Lease Consent is required but not obtained prior to the Real Estate Separation Date for any sublease, the sublease shall be completed on the earlier of (i) the tenth (10th) Business Day after the relevant Lease Consent has been granted and (ii) the date agreed upon by the parties in accordance with Section 2.13(a). Furthermore, subsequent to the commencement date of each such sublease, (x) the sublandlord and subtenant thereunder shall cooperate (reasonably and in good faith) to estimate the amount of time required for any necessary restoration work at the end of the term of the applicable lease and the cost thereof and (y) the sublandlord thereunder will make reasonable efforts to cause the applicable Landlord to agree to accept the Restoration Buy Out in lieu of such restoration work. In any instance where the Landlord refuses to agree to a Restoration Buy Out, the sublandlord, at its option upon notice delivered to the subtenant not less than one hundred and eighty(180) days prior to the scheduled sublease expiration date, may shorten the term of the sublease by changing the scheduled sublease expiration date to the Early Expiration Date; provided however, that the sublandlord's right to modify the sublease term so as to expire on the Early Expiration Date shall be available solely in order to enable the sublandlord to perform the sublandlord's restoration obligations as tenant under the lease and for no other reason. Other than obligations which expressly survive the expiration date of the sublease or as may be stated herein, all other obligations(including, but not limited to, payment of rent) between the sublandlord and subtenant under the sublease shall end of as of the Early Expiration Date. Should the subtenant fail to timely vacate and surrender the subleased premises on or before the Early Expiration Date in the condition required under the applicable sublease, the subtenant shall be liable to the sublandlord for the Restoration Costs and all holdover and other damages the sublandlord suffers as a result of the subtenant's failure to surrender the subleased premises on or before the Early Expiration Date.

Section 2.7 Parent New Lease Properties. Parent shall lease or cause its applicable Subsidiary to lease to SpinCo or its applicable Subsidiary those parts of the Parent New Lease Properties identified on the Colocation Sites Schedule and SpinCo or its applicable Subsidiary shall accept the same, subject to the other provisions of this Agreement and (to the extent not inconsistent with the provisions of this Agreement) the terms of the Separation Agreement and the Ancillary Agreements. Such lease shall be completed on or before the Real Estate Separation Date and based on the Lease Form, as reasonably adjusted and agreed to by Parent and SpinCo to account for local law requirements and site specific issues.

Section 2.8 SpinCo New Lease Properties. SpinCo shall lease cause its applicable Subsidiary to lease to Parent or its applicable Subsidiary those parts of the SpinCo New Lease Properties identified on the Colocation Sites Schedule and Parent or its applicable Subsidiary shall accept the same, subject to the other provisions of this Agreement and (to the extent not inconsistent with the provisions of this Agreement) the terms of the Separation Agreement and the Ancillary Agreements. Such lease shall be completed on or before the Real Estate Separation Date and based on the Lease Form, as reasonably adjusted and agreed to by Parent and SpinCo to account for local law requirements and site specific issues.

Section 2.9 Split Lease Properties.

(a) On or prior to the Real Estate Separation Date, (i) Parent shall terminate or cause its applicable Subsidiary to terminate each Pre-Split Lease which is a Parent Lease on or prior to the Real Estate Separation Date subject to obtaining the necessary Lease Consents, (ii) contemporaneously with the termination described in the foregoing clause (i), Parent (or its Subsidiaries) shall enter into a new lease for a portion of each Split Lease Property on terms mutually agreed upon between Parent and the applicable Landlord demising to Parent or its Subsidiary the portion of the Split Lease Property agreed to among Parent, SpinCo and each applicable Landlord (provided, that, for the avoidance of doubt, such demised portion shall in no event include all or any portion of the Split Lease Property demised to SpinCo (or its Subsidiary) pursuant to the following clause (iii)), in each case subject to obtaining the necessary Lease Consents and (iii) contemporaneously with the termination described in the foregoing clause (i), SpinCo (or its Subsidiaries) shall enter into a new lease for a portion of each Split Lease Property on terms mutually agreed upon between SpinCo and the applicable Landlord demising to Spinco or its Subsidiary the portion of the Split Lease Property agreed to among Parent, SpinCo and each applicable Landlord (provided, that, for the avoidance of doubt, such demised portion shall in no event include all or any portion of the Split Lease Property demised to Parent (or its Subsidiary) pursuant to the foregoing clause (ii)), in each case subject to obtaining the necessary Lease Consents.

(b) On or prior to the Real Estate Separation Date, (i) SpinCo shall terminate or cause its applicable Subsidiary to terminate each Pre-Split Lease which is a SpinCo Lease on or prior to the Real Estate Separation Date subject to obtaining the necessary Lease Consents, (ii) contemporaneously with the termination described in the foregoing clause (i), SpinCo (or its Subsidiaries) shall enter into a new lease for a portion of each Split Lease Property on terms mutually agreed upon between SpinCo and the applicable Landlord demising to SpinCo or its Subsidiaries the portion of the Split Lease Property agreed to among Parent, SpinCo and each applicable Landlord (provided, that, for the avoidance of doubt, such demised portion shall in no event include all or any portion of the Split Lease Property demised to Parent (or its Subsidiary) pursuant to the following clause (iii)), in each case subject to obtaining the necessary Lease Consents and (iii) contemporaneously with the termination described in the foregoing clause (i), Parent (or its Subsidiaries) shall enter into a new lease for a portion of each Split Lease Property on terms mutually agreed upon between Parent and the applicable Landlord demising to Parent of its Subsidiaries the portion of the Split Lease Property agreed to among Parent, SpinCo and each applicable Landlord (provided, that, for the avoidance of doubt, such demised portion shall in no event include all or any portion of the Split Lease Property demised to SpinCo (or its Subsidiary) pursuant to the foregoing clause (ii)), in each case subject to obtaining the necessary Lease Consents.

Section 2.10 Obtaining the Lease Consents and Other Landlord Cooperation.

(a) Parent and SpinCo confirm that, with respect to each Parent Leased Property, SpinCo Leased Property, Parent Sublease Property, SpinCo Sublease Property, Parent Leaseback Property which is a Parent Leased Property, SpinCo Leaseback Property which is a SpinCo Leased Property and Split Lease Property, to the extent required by the Required Consent Lease, one or more applications or requests have been made or will be made (prior to the Real Estate Separation Date or Distribution Date, as applicable) to the relevant Landlord for the Lease Consents required with respect to the transactions contemplated by this Agreement, the Separation Agreement or the other Ancillary Agreements (including, for the avoidance of doubt, the transactions contemplated by the Separation Agreement to occur on the Distribution Date). Parent shall be, and has at all times been, primarily responsible for requesting, negotiating and obtaining all Lease Consents.

(b) Parent shall use commercially reasonable efforts to obtain the Lease Consents, but Parent shall not be required to commence judicial proceedings for a declaration that a Lease Consent has been unreasonably withheld, conditioned or delayed, nor shall Parent be required to pay any consideration in excess of administrative and/or review fees, its shares of fees set forth in Section 2.17, reimbursement of expenses required by the Required Consent Lease to obtain the relevant Lease Consent and other commercially reasonable amounts.

(c) Parent and SpinCo will promptly satisfy the lawful requirements of the Landlord, and Parent and SpinCo, will take all reasonable steps to assist the other in obtaining the Lease Consents and other cooperation reasonably required from any Landlord, including, without limitation:

(i) if reasonably required by the Landlord, entering into an agreement with the relevant Landlord to observe and perform the tenant's obligations contained in the applicable Lease from and after the Real Estate Separation Date throughout the remainder of the term of such Lease, subject to any statutory limitations of such liability, provided, however, that in no event shall Parent or SpinCo be required to enter into any such an agreement for any extension of the then current term of such Lease;

(ii) if reasonably required by the Landlord, providing a commercially reasonable guarantee, surety or other commercially reasonable security (including, without limitation, a security deposit or letter of credit) for the obligations of SpinCo or Parent, as applicable, or its applicable Subsidiary as tenant, accruing under the applicable Lease from and after the Real Estate Separation Date throughout the remainder of the then current term of such Lease, and otherwise taking all steps which are reasonably necessary and which it is capable of doing to meet the lawful requirements of the Landlord so as to ensure that the Lease Consents (and any other reasonably required Landlord cooperation) are obtained, provided, however, that in no event shall Parent or SpinCo be required to provide any such security for any extension of the then current term of the applicable Lease. For the avoidance of any doubt, the steps contemplated by this Section 2.10(c)(ii), shall only be required if such action is consistent with the intention expressed in the Separation Agreement that the Spin-Off qualify for Tax-Free Status;

(iii) using commercially reasonable efforts to assist Parent with obtaining the Landlord's consent to the release of any guarantee, surety or other security which Parent may have previously provided to the Landlord and (if applicable) the release of Parent or its Subsidiary from any assignor or secondary liability with respect to the assignee's failure to perform under the applicable Lease, and, if required and, subject to the limitations contained in Section 2.10(c)(ii), offering substantially the same or equivalent security to the Landlord in order to obtain such release, including a commercially reasonable guarantee from SpinCo or a Subsidiary thereof with respect to any Property where the tenant or subtenant (as the case may be) following the Real Estate Separation Date is SpinCo or its Subsidiaries;

(iv) using commercially reasonable efforts to assist Parent and its Subsidiaries with obtaining the Landlord's consent to the release of Parent or its applicable Subsidiary from any and all liabilities and obligations accruing from and after the Real Estate Separation Date under any Parent Lease to be transferred to SpinCo or a Subsidiary thereof in accordance with the terms hereof, including (if applicable) the release of Parent or its Subsidiary from any assignor or secondary liability with respect to the assignee's failure to perform under the applicable Lease, and if required and, subject to the limitations of Section 2.10(c)(ii), offering security to the Landlord in order to obtain such release, including, including a guarantee from SpinCo or a Subsidiary thereof with respect to any Property where the tenant or subtenant (as the case may be) following the Real Estate Separation Date is SpinCo or its Subsidiaries;

(v) providing (promptly once available) financial statements and other reasonable evidence of net worth, liquidity and/or financial capability to fulfill the obligations of a tenant under the applicable Lease to any Landlord requesting same in connection with a release of the liability of Parent or its applicable Subsidiary for any obligations under such Lease; and

(vi) using commercially reasonable efforts to assist SpinCo and its Subsidiaries with obtaining the Landlord's consent to the release of SpinCo or its applicable Subsidiary from any and all liabilities and obligations accruing from and after the Real Estate Separation Date under any SpinCo Lease to be transferred to Parent or a Subsidiary thereof in accordance with the terms hereof, and if required and, subject to the limitations contained in Section 2.10(c)(ii), offering security to the Landlord in order to obtain such release, including a guarantee from Parent or a Subsidiary thereof with respect to any Property where the tenant or subtenant (as the case may be) following the Real Estate Separation Date is Parent or its Subsidiaries.

(d) If, with respect to any Leased Properties or Sublease Properties, Parent and SpinCo are unable to obtain a release by the Landlord of any guarantee, surety or other security which Parent or an Affiliate has previously provided to the Landlord or are unable to obtain a release of Parent or SpinCo (or their respective Subsidiaries) from liabilities and obligations accruing from and after the Real Estate Separation Date under any SpinCo Lease or Parent Lease (including (if applicable) the release from any assignor or secondary liability with respect to the assignee's failure to perform under the applicable Lease), as applicable, in accordance with Section 2.10(c)(iv) or Section 2.10(c)(v), as applicable, SpinCo or Parent, as applicable, shall indemnify, defend, protect and hold harmless the other party from and after the Real Estate Separation Date against all reasonable, actually incurred losses, costs, claims, damages, or liabilities accruing against such other party after the Real Estate Separation Date and incurred by Parent or SpinCo, as applicable, as a result of such guarantee, surety or other security or assignor or secondary liability of the applicable assignor.

Section 2.11 Occupancy by SpinCo.

(a) Subject to compliance with Section 2.11(b), in the event that the Actual Completion Date for any Parent Owned Property, Parent New Lease Property, Parent Leased Property, Parent Sublease Property or Split Lease Property does not occur on or before the Real Estate Separation Date, SpinCo shall, commencing on or prior to the Real Estate Separation Date, be entitled to occupy, use and receive the rental income from the relevant Parent Property (except to the extent that the same is a Retained Part) as a licensee upon the terms and conditions contained in the Parent Lease (as to Parent Leased Properties), upon the terms and conditions contained in the Sublease Form (as to Parent Sublease Properties), upon the terms and conditions contained in the Lease Form (as to Parent Owned Properties and Parent New Lease Properties), or upon the terms and conditions contained in the Pre-Split Lease with respect to the portion of the Split Lease Property that is to be a SpinCo Split Lease Property (as to Split Lease Properties). Such license shall not be revocable prior to the applicable Actual Completion Date unless an enforcement action or forfeiture by the relevant Landlord due to SpinCo's occupancy of the Parent Property constituting a breach of the Parent Lease cannot, in the reasonable opinion of Parent, be avoided other than by requiring SpinCo to immediately vacate the relevant Parent Property, in which case Parent may by notice to SpinCo immediately require SpinCo to vacate the relevant Parent Property. SpinCo will be responsible for all costs, expenses and liabilities incurred by Parent or its applicable Subsidiary as a consequence of such occupancy, except for any losses, claims, costs, demands and liabilities incurred by Parent or its Subsidiary as a result of any enforcement action or forfeiture taken by the Landlord against Parent or its Subsidiary with respect to any breach by Parent or its Subsidiary of the Required Consent Lease in permitting SpinCo to so occupy the Parent Property without obtaining the required Lease Consent, for which Parent or its Subsidiary shall be solely responsible. SpinCo shall not be entitled to make any claim or demand against, or obtain reimbursement from, Parent or its applicable Subsidiary with respect to any costs, losses, claims, liabilities or damages incurred by SpinCo as a consequence of being obliged to vacate the Parent Property or in obtaining alternative premises, including, without limitation, any enforcement action which a Landlord may take against SpinCo.

(b) In the event that the Actual Completion Date for any Parent Owned Property, Parent New Lease Property, Parent Leased Property, Parent Sublease Property, Parent or Split Lease Property does not occur on or before the Real Estate Separation Date, whether or not SpinCo occupies a Parent Property as licensee as provided in Section 2.11(a), SpinCo shall, effective as of or prior to the Real Estate Separation Date, (i) pay Parent all rents, service charges, insurance premiums and other sums payable by Parent or its applicable Subsidiary under any Required Consent Lease (as to Parent Leased Properties), under the Lease Form (as to Parent Owned Properties or Parent New Lease Properties), under the Sublease Form (as to Parent Sublease Properties) or under the Pre-Split Lease with respect to the portion of the Split Lease Property that is to be a SpinCo Split Lease Property (as to Split Lease Properties), (ii) observe, in all material respects, the tenant's covenants, obligations and conditions contained in the Parent Lease (as to Parent Leased Properties), in the Sublease Form (as to Parent Sublease Properties) or in the Pre-Split Lease with respect to the portion of the Split Lease Property that is to be a SpinCo Split Lease Property (as to Split Lease Properties) and (iii) subject to the limitations contained in Section 2.11(a) indemnify, defend, protect and hold harmless Parent and its applicable Subsidiary from and against all reasonable, actually incurred losses, costs, claims, damages and liabilities arising on account of any breach thereof by SpinCo.

(c) Parent shall supply promptly to SpinCo copies of all invoices, demands, notices and other communications received by Parent or its or its applicable Subsidiaries or agents in connection with any of the matters for which SpinCo may be liable to make any payment or perform any obligation pursuant to Section 2.11(b), and shall, at SpinCo's cost, (x) take any steps and communicate any objections which SpinCo may have in connection with any such matters and (y) at the direction of SpinCo, enforce Parent's rights against the Landlord under the Required Consent Lease. SpinCo shall promptly supply to Parent any notices, demands, invoices and other communications received by SpinCo or its agents from any Landlord while SpinCo occupies any Parent Property without the relevant Lease Consent.

Section 2.12 Occupancy by Parent.

(a) Subject to compliance with Section 2.12(b), in the event that the Actual Completion Date for any SpinCo Owned Property, SpinCo New Lease Property, SpinCo Leased Property, SpinCo Sublease Property or Split Lease Property does not occur on or before the Real Estate Separation Date, Parent shall, commencing on or prior to the Real Estate Separation Date, be entitled to occupy, use and receive the rental income from the relevant SpinCo Property (except to the extent that the same is a Retained Part) as a licensee upon the terms and conditions contained in the SpinCo Lease (as to SpinCo Leased Properties), upon the terms and conditions contained in the Sublease Form (as to SpinCo Sublease Properties), upon the terms and conditions contained in the Lease Form (as to SpinCo Owned Properties or SpinCo New Lease Properties) or upon the terms and conditions contained in the Pre-Split Lease with respect to the portion of the Split Lease Property that is to be a Parent Split Lease Property (as to Split Lease Properties). Such license shall not be revocable prior to the applicable Actual Completion Date unless an enforcement action or forfeiture by the relevant Landlord due to Parent's occupancy of the SpinCo Property constituting a breach of the SpinCo Lease cannot, in the reasonable opinion of SpinCo, be avoided other than by requiring Parent to immediately vacate the relevant SpinCo Property, in which case SpinCo may by notice to Parent immediately require Parent to vacate the relevant SpinCo Property. Parent will be responsible for all costs, expenses and liabilities incurred by SpinCo or its applicable Subsidiary as a consequence of such occupancy, except for any losses, claims, costs, demands and liabilities incurred by SpinCo or its Subsidiary as a result of any enforcement action or forfeiture taken by the Landlord against SpinCo or its Subsidiary with respect to any breach by SpinCo or its Subsidiary of the Required Consent Lease in permitting Parent to so occupy the SpinCo Property without obtaining the required Lease Consent, for which SpinCo or its Subsidiary shall be solely responsible. Parent shall not be entitled to make any claim or demand against, or obtain reimbursement from, SpinCo or its applicable Subsidiary with respect to any costs, losses, claims, liabilities or damages incurred by Parent as a consequence of being obliged to vacate the SpinCo Property or in obtaining alternative premises, including, without limitation, any enforcement action which a Landlord may take against Parent.

(b) In the event that the Actual Completion Date for any SpinCo Owned Property, SpinCo New Lease Property, SpinCo Leased Property, SpinCo Sublease Property or Split Lease Property does not occur on or before the Real Estate Separation Date, whether or not Parent occupies a SpinCo Property as licensee as provided in Section 2.12(a), Parent shall, effective as of or prior to the Real Estate Separation Date, (i) pay SpinCo all rents, service charges, insurance premiums and other sums payable by SpinCo or its applicable Subsidiary under any Required Consent Lease (as to SpinCo Leased Properties), under the Lease Form (as to SpinCo Owned Properties or SpinCo New Lease Properties), under the Sublease Form (as to SpinCo Sublease Properties) or under the Pre-Split Lease with respect to the portion of the Split Lease Property that is to be a Parent Split Lease Property (as to Split Lease Properties), (ii) observe, in all material respects, the tenant's covenants, obligations and conditions contained in the SpinCo Lease (as to SpinCo Leased Properties), in the Sublease Form (as to SpinCo Sublease Properties) or in the Pre-Split Lease with respect to the portion of the Split Lease Property that is to be a Parent Split Lease Property (as to Split Lease Properties) and (iii) subject to the limitations contained in Section 2.12(a) Parent shall indemnify, defend, protect and hold harmless SpinCo and its applicable Subsidiary from and against all actually incurred, reasonable losses, costs, claims, damages and liabilities arising on account of any breach thereof by Parent.

(c) SpinCo shall supply promptly to Parent copies of all invoices, demands, notices and other communications received by SpinCo or its or its applicable Subsidiaries or agents in connection with any of the matters for which Parent may be liable to make any payment or perform any obligation pursuant to Section 2.12(b), and shall, at Parent's cost, (x) take any steps and communicate any objections which Parent may have in connection with any such matters and (y) at the direction of Parent, enforce SpinCo's rights under the Required Consent Lease against the Landlord. Parent shall promptly supply to SpinCo any notices, demands, invoices and other communications received by Parent or its agents from any Landlord while Parent occupies any SpinCo Property without the relevant Lease Consent.

Section 2.13 Obligation to Complete. If, with respect to any Parent Leased Property, SpinCo Leased Property, Parent Sublease Property, SpinCo Sublease Property or Split Lease Property, at any time the relevant Lease Consent is lawfully, formally and unconditionally refused in writing, Parent and SpinCo shall commence good faith negotiations and use commercially reasonable efforts to determine how to allocate the applicable Property, based on the relative importance of the applicable Property to the operations of each party, the size of the applicable Property, the number of employees of each party at the applicable Property, the value of assets associated with each business, the cost to relocate, and the potential risk and liability to each party in the event any enforcement action is brought by the applicable Landlord. Such commercially reasonable efforts shall include consideration of alternate structures to accommodate the needs of each party and the allocation of the costs thereof, including entering into amendments of the size, term or other terms of the Required Consent Lease, restructuring a proposed lease assignment to be a sublease and relocating one party.

Section 2.14 Form of Transfer.

(a) The conveyance to SpinCo or its Subsidiary of each relevant Parent Owned Property shall be in the form of a special or limited warranty deed, or its equivalent, in statutory form. The conveyance to Parent or its Subsidiary of each relevant SpinCo Owned Property shall be in the form of a special or limited warranty deed, or its equivalent, in statutory form.

Section 2.15 Casualty; Lease Termination.

(a) If, prior to the Actual Completion Date (but not after the Distribution Date), any Parent Property (or any part thereof) shall be damaged or destroyed by a fire or other casualty (a "Casualty", and any property subject to such Casualty, a "Damaged Property"), then, in any such event, Parent shall promptly notify SpinCo, and Parent shall proceed to effectuate the transfer of the Damaged Property under all the terms of this Agreement; subject, however, to the following: (1) unless Parent chooses to repair the Damaged Property pursuant to clause (2) below, SpinCo shall accept such Damaged Property subject to the damage or destruction in question; (2) prior to the Actual Completion Date, Parent shall have the right (but not the obligation) to repair or restore any such damage or destruction at Parent's sole cost and expense, subject to the terms and provisions of any applicable Parent Lease, and (3) if Parent chooses not to repair or restore any such damage or destruction, Parent shall (x) assign all of its rights and promptly make available to SpinCo all insurance proceeds due or received by Parent in connection with the Casualty and (y) pay to SpinCo the amount of the deductible due under the applicable insurance policy.

(b) If, prior to the Actual Completion Date (but not after the Distribution Date) any SpinCo Property (or any part thereof) shall be damaged or destroyed by Casualty, then, in any such event SpinCo shall promptly notify Parent, and SpinCo shall proceed to effectuate the transfer of the Damaged Property under all the terms of this Agreement; subject, however, to the following: (1) unless SpinCo chooses to repair the Damaged Property pursuant to clause (2) below, Parent shall accept such Damaged Property subject to the damage or destruction in question; (2) prior to the Actual Completion Date, SpinCo shall have the right (but not the obligation) to repair or restore any such damage or destruction at SpinCo's sole cost and expense, subject to the terms and provisions of any applicable SpinCo Lease, and (3) if SpinCo chooses not to repair or restore any such damage or destruction, SpinCo shall (x) assign all of its rights and promptly make available to Parent all insurance proceeds due or received by SpinCo in connection with the Casualty and (y) pay to Parent the amount of the deductible due under the applicable insurance policy.

(c) Promptly following the execution of the Separation Agreement, Parent or SpinCo, as applicable, shall name (or caused to be named) the other party as an additional insured on any business interruption insurance policies affecting any Parent Property or SpinCo Property, as applicable; provided that following the Real Estate Separation Date, subject to the terms of the Ancillary Agreements each party shall be permitted to remove (and there shall be no obligation to name) the other party as an additional insured on any such insurance policy.

(d) In addition, in the event that a Parent Lease with respect to a Parent Leased Property, a Parent Sublease Property or a Pre-Split Lease or a SpinCo Lease with respect to a SpinCo Leased Property, a SpinCo Sublease Property or a Pre-Split Lease is terminated prior to the Real Estate Separation Date, (i) Parent and SpinCo, respectively, shall not be required to assign, sublease or share such Property, (ii) SpinCo and Parent, respectively, shall not be required to accept an assignment, sublease or sharing of such Property and (iii) neither party shall have any further liability with respect to such Property hereunder.

Section 2.16 Fixtures and Fittings. The provisions of the Separation Agreement and the other Ancillary Agreements shall apply to any equipment, office equipment, trade fixtures, furniture and any other personal property located at each Property (excluding any equipment, office equipment, trade fixtures, furniture and any other personal property owned by third parties), except for the applicable scheduled Excluded Personal Property.

Section 2.17 Costs. Parent shall pay (i) all actual costs and expenses incurred in connection with obtaining the Lease Consents, including, without limitation, Landlord's consent fees and attorneys' fees and any costs and expenses relating to renegotiation of Parent Leases, SpinCo Leases and Split Leases, as applicable, (ii) except as expressly stated otherwise in the applicable Lease Form, Sublease Form or Split Lease, the costs relating to any alterations or improvements (such as demising walls and separate security and badging systems) reasonably required to separate Parent and SpinCo employees with respect to all Properties being shared between Parent and SpinCo following the Real Estate Separation Date, and (iii) all actual costs and expenses in connection with the transfer of any Property pursuant to this Agreement, including title insurance premiums, escrow fees, recording fees, and any transfer taxes arising as a result of such transfers; provided, that, with respect to any Split Lease or other lease agreement entered into with a third-party landlord, the tenant thereunder shall be responsible for any recording, restriction or municipal charges or other fees associated with entering into such Split Lease or other lease agreement; provided, further that this Section 2.17 shall not apply with respect to any obligation to deliver a security deposit, letter of credit or other guaranty (which shall be governed instead by Section 2.10 hereof).

Section 2.18 Signing and Ratification. Parent and SpinCo hereby ratify and authorize all signatures to any document entered into in connection with this Agreement by Parent and SpinCo, or each's respective Subsidiaries, and the parties agree that to the extent any challenges arise to the authority of any such signature from and after the date hereof, Parent and SpinCo will cooperate to ratify such signatures and prepare any corporate authorizations or resolutions necessary therefor.

Section 2.19 Allocation of Properties. To the extent that the Owned and Leased Properties Schedule and the Colocation Sites Schedule require amendments made (i) in accordance with the Allocation Principle in all material respects following the date hereof, or (ii) as a result of changes to allocations made in accordance with Section 2.13, Parent shall provide written notice to SpinCo prior to amending the Owned and Leased Properties Schedule or the Colocation Sites Schedule. If SpinCo disputes in good faith the application of the Allocation Principle with respect to any such amendment, such dispute shall be resolved in accordance with Article XI, Section 11.02 (*Dispute Resolution*) of the Separation Agreement.

Section 2.20 Insurance. Between the date of this Agreement and each applicable Real Estate Separation Date (or earlier termination of this Agreement), each of Parent, SpinCo and their respective Subsidiaries, as applicable, shall use commercially reasonable efforts to keep in full force and effect present insurance policies maintained (or renewals thereof) with respect to each Property owned, leased, subleased or otherwise occupied by such party.

ARTICLE III
PROPERTY OUTSIDE THE UNITED STATES

With respect to each of the Properties located outside the United States listed on the Owned and Leased Property Schedule and the Colocation Sites Schedule, as well as any additional properties acquired by Parent, SpinCo or a Subsidiary prior to the Real Estate Separation Date, Parent and SpinCo will use the appropriate form document attached hereto, translated into the local language, if customary under local practice, and modified to comply with local legal requirements to cause the appropriate transfers, assignments, leases, subleases or leasebacks to occur. Such transfers, assignments, leases, subleases or leasebacks shall, so far as the law in the jurisdiction in which such property is located permits, be on the same terms and conditions as provided in Article II and shall include such other deliveries (and the parties shall comply with such other customary procedures and formalities) as may be required by the laws of the jurisdiction in which the Property is located. In the event of a conflict between the terms of this Agreement and the terms of such local agreements, the terms of the local agreements shall prevail.

ARTICLE IV
MISCELLANEOUS

Section 4.1 Additional Provisions. Section 6.10, Article IX, Article X and Article XI of the Separation Agreement are hereby incorporated into this Agreement *mutatis mutandis*.

Section 4.2 Performance. Parent will 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 will 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 will (a) give timely notice of the terms, conditions and continuing obligations contained in this Section 4.2 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 inconsistent with such Party's obligations under this Agreement.

Section 4.3 Hazardous Materials. In the case of any conflict between the terms of this Agreement or any deed, lease, lease assignment, sublease or sublease assignment executed pursuant to the terms of this Agreement, on the one hand, and any provision of the Separation Agreement, on the other hand, with respect to Hazardous Materials or HSE Liabilities (each as defined in the Separation Agreement), the provisions of the Separation Agreement shall govern and control in all respects.

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

IN WITNESS WHEREOF, each of the parties hereto has caused this Real Estate Matters Agreement to be executed on its behalf by its officers thereunto duly authorized on the day and year first above written.

International Business Machines Corporation, a New York corporation

By: /s/ Frank Sedlarcik
Name: Frank Sedlarcik
Title: Vice President, Assistant General Counsel and Secretary

Kyndryl Holdings, Inc., a Delaware corporation

By: /s/ Simon Beaumont
Name: Simon Beaumont
Title: President

Exhibit 10.6

EXECUTION VERSION

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

IBM International Client Relationship Agreement

This IBM International Client Relationship Agreement (Agreement or iCRA) includes Part 1 – General Terms and Part 2 – Country Required Terms. This Agreement governs transactions by which Client may order Programs, Cloud and other Services, Machines and Appliances (collectively IBM Products) and third party products and services (Non-IBM Products). Transaction Documents (TDs) and Attachments detail the specifics of transactions such as charges and a description of and information about the Product. Examples of TDs include statements of work, service descriptions, ordering documents, supplements, or invoices. Attachments provide supplemental terms that apply to certain types of Products, such as product capacity or trial services. In the event of conflict, an Attachment prevails over this Agreement and a TD prevails over both the Agreement and any Attachment and only applies to the specific transaction.

IBM and Client have entered into a Separation and Distribution Agreement, dated as of November 2, 2021 (the "Separation Agreement"). In furtherance of the foregoing, Client may acquire Products from IBM for Client's own Enterprise or for Client's third-party End Users outside Client's Enterprise, as specified in the applicable Attachment and TDs.

Client Lead Company and IBM Lead Company agree to coordinate the activities of their respective Enterprise companies participating under this Agreement. This Agreement is written in English and signed with the understanding that the Lead Companies are bound by its terms. The Lead Companies will distribute copies of the Agreement to their respective participating Enterprise companies. The specific relationship established in each country will be documented by signing this Agreement or a participation document that incorporates this Agreement and its Attachments and TDs.

Enterprise companies include (i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares), and (ii) any other entity that controls, is controlled by, or is under common control with Client or IBM, and has signed a participation agreement.

All references to the "Spin Date" means November 3, 2021.

Part 1 – General Terms

1. Programs

a. A Program is an IBM-branded computer program and related material available for license subject to the payment of charges. Program details are described in an Attachment called License Information (LI). Programs do not include Machine Code or Project Materials. Programs are copyrighted and licensed (not sold). When IBM accepts an order for a Program, Client is granted a nonexclusive license to: i) use the Program only up to its authorizations and subject to its LI; ii) make and install copies to support such authorized use; and iii) make a backup copy. Programs may be used by Client, its authorized employees and contractors only within Client's Enterprise, and not to provide hosting or timesharing services to any third party. Client may not sublicense, assign, or transfer the license for any Program. Additional rights may be available for additional fees or under different terms. Client is not granted unrestricted rights to use the Program nor has Client paid for all of the economic value of the Program. Certain Programs may contain third party code licensed under separate agreements identified in the LI.

b. The license granted for a Program is subject to Client:

(1) reproducing copyright notices and other markings;

(2) ensuring anyone who uses the Program does so only for Client's authorized use and complies with the license;

(3) not reverse assembling, reverse compiling, translating, or reverse engineering the Program; and

(4) not using any of the elements of the Program or related licensed material separately from the Program.

c. The metric applicable to a Program license is specified in an Attachment or TD. All licenses on a server or capacity based metric must be licensed to the full capacity of the server on which the Program is installed, unless sub-capacity usage is available from IBM and Client complies with the applicable sub-capacity requirements and terms as set forth in Attachments and TDs.

2. Services - Cloud Services

a. A Cloud Service is an IBM offering provided by IBM and made available via a network. Each Cloud Service is described in a TD. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in an Attachment or TD.

b. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD.

c. IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. A Cloud Service may require the use of enabling software that Client downloads to Client systems to facilitate use of the Cloud Service. Client may use enabling software only in connection with use of the Cloud Service and according to any licensing terms if specified in a TD. Enabling software is provided as-is, without warranties of any kind.

d. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates.

e. Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent Content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. In addition, Client may not use Cloud Services if failure of the Cloud Service could lead to death, bodily injury, or property or environmental damage. Client may not: i) reverse engineer any portion of the Cloud Services; or ii) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise. or iii) combine Cloud Services with Client's value add to create a commercially available Client branded solution that Client markets to its end user customers unless otherwise agreed (unless otherwise set forth in an Attachment or Transaction Document).

f. A Cloud Service or feature of a Cloud Service is considered “Preview” when IBM makes such services or features available at no charge, with limited or pre-release functionality, or for a limited time to try available functionality (such as beta, trial, no-charge, or preview designated Cloud Services). Preview services are excluded from available service level agreements. A Preview service may not be covered by support and IBM may change or discontinue a Preview service at any time and without notice. IBM is not obligated to release a Preview service or make an equivalent service generally available.

2.1 Changes to Cloud Services

a. IBM may modify: i) a Cloud Service; and ii) IBM’s Data Security and Privacy Principles for IBM Cloud Services (DSP) from time to time at IBM’s sole discretion and such modifications will supersede prior versions. Updates to a TD (such as a service description or statement of work) will take effect upon a new order, change effective date for ongoing services, or upon the renewal date for Cloud Services that automatically renew. The intent of any modification will be to: i) improve or clarify existing commitments; ii) maintain alignment to current adopted standards and applicable laws; or iii) provide additional features and functionality. Modifications will not degrade the security or functionality of a Cloud Service.

b. IBM may withdraw a Cloud Service on 12 months’ notice, unless otherwise stated in a TD. IBM will continue to provide the Cloud Service for the remainder of Client’s unexpired term or work with Client to migrate to another IBM offering.

2.2 Term and Termination of Cloud Services

a. The term of a Cloud Service begins on the date IBM notifies Client that Client can access the Cloud Service. IBM will specify whether the Cloud Service renews automatically, proceeds on a continuous use basis, or terminates at the end of the term. For automatic renewal, unless Client provides written notice to IBM or the IBM Business Partner involved in the Cloud Service not to renew at least 30 days prior to the term expiration date, the Cloud Service will automatically renew for the specified term. For continuous use, the Cloud Service will continue to be available on a month to month basis until Client provides 30 days written notice to IBM or the IBM Business Partner involved in the Cloud Service of termination. The Cloud Service will remain available to the end of the calendar month after such 30 day period.

b. IBM may suspend or limit, to the extent necessary, Client’s use of a Cloud Service if IBM determines there is a material breach of Client’s obligations, a security breach, violation of law, or breach of the terms set forth in section 2 (f). If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service.

c. Client may terminate a Cloud Service on one month’s notice: i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the Cloud Services; ii) if IBM’s modification to the computing environment used to provide the Cloud Service causes Client to be noncompliant with applicable laws; or iii) if IBM notifies Client of a modification that has a material adverse effect on Client’s use of the Cloud Service, provided that IBM will have 90 days to work with Client to minimize such effect. In the event of such termination, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. If the Agreement is terminated for any other reason, Client shall pay to IBM, on the date of termination, the total amounts due per the Agreement. Upon termination, IBM may assist Client in transitioning Client’s Content to an alternative technology for an additional charge and under separately agreed terms.

3. Services – Other Services

a. IBM provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or TD. Client will own the copyright in works of authorship that IBM develops for Client under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to the Program terms. IBM grants Client an irrevocable (subject to Client’s payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

b. Any operational or administrative process that by its nature apply to a Service that is (a) part of Existing Backlog and (b) the process is documented in Client’s contract with its customer and (c) the process has been agreed to by the parties prior to Spin Date, will continue to apply for the current term of that customer’s contract with Client. For the purposes of this paragraph “Existing Backlog” means existing Service obligations documented under active IBM documents of understanding or the Survey Gizmo tool, including those amended by a mutually agreed project change request (PCR) or request for service (RFS), and as may be reflected in corresponding pricing and quote to cash records (i.e., CFTS/IERP), or equivalent forms but all as specified in an Attachment or TD.

c. Either party may terminate a Service if a material breach concerning the Service is not remedied within a reasonable time. IBM will provide at least 90 days’ notice prior to withdrawal of Service. Client will pay charges for Services provided through the effective date of termination. If Client terminates without cause or IBM terminates for breach, Client will meet all minimum commitments and pay termination or adjustment charges specified in the SOW or TD and any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or relocation. IBM will take reasonable steps to mitigate any such additional costs.

d. IBM Personnel. Attachment A is incorporated by reference.

4. Machines and Appliances

a. A Machine is an IBM-branded device including its features, upgrades, and accessories. An Appliance is a Program and Machine combination designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program component of an Appliance and terms that apply to a Machine apply to the Machine component of an Appliance. Client may not use or transfer an Appliance's Program component independently of the Appliance.

b. When IBM accepts Client's order, IBM transfers title to Machines and non-IBM machines to Client or Client's lessor upon payment of all amounts due, except in the United States where title transfers upon shipment. IBM bears risk of loss until delivery to the carrier for shipment. IBM pays for insurance on Client's behalf until delivery to Client's location. Client must report any loss in writing to IBM within 10 business days of delivery and follow the claim procedure. Additional charges may apply for IBM installation more than six months after shipment. Client must follow instructions provided to install Client set up Machines.

c. Machines and parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM promptly. A replacement assumes the warranty or maintenance status of the replaced part. A Machine may include parts that are not new and in some instances Machines may have been previously installed. Regardless, IBM's warranty terms apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client may only acquire Machines for use within Client's Enterprise in the country where acquired and not for resale, lease, or transfer. Lease-back financing is permitted.

4.1 Machine Code and Built in Capacity

Machines may include Machine Code (MC) and Built in Capacity (BIC). MC is computer instructions, fixes, replacements, and related materials, such as data and passwords relied on, provided, used with, or generated by MC, that permit the operation of the machine's processors, storage, or other functionality. MC is copyrighted and licensed (not sold). IBM only provides copies, fixes, or replacements for MC for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Client agrees that all copies, fixes, or replacements for MC will be obtained solely as authorized by IBM. Client is granted a nonexclusive license to use MC only: i) on the Machine for which IBM provided it; and ii) to access and use BIC only to the extent paid for by Client, activated by IBM and subject to the Attachment called IBM Authorized Use Table for Machines (AUT) available from IBM and at http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html. BIC is computing resource (e.g., processors, storage, and other functionality) that IBM provides for a Machine. Use of BIC may be restricted by contract, technological or other measures. Client agrees to IBM's implementation of technological and other measures that restrict, monitor and report on use of BIC or MC, and to install any changes IBM provides. Client may not alter, reverse assemble, reverse compile, translate, or reverse engineer the MC, or circumvent or interfere, by any means, with IBM's contractual, technological, or other measures that restrict, monitor or report on use of BIC or MC. While Client's license to MC is in effect, Client may transfer possession of the entire MC along with all of Client's rights and obligations only with corresponding transfer of the Machine and a hardcopy of this MC license, and only if the transferee agrees to the terms of this MC license. Client's MC license terminates immediately upon transfer. This Agreement governs MC and BIC on Machines acquired from another party. Use of BIC in excess of authorizations from IBM is subject to additional charges.

5. Content and Data Protection

a. Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to the Cloud Service or information or data Client may provide, make available or grant access to, in connection with IBM providing other Services, such as consulting, maintenance, or Program support. Providing Content or otherwise using Cloud Services will not affect Client's ownership or license rights in such Content. IBM, its affiliates, and contractors of either may access and use the Content solely for the purpose of providing and managing the applicable Cloud Services or other Services. IBM will treat all Content as confidential by not disclosing Content except to IBM employees and contractors and only to the extent necessary to deliver the Cloud Services or perform other Services.

b. Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM, its affiliates, and contractors of either to use, provide, store and otherwise process Content in the Cloud Services or other Services. This includes Client providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated data in such Content. Client is responsible for adequate back-up of Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for Cloud Services or other Services, Client will not input, provide, or allow access to such Content unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures.

c. IBM's Data Security and Privacy Principles for IBM Cloud Services (DSP), at http://www.ibm.com/cloud/data-security, apply for generally available Cloud Service offerings. Specific security features and functions of a Cloud Service may be provided in an Attachment and TDs. Client is responsible to assess the suitability of each Cloud Service for Client's intended use and Content and to take necessary actions to order, enable, or use available data protection features for a Cloud Service appropriate for the Content being used with a Cloud Service. By using the Cloud Service, Client accepts responsibility for use of the Cloud Services, and acknowledges that it meets Client's requirements and processing instructions to enable compliance with applicable laws.

d. IBM's Data Processing Addendum at http://ibm.com/dpa (DPA) and applicable DPA Exhibit(s) apply to personal data contained in Content, if and to the extent: i) European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws identified at http://ibm.com/dpa/dpl apply.

e. Upon request by either party, IBM, Client, affiliates of either, will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

f. IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the Cloud Service, other Services, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format). IBM does not archive Content, however some Content may remain in backup files until expiration of such files as governed by IBM's backup retention practices.

6. Warranties and Post Warranty Support

a. IBM warrants that Programs used in their specified operating environment conform to their official published specifications. The warranty period for a Program (not the Program component of an Appliance) is one year, or the initial license term if less than one year, unless another warranty period is specified in an Attachment or TD. During the Program warranty period, IBM provides Software Subscription and Support (S&S), entitling Client to defect correction information, restrictions, bypasses, and new releases and versions IBM makes generally available. Unless Client elects to discontinue S&S, annual S&S automatically renews at then-current charges until S&S for a version or release is withdrawn. If Client elects to continue S&S for a Program at a designated Client site, Client must maintain S&S for all uses and installations of the Program at that site.

b. IBM warrants that it provides Cloud and other Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD, including any completion criteria, and that Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for a Service ends when the Service ends.

c. IBM warrants that Machines used in their specified operating environment conform to their official published specifications. For a Machine or Appliance, the warranty period is specified in the Attachment or TD. During its warranty period, IBM will repair or exchange the Machine without charge, as specified in the Attachment. Warranty does not apply to Machines that Client did not allow IBM to install as required by the TD. Client may purchase warranty service upgrades and post warranty support where available. For Appliances, post warranty support includes maintenance and S&S.

d. If a Machine or Program does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functional equivalent, Client may return it to IBM for a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use it terminates.

e. **I**BM does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an IBM Product. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with instructions provided by IBM. Preview services and non-IBM Products are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client.

7. Charges, Taxes, Payment and Verification

a. Unless otherwise set forth in a TD, IBM will provide Products only after receiving Client's authorization in either electronic or tangible form (i.e., a purchase order, bill of lading, or another Client designated document) (collectively, a Work Authorization (WA)). Preprinted Client terms on the WA are void and of no effect. Notwithstanding the foregoing, a WA is not required for Program or Cloud Services use in excess of authorizations.

b. Client agrees to pay all applicable charges specified for an IBM Product or non-IBM Product, and charges for use in excess of authorizations. The agreed upon charges and currency for an IBM Product and non-IBM Product will be set forth in the TD. Payment of invoices does not constitute acceptance of Project Materials. IBM will submit invoices to Client via Client's designated electronic invoicing system. [***]. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid. [***].

c. For Cloud Services, based on selected billing frequency, IBM will invoice Client the charges due at the beginning of the billing frequency term, except for overage and usage type of charges which will be invoiced in arrears. One time charges will be billed upon IBM's acceptance of an order.

d. All charges referred to in this Agreement are expressed as exclusive of all applicable Indirect Taxes. If any Indirect Taxes are payable in relation to any goods, services or other supplies made under or in connection with this Agreement, including the provisioning and fulfillment of such supplies (i) the applicable Indirect Taxes shall be added to any charges payable by Client; (ii) IBM shall issue an invoice or other billing documentation to the Client that complies with applicable tax laws; and (iii) as applicable, Client shall pay or reimburse the amounts of such Indirect Taxes to IBM on or before the due dates for satisfaction of such invoices. Indirect Taxes means value added, goods and services, consumption, sales, use, revenue and/or turnover taxes calculated as a percentage of gross revenue (excluding income taxes calculated on net income or profit), financial transaction, digital services, export and import taxes or duties, stamp, registration, documentary and property taxes and any other similar charges or contributions, including surcharges on the aforementioned taxes, in each case imposed, collected or assessed by, or payable to, a tax authority or other governmental agency.

In the event that local laws or regulations could require the IBM contracting entity to register for Indirect taxes in overseas countries, Client agrees to execute local agreements with the local IBM Enterprise company in the applicable overseas country where IBM makes supplies under the Agreement and/ or the Client or Client Enterprise company receives the supplies. Client may nominate which Client Enterprise company (namely, Client or a local Client Enterprise company,) executes the local service agreement with the local IBM Enterprise company.

Client will pay the charge to IBM net of the required withholding or deduction and shall account for the amount so deducted or withheld to the relevant tax authority. Client will supply to IBM evidence to the reasonable satisfaction of IBM that Client has accounted to the relevant tax authority for the amount withheld or deducted and will provide all such reasonable assistance as may be requested by the IBM in recovering the amount withheld or deducted. In the event that a double taxation treaty applies which provides for a reduced withholding tax rate (including a complete exemption from withholding tax), Client shall take all reasonable steps to ensure that such reduced withholding is applied.

e. Unless otherwise set forth in an attachment or TD, IBM may change recurring charges, labor rates and minimum commitments on three months' notice. Notwithstanding the foregoing IBM may change Cloud Service charges on thirty days' notice unless otherwise committed to pricing during the term of the Cloud Service or as specified in an attachment or TD. A change applies on the invoice date or the first day of the charging period on or after the effective date IBM specifies in the notice. IBM may change one-time charges without notice. However, a change to a one-time charge does not apply to an order if: i) IBM receives the order before the announcement date of the increase; and ii) within three months after IBM's receipt of the order, the product is shipped or made available to Client.

f. Client will: i) maintain, and provide upon request, records, system tools output, and access to Client's premises, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with the Agreement, including MC and Program licenses and metrics, such as sub-capacity usage; and ii) promptly order and pay for required entitlements (including associated S&S or maintenance) at IBM's then current rates and for other charges and liabilities determined as a result of such verification, as IBM specifies in an invoice. These compliance verification obligations remain in effect during the term of any TD and for two years thereafter.

g. **Travel Expenses**. To the extent travel expenses are reimbursable by Client under a TD, Client will reimburse IBM for the following travel expenses only, provided they are incurred in the performance of this Agreement and with Client's prior written approval for the estimated costs and daily limits (as may be specified by Client): (i) tolls, parking fees, taxis, buses or auto rentals fees (ii) personal automobile use , excluding normal commutation; (iii) air transportation at the economy, tourist or coach class rate for the most direct route of a scheduled airline; (iv) reasonable lodging charges commensurate with the average rates charged for the immediate area (v) reasonable and actual meal expenses; (vi) necessary business calls made on Client's behalf; (vii) reasonable tipping; (viii) reasonable valet and laundry charges if a trip extends beyond four (4) days. All reservations made by IBM must be made through IBM's designated travel agency or through another agency with Client's prior written approval.

8. Liability and Indemnity

a. IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.

b. The following amounts are not subject to the above cap: i) third party payments referred to in the paragraph below; and ii) damages that cannot be limited under applicable law.

c. If a third party asserts a claim against Client that an IBM Product acquired under the Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly: i) notifies IBM in writing of the claim; ii) supplies information requested by IBM; and iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

d. IBM has no responsibility for claims based on Non-IBM Products, items not provided by IBM, or any violation of law or third party rights caused by Content, or any Client materials, designs, specifications, or use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release.

e. With respect to Services, the parties agree to look to their own risk management (including insurance) to cover damage, destruction, loss, theft, or government taking (collectively, Loss) of their respective tangible property (whether owned or leased), and neither party shall be liable to the other for such Loss except liability for negligence under applicable law.

9. Termination

Either party may terminate this Agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of this Agreement does not terminate TDs, and provisions of this Agreement and Attachments as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms. IBM may terminate Client's license to use a Program or MC if Client fails to comply with the Agreement. Client will promptly destroy all copies of the Program or MC after either party has terminated the license. Failure to pay is a material breach.

10. Governing Laws and Geographic Scope

a. Each party is responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

b. Both parties agree to the application of the laws of the country where the transaction is performed (or for Cloud Services, the laws of the country of Client's business address) to the Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. IBM will not serve as Client's exporter or importer, except as required by data protection laws, for: i) any Content; or ii) use of any portion of the Cloud Service from a country outside Client's business address. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

11. General

a. The parties agree that the IBM International Agreement for the Exchange of Confidential Information (iAECI) between the parties dated November 3, 2021 shall govern the obligations and rights of the parties with respect to any Information (as defined in the iAECI) exchanged between the parties under this Agreement, any Attachment or TDs, which is incorporated herein by reference. Pricing and terms contained in the Agreement, any Attachment or any TD are IBM Information and Client will not disclose such Information to any third party without IBM's written consent. In addition, Client's obligations for IBM pricing remain in effect until the later of (a) two years following the date the pricing was disclosed to Client or (b) one year following the termination of the TD that contains the pricing. This paragraph does not apply to Content provided in the use of a Cloud Service.

b. Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for, the product, offering or service. Since this Agreement may apply to many future orders, IBM may modify this Agreement by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing services that do not expire, and renewals. For transactions with a defined renewable contract period stated in a TD, Client may request that IBM defer the change effective date until the end of the current contract period. IBM's ability to modify the Cloud Services is set forth in Section 2.1. Client accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice. Except as provided above, all changes to the Agreement must be in writing accepted by both parties.

c. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. IBM is an information technology provider only. Any directions, suggested usage, or guidance provided by the IBM or an IBM Product does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client should obtain its own expert advice. Client is responsible for its use of IBM Products and Non-IBM Products. Each party is responsible for determining the assignment of its and its affiliates personnel and their respective contractors, and for their direction, control, and compensation.

d. IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery and corruption, and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies. Each party will be familiar and will strictly comply with all laws and regulations on bribery, corruption, and prohibited business practices. Each party and its Affiliates have not and will not, for the purpose of influencing or inducing anyone to influence decisions in favor of the other party or its Affiliates, offer, promise or make or agree to make, directly or indirectly, (a) any political contributions of any kind or any payment to or for the benefit of any public official, whether elected or appointed, (b) any payments for gifts, meals, travel or other value for a government employee or his/her family members or (c) any payments or gifts (of money or anything of value) to anyone. Neither party shall reimburse the other party for any such political contributions, payments or gifts.

e. IBM Business Partners who use or make available IBM Products or non-IBM products are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

f. IBM may offer Non-IBM Products, or an IBM Product may enable access to Non-IBM Product, that may require acceptance of third party terms presented to the Client. Linking to or use of Non-IBM Products constitutes Client's agreement with such terms. IBM is not a party to such third party agreements and is not responsible for such Non-IBM Products. Access to Non-IBM Cloud Services or other Services may be withdrawn at any time.

g. IBM, its affiliates, and contractors of either, may, wherever they do business, store and otherwise process business contact information (BCI) of Client, its personnel, and authorized users, for example, name, business telephone, address, email, and user ID for business dealings with them. Where notice to or consent by the individuals is required for such processing, Client will notify and obtain such consent. The IBM Privacy Statement at https://www.ibm.com/privacy/us/en/ provides additional details with respect to BCI and Account Data described below.

h. Account Data is information, other than Content and BCI, that Client provides to IBM to enable Client's acquisition or use of IBM Products or Non-IBM Products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Client's acquisition or use of IBM Products or non-IBM Products. IBM, its affiliates, and contractors of either, may use Account Data, for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of IBM Products and non-IBM Products.

i. License grants to Programs and MC hereunder are provided by International Business Machines Corporation, a New York corporation ("IBM Corporation"). For transactions entered into by a Client Enterprise company with an IBM Enterprise company, IBM is acting as a distributor and delivering Programs and MC pursuant to this Agreement, and is responsible for enforcing the license terms and fulfilling all obligations concerning such Programs and MC and no right or cause of action hereunder is created in favor of Client against IBM Corporation. Client waives all claims and causes of action against IBM Corporation and agrees to look solely to IBM for any rights and remedies in connection with Programs and MC.

j. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other, where consent will not be unreasonably withheld or delayed. Assignment of IBM rights to receive payments is not restricted and such assignment does not require Client's consent.

k. This Agreement applies to IBM and Client (the signatories below) and their respective Enterprise companies who acquire IBM Products or Non-IBM Products under this Agreement. The signatories shall coordinate the activities of their own Enterprise companies under this Agreement. Enterprise companies include: i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares); and ii) any other entity that controls, is controlled by or is under common control as Client or IBM and has signed a participation agreement.

l. All notices under the Agreement must be in writing and sent to the business address specified for the Agreement, unless a party designates in writing a different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.

m. No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

n. IBM may use personnel and resources in locations worldwide, including third party contractors to support the delivery of IBM Products and Non-IBM Products. IBM may transfer Content, including personally identifiable information, across country borders. A list of countries where Content may be processed is described in the TD or as specified in service support documentation. IBM is responsible for the obligations under the Agreement even if IBM uses a third party contractor and will have appropriate agreements in place to enable IBM to meet its obligations.

o. Insurance

IBM will maintain at its expense (and provide certificates of insurance at Client's request) i) all statutory mandated insurance such as workers' compensation and employer's liability, ii) commercial general liability insurance including products liability and completed operations with a minimum per occurrence limit of 5,000,000 USD (or local currency equivalent), and iii) automobile liability insurance (if a vehicle is to be used in performance of this Agreement) of at least 5,000,000 USD (or local currency equivalent). Commercial general liability insurance and automobile insurance policy limits may be met through a combination of primary and umbrella/excess liability insurance and must name Client as an additional insured. Insurance required under a TD must be purchased either from insurers with an AM Best Rating of A- or better, or with a Standard & Poor's rating of BBB and $50M in policy holder's surplus or greater.

p. Record Keeping and Audit

IBM will maintain (and subject to applicable law provide to Client upon request) relevant business, technical and accounting records i) to support IBM's invoices; ii) show proof of required permits and professional licenses and iii) to demonstrate compliance with IBM's performance of its obligations under this Agreement, for not less than six (6) years following completion or termination of the relevant Services. All accounting records will be maintained in accordance with generally accepted accounting principles.

Upon Client's notice, Client may, at no charge to IBM, audit IBM's compliance with its obligations under this Agreement, including verifying compliance with applicable laws and the protection and integrity of Client data. In connection with an audit, IBM shall provide Client (including its auditors and any regulators) access at reasonable times (or in the case of regulators, at any time designated by such regulators), to all systems, data and business, technical and accounting records relating to IBM's (and any subcontractor's) compliance with this Agreement or amounts invoiced by IBM to Client. IBM shall provide its full cooperation in any such audit, including by designating a focal point to support an audit and, if required by Client, (a) promptly securing the rights for Client to directly request from any subcontractor, and (b) using commercially reasonable efforts to secure the rights for the subcontractor to promptly provide to Client, access to such systems, data and records relating to the work performed by such subcontractors. Client will not have the right to audit any IBM owned or controlled facilities, including but not limited to data centers.

q. Business Continuity

IBM agrees to have and maintain a business continuity plan and business continuity testing procedures, which include but are not limited to the areas of disaster recovery planning and pandemic planning, and cyber security. Cyber security programs must include, at a minimum, provisions to prevent, detect and respond to cyber security incidents. IBM agrees to provide the specific recovery targets of the business continuity plan and to review, update, and test the business continuity plan annually and, upon Client's request, IBM will provide a summary of the business continuity plan and test results. Client may, from time to time, provide feedback regarding the plan and requests that IBM take Client's comments into consideration when updating the plan. However, IBM remains solely responsible for the performance of its responsibilities under the Agreement and the adequacy of the business continuity plan regardless of whether Client has reviewed or commented on the plan.

r. IBM will continue to evolve and enhance the technical support tools to drive innovation with enhanced automation, artificial Intelligence, and analytics.

s. For Client's acquisition of Products or Services to be delivered to Client's customer on Client's behalf (as allowed under attachments to this Agreement), the following additional terms apply:

(1) Client will not make any representations about IBM or IBM Products or Services other than those authorized by IBM in writing,

(2) Client agrees that it has the direct contractual relationship with Client's customer receiving the benefit of the IBM Products or Services, and

(3) Client is responsible for all Client's customer's obligations with respect to the IBM Products or Services.

IBM will provide the IBM Products or Services to Client or, at Client's direction, to Client's customer, on Client's behalf (as further described in any applicable attachments to this Agreement).

12. Dispute Resolution

12.01 **Negotiation.** In the event of any claim, controversy, demand or request for relief of any kind arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity or breach of this Agreement or otherwise arising out of or related to this Agreement, including any Action based on contract, tort, equity, statute, regulation or constitution (collectively, "Disputes"), the Party raising the Dispute shall give written notice of the Dispute (a "Dispute Notice"), and the general counsels of the Parties (or such other individuals designated by the respective general counsels) and/or the executive officers designated by the Parties shall negotiate for a reasonable period of time to settle such Dispute; provided, that such reasonable period shall not, unless otherwise agreed by the Parties in writing, exceed ninety (90) days (the "Negotiation Period") from the time of receipt of the Dispute Notice; provided, further, that in the event of any arbitration in accordance with Section 12.03 hereof, (x) the Parties shall not assert the defenses of statute of limitations, laches or any other defense, in each such case based on the passage of time during the Negotiation Period, and (y) any contractual time period or deadline under this Agreement relating to such Dispute occurring after the Dispute Notice is received shall not be deemed to have passed until such Arbitration has been resolved.

12.02 **Arbitration**. If the Dispute has not been resolved for any reason after the Negotiation Period, then to the fullest extent permitted by applicable law such Dispute may be submitted by either Party to final and binding arbitration administered in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect (the "Rules"), except as modified herein.

(a) The arbitration shall be conducted by a three-member arbitral tribunal (the "Arbitral Tribunal"). The claimant shall nominate one arbitrator in accordance with the Rules, and the respondent shall nominate one arbitrator in accordance with the Rules within twenty-one days (21) after the appointment of the first arbitrator. The third arbitrator, who shall serve as chair of the Arbitral Tribunal, shall be jointly nominated by the two party-nominated arbitrators within twenty-one (21) days of the confirmation of the appointment of the second arbitrator. If any arbitrator is not appointed within the time limit provided herein, such arbitrator shall be appointed by the AAA in accordance with the listing, striking and ranking procedure in the Rules.

(b) The arbitration shall be held, and the award shall be rendered, in New York, New York, in the English language.

(c) For the avoidance of doubt, by submitting their Dispute to arbitration under the Rules, the Parties expressly agree that all issues of arbitrability, including all issues concerning the propriety and timeliness of the commencement of the arbitration, the jurisdiction of the Arbitral Tribunal (Including the scope of this agreement to arbitrate and the extent to which a Dispute is within that scope), and the procedural conditions for arbitration, shall be finally and solely determined by the Arbitral Tribunal.

(d) Without derogating from Section 12.03(e) below, the Arbitral Tribunal shall have the full authority to grant any pre-arbitral injunction, pre-arbitral attachment, interim or conservatory measure or other order in aid of arbitration proceedings ("Interim Relief"). The Parties shall exclusively submit any application for Interim Relief to only: (A) the Arbitral Tribunal; or (B) prior to the constitution of the Arbitral Tribunal, an emergency arbitrator appointed in the manner provided for in the Rules (the "Emergency Arbitrator"). Any Interim Relief so issued shall, to the extent permitted by applicable Law, be deemed a final arbitration award for purposes of enforceability, and, moreover, shall also be deemed a term and condition of this Agreement subject to specific performance in Section 12.04 below. The foregoing procedures shall constitute the exclusive means of seeking Interim Relief, provided, however, that (i) the Arbitral Tribunal shall have the power to continue, review, vacate or modify any Interim Relief granted by an Emergency Arbitrator; and (ii) in the event an Emergency Arbitrator or the Arbitral Tribunal issues an order granting, denying or otherwise addressing Interim Relief (a "Decision on Interim Relief"), any Party may apply to enforce or require specific performance of such Decision on Interim Relief in any court of competent jurisdiction.

(e) The Arbitral Tribunal shall have the power to grant any remedy or relief that is in accordance with the terms of this Agreement or the applicable Ancillary Agreement, including temporary or final injunctive relief, provided, however, that the Arbitral Tribunal shall have no authority or power to limit, expand, alter, amend, modify, revoke or suspend any condition or provision of this Agreement or any Ancillary Agreement, nor any right or power to award punitive, exemplary, enhanced or treble damages.

(f) The Arbitral Tribunal shall have the power to allocate the costs and fees of the arbitration, including reasonable attorneys' fees and costs as well as those costs and fees addressed in the Rules, between the Parties in the manner it deems fit.

(g) Arbitration under this Section 12 shall be the sole and exclusive remedy for any Dispute, and any award rendered thereby shall be final and binding upon the Parties as from the date rendered. Judgment on the award rendered by the Arbitral Tribunal may be entered in any court having jurisdiction thereof, including any court having jurisdiction over the relevant Party.

12.03 **Relief**. Subject to Section 12.02 and Section 12.03, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the affected Party shall have the right to injunctive or other equitable relief of its rights under this Agreement, in addition to any and all other rights and remedies at Law or in equity, and all such rights and remedies shall be cumulative. The other Party shall not oppose the granting of such relief on the basis that money damages are an adequate remedy. The Parties agree that the remedies at Law for any breach or threatened breach hereof, 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 or similar security with such remedy are waived.

12.04 **Treatment of Arbitration**. The Parties agree that any arbitration hereunder shall be kept confidential, and that the existence of the proceeding and all of its elements (including any pleadings, briefs or other documents or evidence submitted or exchanged, any testimony or other oral submissions, and any awards) shall be deemed confidential, and shall not be disclosed beyond the Arbitral Tribunal, the Parties, their counsel, and any Person necessary to the conduct of the proceeding, except as and to the extent required by law and to defend or pursue any legal right. In the event any Party makes application to any court in connection with this Section 12.05 (including any proceedings to enforce a final award or any Interim Relief), that party shall take all steps reasonably within its power to cause such application, and any exhibits (including copies of any award or decisions of the Arbitral Tribunal or Emergency Arbitrator) to be filed under seal, shall oppose any challenge by any third party to such sealing, and shall give the other Party immediate notice of such challenge.

12.05 **Continuity of Service and Performance**. Unless otherwise agreed in writing, the Parties shall continue to provide services and honor all other commitments under this Agreement and each Ancillary Agreement during the course of dispute resolution pursuant to the provisions of Section 12.02, Section 12.03, Section 12.04 or Section 12.05 with respect to all matters not subject to such dispute resolution.

12.06 As used in this Section 12, "Action" means any claim, complaint, petition, hearing, charge, demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority or any federal, state, local, foreign or international arbitration or mediation tribunal; and "Governmental Authority" means any federal, state, local, foreign, international or multinational court, government, quasi-government, department, commission, board, bureau, agency, official or other legislative, judicial, tribunal, commission, regulatory, administrative or governmental authority.

Part 2 – Country Required Terms

The terms of Part 2 replace or modify those of Part 1 in the countries specified.

AMERICAS

Section 2.2 Term and Termination of Cloud Services

In paragraph b., replace the third sentence with the following:

In Mexico: If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service without responsibility.

Section 4. Machines and Appliances

In paragraph b, replace the first sentence with the following:

In Argentina, Chile, Colombia, Ecuador, Perú, Uruguay and Venezuela: When IBM accepts Client's order, IBM transfers title to Machines and non-IBM machines upon tradition to Client or Client's lessor.

Section 7. Charges, Taxes, Payment, and Verification

Add at the end of the last paragraph of subsection d the following sentence:

In United States and Canada: Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.

Replace the first sentence of paragraph b with the following:

In Brazil: Client agrees to pay all applicable charges specified for a Cloud Service, charges for use in excess of authorizations, any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement.

In paragraph b:

In Mexico: *In the fourth sentence, delete the words "to an account specified by IBM"*

In Mexico: *Add the following new sentence after the fourth sentence:*

Payments will be made through electronic transfer of funds to an account specified by IBM or *in* IBM´s domicile which is located in Alfonso Napoles Gandara 3111, Santa Fe Peña Blanca, Alvaro Obregon, Mexico City, Zip Code 01210.

Section 8. Liability and Indemnity

Insert the following disclaimer at the end of paragraph a:

In Peru: In accordance with Article 1328 of the Peruvian Civil Code this limitations and exclusions will not apply in the cases of willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

Section 10. Governing Laws and Geographic Scope

In paragraph b, replace the first sentence only with:

In Argentina: Both parties agree to the application of the laws of the Republic of Argentina, without regard to the conflict of law principles.

In Chile: Both parties agree to the application of the laws of Chile, without regard to the conflict of law principles.

In Colombia: Both parties agree to the application of the laws of the Republic of Colombia, without regard to the conflict of law principles.

In Ecuador: Both parties agree to the application of the laws of the Republic of Ecuador, without regard to the conflict of law principles.

In Venezuela: Both parties agree to the application of the laws of Venezuela, without regard to the conflict of law principles.

In Peru: Both parties agree to the application of the laws of Perú, without regard to the conflict of law principles.

In Uruguay: Both parties agree to the application of the laws of Uruguay.

In paragraph b, first sentence only, replace the phrase, "the country where the transaction is performed (or for Cloud Services, the laws of the country of Client's Business Address)" with:

In United States, Anguilla, Antigua/Barbuda, Aruba, Bahamas, Barbados, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Curacao, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saba, Saint Eustatius, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, Saint Vincent and the Grenadines, Suriname, Tortola, Trinidad and Tobago, Turk and Caicos: the State of New York, United States.

In Canada: the Province of Ontario and the federal laws of Canada applicable therein.

In paragraph b, second sentence, replace the phrase, "the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use" with:

In Argentina: Argentina
In Chile: Chile
In Colombia: Colombia
In Ecuador: Ecuador
In Perú: Perú

In Uruguay: Uruguay
In Venezuela: Venezuela

Section 11. General

In paragraph b, replace the first sentence with:

In Latin America (all countries): Client accepts the terms in an Attachment or TD by signing it.

In paragraph b, replace the last two sentences with:

In Brazil: Client accepts changes by executing an amendment (in writing or on-line). New orders or continuing use services or renewal may be suspended until an amendment is executed.

In paragraph i:

In United States: Delete entire paragraph i.

In paragraph l, add the following new sentence after the first sentence:

In Mexico: Any change of address must be notified 10 (ten) days in advance, otherwise the notifications made at the last indicated address will have full legal effects.

In paragraph m, delete the 2nd sentence:

In Brazil: Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose.

Add as a new paragraph t to this section:

In Canada: Both parties agree to write this document in English. Les parties ont convenu de rédiger le présent document en langue anglaise.

ASIA PACIFIC

Section 4. Machines and Appliances

In paragraph c, the last sentence, delete "the country where acquired" and replace with:

In Hong Kong: Hong Kong S.A.R. of the PRC

In Macau: Macau S.A.R. of the PRC

In Taiwan: Taiwan

Section 6. Warranties and Post Warranty Support

Add at the end of this section as a new paragraph f:

In Australia: These warranties are in addition to any rights under, and only limited to the extent permitted by, the Competition and Consumer Act 2010.

In New Zealand: These warranties are in addition to any rights under the Consumer Guarantee Act 1993 or other legislation that cannot be limited by law.

Section 7. Charges, Taxes, Payment and Verification

Add as a new sentence to the end of last paragraph in subsection d:

In India: If any Indirect Taxes are not charged on the basis of the exemption documentation provided by the Client and the taxation authority subsequently rules that such Taxes should have been charged, then the Client will be liable to pay such Taxes, including any interests, levies and/or penalties applicable thereon.

Section 8. Liability and Indemnity

In paragraph a, add at the end of the first sentence the following:

In Australia: (for example, whether based in contract, tort, negligence, under statute or otherwise)

In paragraph a, second sentence after the word "special" and before the word "incidental," add the following:

In Philippines: (including nominal damages), moral,

Add as a new paragraph after the end of paragraph a (and ensure paragraphs properly reletter):

In Australia: Where IBM is in breach of a guarantee implied by the Competition and Consumer Act 2010, IBM's liability is limited to (a) for services, the supplying of services again or the payment of the cost of having the services supplied again; and (b) for goods, the repair or replacement of goods or the supply of equivalent goods, or the payment of the cost of replacing the goods or having the good repaired. Where a guarantee relates to the right to sell, quiet possession, or clear title of a good under schedule 2 of the Competition and Consumer Act, then none of these limitations apply.

Section 9. Termination

Add at the end of the section as a new paragraph b:

In Indonesia: The parties waive article 1266 of the Indonesian Civil Code to the extent it requires a court decree for any such termination.

Section 10. Governing Laws and Geographic Scope

In paragraph b, in the first sentence only, replace the phrase, "the country where the transaction is performed (or for Cloud Services, the laws of the country of Client's business address)" with:

In Australia: the State or Territory in which the transaction is performed

In Cambodia, Vietnam: Singapore

In Hong Kong: Hong Kong S.A.R. of the PRC

In India: India

In Korea: the Republic of Korea, and subject to the Seoul Central District Court of the Republic of Korea

In Laos: the State of New York, United States

In Macau: Macau S.A.R. of the PRC

In Taiwan: Taiwan

In paragraph b, in the second and third sentence, replace the phrase "the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use" with:

In Hong Kong: Hong Kong S.A.R. of the PRC

In Macau: Macau S.A.R. of the PRC

In Taiwan: Taiwan

Add at the end of the section as a new paragraph c:

Section 11. General

In the first sentence of paragraph b, before the word "ordering," add:

In Hong Kong, Macau, Thailand: signing (by hand or electronically),

In paragraph g, insert into the first sentence after "store"

In India: , transfer,

In paragraph k, in the following jurisdictions, delete "(the signatories below)" and replace the word "signatories: with:

In Hong Kong, Macau: parties

In paragraph k, replace the phrase "the same country" with:

In Hong Kong: Hong Kong S.A.R. of the PRC

In Macau: Macau S.A.R. of the PRC

In Taiwan: Taiwan

In paragraph m, in the second sentence, replace the phrase "two years" with:

In India: three years

Add to the end of this section the following new paragraph t:

In Indonesia: This agreement is made in the English and Indonesian languages. The English version will prevail if there are any interpretation differences as permitted by law.

EMEA

Section 4. Machines and Appliances

In paragraph b, the first sentence, add all countries listed in the following after "United States":

In Portugal, Spain, Switzerland, and Turkey: , Portugal, Spain, Switzerland, and Turkey,

In paragraph c, replace the second to last sentence (6th sentence) with:

In All countries in Western Europe (see definition within provision): Client may only acquire Machines for use within Client's Enterprise in Western Europe, and not for resale, lease, or transfer outside of Western Europe. For purposes of this paragraph, Western Europe means European Union member countries and Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland, and the Vatican State.

Section 5. Content and Data Protection

Replace paragraph d with the following:

In Switzerland: IBM's Data Processing Addendum (DPA) at http://ibm.com/dpa and the applicable DPA Exhibit apply and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) (GDPR) or the Swiss Federal Privacy Act (SFPA) apply to personal data contained in Content.

Section 6. Warranties and Post Warranty Support

Add at the end of paragraph c the following sentences:

In all countries in Western Europe: The warranty for Machines acquired in Western Europe applies in all Western Europe countries, provided the Machines have been announced and made available in such countries. For purposes of this paragraph, Western Europe means European Union member countries and Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland, and the Vatican State.

In paragraph e, Insert to the end of the fourth sentence (before the period), the following words and then add the additional sentence:

In Czech Republic, Estonia, and Lithuania: , or liabilities for defects. The parties hereby exclude any liability of IBM for defects beyond the agreed warranties.

Section 7. Charges, Taxes, Payment and Verification

In paragraph b, add the following to the end of the fifth sentence:

In Italy: if IBM requests in a written notice to Client.

In paragraph b, add the following to the end of the sixth sentence:

In Lithuania: , except as provided by law

At the end of paragraph b, add the following:

In Italy: In the instance of no payment or partial payment, and also following a formal credit claim procedure or trial that IBM may initiate, in derogation of article 4 of Legislative Decree n. 231 dated October 9, 2002, and according to article 7 of the same Legislative Decree, IBM will notify Client in writing by registered, return receipt mail of payment fees due.

In paragraph e, in the fourth sentence, after the phrase: "IBM may change one-time charges without notice" add:

In Czech Republic: , though Client may terminate the Agreement if Client disagrees with the change

Section 8. Liability and Indemnity

In paragraph a, in the first sentence insert the following before the words "the amounts paid":

In Belgium, France, Germany, Italy, Luxembourg, Malta, Portugal, and Spain: the greater of €500,000 (five hundred thousand euro) or

In UK and Ireland: 125% of

In paragraph a, in the first sentence, replace the phrase "direct damages incurred by Client" with:

In Spain: and proven damages incurred by Client as a direct consequence of the IBM default

In paragraph a, insert after the first sentence the following new sentence:

In Slovakia: Referring to § 379 of the Commercial Code, Act No. 513/1991 Coll. as amended, and concerning all conditions related to the conclusion of the Agreement, both parties state that the total foreseeable damage, which may accrue, shall not exceed the amount above, and it is the maximum for which IBM is responsible.

In paragraph a, insert before the second sentence the following new sentence:

In Russia: IBM will not be liable for the forgone benefit.

In paragraph a, in the second sentence, delete the word:

In Ireland and UK: economic

In paragraph a, replace the second sentence with:

In Belgium, Netherlands, and Luxembourg: IBM will not be liable for indirect or consequential damages, lost profits, business, value, revenue, goodwill, damage to reputation or anticipated savings, any third party claim against Client, and loss of (or damage to) data.

In France: IBM will not be liable for damages to reputation, indirect damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

In Portugal: IBM will not be liable for indirect damages, including loss of profit.

In Spain: IBM will not be liable for damage to reputation, lost profits, business, value, revenue, goodwill, or anticipated savings.

Add the following at the end of paragraph a:

In France: The terms of the Agreement, including financial terms, were established in consideration of the present clause, which is an integral part of the general economy of the Agreement.

In paragraph b, replace "and ii) damages that cannot be limited under applicable law" with the following:

In Germany: ; ii) damages for body injury (including death); iii) loss or damage caused by a breach of guarantee assumed by IBM in connection with any transaction under this Agreement; and iv) caused intentionally or by gross negligence.

Section 9. Termination

In paragraph a, delete:

In Switzerland: Failure to pay is a material breach.

In paragraph a, insert the following at the end of clause i) before "; or":

In Russia: without payment of any damages or penalties to the other party on the basis of early termination

In paragraph a, insert the following at the end:

In Netherlands: The Parties waive their rights under Title 7.1 ('Koop') and clause 7:401 and 402 of the Dutch Civil Code, and their rights to invoke a full or partial dissolution ('gehele of partiele ontbinding') of this Agreement under section 6:265 of the Dutch Civil Code

Section 10. Governing Laws and Geographic Scope

In paragraph b, first sentence only, replace the phrase "the country where the transaction is performed (or for Cloud Services, the laws of the country of Client's Business Address)" with:

Only for offshore agreements: In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Romania, Russia, Serbia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: Austria

Only for offshore agreements: In Estonia, Latvia, and Lithuania: Finland

In Algeria, Andorra, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: France

In Angola, Bahrain, Botswana, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: England

In Liechtenstein: Switzerland

In South Africa, Namibia, Lesotho, and Swaziland: the Republic of South Africa

In the United Kingdom: England

In paragraph b, add the following at the end of the first sentence:

In France: The Parties agree that articles 1222 and 1223 of the French Civil Code are not applicable.

Section 11. General

In paragraph g, replace the first sentence with the following:

In Switzerland and Austria: IBM and its affiliates, and their subcontractors, may process and store information about the Client and business contact information of Client personnel in connection with the performance of this Agreement wherever they do business.

In paragraph g, insert the following after the first sentence

In Spain: IBM will comply with requests to access, update or delete contact information if submitted to the following address: IBM, c/ Santa Hortensia 26-28, 28002 Madrid, Departamento de Privacidad de Datos.

In paragraph k, replace the first sentence with the following:

In Malta and Spain: This Agreement applies to IBM and Client (the signatories below, or the signatories of a document that incorporates this Agreement by reference).

In paragraph m, add to the end the paragraph:

In Czech Republic: Pursuant to Section 1801 of Act No. 89/2012 Coll. (the "Civil Code"), Section 1799 and Section 1800 of the Civil Code as amended, do not apply to transactions under this Agreement. Client accepts the risk of a change of circumstances under Section 1765 of the Civil Code.

In paragraph m, delete the 2nd sentence that says:

In Bulgaria, Croatia, Russia, Serbia, and Slovenia: Neither party will bring a legal action arising out of or related to this Agreement more than two years after the cause of action arose.

In paragraph m, add to the end of the second sentence:

In Lithuania: , except as provided by law

In paragraph m, replace the second sentence with:

In Poland: Neither party will bring a legal action arising out of or related to this Agreement more than three years after the cause of action arose, except for an action of non-payment which will be brought no more than 2 years after payment is due.

In paragraph m, second sentence, replace the word "two" with:

In Latvia and Ukraine: three

In Slovakia: four

In paragraph m, add to the end of the third sentence that says: "Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control":

In Russia: , including but not limited to earthquakes, floods, fires, acts of God, strikes (excluding strikes of the parties' employees), acts of war, military actions, embargoes, blockades, international or governmental sanctions, and acts of authorities of the applicable jurisdiction.

In paragraph m, third sentence, modify the sentence: "Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control" as follows:

In Ukraine: Neither party is responsible for failure to fulfill its non-monetary obligations due to causes or regulatory changes beyond its control, including but not limited to import, export, and economic sanctions requirements of the United States.

Add the following at the end of the section as new paragraph t:

In Hungary: By entering into this Agreement, Client confirms that Client was sufficiently informed of all the provisions of this Agreement and had the opportunity to negotiate those terms. The following provisions may significantly deviate from the provisions generally applied by Hungarian law and both parties accept those provisions by signing the Agreement: Programs; Services – Cloud Services; Services – Other Services; Machines and Appliances; Machine Code and Built in Capacity; Warranty and Post Warranty Support; Charges, Taxes, Payment and Verification; Liability and Indemnity, Termination; Governing Laws and Geographic Scope, and General.

In Czech Republic: Client expressly accepts the terms of this agreement which include the following important commercial terms: i) limitation and disclaimer of liability for defects (Warranties); ii) limitation of Client's entitlement to damages (Liability and Indemnity); iii) binding nature of export and import regulations (Governing Laws and Geographic Scope); iv) shorter limitation periods (General); v) exclusion of applicability of provisions on adhesion contracts (General); and vi) acceptance of the risk of a change of circumstances (General).

In Romania: The Client expressly accepts, the following standard clauses that may be deemed 'unusual clauses' as per the provisions of article 1203 Romanian Civil Code: clauses 6, 7, 8 and 9 h). The Client hereby acknowledges that it was sufficiently informed of all the provisions of this Agreement, including the clauses mentioned above, it properly analyzed and understood such provisions and had the opportunity to negotiate the terms of each clause.

Acceptance

This Agreement, including its Attachments and TDs, is the complete agreement between the parties regarding transactions hereunder, and replaces any prior oral or written communications between Client and IBM (the Parties). By signing below by hand or, where recognized by law, electronically, both parties agree to the terms of this Agreement. Once signed, 1) unless prohibited by local law or specified otherwise, any reproduction of this Agreement made by reliable means (for example photocopy or facsimile) is considered an original and 2) all Services under this Agreement are subject to it. The Agreement applies to IBM Lead Company and Client Lead Company (the signatories below) and their respective Enterprise companies who avail themselves of the Agreement by accepting the terms. The signatories shall coordinate the activities of Enterprise companies under this Agreement. The Effective Date of this Agreement is November 3, 2021.

Agreed to:	Agreed to:
Client Lead Company Name: Kyndryl, Inc. (“Client” or “Kyndryl”)	IBM Lead Company: International Business Machines Corporation (“IBM”)
By /s/ Simon Beaumont Authorized signature	By /s/ Frank Sedlarcik Authorized signature
Title: President	Title: Vice President, Assistant General Counsel and Secretary
Name (type or print): Simon Beaumont	Name (type or print): Frank Sedlarcik
Date: 11/2/2021	Date: 11/2/2021
Client number:	Agreement number:
Enterprise number:	
Client address: One Vanderbilt Avenue 15th Floor New York, NY 10017	IBM address: 1 New Orchard Rd. Armonk, NY 10504

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

Master Subcontracting Framework Agreement

This Master Subcontracting Framework Agreement (**"Framework Agreement"**) effective November 3, 2021 **("Framework Effective Date"**) is between International Business Machines Corporation ("**IBM**") and Kyndryl, Inc. ("**Kyndryl**") (each a "**Party**" and collectively, the "**Parties**").

1. Purpose

IBM and Kyndryl have entered into a Separation and Distribution Agreement, dated as of November 2, 2021 (the "**Separation Agreement**"). In furtherance of the foregoing, the Parties contemplate that a subcontract relationship between the Parties will be necessary and desirable. The purpose of this Framework Agreement is to (i) set forth the general principles by which the Parties will establish subcontract relationships between them; (ii) provide a template for developing the subcontract for each particular engagement ("**Subcontract Template**"); and (iii) establish standard terms and approaches to be applied in the ordinary course of subcontracting between the Parties.

2. General Principles

The following principles will generally apply to each subcontract (each a "**Subcontract Agreement**") between the Parties entered into in support of a prime contract ("**Client Agreement**") between a Party serving as prime contractor ("**Prime**") and its client ("**Client**"):

a. Either Party may be the Prime or the subcontractor ("**Subcontractor**") with respect to any particular Client Agreement, and this Framework Agreement applies equally to each Party without regard to which Party is fulfilling which role. The Subcontract Agreement terms shall be reciprocal regardless of which Party is the Prime and which is the Subcontractor (i.e., "mutatis mutandis"), subject to the provisions set forth in section 4 (a) herein.

b. The Subcontract Agreement will govern delivery of those services under the Client Agreement that are subcontracted by Prime to Subcontractor (the "**Services**"). For Subcontract Agreements with an Effective Date (as defined in the Subcontract Agreement) on or after the Distribution Date (as defined in the Separation Agreement), Prime will provide (or make available) to Subcontractor, relevant flow down terms necessary for Subcontractor to comply with its obligations under such Subcontract Agreements.

c. To the maximum extent practicable, subcontract obligations are derivative of, and constrained by, the obligations of the Prime under the Client Agreement. As a general principle, the Subcontract Agreement should not be used as a vehicle to disproportionally shift risk or otherwise improve the position of the Prime as compared with its position realized by directly delivering the subcontracted Services.

d. Each Party will work cooperatively in good faith to facilitate smooth performance of the Parties' respective subcontract obligations.

e. The Prime will be responsible for the relationship with the Client under the Client Agreement. The Subcontractor will support that relationship as provided in the Subcontract Agreement.

f. These principles will apply to all subcontract relationships between affiliates of the respective Parties to this Framework Agreement and the Parties shall ensure that their respective affiliates enter into (i) Participation Agreements, and (ii) Local Subcontract Agreements, each as defined in Section 3.

g. In discharging its obligations under the Subcontract Agreement, each Party is operating as an independent contractor, and nothing contained in the Framework Agreement or any Subcontract Agreement shall be construed to make either Prime or Subcontractor a partner, joint venturer, principal, fiduciary, agent, or employee of the other. Neither Party shall have any right, power or authority, express or implied, to assume or create any obligation of any kind on behalf of the other Party, to make any representation or warranty on behalf of the other Party, or to bind the other Party in any respect whatsoever.

h. Except as otherwise provided in a Subcontract Agreement, nothing herein shall prevent either Party from working with other service providers for (i) incremental or new scope relating to an existing Subcontract Agreement, or (ii) new Subcontract Agreements entered into after the Distribution Date, or otherwise restrict the other Party's freedom of action to sell its goods or services to other Clients.

3. Subcontract Agreement Template

The Parties will use the Subcontract Agreement Template (Attachment 1) to develop the Subcontract Agreement for each Client Agreement. The Subcontract Agreement Template will be customized to reflect the particulars of each associated Client Agreement as provided therein.

The Parties shall each cause their respective affiliates to enter into (i) a participation agreement (each, a "**Participation Agreement**") in the form of Attachment 3, and (ii) a subcontract agreement ("**Local Subcontract Agreement**") in support of each prime contract ("**Local Client Agreement**") between an affiliate serving as prime contractor ("**Prime Affiliate**") and its client in the form attached as Attachment 4 to this Framework Agreement. The Participation Agreement incorporates the terms of the Framework Agreement and will be customized to reflect any modifications to the Framework Agreement required by local law. The Local Subcontract Agreement Template will be customized to reflect the particulars of each associated Local Client Agreement as provided therein. The Parties will each ensure that all Participation Agreements and Local Subcontract Agreements incorporate the terms of this Framework Agreement by reference.

The Parties shall each ensure that their respective Affiliates in entering into Local Subcontract Agreements shall flow down the terms of the Local Client Agreements to which such Local Subcontract Agreements apply on the basis set forth in section 4(a) below.

Where the Parties' affiliates enter into Local Subcontract Agreements the Parties shall each be liable for the compliance of their respective affiliates with the terms of the Local Subcontract Agreements entered into between such affiliates.

4. Standard Terms/Approaches

Unless otherwise expressly agreed in a Subcontract Agreement or evidenced by an Applicable DOU, the terms and approaches set forth in this Section 4 will apply to the Subcontract Agreements. For purposes of this Framework Agreement and any applicable Subcontract Agreement, an "Applicable DOU" shall mean any active Documents of Understanding that support revenue splitting between IBM brands, including those amended by a mutually agreed PCR or RFS, and as reflected in corresponding pricing and quote to cash records (i.e., CFTS/IERP) that are in place as of the Distribution Date and applicable to the Services being subcontracted from Prime to Subcontractor with respect to such Client.

a. Flow-Down Terms and Obligations from the Client Agreement

This section 4(a) describes terms or approaches to be applied in connection with the "flow-down" of obligations that Prime has under the Client Agreement. The flow-down terms set forth in this section 4(a) will apply unless (i) the Parties specify otherwise in the Subcontract Agreement, or (ii) a flow-down in this section 4(a) conflicts with an Applicable DOU, in which case the Applicable DOU shall apply. For Subcontract Agreements with an Effective Date prior to the Distribution Date (as defined in the Separation Agreement), Applicable DOUs shall be incorporated into such Subcontract Agreement by reference and shall become binding upon the Parties. In the event that the scope of Services or any related terms set forth in the Applicable DOU do not accurately reflect the scope of Services and related terms between the Parties, the Parties shall work together in good faith following the Distribution Date to resolve such inaccuracies which shall be documented as an amendment to the Subcontract Agreement.

Topic		Standard Term or Approach
Substitution of Parties		As between the Prime and the Subcontractor, the Subcontractor and Prime will assume under the Subcontract Agreement the corresponding rights and responsibilities that the Prime and Client have, respectively, under the Client Agreement, but only to the extent relevant to Subcontractor's scope of Services as defined in the Subcontract Agreement.
Client/Prime Policies		1. "Client." Obligations stated in the Client Agreement to comply with "Client" policies/procedures, etc. will continue to be read as a reference to those of the Client (i.e., not those of the Prime), provided that same shall only apply to the extent relevant to the Subcontractor's scope of Services and to the extent Prime is obligated to comply. Prime is responsible for informing Subcontractor of any updates affecting Subcontractor and implementing the related change control procedures. 2. "Prime." Obligations stated in the Client Agreement to comply with "Prime" policies/procedures, etc. will continue to be read as a reference to those of the Prime (i.e., not those of the Subcontractor), provided that same shall only apply to the extent relevant to the Subcontractor's Services scope and that Subcontractor will be obligated to comply with same to the extent practicable or, where not practicable (e.g., references to "Prime's" onboarding procedures), to comply with substantially equivalent terms.
Financial Terms		1. General. As reflected in the Subcontract Agreement Template, the Subcontract Agreement will be customized to reflect the charges, resource unit definitions, minimum revenue or volume commitments, and other pertinent financial details tailored to the Subcontractor's scope of Services. The pricing schedule (i.e., the actual charges and rates) included in the Subcontract Agreement will reflect the agreed financial arrangements between Prime and Subcontractor (i.e., the charges under the schedule will be specific to the pricing by Subcontractor to Prime) and will be independent of the pricing schedule in the Client Agreement. For Subcontract Agreements with an Effective Date prior to the Distribution Date, if an Applicable DOU or DOUs exist for such Client with respect to the Subcontracted Services, then such DOUs shall be used in lieu of a pricing schedule. 2. [***]. 3. Invoicing. Subcontractor shall invoice Prime for the Services monthly. For Subcontract Agreements with an Effective Date prior to the Distribution Date, the Parties shall use the form of invoice currently used between Client and Prime. For Subcontract Agreements with an Effective Date on or after the Distribution Date, each Subcontract Agreement will specify the form of invoice between Prime and Subcontractor. 4. [***]. Prepaid Services must be used within the applicable period. 5. Disputed Charges/Permitted Withholding. Without regard to the terms of any corresponding provision of the Client Agreement, Prime may withhold amounts otherwise payable to Subcontractor in accordance with the "Permitted Withholding" section of section 4(b).

Topic		Standard Term or Approach
Performance Management (SLA Methodology)		1. General. As reflected in the Subcontract Agreement Template, the Subcontract Agreement will be customized to reflect the Service Level definitions, obligations, and other pertinent Service Level-related details tailored to the Subcontractor's scope of Services. For Subcontract Agreements with an Effective Date prior to the Distribution Date, if an Applicable DOU or DOUs exist for such Client relating to Service Levels with respect to the Subcontracted Services, then such DOUs shall be used in lieu of a Service Level schedule. 2. Service Level Credits. Service Level Credits will be flowed down from the Client Agreement, but with credit percentages and amount at risk allocated in the manner set forth in the Subcontract Agreement or an Applicable DOU. 3. Service Levels. Service Levels for which Prime and Subcontractor have shared responsibilities are to be discouraged and whenever practical broken down into Service Levels specific to each Party's responsibilities, but to the extent they exist, fault for Service Level failures will be allocated on the basis of proportional responsibility. 4. Modifications. If Client adjusts the Service Level provisions of Client Agreement in accordance with the provisions of the Client Agreement, Prime can correspondingly adjust the Service Level provisions of the Subcontract Agreement (on comparable terms), but not otherwise unless agreed by Prime and Subcontractor through the change control procedures of the Subcontract Agreement.
Limitations of Liability		1. Caps/Exclusions/Waivers/Indemnification etc. For Subcontract Agreements with an Effective Date (as defined in the Subcontract Agreement) prior to the Distribution Date, limitation of liability caps in the Client Agreement (including additional, extended, or sub-caps or any exclusions/waivers/indemnification etc.) shall apply to the Subcontractor Agreement in proportion to the Subcontractor's revenue. For example, if the Client Agreement has a direct damage cap of 12 months or a fixed amount of money, whichever is greater, the Subcontractor's liability shall be 12 months of the applicable Subcontractor revenue or the fixed amount proportional to the revenue attributable to the Subcontractor. For Subcontract Agreements with an Effective Date on or after the Distribution Date, the same rule will apply unless the Parties specify otherwise in the Subcontract Agreement; provided, however, that any exclusions from liability caps in the Client Agreement associated with damages attributable to abandonment will not apply with respect to project work under the Subcontract Agreement unless otherwise agreed to by Subcontractor. However, any exclusion of liability (e.g. consequential/punitive damages) or enhancement of liability shall be flowed through to the arrangement between Prime Contractor and Subcontractor. For example, if Prime indemnifies Client for Prime's willful misconduct, Subcontractor will do the same for the Prime for its own willful misconduct. It the cap doesn't protect Prime for Prime's fraud or violation of IP rights, Subcontractor will similarly not be protected for its fraud or violation of IP rights. 2. Allocation of Liability. Liability attributable to failures for which each Party is partially at fault shall be allocated between the Parties in proportion to their respective proportional fault.
Compliance with Laws		References to "Customer Laws" and "Supplier Laws" in the Client Agreement will be retained as such in the Subcontract Agreement, provided that, for purposes of the Subcontract Agreement, "Supplier Laws" will apply to the Subcontractor to the extent applicable to Subcontractor's performance of the Services.
Changes		1. Prime shall not agree to any modifications to the Client Agreement affecting the Subcontractor's scope, obligations, resource requirements or performance of Services without the Subcontractor's consent (and, where practicable, the Subcontractor's participation and input). 2. With respect to Client-requested or directed changes, Prime's request or direction to Subcontractor will be limited to the Client's request or direction to Prime to the extent it affects Subcontractor's scope of Services, responsibilities or obligations and will be implemented in accordance with the change control procedures of the Subcontractor Agreement.

Topic		Standard Term or Approach
		3. Where Prime is obligated to comply with a change request under the Client Agreement, Subcontractor will be obligated to comply with Prime's request to the extent necessary to allow Prime to so comply. This change will be implemented in accordance with the change control procedures of the Subcontractor Agreement. 4. Prime will flow down to Subcontractor the benefit of any change-related adjustments under the Client Agreement (to the extent relating to Subcontractor's scope of Services). 5. Prime will permit Subcontractor to reasonably participate in formulating change requests relating to Subcontractor's scope of Services to the extent Prime is permitted to request such changes under the Client Agreement.
Notice Periods		Where the Client Agreement requires or permits notices to be given by Prime within a specified time period, the Parties shall work together in good faith to ensure that the Prime can comply in a timely manner. Where Prime receives a notice from Client that requires action to be taken by Subcontractor, Prime will provide the corresponding notice to Subcontractor as soon as practicable following the Prime's receipt of notice from Client.
Governance/Disputes		1. General. The Governance provisions of the Client Agreement shall remain generally applicable to Prime, with the applicable support to be provided by Subcontractor. 2. Committees. Governance Committees under the Client Agreement and associated members shall be Prime personnel unless otherwise agreed by the Client. 3. Documentation. Governance documentation, including the Process and Procedures Manual, shall be replicated between Prime and Subcontractor to the extent required for Prime to conform to the existing Governance procedures and processes with the Client. 4. Disputes. The Dispute Resolution Provisions of the Client Agreement shall apply as between Client and Prime, with appropriate support given to Prime from Subcontractor.
Human Resource Provisions		1. Subcontractor Personnel. To the extent that the Client Agreement defines Supplier Personnel to include "Subcontractor Personnel," the Client Agreement terms so referenced shall expressly apply to Subcontractor and its personnel. 2. Key Personnel. All Key Personnel positions under the Client Agreement shall be staffed by Prime unless otherwise agreed by Client and Subcontractor. 3. Affected/Transferred Client Personnel. There are no requirements on the part of Subcontractor to hire Client Personnel or engage Client contractors unless otherwise specified in the Subcontract Agreement.
Confidential Information		As between Prime and Subcontractor, "Confidential Information" shall also be deemed to include confidential information of Client in accordance with any applicable definition of same in the Client Agreement.
Intellectual Property		Subcontractor will grant to Prime the rights in Subcontractor's IP necessary for Prime to fulfill Prime's obligations to Client under the Client Agreement with respect to such IP (and only those rights, unless expressly stated to the contrary in the Subcontract Agreement). Prime and Subcontractor IP shall be clearly identified in the Subcontract Agreement. Prime will grant to Subcontractor the rights in Prime's IP or a sublicense to Client's IP as necessary for Subcontractor to perform the subcontracted Services.

Topic		Standard Term or Approach
Data Processing Terms		The applicable Data Processing Addendum ("**DPA**") and any applicable corresponding DPA Exhibit(s) including the Client Agreement.
Personal Data		As between Prime and Subcontractor, "Personal Data" shall be deemed to include personal data of Client in accordance with any applicable definition of same in the Client Agreement
Data Protection Law		As between Prime and Subcontractor, "Data Protection Law" shall be deemed to include data protection law or data privacy law in accordance with any applicable definition of same in the Client Agreement
Termination		1. Permitted Termination. Prime may terminate the Subcontract Agreement in whole or in part to the extent Client has terminated the Client Agreement or Subcontractor portion thereof, and on corresponding terms, provided, however, that a termination of the Prime Contract by Client for material breach shall be considered a termination of the Subcontract Agreement by Prime for convenience unless Subcontractor is itself in material breach of the Subcontract Agreement. In the event of such termination for convenience, Prime shall pay to Subcontractor Termination Charges set forth in paragraph 2 below without regard to whether Prime shall be entitled to recover such charges from Client. 2. Termination Charges. To the extent the Client Agreement permits recovery of such items by Prime with respect to the subcontracted Services or if the termination of the Subcontract Agreement is deemed a termination for convenience in accordance with paragraph 1, Subcontractor will be entitled to: [***].
Assignment/ Subcontracting		1. For Subcontract Agreements with an Effective Date prior to the Distribution Date, the assignment and subcontracting terms of the Client Agreement will apply to the Subcontract Agreement, with substitution of Prime and Subcontractor as the relevant parties. 2. For Subcontract Agreements with an Effective Date on or after the Distribution Date, the presumptive Subcontract Agreement terms will be as follows: (a) Each Party will have the right to assign, novate, or replicate the Subcontract Agreement or to assign or delegate its duties under the Subcontract Agreement to (i) an affiliate capable of providing reasonable assurances of future performance; or (ii) a successor in interest by sale, merger, divestiture, or other corporate reorganization. Further, either Party may assign its right to receive payments under the Subcontract Agreement without further approval of the other Party. (b) Subcontractor may further subcontract its obligations (including to Subcontractor affiliates) without additional Prime approval, provided that: (i) Subcontractor will remain responsible for the performance of any such subcontractor; (ii) as between the Parties, Subcontractor will be solely responsible for the selection and management of any such subcontractor; (iii) Subcontractor will ensure any such subcontractor is committed to standards of care and performance no less stringent than applicable to Subcontractor under the Subcontract Agreement for the Services; and (iv) The Subcontract Agreement will include a list of Subcontractor subcontractors, which list may be updated by Subcontractor as appropriate.

Topic		Standard Term or Approach
Transformation and Innovation Plans		The current and planned Transformation and Innovation plans and initiatives shall be allocated to the appropriate Prime or Subcontractor for execution. If there are no specific charges for the related activities in the Client Agreement, the Subcontract Agreement shall specify Subcontractor's charges to Prime associated with Subcontractor's portion of such activities. Subcontractor shall not be responsible for any plan credits if the associated plan does not provide specific charges.
Insurance		For each Subcontract Agreement, Subcontractor shall provide to Prime a certificate of coverage, satisfactory to Prime, evidencing that such coverage is in compliance with the insurance requirements set for in the Client Agreement.

b. Subcontract Agreement Terms Not Dependent Upon Client Agreement

This section 4(b) describes terms or approaches relating to aspects of the Parties' relationship that are independent from obligations derived from the Client Agreement. To the extent that any terms or information set forth in this section 4(b) are required, but not included in a Subcontract Agreement on its Commencement Date, the Parties will work together in good faith to update the Subcontract Agreement to include such required terms or information as soon as practicable after such Commencement Date. Notwithstanding the foregoing, the Governance provisions set forth below shall be included in any applicable Subcontract Agreement prior to such Subcontract Agreement's Commencement Date.

Topic		Standard Term or Approach
Governance		1. Contract Executives. Each Party shall appoint an individual to serve as the primary representative of such Party for the Subcontract Agreement (each, a "**Contract Executive**"). Each Contract Executive shall (a) have overall responsibility for managing and coordinating the performance under the Subcontract Agreement of the Party that appointed him or her; and (b) be authorized to act for and on behalf of such Party under the Subcontract Agreement subject to its terms. 2. Notices. The Subcontract Agreement will specify the positions and addresses to which notices required or permitted under the Subcontract Agreement should be directed.
Changes		1. Either Party may propose changes or modifications to the Subcontract Agreement not resulting from changes generated through the Client Agreement. Any such changes will be considered in good faith but will require mutual agreement of the Parties, such approval not to be unreasonably withheld. 2. The Parties shall document a change control procedure to be implemented upon any change to the Subcontractor Services or the associated terms, conditions or responsibilities.
[***]		[***].
Termination		1. Without limitation on Prime's ability to terminate in whole or in part the Subcontract Agreement in the event the Client terminates the Client Agreement as provided above, either Party may terminate the Subcontract Agreement as of the date given in a written notice of termination (such date to be no later than ninety (90) days after the date of the written notice) if the other Party commits a material breach of the Subcontract Agreement that is uncured within thirty (30) days of detailed written notice, provided: (i) if the material breach is not curable within thirty (30) days, but is curable within sixty (60) days and the breaching Party diligently works to effectuate such cure, the breaching Party will have an additional thirty (30) days (total of sixty (60) days) to cure such material breach; and (ii) the notice of termination must be given within ninety (90) days after the event forming the basis for the termination right (provided that Prime's failure to provide notice in accordance with this clause (ii) shall not affect Prime's right to provide notice of termination in connection with a termination of the Client Agreement, in which case Prime shall notify Subcontractor promptly after receiving from or providing to Client a written notice of termination).

Topic		Standard Term or Approach
		2. Without regard to whether such failure would otherwise be deemed to be a material breach of the Subcontract Agreement, Subcontractor may terminate the Subcontract Agreement as of the date given in a written notice of termination if (i) Prime fails to pay amounts due under the Subcontract Agreement in excess of the time period specified for payment as set forth in the Client Agreement after such amounts are due; or (ii) to the extent Prime is permitted to withhold disputed amounts in accordance with a Disputed Charges flow-down provision, Prime fails to comply with any such Disputed Charges provision, provided in either case Prime fails to cure such failure within thirty (30) days of Subcontractor's notice. Without regard to the basis for Prime's or Subcontractor's termination of the Subcontract Agreement (including whether or not the termination of the Subcontract Agreement follows a termination of the Client Agreement), Subcontractor will provide termination/expiration assistance to Prime in accordance with the terms of the Client Agreement as applied between Prime and Subcontractor.
No Setoff		Neither Party may set-off, or attempt to set-off, any payments due to the other Party under the Subcontract Agreement by any amounts the first Party may owe the other under other agreements between the Parties, nor set off payments for undisputed products, services, or charges against disputed products, services, or charges.
Solicitation and Hiring		Neither Party's personnel who have been involved in the performance of the Services shall, without the other Party's approval, solicit for employment, directly or indirectly, any employee of the other Party who has been involved in the provision of the Services and who the soliciting Party's personnel identified as an employment candidate through such employee's involvement in the Services. This prohibition shall apply during the period of each such employee's involvement in the Services and for a period of twelve (12) months thereafter. This provision shall not operate or be construed to prevent or limit (i) an employee's right to practice their profession or to utilize their skills for another employer or to restrict any employee's freedom of movement or association or (ii) the solicitation of employees through general advertisement.
Anti-bribery		Both Parties will be familiar and will strictly comply with all laws and regulations on bribery, corruption, and prohibited business practices. Each Party and its affiliates will not, for the purpose of influencing or inducing anyone to influence decisions in favor of the other party or its affiliates, offer, promise or make or agree to make, directly or indirectly, (a) any political contributions of any kind or any payment to or for the benefit of any public official, whether elected or appointed, (b) any payments for gifts, meals, travel or other value for a government employee or his/her family members or (c) any payments or gifts (of money or anything of value) to anyone. Any Party breaching this section shall reimburse the receiving party for any such political contributions, payments or gifts.
GBS Rate Card		Upon Kyndryl's request, IBM agrees to make available resources at the rates set forth in the Rate Card in Attachment 5 (to the extent such resources are available), subject to the terms and conditions set forth therein.

Topic		Standard Term or Approach
Dispute Resolution		In the event of any claim, controversy, demand or request for relief of any kind arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity or breach of this Framework Agreement or otherwise arising out of or related to this Framework Agreement or the transactions contemplated hereby or thereby, including any Action based on contract, tort, equity, statute, regulation or constitution (collectively, "**Disputes**"), the Party raising the Dispute shall give written notice of the Dispute (a "**Dispute Notice**"), and the general counsels of the Parties (or such other individuals designated by the respective general counsels) and/or the executive officers designated by the Parties shall negotiate for a reasonable period of time to settle such Dispute; provided, that such reasonable period shall not, unless otherwise agreed by the Parties in writing, exceed ninety (90) days (the "**Negotiation Period**") from the time of receipt of the Dispute Notice; provided, further, that in the event of any arbitration in accordance with the provisions set forth below, (x) the Parties shall not assert the defenses of statute of limitations, laches or any other defense, in each such case based on the passage of time during the Negotiation Period, and (y) any contractual time period or deadline under this Framework Agreement relating to such Dispute occurring after the Dispute Notice is received shall not be deemed to have passed until such Arbitration has been resolved. As used in this Section, "Action" means any claim, complaint, petition, hearing, charge, demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority or any federal, state, local, foreign or international arbitration or mediation tribunal; and "Governmental Authority" means any federal, state, local, foreign, international or multinational court, government, quasi-government, department, commission, board, bureau, agency, official or other legislative, judicial, tribunal, commission, regulatory, administrative or governmental authority.
Binding Arbitration		If any Disputes have not been resolved for any reason after the Negotiation Period set forth above, then to the fullest extent permitted by applicable law such Dispute may be submitted by either Party to final and binding arbitration administered in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("**AAA**") then in effect (the "**Rules**"), except as modified herein. (a) The arbitration shall be conducted by a three-member arbitral tribunal (the "**Arbitral Tribunal**"). The claimant shall nominate one arbitrator in accordance with the Rules, and the respondent shall nominate one arbitrator in accordance with the Rules within twenty-one days (21) after the appointment of the first arbitrator. The third arbitrator, who shall serve as chair of the Arbitral Tribunal, shall be jointly nominated by the two party-nominated arbitrators within twenty-one (21) days of the confirmation of the appointment of the second arbitrator. If any arbitrator is not appointed within the time limit provided herein, such arbitrator shall be appointed by the AAA in accordance with the listing, striking and ranking procedure in the Rules. (b) The arbitration shall be held, and the award shall be rendered, in New York, New York, in the English language. (c) For the avoidance of doubt, by submitting their Dispute to arbitration under the Rules, the Parties expressly agree that all issues of arbitrability, including all issues concerning the propriety and timeliness of the commencement of the arbitration, the jurisdiction of the Arbitral Tribunal (Including the scope of this agreement to arbitrate and the extent to which a Dispute is within that scope), and the procedural conditions for arbitration, shall be finally and solely determined by the Arbitral Tribunal.

Topic		Standard Term or Approach
		(d) Without derogating from Subsection (e) below, the Arbitral Tribunal shall have the full authority to grant any pre-arbitral injunction, pre-arbitral attachment, interim or conservatory measure or other order in aid of arbitration proceedings ("**Interim Relief**"). The Parties shall exclusively submit any application for Interim Relief to only: (A) the Arbitral Tribunal; or (B) prior to the constitution of the Arbitral Tribunal, an emergency arbitrator appointed in the manner provided for in the Rules (the "**Emergency Arbitrator**"). Any Interim Relief so issued shall, to the extent permitted by applicable Law, be deemed a final arbitration award for purposes of enforceability. The foregoing procedures shall constitute the exclusive means of seeking Interim Relief, provided, however, that the Arbitral Tribunal shall have the power to continue, review, vacate or modify any Interim Relief granted by an Emergency Arbitrator. (e) The Arbitral Tribunal shall have the power to grant any remedy or relief that is in accordance with the terms of this Framework Agreement, including temporary or final injunctive relief, provided, however, that the Arbitral Tribunal shall have no authority or power to limit, expand, alter, amend, modify, revoke or suspend any condition or provision of this Framework Agreement, nor any right or power to award punitive, exemplary, enhanced or treble damages. (f) The Arbitral Tribunal shall have the power to allocate the costs and fees of the arbitration, including reasonable attorneys' fees and costs as well as those costs and fees addressed in the Rules, between the Parties in the manner it deems fit. (g) Arbitration under this Section shall be the sole and exclusive remedy for any Dispute, and any award rendered thereby shall be final and binding upon the Parties as from the date rendered. Judgment on the award rendered by the Arbitral Tribunal may be entered in any court having jurisdiction thereof, including any court having jurisdiction over the relevant Party. (h) The Parties agree that any arbitration hereunder shall be kept confidential, and that the existence of the proceeding and all of its elements (including any pleadings, briefs or other documents or evidence submitted or exchanged, any testimony or other oral submissions, and any awards) shall be deemed confidential, and shall not be disclosed beyond the Arbitral Tribunal, the Parties, their counsel, and any person necessary to the conduct of the proceeding, except as and to the extent required by law and to defend or pursue any legal right. In the event any Party makes application to any court in connection with this Subsection (h) (including any proceedings to enforce a final award or any Interim Relief), that party shall take all steps reasonably within its power to cause such application, and any exhibits (including copies of any award or decisions of the Arbitral Tribunal or Emergency Arbitrator) to be filed under seal, shall oppose any challenge by any third party to such sealing, and shall give the other Party immediate notice of such challenge. (i) Unless otherwise agreed in writing, the Parties shall continue to provide Services and honor all other commitments under this Framework Agreement during the course of dispute resolution set forth above with respect to all matters not subject to such dispute resolution.
Independent IP		As between the Parties: (i) each Party will retain all right, title, and interest in intellectual property owned by it prior to the Effective Date of the Subcontract Agreement or created by such Party independently of the Subcontract Agreement, together with any and all copyright, patent, trade secret, and other intellectual property and proprietary rights therein or in any derivative works thereof; and (ii) neither Party will enter into any agreement with a third party in derogation of such right, title, and interest of the other Party. For clarity, this provision shall not affect the Parties' respective commitments in furtherance of the Prime's or Subcontractor's obligations to deliver intellectual property to the Client under the Client Agreement.

Topic		Standard Term or Approach
Other		The Parties will review the Client Agreement to determine whether any additional modifications to otherwise applicable flow-down terms are warranted given the scope of Subcontractor's Services (e.g., audit requirements deemed incongruous with the Services). The Parties will document any such mutually agreed exceptions in the Subcontract Agreement.
Taxes		All charges referred to in this Framework Agreement are expressed as exclusive of all applicable Indirect Taxes. If any Indirect Taxes are payable in relation to any goods, services or other supplies made under or in connection with this Framework Agreement or a Subcontract Agreement, including the provisioning and fulfillment of such supplies (i) the applicable Indirect Taxes shall be added to any charges payable by Prime; (ii) Subcontractor shall issue an invoice or other billing documentation to Prime that complies with Applicable Tax Laws; and (iii) as applicable, Prime shall pay or reimburse the amounts of such Indirect Taxes to Subcontractor on or before the due dates for satisfaction of such invoices. Indirect Taxes means value added, goods and services, consumption, sales, use, revenue and/or turnover taxes calculated as a percentage of gross revenue (excluding income taxes calculated on net income or profit), telecommunications, financial transaction, digital services, export and import taxes or duties, stamp, registration, documentary and property taxes and any other similar charges or contributions, including surcharges on the aforementioned taxes, in each case imposed, collected or assessed by, or payable to, a tax authority or other Governmental Agency. Prime warrants that, if applicable, it is registered for Indirect Taxes in the jurisdiction where Prime is established and in the end user country as the local law requires, and that it purchases the Subcontractor services for resale only to the end user. To the extent required or provided by local laws in the country or territory where the Services or products are delivered, Prime should collect and remit any taxes imposed or assessed by, or payable to, a tax authority or governmental authorities and agrees to indemnify and hold harmless Subcontractor and its affiliates and their respective officers, directors, employees and agents, against all liabilities, damages, losses, costs and expenses if Prime fails to pay timely all such taxes due on their supply to the end user, in accordance with applicable laws. Any sums payable by Prime to Subcontractor shall be paid without subtractions, deductions or withholdings of any kind, including (without limitation) taxes. Subcontractor is not responsible for the remittance, reporting or recovery of any taxes and duties payable in relation to the Client Agreement. This responsibility remains between Prime and Client. In the event that local laws or regulations could require the Subcontractor contracting entity to register for Indirect Taxes in any overseas jurisdiction/jurisdictions, Prime and Subcontractor will discuss an alternative charge construct, or appropriate next steps. For the avoidance of doubt, nothing in this clause shall be construed to imply that either Party is a general tax advisor to the other Party. Prime will pay the charge to Subcontractor net of the required withholding or deduction and shall account for the amount so deducted or withheld to the relevant tax authority. Prime will supply to Subcontractor evidence to the reasonable satisfaction of Subcontractor that Prime has accounted to the relevant tax authority for the amount withheld or deducted and will provide all such reasonable assistance as may be requested by Subcontractor in recovering the amount withheld or deducted. In the event that a double taxation treaty applies which provides for a reduced withholding tax rate (including a complete exemption from withholding tax), Prime shall take all reasonable steps to ensure that such reduced withholding is applied.

5. Data Processing

The applicable Data Processing Terms specified in the Client Agreement shall be incorporated by reference into each applicable Subcontract Agreement and any applicable Local Subcontract Agreement in accordance with the Subcontractor's scope of Services set forth in the Exhibits thereto or specified by the Applicable DOU, and shall become binding upon the Parties. Prime will provide (or make available) to Subcontractor the relevant "flow-down" Data Processing Terms specified in the Client Agreement, that are necessary for Subcontractor to comply with its obligations under the Subcontract Agreement and any applicable Local Subcontract Agreement.

6. Framework Agreement General Terms

6.1 **Term**. This Framework Agreement shall commence on the Framework Effective Date and shall remain in effect until the later of: (i) the effective date of termination specified in a written notice from one Party to the other (such effective date to be not less than ninety (90) days after the date of notice); and (ii) the date upon which the last Subcontract Agreement subject to the terms of the Framework Agreement is terminated or expires.

6.2 **Changes**. No change to this Framework Agreement will be valid unless signed by an authorized representative of each Party. Unless otherwise expressly agreed in writing, no such change shall alter obligations under then-existing Subcontract Agreements.

6.3 **Severability**. In the event that any provision of this Framework Agreement is held to be invalid or unenforceable, the remaining provisions of this Framework Agreement remain in full force and effect.

6.4 **Counterparts**. This Framework Agreement may be signed in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same agreement. Any copy of this Framework Agreement made by reliable means is considered an original.

6.5 **Execution**. In order to be effective, a Subcontract Agreement must be approved and executed by both Parties. Notwithstanding the foregoing, any Subcontract Agreement listed on Attachment 2 to this Framework Agreement on the Framework Effective Date shall be deemed to be executed concurrently with the execution of this Framework Agreement. If there is a conflict among the terms of this Framework Agreement and any Subcontract Agreement, the terms of such Subcontract Agreement shall prevail over those of this Framework Agreement.

6.6 **Applicable DOUs – Extraneous Terms**. The Parties acknowledge that certain Applicable DOUs incorporated herein and in the Subcontract by reference contain extraneous terms that are not applicable to this Framework Agreement or the Subcontract Agreements. As such, for purposes of this Framework Agreement and a Subcontract Agreement:

6.6.1 Any Applicable DOU that makes reference to a "DOU" or "Document of Understanding" shall be read to mean "SOW" or "Statement of Work", respectively;

6.6.2 Any reference to "Internal Use Only" shall be deleted;

6.6.3 Any reference to "IBM Confidential" shall be read to mean "IBM and Kyndryl Confidential;"

6.6.4 Any Applicable DOU with strike-through text (e.g., ~~strike-through~~) shall be deleted and all other text shall be read in the context of its plain meaning;

6.6.5 Any Applicable DOUs with incorrect references to the Client Agreement Documents shall be corrected by mutual agreement of the Parties;

6.6.6 Any Applicable DOUs referencing (a) revenue splitting terms, (b) IBM internal billing or accounting codes, (c) IBM's revenue splitting checklist, or (d) "green" or "blue" dollar revenue terms, shall be disregarded;

6.6.7 Any reference to "GTS" should be read as "Kyndryl;" any reference to "GBS" should be read as "IBM". Any reference to "IBM" should be reviewed to determine the appropriate reference ("IBM" or "Kyndryl");

6.6.8 Any references to "LBL" and "PBL" should be confirmed to be consistent with the Parties associated with "Prime" and "Subcontractor" under this Framework Agreement;

6.6.9 Any reference to provisions related to Signings/Bookings Recognition and Revenue Recognition will not apply to the Subcontract Agreement;

6.6.10 Any reference to the Prime's provision of executed contract documents will be limited to the contents of such documents as are required from the Subcontractor for the Prime to meet its Client responsibilities and obligations; and

6.6.11 Any dispute between the Parties with respect to an Applicable DOU shall be addressed by the dispute terms set forth in Section 4.b. above.

6.7 Entire Agreement. This Framework Agreement, including, as applicable, Participation Agreements, Subcontract Agreements and associated Attachments executed pursuant to the terms of this Framework Agreement, and any Applicable DOUs, is the complete agreement between the Parties and replaces any prior oral and/or written communications between the Parties concerning this subject matter, and neither Party has relied or is relying upon any representation made by or on behalf of the other that is not specified in the Framework Agreement or such Subcontract Agreement.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have each caused this Framework Agreement to be signed and delivered by its duly authorized representative.

Agreed to:	Agreed to:
International Business Machines Corporation	**Kyndryl, Inc.**
By /s/ Frank Sedlarcik Authorized Signature	By /s/ Simon Beaumont Authorized Signature
Name (type or print): Frank Sedlarcik, Vice President, Assistant General Counsel and Secretary	Name (type or print): Simon Beaumont, President
Date: 11/2/2021	Date: 11/2/2021

Exhibit 10.8

EXECUTION VERSION

STOCKHOLDER AND REGISTRATION RIGHTS AGREEMENT

This STOCKHOLDER AND REGISTRATION RIGHTS AGREEMENT, dated as of November 2 , 2021 (this "Agreement"), is by and between International Business Machines Corporation, a New York corporation ("IBM"), and Kyndryl Holdings, Inc., a Delaware corporation ("Kyndryl").

WHEREAS, IBM currently owns all of the issued and outstanding shares of common stock, par value $0.01 per share, of Kyndryl ("Kyndryl Common Stock");

WHEREAS, pursuant to the Separation and Distribution Agreement, dated as of November 2 , 2021, by and between IBM and Kyndryl, IBM will distribute 80.1% of the issued and outstanding shares of Kyndryl Common Stock to holders of shares of IBM common stock, on a pro rata basis (the "Distribution");

WHEREAS, in connection with the Distribution, Kyndryl will register shares of Kyndryl Common Stock under the Exchange Act (as defined below) on a registration statement on Form 10;

WHEREAS, following the Distribution, IBM may effect distributions of any shares of Kyndryl Common Stock that are not distributed in the Distribution (such shares not distributed in the Distribution, the "Retained Shares") to IBM stockholders as dividends or in exchange for outstanding shares of IBM common stock or through one or more subsequent exchanges of Kyndryl Common Stock for IBM debt held by IBM creditors, including pursuant to one or more transactions Registered under the Securities Act (as such terms are defined below);

WHEREAS, Kyndryl desires to grant to IBM the Registration Rights (as defined below) for the Registrable Securities (as defined below), subject to the terms and conditions of this Agreement; and

WHEREAS, IBM desires to grant to Kyndryl a proxy to vote the Retained Shares in proportion to the votes cast by Kyndryl's other stockholders, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements of the parties hereto, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"AAA" has the meaning set forth in Section 4.4(c).

"Action" means any demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation by or before any federal, state, local, foreign or international Governmental Authority or any arbitration or mediation tribunal.

"Affiliate" means, when used with respect to a specified Person, another Person that controls, is controlled by, or is under common control with the Person specified; provided, however, that, for purposes of this Agreement, Kyndryl and its Subsidiaries shall not be considered to be "Affiliates" of IBM and its Subsidiaries (other than Kyndryl and its Subsidiaries), and IBM and its Subsidiaries (other than Kyndryl and its Subsidiaries) shall not be considered to be "Affiliates" of Kyndryl or its Subsidiaries. As used herein, "control" means 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 or otherwise.

"Agreement" has the meaning set forth in the preamble to this Agreement.

"Ancillary Filings" has the meaning set forth in Section 2.4(a)(i).

"Arbitral Tribunal" has the meaning set forth in Section 4.4(c)(i).

"Block Trade" means an Underwritten Offering not involving any "road show" which is commonly known as a "block trade."

"Business Day" means any day that is not a Saturday, Sunday or other day on which banking institutions doing business in New York, New York are authorized or obligated by law or required by executive order to be closed.

"Chosen Court Claim" has the meaning set forth in Section 4.6.

"Chosen Courts" has the meaning set forth in Section 4.6.

"Convertible or Exchange Registration" has the meaning set forth in Section 2.7.

"Debt" means any indebtedness of any member of the IBM Group, including debt securities, notes, credit facilities, credit agreements and other debt instruments, including, in each case, any amounts due thereunder.

"Demand Registration" has the meaning set forth in Section 2.1(a).

"Decision on Interim Relief" has the meaning set forth in Section 4.4(c)(iv).

"Dispute" or "Disputes" has the meaning set forth in Section 4.4(b).

"Dispute Notice" has the meaning set forth in Section 4.4(b).

"Distribution" has the meaning set forth in the recitals to this Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"Exchange Offer" means an exchange offer of Registrable Securities for outstanding securities of a Holder.

"Exchanges" means one or more Public Exchanges or Private Exchanges.

"Governmental Authority" means 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.

"Holder" means IBM or any of its Subsidiaries, so long as such Person holds any Registrable Securities, and any Person owning Registrable Securities who is a Permitted Transferee of rights under Section 4.3.

"IBM" has the meaning set forth in the preamble to this Agreement and shall include its successors, by merger, acquisition, reorganization or otherwise.

"IBM Group" means IBM and each Person that is a direct or indirect Subsidiary of IBM as of immediately following the Distribution, and each Person that becomes a Subsidiary of IBM after the Distribution (in each case other than any member of the Kyndryl Group).

"Initiating Holder" has the meaning set forth in Section 2.1(a).

"Interim Relief" has the meaning set forth in Section 4.4(c)(iv).

"Kyndryl" has the meaning set forth in the preamble to this Agreement and shall include its successors, by merger, acquisition, reorganization or otherwise.

"Kyndryl Common Stock" has the meaning set forth in the recitals to this Agreement.

"Kyndryl Group" means Kyndryl and each Person that is a direct or indirect Subsidiary of Kyndryl as of immediately following the Distribution, and each Person that becomes a Subsidiary of Kyndryl after the Distribution (in each case other than any member of the IBM Group).

"Kyndryl Notice" has the meaning set forth in Section 2.1(a).

"Kyndryl Public Sale" has the meaning set forth in Section 2.2(a).

"Kyndryl Takedown Notice" has the meaning set forth in Section 2.1(f).

"Loss" or "Losses" has the meaning set forth in Section 2.9(a).

"Negotiation Period" has the meaning set forth in Section 4.4(b).

"Participating Banks" means such investment banks or other Persons that are not part of the IBM Group that engage, directly or indirectly, in any Exchange with one or more members of the IBM Group.

"Permitted Transferee" means any Transferee and any Subsequent Transferee.

"Person" means any individual, firm, limited liability company or partnership, joint venture, corporation, joint stock company, trust or unincorporated organization, incorporated or unincorporated association, government (or any department, agency or political subdivision thereof) or other entity of any kind, and shall include any successor (by merger or otherwise) of such entity.

"Piggyback Registration" has the meaning set forth in Section 2.2(a).

"Private Exchange" means a private exchange pursuant to which one or more members of the IBM Group shall Sell some or all of their Registrable Securities to one or more Participating Banks in exchange, directly or indirectly, for any equity interest of IBM or the satisfaction of Debt, in a transaction or series of transactions not required to be registered under the Securities Act.

"Prospectus" means the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including post-effective amendments, and all other material incorporated by reference in such prospectus.

"Public Exchange" means a public exchange pursuant to which one or more members of the IBM Group shall Sell some or all of their Registrable Securities to one or more Participating Banks in exchange, directly or indirectly, for any equity interest of IBM or the satisfaction of Debt, in a transaction or series of transactions registered under the Securities Act.

"Registrable Securities" means any Retained Shares and any securities issued or issuable directly or indirectly with respect to, in exchange for, upon the conversion of or in replacement of the Retained Shares, whether by way of a dividend or distribution or stock split or in connection with a combination of shares, recapitalization, merger, consolidation, exchange or other reorganization. The term "Registrable Securities" excludes any security (i) the offering and Sale of which has been effectively Registered under the Securities Act and which has been Sold in accordance with a Registration Statement, (ii) that has been Sold pursuant to Rule 144 (or any successor provision) under the Securities Act, (iii) that (A) may be Sold pursuant to Rule 144 (or any successor provision) under the Securities Act without being subject to the volume limitations in subsection (e) of such rule and (B) is held by a Holder of less than 1% of the then-issued and outstanding shares of Kyndryl Common Stock (determined, in the case of IBM or any of its direct or indirect Subsidiaries, as applicable, as the aggregate number of Registrable Securities held by the IBM Group) or (iv) that has been sold by a Holder in a transaction in which such Holder's rights under this Agreement are not, or cannot be, assigned.

"Registration" means a registration with the SEC of the offer and Sale to the public of any Kyndryl Common Stock under a Registration Statement. The terms "Register," "Registered" and "Registering" shall have a correlative meaning.

"Registration Expenses" means all expenses incident to Kyndryl's performance of or compliance with this Agreement, including all (i) registration, qualification and filing fees; (ii) expenses incurred in connection with the preparation, printing and filing under the Securities Act of the Registration Statement, any Prospectus and any issuer free writing prospectus and the distribution thereof; (iii) the fees and expenses of Kyndryl's counsel and independent accountants (including the expenses of any comfort letters or costs associated with the delivery by Kyndryl Group members' independent certified public accountants of comfort letters customarily requested by underwriters); (iv) the fees and expenses incurred in connection with the registration or qualification and determination of eligibility for investment of the Shares under the state or foreign securities or blue sky laws and the preparation, printing and distribution of a Blue Sky Memorandum (including the related reasonable fees and expenses of counsel); (v) the costs and charges of any transfer agent and any registrar; (vi) all expenses and application fees incurred in connection with any filing with, and clearance of an offering by, Financial Industry Regulatory Authority, Inc.; (vii) printing expenses, messenger, telephone and delivery expenses; (viii) internal expenses of Kyndryl (including all salaries and expenses of employees of Kyndryl performing legal or accounting duties); (ix) fees and expenses of listing any Registrable Securities on any securities exchange on which shares of Kyndryl Common Stock are then listed; and (x) the reasonable fees and expenses of one legal counsel chosen by IBM or the Holders of a majority of the Registrable Securities included in a Demand Registration, Piggyback Registration or Shelf Registration (including Block Trades), as applicable; but excluding any underwriting discounts or commissions attributable to the Sale of any Registrable Securities, any fees and expenses of any other counsel, accountants or other persons retained or employed by any Holder, any fees and expenses of any counsel to the underwriters or dealer managers and any stock transfer taxes.

"Registration Period" has the meaning set forth in Section 2.1(c).

"Registration Rights" means the rights of the Holders to cause Kyndryl to Register Registrable Securities pursuant to this Agreement.

"Registration Statement" means any registration statement of Kyndryl 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 in such registration statement.

"Retained Shares" has the meaning set forth in the recitals to this Agreement.

"Rules" has the meaning set forth in Section 4.4(c).

"Sale" means the direct or indirect transfer, sale, assignment or other disposition of a security. The terms "Sell" and "Sold" have correlative meanings.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the U.S. Securities Act of 1933, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"Shares" means all shares of Kyndryl Common Stock that are beneficially owned by IBM or any Permitted Transferee from time to time, whether or not held immediately following the Distribution.

"Shelf Registration" means a Registration Statement of Kyndryl for an offering to be made on a delayed or continuous basis of Kyndryl Common Stock pursuant to Rule 415 under the Securities Act (or similar provisions then in effect).

"Subsequent Transferee" has the meaning set forth in Section 4.3(b).

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (i) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (A) the total combined voting power of all classes of voting securities of such Person, (B) the total combined equity interests or (C) the capital or profit interests, in the case of a partnership, or (ii) 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.

"Takedown Notice" has the meaning set forth in Section 2.1(f).

"Takedown Prospectus Supplement" has the meaning set forth in Section 2.1(f).

"Transferee" has the meaning set forth in Section 4.3(b).

"Underwritten Offering" means a Registration in which securities of Kyndryl are Sold to an underwriter or underwriters on a firm commitment basis for reoffering to the public.

1.2 General Interpretive Principles. Whenever used in this Agreement, except as otherwise expressly provided or unless the context otherwise requires, any noun or pronoun shall be deemed to include the plural as well as the singular and to cover all genders. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." Unless otherwise specified, the terms "hereof," "herein," "hereunder" and similar terms refer to this Agreement as a whole (including the exhibits hereto), and references herein to Articles, Sections and Exhibits refer to Articles, Sections and Exhibits of this Agreement. The word "or" shall have the inclusive meaning represented by the phrase "and/or." Except as otherwise indicated, all periods of time referred to herein shall include all Saturdays, Sundays and holidays; provided, however, that if the date to perform the act or give any notice with respect to this Agreement shall fall on a day other than a Business Day, such act or notice may be performed or given timely if performed or given on the next succeeding Business Day. References to a Person are also to its permitted successors and assigns. The titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement. The parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE II

REGISTRATION RIGHTS

2.1 Registration.

(a) Request. Any Holder(s) of Registrable Securities (collectively, the "Initiating Holder") shall have the right (including, for the avoidance of doubt, in connection with its rights pursuant to Section 2.7) to request that Kyndryl 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 to Kyndryl specifying the aggregate number of shares of Registrable Securities such Initiating Holder wishes to Register (a "Demand Registration"). Kyndryl shall (i) within five (5) days of the receipt of such request, give written notice of such Demand Registration to all Holders of Registrable Securities (the "Kyndryl Notice"), (ii) use its reasonable best efforts to prepare and file a Registration Statement as expeditiously as possible in respect of such Demand Registration and in any event within thirty (30) days of receipt of the request, and (iii) use its reasonable best efforts to cause such Registration Statement to become effective as expeditiously as possible. Kyndryl shall include in such Registration all Registrable Securities that the Holders request to be included within the ten (10) days following their receipt of the Kyndryl Notice.

(b) Limitations of Demand Registrations. There shall be no limitation on the number of Demand Registrations pursuant to Section 2.1(a); provided, however, that the Holder(s) may not require Kyndryl to effect a Demand Registration within sixty (60) days after the effective date of a previous registration by Kyndryl, other than a Shelf Registration, effected pursuant to this Section 2.1. In the event that any Person shall have received rights to Demand Registrations pursuant to Section 2.7 or Section 4.3, and such Person shall have made a Demand Registration request, such request shall be treated as having been made by the Holder(s). The Registrable Securities requested to be Registered pursuant to Section 2.1(a) must represent (i) an aggregate offering price of Registrable Securities that is reasonably expected to equal at least $100,000,000 (or its equivalent if the Registrable Securities are to be offered in an Exchange Offer) or (ii) all of the remaining Registrable Securities owned by the requesting Holder and its Affiliates.

(c) Effective Registration. Kyndryl shall be deemed to have effected a Registration for purposes of Section 2.1(a) 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 Sold and (ii) (x) in case of a Registration Statement that is not a Shelf Registration Statement, 60 days from the effective date of the Registration Statement or (y) 12 months from the effective date of the 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 any member of the Kyndryl 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 the Holder 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.

(d) Underwritten Offering; Exchange Offer. If the Initiating Holder so indicates at the time of its request pursuant to Section 2.1(a), such offering of Registrable Securities shall be in the form of an Underwritten Offering or an Exchange Offer and Kyndryl shall include such information in the Kyndryl Notice. In the event that the Initiating Holder intends to Sell 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 Exchange Offer.

(e) Priority of Securities in an Underwritten Offering. If the managing underwriter or underwriters of a proposed Underwritten Offering, including an Underwritten Offering from a Shelf Registration, pursuant to this Section 2.1 informs the Holders with Registrable Securities in the proposed Underwritten Offering in writing that, in its or their opinion, the number of Registrable Securities requested to be included in such Underwritten Offering exceeds the number that can be Sold in such Underwritten Offering without being likely to have an adverse effect on the price, timing or distribution of the Registrable Securities offered or the market for the Registrable Securities offered, then the number of Registrable Securities to be included in such Underwritten Offering shall be reduced to such number that can be Sold without such adverse effect based on the recommendation of the managing underwriter or underwriters and the Registrable Securities to be included in such Underwritten Offering shall be: (i) first, Registrable Securities requested by IBM to be included in such Underwritten Offering; (ii) second, Registrable Securities requested by all other Holders to be included in such Underwritten Offering on a pro rata basis calculated based on the number of shares requested to be registered; and (iii) third, all other Registrable Securities requested and otherwise eligible to be included in such Underwritten Offering (including Registrable Securities to be Sold for the account of Kyndryl) on a pro rata basis calculated based on the number of shares requested to be registered. In the event the Initiating Holder notifies Kyndryl that such Registration Statement shall be abandoned or withdrawn, such Holder shall not be deemed to have requested a Demand Registration pursuant to Section 2.1(a), and Kyndryl shall not be deemed to have made a Demand Registration request pursuant to Section 2.1(a) and Section 2.1(c).

(f) Shelf Registration. At any time after the date hereof when Kyndryl is eligible to Register the applicable Registrable Securities on Form S-3 (or a successor form) and Holders may request Demand Registrations, the requesting Holders may request Kyndryl to effect a Demand Registration as a Shelf Registration. Any Holder of Registrable Securities included on a Shelf Registration shall have the right to request that Kyndryl cooperate in a shelf takedown at any time, including an Underwritten Offering, by delivering a written request thereof to Kyndryl specifying the number of shares of Registrable Securities such Holder wishes to include in the shelf takedown ("Takedown Notice"). Kyndryl shall (i) within five (5) days of the receipt of a Takedown Notice for an Underwritten Offering, give written notice of such Takedown Notice to all Holders of Registrable Securities included on such Shelf Registration ("Kyndryl Takedown Notice"), and (ii) take all actions reasonably requested by such Holder, including the filing of a Prospectus supplement ("Takedown Prospectus Supplement") and the other actions described in Section 2.4, in accordance with the intended method of distribution set forth in the Takedown Notice as expeditiously as possible. If the takedown is an Underwritten Offering, Kyndryl shall include in such Underwritten Offering all Registrable Securities that that the Holders request to be included within the two (2) days following their receipt of the Kyndryl Takedown Notice. If the takedown is an Underwritten Offering, the Registrable Securities requested to be included in a shelf takedown must represent (i) an aggregate offering price of Registrable Securities that is reasonably expected to equal at least $100,000,000 or (ii) all of the remaining Registrable Securities owned by the requesting Holder and its Affiliates. Notwithstanding anything else to the contrary in this Agreement, the requirement to deliver a Kyndryl Takedown Notice and the piggyback rights described in this Section 2.1(f) shall not apply to an Underwritten Offering that constitutes a Block Trade. There shall be no limitations on the number of Underwritten Offerings pursuant to a Shelf Registration; provided, that in no event shall Kyndryl be required to effect, pursuant to this Section 2.01(f), during any 90-day period, more than (A) two Block Trades or (B) more than one Underwritten Offering that is not a Block Trade pursuant to a Takedown Notice (it being understood, for the avoidance of doubt, that a Takedown Notice shall not count as a Demand Registration request for purposes of the limit set forth in Section 2.01(b)).

(g) SEC Form. Except as set forth in the next sentence, Kyndryl shall use its reasonable best efforts to cause Demand Registrations to be Registered on Form S-3 (or any successor form), and if Kyndryl is not then eligible under the Securities Act to use Form S-3, Demand Registrations shall be Registered on Form S-1 (or any successor form) or Form S-4 (in the case of an Exchange Offer). If a Demand Registration is a Convertible or Exchange Registration, Kyndryl shall effect such Registration on the appropriate Form under the Securities Act for such Registrations. Kyndryl shall use its reasonable best efforts to become eligible to use Form S-3 and, after becoming eligible to use Form S-3, shall use its reasonable best efforts to remain so eligible. All Demand Registrations shall comply with applicable requirements of the Securities Act and, together with each Prospectus included, filed or otherwise furnished by Kyndryl in connection therewith, shall not contain any untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

2.2 Piggyback Registrations.

(a) Participation. If Kyndryl proposes to file a Registration Statement under the Securities Act with respect to any offering of Kyndryl Common Stock for its own account and/or for the account of any other Persons (other than a Registration (i) under Section 2.1 hereof, (ii) 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) pursuant to any form that does not include substantially the same information as would be required to be included in a Registration Statement covering the Sale of Registrable Securities, (iv) in connection with any dividend reinvestment or similar plan, (v) for the sole 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 (vi) in which the only Kyndryl Common Stock being Registered is Kyndryl Common Stock issuable upon conversion of debt securities that are also being Registered) (a "Kyndryl Public Sale"), then, as soon as practicable (but in no event less than fifteen (15) days prior to the proposed date of filing such Registration Statement), Kyndryl 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 2.2(a) and Section 2.2(c), Kyndryl shall include in such Registration Statement all such Registrable Securities that are requested to be included therein within ten (10) 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, Kyndryl shall determine for any reason not to Register or to delay Registration of such securities, Kyndryl may, at its election, give written notice of such determination to each such Holder and, thereupon, (i) 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 2.1, and (ii) 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 shares of Kyndryl Common Stock. No Registration effected under this Section 2.2 shall relieve Kyndryl of its obligation to effect any Demand Registration under Section 2.1. If the offering pursuant to a Registration Statement pursuant to this Section 2.2 is to be an Underwritten Offering, then each Holder making a request for a Piggyback Registration pursuant to this Section 2.2(a) shall, and Kyndryl shall use reasonable best efforts to coordinate arrangements with the underwriters so that each such Holder may, participate in such Underwritten Offering. If the offering pursuant to such Registration Statement is to be on any other basis, then each Holder making a request for a Piggyback Registration pursuant to this Section 2.2(a) shall, and Kyndryl shall use reasonable best efforts to coordinate arrangements so that each such Holder may, participate in such offering on such basis. Kyndryl's filing of a Shelf Registration shall not be deemed to be a Kyndryl Public Sale; provided, however, that the proposal to file any Prospectus supplement filed pursuant to a Shelf Registration with respect to an offering of Kyndryl Common Stock for its own account and/or for the account of any other Persons will be a Kyndryl Public Sale unless such offering qualifies for an exemption from the Kyndryl Public Sale definition in this Section 2.2(a); provided, further that if Kyndryl files a Shelf Registration for its own account and/or for the account of any other Persons, Kyndryl agrees that it shall use its reasonable best efforts to include in such Registration Statement such disclosures as may be required by Rule 430B under the Securities Act in order to ensure that the Holders may be added to such Shelf Registration at a later time through the filing of a Prospectus supplement rather than a post-effective amendment.

(b) Right to Withdraw. Each Holder shall have the right to withdraw such Holder's request for inclusion of its Registrable Securities in any Underwritten Offering pursuant to this Section 2.2 at any time prior to the execution of an underwriting agreement with respect thereto by giving written notice to Kyndryl 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) Priority of Piggyback Registration. If the managing underwriter or underwriters of any proposed Underwritten Offering of a class of Registrable Securities included in a Piggyback Registration informs Kyndryl and the Holders in writing that, in its or their opinion, the number of securities of such class which such Holder and any other Persons intend to include in such Underwritten Offering exceeds the number which can be Sold in such Underwritten 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 Underwritten Offering shall be reduced to such number that can be Sold without such adverse effect based on the recommendation of the managing underwriter or underwriters and the securities to be included in the Underwritten Offering shall be (i) first, all securities of Kyndryl or any other Persons for whom Kyndryl is effecting the Underwritten Offering, as the case may be, proposes to Sell; (ii) second, Registrable Securities requested by IBM to be included in such Underwritten Offering; (iii) third, Registrable Securities requested by all other Holders to be included in such Underwritten Offering on a pro rata basis calculated based on the number of shares requested to be registered; and (iv) fourth, all other securities requested and otherwise eligible to be included in such Underwritten Offering (including securities to be Sold for the account of Kyndryl) on a pro rata basis calculated based on the number of shares requested to be registered.

2.3 Selection of Underwriter(s), Etc. In any Underwritten Offering or Exchange Offer pursuant to Section 2.1 or Section 2.2 that is not an Kyndryl Public Sale, IBM or, in the event IBM is not participating in such Underwritten Offering or Exchange Offer, the Holders of a majority of the outstanding Registrable Securities being included in the Underwritten Offering or Exchange Offer, shall select the underwriter(s), dealer-manager(s), financial printer, solicitation and/or exchange agent (if any) and counsel to the Holder(s) for such Underwritten Offering or Exchange Offer; provided, that IBM, or the Holders of a majority of the outstanding Registrable Securities, as applicable, shall consult with Kyndryl and consider Kyndryl's suggestions, if any, in good faith in connection with such selection. In any Kyndryl Public Sale, Kyndryl shall select the underwriter(s), dealer-manager(s), financial printer, solicitation and/or exchange agent (if any) and IBM or, in the event IBM is not participating in such Underwritten Offering or Exchange Offer, the Holders of a majority of the outstanding Registrable Securities being included in the Kyndryl Public Sale shall select counsel to the Holder(s).

2.4 Registration Procedures.

(a) In connection with the Registration and/or Sale of Registrable Securities pursuant to this Agreement, through an Underwritten Offering or otherwise, Kyndryl shall use reasonable best efforts to effect or cause the Registration and the Sale of such Registrable Securities in accordance with the intended methods of Sale thereof and:

(i) prepare and file the required Registration Statement 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 dealers 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) except in the case of a Shelf Registration or Convertible or Exchange Registration, prepare and file with the SEC such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act with respect to the Sale of all of the Shares Registered thereon until the earlier of (A) such time as all of such Shares have been Sold in accordance with the intended methods of Sale set forth in such Registration Statement or (B) the expiration of nine (9) months after such Registration Statement becomes effective;

(iii) in the case of a Shelf Registration, prepare and file with the SEC such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act with respect to the Sale of all Shares subject thereto for a period ending thirty-six (36) months after the effective date of such Registration Statement;

(iv) in the case of a Convertible or Exchange Registration, prepare and file with the SEC such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act with respect to the Sale of all of the Shares subject thereto until such time as the rules, regulations and requirements of the Securities Act and the terms of any applicable convertible securities no longer require such Shares to be Registered under the Securities Act;

(v) notify the participating Holders and the managing underwriter or 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 Kyndryl (A) when the applicable Registration Statement or any amendment thereto has been filed or becomes effective, when the applicable Prospectus or any amendment or supplement to such Prospectus has been filed, or any Ancillary Filing has been filed, (B) of any written comments by the SEC or any request by the SEC or any other Governmental Authority for amendments or supplements to such Registration Statement or such Prospectus or any Ancillary Filing or for additional information, (C) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or 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 of Kyndryl in any applicable underwriting agreement or dealer-manager agreements cease to be true and correct in all material respects, and (E) of the receipt by Kyndryl of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or Sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(vi) promptly notify each selling Holder and the managing underwriter or underwriters or dealer-managers, if any, when Kyndryl becomes aware of the occurrence of any event as a result of which the applicable Registration Statement or 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 or Prospectus or any Ancillary Filing in order to comply with the Securities Act and, in either case as promptly as reasonably practicable thereafter, prepare and file with the SEC, and furnish without charge to the selling Holder and the managing underwriter or underwriters or dealer-managers, if any, an amendment or supplement to such Registration Statement or Prospectus or any Ancillary Filing which will correct such statement or omission or effect such compliance;

(vii) 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;

(viii) promptly incorporate in a Prospectus supplement or post-effective amendment such information as the managing underwriters or dealer-managers, if any, and the Holders may reasonably request in order to permit the intended method of distribution of the Registrable Securities; and 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;

(ix) furnish to each selling 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);

(x) deliver to each selling 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 Kyndryl consents to the use of such Prospectus or any amendment or supplement thereto by each selling Holder and the underwriters or dealer-managers, if any, in connection with the offering and Sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto) and such other documents as such selling Holder or underwriter or dealer-manager may reasonably request in order to facilitate the Sale of the Registrable Securities by such Holder or underwriter or dealer-manager;

(xi) 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 selling Holder, the managing underwriter or underwriters or dealer-managers, if any, and their respective counsel, in connection with the registration or qualification of such Registrable Securities for offer and Sale under the securities or "Blue Sky" laws of each state and other jurisdiction of the United States as any selling Holder or managing underwriter or underwriters or dealer-managers, if any, or their respective counsel reasonably request, and in any foreign jurisdiction mutually agreeable to Kyndryl and the participating Holders, in writing 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 Sales and dealings in such jurisdictions of the United States for so long as may be necessary to complete the distribution of the Registrable Securities covered by the Registration Statement; provided that Kyndryl will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or 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;

(xii) in connection with any Sale of Registrable Securities that will result in such securities no longer being Registrable Securities, cooperate with each participating Holder and the managing underwriter or underwriters or dealer-managers, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be Sold and not bearing any restrictive Securities Act legends; and to register such Registrable Securities in such denominations and such names as such selling Holder or the underwriters or dealer-managers, if any, may request at least two (2) Business Days prior to such Sale of Registrable Securities; provided that Kyndryl may satisfy its obligations hereunder without issuing physical stock certificates through the use of the Depository Trust Company's Direct Registration System;

(xiii) 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 Kyndryl's securities are then listed or quoted and on each inter-dealer quotation system on which any of Kyndryl'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 agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter or underwriters or dealer-managers, if any, to consummate the Sale of such Registrable Securities;

(xiv) 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 Kyndryl may satisfy its obligations hereunder without issuing physical stock certificates through the use of the Depository Trust Company's Direct Registration System;

(xv) obtain for delivery to and addressed to each selling Holder and to the underwriter or underwriters or dealer-managers, if any, opinions from outside counsel and the general counsel for Kyndryl, 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;

(xvi) in the case of an Underwritten Offering or Exchange Offer, obtain for delivery to and addressed to Kyndryl and the underwriter or underwriters or dealer-managers and, to the extent requested, each participating Holder, a comfort letter from Kyndryl's or other applicable independent certified public accountants 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;

(xvii) 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 agreement or dealer-manager agreement;

(xviii) 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 no later than ninety (90) days after the end of the twelve (12)-month period beginning with the first day of Kyndryl'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 the rules and regulations promulgated thereunder and covering the period of at least twelve (12) months, but not more than eighteen (18) months, beginning with the first month after the effective date of the Registration Statement;

(xix) 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;

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

(xxi) provide (A) each Holder participating in the Registration, (B) the underwriters (which term, for purposes of this Agreement, shall include a 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 Sale or placement agent therefor, if any, (D) the dealer-manager therefor, (E) counsel for such underwriters or 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, 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 to require the insertion therein of material, furnished to Kyndryl in writing, which in the reasonable judgment of such Holder(s) and their counsel should be included; and for a reasonable period prior to the filing of such Registration Statement, upon receipt of such confidentiality agreements as Kyndryl may reasonably request, make available upon reasonable notice at reasonable times and for reasonable periods for inspection by the parties referred to in (A) through (F) above, all pertinent financial and other records, pertinent corporate and other documents and properties of Kyndryl that are available to Kyndryl, and cause all of Kyndryl'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 Kyndryl and to supply all information available to Kyndryl reasonably requested by any such Person in connection with such Registration Statement as shall be necessary to enable them to exercise their due diligence responsibility, subject to the foregoing;

(xxii) to cause the executive officers of Kyndryl to participate in customary "road show" presentations that may be reasonably requested by the managing underwriter or underwriters or dealer-managers in any Underwritten Offering or Exchange Offer and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto;

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

(xxiv) take all other customary steps reasonably necessary to effect the Registration, offering and Sale of the Registrable Securities.

(b) As a condition precedent to any Registration hereunder, Kyndryl may require each Holder as to which any Registration is being effected to furnish to Kyndryl 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 Kyndryl may from time to time reasonably request in writing. Each such Holder agrees to furnish such information to Kyndryl and to cooperate with Kyndryl as reasonably necessary to enable Kyndryl to comply with the provisions of this Agreement.

(c) IBM agrees, and any other Holder agrees by acquisition of such Registrable Securities, that, upon receipt of any written notice from Kyndryl of the occurrence of any event of the kind described in Section 2.4(a)(vi), such Holder will forthwith discontinue the Sale 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 2.4(a)(vi), or until such Holder is advised in writing by Kyndryl that the use of the Prospectus may be resumed, and if so directed by Kyndryl, such Holder will deliver to Kyndryl (at Kyndryl's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event Kyndryl shall give any such notice, the period during which the applicable Registration Statement is required to be maintained effective shall be extended by the number of days during the period from and including the date of the giving of such notice to and including 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 2.4(a)(vi) or is advised in writing by Kyndryl that the use of the Prospectus may be resumed.

2.5 Holdback Agreements. To the extent requested in writing by the managing underwriter or underwriters of any Underwritten Offering, Kyndryl agrees not to, and shall exercise reasonable best efforts to obtain agreements (in the underwriters' customary form) from its directors, executive officers and any beneficial owner or owners of five percent (5%) or more of Kyndryl Common Stock that has a representative on the board of directors of Kyndryl not to, directly or indirectly offer, Sell, pledge, contract to Sell (including any short Sale), grant any option to purchase or otherwise Sell any equity securities of Kyndryl or enter into any hedging transaction relating to any equity securities of Kyndryl during the ninety (90) days beginning on pricing date of such Underwritten Offering (except as part of such Underwritten Offering or any Distribution or pursuant to registrations on Form S-8 or S-4 or any successor forms thereto) unless the managing underwriter or underwriters otherwise agree to a shorter period.

2.6 Underwritten Offerings; Exchange Offers. If requested by the managing underwriters for any Underwritten Offering or dealer-managers for any Exchange Offer, Kyndryl shall enter into an underwriting agreement or dealer-manager agreement with such underwriters or dealer-managers for such offering; provided, however, that no Holder shall be required to make any representations or warranties to Kyndryl or the underwriters or dealer-managers (other than representations and warranties regarding such Holder and such Holder's intended method of distribution) or to undertake any indemnification obligations to Kyndryl or the underwriters or dealer-managers with respect thereto, except as otherwise provided in Section 2.9 hereof.

2.7 Convertible or Exchange Registration; Registration Rights with Participating Banks.

(a) If any Holder of Registrable Securities offers any options, rights, warrants or other securities issued by it or any other Person that are offered with, convertible into or exercisable or exchangeable for any Registrable Securities, the Registrable Securities underlying such options, rights, warrants or other securities shall be eligible for Registration pursuant to Section 2.1 and Section 2.2 hereof (a "Convertible or Exchange Registration").

(b) If one or more members of the IBM Group decides to engage, directly or indirectly, in an Exchange with one or more Participating Banks, Kyndryl shall, upon IBM's request, enter into a registration rights agreement with the Participating Banks in connection with such Exchange, as applicable, on terms and conditions consistent with this Agreement (other than the voting provisions contained in Article III hereof) and reasonably satisfactory to Kyndryl and the IBM Group.

2.8 Registration Expenses Paid By Kyndryl. In the case of any Registration of Registrable Securities required pursuant to this Agreement (including any Registration that is delayed or withdrawn) or proposed Underwritten Offering pursuant to this Agreement, Kyndryl shall pay all Registration Expenses regardless of whether the Registration Statement becomes effective or the Underwritten Offering is completed.

2.9 Indemnification.

(a) Indemnification by Kyndryl. Kyndryl agrees to indemnify and hold harmless, to the full extent permitted by law, each Holder, such Holder's Affiliates and their respective officers, directors, employees, advisors, and agents and each Person who controls (within the meaning of the Securities Act or the Exchange Act) such Persons from and against any and all losses, claims, damages, liabilities (or actions 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 Sale 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 Kyndryl has filed or is required to file pursuant to Rule 433(d) under the Securities Act, or (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, however, that Kyndryl shall not be liable to any particular indemnified party in any such case to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any such Registration Statement in reliance upon and in conformity with written information furnished to Kyndryl by such indemnified party expressly for use in the preparation thereof. This indemnity shall be in addition to any liability Kyndryl may otherwise have. 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) Indemnification by the Selling Holder. Each selling Holder agrees (severally and not jointly) to indemnify and hold harmless, to the full extent permitted by law, Kyndryl, its directors, officers, employees, advisors, and agents and each Person who controls Kyndryl (within the meaning of the Securities Act and the Exchange Act) from and against any 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 Sale 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 that Kyndryl has filed or is required to file pursuant to Rule 433(d) under the Securities Act, or (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 to the extent, but, in each case (i) or (ii), only to the extent, that such untrue statement or omission is made in reliance upon and conformity with any information furnished in writing by such selling Holder to Kyndryl specifically for inclusion in such Registration Statement, Prospectus, preliminary Prospectus or free writing prospectus. In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder (or the fair value of the security received in an Exchange Offer) under the Sale of the Registrable Securities giving rise to such indemnification obligation. This indemnity shall be in addition to any liability the selling Holder may otherwise have. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of Kyndryl or any indemnified party.

(c) Conduct of Indemnification Proceedings. Any Person entitled to indemnification hereunder will (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that any delay or failure to so notify the indemnifying party shall relieve the indemnifying party of its obligations hereunder only to the extent that it is materially prejudiced by reason of such delay or failure) and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, however, that any Person entitled to indemnification hereunder shall have the right to select and employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (i) the indemnifying party has agreed in writing to pay such fees or expenses, (ii) the indemnifying party shall have failed to assume the defense of such claim within a reasonable time after receipt of notice of such claim from the Person entitled to indemnification hereunder and employ counsel reasonably satisfactory to such Person, (iii) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, or (iv) in the reasonable judgment of any such Person, based upon advice of its counsel, a conflict of interest may exist between such Person and the indemnifying party with respect to such claims (in which case, if the Person notifies the indemnifying party in writing that such Person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Person). If such defense is not assumed by the indemnifying party, the indemnifying party will not be subject to any liability for any settlement made without its consent, but such consent may not be unreasonably withheld, conditioned or delayed. If the indemnifying party assumes the defense, the indemnifying party shall not have the right to settle such action without the consent of the indemnified party, which consent may not be unreasonably withheld, conditioned or delayed. No indemnifying party shall consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of an unconditional release from all liability in respect to such claim or litigation. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm at any one time (in addition to local counsel) from all such indemnified party or parties unless (x) the employment of more than one counsel has been authorized in writing by the indemnified party or parties, (y) an indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it that are different from or in addition to those available to the other indemnified parties or (z) a conflict or potential conflict exists or may exist (based on advice of counsel to an indemnified party) between such indemnified party and the other indemnified parties, in each of which cases the indemnifying party shall be obligated to pay the reasonable fees and expenses of such additional counsel or counsels.

(d) Contribution. If for any reason the indemnification provided for in Section 2.9(a) or Section 2.9(b) is unavailable to an indemnified party or insufficient to hold it harmless as contemplated by Section 2.9(a) or Section 2.9(b), then the indemnifying party shall contribute to the amount paid or payable by the indemnified party 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 indemnified party 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 indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. Notwithstanding anything in this Section 2.9(d) to the contrary, no indemnifying party (other than Kyndryl) shall be required pursuant to this Section 2.9(d) to contribute any amount in excess of the amount by which the net proceeds received by such indemnifying party from the Sale of Registrable Securities in the offering to which the Losses of the indemnified parties 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 2.9(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 2.9(d). Notwithstanding the provisions of this Section 2.9(d), no selling Holder hereunder shall be required to contribute any amount in excess of the dollar amount of the net proceeds received by such Holder (or the fair value of the security received in an Exchange Offer) under the Sale of the Registrable Securities giving rise to such indemnification obligation. 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 indemnified party hereunder shall be deemed to include, for purposes of this Section 2.9(d), any legal or other expenses reasonably incurred by such indemnified party 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 2.9, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Section 2.9(a) and Section 2.9(b) hereof without regard to the relative fault of said indemnifying parties or indemnified party.

2.10 Reporting Requirements; Rule 144. Until the expiration or termination of this Agreement in accordance with its terms, Kyndryl shall 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 shall timely file such information, documents and reports as the SEC may require or prescribe under Section 13 or 15(d) (whichever is applicable) of the Exchange Act. If Kyndryl is not required to file such reports, it will, upon the request of any Holder, make publicly available such necessary information for so long as necessary to permit Sales pursuant to Rule 144 or Regulation S under the Securities Act, and it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to Sell Registrable Securities without Registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144 or Regulation S under the Securities Act, as such Rules may be amended from time to time, or (b) any rule or regulation hereafter adopted by the SEC. From and after the date hereof through the first anniversary of the date upon which no Holder owns any Registrable Securities, Kyndryl shall forthwith upon request furnish any Holder (i) a written statement by Kyndryl as to whether it has complied with such requirements and, if not, the specifics thereof, (ii) a copy of the most recent annual or quarterly report of Kyndryl, and (iii) such other reports and documents filed by Kyndryl with the SEC as such Holder may reasonably request in availing itself of an exemption for the Sale of Registrable Securities without registration under the Securities Act.

2.11 Other Registration Rights. Kyndryl shall not grant to any Persons the right to request Kyndryl to Register any equity securities of Kyndryl, or any securities convertible or exchangeable into or exercisable for such securities, whether pursuant to "demand," "piggyback," or other rights, unless such rights are subject and subordinate to the rights of the Holders under this Agreement.

ARTICLE III

VOTING RESTRICTIONS

3.1 Voting of Kyndryl Common Stock.

(a) From the date of the Distribution until the date that the IBM Group ceases to own any Retained Shares, IBM shall, and shall cause each member of the IBM Group to (in each case, to the extent that they own any Retained Shares), be present, in person or by proxy, at each and every Kyndryl stockholder meeting, and otherwise to cause all Retained Shares 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 Retained Shares in proportion to the votes cast by the other holders of Kyndryl Common Stock on such matter.

(b) From the date of the Distribution until the date that the IBM Group ceases to own any Retained Shares, IBM hereby grants, and shall cause each member of the IBM Group (in each case, to the extent that they own any Retained Shares) to grant, an irrevocable proxy, which shall be deemed coupled with an interest sufficient in law to support an irrevocable proxy to Kyndryl or its designees, to vote, with respect to any matter (including waivers of contractual or statutory rights), all Retained Shares owned by them, in proportion to the votes cast by the other holders of Kyndryl Common Stock on such matter; provided that (i) such proxy shall automatically be revoked as to a particular Retained Share upon any Sale of such Retained Share from a member of the IBM Group to a Person other than a member of the IBM Group and (ii) nothing in this Section 3.1(b) shall limit or prohibit any such Sale.

(c) IBM acknowledges and agrees (on behalf of itself and each member of the IBM Group) that Kyndryl will be irreparably damaged in the event any of the provisions of this Article III are not performed by IBM in accordance with their terms or are otherwise breached. Accordingly, it is agreed that Kyndryl 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

4.1 Term. This Agreement shall terminate upon such time as there are no Registrable Securities, except for the provisions of Section 2.8 and Section 2.9 and all of this Article IV, which shall survive any such termination.

4.2 Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given (a) when delivered in person, (b) on the date received, if sent by a nationally recognized delivery or courier service, (c) upon written confirmation of receipt after transmittal by electronic mail or (d) upon the earlier of confirmed receipt or the fifth (5th) business day following the date of mailing if sent by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

To IBM:

International Business Machines Corporation
One New Orchard Road
Armonk, NY 10504
Attn: General Manager, Corporate Development and Strategy

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attn: Scott A. Barshay
Steven J. Williams
Laura C. Turano
Email: sbarshay@paulweiss.com
swilliams@paulweiss.com
lturano@paulweiss.com

To Kyndryl:

Kyndryl Holdings, Inc.
One Vanderbilt Avenue, 15th Floor
New York, NY 10017
Attn: Thomas P. Hagen, Associate General Counsel

Either party may, by notice to the other party, change the address and identity of the Person to which such notices and copies of such notices are to be given. Each party agrees that nothing in this Agreement shall affect the other party's right to serve process in any other manner permitted by law (including pursuant to the rules for foreign service of process authorized by the Hague Convention).

4.3 Successors, Assigns and Transferees.

(a) The provisions of this Agreement and the obligations and rights hereunder shall be binding upon, inure to the benefit of and be enforceable by (and against) the parties and their respective successors and permitted assigns. Kyndryl may assign this Agreement at any time in connection with a Sale or acquisition of Kyndryl, whether by merger, consolidation, Sale of all or substantially all of Kyndryl's assets, or similar transaction, without the consent of the Holders; provided that the successor or acquiring Person agrees in writing to assume all of Kyndryl's rights and obligations under this Agreement. IBM may assign this Agreement to any member of the IBM Group or at any time in connection with a sale or acquisition of IBM, whether by merger, consolidation, sale of all or substantially all of IBM's assets, or similar transaction, without the consent of Kyndryl.

(b) In connection with the Sale of Registrable Securities, IBM may assign its Registration-related rights and obligations under this Agreement relating to such Registrable Securities to the following transferees in such Sale: (i) a member of the IBM Group to which Registrable Securities are Sold, (ii) one or more Participating Banks to which Registrable Securities are Sold, (iii) any other transferee to which Registrable Securities are Sold, if Kyndryl provides prior written consent to the transfer of such Registration-related rights and obligations along with the Sale of Registrable Securities or (iv) any other transferee that acquires at least five percent (5%) of the outstanding shares of Kyndryl Common Stock immediately following the completion of the Distribution; provided, that in the case of clauses (i), (ii), (iii) or (iv), (x) Kyndryl is given written notice prior to or at the time of such Sale stating the name and address of the transferee and identifying the securities with respect to which the Registration-related rights and obligations are being Sold and (y) the transferee executes a counterpart in the form attached hereto as Exhibit A and delivers the same to Kyndryl (any such transferee in such Sale, a "Transferee"). In connection with the Sale 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 Sold, (B) any subsequent transferee to which Registrable Securities are Sold, if Kyndryl provides prior written consent to the transfer of such Registration-related rights and obligations along with the Sale of Registrable Securities or (C) any other subsequent transferee that acquires at least five percent (5%) of the outstanding shares of Kyndryl Common Stock immediately following the completion of the Distribution; provided, that in the case of clauses (A), (B) or (C), (x) Kyndryl is given written notice prior to or at the time of such Sale 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 Kyndryl (any such subsequent transferee, a "Subsequent Transferee").

4.4 GOVERNING LAW; NO JURY TRIAL.

(a) This Agreement and any disputes relating to, arising out of or resulting from this Agreement, including to its execution, performance, or enforcement, shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

(b) In the event of any claim, controversy, demand or request for relief of any kind arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity or breach of this Agreement or otherwise arising out of or related to this Agreement or the transactions contemplated hereby, including any Action based on contract, tort, equity, statute, regulation or constitution (each, a "Dispute" and collectively, "Disputes"), the party raising the Dispute shall give written notice of the Dispute (a "Dispute Notice"), and the general counsels of the parties (or such other individuals designated by the respective general counsels) and/or the executive officers designated by the parties shall negotiate for a reasonable period of time to settle such Dispute; provided, that such reasonable period shall not, unless otherwise agreed by the parties in writing, exceed ninety (90) days (the "Negotiation Period") from the time of receipt of the Dispute Notice; provided, further, that in the event of any arbitration in accordance with Section 4.4(c) hereof, the parties shall not assert the defenses of statute of limitations, laches and any other defense, in each such case based on the passage of time during the Negotiation Period, and any contractual time period or deadline under this Agreement relating to such Dispute occurring after the Dispute Notice is received shall not be deemed to have passed until such Dispute has been resolved.

(c) If the Dispute has not been resolved for any reason after the Negotiation Period, such Dispute may be submitted by either party to final and binding arbitration administered in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect (the "Rules"), except as modified herein.

(i) The arbitration shall be conducted by a three-member arbitral tribunal (the "Arbitral Tribunal"). The claimant shall nominate one arbitrator in accordance with the Rules, and the respondent shall nominate one arbitrator in accordance with the Rules within twenty-one days (21) after the appointment of the first arbitrator. The third arbitrator, who shall serve as chair of the Arbitral Tribunal, shall be jointly nominated by the two party-nominated arbitrators within twenty-one (21) days of the confirmation of the appointment of the second arbitrator. If any arbitrator is not appointed within the time limit provided herein, such arbitrator shall be appointed by the AAA in accordance with the listing, striking and ranking procedure in the Rules.

(ii) The arbitration shall be held, and the award shall be rendered, in New York, New York, in the English language.

(iii) For the avoidance of doubt, by submitting their Dispute to arbitration under the Rules, the parties expressly agree that all issues of arbitrability, including all issues concerning the propriety and timeliness of the commencement of the arbitration, the jurisdiction of the Arbitral Tribunal (including the scope of this agreement to arbitrate and the extent to which a Dispute is within that scope), and the procedural conditions for arbitration, shall be finally and solely determined by the Arbitral Tribunal.

(iv) Without derogating from Section 4.4(c)(v), Section 4.5, or Section 4.6 below, the Arbitral Tribunal shall have the full authority to grant any pre-arbitral injunction, pre-arbitral attachment, interim or conservatory measure or other order in aid of arbitration proceedings ("Interim Relief"). The parties shall exclusively submit any application for Interim Relief to only: (A) the Arbitral Tribunal; or (B) prior to the constitution of the Arbitral Tribunal, an emergency arbitrator appointed in the manner provided for in the Rules. Any Interim Relief so issued shall, to the extent permitted by applicable law, be deemed a final arbitration award for purposes of enforceability, and, moreover, shall also be deemed a term and condition of this Agreement subject to specific performance in Section 4.5 below. The foregoing procedures shall constitute the exclusive means of seeking Interim Relief (subject, for the avoidance of doubt, to Section 4.5 and Section 4.6 below), provided, however, that (i) the Arbitral Tribunal shall have the power to continue, review, vacate or modify any Interim Relief granted by an Emergency Arbitrator and (ii) in the event an Emergency Arbitrator or the Arbitral Tribunal issues an order granting, denying or otherwise addressing Interim Relief (a "Decision on Interim Relief"), any party may apply to enforce or require specific performance of such Decision on Interim Relief in any court of competent jurisdiction.

(v) The Arbitral Tribunal shall have the power to grant any remedy or relief that is in accordance with the terms of this Agreement, including specific performance and temporary or final injunctive relief, provided, however, that the Arbitral Tribunal shall have no authority or power to limit, expand, alter, amend, modify, revoke or suspend any condition or provision of this Agreement, nor any right or power to award punitive, exemplary, enhanced or treble damages.

(vi) The Arbitral Tribunal shall have the power to allocate the costs and fees of the arbitration, including reasonable attorneys' fees and costs as well as those costs and fees addressed in the Rules, between the parties in the manner it deems fit.

(vii) Without derogating from Section 4.5 or Section 4.6 below, arbitration under this Section 4.4 shall be the sole and exclusive remedy for any Dispute, and any award rendered thereby shall be final and binding upon the parties as from the date rendered. Judgment on the award rendered by the Arbitral Tribunal may be entered in any state or federal court within the State of Delaware (which the parties hereby agree have jurisdiction over them to enforce any such award) and any other court having jurisdiction thereof, including any court having jurisdiction over the relevant Party or its Assets.

4.5 Specific Performance. Notwithstanding anything to the contrary in this Agreement (including, for the avoidance of doubt, Section 4.4(b) and Section 4.4(c)), in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the affected party shall have the right, without first pursuing the procedures provided for in Sections 4.4(b) and Section 4.4(c), to specific performance, declaratory relief and injunctive or other equitable relief (on a permanent, emergency, temporary, preliminary or interim basis) of its rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The other party shall not oppose the granting of such relief on the basis that money damages are an adequate remedy. The parties agree that the remedies at law for any breach or threatened breach hereof, 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 or similar security with such remedy are waived.

4.6 Venue for Injunctive Relief and Specific Performance Claims. Notwithstanding anything to the contrary in this Agreement (including, for the avoidance of doubt, Section 4.4(b) and Section 4.4(c)), an affected party may bring any claim for specific performance, declaratory relief and injunctive or other equitable relief (on a permanent, emergency, temporary, preliminary or interim basis) under Section 4.5 of this Agreement (a "Chosen Court Claim") either (a) pursuant to the procedures contained in Section 4.4(b) and Section 4.4(c); or (b) at the affected party's sole discretion, in the Delaware Court of Chancery (or, if the Delaware Court of Chancery shall be unavailable, any Delaware State court or the federal court sitting in the State of Delaware) (the "Chosen Courts"). The parties irrevocably consent and agree, on behalf of themselves and their Affiliates, to the jurisdiction, forum and venue of the Chosen Courts for a Chosen Court Claim, and agree that they shall not assert, and shall hereby waive, any claim or right or defense that they are not subject to the jurisdiction of the Chosen Courts, that the venue is improper, that the forum is inconvenient, that the Chosen Court Claim should instead be arbitrated by their agreement or operation of law, or any similar objection, claim or argument.

4.7 Headings. The article, section and paragraph headings contained in this Agreement are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

4.8 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court or arbitrator 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, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Upon any such determination, any such provision, to the extent determined to be invalid, void or unenforceable, shall be deemed replaced by a provision that such court determines is valid and enforceable and that comes closest to expressing the intention of the invalid, void or unenforceable provision.

4.9 Amendment; Waiver.

(a) This Agreement may not be amended or modified and waivers and consents to departures from the provisions hereof may not be given, except by an instrument or instruments in writing making specific reference to this Agreement and signed by Kyndryl and the Holders of a majority of the Registrable Securities; provided that if IBM or any of its Affiliates owns Registrable Securities, no amendment to or waiver of any provision in this Agreement will be effected without the written consent of IBM if such amendment or waiver adversely affects the rights of IBM or such Affiliates of IBM.

(b) No failure to exercise and no delay in exercising, on the part of any party, any right, remedy, power or privilege hereunder shall operate as a waiver hereof or thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

4.10 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 shares of Kyndryl Common Stock, now or hereafter authorized to be issued, (b) any and all securities of Kyndryl into which the shares of Kyndryl Common Stock are converted, exchanged or substituted in any recapitalization or other capital reorganization by Kyndryl and (c) any and all securities of any kind whatsoever of Kyndryl or any successor or permitted assign of Kyndryl (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, the shares of Kyndryl Common Stock, 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.

4.11 Further Assurances. In addition to the actions specifically provided for elsewhere in this Agreement, but subject to the express limitations of this Agreement, each of the parties shall use reasonable best efforts, prior to, on and after the Distribution, 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 and agreements to consummate, make effective, the transactions contemplated by this Agreement.

4.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which counterparts shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each party and delivered to the other party. This Agreement may be executed by facsimile or PDF signature and scanned and exchanged by electronic mail, and such facsimile or PDF signature or scanned and exchanged copies shall constitute an original for all purposes.

[*The remainder of page intentionally left blank. Signature page follows*.]

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

INTERNATIONAL BUSINESS MACHINES CORPORATION

By: /s/ Frank Sedlarcik
Name: Frank Sedlarcik
Title: Vice president, Assistant General Counsel and Secretary

KYNDRYL HOLDINGS, INC.

By: /s/ Simon Beaumont
Name: Simon Beaumont
Title: President

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

Exhibit 10.9

Kyndryl 2021 Long-Term Performance Plan

1. Objectives.

The Kyndryl 2021 Long-Term Performance Plan (the "Plan") is designed to attract, motivate and retain selected employees of, and other individuals providing services to, the Company. These objectives are accomplished by making long-term incentive and other awards under the Plan, thereby providing Participants with a proprietary interest in the growth and performance of the Company.

2. Definitions.

(a) "Assumed Award" – An award granted to certain employees, officers, and directors of the Company and its subsidiaries under a Prior Plan, which award is assumed by the Company and converted into an Award in connection with the Spin-Off, pursuant to the terms of the Employee Matters Agreement.

(b) "Awards" – The grant of any form of stock option, stock appreciation right, stock or cash award, whether granted singly, in combination or in tandem, to a Participant pursuant to such terms, conditions, performance requirements, limitations and restrictions as the Committee may establish in order to fulfill the objectives of the Plan.

(c) "Award Agreement" – An agreement between the Company and a Participant that sets forth the terms, conditions, performance requirements, limitations and restrictions applicable to an Award.

(d) "Beneficial Ownership" – Beneficial ownership within the meaning of Rule 13d-3 promulgated under Section 13 of the Exchange Act.

(e) "Board" – The Board of Directors of Kyndryl.

(f) "Cause" – As reasonably determined by Kyndryl, the occurrence of any of the following: (i) embezzlement, misappropriation of corporate funds or other material acts of dishonesty; (ii) commission or conviction of any felony or of any misdemeanor involving moral turpitude, or entry of a plea of guilty or nolo contendere to any felony or misdemeanor (other than a minor traffic violation or other minor infraction); (iii) engagement in any activity that the employee knows or should know could harm the business or reputation of the Company; (iv) failure to adhere to the Company's corporate codes, policies or procedures; (v) a breach of any covenant in any employment agreement or any intellectual property agreement, or a breach of any other provision of the employment agreement, in either case if the breach is not cured to the Company's satisfaction within a reasonable period after notice of the breach (no notice and cure period is required if the breach cannot be cured); (vi) failure to perform duties or follow management direction, which failure is not cured to the Company's satisfaction within a reasonable period of time after a written demand for substantial performance is delivered to (no notice or cure period is required if the failure to perform cannot be cured); (vii) violation of any statutory, contractual or common law duty or obligation to the Company, including, without limitation, the duty of loyalty; (viii) rendering of services for any organization or engaging directly or indirectly in any business which is or becomes competitive with the Company, or which organization or business, or the rendering of services to such organization or business, is or becomes otherwise prejudicial to or in conflict with the interests of the Company; or (ix) acceptance of an offer to engage in or associate with any business which is or becomes competitive with the Company; provided, however, that the mere failure to achieve performance objectives shall not constitute Cause.

(g) "Change in Control" – Unless the applicable Award Agreement or the Committee provides otherwise, the first to occur of any of the following events:

(i) the acquisition by any Person or related "group" (as such term is used in Section 13(d) and Section 14(d) of the Exchange Act) of Persons, or Persons acting jointly or in concert, of Beneficial Ownership (including control or direction) of more than 50% (on a fully diluted basis) of either (A) the then-outstanding shares of Common Stock, including shares of Common Stock issuable upon the exercise of options or warrants, the conversion of convertible stock or debt, and the exercise of any similar right to acquire such shares of Common Stock or (B) the combined voting power of the then-outstanding voting securities of the Company entitled to vote in the election of Directors (the "Outstanding Company Voting Securities"), but excluding any acquisition by the Company or any of its affiliates, its Permitted Transferees or any of their respective affiliates or by any employee benefit plan sponsored or maintained by the Company;

(ii) a change in the composition of the Board such that members of the Board during any consecutive 24-month period (the "Incumbent Directors") cease to constitute a majority of the Board. Any person becoming a Director through election or nomination for election approved by a valid vote of at least a majority of the Incumbent Directors shall be deemed an Incumbent Director; provided, however, that no individual becoming a Director as a result of an actual or threatened election contest, as such terms are used in Rule 14a-12 of Regulation 14A promulgated under the Exchange Act, or as a result of any other actual or threatened solicitation of proxies or consents by or on behalf of any person other than the Board, shall be deemed an Incumbent Director;

(iii) the approval by the stockholders of the Company of a plan of complete dissolution or liquidation of the Company; or

(iv) the consummation of a reorganization, recapitalization, merger, amalgamation, consolidation, statutory share exchange or similar form of corporate transaction involving (x) the Company or (y) any of its subsidiaries, but in the case of this clause (y) only if Outstanding Company Voting Securities are issued or issuable (a "Business Combination"), or sale, transfer or other disposition of all or substantially all of the business or assets of the Company to an entity that is not an affiliate of the Company (a "Sale"), unless immediately following such Business Combination or Sale: (A) more than 50% of the total voting power of the entity resulting from such Business Combination or the entity that acquired all or substantially all of the business or assets of the Company in such Sale (in either case, the "Surviving Company"), or the ultimate parent entity that has Beneficial Ownership of sufficient voting power to elect a majority of the board of directors (or analogous governing body) of the Surviving Company (the "Parent Company"), is represented by the Outstanding Company Voting Securities that were outstanding immediately prior to such Business Combination or Sale (or, if applicable, is represented by shares of Common Stock into which the Outstanding Company Voting Securities were converted pursuant to such Business Combination or Sale), and such voting power among the holders thereof is in substantially the same proportion as the voting power of the Outstanding Company Voting Securities among the holders thereof immediately prior to the Business Combination or Sale, (B) no Person (other than any employee benefit plan sponsored or maintained by the Surviving Company or the Parent Company) is or becomes the beneficial owner, directly or indirectly, of more than 50% of the total voting power of the outstanding voting securities eligible to elect members of the board of directors (or the analogous governing body) of the Parent Company (or, if there is no Parent Company, the Surviving Company) and (C) at least a majority of the members of the board of directors (or the analogous governing body) of the Parent Company (or, if there is no Parent Company, the Surviving Company) following the consummation of the Business Combination or Sale were Board members at the time of the Board's approval of the execution of the initial agreement providing for such Business Combination or Sale.

(h) "Common Stock" or "stock" – Authorized and issued or unissued Common Stock of Kyndryl, at such par value as may be established from time to time.

(i) "Code" – The Internal Revenue Code of 1986, as amended from time to time.

(j) "Committee" – The committee designated by the Board to administer the Plan.

(k) "Company" – Kyndryl and its affiliates and subsidiaries including subsidiaries of subsidiaries and partnerships and other business ventures in which Kyndryl has an equity interest.

(l) “Director” – Any member of the Board.

(m) “Exchange Act” – The U.S. Securities Exchange Act of 1934, as amended, and any successor thereto. References to any section of (or rule promulgated under) the Exchange Act shall be deemed to include any rules, regulations or other interpretative guidance under such section or rule, and any amendments or successors thereto.

(n) “Fair Market Value” – The average of the high and low prices of Common Stock on the New York Stock Exchange for the date in question, provided that, if no sales of Common Stock were made on said exchange on that date, the average of the high and low prices of Common Stock as reported for the most recent preceding day on which sales of Common Stock were made on said exchange.

(o) “Kyndryl” – Kyndryl Holdings, Inc.

(p) “Participant” – An individual to whom an Award has been made under the Plan. Awards may be made to (i) any employee of, or any other individual providing services to, the Company, or (ii) any prospective employee or other service provider of the Company who has accepted an offer of employment or service from the Company. However, incentive stock options may be granted only to individuals who are employed by Kyndryl or by a subsidiary corporation (within the meaning of section 424(f) of the Code) of Kyndryl, including a subsidiary that becomes such after the adoption of the Plan.

(q) “Performance Period” – A multi-year period of no more than five consecutive calendar years over which one or more of the performance criteria listed in Section 6 shall be measured pursuant to the grant of Long-Term Performance Incentive Awards (whether such Awards take the form of stock, stock units or equivalents or cash). Performance Periods may overlap one another, but no two Performance Periods may consist solely of the same calendar years.

(r) “Permitted Transferee” – A Person to whom an Award may be transferred in accordance with Section 10.

(s) “Person” – A “person” as defined in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof, except that such term shall not include (i) the Company, (ii) a trustee or other fiduciary holding securities under an employee benefit plan of the Company, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities or (iv) a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of shares of Common Stock of the Company.

(t) “Prior Plans” – Any Long-Term Performance Plan of International Business Machines Corporation.

(u) “Spin-Off” – The distribution of shares of Common Stock to the stockholders of International Business Machines Corporation in 2021 pursuant to the Separation and Distribution Agreement and the Employee Matters Agreement between the Company and International Business Machines Corporation entered into in connection with such distribution.

(v) “Substitute Awards” – An Award granted under the Plan upon the assumption of, or in substitution for, outstanding equity awards previously granted by a company or other entity in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock; provided, however, that in no event shall the term “Substitute Award” be construed to refer to an award made in connection with the cancellation and repricing of an option or stock appreciation right.

3. Common Stock Available for Awards.

The number of shares of Common Stock that may be issued under the Plan for Awards granted wholly or partly in stock during the term of the Plan is 22,400,000, which includes the number of shares of Common Stock subject to the Assumed Awards. Shares of Common Stock may be made available from the authorized but unissued shares of the Company or from shares held in the Company’s treasury and not reserved for some other purpose. For purposes of determining the number of shares of Common Stock issued under the Plan, no shares shall be deemed issued until they are actually delivered to a Participant, or such other person in accordance with Section 10. Shares covered by Awards that either wholly or in part are not earned, or that expire or are forfeited, terminated, canceled, settled in cash, payable solely in cash or exchanged for other awards, shall be available for future issuance under Awards. However, shares of Common Stock tendered to or withheld by the Company in connection with the exercise of stock options or SARs, or the payment of tax withholding on any Award, shall not be available for future issuance under Awards. The maximum amount (based on the fair value of shares of Common Stock underlying Awards on the grant date as determined in accordance with applicable financial accounting rules) of Awards that may be granted in any single fiscal year to any non-employee member of the Board, taken together with any cash fees paid to such non-employee member of the Board during such fiscal year, shall be $750,000.

Substitute Awards shall not reduce the shares of Common Stock authorized for grant under the Plan. Additionally, in the event that a company acquired by the Company or any affiliate or with which the Company or any affiliate combines has shares available under a pre-existing plan approved by stockholders and not approved in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the shares of Common Stock authorized for grant under the Plan; provided that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not employed by or providing services to the Company immediately prior to such acquisition or combination.

4. Administration.

The Plan shall be administered by the Committee, which shall have full power to select Participants, to interpret the Plan, to grant waivers of Award restrictions, to continue, accelerate or suspend exercisability, vesting or payment of an Award and to adopt such rules, regulations and guidelines for carrying out the Plan as it may deem necessary or proper. These powers include, but are not limited to, the adoption of modifications, amendments, procedures, subplans and the like as necessary to comply with provisions of the laws and regulations of the countries in which the Company operates in order to assure the viability of Awards granted under the Plan and to enable Participants regardless of where employed to receive advantages and benefits under the Plan and such laws and regulations.

5. Delegation of Authority.

The Committee may delegate to officers of the Company its duties, power and authority under the Plan pursuant to such conditions or limitations as the Committee may establish, except that only the Committee or the Board may select, and grant Awards to, Participants who are subject to Section 16 of the Securities Exchange Act of 1934.

6. Awards.

The Committee shall determine the type or types of Award(s) to be made to each Participant and shall set forth in the related Award Agreement the terms, conditions, performance requirements, and limitations applicable to each Award. Awards may include but are not limited to those listed in this Section 6. Notwithstanding anything to the contrary herein, and subject to Section 15, Awards shall be subject to a condition that vesting of (or lapsing of restrictions on) such Award will not occur until at least the first anniversary of the date of grant; provided, however, that the Committee may, in its sole discretion, (i) accelerate the vesting of Awards or otherwise lapse or waive such minimum vesting condition in connection with (A) the Participant's termination of employment (including as a result of death, disability or retirement) or (B) a Change in Control (subject to the requirements of Section 15) and (ii) grant Awards that are not subject to the minimum vesting condition with respect to (A) 5% or less of the total shares of Common Stock available for Awards (as set forth in Section 3, as may be adjusted pursuant to Section 14), (B) Awards made to non-employee members of the Board that occur in connection with the Company's annual meeting of stockholders, and which vest on the earlier of the one-year anniversary of the date of grant or the date of the Company's next annual meeting of stockholders which is at least 50 weeks after the immediately preceding year's annual meeting and (C) Substitute Awards that were scheduled to vest within the one year minimum vesting period. Awards may be granted singly, in combination or in tandem. Awards may also be made in combination or in tandem with, in replacement or payment of, or as alternatives to, grants, rights or compensation earned under any other plan of the Company, including the plan of any acquired entity.

(a) Stock Option – A grant of a right to purchase a specified number of shares of Common Stock the exercise price of which shall be not less than 100% of Fair Market Value on the date of grant of such right, as determined by the Committee, provided that, in the case of a stock option granted retroactively in tandem with or as substitution for another award granted under any plan of the Company, the exercise price may be the same as the purchase or designated price of such other award. A stock option may be in the form of an incentive stock option ("ISO") which, in addition to being subject to applicable terms, conditions and limitations established by the Committee, complies with section 422 of the Code. The number of shares of Common Stock that shall be available for issuance under ISOs granted under the Plan is limited to 22,400,000.

(b) Stock Appreciation Right – A right to receive a payment, in cash and/or Common Stock, equal in value to the excess of the Fair Market Value of a specified number of shares of Common Stock on the date the stock appreciation right (SAR) is exercised over the grant price of the SAR, which shall not be less than 100% of the Fair Market Value on the date of grant of such SAR, as determined by the Committee, provided that, in the case of a SAR granted retroactively in tandem with or as substitution for another award granted under any plan of the Company, the grant price may be the same as the exercise or designated price of such other award

(c) Stock Award – An Award made in stock and denominated in units of stock. All or part of any stock award may be subject to conditions established by the Committee, and set forth in the Award Agreement, which may include, but are not limited to, continuous service with Company, achievement of specific business objectives, increases in specified indices, attaining growth rates, and other comparable measurements of Company performance. An Award made in stock or denominated in units of stock that is subject to restrictions on transfer and/or forfeiture provisions may be referred to as an Award of "Restricted Stock" or "Restricted Stock Units".

(d) Cash Award – An Award denominated in cash with the eventual payment amount subject to future service and such other restrictions and conditions as may be established by the Committee, and as set forth in the Award Agreement, including, but not limited to, continuous service with the Company, achievement of specific business objectives, increases in specified indices, attaining growth rates, and other comparable measurements of Company performance.

7. Payment of Awards.

Payment of Awards may be made in the form of cash, stock or combinations thereof and may include such restrictions as the Committee shall determine. Further, with Committee approval, payments may be deferred, either in the form of installments or as a future lump-sum payment, in accordance with such procedures as may be established from time to time by the Committee. Any deferred payment, whether elected by the Participant or specified by the Award Agreement or the Committee, may require the payment to be forfeited in accordance with the provisions of Section 13. Dividends or dividend equivalent rights may be extended to and made part of any Award denominated in stock or units of stock (for the avoidance of doubt, excluding stock options or SARs), subject to such terms, conditions and restrictions as the Committee may establish; provided, that, notwithstanding anything herein to the contrary, any dividends or dividend equivalents payable with respect to any Award or any portion of an Award may only be paid to the Participant to the extent the vesting conditions applicable to such Award or portion thereof are subsequently satisfied and the Award or portion thereof to which such dividend or dividend equivalent relates, and any dividends or dividend equivalents with respect to any Award or any portion thereof does not become vested shall be forfeited. The Committee may also establish rules and procedures for the crediting of interest on deferred cash payments and dividend equivalents for deferred payments denominated in stock or units of stock. At the discretion of the Committee, a Participant may be offered an election to substitute an Award for another Award or Awards of the same or different type.

8. Stock Option Exercise.

The price at which shares of Common Stock may be purchased under a stock option shall be paid in full in cash at the time of the exercise or, if permitted by the Committee, by means of tendering Common Stock or surrendering another Award or any combination thereof. The Committee shall determine acceptable methods of tendering Common Stock or other Awards and may impose such conditions on the use of Common Stock or other Awards to exercise a stock option as it deems appropriate.

9. Tax Withholding.

Prior to the payment or settlement of any Award, the Participant must pay, or make arrangements acceptable to the Company for the payment of, any and all federal, state and local tax withholding that in the opinion of the Company is required by law. The Company shall have the right to deduct applicable taxes from any Award payment and withhold, at the time of delivery or vesting of shares under the Plan and up to the maximum permissible withholding amounts, an appropriate number of shares for payment of taxes required by law or to take such other action as may be necessary in the opinion of the Company to satisfy all obligations for withholding of such taxes.

10. Transferability.

No Award shall be transferable or assignable, or payable to or exercisable by, anyone other than the Participant to whom it was granted, except (i) by law, will or the laws of descent and distribution, (ii) as a result of the disability of a Participant or (iii) that the Committee (in the form of an Award Agreement or otherwise) may permit transfers of Awards by gift or otherwise to a member of a Participant's immediate family and/or trusts whose beneficiaries are members of the Participant's immediate family, or to such other persons or entities as may be approved by the Committee. Notwithstanding the foregoing, in no event shall ISOs be transferable or assignable other than by will or by the laws of descent and distribution.

11. Amendment, Modification, Suspension or Discontinuance of the Plan.

The Board may amend, modify, suspend or terminate the Plan for the purpose of meeting or addressing any changes in legal requirements or for any other purpose permitted by law. Subject to changes in law or other legal requirements that would permit otherwise, the Plan may not be amended without the consent of the holders of a majority of the shares of Common Stock then outstanding, to (i) increase the aggregate number of shares of Common Stock that may be issued under the Plan (except for adjustments pursuant to Section 14 of the Plan), (ii) permit the granting of stock options or SARs with exercise or grant prices lower than those specified in Section 6, (iii) reduce the exercise or grant price of any stock option or SAR, (iv) cancel any outstanding stock option or SAR and replace it with a new stock option or SAR (with a lower exercise or grant price, as the case may be) or other Award or cash in a manner which would either (A) be reportable on the Company's proxy statement as stock options that have been "repriced" (as such term is used in Item 402 of Regulation S-K promulgated under the Exchange Act), or (B) result in any "repricing" for financial statement reporting purposes (or otherwise cause the Award to fail to qualify for equity accounting treatment) and (v) take any other action which is considered a "repricing" for purposes of the stockholder approval rules of the applicable securities exchange or inter-dealer quotation service on which the Common Stock is listed or quoted.

12. Termination of Employment.

If the employment of a Participant terminates, other than as a result of the death or disability of a Participant, all unexercised, deferred and unpaid Awards shall be canceled immediately, unless the Award Agreement provides otherwise. In the event of the death of a Participant or in the event a Participant is deemed by the Company to be disabled and eligible for benefits under the terms of the Kyndryl Long Term Disability Plan (or any successor plan or similar plan of another employer), the Participant's estate, beneficiaries or representative, as the case may be, shall have the rights and duties of the Participant under the applicable Award Agreement.

13. Cancellation and Rescission of Awards/Clawback.

(a) Unless the Award Agreement specifies otherwise, the Committee may cancel, rescind, suspend, withhold or otherwise limit or restrict any unexpired, unpaid, or deferred Awards at any time if the Participant is not in compliance with all applicable provisions of the Award Agreement and the Plan, or if the Participant engages in any "Detrimental Activity." For purposes of this Section 13, "Detrimental Activity" shall include: (i) the rendering of services, including the acceptance of an offer to render services, for any organization or engaging directly or indirectly in any business which is or becomes competitive with the Company, or which organization or business, or the rendering of services to such organization or business, is or becomes otherwise prejudicial to or in conflict with the interests of the Company; (ii) the disclosure to anyone outside the Company, or the use in other than the Company's business, without prior written authorization from the Company, of any confidential information or material, as defined in the Company's Agreement Regarding Confidential Information and Intellectual Property, relating to the business of the Company, acquired by the Participant either during or after employment with the Company; (iii) the failure or refusal to disclose promptly and to assign to the Company, pursuant to the Company's Agreement Regarding Confidential Information and Intellectual Property, all right, title and interest in any invention or idea, patentable or not, made or conceived by the Participant during employment by the Company, relating in any manner to the actual or anticipated business, research or development work of the Company or the failure or refusal to do anything reasonably necessary to enable the Company to secure a patent where appropriate in the United States and in other countries; (iv) activity that results in termination of the Participant's employment for Cause; (v) a violation of any rules, policies, procedures or guidelines of the Company, including but not limited to the Company's Business Conduct Guidelines; (vi) any attempt directly or indirectly to induce any employee of the Company to be employed or perform services elsewhere or any attempt directly or indirectly to solicit the trade or business of any current or prospective customer, supplier or partner of the Company; or (vii) the Participant being convicted of, or entering a guilty plea with respect to, a crime, whether or not connected with the Company.

(b) Upon exercise, payment or delivery pursuant to an Award, the Participant shall certify in a manner acceptable to the Company that he or she is in compliance with the terms and conditions of the Plan. In the event a Participant fails to comply with the provisions of paragraphs (a)(i)-(vii) of this Section 13 prior to, or during the Rescission Period, then any exercise, payment or delivery may be rescinded within two years after such exercise, payment or delivery. In the event of any such rescission, the Participant shall pay to the Company the amount of any gain realized or payment received as a result of the rescinded exercise, payment or delivery, in such manner and on such terms and conditions as may be required, and the Company shall be entitled to set-off against the amount of any such gain any amount owed to the Participant by the Company. As used herein, Rescission Period shall mean that period of time established by the Committee which shall not be less than 6 months after any exercise, payment or delivery pursuant to an Award.

(c) The Committee shall have full authority to implement any policies and procedures necessary to comply with Section 10D of the Exchange Act and any rules promulgated thereunder and any other regulatory regimes. Further, to the extent required by applicable law (including, without limitation, Section 304 of the Sarbanes-Oxley Act and Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act) and/or the rules and regulations of the securities exchange or inter-dealer quotation service on which the shares of Common Stock are listed or quoted, or if so required pursuant to a written policy adopted by the Company, Awards shall be subject (including on a retroactive basis) to clawback, forfeiture or similar requirements (and such requirements shall be deemed incorporated by reference into all outstanding Award Agreements).

14. Adjustments.

In the event of any change in the outstanding Common Stock of the Company by reason of a stock split, stock dividend, combination or reclassification of shares, recapitalization, merger, or similar event, the Committee may adjust proportionately: (a) the number of shares of Common Stock (i) available for issuance under the Plan, (ii) available for issuance under ISOs, (iii) for which Awards may be granted to an individual Participant set forth in Section 6, and (iv) covered by outstanding Awards denominated in stock or units of stock; (b) the exercise and grant prices related to outstanding Awards; and (c) the appropriate Fair Market Value and other price determinations for such Awards. Notwithstanding the foregoing, in the event of any change in the outstanding Common Stock of the Company by reason of a stock split or a reverse stock split, the above-referenced proportionate adjustments, if applicable, shall be mandatory.

In the event of any other change affecting the Common Stock or any distribution (other than normal cash dividends) to holders of Common Stock, such adjustments in the number and kind of shares and the exercise, grant and conversion prices of the affected Awards as may be deemed equitable by the Committee, including adjustments to avoid fractional shares, shall be made to give proper effect to such event. In the event of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization or liquidation, the Committee shall be authorized to cause Kyndryl to issue or assume stock options, whether or not in a transaction to which section 424(a) of the Code applies, by means of substitution of new stock options for previously issued stock options or an assumption of previously issued stock options. In such event, the aggregate number of shares of Common Stock available for issuance under Awards under Section 3, including the individual Participant maximums set forth in Section 6 will be increased to reflect such substitution or assumption.

15. Effect of a Change in Control on Awards.

Except to the extent otherwise provided in an Award Agreement, or any applicable employment, consulting, change-in-control, severance or other agreement between the Participant and the Company, in the event of a Change in Control, notwithstanding any provision of the Plan to the contrary:

(a) If the acquirer or successor company in such Change in Control has agreed to provide for the substitution, assumption, exchange or other continuation of Awards granted pursuant to the Plan, then, if the Participant's employment with or service to the Company or an Affiliate is terminated by the Company without Cause (and other than due to death or Disability) on or within 24 months following a Change in Control, then unless otherwise provided by the Committee, all stock options and SARs held by such Participant shall become immediately exercisable with respect to 100% of the shares of Common Stock subject to such stock options and SARs, and that the restricted period (and any other conditions) shall expire immediately with respect to 100% of the shares of Restricted Stock and Restricted Stock Units and any other Awards held by such Participant (including a waiver of any applicable performance conditions); provided that if the vesting or exercisability of any Award would otherwise be subject to the achievement of performance conditions, the portion of such Award that shall become fully vested and immediately exercisable shall be based on the assumed achievement of actual or target performance as determined by the Committee.

(b) If the acquirer or successor company in such Change in Control has not agreed to provide for the substitution, assumption, exchange or other continuation of Awards granted pursuant to the Plan, then unless otherwise provided by the Committee, all Options and SARs held by such Participant shall become immediately exercisable with respect to 100% of the shares of Common Stock subject to such Options and SARs, and the Restricted Period (and any other conditions) shall expire immediately with respect to 100% of the shares of Restricted Stock and Restricted Stock Units and any other Awards held by such Participant (including a waiver of any applicable performance conditions); provided that if the vesting or exercisability of any Award would otherwise be subject to the achievement of performance conditions, the portion of such Award that shall become fully vested and immediately exercisable shall be based on the assumed achievement of actual or target performance as determined by the Committee.

(c) In addition, the Committee may upon at least 10 days' advance notice to the affected Participants, cancel any outstanding Award and pay to the holders thereof, in cash, securities or other property (including of the acquiring or successor company), or any combination thereof, the value of such Awards based upon the price per share of Common Stock received or to be received by other stockholders of the Company in the event (it being understood that any Option or SAR having a per-share exercise or hurdle price equal to, or in excess of, the Fair Market Value (as of the date specified by the Committee) of a share of Common Stock subject thereto may be canceled and terminated without any payment or consideration therefor). Notwithstanding the above, the Committee shall exercise such discretion over the timing of settlement of any Award subject to Code Section 409A at the time such Award is granted.

(d) To the extent practicable, the provisions of this Section 15 shall occur in a manner and at a time that allows affected Participants the ability to participate in the Change in Control transaction with respect to the shares of Common Stock subject to their Awards.

16. Section 409A of the Code.

(a) It is intended that the Plan comply with Section 409A of the Code, and all provisions of the Plan shall be construed and interpreted in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A of the Code. Each Participant is solely responsible and liable for the satisfaction of all taxes and penalties that may be imposed on or in respect of such Participant in connection with the Plan or any other plan maintained by the Company, including any taxes and penalties under Section 409A of the Code, and the Company shall not have any obligation to indemnify or otherwise hold such Participant or any beneficiary harmless from any or all of such taxes or penalties. With respect to any Award that is considered "deferred compensation" subject to Section 409A of the Code, references in the Plan to "termination of employment" (and substantially similar phrases) shall mean "separation from service" within the meaning of Section 409A of the Code. For purposes of Section 409A of the Code, each of the payments that may be made in respect of any Award granted under the Plan is designated as a separate payment.

(b) Notwithstanding anything in the Plan to the contrary, if the Participant is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code, no payments or deliveries in respect of any Awards that are "deferred compensation" subject to Section 409A of the Code shall be made to such Participant prior to the date that is six months after the date of such Participant's "separation from service" within the meaning of Section 409A of the Code or, if earlier, the Participant's date of death. All such delayed payments or deliveries will be paid or delivered (without interest) in a single lump sum on the earliest date permitted under Section 409A of the Code that is also a business day.

(c) In the event that the timing of payments in respect of any Award that would otherwise be considered "deferred compensation" subject to Section 409A of the Code would be accelerated upon the occurrence of (A) a Change in Control, no such acceleration shall be permitted unless the event giving rise to the Change in Control satisfies the definition of a change in the ownership or effective control of a corporation, or a change in the ownership of a substantial portion of the assets of a corporation pursuant to Section 409A of the Code and any Treasury Regulations promulgated thereunder, or (B) a Disability, no such acceleration shall be permitted unless the Disability also satisfies the definition of "disability" pursuant to Section 409A of the Code and any Treasury Regulations promulgated thereunder.

17. Miscellaneous.

(a) Any notice to the Company required by any of the provisions of the Plan shall be addressed to the chief human resources officer of Kyndryl in writing, and shall become effective when it is received.

(b) The Plan shall be unfunded and the Company shall not be required to establish any special account or fund or to otherwise segregate or encumber assets to ensure payment of any Award.

(c) Nothing contained in the Plan shall prevent the Company from adopting other or additional compensation arrangements or plans, subject to stockholder approval if such approval is required, and such arrangements or plans may be either generally applicable or applicable only in specific cases.

(d) No Participant shall have any claim or right to be granted an Award under the Plan and nothing contained in the Plan shall be deemed or be construed to give any Participant the right to be retained in the employ of the Company or to interfere with the right of the Company to discharge any Participant at any time without regard to the effect such discharge may have upon the Participant under the Plan. Except to the extent otherwise provided in any plan or in an Award Agreement, no Award under the Plan shall be deemed compensation for purposes of computing benefits or contributions under any other plan of the Company.

(e) The Plan and each Award Agreement shall be governed by the laws of the State of Delaware, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of the Plan to the substantive law of another jurisdiction. Unless otherwise provided in the Award Agreement, recipients of an Award under the Plan are deemed to submit to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware lacks jurisdiction over such action or proceeding, then another court of the State of Delaware or, if no court of the State of Delaware has jurisdiction, then the United States District Court for the District of Delaware), to resolve any and all issues that may arise out of or relate to the Plan or any related Award Agreement.

(f) In the event that a Participant or the Company brings an action to enforce the terms of the Plan or any Award Agreement and the Company prevails, the Participant shall pay all costs and expenses incurred by the Company in connection with that action, including reasonable attorneys' fees, and all further costs and fees, including reasonable attorneys' fees incurred by the Company in connection with collection.

(g) The Committee and any officers to whom it may delegate authority under Section 5 shall have full power and authority to interpret the Plan and to make any determinations thereunder, including determinations under Section 13, and the Committee's or such officer's determinations shall be binding and conclusive. Determinations made by the Committee or any such officer under the Plan need not be uniform and may be made selectively among individuals, whether or not such individuals are similarly situated.

(h) If any provision of the Plan is or becomes or is deemed invalid, illegal or unenforceable in any jurisdiction, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended or limited in scope to conform to applicable laws or, in the discretion of the Committee, it shall be stricken and the remainder of the Plan shall remain in full force and effect.

(i) The Plan shall become effective on the date it is approved by the requisite vote of the stockholder of the Company.

(j) Notwithstanding anything in this Plan to the contrary, each Assumed Award shall be subject to the terms and conditions of the Prior Plan and award agreement to which such Assumed Award was subject immediately prior to the Spin-Off, subject to the adjustment of such Assumed Award by the Executive Compensation and Management Resources Committee of International Business Machines Corporation and the terms of the Employee Matters Agreement; provided that following the date of the Spin-Off, each such Assumed Award shall relate solely to shares of Common Stock and be administered by the Committee in accordance with the administrative procedures in effect under this Plan.

Federal Income Tax Consequences

The Company has been advised by counsel that, in general, under the Internal Revenue Code, as presently in effect, a Participant will not be deemed to recognize any income for federal income tax purposes at the time an option or SAR is granted or a restricted stock award is made, nor will the Company be entitled to a tax deduction at that time. However, when any part of an option or SAR is exercised, when restrictions on restricted stock lapse, or when an unrestricted stock award is made, the federal income tax consequences may be summarized as follows:

1. In the case of an exercise of a stock option other than an ISO, the optionee will generally recognize ordinary income in an amount equal to the excess of the fair market value of the shares on the exercise date over the option price.

2. In the case of an exercise of a SAR, the Participant will generally recognize ordinary income on the exercise date in an amount equal to any cash and the fair market value of any unrestricted shares received.

3. In the case of an exercise of an option or SAR payable in restricted stock, or in the case of an award of restricted stock, the immediate federal income tax effect for the recipient will depend on the nature of the restrictions. Generally, the fair market value of the stock will not be taxable to the recipient as ordinary income until the year in which his or her interest in the stock is freely transferable or is no longer subject to a substantial risk of forfeiture. However, the recipient may elect to recognize income when the stock is received, rather than when his or her interest in the stock is freely transferable or is no longer subject to a substantial risk of forfeiture. If the recipient makes this election, the amount taxed to the recipient as ordinary income is determined as of the date of receipt of the restricted stock.

4. In the case of ISOs, there is generally no tax liability at time of exercise. However, the excess of the fair market value of the stock on the exercise date over the option price is included in the optionee's income for purposes of the alternative minimum tax. If no disposition of the ISO stock is made before the later of one year from the date of exercise and two years from the date of grant, the optionee will realize a capital gain or loss upon a sale of the stock, equal to the difference between the option price and the sale price. If the stock is not held for the required period, ordinary income tax treatment will generally apply to the excess of the fair market value of the stock on the date of exercise (or, if less, the amount of gain realized on the disposition of the stock) over the option price, and the balance of any gain or any loss will be treated as capital gain or loss. In order for ISOs to be treated as described above, the Participant must remain employed by the Company (or a subsidiary in which the Company holds at least 50 percent of the voting power) from the ISO grant date until three months before the ISO is exercised. The three-month period is extended to one year if the Participant's employment terminates on account of disability. If the Participant does not meet the employment requirement, the option will be treated for federal income tax purposes as an option as described in paragraph 5 below. A Participant who exercises an ISO might also be subject to an alternative minimum tax.

5. Upon the exercise of a stock option other than an ISO, the exercise of a SAR, the award of stock, or the recognition of income on restricted stock, the Company will generally be allowed an income tax deduction equal to the ordinary income recognized by a Participant. The Company will not receive an income tax deduction as a result of the exercise of an ISO, provided that the ISO stock is held for the required period as described above. When a cash payment is made pursuant to the Award, the recipient will recognize the amount of the cash payment as ordinary income, and the Company will generally be entitled to a deduction in the same amount.

Exhibit 10.10

Kyndryl
Equity Award Agreement

Plan	**Kyndryl 2021 Long-Term Performance Plan (the "Plan")**
Award Type	**[Stock Options, Restricted Stock, Restricted Stock Units, Cash-Settled Restricted Stock Units]**
Purpose	The purpose of this Award is to retain selected employees and executives. You recognize that this Award represents a potentially significant benefit to you and is awarded for the purpose stated here.
Awarded to **Home Country** **Global ID`**	**Sample** **United States (USA) [Employee ID]** **[Global ID]**
Award Agreement	This Equity Award Agreement, together with the "Terms and Conditions of Your Equity Award: Effective November 3, 2021" ("Terms and Conditions") document and the Plan http://w3.kyndryl.net/hr/web/compensation/executive/eq_prospectus/, both of which are incorporated herein by reference, together constitute the entire agreement between you and Kyndryl with respect to your Award.
Grant	Date of Grant: [**Month Date, Year**] **[Exercise Price: $XX]** Number of **[Options/Units/Shares]** Awarded: [**XX]**
Vesting	This Award vests as set forth below, subject to your continued employment with Kyndryl as described in the Terms and Conditions document. **Options/Units/Shares** Date [number of shares] **[month date year]** [number of shares] **[month date year]** ["] ["] **Options expire, subject to the Terms and Conditions document, on:** [month date year]
Terms and Conditions of Your Equity Award	Refer to the Terms and Conditions document attached for an explanation of the terms and conditions applicable to your Award, including those relating to: · Cancellation and rescission of awards (also see below) · Jurisdiction, governing law, expenses and taxes · Non-solicitation of Company employees and clients, if applicable · Treatment of your Award in the event of death or disability or leave of absence · Treatment of your Award upon termination of employment It is strongly recommended that you print the Terms and Conditions document for later reference.

Terms and Conditions of Your Equity Award:

Cancellation and Rescission	You understand that Kyndryl may cancel, modify, rescind, suspend, withhold or otherwise limit or restrict this Award in accordance with the terms of the Plan, including, without limitation, canceling or rescinding this Award if you render services for a competitor prior to, or during the Rescission Period. You understand that the Rescission Period that has been established is 12 months. Refer to the Terms and Conditions document and the Plan for further details.
Data Privacy, Electronic Delivery	By accepting this Award, you agree that data, including your personal data, necessary to administer this Award may be exchanged among Kyndryl and its subsidiaries and affiliates as necessary, and with any vendor engaged by Kyndryl to administer this Award, subject to the Terms and Conditions document; you also consent to receiving information and materials in connection with this Award or any subsequent awards under Kyndryl's long-term performance plans, including without limitation any prospectuses and plan documents, by any means of electronic delivery available now and/or in the future (including without limitation by e-mail, by Web site access and/or by facsimile), such consent to remain in effect unless and until revoked in writing by you.
Extraordinary Compensation	Your participation in the Plan is voluntary. The value of this Award is an extraordinary item of income, is not part of your normal or expected compensation and shall not be considered in calculating any severance, redundancy, end of service payments, bonus, long-service awards, pension, retirement or other benefits or similar payments. The Plan is discretionary in nature. This Award is a one-time benefit that does not create any contractual or other right to receive additional awards or other benefits in the future. Future grants, if any, are at the sole grace and discretion of Kyndryl, including but not limited to, the timing of the grant, the number of units and vesting provisions. This Equity Award Agreement is not part of your employment agreement, if any.
Accept Your Award	This Award is considered valid when you accept it. This Award will be cancelled unless you accept it by 11:59 p.m. Eastern time two business days prior to the first vesting date in the "Vesting" section of this Agreement. By pressing the Accept button below to accept your Award, you acknowledge having received and read this Equity Award Agreement, the Terms and Conditions document and the Plan under which this Award was granted and you agree (i) not to hedge the economic risk of this Award or any previously-granted outstanding awards, which includes entering into any derivative transaction on Kyndryl securities (e.g., any short sale, put, swap, forward, option, collar, etc.), and (ii) to comply with the terms of the Plan, this Equity Award Agreement and the Terms and Conditions document, including those provisions relating to cancellation and rescission of awards and jurisdiction and governing law.

Terms and Conditions of Your Equity Award:

Kyndryl
Equity Award Agreement

Plan	**Kyndryl 2021 Long-Term Performance Plan (the "Plan")**
Award Type	**Retention Restricted Stock Units (RRSUs)**
Purpose	The purpose of this Award is to retain selected executives. You recognize that this Award represents a potentially significant benefit to you and is awarded for the purpose stated here.
Awarded to **Home Country** **[Global ID]**	**Sample** **United States (USA) [Employee ID]** **[Global ID]**
Award Agreement	This Equity Award Agreement, together with the "Terms and Conditions of Your Equity Award: Effective November 3, 2021" ("Terms and Conditions") document and the Plan http://w3.kyndryl.net/hr/web/compensation/executive/eq_prospectus/, both of which are incorporated herein by reference, together constitute the entire agreement between you and Kyndryl with respect to your Award.
Grant	Date of Grant: **[Month Date, Year**] Number of Units Awarded: [XX]
Vesting	This Award vests as set forth below, subject to your continued employment with Kyndryl as described in the Terms and Conditions document. Units Date **[amount**] **[month date, year**] **[amount**] **[month date, year**]
Terms and Conditions of Your Equity Award	Refer to the Terms and Conditions document attached for an explanation of the terms and conditions applicable to your Award, including those relating to: · Cancellation and rescission of awards (also see below) · Jurisdiction, governing law, expenses and taxes · Non-solicitation of Company employees and clients, if applicable · Treatment of your Award in the event of death or disability or leave of absence · Treatment of your Award upon termination of employment, including for cause It is strongly recommended that you print the Terms and Conditions document for later reference.
Cancellation and Rescission	You understand that Kyndryl may cancel, modify, rescind, suspend, withhold or otherwise limit or restrict this Award in accordance with the terms of the Plan, including, without limitation, canceling or rescinding this Award if you render services for a competitor prior to, or during the Rescission Period. You understand that the Rescission Period that has been established is three years. Refer to the Terms and Conditions document and the Plan for further details.

Terms and Conditions of Your Equity Award:

Data Privacy, Electronic Delivery	By accepting this Award, you agree that data, including your personal data, necessary to administer this Award may be exchanged among Kyndryl and its subsidiaries and affiliates as necessary, and with any vendor engaged by Kyndryl to administer this Award, subject to the Terms and Conditions document; you also consent to receiving information and materials in connection with this Award or any subsequent awards under Kyndryl's long-term performance plans, including without limitation any prospectuses and plan documents, by any means of electronic delivery available now and/or in the future (including without limitation by e-mail, by Web site access and/or by facsimile), such consent to remain in effect unless and until revoked in writing by you.
Extraordinary Compensation	Your participation in the Plan is voluntary. The value of this Award is an extraordinary item of income, is not part of your normal or expected compensation and shall not be considered in calculating any severance, redundancy, end of service payments, bonus, long-service awards, pension, retirement or other benefits or similar payments. The Plan is discretionary in nature. This Award is a one-time benefit that does not create any contractual or other right to receive additional awards or other benefits in the future. Future grants, if any, are at the sole grace and discretion of Kyndryl, including but not limited to, the timing of the grant, the number of units and vesting provisions. This Equity Award Agreement is not part of your employment agreement, if any.
Accept Your Award	This Award is considered valid when you accept it. This Award will be cancelled unless you accept it by 11:59 p.m. Eastern time two business days prior to the first vesting date in the "Vesting" section of this Agreement. By pressing the Accept button below to accept your Award, you acknowledge having received and read this Equity Award Agreement, the Terms and Conditions document and the Plan under which this Award was granted and you agree (i) not to hedge the economic risk of this Award or any previously-granted outstanding awards, which includes entering into any derivative transaction on Kyndryl securities (e.g., any short sale, put, swap, forward, option, collar, etc.), and (ii) to comply with the terms of the Plan, this Equity Award Agreement and the Terms and Conditions document, including those provisions relating to cancellation and rescission of awards and jurisdiction and governing law .

Kyndryl
Equity Award Agreement

Plan	**Kyndryl 2021 Long-Term Performance Plan (the "Plan")**
Award Type	**Performance Share Units (PSUs)**
Purpose	The purpose of this Award is to retain selected executives. You recognize that this Award represents a potentially significant benefit to you and is awarded for the purpose stated here.
Awarded to **Home Country** **Global ID**	**Sample** **United States (USA) [Employee ID]** **[Global ID]**
Award Agreement	This Equity Award Agreement, together with the "Terms and Conditions of Your Equity Award Effective November 3, 2021" ("Terms and Conditions") document and the Plan http://w3.kyndryl.net/hr/web/compensation/executive/eq_prospectus/, both of which are incorporated herein by reference, together constitute the entire agreement between you and Kyndryl with respect to your Award.

Grant

Date of Grant	# PSUs Awarded	Performance Period	Date of Payout
[month day year]	[amount]	[dates]	[date]
[month day year]	[amount]	[dates]	[date]
[□]	[□]	[□]	[□]

Vesting	You can earn the PSUs awarded above based on Kyndryl's performance in achieving the business targets set forth on Exhibit A.
Payout of Awards	Following the Date of Payout, the Company shall either (a) deliver to you a number of shares of Common Stock equal to the number of your earned PSUs, or (b) make a cash payment to you equal to the Fair Market Value on the Date of Payout of the number of your earned PSUs at the end of the Performance Period, in either case, net of any applicable tax withholding, and the respective PSUs shall thereafter be cancelled. All payouts under this Award are subject to the provisions of the Plan, this Agreement and the Terms and Conditions document, including those relating to the cancellation and rescission of awards.

Terms and Conditions of Your Equity Award

Refer to the Terms and Conditions document attached for an explanation of the terms and conditions applicable to your Award, including those relating to:

- Cancellation and rescission of awards (also see below)
- Jurisdiction, governing law, expenses and taxes
- Non-solicitation of Company employees and clients, if applicable
- Treatment of your Award in the event of death or disability or leave of absence
- Treatment of your Award upon termination of employment

It is strongly recommended that you print the Terms and Conditions document for later reference.

Cancellation and Rescission

You understand that Kyndryl may cancel, modify, rescind, suspend, withhold or otherwise limit or restrict this Award in accordance with the terms of the Plan, including, without limitation, canceling or rescinding this Award if you render services for a competitor prior to, or during the Rescission Period. You understand that the Rescission Period that has been established is 12 months. Refer to the Terms and Conditions document and the Plan for further details.

Data Privacy, Electronic Delivery

By accepting this Award, you agree that data, including your personal data, necessary to administer this Award may be exchanged among Kyndryl and its subsidiaries and affiliates as necessary, and with any vendor engaged by Kyndryl to administer this Award, subject to the Terms and Conditions document; you also consent to receiving information and materials in connection with this Award or any subsequent awards under Kyndryl's long-term performance plans, including without limitation any prospectuses and plan documents, by any means of electronic delivery available now and/or in the future (including without limitation by e-mail, by Web site access and/or by facsimile), such consent to remain in effect unless and until revoked in writing by you.

Extraordinary Compensation

Your participation in the Plan is voluntary. The value of this Award is an extraordinary item of income, is not part of your normal or expected compensation and shall not be considered in calculating any severance, redundancy, end of service payments, bonus, long-service awards, pension, retirement or other benefits or similar payments. The Plan is discretionary in nature. This Award is a one-time benefit that does not create any contractual or other right to receive additional awards or other benefits in the future. Future grants, if any, are at the sole grace and discretion of Kyndryl, including but not limited to, the timing of the grant, the number of units and vesting provisions. This Equity Award Agreement is not part of your employment agreement, if any.

Accept Your Award	This Award is considered valid when you accept it. This Award will be cancelled unless you accept it by 11:59 p.m. Eastern time two business days prior to the end of the Performance Period in the "Grant" section of this Agreement. By pressing the Accept button below to accept your Award, you acknowledge having received and read this Equity Award Agreement, the Terms and Conditions document and the Plan under which this Award was granted and you agree (i) not to hedge the economic risk of this Award or any previously-granted outstanding awards, which includes entering into any derivative transaction on Kyndryl securities (e.g., any short sale, put, swap, forward, option, collar, etc.), (ii) to comply with the terms of the Plan, this Equity Award Agreement and the Terms and Conditions document, including those provisions relating to cancellation and rescission of awards and jurisdiction and governing law, and (iii) that by your acceptance of this Award, all awards previously granted to you under the Plan or other Kyndryl Long-Term Performance Plans are subject to any cancellation, rescission or recovery required by applicable laws, rules, regulations or standards, including without limitation any requirements or standards of the U.S. Securities and Exchange Commission or the New York Stock Exchange.

Vesting	You can earn the PSUs awarded above based on Kyndryl's performance in achieving cumulative business targets of Kyndryl. [insert performance targets]

KYNDRYL

TERMS AND CONDITIONS OF YOUR
EQUITY AWARD:
EFFECTIVE NOVEMBER 3, 2021

Terms and Conditions of Your Equity Award

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Terms and Conditions of Your Equity Award

Introduction

This document provides you with the terms and conditions of your Award that are in addition to the terms and conditions contained in your Equity Award Agreement for your specific Award. Also, your Award is subject to the terms and conditions in the governing plan document; the applicable document is indicated in your Equity Award Agreement and can be found at http://w3.kyndryl.net/hr/web/compensation/executive/eq_prospectus/.

> As an Award recipient, you can see a personalized summary of all your outstanding equity grants in the Portfolio section of the Kyndryl Morgan Stanley stockplanconnect web site www.stockplanconnect.com. This site also contains other information about long-term incentive awards, including copies of the prospectus (the governing plan document). If you have additional questions and you are based in the U.S., you can call the Benefits Center – Provided by Fidelity at 866-937-0720, weekdays from 8:00 a.m. to 8:00 p.m. Eastern time (TTY available at 711). Outside of the U.S. dial your country's toll-free AT&T Direct® access number, and then enter 866-937-0720. In the U.S., call 800-225-5288 to obtain AT&T Direct access numbers. Access numbers are also available online at www.att.com/traveler or from your local operator.

How to Use This Document

Terms and conditions that apply to all awards in all countries can be found on page 6. Review these in addition to any award- or country-specific terms and conditions that may be listed. Once you have reviewed these general terms, check in your Equity Award Agreement for any award-specific and/or country-specific terms that apply to your Award.

Terms and Conditions of Your Equity Award:

Definition of Terms

The following are defined terms from the Long-Term Performance Plan, your Equity Award Agreement, or this Terms and Conditions document. These are provided for your information. In addition to this document, see the Plan prospectus and your Equity Award Agreement for more details.

“Awards” -- The grant of any form of stock option, stock or cash award, whether granted singly, in combination or in tandem, to a Participant pursuant to such terms, conditions, performance requirements, limitations and restrictions as the Committee may establish in order to fulfill the objectives of the Plan.

“Board” -- The Board of Directors of Kyndryl Holdings, Inc.

“Common Stock” -- Authorized and issued or unissued Common Stock of Kyndryl, at such par value as may be established from time to time.

“Committee” -- The committee designated by the Board to administer the Plan.

“Company” -- Kyndryl and its affiliates and subsidiaries including subsidiaries of subsidiaries and partnerships and other business ventures in which Kyndryl has an equity interest.

“Engage in or Associate with” includes, without limitation, engagement or association as a sole proprietor, owner, employer, director, partner, principal, joint venture, associate, employee, member, consultant, or contractor. This also includes engagement or association as a shareholder or investor during the course of your employment with the Company, and includes beneficial ownership of five percent (5%) or more of any class of outstanding stock of a competitor of the Company following the termination of your employment with the Company.

“Equity Award Agreement” -- The document provided to the Participant which provides the grant details.

“Fair Market Value” -- The average of the high and low prices of Common Stock on the New York Stock Exchange for the date in question, provided that, if no sales of Common Stock were made on said exchange on that date, the average of the high and low prices of Common Stock as reported for the most recent preceding day on which sales of Common Stock were made on said exchange.

“Participant” -- An individual to whom an Award has been made under the Plan. Awards may be made to any employee of, or any other individual providing services to, the Company. However, incentive stock options may be granted only to individuals who are employed by Kyndryl or by a subsidiary corporation (within the meaning of section 424(f) of the Code) of Kyndryl, including a subsidiary that becomes such after the adoption of the Plan.

“Plan” -- Any Kyndryl Long-Term Performance Plan.

“Termination of Employment” -- For the purposes of determining when you cease to be an employee for the cancellation of any Award, a Participant will be deemed to be terminated if the Participant is no longer employed by Kyndryl or a subsidiary corporation that employed the Participant when the Award was granted unless approved by a method designated by those administering the Plan.

Terms and Conditions of Your Equity Award:

Provisions that apply to all Award types and all countries

The following terms apply to all countries and for all Award types (Restricted Stock Units, Cash-Settled Restricted Stock Units, Restricted Stock, Stock Options and Performance Share Units).

Cancellation and Rescission

All determinations regarding enforcement, waiver or modification of the cancellation and rescission and other provisions of the Plan and your Equity Award Agreement (including the provisions relating to termination of employment, death and disability) shall be made in Kyndryl's sole discretion. Determinations made under your Equity Award Agreement and the Plan need not be uniform and may be made selectively among individuals, whether or not such individuals are similarly situated.

You agree that the cancellation and rescission provisions of the Plan and your Equity Award Agreement are reasonable and agree not to challenge the reasonableness of such provisions, even where forfeiture of your Award is the penalty for violation. Engaging in Detrimental Activity (as defined in the Plan) during employment or after your employment relationship has ended may result in cancellation or rescission of your Award.

The cancellation and rescission provisions of the Plan may be triggered by your acceptance of an offer to Engage in or Associate with any business which is or becomes competitive with the Company, or your engagement in competitive activities after your employment relationship with Kyndryl has ended if: (i) on or prior to the grant date stated in your latest Equity Award Agreement you have entered into a Noncompetition Agreement with IBM Corporation, an IBM affiliate or with Kyndryl, as applicable; or (ii) the Award is a Retention Restricted Stock Unit award. Notwithstanding the above, the cancellation and rescission provisions of the Plan will apply to all Awards if during your employment with Kyndryl you engage in any Detrimental Activity, including competitive activities, described in Section 13(a) of the Plan.

For the avoidance of doubt: (a) all other cancellation and rescission provisions of the Plan will apply to all Awards if after your employment relationship has ended with Kyndryl but during the Rescission Period you engage in any Detrimental Activity described in Section 13(a) (excluding Section 13(a)(i)) of the Plan; and (b) the cancellation and rescission provisions of the Plan will apply to all Awards if during your employment with Kyndryl you engage in any Detrimental Activity, including competitive activities, described in Section 13(a)of the Plan.

Jurisdiction, Governing Law, Expenses, Taxes and Administration

Your Equity Award Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of law rules. You agree that any action or proceeding with respect to your Equity Award Agreement shall be brought exclusively in the state and federal courts sitting in New York County or Westchester County, New York. You agree to the personal jurisdiction thereof, and irrevocably waive any objection to the venue of such action, including any objection that the action has been brought in an inconvenient forum.

If any court of competent jurisdiction finds any provision of your Equity Award Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of your Equity Award Agreement shall continue in full force and effect.

If you or the Company brings an action to enforce your Equity Award Agreement and the Company prevails, you will pay all costs and expenses incurred by the Company in connection with that action and in connection with collection, including reasonable attorneys' fees.

If the Company, in its sole discretion, determines that it has incurred or will incur any obligation to withhold taxes as a result of your Award, without limiting the Company's rights under Section 9 of the Plan, the Company may withhold the number of shares that it determines is required to satisfy such liability and/or the Company may withhold amounts from other compensation to the extent required to satisfy such liability under federal, state, provincial, local, foreign or other tax laws. To the extent that such amounts are not withheld, the Company may require you to pay to the Company any amount demanded by the Company for the purpose of satisfying such liability.

If the Company changes the vendor engaged to administer the Plan, you consent to moving all of the shares you have received under the Plan that is in an account with such vendor (including unvested and previously vested shares), to the new vendor that the Company engages to administer the Plan. Such consent will remain in effect unless and until revoked in writing by you.

Terms and Conditions of Your Equity Award:

Provisions that apply to all Award types but not all countries

The following provision applies to all Award types (Restricted Stock Units, Cash-Settled Restricted Stock Units, Restricted Stock, Stock Options and Performance Share Units) granted to all individuals in all countries except those with a home country of Latin America, specifically: Argentina, Bolivia, Brazil, Chile, Columbia, Costa Rica, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela.

Non-Solicitation

In consideration of your Award, you agree that during your employment with the Company and for one year following the termination of your employment for any reason, you will not directly or indirectly hire, solicit or make an offer to any employee of the Company to be employed or perform services outside of the Company. Also, you agree that during your employment with the Company and for one year following the termination of your employment for any reason, you will not directly or indirectly, solicit, for competitive business purposes, any customer of the Company with which you were involved as part of your job responsibilities during the last year of your employment with the Company. By accepting your Award, you acknowledge that the Company would suffer irreparable harm if you fail to comply with the foregoing, and that the Company would be entitled to any appropriate relief, including money damages, equitable relief and attorneys' fees.

Terms and Conditions of Your Equity Award:

Provisions that apply to specific Award types for all countries

a. Restricted Stock Units ("RSUs") including Cash-Settled RSUs and Retention RSUs ("RRSUs")

All references in this document to RSUs include RRSUs, unless explicitly stated otherwise

i. All RSUs

Termination of Employment including Death, Disability and Leave of Absence

Termination of Employment

In the event you cease to be an employee (other than on account of death or are disabled as described in Section 12 of the Plan) prior to the Vesting Date(s) set in your Equity Award Agreement, all then unvested RSUs, including RRSUs, under your Award shall be canceled.

Death or Disability

Upon your death all RSUs covered by this Agreement shall vest immediately and your Vesting Date shall be your date of death. If you are disabled as described in Section 12 of the Plan, your RSUs shall continue to vest according to the terms of your Award.

Leave of Absence

In the event of a management approved leave of absence, any unvested RSUs shall continue to vest as if you were an active employee of the Company, subject to the terms in this document and your Equity Award Agreement. If you return to active status, your unvested RSUs will continue to vest in accordance with the terms in this document and your Equity Award Agreement.

Dividend Equivalents

Dividend equivalents shall accrue on RSUs and RRSUs until the underlying award vests, upon which time they shall be paid out in cash.

Terms and Conditions of Your Equity Award:

Provisions that apply to specific Award types for all countries

ii. *RSUs Other Than Cash-Settled RSUs and Cash-Settled RRSUs*

Settlement of Award

Subject to Sections 12 and 13 of the Plan and the section "Termination of Employment including Death, Disability and Leave of Absence" above, upon the Vesting Date(s), or as soon thereafter as may be practicable but in no event later than March 15 of the following calendar year, Kyndryl shall make a payment to Participant in shares of Common Stock equal to the number of vested RSUs, subject to any applicable tax withholding requirements as described in Section 9 of the Plan, and the respective RSUs shall thereupon be canceled. RSUs are not shares of Common Stock and do not convey any stockholder rights.

iii. *Cash-Settled RSUs including Cash-Settled RRSUs*

Settlement of Award

Subject to Sections 12 and 13 of the Plan and the section entitled “Termination of Employment including Death, Disability and Leave of Absence” above, upon the Vesting Date(s), or as soon thereafter as may be practicable but in no event later than March 15 of the following calendar year, the Company shall make a payment to Participant in cash equal to the Fair Market Value of the vested RSUs, subject to any applicable tax withholding requirements as described in Section 9 of the Plan, and the respective RSUs shall thereupon be canceled. Fair Market Value will be calculated in your home country currency at the exchange rate on the applicable Vesting Date using a commercially reasonable measure of exchange rate. RSUs are not shares of Common Stock and do not convey any stockholder rights.

b. Restricted Stock

Settlement of Award

Subject to Sections 12 and 13 of the Plan and the paragraph entitled “Termination of Employment including Death, Disability or Leave of Absence” below, upon the Vesting Date(s), the shares of Restricted Stock awarded under your Equity Award Agreement will vest, subject to any applicable tax withholding requirements as described in Section 9 of the Plan.

Terms and Conditions of Your Equity Award:

Provisions that apply to specific Award types for all countries

Termination of Employment including Death, Disability and Leave of Absence

Termination of Employment

In the event you cease to be an employee (other than on account of death or are disabled as described in Section 12 of the Plan) prior to the Vesting Date(s) in your Equity Award Agreement, all then unvested shares of Restricted Stock under your Award shall be canceled (unless your Equity Award Agreement provides otherwise).

Death or Disability

Upon your death all unvested shares of Restricted Stock covered by your Equity Award Agreement shall vest immediately and your Vesting Date shall be your date of death. If you are disabled as described in Section 12 of the Plan, your unvested shares of Restricted Stock shall continue to vest according to the terms of your Equity Award Agreement.

Leave of Absence

In the event of a management approved leave of absence, any unvested shares of Restricted Stock shall continue to vest as if you were an active employee of the Company, subject to the terms in this document and your Equity Award Agreement. If you return to active status, your unvested shares of Restricted Stock will continue to vest in accordance with the terms in this document and your Equity Award Agreement.

Dividends and Other Rights

During the period that the Restricted Stock is held by Kyndryl hereunder, such stock will remain on the books of Kyndryl in your name, may be voted by you, and any applicable dividends shall accrue until the underlying award vests, upon which time they shall be paid out in cash. Shares issued in stock splits or similar events which relate to Restricted Stock then held by Kyndryl in your name shall be issued in your name but shall be held by Kyndryl under the terms hereof and shall be subject to the same vesting criteria as the underlying award.

Transferability

Shares of Restricted Stock awarded under your Equity Award Agreement cannot be sold, assigned, transferred, pledged or otherwise encumbered prior to the vesting of your Award as set forth in your Equity Award Agreement and any such sale, assignment, transfer, pledge or encumbrance, or any attempt thereof, shall be void.

Terms and Conditions of Your Equity Award:

Provisions that apply to specific Award types for all countries

c. Stock Options ("Options")

Termination of Employment including Death, Disability and Leave of Absence

Termination of Employment

In the event you cease to be an employee (other than on account of death or are disabled as described in Section 12 of the Plan):

- Any Options that are not exercisable as of the date your employment terminates shall be canceled immediately (unless your Equity Award Agreement provides otherwise), and

- Any Options that are exercisable as of the date your employment terminates (other than for cause) will remain exercisable for 90 days (not three months) after the date of termination, after which any unexercised Options are canceled.

- However, if your employment with the Company terminates (other than for cause) after you have attained age 55 and completed at least 10 years of service with the Company at the time of termination, any unvested Options shall vest and become exercisable and all Options that are exercisable as of the date your employment terminates shall remain exercisable until the earlier of the expiration of the full term as in your Equity Award Agreement and the fifth anniversary of the date your employment terminates (unless your Equity Award Agreement provides otherwise).

Death or Disability

In the event of your death, all Options shall become fully exercisable and remain exercisable until the earlier of the expiration of their full term and the third anniversary of the date your employment terminates.

In the event you are disabled (as described in Section 12 of the Plan), all Options shall become fully exercisable and remain exercisable until the earlier of the expiration of their full term and the third anniversary of the date your employment terminates.

Terms and Conditions of Your Equity Award:

Provisions that apply to specific Award types for all countries

Leave of Absence

In the event of a management approved leave of absence, any unvested Options shall continue to vest and be exercisable as if you were an active employee of the Company, subject to the terms in this document and your Equity Award Agreement. If you return to active status, your Options will continue to vest and be exercisable in accordance with their terms. If you do not return to active status,

- Your unvested Options will be canceled immediately; and
- Your vested Options will be canceled on the later of the 91st day following your last day of active employment or the date of the termination of your leave of absence.
- However, if your employment terminates (other than for cause) after you have attained age 55 and completed at least 10 years of service with the Company at the time of termination, any Options that are exercisable as of the date your employment terminates shall remain exercisable for the full term as in your Equity Award Agreement.

Termination of Employment for Cause

If your employment terminates for cause, all exercisable and not exercisable Options are canceled immediately.

Terms and Conditions of Your Equity Award:

Provisions that apply to specific Award types for all countries

d. Performance Share Units ("PSUs")

Termination of Employment, including Death and Disability, and Leave of Absence

Termination of Employment and Leave of Absence

If you cease to be an active employee for any reason (other than on account of death or are disabled as described in Section 12 of the Plan) before the Date of Payout (in the case of a recipient in the United States, at year end of the applicable PSU Performance Period), all PSUs are canceled immediately.

However, if at the time that you cease to be an active employee (provided you are not terminated for cause), you have attained age 55, completed at least 10 years of service with the Company, and completed at least one year of active service during the PSU Performance Period (as set forth in your Equity Award Agreement), the PSUs granted hereunder shall be paid out on the Date of Payout (as set forth in your Equity Award Agreement) in an amount that will be prorated for the time that you work as an active executive during the PSU Performance Period, and adjusted for the performance score determined for the entire applicable performance period(s).

Death or Disability

Prior to the Date of Payout, (i) in the event of your death or (ii) if you are disabled (as described in Section 12 of the Plan), all PSUs shall continue to vest according to the terms of your Equity Award Agreement and the PSUs will be paid on the Date of Payout, based on Kyndryl performance, if applicable, over the entire applicable Performance Period(s).

Terms and Conditions of Your Equity Award:

Provisions that apply to specific countries

a. Denmark

i. All Awards

The following non-solicitation clause will replace the above-non-solicitation provision for individuals with the home country of Denmark:

"In consideration of your Award, you agree that during your employment with the Company, you will not directly or indirectly, solicit, for competitive business purposes, any customer of the Company. By accepting your Award, you acknowledge that the Company would suffer irreparable harm if you fail to comply with the foregoing, and that the Company would be entitled to any appropriate relief, including money damages, equitable relief and attorneys' fees."

b. Israel

i. All Awards

Data Privacy

In addition to the data privacy provisions in your Equity Award Agreement, you agree that data, including your personal data, necessary to administer this Award may be exchanged among Kyndryl and its subsidiaries and affiliates as necessary (including transferring such data out of the country of origin both in and out of the EEA), and with any vendor engaged by Kyndryl to administer this Award.

c. United States

i. All Awards

Nothing in the Plan prospectus, your Equity Award Agreement or this Document affects your rights, immunities, or obligations under any federal, state, or local law, including under the Defend Trade Secrets Act of 2016, as described in Company policies, or prohibits you from reporting possible violations of law or regulation to a government agency, as protected by law.

If you are, and have been for at least 30 days immediately preceding, a resident of, or an employee in Massachusetts at the time of the termination of your employment with Kyndryl, cancellation and rescission provisions of the Plan will not apply if you engage in competitive activities after your employment relationship has ended with Kyndryl. For the avoidance of doubt, cancellation and rescission provisions of the Plan will apply if you engage in (1) any Detrimental Activity prior to your employment relationship ending with Kyndryl or (2) any Detrimental Activity described in Section 13(a) of the Plan other than engaging in competitive activities after your employment relationship has ended with Kyndryl.

Exhibit 10.13

KYNDRYL EXCESS PLAN

Effective January 1, 2022
(except as otherwise provided herein)

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ARTICLE I. INTRODUCTION

1.01 Name of Plan and Effective Date. This plan document is effective for Deferral Periods beginning on and after January 1, 2022, except with respect to (a) certain Automatic Contribution credits made in accordance with Section 5.01; (b) certain elections and deferrals that are carried over from the IBM Excess 401(k) Plus Plan (the "IBM Excess Plan") for Deferral Periods that began in 2021: "base pay" and "performance pay" (each within the meaning of the IBM Excess Plan) paid by Kyndryl with respect to Deferral Periods beginning in 2021 and after the Company becomes an independent publicly traded company (but not deferred into the IBM Excess Plan); and (c) certain Matching Contributions with respect to deferrals described in (b).

1.02 Purpose. The purpose of the Plan is to attract and retain employees by providing a means for employees to defer their pay and for Transferred Employees to obtain company contributions outside of the Kyndryl 401(k) Plan, which is subject to certain limits under the Internal Revenue Code of 1986, as amended (the "Code"). All Plan benefits are paid out of the general assets of the Company (as defined in ARTICLE II).

1.03 Legal Status. The Plan is an unfunded deferred compensation plan for a select group of management or highly compensated employees (within the meaning of Sections 201(2), 301(a)(3), 401(a)(1), 4021(b)(6) of Employee Retirement Income Security Act of 1974, as amended ("ERISA").

1.04 Section 409A.

The Plan is intended, and shall be construed, to comply with the requirements of Section 409A of the Code. Notwithstanding anything to the contrary in this Section 1.04, in no event shall the Company, its officers, directors, employees, parents, subsidiaries, or affiliates be liable for any additional tax, interest, or penalty incurred by a Participant or Beneficiary as a result of the Plan's failure to satisfy the requirements of Section 409A of the Code, or as a result of the Plan's failure to satisfy any other applicable requirements for the deferral of tax.

ARTICLE II. DEFINITIONS

The following words and phrases as used herein have the following meanings unless a different meaning is required by the context:

"401(k) Plan" means the Kyndryl 401(k) Plan as in effect from time to time.

"409A Key Employee" means, for each 12-consecutive-month period beginning on any April 1 (an "effective period"), an individual who is a "specified employee" of the Company (within the meaning of Treas. Reg. § 1.409A-1(i)) within the 12-consecutive-month period ending on the December 31 immediately preceding the start of such effective period, as follows:

(a) Effective through March 31, 2022, "specified employees" means those individuals determined to be "specified employees" under the IBM Excess Plan in accordance with Treas. Reg. § 1.409A-1(i)(6)(iii).

(b) Effective April 1, 2022, "specified employees" means those employees of the Company identified under a policy or other document adopted by Kyndryl. As of the Effective Date, the employees designated under such policy means all Participants.

"409A Separation from Service" means a separation from service within the meaning of Treas. Reg. § 1.409A-1(h), which shall include, but not be limited to, the following events:

(a) A "termination of employment," as that term is applied for purposes of the Kyndryl 401(k) Plan (except to the extent that an earlier event associated with such termination of employment is described in subsections (b) through (c), below or to the extent such termination is not a separation from service on account of the individual being expected to continue to provide services as a non-employee, or otherwise);

(b) A permanent reduction in services to no more than 20% of the average level of services performed over the immediately preceding 36-month period (or the full period of services if less);

(c) The six-month anniversary of a leave of absence, when no services are performed (including paid and unpaid leave and including disability leave or any combination thereof) other than a military leave.

"Account" means a record-keeping account maintained for a Participant under the Plan. A Participant's Accounts under the Plan include an Elective Deferral Account, a Company Account, and such other sub-accounts as may be determined by the Plan Administrator.

"Actively Employed" means actively employed by the Company, including on a leave of absence.

"Automatic Contribution" has the meanings provided in Sections 5.01 and 5.03.

"Base Pay" means an Employee's base pay (determined under the 401(k) Plan) from the Company for employment while on a U.S. payroll, determined before reduction for deferrals under the Plan or the 401(k) Plan or for amounts not included in income on account of salary reductions under Code section 125 or 132(f). However, Base Pay does not include any pay during a Deferral Period that is paid after an Employee's 409A Separation from Service (except amounts paid in the pay period in which the Employee's 409A Separation from Service occurs and Rehire Pay).

"Beneficiary" means a person who is designated by a Participant or by the terms of the Plan to receive a benefit under the Plan by reason of the Participant's death. Each Participant's Beneficiary under the Plan shall be the person or persons designated as the Participant's Beneficiary under the Plan, in the form and manner prescribed by the Plan Administrator. A beneficiary designation under the IBM Excess Plan that was made electronically (through the recordkeeper's website) and was in effect as of immediately before the Effective Date will be treated as a beneficiary designation under this Plan as of the Effective Date.

If no such beneficiary designation is in effect under the Plan at the time of the Participant's death, or if no designated beneficiary under the Plan survives the Participant, the Participant's Beneficiary shall be the person or persons determined to be the Participant's beneficiary under the 401(k) Plan (including the default beneficiary rules under the 401(k) Plan, if no beneficiary is designated under that plan, including due to there not being a beneficiary designation after full distribution of 401(k) Plan benefits).

"Board" means the Board of Directors of Kyndryl.

"Code" means the Internal Revenue Code of 1986, as amended from time to time. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

"Company" means Kyndryl, Inc. a Delaware Corporation, having its principal place of business at New York, New York, and its Domestic Subsidiaries that are participating employers in the 401(k) Plan.

"Company Auto Contribution-Eligible Individual" generally means, with respect to a Plan Year, any Transferred Employee to the extent such employee remains continuously employed by the Company following such employee's Transfer Date (as defined in the 401(k) Plan) and who satisfies any of the following:

(a) On December 15 of the Plan Year, the individual is employed by the Company, is on a U.S. payroll, and is not a Supplemental Employee; for this purpose, an individual (other than a Supplemental Employee) shall be treated as "employed" if the individual is on a leave of absence that is classified in the employer's payroll records as a pre-retirement planning leave, a paid or unpaid leave of absence, or a military leave.

(b) The individual terminates employment with the Company during the Plan Year due to Retirement.

(c) The individual terminates U.S. employment during the Plan Year due to participation in Kyndryl's global assignment program.

(d) The individual is terminated by the Company as a result of the consummation of a divestiture or similar transaction (including an outsourcing or IP licensing transaction) and becomes an employee of the buyer or one of its affiliates immediately thereafter.

(e) The individual terminates employment with the Company during the Plan Year due to death.

(f) The individual terminates employment with the Company during the Plan Year due to transfer of employment from the Company directly to an Affiliate (as defined in the 401(k) Plan) that is not a participating employer in the Plan.

An individual shall not be a Company Auto Contribution-Eligible Individual for a Plan Year if the individual terminates employment with the Company prior to December 15 of the Plan Year for any reason not described in the foregoing provisions of this Section and did not satisfy the age and/or service requirements for Retirement on the date such benefits commence.

No individual who is rehired following a termination of employment with the Company and all of its affiliates (whether or not for a reason described in the foregoing provisions of this Section) shall be a Company Auto Contribution-Eligible Individual following such rehire.

Notwithstanding the preceding provisions of this Section, to be eligible for Matching Contributions or Automatic Contributions on account of Elective Deferrals of Performance Pay for the Deferral Period beginning in 2021 and otherwise paid in 2022 (as provided in Sections 5.02(b) and 5.03, respectively), the individual will be considered a Company Auto Contribution-Eligible Individual for 2022 if the individual meets the requirements in the preceding provisions of this Section, substituting "the date on which the applicable Performance Pay would otherwise be paid" for "December 15" in each place it appears in the preceding provisions of this Section.

"Company Contributions" means amounts credited to a Participant's Company Account, including Automatic Contributions, Matching Contributions, or Missed Matching Contributions.

"***Company Missed Matching Contribution-Eligible Individual"*** generally means, with respect to a Plan Year, an Eligible Employee other than a Company Auto Contribution-Eligible Individual, who meets all of the following requirements:

(a) The Eligible Employee participates in the 401(k) Plan and makes elective deferrals to the 401(k) Plan for the Plan Year that are equal to the limit provided under Code section 402(g).

(b) The Eligible Employee's Elective Deferrals to the Plan result in the Employee's eligible compensation in the 401(k) Plan falling below the Pay Limit.

(c) On December 15, 2021, such individual is employed by the Company, is on a U.S. payroll, and is not a Supplemental Employee; for this purpose, an individual (other than a Supplemental Employee) shall be treated as "employed" if the individual is on a leave of absence that is classified in the employer's payroll records as a pre-retirement planning leave, a paid or unpaid leave of absence, or a military leave. Notwithstanding the preceding sentence, such individual will be considered employed by the Company for purposes of eligibility for Automatic Contributions for the applicable Plan Year if the individual is described in paragraphs (b), (c), (d), (e), or (f) in the definition of Company Auto Contribution-Eligible Individual.

"Company Only-2021 Contribution-Eligible Individual" means a "transferred employee," as defined in the 401(k) Plan, other than a Company Auto Contribution-Eligible Individual, who meets both of the following requirements:

(a) Such employee did not make elective deferrals in the IBM Excess Plan for a Deferral Period beginning in 2021 but was or would have been eligible for automatic contributions under the IBM Excess Plan for the 2021 Plan Year by reason of the individual's eligible compensation for 2021 exceeding the Pay Limit (assuming for this purpose that Company compensation and Company U.S. employment were counted as IBM compensation and IBM U.S. employment, respectively, for purposes of the IBM Excess Plan).

(b) On December 15, 2021, such individual is employed by the Company, is on a U.S. payroll, and is not a Supplemental Employee; for this purpose, an individual (other than a Supplemental Employee) shall be treated as "employed" if the individual is on a leave of absence that is classified in the employer's payroll records as a pre-retirement planning leave, a paid or unpaid leave of absence, or a military leave. Notwithstanding the preceding sentence, such individual will be considered employed by the Company for purposes of eligibility for Automatic Contributions for the 2021 Plan Year if the individual is described in paragraphs (b), (c), (d), (e), or (f) in the definition of Company Auto Contribution-Eligible Individual.

"Deferral Election" means an Eligible Employee's election to defer Base Pay or Performance Pay under Sections 4.01 or 4.02.

"Deferral Period" means a period that (a) starts on January 1 and ends on the next following December 31 for Base Pay and (b) starts on April 1 and ends on the next following March 31 for Performance Pay.

"Domestic Subsidiary" means a "Domestic Subsidiary" as defined in the 401(k) Plan.

"Effective Date" means the initial effective date of the Plan, which is the date that the Company becomes an independent publicly-traded company or January 1, 2022, if earlier.

"Elective Deferrals" means deferrals of Base Pay or Performance Pay credited to the Participant's Elective Deferral Account pursuant to a Participant's election described in Sections 4.01 or 4.02.

"Eligible Employee" means, with respect to a Plan Year, an Employee who is eligible to make Elective Deferrals or to receive Company Contributions during the Plan Year pursuant to ARTICLE III.

"Employee" means an employee of the Company who is eligible to participate in the 401(k) Plan and is not a Supplemental Employee. Notwithstanding the foregoing, an individual who was an Employee and becomes a Supplemental Employee before or during a Deferral Period with respect to which the individual has a valid, irrevocable Deferral Election and without first incurring a 409A Separation from Service shall continue to be considered to be an Employee solely for purposes of the individual's eligibility during such Deferral Period to make Elective Deferrals (but not for purposes of the individual's eligibility for any Company Contribution during the period the Employee remains a Supplemental Employee). For example, an individual who becomes a Supplemental Employee is not eligible to participate in the 401(k) Plan (as in effect on the Effective Date) and is therefore not an Employee, except that if the individual has not incurred a 409A Separation from Service, the Employee's Elective Deferrals shall continue pursuant to any irrevocable Deferral Election.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Excess 401(k) Eligible Pay" means, the excess, if any, of (A) the Eligible Employee's eligible compensation under the 401(k) Plan determined without regard to the Pay Limit and amounts deferred under this Plan, over (B) the Eligible Employee's eligible compensation under the 401(k) Plan determined taking into account the Pay Limit and amounts deferred under this Plan (in each case excluding, for the avoidance of doubt, any compensation earned as a non-Employee). For purposes of calculating an Eligible Employee's Excess 401(k) Eligible Pay for 2021 Plan Year Automatic Contributions, eligible compensation shall only include compensation paid by Kyndryl on or after the Effective Date.

"Executive" means an Employee who is a banded executive as designated in the Company's records.

"IBM" means International Business Machines Corporation and any predecessor.

"IBM Excess Plan" means the IBM Excess 401(k) Plus Plan.

"Kyndryl" means Kyndryl, Inc., or any successor by merger, purchase, or otherwise.

"Matching Contribution" has the meaning provided in Section 5.02.

"Missed Matching Contribution" has the meaning provided in Section 5.04.

"Participant" means an individual who has a positive balance in an Account under the Plan.

"Pay Limit" means, for a Plan Year, the limit on compensation that may be taken into account during such Plan Year under a tax-qualified plan as determined under Code Section 401(a)(17).

"Performance Pay" means an Employee's performance pay (determined under the 401(k) Plan) paid by the Company for employment while on a U.S. payroll, determined before reduction for deferrals under the Plan or the 401(k) Plan or for amounts not included in income on account of salary reductions under Code section 125 or 132(f). For the Performance Pay Deferral Period beginning in 2021, a Transferred Employee's Performance Pay means the Employee's performance pay (determined under the 401(k) Plan) paid by the Company for employment while on a U.S. payroll or on the IBM U.S. payroll, determined before reduction for deferrals under the Plan or the 401(k) Plan or for amounts not included in income on account of salary reductions under Code section 125 or 132(f). However, Performance Pay does not include any pay during a Deferral Period that is paid after an Employee's 409A Separation from Service (except amounts paid in the pay period in which the Employee's 409A Separation from Service occurs and Rehire Pay).

"Plan" means this Kyndryl Excess Plan.

"Plan Administrator" means Kyndryl's VP, Global Benefits or such other person or committee appointed pursuant to ARTICLE VIII, which shall be responsible for reporting, recordkeeping, and related administrative requirements. If appointed as a committee, any one of the members of the committee may act individually on behalf of the committee to fulfill the committee's duties.

"Plan Year" means the calendar year.

"Rehire Pay" means Base Pay or Performance Pay, as applicable, that is payable on or after the date an Employee returns to active employment with the Company following a 409A Separation from Service or, if later, after the end of the Deferral Period in which the Employee's 409A Separation from Service occurred. For example, if an Employee incurs a 409A Separation from Service in April 2022 (whether on account of a leave in excess of six months or because of a termination of employment with Kyndryl) and returns to active employment with Kyndryl in November 2022, the Employee's Rehire Pay would include (a) Base Pay payable on or after January 1, 2023 (i.e., the beginning of the Base Pay Deferral Period after the 409A Separation from Service), and (b) Performance Pay payable on or after April 1, 2023 (i.e., the beginning of the Performance Pay Deferral Period after the 409A Separation from Service). By contrast, if instead the Employee returned to active employment on February 1, 2023, the Employee's Rehire Pay would include (a) Base Pay payable on or after on February 1, 2023, and (b) Performance Pay payable on or after April 1, 2023.

"Retirement" means termination of employment (a) with at least 30 years of service, (b) after reaching age 55 with at least 15 years of service, (c) after reaching age 62 with at least 5 years of service, or (d) after reaching age 65 with at least 1 year of service. For purposes of this definition, "year of service" means a year of "Continuous Service" as defined in the Kyndryl 401(k) Plan. Retirement does not include a transfer to an affiliate of the Company that is not participating in the Plan, or death while employed by the Company, even if the Participant satisfies (a), (b), (c) or (d) above prior to the Participant's transfer or death.

"Subsidiary" means a "Subsidiary" as defined in the 401(k) Plan.

"Supplemental Employee" means a "Supplemental 1 Employee" or a "Supplemental 2 Employee" as defined in the 401(k) Plan.

"Transferred Employee" means a "transferred employee," as defined in the 401(k) Plan, who was, as of immediately prior to the Transferred Employee's Transfer Date (as defined in the 401(k) Plan), either (i) an Eligible Employee in the IBM Excess Plan for 2021 who made a deferral election under the IBM Excess Plan for a Deferral Period beginning in the 2021 Plan Year; or (ii) an Executive who was hired by IBM on or after November 15, 2020 and prior to September 1, 2021.

ARTICLE III. ELIGIBILITY

3.01 Eligibility for Elective Deferrals.

(a) For Deferral Periods beginning in 2021, a Transferred Employee who made "elective deferrals" under the IBM Excess Plan will have such Employee's IBM Excess Plan elections carried over to the Plan and thereby have (1) Base Pay Elective Deferrals credited to the Plan for the remainder of the 2021 Deferral Period, beginning after the Company becomes an independent publicly traded company, and (2) Performance Pay Elective Deferrals credited to the Plan with respect to Performance Pay paid by Kyndryl after the date the Company becomes an independent publicly traded company.

(b) For Deferral Periods beginning in and after 2022, an Employee is eligible to make Elective Deferrals for the Deferral Period if the Employee is an Employee under the 401(k) Plan and is either (1) Actively Employed as an Executive on both November 15 and December 31 immediately prior to the start of the Deferral Period, or (2) a Transferred Employee who is Actively Employed on both November 15 and December 31 immediately prior to the start of the Deferral Period.

In addition to the Employees identified above, Kyndryl's chief human resources officer may, in such officer's sole discretion, determine that an Employee other than an executive officer shall be eligible to make Elective Deferrals for a Deferral Period even if the Employee does not otherwise satisfy the requirements set forth above. Any such determination shall be made by the December 15 immediately preceding the Deferral Period.

Notwithstanding any other provision in this Section 3.01, an individual shall be eligible to make Elective Deferrals for a Deferral Period only if the Plan Administrator notifies the Employee between August 1 and December 31 immediately preceding the Deferral Period that the Employee will be eligible to make Elective Deferrals under the Plan during the Deferral Period.

3.02 Eligibility for 2021 Automatic Contributions.

(a) *General Rule.* For the 2021 Plan Year, except as provided in subsection (b) (regarding the period following a 409A Separation from Service), an Employee shall be eligible for Automatic Contributions only if the Employee is a Company Only-2021 Contribution-Eligible Individual or a Company Auto Contribution-Eligible Individual.

(b) *Eligibility after 409A Separation from Service*. An Employee's Automatic Contributions for a Plan Year shall be calculated without regard to any Excess 401(k) Eligible Pay for any payroll period that begins after the Employee has a 409A Separation from Service and ends before the next Plan Year.

3.03 Eligibility for 2021 and 2022 Matching Contributions.

(a) *General Rule.* For the 2021 and 2022 Plan Years, except as provided in subsection (b) (regarding the period following a 409A Separation from Service), an Employee shall be eligible for Matching Contributions only if the Employee is a Company Auto Contribution-Eligible Individual.

(b) *Eligibility after 409A Separation from Service*. An Employee's Matching Contributions for a Plan Year shall be calculated without regard to any Excess 401(k) Eligible Pay for any payroll period that begins after the Employee has a 409A Separation from Service and ends before the next Plan Year.

3.04 Eligibility for Automatic Contributions After 2021.

(a) *General Rule.* For each Plan Year after 2021, except as provided in subsection (b) (regarding the period following a 409A Separation from Service), an Employee shall be eligible for Automatic Contributions for a Plan Year only if the Employee is a Company Auto Contribution-Eligible Individual. No Company 2021-Only Contribution-Eligible Individual or Company Missed Matching Contribution-Eligible Individual shall be eligible for Automatic Contributions after 2021.

(b) *Eligibility after 409A Separation from Service*. An Employee's Automatic Contributions for a Plan Year shall be calculated without regard to any Excess 401(k) Eligible Pay for any payroll period that begins after the Employee has a 409A Separation from Service and ends before the next Plan Year.

3.05 Eligibility for Missed Matching Contributions After 2021.

(a) *General Rule.* For each Plan Year after 2021, except as provided in subsection (b) (regarding the period following a 409A Separation from Service), an Employee shall be eligible for Missed Matching Contributions for a Plan Year only if the Employee is a Company Missed Matching Contribution-Eligible Individual. No Company 2021-Only Contribution-Eligible Individual or Company Auto Contribution-Eligible Individual shall be eligible for Missed Matching Contributions.

(b) *Eligibility after 409A Separation from Service*. An Employee's Missed Matching Contributions for a Plan Year shall be calculated without regard to any Excess 401(k) Eligible Pay for any payroll period that begins after the Employee has a 409A Separation from Service and ends before the next Plan Year.

ARTICLE IV. ELECTIVE DEFERRALS

4.01 Elective Deferrals for Deferral Periods Beginning in 2021. An Eligible Employee's Deferral Election with respect to Base Pay and Performance Pay earned during Deferral Periods beginning in 2021 (to the extent such Pay had not previously been deferred and credited to the IBM Excess Plan) will be determined based on the Eligible Employee's deferral election as in effect under the IBM Excess Plan immediately prior to the Effective Date of this Plan. Deferrals described in the preceding sentence that were not previously credited to the IBM Excess Plan shall be credited to the Employee's Elective Deferral Account in this Plan on the date on which such amount would otherwise be paid to the Eligible Employee absent a Deferral Election.

4.02 Elective Deferrals for Deferral Periods Beginning in and After 2022. Elective Deferrals made pursuant to an Eligible Employee's Deferral Election for Deferral Periods beginning in 2022 and thereafter, as described below, shall be credited to the Employee's Elective Deferral Account on the date on which the amount would otherwise be paid to the Eligible Employee absent a Deferral Election.

(a) *Amount of Elective Deferrals*.

(1) Amount of Base Pay Deferrals. An Employee who, pursuant to Section 3.01, is eligible to make Elective Deferrals under the Plan for a Deferral Period with respect to Base Pay may elect to defer Base Pay from 1% to 80%, in 1% increments, of the Eligible Employee's Base Pay, if any, for each payroll period that ends during the Deferral Period. An Employee's elective deferral of Base Pay pursuant to this paragraph (1) is subject to any restriction imposed by the Plan Administrator to ensure sufficient pay remains for other deductions and withholding, which limitations shall be imposed prior to the date on which the election becomes irrevocable.

(2) Amount of Performance Pay Deferrals. An Employee who, pursuant to Section 3.01, may elect to make Elective Deferrals under the Plan for a Deferral Period with respect to Performance Pay may elect to make Deferrals from 1% to 80%, in 1% increments, of the Eligible Employee's Performance Pay, if any, paid during the Deferral Period.

(b) *Timing of Deferral Elections.* An Eligible Employee's Deferral Elections under subsection (a), above, shall be made as follows:

(1) Election Period. The election must be made while the individual is an Employee and Actively Employed, in the form and manner prescribed by the Plan Administrator, and during the time period prescribed by the Plan Administrator, which shall begin no earlier than the September 1 and end no later than the December 31 of the Plan Year immediately preceding the first day of the Deferral Period to which the election applies.

(2) Irrevocability. The election must become irrevocable on the December 31st immediately preceding the Plan Year during which the applicable Deferral Period begins. Once a Deferral Election becomes irrevocable, an Eligible Employee's Deferral Election shall apply for the entire Deferral Period to which it relates and shall cease to apply after such Deferral Period except to the extent that the individual makes a new Deferral Election in accordance with this Section for subsequent Deferral Periods.

ARTICLE V. COMPANY CONTRIBUTIONS

5.01 Automatic Contributions With Respect to 2021. For the short Plan Year beginning on the Effective Date and ending on December 31, 2021, Automatic Contributions shall be credited to the Company Account for each Employee who is eligible for Automatic Contributions for 2021 under Section 3.02. The amount of such Automatic Contributions, if any, shall be the amount of "automatic contributions" that would have been credited to the Employee under the IBM Excess Plan, if the Employee's Excess 401(k) Eligible Pay for 2021 had been treated as eligible pay for 2021 under the IBM Excess Plan, but reduced by the amount of "automatic contributions" actually made to the IBM Excess Plan for 2021.

5.02 Matching Contributions for Transferred Employees With Respect to Deferral Periods Beginning in 2021. With respect to Elective Deferrals described in Section 4.01, Matching Contributions shall be credited to the Company Account for each Transferred Employee who is a Company Auto Contribution-Eligible Individual for the applicable Plan Year, as follows:

(a) The amount of such Matching Contributions, if any, for the 2021 Plan Year shall be (1) the amount of "matching contributions" that would have been credited to the Employee under the IBM Excess Plan, assuming that the Employee's Elective Deferrals for the 2021 Plan Year that were made to the Plan had been made to the IBM Excess Plan and the Employee's Excess 401(k) Eligible Pay were considered eligible pay under the IBM Excess Plan, reduced by (2) the "matching contributions" actually made to the IBM Excess Plan for the 2021 Plan Year.

(b) The amount of such Matching Contributions, if any, for the 2022 Plan Year shall be the amount of "matching contributions" that would have been credited to the Employee under the IBM Excess Plan for the 2022 Plan Year with respect to Elective Deferrals of Performance Pay for the Deferral Period beginning in 2021, assuming that such deferrals had been made to the IBM Excess Plan and were considered eligible pay under the IBM Excess Plan.

5.03 Automatic Contributions After 2021. For each Plan Year beginning on and after January 1, 2022, an Automatic Contribution shall be credited to the Company Account for each Employee who is eligible for Automatic Contributions for the Plan Year under Section 3.04. The amount of such Automatic Contributions shall be 6% of the Employee's Excess 401(k) Eligible Pay, if any, for the Plan Year; provided, however, that for the 2022 Plan Year, Automatic Contributions on account of Elective Deferrals of Performance Pay for the Deferral period beginning in 2021 shall be based on the "automatic contributions" that would have been credited under the IBM Excess Plan, assuming that such deferrals had been made to the IBM Excess Plan and were considered eligible pay under the IBM Excess Plan, and such Elective Deferrals shall reduce the Employee's otherwise applicable Excess 401(k) Eligible Pay.

5.04 Missed Matching Contributions After 2021. For each Plan Year beginning on and after January 1, 2022, a Missed Matching Contribution shall be credited to the Company Account for each Employee who is eligible for Missed Matching Contributions for the Plan Year under Section 3.05. The amount of such Missed Matching Contribution shall be 3% of such portion of the Employee's Elective Deferrals that, when added to the Eligible Employee's eligible compensation under the 401(k) Plan, does not exceed the Pay Limit. In no case, will the sum of an individual's Missed Matching Contributions under this Plan and matching contributions under the 401(k) Plan exceed 3% multiplied by the lesser of (a) the Employee's eligible compensation under the 401(k) Plan plus Elective Deferrals under this Plan or (b) the Pay Limit.

ARTICLE VI. VESTING, DEEMED INVESTMENT OF ACCOUNTS

6.01 Individual Accounts. For record-keeping purposes only, the Plan Administrator shall maintain, or cause to be maintained, records showing the individual balances of each Account maintained for a Participant from time to time under the Plan. Periodically, each Participant shall be furnished with a statement setting forth the value of the Participant's Accounts under the Plan.

6.02 Vesting of Accounts. A Participant shall be fully vested in all Accounts maintained for the Participant under the Plan.

6.03 Deemed Investment of Accounts. A Participant's Accounts under the Plan shall be adjusted for deemed earnings, gains, or losses determined in accordance with the following:

(a) *Deemed Investment Options Available*.

(1) General Rule. A Participant's Account shall be treated as if the Participant had invested such accounts in certain 401(k) Plan investment funds in accordance with and subject to subsection (b), below.

(b) *Elections for Deemed Investment Options.*

(1) Initial Election For Future Credits. A Participant shall designate, in such form and at such time in advance as may be prescribed by the Plan Administrator, the proportions (in multiples of 1%) in which Elective Deferrals and Company Contributions credited to the Participant's Plan Accounts shall be treated as if they had been allocated among any or all of the investment funds that are available under the 401(k) Plan (to the extent such funds are also made available under the Plan) at the time such amounts are credited. If the Participant makes no such designation, the Participant shall be deemed to have designated the default investment fund under the 401(k) Plan.

(2) Change in Election for Future Credits. A Participant may elect, in such form and at such time in advance as may be prescribed by the Plan Administrator, to change the Participant's investment elections for future Elective Deferrals and Company Contributions credited to the Participant's Plan Accounts. Any restrictions on investment election changes that apply under the 401(k) Plan shall also apply under the Plan.

(3) Transfers Among Deemed Investment Options. A Participant may elect, in such form and at such time in advance as may be prescribed by the Plan Administrator, to transfer balances in the Participant's Plan Accounts among the available investment funds, provided that:

i. Transfers must be made in multiples of 1%, provided that the minimum amount transferred shall be $250 if that is greater than 1% (provided, however, that the Plan Administrator may specify a different percentage and/or a different dollar amount to be applied in this paragraph);

ii. Any restrictions on transfers into or out of investment funds that apply under the 401(k) Plan shall also apply under the Plan; and

iii. Plan Administrator may impose such additional rules and limits upon transfers between investment funds as the Plan Administrator may deem necessary or appropriate.

(c) *Administrative Fee*. Each calendar quarter, an administrative fee shall be deducted pro rata from each Participant's Accounts. The amount of the fee shall be determined by the Plan Administrator and, as of the Effective Date is $10 each quarter.

ARTICLE VII. PAYMENT OF ACCOUNTS

7.01 Payment of Accounts Upon Death. If a Participant dies before the Participant's Accounts have been distributed in full, the value of the Participant's Accounts shall be paid in a lump sum to the Participant's Beneficiary on the date that is 30 days after the date of the Participant's death (or, if that date is not a business day, the first business day thereafter). However, the Plan Administrator may make payment on any other day to the extent that such payment is treated as being paid on the date specified in the previous sentence under applicable Treasury Regulations, which permit payment to be made within thirty days before the specified date and later within the same calendar year, or by December 31 of the first calendar year following the calendar year during which the death occurs. For purposes of determining the amount payable to the Beneficiary, the Participant's Accounts will be valued as of the date the payment is processed.

7.02 Form of Payment for Accounts Paid Upon a 409A Separation from Service. A Participant may elect, at the time and in the manner described in Section 7.03, below, to have the value of the Participant's Accounts paid under one of the following options, subject to the limits in Section 7.04, below (regarding delays for 409A Key Employees):

(a) A lump sum payment as of the first business day that is at least 30 days after the Participant's 409A Separation from Service;

(b) A lump sum payment as of the last business day in January of the calendar year immediately following the calendar year in which the Participant's 409A Separation from Service occurs; or

(c) From two to 10 annual installments (as elected by the Participant), each paid as of the last business day in January beginning with the January immediately following the calendar year in which the Participant's 409A Separation from Service occurs, until the elected number of installments have been paid, subject to Section 7.04(c) (involuntary cash-outs). This installment option is treated as the entitlement to a single payment for purposes of Treasury Regulation section 1.409A-2(b)(2)(iii).

However, the Plan Administrator may make payment on any other day to the extent that such payment is treated as being paid on the date specified above under Treasury Regulation section 1.409A-3(d), which permits payment to be made within thirty days before the specified date and later within the same calendar year, or, if later, within 2-1/2 months following the specified date, provided that the Participant is not permitted to designate the taxable year of payment.

Notwithstanding any other provision of this Section 7.02, the portion of a Transferred Employee's Accounts attributable to Deferral Periods beginning in 2021 (carried over from the IBM Excess Plan) including Automatic Contributions for Elective Deferrals of Performance Pay with respect to Deferral Periods beginning before 2022 shall be payable in the form of payment elected by the Transferred Employee for such deferrals under the IBM Excess Plan, as reflected in such IBM Excess Plan records as of immediately prior to the Effective Date (including, for this purpose, any subsequent election changes made pursuant to section 9.03(c) of the IBM Excess Plan, but only if such subsequent election was made prior to the Effective Date and becomes effective under the IBM Excess Plan).

7.03 Electing and Changing Payment Options.

(a) *Election of Payment Option.* A Participant shall elect a payment option for the Participant's Accounts in the form and manner prescribed by the Plan Administrator and during whichever of the following election periods applies to the Participant:

(1) An individual who is eligible to make Elective Deferrals for Deferral Periods beginning in 2022 may, during the annual enrollment period prescribed by the Plan Administrator in 2021, elect the payment option that will apply to the portion of such Employee's Accounts under the Plan attributable to (A) Elective Deferrals for Deferral Periods beginning in 2022 and thereafter and (B) Automatic Contributions for Excess 401(k) Eligible Pay earned in Deferral Periods beginning in and after 2022, whether or not the individual also elects to make Elective Deferrals during the enrollment period in 2021.

(2) An individual who is first eligible to make Elective Deferrals in a Plan Year subsequent to 2022, may, during the annual enrollment period prescribed by the Plan Administrator that immediately precedes such Plan Year, elect the payment option that will apply to such individual's Accounts under the Plan, whether or not the individual also elects to make Elective Deferrals during such enrollment period. Notwithstanding any other provision of this Section 7.03, a Transferred Employee's payment option election made pursuant to the terms of the IBM Excess Plan for a Deferral Period beginning in 2021 shall be treated as an election under this Plan for purposes of this Section 7.03(a) and shall apply with respect to the portion of such Employee's Accounts attributable to Deferral Periods beginning in 2021 including Automatic Contributions for Elective Deferrals of Performance Pay with respect to Deferral Periods beginning before 2022.

(3) To the extent permitted by the Plan Administrator and consistent with Treas. Reg. § 1.409A-2(a)(7)(iii), an Eligible Employee may make a payment option election no later than January 31, 2022 with respect to Automatic Contributions such Employee earns for 2021 if such Employee does not have a payment option election made pursuant to the terms of the IBM Excess Plan as of immediately prior to the Effective Date.

(b) *Irrevocability and Default Payment Option*. If a Participant does not make an election under paragraph (a), the Participant's initial payment election shall be the payment option described in Section 7.02(a) (immediate lump sum), above. A Participant's initial payment election (including the default option described in the previous sentence) becomes irrevocable, and can be changed only in accordance with subsection (c), below.

(c) *Changing Payment Options*. A Participant may elect, in the form and manner prescribed by the Plan Administrator, to change the Participant's payment option determined under this Section 7.03, provided that:

(1) The Participant must make such election at least 12 months before the date of his 409A Separation from Service;

(2) The payment date for any lump sum or the start date for any series of installments provided for under the new payment option shall be the fifth anniversary of the payment date or start date that would have applied absent a change in payment option; and

(3) Such election change shall not apply or be available with respect to the portion of a Transferred Employee's Accounts attributable to Deferral Periods beginning in 2021 including Automatic Contributions for Elective Deferrals of Performance Pay with respect to Deferral Periods beginning before 2022.

7.04 Payment Upon a 409A Separation from Service. The value of a Participant's Accounts shall be paid to the Participant upon the Participant's 409A Separation from Service in the form and at the time provided in Sections 7.02 and 7.03, above, subject to the following:

(a) *Delay for 409A Key Employees*. If the Participant is a 409A Key Employee on the date of the Participant's 409A Separation from Service, the payment date for any lump sum or the start date for any series of installments provided for under the applicable payment option shall be the later of (I) the first business day that is six months after the date of the Participant's 409A Separation from Service, or (II) the otherwise applicable payment date or start date, subject to subsection (b) (death). If the start date of a series of installments occurs other than as of the last business day in January due to application of this paragraph, installments after the first installment shall be paid as of the last business day in January of each subsequent year, as scheduled without regard to the delay described in this subsection (a).

(b) *Death of Participant After 409A Separation from Service*. If the death of a Participant (including a 409A Key Employee described in subsection (a), above) occurs before the payment date for any lump sum or installment provided for under the applicable payment option, payment shall be made to the Participant's Beneficiary as provided in Section 7.01.

(c) *Involuntary Cash-Out*. If (i) the applicable payment option is the installment option described in subsection 7.02(c), above, and (ii) the aggregate value of all of the Participant's Accounts under the Plan determined as of the date of the Participant's 409A Separation from Service is less than 50% of the Pay Limit in effect for the calendar year in which the Participant's 409A Separation from Service occurs, the value of the Participant's Accounts shall be distributed in a lump sum on the start date that would otherwise have applied for the elected installments, taking into account any applicable delay for a 409A Key Employee described in subsection (a), above.

7.05 Valuation of Accounts. For purposes of determining the amount of any payment of the Participant's Accounts, the Participant's Accounts will be valued as of the date the payment is processed, except that if payment is required under the terms of the Plan to be made as of the last business day in January of a Plan Year (for example, pursuant to Section 7.02(b)), the Participant's Accounts with respect to such payment shall be valued as of such last business day in January. For purposes of determining the amount of any annual installment payment of the Participant's Accounts, the value of the Participant's Accounts on the valuation date shall be divided by the remaining number of installments. No adjustment shall be made to the amount of any lump sum or installment after the valuation date.

7.06 Effect of Rehire on Payments. If a Participant becomes eligible for a payment of benefits on account of a 409A Separation from Service and is rehired as an Employee before the Participant's Accounts have been distributed in full, payments shall be made as if the Participant had not been rehired. If the Participant again becomes eligible to make Elective Deferrals or receive Company Contributions following the Participant's rehire, the Plan Administrator shall arrange separate accounting for Elective Deferrals and Company Contributions (and related earnings, gains, or losses) credited to the Participant's Accounts following the Participant's rehire, and the Participant's opportunity to make an initial distribution election under subsection 7.03(a) shall be determined without regard to the benefits earned under the Plan prior to the Participant's rehire.

ARTICLE VIII. ADMINISTRATION

8.01 Amendment or Termination. This Plan may be amended from time to time for any purpose permitted by law or terminated at any time by written resolution of the Board. Notwithstanding the preceding sentence, the Plan may be amended by Kyndryl's chief human resources officer to the extent that such amendment is not materially inconsistent with a prior action of the Board, does not materially increase the Company's cost of maintaining the Plan, or is required or advisable to comply with applicable law, each as determined by Kyndryl's chief human resources officer in their sole discretion. The authority to amend or terminate the Plan shall include the authority to amend the procedure for amending or terminating the Plan and the authority to amend or terminate any related instrument or agreement.

8.02 Responsibilities.

(a) The following persons and groups of persons shall severally have the authority to control and manage the operation and administration of the Plan as herein delineated:

(1) the Board,

(2) Kyndryl's chief human resources officer, and

(3) the Plan Administrator and each person on any committee serving as the Plan Administrator.

Each person or group of persons shall be responsible for discharging only the duties assigned to it by the terms of the Plan.

(b) The Board shall be responsible only for approval of a resolution in accordance with Section 8.01 to amend or terminate the Plan.

(c) Kyndryl's chief human resources officer may, pursuant to a duly adopted resolution, delegate to any officer or employee of the Company, or a committee thereof, authority to carry out any decision, directive, or resolution of Kyndryl's chief human resources officer. Kyndryl's chief human resources officer may appoint one or more employees of the Company to serve as Plan Administrator or as a committee to fulfill the function of Plan Administrator. Kyndryl's VP, Global Benefits shall serve as the Plan Administrator if no such appointment is made by Kyndryl's chief human resources officer.

(d) In the sole discretion of the Plan Administrator, the Plan Administrator shall have the full power and authority to:

(1) promulgate and enforce such rules and regulations as shall be deemed to be necessary or appropriate for the administration of the Plan;

(2) adopt any amendments to the Plan that are required by law;

(3) interpret the Plan consistent with the terms and intent thereof; and

(4) resolve any possible ambiguities, inconsistencies, and omissions.

All such determinations and interpretations shall be in accordance with the terms and intent of the Plan, and the Plan Administrator shall report such actions to Kyndryl's chief human resources officer on a regular basis.

(e) Kyndryl's chief human resources officer and the Plan Administrator may engage the services of accountants, attorneys, actuaries, investment consultants, and such other professional personnel as are deemed necessary or advisable to assist them in fulfilling their responsibilities under the Plan. Kyndryl's chief human resources officer, the Plan Administrator, and their delegates and assistants will be entitled to act on the basis of all tables, valuations, certificates, opinions, and reports furnished by such professional personnel.

ARTICLE IX. GENERAL PROVISIONS

9.01 Funding.

(a) All amounts payable in accordance with this Plan shall constitute a general unsecured obligation of the Company. Such amounts, as well as any administrative costs relating to the Plan, shall be paid out of the general assets of the Company. In the sole discretion of Kyndryl's chief human resources officer, a Participant's accounts under the Plan may be reduced to reflect allocable administrative expenses.

(b) The Company, Kyndryl's chief human resources officer, and the Plan Administrator do not guarantee the investment alternatives available under the Plan in any manner against loss or depreciation.

9.02 No Contract of Employment. Nothing herein contained shall be deemed to give any employee the right to be retained in the service of the Company or an affiliate or to interfere with the right of the Company or an affiliate to discharge any employee at any time without regard to the effect that such discharge may have upon the employee under the Plan. Nothing appearing in or done pursuant to the Plan shall be held or construed to create a contract of employment with the Company, to obligate the Company to continue the services of any employee, or to affect or modify any employee's terms of employment in any way or to give any person any legal or equitable right or interest in the Plan or any part thereof or distribution therefrom or against the Company except as expressly provided herein.

9.03 Facility of Payment. In the event the Plan Administrator determines that any Participant or Beneficiary receiving or entitled to receive benefits under the Plan is incompetent to care for such individual's affairs and in the absence of the appointment of a legal guardian of the property of the incompetent, benefit payments due under the Plan (unless prior claim thereto has been made by a duly qualified guardian, committee, or other legal representative) may be made to the spouse, parent, brother or sister, or other person, including a hospital or other institution, deemed by the Plan Administrator to have incurred or to be liable for expenses on behalf of such incompetent. In the absence of the appointment of a legal guardian of the property of a minor, any minor's share of benefits payable under the Plan may be paid to such adult or adults as in the opinion of the Plan Administrator have assumed the custody and principal support of such minor. The Plan Administrator, however, in its sole discretion, may require that a legal guardian for the property of such incompetent or minor be appointed before authorizing the payment of benefits in such situation. Benefit payments made under the Plan in accordance with determinations of the Plan Administrator pursuant to this Section 9.03 shall be a complete discharge of any obligation arising under the Plan with respect to such benefit payments.

9.04 Withholding Taxes. The Plan Administrator shall have the right to withhold all applicable taxes or other payments from benefits hereunder and to report information to government agencies when required to do so by law.

9.05 Nonalienation. No benefits payable under the Plan shall be subject to alienation, sale, transfer, assignment, pledge, attachment, garnishment, lien, levy, or like encumbrance. No benefit under the Plan shall in any manner be liable for or subject to the debts or liabilities of any person entitled to benefits under the Plan. On and after the Effective Date, compliance with any domestic relations order relating to a Participant's Account that the Plan Administrator determines must be complied with under applicable law shall not be considered a violation of this provision; provided, however, that an administrative fee determined by the Plan Administrator shall be deducted from any Participant's Account that is subject to a domestic relations order.

9.06 Administration. All decisions, determinations, or interpretations the Board, Kyndryl's chief human resources officer, the Plan Administrator, the Company, or any member, officer or employee thereof are authorized to make under the Plan (including the delegation of any authority hereunder to another party) shall be made in that party's sole discretion and shall be final, binding, and conclusive on all interested persons.

9.07 Construction. All rights hereunder shall be governed by and construed in accordance with federal law and, to the extent not preempted by federal law, the laws of the State of New York without regarding to the choice of law rules of any jurisdiction.

ARTICLE X. CLAIMS PROCEDURE

If a Participant or Beneficiary believes they are entitled to have received benefits but have not received such benefits, the Participant or Beneficiary must accept any payment made under the Plan and make prompt and reasonable, good faith efforts to collect the remaining portion of the payment, as determined under Treas. Reg. § 1.409A-3(g). For this purpose (and as determined under such regulation), efforts to collect the payment will be presumed not to be prompt, reasonable, good faith efforts, unless the Participant or Beneficiary provides notice to the Plan Administrator within 90 days of the latest date upon which the payment could have been timely made in accordance with the terms of the Plan and the regulations under Code Section 409A, and unless, if not paid, the Participant or Beneficiary takes further enforcement measures within 180 days after such latest date. In addition, a Participant or Beneficiary must exhaust any other claims procedures established by the Plan Administrator before initiating litigation.

Any limitations periods for filing claims in court that apply under the 401(k) Plan shall also apply under this Plan. This incorporation by reference is not intended to broaden the scope of the claims that are available under this Plan. For example, certain claims that may be pursued under the 401(k) Plan in certain circumstances (such as claims for breach of fiduciary duty) may not be pursued under this Plan.

Any action in court in connection with the Plan by, or on behalf of, any participant or beneficiary must be brought in the federal courts in New York, New York County. By participating in the Plan, participants consent to jurisdiction and venue in courts in New York, New York County to resolve any issues that may arise out of the Plan.

Exhibit 99.1

Kyndryl Completes Separation from IBM

Begins Trading on NYSE as World's Largest Independent IT Infrastructure Services Provider

NEW YORK, Nov. 4, 2021 -- Kyndryl today announced that it has completed its previously announced spin-off from IBM (NYSE: IBM) and began trading as an independent company on the New York Stock Exchange under the ticker "KD". Kyndryl celebrated becoming an independent, publicly-traded company by ringing the Opening Bell at the Exchange.

"We are thrilled that Kyndryl is today an independent company -- with 90,000 of the best and brightest professionals, a strong balance sheet and a path to growth," said Martin Schroeter, Kyndryl's chairman and chief executive officer. "There is a large and growing need for digital transformation services, and our unrivaled global expertise in creating, managing and modernizing mission-critical information systems positions us well in a market that will expand to more than $500 billion by 2024. We look forward to the path ahead, with a flatter and faster company that is at the heart of progress for our customers and for the world."

Kyndryl launches as the world's largest IT infrastructure provider, with a differentiated approach that integrates development, security and operations. Kyndryl's 90,000 professionals worldwide deliver world-class advisory, implementation and managed services to more than 4,000 global customers, including 75% of the Fortune 100 and leading financial services, telecommunications, retail, airline and automotive companies.

Kyndryl begins its independent life with a solid financial position, with $19 billion in annual revenue, investment-grade credit ratings and long-standing customer relationships that drive annuity-like revenue streams. Kyndryl is led by an experienced management team and a Board of Directors comprised of 10 leaders who bring diverse perspectives and experiences spanning technology, financial services, government affairs, and academia.

Kyndryl shares were distributed on the evening of November 3 to shareholders of IBM, who received one Kyndryl share for every five IBM shares owned. IBM has temporarily retained 19.9 percent equity ownership of Kyndryl following this distribution.

Kyndryl (NYSE: KD) designs, builds, manages and modernizes the complex, mission-critical information systems that the world depends on every day. Kyndryl's nearly 90,000 employees serve customers in more than 60 countries around the world. For more information, visit www.kyndryl.com.

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