ARTICLE VII
INDEMNIFICATION

Section 7.1 Survival. Except for the Fundamental Representations, all representations and warranties contained in this Agreement shall survive the Closing until the first anniversary of the Closing Date (the "**Expiration Date**"), and as of and following the Expiration Date will terminate and be of no further force and effect and no Party will have any liability with respect thereto from and after the Expiration Date. The Fundamental Representations (other than the representations and warranties set forth in Section 3.14 (Tax Matters)) shall survive until the date that is six (6) years following the Closing Date, and the representations and warranties set forth in Section 3.14 (Tax Matters) shall survive until the date that is sixty (60) days following the expiration of the statute of limitations applicable thereto. [The foregoing is not intended to limit the survival periods contained in the RWI Policy.][1]

Section 7.2 Indemnification by Seller.[2] Subject to the limitations and other terms and conditions set forth in this Article VII, from and after the Closing Date, Seller shall indemnify and hold harmless Buyer, the Company, their respective Affiliates, and their respective current and former directors, managers, equityholders, officers, employees, agents, successors and assigns (collectively, the "**Buyer Indemnified Parties**"), from and against any and all Losses asserted against, suffered by, imposed upon, or incurred by such Buyer Indemnified Party arising out of, in connection with, relating to or resulting from:

(a) any breach or inaccuracy of any representation or warranty contained in Article III;

(b) Pre-Closing Taxes;

(c) any Excluded Asset or any Excluded Liability; and

(d) any Third-Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller or any of its Affiliates (other than the Purchased Assets or Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date.

Section 7.3 Limitations on Indemnification. Notwithstanding anything to the contrary in this Article VII:

(a) The Buyer Indemnified Parties shall not be entitled to indemnification under Section 7.2(a) unless and until the Buyer Indemnified Parties have suffered or incurred aggregate Losses indemnifiable under Section 7.2(a) in an amount in excess of the Deductible,[3] and then the Buyer Indemnified Parties shall be entitled to indemnification under Section 7.2(a) only with respect to Losses in excess of the Deductible; provided, that, notwithstanding the foregoing, the Deductible shall not apply to Losses resulting from, arising out of or in connection with any breach or inaccuracy of a Fundamental Representation or Fraud.[4] [ALTERNATIVE: With respect to claims for Losses under Section 7.2(a) for breaches of one or more of the Fundamental Representations and claims for Losses under Section 7.2(b) for Pre-Closing Taxes: (i) first, the Buyer Indemnified Parties shall be entitled to recover any such Losses from the Indemnity Escrow Amount; (ii) second, the Buyer Indemnified Parties shall look to recover the balance of any such Losses solely from the RWI Policy until the coverage limits thereunder have been

[1] ***Note***: The bracketed language would be used in the context of a deal with RWI and a Seller indemnity.
[2] ***Note***: This indemnification provision is simplified and omits consideration of indemnification for breach of Seller covenants as well as any concept of an escrow for indemnification liabilities. Concepts related to indemnification procedures and mechanics for addressing Third-Party Claims are also omitted for the sake of brevity.
[3] ***Note:*** Buyer will not want to accept a Deductible amount that is greater than the RWI policy retention.
[4] ***Note***: There will be a mismatch between this provision and the RWI policy where the buyer has negotiated a NBIL with a nil retention for Fundamental Representations and/or Tax.

exhausted; and (iii) third, to the extent the Buyer Indemnified Parties have not recovered all such Losses pursuant to the foregoing clauses (i) and (ii), the Buyer Indemnified Parties shall, subject to the other limitations herein, be entitled to recover any remaining such Damages from Seller.][5]

(b) [If and solely to the extent the Buyer Indemnified Parties are prohibited from recovering Losses under Section 7.2(a) for breaches or inaccuracies of Fundamental Representations or under Section 7.2(b), in each case solely due to the exhaustion of policy limits under the RWI Policy as a result of prior recovery of Losses (such prohibited Losses, "**Excess Special Losses**"), the Buyer Indemnified Parties may recover Excess Special Losses from Seller under Section 7.2(a) or Section 7.2(b). / Notwithstanding anything expressed or implied herein to the contrary, the Escrow Amount shall be the sole and exclusive source for the satisfaction of any Losses indemnifiable under and pursuant to Section 7.2, and once such funds have been exhausted and/or released, (i) Seller shall not have any direct or indirect liability with respect to, or any obligation to satisfy, any claim by any Buyer Indemnified Party under Section 7.2 and (ii) the sole and exclusive remedy of the Buyer Indemnified Parties in respect of any such Losses shall be limited to the RWI Policy. Seller shall not have any direct or indirect liability of any kind or nature with respect to the RWI Policy or any claim thereunder.][6]

(c) Any liability for indemnification hereunder shall be determined without duplication of recovery by reason of the state of facts giving rise to such liability, or a breach of more than one representation, warranty, covenant or agreement, with the Parties' intent being that there shall not be any double recovery of Losses hereunder.

(d) The Buyer Indemnified Parties shall not be entitled to any indemnification for any Losses under this Article VII to the extent such Losses were specifically included or otherwise taken into account in the calculation of the Estimated Closing Date Payment or the Closing Date Payment (as determined under Section 2.2), including any calculation of Indebtedness, Company Transaction Expenses, Closing Cash or Closing Net Working Capital.[7]

Section 7.4 Other Indemnification Provisions.

(a) The right to indemnification or any other remedy based on representations, warranties, covenants and agreements in this Agreement or any Transaction Document shall not be affected by any investigation conducted at any time, or any knowledge acquired (or capable of being acquired) at any time, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or agreement.[8]

(b) The amount of any and all Losses with respect to a claim subject to indemnification under this Agreement shall be determined net of any amounts actually recovered (after deducting therefrom the amount of the reasonable and documented out-of-pocket expenses and costs incurred by the Buyer Indemnified Party in procuring such recovery, any Taxes imposed thereon, any increased costs of insurance,

[5] ***Note***: Seller will want to set up an order of recovery that addresses below retention Losses, often via an escrow, and then Losses covered by the RWI policy, and will not want to accept the excess coverage concept provided in Section 7.3(b) below.

[6] ***Note***: The bracketed language would be used to provide for Buyer recovery above RWI policy limits. While occasionally present in a deal with RWI and a Seller indemnity, this is a highly negotiated term. Seller's counsel, even in a deal that isn't "clean walkaway," could argue against stepping back in as a source of recovery above the RWI policy limit, and push for the alternative language provided here to make that clear.

[7] ***Note***: Most RWI policies will exclude, for the purposes of avoiding double-counting, Losses that would otherwise be addressed by a purchase price adjustment mechanism.

[8] ***Note***: Most RWI policies will operate in conflict with this provision, as anything known by the Buyer deal team will be deemed excluded from coverage via the "Actual Knowledge" exclusion.

retroactive or prospective premium adjustments, chargebacks related to such insurance claim and any loss or reduction in coverage as a result of such insurance claim), by the Buyer Indemnified Parties, under insurance policies and/or any indemnity, contribution or other similar agreements in favor of such Buyer Indemnified Party. For the avoidance of doubt, no such amounts will be netted pursuant to this Section 7.4(b) against the amount of a Loss with respect to a claim subject to indemnification hereunder unless and until such amounts are actually recovered by a Buyer Indemnified Party (*i.e.*, the full amount of the Loss will be payable under this Agreement (subject to the other applicable limitations herein) unless such amounts were actually recovered from the third-party insurers or indemnitors at or prior to the time such Loss is payable hereunder), and the determination of the amount of any Loss payable hereunder shall not include a reduction for any such amounts anticipated to be recovered at the time such Loss is payable to the Buyer Indemnified Party hereunder. If the amount to be netted pursuant to this Section 7.4(b) from any payment required pursuant to the indemnification provision under this Agreement is recovered only after such payment is made by the Seller, the Buyer Indemnified Parties shall promptly repay the Seller the amount so recovered with respect to such matter (after deducting therefrom the amount of the reasonable and documented out-of-pocket expenses and costs incurred by the Buyer Indemnified Parties in procuring such recovery, any Taxes imposed thereon, any increased costs of insurance, retroactive or prospective premium adjustments, chargebacks related to any such insurance claim and any loss or reduction in coverage as a result of such insurance claim, but only to the extent that such increased costs of insurance, premium adjustments, chargebacks and/or losses and/or reductions in coverage are directly attributable to such recovery and are borne or become payable (as applicable) prior to the second anniversary of such claim), but not in excess of the amount previously indemnified by the Seller in respect of such matter.

(c) Notwithstanding anything contained herein to the contrary, for purposes of determining whether there has been a breach of a representation or warranty and the amount of any Losses with respect to any representation or warranty that are the subject matter of a claim for indemnification or reimbursement hereunder, each representation and warranty in this Agreement shall be read without regard and without giving effect to any reference or qualification to a set of facts using the term "material," "in all material respects," "material adverse effect" or any similar phrase contained in such representation or warranty which has the effect of making such representation and warranty less likely to be breached (as if such word or words were deleted from such representation and warranty), and the amount of the Losses shall be the entire Losses arising by reason of the breach of such representation or warranty and not merely the amount of such Losses in excess of the minimum amount that would result in such representation or warranty being breached.[9]

(d) [Notwithstanding anything expressed or implied in this Agreement to the contrary, nothing in this Article VII (or any other provision of this Agreement) shall: (a) modify the terms of the RWI Policy, and if the terms of the RWI Policy and this Article VII (or any other provision of this Agreement) conflict in any manner, the terms of the RWI Policy shall govern as between Buyer (and the Buyer Indemnified Parties), on the one hand, and the insurer(s) under the RWI Policy, on the other hand; or (b) prevent or limit in any manner whatsoever any Buyer Indemnified Party from seeking recovery, or recovering, under the RWI Policy.][10]

(e) [The denial of any claim by any Buyer Indemnified Parties under the RWI Policy shall not be construed as, or used as evidence that, such Buyer Indemnified Party is not entitled to indemnification under this Article VII. Nothing in this Article VII shall limit a Party's right to seek and obtain equitable relief to which such Party shall be entitled hereunder or a Party's right to seek claims for Fraud. In connection with Buyer entering into the RWI Policy, the Buyer Indemnified Parties may make

[9] ***Note***: The RWI policy will almost always follow the materiality scrape.

[10] ***Note***: Buyer will want some form of this language in deals where the purchase agreement acknowledges the existence of the RWI policy.

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