

**HORIZON NORTH LOGISTICS INC.**

– and –

**9477179 CANADA INC.**

– and –

**EACH ADDITIONAL AFFILIATE OF 9477179 CANADA INC. WHO BECOMES,  
FROM TIME TO TIME, A HOLDER OF COMMON SHARES**

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**INVESTOR RIGHTS AGREEMENT**

**Made as of May 29, 2020**

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REGISTRATION RIGHTS PROCEDURES ..... 1

**THIS INVESTOR RIGHTS AGREEMENT** is made as of the 29<sup>th</sup> day of May, 2020.

**BETWEEN:**

**HORIZON NORTH LOGISTICS INC.**, a corporation existing under the laws of Alberta

(the “**Company**”)

- and -

**9477179 CANADA INC.**, a corporation incorporated under the laws of Canada

(“**9477179**”)

- and -

**EACH ADDITIONAL AFFILIATE OF 94771779 WHO BECOMES, FROM TIME TO TIME, A HOLDER OF COMMON SHARES**

(collectively with 94771779, the “**Shareholders**”, and “**Shareholder**” means any one of them)

**WHEREAS** pursuant to the Articles of Amalgamation of the Company dated as of July 1, 2007, as they may be amended from time to time, the Company is authorized to issue common shares (each, a “**Share**” and, collectively, the “**Shares**”);

**AND WHEREAS** the parties hereto wish to provide the Shareholders with (a) demand and piggy-back registration rights with respect to public offerings of Shares, (b) pre-emptive rights enabling the Shareholders to participate in issuances of certain securities by the Company and (c) nomination rights in respect of the board of directors of the Company (the “**Board**”), in each case on the terms and conditions provided for herein;

**AND WHEREAS** the parties hereto wish to agree upon certain restrictions on the Shareholders’ ability to transfer their Shares;

**THIS AGREEMENT WITNESSES THAT**, in consideration of the respective covenants, representations and warranties of the parties hereinafter contained, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties hereto covenant and agree as follows:

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement, the following terms have the following meanings:

“**9477179**” has the meaning set out in the recitals to this Agreement;

“**9477179 Initial Nominees**” has the meaning set out in Section 4.1;

“**9477179 Nominees**” means the Directors designated by 9477179 as Nominees pursuant to Article 4;

“**ABCA**” means the *Business Corporations Act* (Alberta);

“**Affiliate**” means, with respect to any Person, a Person who is an “affiliate” of that first mentioned Person as that term is defined in National Instrument 45-106 – *Prospectus Exemptions*, provided that, with respect to 9477179, any Person for which Hamblin Watsa Investment Counsel Ltd. exercises control or direction over Shares held by such Person shall be considered an Affiliate of 9477179;

“**Applicable Securities Laws**” means the applicable securities legislation in each province or territory of Canada, including all rules, regulations, published policy statements and blanket orders thereunder or issued by one or more of the Canadian Securities Regulatory Authorities;

“**Board**” has the meaning set out in the recitals to this Agreement;

“**Business Day**” means a day on which banks are open for business in both the City of Toronto, Ontario and the City of Calgary, Alberta, other than a Saturday, Sunday or statutory holiday;

“**Canadian Securities Regulatory Authorities**” means, collectively, the securities regulatory authority in each of the provinces and territories of Canada;

“**Company**” has the meaning set out in the recitals to this Agreement;

“**Company Successor**” has the meaning set out in Section 8.2(c)(ii)(A);

“**Demand Distribution**” has the meaning set out in Section 2.1(a);

“**Demand Notice**” has the meaning set out in Section 2.1(a);

“**Director**” means a director of the Board;

“**Director Election Meeting**” means any meeting of shareholders of the Company at which Directors are to be elected to the Board;

“**Distribution**” means a distribution, issuance or sale of Shares to the public for cash by means of a prospectus under Applicable Securities Laws, and the term “**Distribute**” has a similar meaning;

“**Indemnified Party**” has the meaning set out in Schedule A hereto;

“**Indemnifying Party**” has the meaning set out in Schedule A hereto;

“**Issued Securities**” has the meaning set out in Section 3.1(a);

“**Nominee**” means, with respect to a Director Election Meeting, a nominee proposed for election as a Director by the Company and included as a nominee for election as a Director in the management information circular of the Company relating to such Director Election Meeting;

“**Person**” means an individual, partnership, limited partnership, corporation, company, unlimited liability company, trust, unincorporated organization, association, government, or any department or agency thereof and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual;

“**Piggy-Back Registration**” has the meaning set out in Section 2.2(a);

“**Piggy-Back Shares**” has the meaning set out in Section 2.2(a);

“**Qualifying Securities**” has the meaning set out in Section 2.1(a);

“**Registration Expenses**” means all out-of-pocket expenses incident to the parties’ performance of, or compliance with, this Agreement in connection with a Distribution, including all registration and filing fees, all fees and expenses of complying with Applicable Securities Laws, all printing expenses, all internal expenses, all “road show” and marketing expenses, all listing fees, all registrars’ and transfer agents’ fees, the fees and disbursements of the Company’s independent public accountants, including the expenses of any special audits and/or “comfort” letters required by or incidental to such performance and compliance, but excluding Selling Expenses and the fees, disbursements and taxes of counsel for the Company and for any selling Shareholder;

“**Requesting Shareholder**” has the meaning set out in Section 2.1(a);

“**Selling Expenses**” means all underwriting commissions, discounts or brokers’ commissions incurred in connection with a Distribution of Shares;

“**Shareholders**” has the meaning set out in the recitals to this Agreement;

“**Shares**” has the meaning set out in the recitals to this Agreement;

“**subsidiary**” has the meaning set out in National Instrument 45-106 – *Prospectus Exemptions*; and

“**Transfer**” includes any sale, exchange, disposition, assignment, gift, bequest, mortgage, charge, pledge, encumbrance, grant of security interest or other arrangement by which possession, legal title or beneficial ownership or other ownership interest (including in respect of any associated voting rights) passes from one Person to another, or to the same Person in a different capacity, whether or not voluntary and whether or not for value and whether directly or indirectly in any manner whatsoever, and includes any agreement to effect any of the foregoing and, in the case of Shares includes a transaction involving the direct or indirect Transfer in any manner whatsoever of the ownership interests in a Shareholder (other than Fairfax Financial Holdings Limited) which holds any legal title or beneficial ownership or other ownership interest (including in respect of any associated

voting rights) in Shares which is designed to otherwise circumvent the restrictions contained in Section 6.1 of this Agreement; provided, however, that any transaction which results in Fairfax Financial Holdings Limited, directly or indirectly, including through Hamblin Watsa Investment Counsel Ltd., having control or direction of Shares shall not constitute an indirect Transfer; and the words “**Transferred**”, “**Transferring**” and similar words have corresponding meanings.

## 1.2 Rules of Construction

Unless the context otherwise requires, in this Agreement:

- (a) “**Agreement**”, “**this Agreement**”, “**the Agreement**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions mean or refer to this Agreement, as amended, restated, modified, replaced or supplemented from time to time, including the Schedules attached hereto or to any amendment to this Agreement, and any agreement or instrument supplemental hereto, and unless otherwise expressly stated herein, the expressions “**Article**”, “**Section**”, “**Subsection**”, “**Schedule**” and “**clause**” followed by a number or a letter mean and refer to the specified Article, Section, Subsection, Schedule or clause of this Agreement;
- (b) the division of this Agreement into Articles, Sections, Subsections and clauses and the insertion of headings and a table of contents are provided for convenience of reference only and shall not affect the construction or interpretation thereof and all references to designated Articles, Sections or other subdivisions or to Schedules, are references to Articles, Sections or other subdivisions or to Schedules of this Agreement;
- (c) words importing the singular number only shall include the plural and *vice versa* and words importing the use of any gender shall include all genders;
- (d) the words “includes” and “including”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- (e) if any date on which any action is required to be taken under this Agreement is not a Business Day, such action will be required to be taken on the next succeeding Business Day;
- (f) reference to any statute shall be deemed to be a reference to such statute as amended, re-enacted or replaced from time to time, including every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation which supplements or supersedes such statute or any such regulation; and

- (g) “Dollar” or “\$”, in respect of all amounts referred to in this Agreement and all references to currency in this Agreement, unless otherwise expressly stated, shall mean Canadian dollars.

### **1.3 Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral agreements between such parties, in connection with the subject matter hereof. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, relating to the subject matter hereof except as specifically set forth in this Agreement.

### **1.4 Governing Law**

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties hereto shall be governed by, the laws of the Province of Alberta and the federal laws of Canada applicable therein, and the parties hereto irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the Province of Alberta located in Calgary, Alberta and all courts competent to hear appeals therefrom.

### **1.5 Severability**

Each provision of this Agreement is intended to be severable and if any severable provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct. To the extent that any such provision is found to be invalid, illegal or unenforceable, the parties hereto shall act in good faith to substitute for such provision, to the extent possible, a new provision with content and purpose as close as possible to the provision so determined to be invalid, illegal or unenforceable.

### **1.6 Accounting Principles**

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Agreement, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, applied on a consistent basis.

### **1.7 Share Ownership Thresholds**

For the purposes of this Agreement, upon the first instance whereby the Shareholders, in the aggregate, own, control or direct, directly or indirectly, less than a specified percentage of the outstanding Shares (on a non-diluted basis), the Shareholders (including 9477179) shall not subsequently be entitled to any rights available to them by virtue of ownership or control of a number of Shares at or above such specified percentage, even if they subsequently acquire



ownership or control of outstanding Shares that would then be in excess of such specified percentage.

## ARTICLE 2 DEMAND AND PIGGY-BACK REGISTRATION RIGHTS

### 2.1 Demand Registration Rights

- (a) Subject to Section 2.1(c), following the expiration of the 24 month period set forth in Section 6.1, upon the written request (a “**Demand Notice**”) of 9477179 on behalf of itself or one or more of the Shareholders (each, a “**Requesting Shareholder**”), made at any time and from time to time as long as the Shareholders, in the aggregate, directly or indirectly own, control or direct at least 10% of the outstanding Shares (on a non-diluted basis), the Company will use commercially reasonable efforts, subject to compliance with Applicable Securities Laws and applicable stock exchange requirements (and the Company will use commercially reasonable efforts to comply with such laws and requirements), to file such documents and take such other steps as may be necessary under Applicable Securities Laws to qualify for Distribution all or any whole number (as may be reduced pursuant to Section 2.1(b)) of Shares requested by the Requesting Shareholder under this Agreement (the “**Qualifying Securities**”). The Company and the Shareholders shall cooperate in a timely manner and in accordance with the procedures set forth in Schedule A hereto in connection with each such Distribution (a “**Demand Distribution**”).
  
- (b) After receipt of the Demand Notice referred to in Section 2.1(a), the Company shall have five Business Days to determine whether it wishes to Distribute Shares under the prospectus prepared in connection with such Demand Distribution by giving written notice to 9477179, on its own behalf or on behalf of the Requesting Shareholders, specifying the number of Shares it wishes to Distribute, provided that if the lead underwriter or underwriters, acting in good faith, advises 9477179 and the Company in writing that, in its or their judgment, the inclusion of the Shares to be Distributed by the Company in the Demand Distribution should be limited (i) due to market conditions, or (ii) because the number of Shares proposed to be distributed is likely to have a significant adverse effect on the successful marketing of the Distribution (including that the selling price of the Shares would likely be below the price range acceptable to the Requesting Shareholders), then the maximum number of Shares that the lead underwriter or underwriters advise should be Distributed will be allocated as follows: (i) first, to the number of Qualifying Securities; and (ii) second, subject to clause (i), to the number of Shares to be Distributed by the Company, if any, that may be accommodated in such Distribution.

- (c) Notwithstanding Subsection 2.1(a), the Company will not be obligated to effect a Demand Distribution:
- (i) within the earlier of:
    - (A) a period of 90 days after the date of completion of a previous Demand Distribution; and
    - (B) the period, if any, during which the Company or 9477179 has agreed with the underwriters of a Distribution that it would not issue Shares (unless waived by such underwriters);
  - (ii) during a regularly scheduled black-out period in which insiders of the Company are restricted from trading in securities of the Company under the insider trading policy or other policy of the Company;
  - (iii) if, within a particular calendar year, the Company has already effected an aggregate of three Demand Distributions from Requesting Shareholders pursuant to Section 2.1(a). For the purposes of this subsection, a Demand Distribution shall not be considered as having been effected until (a) a receipt has been issued by, or deemed to be issued by, the applicable Canadian Securities Regulatory Authorities for a final prospectus pursuant to which the Qualifying Securities are to be Distributed, or (b) a prospectus supplement in connection with a base shelf prospectus is filed pursuant to which the Qualified Securities are to be Distributed. However, if a Requesting Shareholder withdraws or does not pursue a request for a Demand Distribution after (A) filing a preliminary prospectus pursuant to which the Qualifying Securities are to be Distributed or (B) the entering into of an enforceable bought deal letter or an underwriting or agency agreement in connection with the Demand Distribution (provided that at such time the Company is in compliance in all material respects with its obligations under this Agreement), then such Demand Distribution shall be deemed to be effected. In the event of any withdrawal or revocation by the Requesting Shareholder, the Requesting Shareholder shall continue to be responsible for applicable Registration Expenses in accordance with Section 3(d) of Schedule A to this Agreement;
  - (iv) unless the Distribution of Qualifying Securities would reasonably be expected to result in gross proceeds of at least \$30 million;
  - (v) other than in a province or territory of Canada;
  - (vi) in the event that the Board determines in good faith (with the 9477179 Nominees abstaining from such determination) that there is a Valid Business Reason (as defined below) and that it is, therefore, in the best interests of the Company to defer the filing of a prospectus at such time, in which case the Company's obligations under this Section 2.1 will be deferred until the earlier of:

- (A) five Business Days after the date that such Valid Business Reason ceases to exist; and
- (B) the expiry of a period of not more than 90 days from the date of the Company's receipt of the Demand Notice,

provided that such right of deferral may not be exercised more than once in any 12-month period. For purposes of this Subsection 2.1(c)(vi), "**Valid Business Reason**" means a determination that the effect of the filing of a prospectus:

- (1) would materially adversely affect a pending or proposed acquisition, merger, recapitalization, consolidation, reorganization, or similar transaction involving the Company or any of its subsidiaries that is material to the Company and its subsidiaries taken as a whole, or the negotiations, discussions or pending proposals with respect thereto; or
    - (2) would require the disclosure of material non-public information that the Company has a *bona fide* business purpose for preserving as confidential; or
  - (vii) if the Company is advised in writing by an independent investment dealer selected by the Company that, in such dealer's opinion, the Demand Distribution at that time and on the terms requested would adversely affect any proposed financing by the Company, in which case the Company's obligations under this Section 2.1 will be deferred for a period of not more than 90 days after completion or abandonment of such financing.
- (d) Any Demand Notice pursuant to Section 2.1(a) shall:
- (i) specify the number of Shares which each Requesting Shareholder intends to Distribute;
  - (ii) describe the nature or methods of the proposed offer and sale thereof and the provinces and territories of Canada in which such offer and sale shall be made;
  - (iii) contain an undertaking of 9477179, on behalf of each such Requesting Shareholder, to provide all such information as may be required in order to permit the Company to comply with Applicable Securities Laws;
  - (iv) specify whether such offer and sale shall be made by an underwritten public offering; and
  - (v) be carried out in accordance with the procedures set forth in Schedule A to this Agreement.

- (e) In the case of an underwritten public offering initiated pursuant to this Section 2.1, (i) 9477179 will, upon consultation with the Company, have the right to select the managing underwriter or underwriters of such Qualifying Securities, provided that such managing underwriter or underwriters are acceptable to the Company, acting reasonably, and (ii) the Company will have the right to retain counsel of its choice to assist it in fulfilling its obligations under this Section 2.1.

## 2.2 **Piggy-Back Registration Rights**

- (a) If the Company proposes to make a Distribution at any time following the expiration of the 24 month period set forth in Section 6.1, the Company will, at that time, promptly give 9477179 (on its own behalf and on behalf of each Shareholder) written notice of the proposed Distribution if at that time the Shareholders, in the aggregate, directly or indirectly own at least 10% of the outstanding Shares (on a non-diluted basis). Upon the written request of 9477179 (on its own behalf and on behalf of one or more Shareholders requesting to be included in such Distribution) given, subject to Section 2.2(c), within five Business Days after receipt of the notice of the proposed Distribution from the Company, the Company will use commercially reasonable efforts to, in conjunction with the proposed Distribution, cause to be qualified in such offering the applicable number of Shares that 9477179 has requested be included in such Distribution (the “**Piggy-Back Shares**”) in accordance with the procedures set forth in Schedule A to this Agreement (a “**Piggy-Back Registration**”), provided that if the lead underwriter or underwriters of such proposed Distribution, acting in good faith, advises the Company and 9477179 in writing that, in its or their judgment, the inclusion of the Piggy-Back Shares held by the Shareholders in the proposed Distribution should be limited (i) due to market conditions, or (ii) because the number of Shares proposed to be Distributed is likely to have a significant adverse effect on the successful marketing of the proposed Distribution (including that the selling price of the Shares would likely be below the price range acceptable to the Company), then the maximum number of Shares that the lead underwriter advises or lead underwriters advise should be Distributed will be allocated as follows: (i) first, to the number of Shares that the Company proposed to Distribute; and (ii) second, subject to clause (i), to the number of Piggy-Back Shares, if any, that may be accommodated in such Distribution.
- (b) If the proposed Distribution is not completed within 180 days of such request, the related notice of a Piggy-Back Registration delivered by 9477179 hereunder shall be deemed to be withdrawn, unless otherwise agreed between the Company and 9477179.
- (c) If the Company receives a “bought deal” letter (which means a fully underwritten commitment, subject to customary conditions, from an underwriter or underwriters) relating to a Distribution, 9477179 shall have 48 hours from the time the Company advises it of such “bought deal” to provide the Piggy-Back Registration notice referred to in Section 2.2(a).

### 2.3 Reporting Issuer Status

The Company will at all times during the term of this Agreement use commercially reasonable efforts to maintain its status as a reporting issuer in each of the provinces of Canada and maintain the listing of the Shares on the Toronto Stock Exchange.

## ARTICLE 3 PRE-EMPTIVE RIGHTS

### 3.1 Pre-Emptive Right

- (a) Provided that the Shareholders own, in the aggregate, at least 10% of the outstanding Shares (on a non-diluted basis), as of the applicable time, no Shares or other voting or equity securities or securities convertible into or exchangeable for Shares or other voting or equity securities or an option or other right to acquire any such securities other than to an Affiliate thereof (the “**Issued Securities**”) will be issued by the Company or any of its subsidiaries and no option or other right for the purchase of or subscription for any Issued Securities will be granted at any time after the date hereof except in compliance with the following provisions.
- (b) If the Company or any of its subsidiaries proposes to issue, distribute or offer any Issued Securities, the Shareholders shall be entitled to participate in such issuance, distribution or offering on a *pro rata* basis, but only to the extent necessary to maintain 9477179’s direct and indirect effective *pro rata* ownership interest in the Company. At least five Business Days prior to the closing of any such proposed offering, the Company shall deliver to 9477179 (on its own behalf and on behalf of the Shareholders) a notice in writing offering the Shareholders the opportunity to subscribe for a *pro rata* number of Issued Securities. The offer will contain a description of the terms and conditions relating to the Issued Securities and will, to the extent known, state the price at which the Issued Securities will be issued, distributed or offered and the date on which such issuance, distribution or offering of Issued Securities is to be completed and will state that the Shareholders, if any wish to subscribe for Issued Securities, may do so only by 9477179 (on behalf of such Shareholder) giving written notice of the exercise of the subscription right granted hereby to the Company within two Business Days after the date upon which the notice contemplated hereby is received by the Shareholder (or deemed to be received pursuant to Section 8.5), provided that if the Company receives a “bought deal” letter (which for the purposes of Section 3.1(b) and (c) means a fully underwritten commitment from an underwriter or underwriters) relating to such Distribution, 9477179 shall have not less than 48 hours from the time the Company advises them of such “bought deal” to provide the written notice to the Company specified in this Section 3.1(b). The Shareholders will be entitled to participate in the issuance of the Issued Securities at the most favourable price and on the most favourable terms as such Issued Securities are to be offered to any party, excluding commissions and other transaction expenses paid by the Company.

- (c) If any of the Issued Securities of any issue are not subscribed by the Shareholders within the period of two Business Days after they are offered to the Shareholders (or in the event that the Company receives a “bought deal” letter, the applicable subscription period provided to the Shareholders which shall not be less than 48 hours from the time the Company advises them of such “bought deal”), the Company or its relevant subsidiary may offer such unsubscribed Issued Securities within the period of 90 days after the expiration of such notice period to any Person, but the price at which such Issued Securities may be issued will not be less than the subscription price offered to the Shareholders and the terms of payment for such Issued Securities will not be more favourable to such Person than the terms of payment offered to the Shareholders.
- (d) If the Company or any of its subsidiaries proposes to grant an option or other right for the purchase of or subscription for Issued Securities, such option or other right will also be made available to the Shareholders as nearly as may be possible in accordance with the foregoing.
- (e) The right to subscribe for Issued Securities under this Section 3.1 or to participate in any grant of an option or other right to acquire or subscribe for Issued Securities and the legal or beneficial ownership of such right to subscribe, may be assigned in whole or in part among 9477179 and its Affiliates, provided that written notice of any such assignment shall be sent promptly to the other parties and the Company.
- (f) If any Shareholder exercises its right to subscribe for Issued Securities granted under Section 3.1(b), then the Company shall, subject to the receipt and continued effectiveness of all required approvals (including the approval(s) of the Toronto Stock Exchange and any other stock exchange or over-the-counter market on which the Shares or Issued Securities are then listed and/or traded and any required approvals under Applicable Securities Laws), which approvals the Company shall use all commercially reasonable efforts to promptly obtain (including by applying for any necessary price protection confirmations and seeking shareholder approval (if required)), issue to such Shareholder, against payment of the subscription price payable in respect thereof, that number of Issued Securities so subscribed for by such Shareholder. The Company shall use its commercially reasonable efforts to list the Issued Securities (or the underlying securities into which such Issued Securities are convertible or exchangeable) subscribed for by a Shareholder pursuant to this Article 3 on each such securities exchange or quotation system on which such Issued Securities (or the underlying securities into which such Issued Securities are convertible or exchangeable) are already listed or quoted (if such Issued Securities are not already so listed or quoted).

### **3.2 Non-Applicability of Pre-Emptive Right**

The provisions of Section 3.1 will not apply to any issues of Issued Securities or to the grant of any option or other right for the purchase of or subscription for any Issued Securities:

- (a) which are expressly contemplated or provided for in other sections of this Agreement;
- (b) in connection with any grant or exercise of options, restricted share units, warrants, rights or other securities issued under the Company's security-based compensation arrangements, if any;
- (c) in connection with a subdivision of then-outstanding Shares into a greater number of Shares;
- (d) that are equity securities of the Company in lieu of cash dividends, if any;
- (e) pursuant to a shareholders' rights plan of the Company, if any;
- (f) pursuant to a dividend reinvestment plan of the Company, if any;
- (g) upon the exercise by a holder of a conversion, exchange or other similar privilege pursuant to the terms of a security outstanding prior to the date hereof or issued in compliance with the terms of this Article 3 in respect of which the Shareholders did not exercise, failed to exercise, or waived its rights under Section 3.1 or in respect of which such pre-emptive rights did not apply;
- (h) to the Company or any subsidiary of the Company or an Affiliate of any of them;
- (i) in the event that the rights of a Shareholder under Section 3.1 are waived by such Shareholder (but only in respect of that Shareholder);
- (j) pursuant to an over-allotment option granted to the agents or underwriters, as applicable, in connection with an offering of Shares; or
- (k) pursuant to any take-over bid,, arrangement, merger or similar corporate transaction or any share or asset acquisition or similar transaction where the Issued Securities are used to fund all or a portion of the applicable purchase price payable by the Company.

## **ARTICLE 4 BOARD NOMINATION RIGHTS**

### **4.1 Size and Composition of the Board**

At the time this Agreement becomes effective, the Board shall take all necessary actions to appoint R. William McFarland as Chairman of the Board and the following individuals as Directors:

Kevin Nabholz  
Russell Newmark  
Mary Garden  
Rod Graham  
R. William McFarland

John MacCuish  
David Johnston  
Simon Landy

For as long as the Shareholders, in the aggregate, own, control or direct, directly or indirectly, at least 10% of the outstanding Shares (on a non-diluted basis), the Board will at all times consist of eight Directors or such other number as the Company and 9477179 may agree. For the purposes of this Agreement, R. William McFarland, John MacCuish, David Johnston and Simon Landy shall be considered the initial Nominees of 9477179 (the “**9477179 Initial Nominees**”). For as long as the Shareholders, in the aggregate, own, control or direct, directly or indirectly, at least 20% of the outstanding Shares (on a non-diluted basis,) 9477179 shall also be entitled to have at least one of its Nominees (as selected by 9477179 for each committee) appointed to each committee of the Board, including the Corporate Governance and Compensation Committee, the Audit Committee and the Health, Safety and Environment Committee.

#### **4.2 Designation of Nominees**

Pursuant to the terms and subject to the conditions set forth in this Article 4 and applicable law, in respect of any Director Election Meeting:

- (a) as long as the Shareholders, in the aggregate, own, control or direct, directly or indirectly, at least 40% of the outstanding Shares (on a non-diluted basis) at the time such nomination is delivered in accordance with Section 4.3, 9477179 shall be entitled to designate 50% of the Nominees, rounding up to the nearest whole member;
- (b) as long as the Shareholders, in the aggregate, own, control or direct, directly or indirectly, at least 30% (but less than 40%) of the outstanding Shares (on a non-diluted basis) at the time such nomination is delivered in accordance with Section 4.3, 9477179 shall be entitled to designate one-third of the Nominees, rounding up to the nearest whole member;
- (c) as long as the Shareholders, in the aggregate, own, control or direct, directly or indirectly, at least 20% (but less than 30%) of the outstanding Shares (on a non-diluted basis) at the time such nomination is delivered in accordance with Section 4.3, 9477179 shall be entitled to designate 20% of the Nominees, rounding up to the nearest whole member; and
- (d) as long as the Shareholders, in the aggregate, own, control or direct, directly or indirectly, at least 10% (but less than 20%) of the outstanding Shares (on a non-diluted basis) at the time such nomination is delivered in accordance with Section 4.3, 9477179 shall be entitled to designate one (1) Nominee.

For greater certainty, (i) upon the first instance whereby the Shareholders, in the aggregate, own, control or direct, directly or indirectly, less than 10% of the outstanding Shares (on a non-diluted basis), 9477179 shall no longer be entitled to designate any Nominees, and (ii) any person directly or indirectly associated or affiliated with, or who could reasonably be considered to have a material relationship with, any Shareholder and who is both a Director and a Chief Executive Officer (or



co-Chief Executive Officer) of the Company, including John MacCuish, shall be considered to be a 9477179 Nominee for the purposes of this Agreement.

### **4.3 Nomination Procedures**

- (a) The Company shall notify 9477179 of any Director Election Meeting called or proposed to be called by the Company at least 45 Business Days prior to the date of such Director Election Meeting.
- (b) 9477179 may notify the Company of its designated Nominee(s) at any time following receipt of the notice provided by the Company in accordance with Section 4.3(a) but no less than 35 Business Days prior to the date of any Director Election Meeting. For purposes of the Director Election Meeting to be held in 2020, the 9477179 Initial Nominees shall be deemed to be 9477179's designated Nominees, and the Parties agree that, unless otherwise agreed to by a majority of the Directors who are not 9477179 Nominees, the individuals named in Section 4.1 shall be the Company's nominees for any Director Election Meeting to be held in 2020. If, prior to the Director Election Meeting, a Nominee designated by 9477179 under Section 4.2 is unable or unwilling to serve as a Director, then 9477179 will be entitled to designate a replacement Nominee, except where 9477179 would have otherwise ceased to be entitled to designate such Nominee pursuant to Section 4.2.
- (c) The Company shall (i) nominate for election and include in any management information circular relating to any Director Election Meeting (or submit to shareholders by written consent if applicable) each person designated as a Nominee of 9477179 under Section 4.2; (ii) recommend (and reflect such recommendation in any management information circular relating to any Director Election Meeting or in any written consent submitted to shareholders of the Company for the purpose of electing directors of the Company) that the shareholders of the Company vote to elect such Nominee(s) as a Director for a term of office expiring at the subsequent annual meeting of the shareholders of the Company; (iii) solicit, obtain proxies in favour of and otherwise support the election of such Nominee(s) at the applicable Director Election Meeting, each in a manner no less favourable than the manner in which the Company supports its own nominees for election at the applicable Directors Election Meeting; and (iv) use commercially reasonable efforts to take all steps which may be necessary or appropriate to recognize, enforce and comply with the rights of 9477179 under this Article 4.
- (d) Except as set forth in this Article 4, the selection of Nominees other than the 9477179 Nominees designated pursuant to Section 4.2 (including when any designation right of 9477179 has not been exercised pursuant thereto), shall rest with the Board, or the Governance and Compensation Committee of the Board, if so determined by the Board.

#### **4.4 Replacement Appointment**

If any Nominee of 9477179 resigns, is removed, or is unable to serve for any reason prior to the expiration of his or her term as a Director, then 9477179 shall be entitled to designate a replacement to be appointed by the Board as Director as soon as reasonably practicable, except where 9477179 would have otherwise ceased to be entitled to designate such Nominee pursuant to Section 4.2.

#### **4.5 Qualifications**

Notwithstanding anything to the contrary in this Agreement, all Directors (including Directors designated by the Shareholders) shall, at all times while serving on the Board, meet the qualification requirements to serve as a director under the ABCA, Applicable Securities Laws and the rules of any stock exchange on which the Shares are listed.

#### **4.6 Expenses**

- (a) The Company shall reimburse the Directors for all reasonable out-of-pocket expenses incurred in connection with attending meetings of the Board and any committees thereof, including without limitation, travel, lodging and meal expenses.
- (b) The Company shall obtain customary director and officer liability insurance on commercially reasonable terms.
- (c) The Company and each Nominee that has been so elected or appointed, as the case may be, shall, upon request from such Nominee or the Company, enter into a customary director indemnification agreement.

#### **4.7 Written Consent or Resolutions**

The provisions of this Article 4 applicable to Director Election Meetings shall apply *mutatis mutandis* to any written consent or resolutions of shareholders relating to the election of Directors.

#### **4.8 Quorum**

As long as 9477179 has the right to designate at least one Nominee under Section 4.2, and except where no Director is a 9477179 Nominee, the quorum for any meeting of Directors shall require, in addition to all applicable requirements of the Company's constating documents, the presence (in person or by telephonic or electronic means) of at least one 9477179 Nominee, and the Company agrees not to transact any business at any meeting of Directors except in compliance with this Section 4.8. Notwithstanding the foregoing, in the event that a quorum is not achieved or maintained for a meeting of the Directors (an "**initial Directors meeting**") as a result of the requirements of this Section 4.8 not being met, any two Directors may call a meeting of the Directors (a "**reconvened meeting**") by proper notice to be held on a date no earlier than the second Business Day following the initial Directors' meeting solely to address the business proposed at the initial Directors' meeting and the requirements of this Section 4.8 shall not apply for such reconvened meeting.

## **ARTICLE 5 OFFICERS**

### **5.1 Appointment of Officers**

At the time this Agreement becomes effective, Rod Graham and John MacCuish shall each be the Co-Chief Executive Officer of the Company. Additional officers shall be appointed by the Board.

## **ARTICLE 6 RESTRICTIONS ON SHARE TRANSFERS**

### **6.1 Restrictions on Share Transfers**

Without the prior written consent of a majority of the Directors who are not designated as 9477179 Nominees under this Agreement (which consent may, in the sole discretion of such Directors, be withheld or given subject to such conditions as such Directors may in their sole discretion determine), no Shareholder or any of its Affiliates will, directly or indirectly (including through its representative underwriter or agent) prior to the date that is 24 months from the date of this Agreement, Transfer or cause the Transfer of any Shares.

### **6.2 Transfers to 9477179 Affiliates**

Notwithstanding Section 6.1, a Shareholder may Transfer all or any portion of the Shares legally or beneficially owned by such Shareholder to another Affiliate of 9477179, provided that such Affiliate agrees to be bound by and become a party to this Agreement as and in the manner contemplated in the final paragraph of Section 6.1. Prior to any such transferee ceasing to be an Affiliate of 9477179, 9477179 shall cause such Shares to be Transferred to another Affiliate of 9477179. A Shareholder, or its Affiliate, shall promptly (and in any event within three Business Days) notify the Company if it engages in any of the transactions referred to in this Section 6.2.

## **ARTICLE 7 AMENDMENTS**

### **7.1 Amendments and Modifications**

This Agreement may not be amended or modified except by an agreement in writing executed by the parties hereto; provided that the Company's approval of any such amendment shall be made by a majority of the Directors who are not 9477170 Nominees.

### **7.2 Changes in Capital of the Company**

At all times after the occurrence of any event which results in a consolidation, subdivision, reclassification or similar change to the Shares, this Agreement will forthwith be amended and modified as necessary in order that it will apply with full force and effect, with appropriate changes, to all new securities into which the Shares are so changed and the parties will execute and deliver a supplemental agreement giving effect to and evidencing such necessary amendments and modifications.

## ARTICLE 8 GENERAL

### 8.1 Termination

This Agreement will automatically terminate upon the earliest to occur of the following events:

- (a) the first date on which none of 9477179, nor any of its Affiliates, owns, controls or directs, directly or indirectly, any outstanding Shares or securities or rights convertible into or exchangeable for or carrying rights to acquire Shares;
- (b) this Agreement is terminated by written agreement of the parties hereto; and
- (c) the dissolution or liquidation of the Company.

### 8.2 Assignment and Successors

- (a) This Agreement is not assignable by 9477179 without the Company's prior written consent other than to one or more Affiliates of 9477179, provided that such entity remains an Affiliate of 9477179 and to whom Shares are Transferred as permitted hereunder, and such assignee executes an instrument in writing agreeing to be bound by this Agreement. Upon any such permitted assignee executing an instrument in writing agreeing to be bound by this Agreement, such assignee will be entitled to its benefit and be bound by all of its terms as if it were an original signatory hereto as a "Shareholder". For the avoidance of doubt, nothing in this Section 8.2 shall in any way restrict or limit any Transfer otherwise permitted pursuant to Sections 6.1 if or 6.2.
- (b) This Agreement is not assignable by the Company, except with the prior written consent of 9477179.
- (c) Notwithstanding the foregoing provisions of this Section 8.2, if the Shares are converted, reclassified, exchanged or otherwise changed pursuant to a reorganization, amalgamation, merger, arrangement or other form of reorganization, or the Company enters into a transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other Person (any of the foregoing a "**Transaction**"), and provided that the shareholders of the Company immediately prior to the consummation of the Transaction will continue to hold at least 50% of the voting common equity interests of the continuing entity or such other Person following completion of the Transaction (the "**Company Successor**"):
  - (i) this Agreement may be assigned by the Company to the Company Successor pursuant to any such Transaction without the prior written consent of 9477179 or any other Shareholder; and
  - (ii) the Company will not consummate any such Transaction unless:

- (A) such other Person or continuing entity (the “**Company Successor**”), by operation of law, becomes, without any further action, bound by the terms and provisions of this Agreement or, if not so bound, executes, prior to or contemporaneously with the consummation of the Transaction, an agreement supplemental hereto and such other instruments (if any) as are reasonably necessary or advisable to evidence the assumption by the Company Successor of liability for all of the Company’s obligations hereunder and the covenant of such Company Successor to observe and perform all the covenants and obligations of the Company under this Agreement; and
- (B) the Transaction is on such terms and conditions that substantially preserve and do not impair in any material respect any of the rights, duties, powers and authorities of the other parties hereto.

Whenever the conditions of Section 8.2(c) have been duly observed and performed, if required by Section 8.2(c), the parties hereto and the Company Successor will execute and deliver a supplemental agreement hereto and thereupon the Company Successor will possess and from time to time may exercise each and every right and power and will be subject to each and every obligation of the Company hereunder in the name of the Company or otherwise and any act or proceeding under any provision hereunder required to be done or performed by the Board or any officers of the Company may be done and performed with like force and effect by the directors or officers, as applicable, of such Company Successor.

### **8.3 Time**

Time is of the essence of this Agreement.

### **8.4 Enurement**

This Agreement is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns.

### **8.5 Notices to Parties**

Any notice, approval, consent, information, payment, request or other communication (in this Section, a “**Notice**”) to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery or by electronic mail addressed or sent as set out below:

- (a) in the case of the Company:

240 - 4<sup>th</sup> Avenue S.W., Suite 900  
Calgary, Alberta T2P 4H4

Attention: General Counsel  
E-mail: [REDACTED]

with a copy to:

Blake, Cassels & Graydon LLP  
855 – 2<sup>nd</sup> Street S.W., Suite 3500  
Calgary, Alberta T2P 4J8

Attention: Chelsea Hunter E-mail: chelsea.hunter@blakes.com

(b) if to 9477179 or any Shareholder:

95 Wellington Street West, Suite 800  
Toronto, Ontario M5J 2N7

Attention: General Counsel  
E-mail: [REDACTED]

Any Notice, if personally delivered, will be deemed to have been given on the date of such delivery and if sent by electronic mail, shall be deemed to have been validly and effectively given and received (i) on the Business Day sent if sent on or prior to 4:30 p.m. (Toronto time) on a Business Day, or (ii) the next following Business Day if sent on a day that is not a Business Day or sent after 4:30 p.m. (Toronto time) on a Business Day.

## **8.6 Counterparts**

This Agreement may be executed in counterparts and may be executed and delivered by facsimile (including in portable document format), each of which will be deemed an original, but all of which taken together will constitute one and the same agreement.

**[Remainder of page left intentionally blank]**

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

**HORIZON NORTH LOGISTICS INC.**

By: (signed) "Scott Matson"

Name: Scott Matson

Title: Senior Vice President and Chief  
Financial Officer

**9477179 CANADA INC.**

By: (signed) "John Varnell"

Name: John Varnell

Title: President

**SCHEDULE A**  
**REGISTRATION RIGHTS PROCEDURES**

**1. Demand Registration Procedures**

Whenever the Company is under an obligation pursuant to the provisions of this Agreement to effect the qualification of Shares in connection with a Distribution of any Qualifying Securities on behalf of a Shareholder:

- (a) the Company shall prepare and file as expeditiously as practicable (and, in any event, not later than 30 days after the receipt of a Demand Notice) with the appropriate Canadian Securities Regulatory Authorities all documents reasonably necessary, including, if required, a prospectus and any amendment or supplement thereto, to qualify for Distribution the Qualifying Securities and, in so doing, act as expeditiously as is practicable and in good faith to settle all deficiencies and obtain those receipts and clearances and provide those undertakings and commitments as may be reasonably required by any Canadian Securities Regulatory Authority, all as may be necessary to permit the Distribution of the Qualifying Securities in compliance with all Applicable Securities Laws;
- (b) prior to the filing of a prospectus and up to the date of completion of the Distribution of the Qualifying Securities, the Company shall permit the Requesting Shareholders to review and participate in the preparation of the prospectus and any related offering materials or filings and shall, subject to the applicable Requesting Shareholders entering into confidentiality agreements satisfactory to the Company, acting reasonably and in good faith, allow the applicable Requesting Shareholders to conduct any due diligence investigations which such Requesting Shareholders reasonably request in order to assist such Requesting Shareholders in establishing a due diligence defence pursuant to Applicable Securities Laws and enabling such Requesting Shareholder to responsibly execute any applicable certificate in the prospectus to be executed by it;
- (c) during the period from the date of initiation of the Distribution and up to the date of completion of the Distribution of the Qualifying Securities, the Company shall promptly notify the applicable Requesting Shareholders in writing of:
  - (i) any filing made by the Company of information relating to the Distribution with any Canadian Securities Regulatory Authority and any correspondence with any Canadian Securities Regulatory Authority regarding the Distribution;
  - (ii) any material change, within the meaning of Applicable Securities Laws, with respect to the Company and its subsidiaries, taken as a whole;
  - (iii) any material fact within the meaning of Applicable Securities Laws which has arisen or has been discovered and would have been required to have been stated in the prospectus and any related offering materials or filings



had the fact arisen or been discovered on, or prior to, the date of such document; and

- (iv) any change in any material fact within the meaning of Applicable Securities Laws (which for the purposes of this Agreement shall be deemed to include the disclosure of any previously undisclosed material fact) contained in the prospectus or any related offering materials or filings which fact or change is, or may be, of such a nature as to render any statement in any such document misleading or untrue in any material respect or which would result in a misrepresentation within the meaning of Applicable Securities Laws in any such document, or which would result in any such document not complying with Applicable Securities Laws;
- (d) during the period from the date of initiation of the Distribution to the date of completion of the Distribution of the Qualifying Securities, each applicable Requesting Shareholder shall promptly notify the Company in writing of:
  - (i) any filing made by the applicable Requesting Shareholder of information relating to the Distribution with any Canadian Securities Regulatory Authority and any correspondence with any Canadian Securities Regulatory Authority regarding the Distribution;
  - (ii) any material fact, within the meaning of Applicable Securities Laws, in respect of the applicable Requesting Shareholder which has arisen or has been discovered and would have been required to have been stated in the prospectus and any related offering materials or filings had the fact arisen or been discovered on, or prior to, the date of such document; and
  - (iii) any change in any material fact, within the meaning of Applicable Securities Laws, (which for the purposes of this Agreement shall be deemed to include the disclosure of any previously undisclosed material fact), in respect of the applicable Requesting Shareholder, contained in the prospectus or any related offering materials or filings which fact or change is, or may be, of such a nature as to render any statement in any such document misleading or untrue in any material respect or which would result in a misrepresentation within the meaning of Applicable Securities Laws in any such document, or which would result in any such document not complying with Applicable Securities Laws.
- (e) the Company and the applicable Requesting Shareholders shall in good faith discuss any fact or change in circumstances (actual, anticipated, contemplated or threatened, financial or otherwise) which is of such a nature that there is reasonable doubt whether written notice need be given under Section 1(c) or Section 1(d) of this Schedule A;
- (f) promptly, and in any event within any applicable time limitation, the Company shall comply with all applicable filings and other requirements under Applicable

Securities Laws as a result of a material change, the discovery of a material fact or the change in a material fact referred to under Section 1(c) or 1(d) of this Schedule A, provided that the Company shall not file any amendment to the prospectus or other document without first complying with its obligations in Section 1(c) of this Schedule A;

- (g) the Company shall furnish to such Requesting Shareholder such number of copies of any preliminary prospectus, prospectus, prospectus supplement and any amendments thereto, any documents incorporated by reference in such prospectus and such other documents as such Requesting Shareholder may reasonably request in order to facilitate the Distribution of the Qualifying Securities;
- (h) if an underwritten public offering is contemplated, the Company shall execute and perform the obligations under an underwriting agreement in a form reasonably satisfactory to each of the Company and such Requesting Shareholder containing customary representations, warranties and indemnities for the benefit of the Requesting Shareholder and the underwriter(s);
- (i) subject to Applicable Securities Laws, the Company shall keep the prospectus effective until such Requesting Shareholder has completed the Distribution described in the prospectus but no longer than 60 days from the date of the prospectus, provided that such Requesting Shareholder uses commercially reasonable efforts to complete the Distribution as soon as reasonably practicable;
- (j) the Company shall use its commercially reasonable efforts to furnish to the underwriter(s) involved in the Distribution all documents as they may reasonably request;
- (k) the Company shall take such other actions and execute and deliver such other documents as may be reasonably necessary to give full effect to the rights of such Shareholder under this Agreement;
- (l) the Company shall use its commercially reasonable efforts to list the Qualifying Securities on each securities exchange or quotation system on which Shares of the Company are then-listed or quoted, if such Shares are not already so listed or quoted;
- (m) the Company shall use its commercially reasonable efforts to prevent the issuance of any cease trading order suspending the use of any prospectus and, if any such order is issued, to obtain the withdrawal of any such order; and
- (n) the Company shall use its commercially reasonable efforts to furnish, at the request of the applicable Requesting Shareholders, on the date that such Shares are delivered to the underwriters for sale in connection with the Distribution:
  - (i) an opinion, dated such date, of the Company's counsel for the purposes of such Distribution, in form and substance as is customarily given to

underwriters in an underwritten public offering, addressed to the applicable Requesting Shareholders and the underwriters, if any; and

- (ii) a letter, dated such date, from the Company's auditors, in form and substance as is customarily given by auditors to underwriters in an underwritten public offering, addressed to the applicable Requesting Shareholders and the underwriters, if any.

## **2. Rights and Obligations of Shareholders**

A Shareholder will furnish to the Company such information and execute such documents regarding the Qualifying Securities and the intended method of disposition thereof as the Company may reasonably request in order to effect the requested qualification for sale or other disposition. If an underwritten public offering is contemplated, the Shareholders shall execute and perform their respective obligations under an underwriting agreement in a form reasonably satisfactory to each of the Company and such Requesting Shareholder containing customary representations, warranties and indemnities (and contribution covenants) for the benefit of the underwriters and the Company; provided that the obligation of each Shareholder to indemnify shall be limited in amount to the gross proceeds received by such Shareholder from the sale of Qualifying Securities pursuant to such Distribution. Such Shareholder will have the right to withdraw from a proposed underwritten public offering at any time prior to the signing of the underwriting agreement, without incurring any obligation to the Company or any proposed underwriter, except as set forth below.

## **3. Expenses of Registration**

- (a) All Registration Expenses incurred in respect of a Distribution in connection with a Demand Registration shall be borne by the Company and the selling Shareholder(s) in proportion to the number of Shares distributed by each pursuant to the prospectus filed in connection with such Demand Registration. All Registration Expenses incurred in respect of a Distribution in connection with a Piggy-Back Registration shall be borne by the Company.
- (b) Selling Expenses, if any, shall in all cases be borne by the Company and the selling Shareholders *pro rata* in respect of the Shares being Distributed by the Company and the selling Shareholders, respectively.
- (c) In all circumstances the selling Shareholder(s) and the Company will each pay the fees, disbursements and taxes of their own legal counsel.

## **4. Indemnification**

- (a) The Company will indemnify and hold harmless each applicable Shareholder, each of its officers and directors, trustees, shareholders, members, managers, employees, partners, investment managers, representatives and each person controlling the applicable Shareholder (collectively, the "**Shareholder Indemnified Parties**"), with respect to a registration, qualification of Shares or Distribution which has been effected pursuant to this Agreement, against all expenses, claims, losses (other than losses of profits), penalties, judgments, suits, costs, damages or liabilities (or

actions in respect thereof) (including (i) any of the foregoing incurred in settlement of any litigation, commenced or threatened, (ii) any reasonable legal and any other expenses incurred in connection with investigating, preparing for or defending any such expense, claim, loss, penalties, judgment, suit, cost, damage or liability (or actions in respect thereof), and (iii) any contribution payments made by a Shareholder Indemnified Party to underwriters by the applicable Shareholder Indemnified Party in respect of any such expense, claim, loss, penalties, judgment, suit, cost, damage or liability (or actions in respect thereof)) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus or any amendment or supplement thereto, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading in light of the circumstances in which they were made, or any violation or alleged violation by the Company of Applicable Securities Laws in connection with any such registration, qualification of Shares or Distribution; provided that the Company will not be liable in any such case to the extent that any such expense, claim, loss, penalty, judgment, suit, cost, damage or liability (or actions in respect thereof) arises out of or is based on any untrue statement or omission or alleged untrue statement or omission in any information relating solely to the applicable Shareholder or any underwriter in such prospectus, which information has been provided to the Company in writing by the applicable Shareholder or underwriter, respectively, for the purpose of including such information in such prospectus, or any amendment or supplement thereto; and provided, further, that the Company will not be liable with respect to any expense, claim, loss, penalty, judgment, suit, cost, damage or liability (or actions in respect thereof) with respect to any Person who purchased Qualifying Securities or Piggy-Back Shares, as the case may be, and to whom there was not sent or who was not given a copy of any amended, supplemented or final prospectus, as applicable, with respect to such Qualifying Securities or Piggy-Back Shares, as the case may be, if (i) such loss, claim, damage or liability results from an untrue statement or an omission or alleged untrue statement or omission contained in any preliminary or other prospectus that was corrected in such amended, supplemented or final prospectus and (ii) the Company had previously furnished copies of such amended, supplemented or final prospectus to the applicable Shareholder or the underwriter for the applicable Shareholder.

- (b) Each applicable Shareholder will, if Qualifying Securities or Piggy-Back Shares, as the case may be, held by such Shareholder are included in the securities to be Distributed in a Distribution effected pursuant to this Agreement, indemnify the Company and its directors, officers, employees and agents, against all expenses, claims, losses, penalties, judgments, suits, costs, damages or liabilities (or actions in respect thereof) (including (i) any of the foregoing incurred in settlement of any litigation, commenced or threatened and (ii) any reasonable legal and any other expenses incurred in connection with investigating, preparing for or defending any such expense, claim, loss, penalty, judgment, suit, cost, damage or liability (or actions in respect thereof)) that relates to, is arising out of or is based on any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus filed in respect of such Distribution (or any amendment or supplement

thereto) or based on any omission (or alleged omission) to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading in light of the circumstances in which they were made, or any violation or alleged violation by the applicable Shareholder of Applicable Securities Laws in connection with any such Distribution, in each case to the extent, but only to the extent, that any such expense, claim, loss, penalties, judgment, suit, cost, damage or liability (or actions in respect thereof) arises out of or is based on any untrue statement or omission or alleged untrue statement or omission in any information relating solely to such Shareholder contained in such prospectus, or any amendment or supplement thereto, made in reliance upon and in conformity with written information furnished to the Company by such Shareholder for the purpose of including such information therein; provided, however, that the liability of such Shareholder for indemnification under this Section 4(b) and for any contribution payments to underwriters will not exceed the gross proceeds actually received by the applicable Shareholder from the sale of Qualifying Securities pursuant to the offering giving rise to such indemnification obligation.

- (c) Each party entitled to indemnification under this Section 4 (the “**Indemnified Party**”) will give written notice to the party required to provide indemnification (the “**Indemnifying Party**”) promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought (and such notice shall include a description the material events and facts, if known, giving rise to such claim), and will permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who will conduct the defense of such claim or litigation, will be approved by the Indemnified Party (whose approval will not be unreasonably withheld), and the Indemnified Party may participate in such defense at such party’s expense, and provided further that the failure of any Indemnified Party to give notice as provided herein will not relieve the Indemnifying Party of its obligations under this Section 4 unless, and only to the extent, the failure to give such notice is materially prejudicial to an Indemnifying Party’s ability to defend such action. An Indemnified Party will have the right to retain its own counsel, with fees and expenses to be paid by the Indemnifying Party (subject to the last proviso in Section 4(b)), if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential conflicting interests between such Indemnified Party and any other party represented by such counsel in such proceeding. No Indemnifying Party, in the defense of any such claim or litigation, will, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.
- (d) If the indemnification provided for in this Section 4 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage, or expense referred to therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, will contribute to

the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations, provided, however, that the liability of any Shareholder under this Section 4(d) will not will not exceed the net proceeds actually received by the applicable Shareholder pursuant to the offering giving rise to such contribution obligation. The relative fault of the Indemnifying Party and of the Indemnified Party will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent with respect to, knowledge regarding and opportunity to correct, such information. Notwithstanding anything to the contrary in this Section 4(d), if (1) a Shareholder is required to make a contribution contemplated by this 4(d) and (2) all or any portion of expenses, claims, losses, penalties, judgments, suits, costs, damages or liabilities (or actions in respect thereof) relating to such contribution would not have been indemnifiable by such Shareholder pursuant to Section 4(b) (assuming that the indemnity provided in Section 4(b) was available in accordance with its terms), then the Company shall promptly reimburse such Shareholder (or, upon demand from the Shareholder, advance to such Shareholder) the portion of such contribution that would have not otherwise been indemnifiable.

- (e) Notwithstanding the foregoing, to the extent that the provisions regarding indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions of the underwriting agreement shall prevail.