

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) **December 23, 2019 (December 18, 2019)**

ECOLAB INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

1-9328
(Commission File No.)

41-0231510
(IRS Employer Identification No.)

1 Ecolab Place, Saint Paul, Minnesota
(Address of principal executive offices)

55102
(Zip Code)

Registrant's telephone number, including area code **1-800-232-6522**

(Not applicable)

(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:

<u>Title of each class</u>	<u>Trading symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$1.00 par value	ECL	New York Stock Exchange
2.625% Euro Notes due 2025	ECL 25	New York Stock Exchange
1.000% Euro Notes due 2024	ECL 24	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 December 18, 2019, Ecolab Inc. (the “Company”), ChampionX Holding Inc., a wholly owned subsidiary of the Company (“Newco”), Apergy Corporation (“Apergy”) and Athena Merger Sub, Inc., a wholly owned subsidiary of Apergy (“Merger Sub”), entered into an Agreement and Plan of Merger and Reorganization (the “Merger Agreement”) pursuant to which the Company’s upstream energy business (the “Newco Business”) will combine with Apergy in a Reverse Morris Trust transaction.

Immediately prior to the Merger (as defined below) and pursuant to a Separation and Distribution Agreement, dated as of December 18, 2019, among the Company, Newco and Apergy (the “Separation Agreement”), the Company will, among other things, transfer the Newco Business to Newco and its subsidiaries (the “Reorganization”) and, thereafter, will distribute (the “Distribution”) to the Company’s common stockholders shares of common stock, par value \$0.01 per share, of Newco (the “Newco Common Stock”), as further described below. The Distribution and the Merger are expected to be tax-free to the Company’s stockholders, except to the extent that cash is paid to the Company’s stockholders in lieu of fractional shares in the Merger.

Immediately following the Distribution, in accordance with and subject to the terms and conditions of the Merger Agreement, Merger Sub will merge with and into Newco (the “Merger”), with Newco continuing as the surviving company in the Merger and as a wholly owned subsidiary of the Company.

Agreement and Plan of Merger and Reorganization

Upon consummation of the transactions contemplated by the Merger Agreement, each share of Newco Common Stock outstanding will automatically be converted into the right to receive a number of shares of common stock, par value \$0.01 per share, of Apergy (“Apergy Common Stock”), at an exchange ratio calculated such that following the Merger holders of the Company’s common stock will own, in the aggregate, 62% of the issued and outstanding Apergy Common Stock on a fully diluted basis and the existing holders of Apergy Common Stock will own, in the aggregate, 38% of the issued and outstanding Apergy Common Stock on a fully diluted basis.

The Merger Agreement provides that, in connection with the Merger, two individuals designated by the Company will be added to the Apergy’s Board of Directors as of the effective time of the Merger.

The Merger Agreement contains customary representations and warranties made by each of the Company, Newco, Apergy and Merger Sub. The Company, Newco and Apergy have also agreed to various covenants in the Merger Agreement, including, among other things, covenants (i) to conduct their respective operations in the ordinary course in all material respects and (ii) not to take certain actions prior to the closing of the Merger without the prior consent of the other party.

Consummation of the Merger is subject to various conditions, including, among others, (i) the Reorganization and the Distribution having taken place in accordance with the Separation Agreement; (ii) the effectiveness of Apergy’s registration statement registering Apergy Common Stock to be issued pursuant to the Merger Agreement, and any other required Registration Statement (as defined in the Merger Agreement); (iii) approval of the Stock Issuance by the requisite vote of Apergy’s stockholders; (iv) expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and approval by certain foreign regulatory authorities; and (v) receipt of opinions with respect to the tax-free nature of the proposed transaction. The parties have agreed to use their respective reasonable best efforts to obtain all necessary regulatory approvals for the Merger. The obligation of each party to consummate the Merger is also conditioned upon the other party’s representations and warranties being true and correct (subject to certain materiality exceptions) and the other party having performed in all material respects its obligations under the Merger Agreement.

The Merger Agreement provides for certain mutual termination rights of the Company and Apergy, including the right of either party to terminate the Merger Agreement: (i) if the Merger is not consummated prior to September 20, 2020, which is subject to an automatic extension of 90 days in certain circumstances (the “End Date”); (ii) if a Governmental Body (as defined in the Merger Agreement) has permanently enjoined the consummation of the Merger; (iii) if the approval of the Stock Issuance has not been obtained at a duly convened meeting of Apergy’s stockholders held therefor; or (iv) in the event that the other party breaches any of its representations, warranties, covenants or other agreements in the Merger Agreement such that certain closing conditions are not able to be satisfied, and such breach is not cured within the earlier of 30 days of notice of such breach by the other party and the date that is three business days prior to the End Date.

In addition, the Merger Agreement contains specified termination rights for the Company and Apergy that requires Apergy to pay the Company a termination fee equal to \$89.9 million under certain circumstances. In addition, the Merger Agreement provides that Apergy will reimburse the Company's and Newco's transaction-related expenses in an amount equal to \$25 million if the Merger Agreement is terminated because Apergy's stockholders do not approve the Stock Issuance.

Certain additional agreements have been or will be entered into in connection with the transactions contemplated by the Merger Agreement and the Separation Agreement, including, among others:

- an Intellectual Property Matters Agreement between the Company and Newco, pursuant to which (i) the Company will grant Newco exclusive and non-exclusive licenses to certain intellectual property owned by the Company and its affiliates and used in the Newco Business and (ii) Newco will grant the Company exclusive and non-exclusive licenses to certain intellectual property owned by Newco and its affiliates and used in the Company's business;
- an Employee Matters Agreement among the Company, Newco and Apergy, which will govern, among other things, the Company, Newco and Apergy's obligations with respect to current and former employees of the Newco Business;
- a Transition Services Agreement between the Company and Newco, pursuant to which each party will, on a transitional basis, provide the other party with certain support services and other assistance after the Distribution and Merger; and
- a Tax Matters Agreement among the Company, Newco and Apergy, which governs, among other things, the Company, Newco and Apergy's respective rights, responsibilities and obligations with respect to taxes, tax attributes, the preparation and filing of tax returns, responsibility for and preservation of the expected tax-free status of the transactions contemplated by the Separation Agreement and certain other tax matters.

Separation Agreement

The Separation Agreement governs the rights and obligations of the Company, Apergy and Newco regarding the Reorganization, and provides, among other things, for the transfer by the Company to Newco of certain assets, and the assumption by Newco of certain liabilities, related to the Newco Business. The Separation Agreement also governs the rights and obligations of the Company and Newco regarding the Distribution. At the Company's election, the Distribution may be effected by means of a pro-rata distribution of Newco Common Stock to the Company's stockholders or through an exchange offer of currently issued and outstanding shares of common stock of the Company for Newco Common Stock, which would be followed by a pro rata, clean-up distribution of any unsubscribed shares.

The Separation Agreement also sets forth other agreements between the Company, Newco and Apergy related to the Distribution, including provisions concerning the termination and settlement of intercompany accounts and the obtaining of necessary governmental approvals and third-party consents. The Separation Agreement also sets forth agreements that govern certain aspects of the relationship between the Company, Newco and Apergy after the Distribution, including provisions with respect to release of claims, indemnification, insurance, access to financial and other information and access to and provision of records. The parties have mutual ongoing indemnification obligations following the Distribution with respect to losses related to the Newco Business and the Company's business, respectively.

Additionally, at or prior to the Separation Effective Time (as defined in the Separation Agreement), Newco will make a cash distribution to the Company equal to \$525 million plus the estimated amount of certain taxes paid prior to the separation up to a \$12 million cap. The Separation Agreement provides that Newco will have at least \$45 million of cash as of the closing of the transaction, and also includes a post-closing adjustment based on the net debt of Newco as of the closing of the transaction.

Consummation of the Distribution is subject to the satisfaction or waiver of all conditions under the Merger Agreement (other than those conditions that are to be satisfied contemporaneously with the Distribution and/or the Merger, provided that such conditions are capable of being satisfied at such time).

The Merger Agreement, Separation Agreement and Employee Matters Agreement have been filed, and the above descriptions have been included, to provide investors and securityholders with information regarding the terms of such agreements. They are not intended to provide any other factual information about the Company, Apergy, Newco, Merger Sub, their respective subsidiaries or affiliates, or the Newco Business. The Merger Agreement contains representations and warranties that the Company and Newco, on the one hand, and Apergy and Merger Sub on the other hand, made to each other as of specific dates. The assertions embodied in those representations and warranties were made solely for purposes of the contract between the parties to the Merger Agreement and may be subject to important qualifications and limitations agreed by the parties in connection with negotiating the terms of the contract. Moreover, some of those representations and warranties may not be accurate or complete as of any specified date, may be subject to a contractual standard of materiality different from those generally applicable to stockholders, or may have been used for the purpose of allocating risk between the parties rather than establishing matters as facts. For the foregoing reasons, such representations and warranties should not be relied upon as statements of factual information.

Cautionary Notes on Forward Looking Statements

This communication includes “forward-looking statements” as that term is defined in Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995, including statements regarding the proposed transaction between Apergy, ChampionX and Ecolab. These forward-looking statements generally are identified by the words “believe,” “project,” “expect,” “anticipate,” “estimate,” “forecast,” “outlook,” “target,” “endeavor,” “seek,” “predict,” “intend,” “strategy,” “plan,” “may,” “could,” “should,” “will,” “would,” “will be,” “will continue,” “will likely result,” or the negative thereof or variations thereon or similar terminology generally intended to identify forward-looking statements. All statements, other than historical facts, including, but not limited to, statements regarding the expected timing and structure of the proposed transaction, the ability of the parties to complete the proposed transaction, the expected benefits of the proposed transaction, including future financial and operating results and strategic benefits, the tax consequences of the proposed transaction, and the combined company’s plans, objectives, expectations and intentions, legal, economic and regulatory conditions, and any assumptions underlying any of the foregoing, are forward looking statements.

These forward-looking statements are based on Apergy, ChampionX and Ecolab’s current expectations and are subject to risks and uncertainties, which may cause actual results to differ materially from Apergy, ChampionX and Ecolab’s current expectations. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those indicated or anticipated by such forward-looking statements. The inclusion of such statements should not be regarded as a representation that such plans, estimates or expectations will be achieved. Important factors that could cause actual results to differ materially from such plans, estimates or expectations include, among others, (1) that one or more closing conditions to the transaction, including certain regulatory approvals, may not be satisfied or waived, on a timely basis or otherwise, including that a governmental entity may prohibit, delay or refuse to grant approval for the consummation of the proposed transaction, may require conditions, limitations or restrictions in connection with such approvals or that the required approval by the stockholders of Apergy may not be obtained; (2) the risk that the proposed transaction may not be completed on the terms or in the time frame expected by Apergy, ChampionX or Ecolab, or at all; (3) unexpected costs, charges or expenses resulting from the proposed transaction; (4) uncertainty of the expected financial performance of the combined company following completion of the proposed transaction; (5) failure to realize the anticipated benefits of the proposed transaction, including as a result of delay in completing the proposed transaction or integrating the businesses of Apergy and ChampionX, or at all; (6) the ability of the combined company to implement its business strategy; (7) difficulties and delays in the combined company achieving revenue and cost synergies; (8) inability of the combined company to retain and hire key personnel; (9) the occurrence of any event that could give rise to termination of the proposed transaction; (10) the risk that stockholder litigation in connection with the proposed transaction or other settlements or investigations may affect the timing or occurrence of the proposed transaction or result in significant costs of defense, indemnification and liability; (11) evolving legal, regulatory and tax regimes; (12) changes in general economic and/or industry specific conditions; (13) actions by third parties, including government agencies; and (14) other risk factors detailed from time to time in Apergy and Ecolab’s reports filed with the SEC, including Apergy and Ecolab’s annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and other documents filed with the SEC. The foregoing list of important factors is not exclusive.

Any forward-looking statements speak only as of the date of this communication. None of Apergy, ChampionX or Ecolab undertakes any obligation to update any forward-looking statements, whether as a result of new information or development, future events or otherwise, except as required by law. Readers are cautioned not to place undue reliance on any of these forward-looking statements.

Important Information About the Transaction and Where to Find It

In connection with the proposed transaction, Apergy and ChampionX intend to file registration statements with the SEC. Apergy will also file a proxy statement. Ecolab stockholders are urged to read the prospectus and/or information statement that will be included in the registration statements and any other relevant documents when they become available, and Apergy stockholders are urged to read the proxy statement and any other relevant documents when they become available, because they will contain important information about Apergy, ChampionX, Ecolab and the proposed transactions. The proxy statement, prospectus and/or information statement and other documents relating to the proposed transactions (when they become available) can also be obtained free of charge from the SEC's website at www.sec.gov. The proxy statement, prospectus and/or information statement and other documents (when they are available) can also be obtained free of charge from Ecolab upon written request to Ecolab Inc., Attn: Investor Relations, 1 Ecolab Place, St. Paul, MN 55102, or by e-mailing investor.info@ecolab.com or upon written request to Apergy, Investor Relations, 2445 Technology Forest Boulevard, The Woodlands, Texas 77381 or by e-mailing david.skipper@apergy.com.

Participants in the Solicitation

This communication is not a solicitation of a proxy from any security holder of Apergy. However, Apergy, Ecolab and certain of their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from shareholders of Apergy in connection with the proposed transaction under the rules of the SEC. Information regarding the persons who are, under the rules of the SEC, participants in the solicitation of the stockholders of Apergy in connection with the proposed transactions, including a description of their direct or indirect interests, by security holdings or otherwise, will be set forth in the proxy statement/prospectus when it is filed with the SEC. Information about the directors and executive officers of Ecolab may be found in its Annual Report on Form 10-K filed with the SEC on March 1, 2019, and its definitive proxy statement relating to its 2019 Annual Meeting of Shareholders filed with the SEC on March 15, 2019. Information about the directors and executive officers of Apergy may be found in its Annual Report on Form 10-K filed with the SEC on February 27, 2019, and its definitive proxy statement relating to its 2019 Annual Meeting of Stockholders filed with the SEC on March 25, 2019.

No Offer or Solicitation

This communication is not intended to and shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote of approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
2.1*	Agreement and Plan of Merger and Reorganization, dated December 18, 2019, by and among Ecolab Inc., ChampionX Holding Inc., Apergy Corporation and Athena Merger Sub, Inc.
2.2*	Separation and Distribution Agreement, dated December 18, 2019, by and among Ecolab Inc., ChampionX Holding Inc. and Apergy Corporation
10.1*	Employee Matters Agreement, dated December 18, 2019, by and among Ecolab Inc., ChampionX Holding Inc. and Apergy Corporation
104	The cover page from this Current Report on Form 8-K, formatted in Inline XBRL

* Schedules omitted pursuant to item 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted schedule to the SEC upon request, provided, however, that the Company may request confidential treatment pursuant to Rule 24b-2 of the Exchange Act, as amended, for any schedule or exhibit so furnished.

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.

ECOLAB INC.

Date: December 23, 2019

By: /s/ David F. Duvick

David F. Duvick

Assistant Secretary

AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

by and among

ECOLAB INC.,

CHAMPIONX HOLDING INC.,

APERGY CORPORATION,

and

ATHENA MERGER SUB, INC.

Dated as of December 18, 2019

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AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

This AGREEMENT AND PLAN OF MERGER AND REORGANIZATION (“Agreement”) is made and entered into as of December 18, 2019, by and among: (i) Ecolab Inc., a Delaware corporation (“Everest”); (ii) ChampionX Holding Inc., a Delaware corporation and a wholly owned subsidiary of Everest (“Newco”); (iii) Apergy Corporation, a Delaware corporation (“Athena”); and (iv) Athena Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Athena (“Merger Sub”). Certain capitalized terms used in this Agreement are defined in Exhibit A.

W I T N E S S E T H:

WHEREAS, Everest is, directly and indirectly, engaged in the Newco Business;

WHEREAS, Everest has determined that it would be desirable to separate the Newco Business from Everest;

WHEREAS, Newco is a recently-formed, wholly owned direct subsidiary of Everest;

WHEREAS, concurrently with the execution of this Agreement, Everest, Newco and Athena are entering into the Distribution Agreement, pursuant to which and as more fully described in the Distribution Agreement, prior to the Effective Time, Everest will undertake the Internal Restructuring and, in connection therewith, effect the Newco Contribution, and, in exchange therefor, Newco shall (i) issue to Everest additional shares of Newco Common Stock and (ii) pay to Everest the Cash Payment, following which, prior to the Effective Time on the Closing Date, Everest and Newco will effect the Distribution;

WHEREAS, the respective boards of directors of Everest, Newco, Athena and Merger Sub have each approved and declared advisable this Agreement and the transactions contemplated hereby, including the merger of Merger Sub with and into Newco immediately following the Distribution, on the terms and subject to the conditions set forth in this Agreement and in accordance with the DGCL (the “Merger”); and

WHEREAS, for U.S. federal income tax purposes (i) the Newco Contribution and Distribution, taken together, are intended to qualify as a transaction described in Sections 355 and 368(a)(1)(D) of the Code, (ii) the Merger is intended to qualify as a “reorganization” within the meaning of Section 368(a) of the Code and (iii) each of this Agreement and the Distribution Agreement constitute “a plan of reorganization” within the meaning of Section 368 of the Code and Treasury Regulations Section 1.368-2(g).

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and covenants and agreements contained herein, the parties to this Agreement, intending to be legally bound, hereby agree as follows:

ARTICLE I

DESCRIPTION OF TRANSACTIONS

Section 1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Effective Time, Merger Sub shall be merged with and into Newco. By virtue of the Merger, at the Effective Time, the separate existence of Merger Sub shall cease and Newco shall continue as the surviving corporation in the Merger (the “Surviving Corporation”).

Section 1.2 Effects of the Merger. The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL.

Section 1.3 Closing; Effective Time. Unless this Agreement shall have been terminated pursuant to Section 8.1, subject to the provisions of Articles VI and VII, the closing of the Merger and the consummation of the other transactions contemplated hereby (the “Closing”) shall take place at 10:00 a.m., Central time, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, on a date and time to be designated jointly by Everest and Athena, which shall be no later than the second Business Day after the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Articles VI and VII (other than the conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of each of such conditions), or at such other date, time or place as Athena and Everest may mutually agree. The date on which the Closing actually takes place is referred to as the “Closing Date.” Subject to the provisions of this Agreement, a certificate of merger, with respect to the Merger, satisfying the applicable requirements of the DGCL shall be duly executed by Newco and concurrently with the Closing shall be filed by Newco with the Secretary of State of the State of Delaware. The Merger shall become effective at the time of the filing of such certificate of merger with the Secretary of State of the State of Delaware or at such later time as may be designated jointly by Everest and Athena and specified in such certificate of merger (the time as of which the Merger becomes effective being referred to as the “Effective Time”).

Section 1.4 Certificate of Incorporation and Bylaws; Directors and Officers.

(a) At the Effective Time, the certificate of incorporation of Newco, as is effective immediately prior to the Effective Time, shall, by virtue of the Merger, be amended and restated in its entirety to read as set forth on Exhibit B hereto, and as so amended shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided therein or by applicable Legal Requirement;

(b) At the Effective Time, Athena shall take such action necessary to change the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, to be the bylaws of the Surviving Corporation, except as to the name of the Surviving Corporation, which shall be “ChampionX Holding Inc.”, until thereafter amended as provided by applicable Legal Requirement, the certificate of incorporation of the Surviving Corporation or such bylaws; and

(c) The directors and officers of the Surviving Corporation from and after the Effective Time shall be the same individuals who are the directors and officers of Merger Sub immediately prior to the Effective Time.

Section 1.5 Conversion of Newco Common Stock in the Merger.

(a) Subject to the terms and conditions of this Agreement, at the Effective Time, by virtue of the Merger and without any further action on the part of Everest, Newco, Athena, Merger Sub or any stockholder of any of the foregoing:

(i) each share of Newco Common Stock held in Newco’s treasury shall automatically be canceled and shall cease to exist, and no consideration shall be delivered in exchange therefor or in respect thereof;

(ii) except as provided in clause (i) above, and subject to Section 1.5(c), each share of Newco Common Stock outstanding immediately prior to the Effective Time (other than shares canceled in accordance with Section 1.5(a)(i)) shall be converted into the right to receive a number of duly authorized, validly issued, fully paid and nonassessable shares of Athena Common Stock equal to the Exchange Ratio, subject to adjustment in accordance with Section 1.5(b); and

(iii) each share of the common stock, \$0.01 par value per share, of Merger Sub outstanding immediately prior to the Effective Time shall be converted into one share of the Surviving Corporation, which shall be a wholly owned Subsidiary of Athena.

(b) If, during the period from the date of this Agreement through the Effective Time, the outstanding shares of Athena Common Stock are changed into a different number or class of shares by reason of any stock split, division or subdivision of shares, stock dividend, reverse stock split, combination of shares, reclassification, recapitalization or other similar transaction, or if a stock dividend is declared by Athena during such period, then the Exchange Ratio shall be adjusted to the extent appropriate to provide the same economic effect as contemplated by this Agreement prior to such action. This Section 1.5(b) shall not permit Athena to take or refrain from taking any action which it is obligated to take or refrain from taking pursuant to Section 4.3.

(c) No fractional shares of Athena Common Stock shall be issued in connection with the Merger, and no certificates or scrip for any such fractional shares shall be issued. Any holder of shares of Newco Common Stock who would otherwise be entitled to receive a fraction of a share of Athena Common Stock (after aggregating all fractional shares of Athena Common Stock issuable to such holder) shall, in lieu of such fraction of a share, be paid in cash the dollar amount (rounded to the nearest whole cent), after deducting any required withholding Taxes, on a pro rata basis, without interest, determined by multiplying such fraction by the closing price of a share of Athena Common Stock on the New York Stock Exchange on the last Business Day prior to the date on which the Merger becomes effective. Payment of cash in lieu of fractional shares of Athena Common Stock shall be made solely for the purpose of avoiding the expense and inconvenience to Athena of issuing fractional shares of Athena Common Stock and shall not represent separately bargained-for consideration.

Section 1.6 Exchange of Newco Common Stock.

(a) Pursuant to Section 3.1 of the Distribution Agreement, the Exchange Agent (as defined below) shall hold, for the account of the relevant Everest stockholders, book-entry shares representing all of the outstanding shares of Newco Common Stock distributed in the Distribution.

(b) Not less than five (5) Business Days prior to the Closing Date, Everest shall appoint a nationally recognized bank or trust company reasonably acceptable to Athena as exchange agent in the Merger (the "Exchange Agent") for the benefit of the holders of Newco Common Stock. At or prior to the Effective Time, Athena shall cause to be deposited with the Exchange Agent, for exchange in accordance with this Article I, such shares of Athena Common Stock in book-entry form issuable pursuant to Section 1.5 (such shares of Athena Common Stock, together with any dividends or distributions pursuant to Section 1.6(d) received by the Exchange Agent with respect to such shares of Athena Common Stock, are referred to collectively as the "Exchange Fund"). Athena will make available to the Exchange Agent, for addition to the Exchange Fund, from time to time as needed or as reasonably requested by Everest, cash sufficient to pay cash in lieu of fractional shares in accordance with Section 1.5(c). Following the Effective Time, the Exchange Agent shall, pursuant to irrevocable instructions, deliver the Athena Common Stock to be issued pursuant to this Article I from the shares of Athena Common Stock held in the Exchange Fund. The Exchange Fund shall not be used for any other purpose.

(c) Promptly after the Effective Time, the Exchange Agent shall, and Athena shall cause the Exchange Agent to, deliver to each Person who was a record holder of shares of Newco Common Stock immediately prior to the Effective Time (i) a notice of the effectiveness of the Merger and (ii) from the Exchange Fund, the number of whole shares of Athena Common Stock that such holder has the right to receive pursuant to the provisions of Section 1.5(a)(ii) (and cash in lieu of any fractional share of Athena Common Stock pursuant to Section 1.5(c)) and any dividends or other distributions pursuant to Section 1.6(d)). From and after the Effective Time, any share of Newco Common Stock will represent only the right to receive shares of Athena Common Stock pursuant to the provisions of Section 1.5(a)(ii) (and cash in lieu of any fractional share of Athena Common Stock as contemplated by Section 1.5(c)) and any dividends or other distributions pursuant to Section 1.6(d)).

(d) No dividends or other distributions declared or made with respect to Athena Common Stock with a record date after the Effective Time shall be paid or otherwise delivered to the holder of any shares of Newco Common Stock with respect to the shares of Athena Common Stock that cannot be distributed by the Exchange Agent to such holder promptly after the Effective Time, whether due to a legal impediment to such distribution or otherwise. Subject to the effect of applicable abandoned property law, escheat law or other Legal Requirement, following the distribution of any such previously undistributed shares of Athena Common Stock, there shall be paid to the record holder of such shares of Athena Common Stock, without interest, at the time of such distribution, the amount of cash in lieu of any fractional share of Athena Common Stock as contemplated by Section 1.5(c) and the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such shares of Athena Common Stock. Athena shall deposit all such dividends and distributions in the Exchange Fund.

(e) Any portion of the Exchange Fund that remains undistributed to holders of any shares of Newco Common Stock with respect to the shares of Athena Common Stock that the Exchange Agent is not able to distribute to such holders as of the date that is one year after the Effective Time shall be delivered to Athena upon demand, and any holders of shares of Newco Common Stock who have not theretofore exchanged their shares of Newco Common Stock in accordance with this Section 1.6 shall thereafter look only to Athena for satisfaction of their claims for Athena Common Stock, cash in lieu of fractional shares of Athena Common Stock as contemplated by Section 1.5(c) and any dividends or distributions pursuant to Section 1.6(d) with respect to shares of Athena Common Stock, in each case without interest thereon.

(f) None of Everest, Athena or the Surviving Corporation shall be liable to any holder or former holder of shares of Newco Common Stock or to any other Person with respect to any shares of Athena Common Stock (or dividends or distributions with respect thereto), or for any cash amounts, required to be delivered to any public official or Governmental Body pursuant to any applicable abandoned property law, escheat or similar law or other Legal Requirement.

Section 1.7 Closing of Transfer Books. From and after the Effective Time, the stock transfer books of Newco shall be closed and no transfer shall be made of any shares of Newco Common Stock that were outstanding as of the Effective Time.

Section 1.8 Tax Consequences. For U.S. federal income Tax purposes, the Merger is intended to qualify as a reorganization within the meaning of Section 368(a) of the Code. The parties to this Agreement have adopted this Agreement as a “plan of reorganization” within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a). Each party hereto shall cause all Tax Returns relating to the Merger filed by such party to be filed on the basis of treating the Merger as a reorganization within the meaning of Section 368(a) of the Code unless otherwise required by a “determination” (within the meaning of Section 1313(a) of the Code).

Section 1.9 Further Action. If, at any time after the Closing, any further action is determined by Athena or the Surviving Corporation to be necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full right, title and possession of and to all rights and property of Merger Sub and Newco, the officers and directors of the Surviving Corporation and Athena shall be fully authorized (in the name of Merger Sub, in the name of Newco and otherwise) to take such action.

Section 1.10 Withholding. Each of the Exchange Agent, Everest, Athena and the respective Subsidiaries of Everest or Athena (including the Surviving Corporation), as applicable, shall be entitled to deduct and withhold from any consideration or other amounts payable or otherwise deliverable pursuant to this Agreement (including to any holder or former holder of shares of Newco Common Stock) such amounts as may be required to be deducted or withheld from such consideration or payment under the Code or any provision of state, local or foreign Tax law or under any other applicable Legal Requirement. To the extent such amounts are so deducted or withheld and paid to the appropriate Governmental Body, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF EVEREST AND NEWCO

Each of Everest and Newco hereby represent and warrant to Athena and Merger Sub as follows (it being understood that each representation and warranty contained in this Article II is subject to: (a) the exceptions and disclosures set forth in the section or subsection of the Everest Disclosure Letter corresponding to the particular section or subsection in this Article II in which such representation and warranty appears; (b) the assumption that the transactions contemplated by the Distribution Agreement have occurred in compliance with the terms thereof; (c) any exception or disclosure set forth in any other section or subsection of the Everest Disclosure Letter to the extent it is reasonably apparent that such exception or disclosure is relevant to such representation and warranty; and (d) any information set forth in the Everest SEC Documents filed on the SEC’s EDGAR database on or after January 1, 2018 and publicly available at least two (2) Business Days prior to the date of this Agreement (but excluding any supplements or amendments thereto to the extent such supplement or amendment is not publicly filed at least two (2) Business Days prior to the date hereof), other than information set forth therein under the headings “Risk Factors” or “Forward-Looking Statements” and any other information or statement set forth therein that is primarily cautionary, predictive or forward-looking in nature):

Section 2.1 Organization and Good Standing.

(a) Each of the Newco Companies is (or, if formed after the date of this Agreement, shall be at the Effective Time) a corporation or other business organization duly organized, validly existing and in good standing (to the extent that the laws of the jurisdiction of its formation recognize the concept of good standing) under the laws of the jurisdiction of its formation, and has (or, if formed after the date of this Agreement, shall have at the Effective Time) all necessary organizational power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; (ii) to own and use its material assets in the manner in which such assets are currently owned and used; and (iii) to perform its obligations under all Contracts by which it is bound, other than in the case of clauses (i) through (iii) as would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect.

(b) Each of the Newco Companies is (or, if formed after the date of this Agreement, shall be at the Effective Time) qualified to do business as a foreign corporation or other foreign business organization, and is (or, if formed after the date of this Agreement, shall be at the Effective Time) in good standing (to the extent that the laws of the applicable jurisdiction recognize the concept of good standing), under the laws of all jurisdictions where the nature of its business requires such qualification, except for jurisdictions in which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect.

Section 2.2 Authority; Binding Nature of Agreement. Each of Everest and Newco have all requisite corporate right, power and authority to enter into and perform their respective obligations under this Agreement, the Distribution Agreement and the other Transaction Documents, as applicable, to which it is a party and, subject to the adoption of this Agreement by Everest as the sole stockholder of Newco (which shall occur immediately after the execution and delivery hereof), respectively, to consummate the Contemplated Transactions. Each of the Everest Board and the Newco board of directors has: (a) determined that this Agreement, the Distribution Agreement, the Distribution and the Merger are advisable and fair to, and in the best interests of, Everest, Newco and their respective stockholders and (b) authorized and approved the execution, delivery and performance of this Agreement, the Distribution Agreement and the other Transaction Documents by Everest and Newco, as applicable, and approved the Distribution and the Merger and the other Contemplated Transactions. Everest, as the sole stockholder of Newco prior to the Distribution, will adopt this Agreement and approve the Merger as sole stockholder of Newco immediately following the execution and delivery of this Agreement. No other vote of Newco's stockholders is necessary to consummate the Contemplated Transactions. Subject to the adoption of this Agreement by Everest as the sole stockholder of Newco and assuming the due authorization, execution and delivery of this Agreement by Athena and Merger Sub, this Agreement constitutes a legal, valid and binding obligation of each of Everest and Newco, enforceable against each of Everest and Newco in accordance with its terms, subject to: (i) laws of general application relating to bankruptcy, insolvency, the relief of debtors and creditors' rights generally; and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

Section 2.3 Non-Contravention; Consents. Assuming compliance with the applicable provisions of the DGCL, the HSR Act and all applicable foreign Competition Laws and the listing requirements of the New York Stock Exchange, neither (1) the execution, delivery or performance of this Agreement, nor (2) the consummation of the Merger or any of the other Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with or result in a violation of any of the provisions of the certificate of incorporation, bylaws, certificate of formation, limited liability company operating agreement, or other charter or organizational documents of Everest or any of the Newco Companies;

(b) contravene, conflict with or result in a violation of any Legal Requirement or any Order to which Everest or any of the Newco Companies, or any of the Newco Assets, is subject, except where such contravention, conflict or violation would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect;

(c) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by any of the Newco Companies or that otherwise relates to the Newco Business or to any of the Newco Assets, except where such contravention, conflict, violation, revocation, withdrawal, suspension, cancellation, termination or modification would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect;

(d) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Newco Material Contract, or give any Person the right to: (i) declare a default or exercise any remedy under any such Newco Material Contract; (ii) accelerate the maturity or performance of any such Newco Material Contract (other than any Everest Employee Plan); or (iii) cancel, terminate or modify any right, benefit, obligation or other term of such Newco Material Contract, in each case except as would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect; or

(e) result in the imposition or creation of any material Encumbrance (other than a Permitted Encumbrance) upon or with respect to any Newco Asset, except as would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect.

Except as may be required by the Securities Act, the Exchange Act, state securities laws or “blue sky” laws, the DGCL, the HSR Act, any applicable foreign Competition Laws and any applicable listing requirements of the New York Stock Exchange, neither Everest nor any of the Newco Companies is or will be required to make any filing with or give any notice to, or to obtain any Consent from, any Governmental Body in connection with: (x) the execution, delivery or performance of this Agreement; or (y) the consummation of the Merger or any of the other Contemplated Transactions, except where the failure to make any such filing or give any such notice or to obtain any such Consent would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect, and except for the novation of Contracts with any Governmental Body.

Section 2.4 Capitalization, Etc.

(a) On the date of this Agreement, the authorized capital stock of Newco consists of one thousand (1,000) shares of Newco Common Stock, of which one hundred (100) shares of Newco Common Stock are outstanding. Immediately prior to the Distribution, all the outstanding shares of Newco Common Stock will be owned directly or indirectly by Everest free and clear of any Encumbrance, other than restrictions under applicable securities laws. Immediately following the Distribution, (i) there will be outstanding only such number of shares of Newco Common Stock as determined in accordance with this Agreement and the Distribution Agreement and (ii) no shares of Newco Common Stock will be held in Newco’s treasury. As of the date of this Agreement and as of the Effective Time, all of the outstanding shares of Newco Common Stock have been and will be duly authorized and validly issued, and are and will be fully paid and nonassessable.

(b) (i) None of the outstanding shares of Newco Common Stock is entitled or subject to any preemptive right, right of repurchase or forfeiture, right of participation, right of maintenance or any similar right; (ii) none of the outstanding shares of Newco Common Stock is subject to any right of first refusal in favor of Newco; and (iii) there is no Newco Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or from granting any option or similar right with respect to) any shares of Newco Common Stock. Newco is not under any obligation, and is not bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of Newco Common Stock.

(c) There are no outstanding stock appreciation, phantom stock, profit participation or similar rights or other equity appreciation or other equity or equity-based compensation rights or arrangements with respect to any shares of capital stock or other equity interests of Newco or the value thereof.

(d) Except for the Transaction Documents, there is no (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of Newco; (ii) outstanding security, bond, debenture, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of Newco or that has the right to vote on any matter on which the stockholders of Newco have the right to vote; or (iii) Contract under which Newco is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities.

(e) All outstanding shares of Newco Common Stock and other outstanding securities of Newco have been issued in compliance in all material respects with all applicable securities laws and other applicable Legal Requirements.

Section 2.5 Subsidiaries, Etc.

(a) Section 2.5(a) of the Everest Disclosure Letter identifies, as of the date of this Agreement, each existing Entity (and jurisdiction of organization) that will be a Subsidiary of Newco as of immediately prior to the Distribution based on the Separation Plan as of the date of this Agreement.

(b) All of the outstanding shares of capital stock, membership interests or other equity interests, as the case may be, of each of Newco's Subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable (to the extent applicable) and free of preemptive rights, with no personal liability attaching to the ownership thereof, and are, or following the Internal Restructuring and Newco Contribution will be, owned beneficially and of record, directly or indirectly, by Newco, free and clear of any Encumbrances, other than Permitted Encumbrances and restrictions under applicable securities laws.

(c) Except for the Transaction Documents, none of the Newco Companies other than Newco is under any obligation, or is bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of Newco Common Stock.

(d) There are no outstanding stock appreciation, phantom stock, profit participation or similar rights or equity-based awards with respect to (i) any shares of capital stock or other equity interests of any of the Newco Companies other than Newco or the value thereof or (ii) the Newco Business or any part thereof.

(e) Except for the Transaction Documents, there is no (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock, membership interests, or other securities of any of the Newco Companies other than Newco; (ii) outstanding security, bond, debenture, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock, membership interests or other securities of any of the Newco Companies other than Newco; or (iii) Contract under which any of the Newco Companies other than Newco is or may become obligated to sell or otherwise issue any shares of its capital stock, membership interests or any other securities.

(f) All outstanding securities of the Newco Companies other than Newco have been issued in compliance in all material respects with all applicable securities laws and other applicable Legal Requirements.

Section 2.6 Financial Statements.

(a) Section 2.6(a) of the Everest Disclosure Letter contains copies of (i) the audited combined balance sheets of the Newco Business at December 31, 2018 and 2017 and the audited combined statements of income, combined statements of comprehensive income, combined statements of cash flows and combined statements of changes in net parent investment in the Newco Business for the years ended December 31, 2018, 2017 and 2016, and (ii) the unaudited combined balance sheet of the Newco Business at September 30, 2019 and the unaudited combined statements of income, combined statements of comprehensive income, combined statements of cash flows and combined statements of changes in net parent investment in the Newco Business for the nine months ended September 30, 2019 and 2018 (collectively, the “Newco Business Financial Statements”). The Newco Business Financial Statements, subject to the notes thereto, (i) present fairly, in all material respects, the combined financial position of the Newco Business as of the dates thereof and the results of operations and cash flows of the Newco Business for the periods covered thereby; and (ii) were prepared in accordance with GAAP, consistently applied during the periods covered thereby.

(b) Everest maintains a system of internal controls over financial reporting which is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, in each case, with respect to Everest and its Subsidiaries, taken as a whole. Since the Applicable Date, to the Knowledge of Everest, neither Everest nor any of its Subsidiaries has identified or been made aware of any material illegal act or fraud related to the business of the Newco Business.

(c) None of the information to be supplied by or on behalf of Everest or Newco for inclusion or incorporation by reference in the Athena Form S-4 Registration Statement or the Newco Registration Statements will, after giving effect to any amendments that have theretofore been made thereto, (i) at the time the Athena Form S-4 Registration Statement or the Newco Registration Statements, respectively, is filed with the SEC; (ii) at the time it, or any amendment or supplement thereto, becomes effective under the Securities Act; or (iii) at the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. None of the information supplied or to be supplied by or on behalf of Everest or Newco for inclusion or incorporation by reference in the Proxy Statement/Prospectus will, at the time the Proxy Statement/Prospectus is mailed to the stockholders of Athena or at the time of the Athena Stockholders’ Meeting (or any adjournment or postponement thereof), contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. The Newco Registration Statements and the Schedule TO (if applicable) will comply as to form in all material respects with the provisions of the Securities Act, the Exchange Act and the rules and regulations promulgated by the SEC thereunder, except that no representation or warranty is made by Everest or Newco with respect to statements made or incorporated by reference therein based on information supplied by or on behalf of Athena for inclusion or incorporation by reference in the Newco Registration Statements or the Schedule TO.

(d) After giving effect to the Distribution and the other transactions contemplated by the Distribution Agreement, the Newco Companies have not incurred any liabilities or obligations (whether accrued, absolute, contingent or otherwise) that are required to be reflected in the Newco Business Financial Statements in accordance with GAAP, as in effect on the date of this Agreement, except for (i) those liabilities that are reflected or reserved for in the Newco Business Financial Statements; (ii) liabilities that have been incurred by the Newco Business since September 30, 2019 in the ordinary course of the Newco Business consistent with past practice; (iii) liabilities under this Agreement or incurred in connection with the Contemplated Transactions; and (iv) liabilities that are not, individually or in the aggregate, material to the Newco Business, taken as a whole.

Section 2.7 Absence of Changes.

(a) Except as expressly contemplated by this Agreement, since September 30, 2019 through the date of this Agreement, except for discussions, negotiations and transactions related to this Agreement or the other Transaction Documents (including the Internal Restructuring contemplated by the Distribution Agreement), Everest and its Subsidiaries (with respect to the Newco Business) and the Newco Companies have conducted the Newco Business in all material respects in the ordinary course of business consistent with past practice.

(b) Since September 30, 2019 through the date of this Agreement, no Effect has occurred or exists that, individually or in the aggregate, has had, or would reasonably be expected to have, a Newco Material Adverse Effect.

(c) Except as expressly contemplated by this Agreement, since September 30, 2019 through the date of this Agreement, neither Everest nor any of its Subsidiaries (with respect to the Newco Business) nor the Newco Companies have taken any actions which, had such actions been taken after the date of this Agreement, would have required the written consent of Athena pursuant to Section 4.2(b)(iv) through Section 4.2(b)(xvii) and (with respect to actions under Section 4.2(b)(iv) through Section 4.2(b)(xvii)), Section 4.2(b)(xviii).

Section 2.8 Assets.

(a) After giving effect to the Contemplated Transactions contemplated by the Distribution Agreement, the Newco Companies will have good and valid title to, or valid leasehold interest in or license to, all of the material Newco Assets. All of said assets are, or after the Distribution will be, owned or leased by the Newco Companies free and clear of any Encumbrances, except where (i) the conveyance of any such assets requires a Consent which is not obtained, in which case the provisions of Section 2.2 and/or 2.5 of the Distribution Agreement (as applicable) will govern or (ii) the failure to have such good and valid title or valid leasehold interest or license results from Encumbrances created or otherwise imposed by the Athena Companies or any other Permitted Encumbrance.

(b) At the Effective Time, the Newco Assets, taken together with the benefits of any alternative arrangements provided pursuant to Section 2.2 and/or 2.5 of the Distribution Agreement (as applicable), the services available from Everest under the Transition Services Agreement, the licenses from Everest under the Intellectual Property Matters Agreement and the arrangements under the other Transaction Documents will constitute all of the assets necessary and sufficient for Athena and the Newco Companies to operate the Newco Business immediately following the Closing in all material respects as it is currently conducted.

(c) No representation is made in this Section 2.8 with respect to infringement, misappropriation or other violation of third party Intellectual Property Rights, which solely is covered under Section 2.10.

Section 2.9 Real Property; Leasehold.

(a) With respect to the Newco Owned Real Property and Newco Leased Real Property all material buildings, structures, fixtures and improvements are in satisfactory condition sufficient to support the operations of the Newco Business as presently conducted, except as would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect.

(b) With respect to each parcel of Newco Owned Real Property (i) there are no outstanding Contracts to sell, lease or otherwise transfer such Newco Owned Real Property and (ii) as of the date of this Agreement, there are no pending or, to the Knowledge of Everest, threatened condemnation or other Legal Proceedings relating to the Newco Owned Real Property, except as would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect.

(c) With respect to each lease, license or similar use or occupancy agreement (each a “Newco Lease”) pursuant to which, after giving effect to the Contemplated Transactions contemplated by the Distribution Agreement, a Newco Company leases or otherwise uses or occupies (or will lease or otherwise use or occupy) real property (all such real property that is the subject of any Newco Lease, the “Newco Leased Real Property”), (i) each Newco Lease is (or will be) the legal, valid and binding obligation of the applicable Newco Company that is (or will be) lessee thereunder and, to the Knowledge of Everest, any other party thereto, and (ii) the applicable Newco Company is not in default, and, to the Knowledge of Everest, no other party to such Newco Lease is in default, under such Newco Lease, except, in each case of (i) and (ii), as would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect.

Section 2.10 Intellectual Property; Data Privacy.

(a) Section 2.10(a) of the Everest Disclosure Letter identifies, as of the date of this Agreement, each material item of Registered IP included in the Newco Owned IP (the “Newco Material Registered IP”). The Newco Material Registered IP is subsisting, and to the Knowledge of Everest, none of the Newco Material Registered IP is invalid or unenforceable.

(b) The Newco Companies solely and exclusively own all right, title, and interest to and in the material Newco Owned IP free and clear of any Encumbrances other than Permitted Encumbrances, and the Newco Companies have valid rights to use, pursuant to an inbound Newco IP License (or under the Intellectual Property Matters Agreement or Other IP Licenses), all other material Intellectual Property Rights used in or necessary for the conduct of the Newco Business (provided that the foregoing is not a representation with respect to infringement, misappropriation or other violation of third party Intellectual Property Rights, which is covered under Section 2.10(f)).

(c) To the Knowledge of Everest, Everest and each of its Subsidiaries (including the Newco Companies) have taken commercially reasonable steps to maintain the confidentiality of the material trade secrets included in the Newco IP. No such trade secret material to the Newco Business as presently conducted and presently proposed to be conducted has been authorized to be (or has actually been) disclosed by Everest or any of its Subsidiaries (including the Newco Companies) to any other Person, other than pursuant to a written non-disclosure agreement (or obligations by operation of law) restricting the disclosure and use thereof.

(d) Everest (or its applicable Subsidiary) has executed valid written agreements with each of its former and current employees, consultants and independent contractors (or such Persons have obligations by operation of law) to the extent engaged in the creation or development of any material Newco IP, pursuant to which each such Person has: (i) agreed to hold all material trade secrets of the Newco Business in confidence both during and after such Person's employment or retention, as applicable; and (ii) assigned to Everest (or its applicable Subsidiary) all of such Person's rights, titles and interests in and to all such Newco IP, in each case created or developed for Everest (or its applicable Subsidiary, including the Newco Companies) in the course of such Person's employment or retention thereby. To the Knowledge of Everest, no party thereto is in default, violation or breach of any such agreements, except where such default, violation or breach would not be material to the Newco Business. No government funding and no facilities of a university, college, other educational institution or research center were used in the development of any material Newco IP where, as a result of such funding or the use of such facilities, such government or university entity or organization has any material rights, title or interest in such Newco IP.

(e) To the Knowledge of Everest, as of the date of this Agreement, no Person has infringed, misappropriated, or otherwise violated any Newco IP in connection with the Newco Business in any material respect since the Applicable Date, and, as of the date of this Agreement, no claim or Legal Proceeding involving or alleging any of the foregoing is pending or, to the Knowledge of Everest, is threatened in writing by Everest or its Subsidiaries (including the Newco Companies) against any other Person.

(f) To the Knowledge of Everest, the use and practice of the Newco IP and the conduct of the Newco Business by Everest and its Subsidiaries with respect to the Newco Business (including the Newco Companies, and including prior to giving effect to the Contemplated Transactions contemplated by the Distribution Agreement) as conducted since the Applicable Date, have not infringed, misappropriated, or otherwise violated any Intellectual Property Right of any other Person in any material respect, and, as of the date of this Agreement, no claim or Legal Proceeding is pending or, to the Knowledge of Everest, has since the Applicable Date been threatened in writing against Everest or its Subsidiaries (including the Newco Companies) by any other Person either (i) involving or alleging any of the foregoing, or (ii) challenging the ownership, use, validity or enforceability of any material Newco IP.

(g) Neither Everest nor any of its Subsidiaries (with respect to the Newco Business) nor the Newco Companies have used Open Source Code in connection with any Software included in the Newco IP developed, licensed, distributed, used or otherwise exploited by Everest or any of its Subsidiaries (including the Newco Companies) in a manner that has resulted or will result in a requirement that any material proprietary source code included in the Newco IP (1) be disclosed or distributed in source code form, (2) be licensed for the purpose of making modifications or derivative works, or (3) be redistributable at no charge.

(h) To the Knowledge of Everest, (i) Everest and its Subsidiaries (including the Newco Companies) have, at all times since the Applicable Date, materially complied with, and, as of the date of this Agreement, no Person has asserted a written claim against Everest or its Subsidiaries (including the Newco Companies) in connection with the Newco Business alleging a material violation of, any public-facing privacy policy of Everest or any of its Subsidiaries (including the Newco Companies) or applicable Privacy Laws, and (ii) as of the date of this Agreement, there have been no unauthorized intrusions or breaches of the security of Everest's or any of its Subsidiaries' (with respect to the Newco Business) or the Newco Companies' IT Systems resulting in any material data breach, unauthorized access to or disclosure of, or other material misuse or breach of any Personal Data under the possession or control of Everest or its Subsidiaries (including the Newco Companies) or collected by or on their behalf in connection with the Newco Business. Everest (or its Subsidiaries, as applicable to the Newco Business) has implemented commercially reasonable disaster recovery and business continuity plans, and taken actions consistent with such plans in all material respects, intended to safeguard the IT Systems of the Newco Business and material data and information (including any Personal Data) contained or stored therein, and enable the ongoing conduct of the Newco Business in all material respects in the event of a disaster or IT Systems outage.

(i) This Section 2.10 contains the sole and exclusive representations and warranties of Everest and Newco under this Agreement with respect to infringement, misappropriation or other violation of Intellectual Property Rights.

Section 2.11 Contracts.

(a) Section 2.11(a) of the Everest Disclosure Letter identifies each Newco Material Contract. For purposes of this Agreement, “Newco Material Contract” shall mean the following Contracts to which Everest or any of its Subsidiaries (including the Newco Companies) is a party that is executory as of the date of this Agreement:

- (i) with respect to the Newco Business, any Contract with any distributor involving sales in excess of \$10,000,000 in the fiscal year ended December 31, 2018, in each case that provides exclusivity rights to any third party;
- (ii) any Contract that is with a supplier of equipment, consumables, products or raw materials, which supplier is the only source of supply in the marketplace or only supplier to the Newco Business or that imposes a minimum purchase order, in each case, involving payments in excess of \$10,000,000 in the fiscal year ended December 31, 2018;
- (iii) any Contract imposing any material restriction on the right or ability of the Newco Business taken as a whole: (A) to compete with any other Person; (B) to develop, sell, supply, distribute, offer, support or service any product or any technology or other asset to or for any other Person; (C) to perform services for any other Person; or (D) to transact business with any other Person, in each case which restriction would or would reasonably be expected to materially and adversely affect the conduct of the Newco Business, taken as a whole, as currently conducted;
- (iv) with respect to which a Newco Company will be party at the Effective Time, any Contract relating to any currency hedging;
- (v) any Contract of the Newco Business concerning the establishment and/or operation of a partnership, joint venture or limited liability company with a third party that is not an Affiliate of Everest;
- (vi) any Contract relating to the acquisition or disposition of any material assets (other than in the ordinary course of business) or businesses, and with any outstanding obligations of the Newco Business (including indemnification, guarantee, “earn-out” or other similar contingent obligations);
- (vii) any (A) material Contract of the Newco Business containing any provision granting the other party “most favored nation” status or equivalent preferential pricing terms or (B) material Contract of the Newco Business containing any provision granting the other party exclusivity or other similar rights;

(viii) any Contract related to third party Indebtedness of the Newco Business in excess of \$5,000,000 (other than any Contract related to the matters described in Section 2.22);

(ix) with respect to the Newco Business, any Contract containing material licenses of, covenants not to sue under or other grants to any Intellectual Property Rights that have been granted by or to any Newco Company (or by or to Everest or its applicable Subsidiary, prior to giving effect to the Contemplated Transactions) (the "Newco IP Licenses"), except with regard to licenses to off-the-shelf Software commercially available on standard, non-discriminatory terms for an annual or aggregate fee of no more than \$5,000,000 or non-exclusive licenses or other non-exclusive grants of rights granted to customers, manufacturers, suppliers, distributors, consultants or vendors in the ordinary course of business ("Other IP Licenses"); and

(x) with respect to the Newco Business, any Contract that resulted in revenue to or expenses of the Newco Business in excess of \$25,000,000 in the fiscal year ending December 31, 2018.

Everest has delivered or Made Available to Athena an accurate and complete copy of each Newco Contract that constitutes a Newco Material Contract.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect, each Newco Contract that constitutes a Newco Material Contract is valid and in full force and effect (except to the extent any such Newco Material Contract expires by its terms or is terminated in compliance with Section 4.2), and is enforceable against Everest or its applicable Subsidiary (including any Newco Company, if applicable) in accordance with its terms, subject to: (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(c) Except as would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect, (i) neither Everest nor any of its Subsidiaries (including the Newco Companies) has violated or breached, or committed any default under, any Newco Material Contract; and (ii) to the Knowledge of Everest, no other Person has violated or breached, or committed any default under, any Newco Material Contract.

Section 2.12 Compliance with Legal Requirements; Regulatory Matters. The conduct of the Newco Business by Everest and its Subsidiaries (including the Newco Companies) is, and since the Applicable Date has been, in compliance with all applicable Legal Requirements, except where the failure to so comply would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect. Since the Applicable Date through the date hereof, neither Everest nor any of its Subsidiaries (with respect to the Newco Business) nor any of the Newco Companies has received any written notice or other written communication from any Governmental Body (i) regarding any actual or possible violation of, or failure to comply with, any Legal Requirement or (ii) that it is or has been the subject of any inspection, investigation, survey, audit, monitoring or other form of review by any Governmental Body.

Section 2.13 Anti-Corruption Compliance; Export Control and Sanctions Compliance.

(a) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Newco Business, taken as a whole, since the Applicable Date, neither Everest nor any of its Subsidiaries (with respect to the Newco Business), nor any of their officers or employees, nor any Newco Company, nor, to the Knowledge of Everest, any of their respective agents, distributors or representatives with respect to the Newco Business (i) has directly or indirectly offered, promised or made any unlawful contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to any Person in respect of the Newco Business, private or public, regardless of what form, (ii) is or has otherwise been in violation of any applicable anti-bribery, anti-corruption or similar Legal Requirements, including the U.S. Foreign Corrupt Practices Act of 1977 (15 U.S. Code Section 78dd-1, et seq.) (as amended, the “FCPA”) or the UK Bribery Act 2010 and (iii) has received any notice from, or voluntarily provided any notice to, a Governmental Body or other Person with respect to the Newco Business or a Newco Company that alleges any of the foregoing. With respect to any relevant portion of the Newco Business or a Newco Company that was acquired by Everest or any of its Subsidiaries after the Applicable Date, the foregoing representation is made to the Knowledge of Everest with respect to the time period between the Applicable Date and such acquisition.

(b) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Newco Business, taken as a whole, since the Applicable Date, Everest and its Subsidiaries (including the Newco Companies) have conducted the Newco Business in compliance with applicable provisions of U.S. economic or financial sanctions or trade embargoes, export controls, and anti-boycott laws and regulations imposed, administered or enforced from time to time by relevant Governmental Bodies, including those administered by the U.S. government through the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce’s Bureau of Industry and Security (collectively, “U.S. Sanctions and Export Control Laws”). Since the Applicable Date, neither Everest nor any of its Subsidiaries (with respect to the Newco Business) nor any Newco Company has had any transactions, business or financial dealings that benefited, or directly or indirectly involved Cuba, Iran, North Korea, Sudan, Syria or the Crimea region of Ukraine.

Section 2.14 Governmental Authorizations. Everest and its Subsidiaries (and after giving effect to the Distribution and the other transactions contemplated by the Distribution Agreement, the Newco Companies will) hold all Governmental Authorizations necessary to enable the Newco Companies to conduct their respective businesses in the manner in which such businesses are currently being conducted, including all Governmental Authorizations required under Environmental Laws, except where the failure to so hold would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect. All such Governmental Authorizations are valid and in full force and effect except as would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect. Everest and its Subsidiaries (including each Newco Company) are, and at all times since the Applicable Date have been, in compliance with the terms and requirements of such Governmental Authorizations, except where the failure to so comply would not, individually or in the aggregate, reasonably be expected to have a Newco Material Adverse Effect.

Section 2.15 Tax Matters.

(a) Each material Tax Return required to be filed by or on behalf of the respective Newco Companies or by or on behalf of Everest or any of its Subsidiaries with any Governmental Body (other than any such Tax Returns that relate solely to the Everest Retained Business) with respect to any Taxable period ending on or before the Closing Date (the “Newco Company Returns”): (i) has been or will be filed on or before the applicable due date (including any extensions of such due date); and (ii) has been, or will be when filed, prepared in all material respects in compliance with all applicable Legal Requirements. All material Taxes shown on the Newco Company Returns or otherwise payable by or with respect to the Newco Companies that are due and owing have been duly paid except, in each case, for Taxes contested in good faith in appropriate proceedings and for which adequate reserves have been established in accordance with GAAP.

(b) As of the date of this Agreement, no Newco Company and no Newco Company Return is subject to a pending, ongoing, or, to the Knowledge of Everest, threatened, audit with respect to Taxes by any Governmental Body. No extension or waiver of the limitation period applicable to any of the Newco Company Returns has been granted (by Everest, Newco or any other Person) which currently remains in effect, and no such extension or waiver has been requested from any Newco Company.

(c) No claim or Legal Proceeding is pending or, to the Knowledge of Everest, has been threatened against or with respect to any Newco Company or with respect to the Newco Business in respect of any material Tax. There are no unsatisfied liabilities for material Taxes with respect to any notice of deficiency or similar document received by Everest or any of its Subsidiaries with respect to the Newco Business or with respect to any Newco Company with respect to any material Tax (other than liabilities for Taxes asserted under any such notice of deficiency or similar document which are being contested in good faith by Everest or its applicable Subsidiaries and with respect to which adequate reserves for payment have been established on the Newco Business Financial Statements). There are no Encumbrances for material Taxes upon any of the Newco Assets except Permitted Encumbrances.

(d) No written claim has ever been made by any Governmental Body in a jurisdiction where a Newco Company does not file a Tax Return that it is or may be subject to Taxation by that jurisdiction which has resulted or could reasonably be expected to result in an obligation to pay material Taxes.

(e) There are no Contracts relating to the allocating, sharing or indemnification of Taxes to which any Newco Company is a party, other than (i) the Tax Matters Agreement, and (ii) Contracts containing customary gross-up or indemnification provisions in credit agreements, derivatives, leases, and similar agreements entered into in the ordinary course of business.

(f) Other than in connection with the Distribution or otherwise in connection with the separation of the Newco Business, no Newco Company has constituted either a “distributing corporation” or a “controlled corporation” within the meaning of Section 355(a)(1)(A) of the Code.

(g) Newco is not and has not been a U.S. real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(h) No Newco Company has participated in, or is currently participating in, a “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b).

(i) The Newco Companies have withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder or other Person.

(j) Neither Everest nor any Newco Company has taken any action or knows, after consultation with outside legal counsel, of any fact that could reasonably be expected to prevent the Intended Tax Treatment.

(k) As of the date hereof, neither Everest nor Newco knows, after consultation with outside legal counsel, of any reason why (i) Everest or Athena would not be able to deliver the Tax representation letters contemplated by Section 5.5(a) and Section 5.5(b), upon which the applicable law or accounting firms may rely in rendering the opinions contemplated by Section 5.5(b), Section 7.6(a) and Section 7.6(b), (ii) Everest would not be able to obtain (A) the opinion contemplated by Section 7.6(a), (B) the opinion contemplated by Section 7.6(b) or (C) the Tax ruling contemplated by Section 5.5(e), or (iii) Athena would not be able to obtain any opinion contemplated by Section 5.5(b).

(l) This Section 2.15 and, to the extent relating to Tax matters, Section 2.16, contain the sole and exclusive representations and warranties of Everest and Newco in this Agreement with respect to Tax matters.

Section 2.16 Employee and Labor Matters; Benefit Plans.

(a) (i) As of the date of this Agreement, neither Everest nor any of its Subsidiaries (with respect to the Newco Business) nor any of the Newco Companies is a party to any collective bargaining agreement or other Contract with a labor organization, employee representative or works council representing any of its employees and there are no labor organizations, employee representatives or works councils representing, purporting to represent or, to the Knowledge of Everest, seeking to represent any employees of any of the Newco Business; (ii) since the Applicable Date through the date hereof, there has not been any material strike, slowdown, work stoppage, lockout, job action, picketing, labor dispute, question concerning representation, union organizing activity, or any threat thereof, or any similar activity or dispute, affecting Everest or any of its Subsidiaries (with respect to the Newco Business) or any of the Newco Companies or any of their employees in the Newco Business; (iii) as of the date of this Agreement, there are no pending, and, to the Knowledge of Everest, no Person has threatened to commence, any such strike, slowdown, work stoppage, lockout, job action or picketing referred to in the preceding clause (ii); (iv) as of the date of this Agreement, no labor organization, employee representative, works council, or group of employees of the Newco Companies has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority; and (v) as of the date of this Agreement, there is no material unfair labor practice charge, or claim or grievance pending or, to the Knowledge of Everest, threatened against any Newco Company arising under any collective bargaining agreement or other Contract with a labor organization, employee representative or works council relating to any terms or conditions of employment. The execution and delivery of this Agreement and the performance of this Agreement do not require Everest or any of the Newco Companies to seek or obtain any consent, engage in consultation with, or issue any notice to or make any filing with (as applicable) any labor organization, employee representative or works council, or any Governmental Body, with respect to any employee of Everest or any of the Newco Companies.

(b) Section 2.16(b) of the Everest Disclosure Letter sets forth a list of each material Everest Employee Plan (x) under which any of the Newco Companies or Athena has or may have any liability or an obligation under the terms of the Employee Matters Agreement or otherwise on or following the Effective Time, (y) the terms and conditions of which serve as the basis for the provision of benefits to the Newco Associates after the Closing Date in accordance with the terms and conditions of the Employee Matters Agreement, or (z) as to which Athena or any of the Newco Companies is obligated under applicable Legal Requirements or under the terms of the Employee Matters Agreement to assume sponsorship or liability for or otherwise maintain after the Closing Date (any such Everest Employee Plan referenced in (x), (y), or (z) the "Newco Plans"). Everest has Made Available to Athena the following items with respect to each material Newco Plan maintained primarily in respect of individuals who are located in the United States: (i) all documents setting forth the terms of each such Newco Plan, including all amendments thereto and all related trust documents and funding arrangements; (ii) the most recent summary plan description; (iii) the most recent annual reports (Form 5500s and all schedules and financial statements attached thereto), if any; (iv) the most recent annual actuarial valuation; (v) all material correspondence in its possession regarding any such Newco Plan regarding any audit, investigation or proceeding before any Governmental Body regarding such Newco Plan or any fiduciary thereof; and (vi) in the case of any Newco Plan intended to be qualified under Section 401(a) of the Code, the most recent IRS determination or opinion letter issued with respect to such Newco Plan.

(c) Except as would not reasonably be expected to result in material liability to the Newco Companies or Athena, taken as a whole, (i) each of the Newco Companies and Everest Affiliates has performed in all material respects all obligations required to be performed by it under each Newco Plan and each Newco Plan has been established and maintained in all material respects in accordance with its terms and applicable Legal Requirements; (ii) as of the date of this Agreement, there are no material audits or inquiries pending or, to the Knowledge of Everest, threatened by the IRS, the DOL or any other Governmental Body with respect to any such Newco Plan (or any fiduciary thereof); (iii) as of the date of this Agreement, there are no material actions, suits or claims pending, or to the Knowledge of Everest, threatened or reasonably anticipated (other than routine claims for benefits) against any such Newco Plans, or against the assets of any such Newco Plan; (iv) full and timely payment has been made of all material amounts which Everest or any of the Newco Companies are required, under applicable Legal Requirements or in accordance with the terms of any Newco Plan, to have paid as a contribution or payment in respect of any Newco Plan, and all such contributions or payments for any period that are not yet due have been made, paid or properly accrued in accordance with GAAP applied on a consistent basis; (v) no nonexempt “prohibited transaction” (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) or breach of fiduciary duty (as determined under ERISA) has occurred with respect to any Newco Plan; and (vi) no events have occurred with respect to any Newco Plan that would result in a payment or assessment by or against Everest or any of its Subsidiaries (with respect to the Newco Business) or any of the Newco Companies of any material Taxes, liabilities or penalties (civil or otherwise).

(d) Each Newco Plan that is intended to be qualified under Section 401(a) of the Code has obtained a favorable determination letter (or opinion letter, if applicable) as to its qualified status under the Code and, to the Knowledge of Everest, nothing has occurred that would adversely affect the qualification or Tax exemption of any such Newco Plan.

(e) Except as would not reasonably be expected to result in material liability to the Newco Companies or Athena, taken as a whole, (i) neither Everest, its Subsidiaries, the Newco Companies nor any Everest Affiliate, has ever maintained, established, sponsored, participated in or contributed to, or has any current or contingent liability under, any: (A) “defined benefit plan” (as defined in Section 3(35) of ERISA) or plan that is or was subject to Section 412 of the Code or Title IV of ERISA, (B) “multiemployer plan” (as defined in Section 3(37) of ERISA), (C) “multiple employer plan” (as defined in Section 210 of ERISA or Section 413(c) of the Code), or (D) “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA); (ii) no Everest Employee Plan provides (except at no cost to the Newco Companies or any Everest Affiliate), or reflects or represents any liability of any of the Newco Companies or any Everest Affiliate to provide, post-termination or retiree life insurance, post-termination or retiree health benefits or other post-termination or retiree employee welfare benefits to any Newco Associate, except as may be required by COBRA or other applicable Legal Requirements; (iii) none of Everest or any of its Subsidiaries has any liability as a result of at any time being treated as a single employer under Section 414 of the Code (other than with respect to Everest or any of its Subsidiaries, as applicable); and (iv) with respect to any Newco Plan subject to the minimum funding requirements of Section 412 of the Code or Title IV of ERISA, (A) no such plan is, or is expected to be, in “at-risk” status (within the meaning of Section 303(i)(4)(A) of ERISA or Section 430(i)(4)(A) of the Code), (B) the Pension Benefit Guaranty Corporation (the “PBGC”) has not instituted proceedings to terminate any such Newco Plan, and (C) no “reportable event” within the meaning of Section 4043 of ERISA (excluding any such event for which the 30 day notice requirement has been waived under the regulations to Section 4043 of ERISA) has occurred, nor has any event described in Sections 4062, 4063 or 4041 of ERISA occurred.

(f) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement would, either alone or in combination with another event, (i) entitle any Newco Associate to severance, change in control, retention or incentive pay or bonuses or any increase in severance, change in control, retention or incentive pay or bonuses under any Newco Plan; (ii) accelerate the time of payment or vesting, or increase the amount, of compensation or benefits due to any Newco Associate; (iii) directly or indirectly require Everest or any of its Subsidiaries to transfer or set aside any assets to fund any benefits under any Newco Plan; (iv) otherwise give rise to any material liability of Everest or any of its Subsidiaries under any Newco Plan; or (v) result in the payment of any amount that could, individually or in combination with any other such payment, be an “excess parachute payment” as defined in Section 280G(b)(1) of the Code. None of the Newco Companies has any obligation to compensate any Person for excise Taxes payable pursuant to Section 4999 of the Code or for Taxes payable pursuant to Section 409A of the Code.

(g) There are no material complaints, charges, or claims against Everest or any of the Newco Companies pending or, to the Knowledge of Everest, threatened that could be brought or filed with any Governmental Body, based on, arising out of, in connection with or otherwise relating to the employment or termination of employment or failure to employ by Everest or any of the Newco Companies of any individual.

(h) Except as would not reasonably be expected to result in material liability to the Newco Companies or Athena, taken as a whole, since the Applicable Date, Everest and the Newco Companies are in compliance in all material respects with all Legal Requirements relating to terms and conditions of employment, employment practices, employment discrimination and harassment, civil rights, WARN and any similar state or local plant closures and mass layoffs Legal Requirements, wages (including minimum wage and overtime), hours of work, withholdings and deductions, classification and payment of employees, independent contractors, and consultants, employment equity, collective bargaining, occupational health and safety, workers’ compensation, immigration, and all other labor related matters with respect to the Newco Employees. There has been no “mass layoff” or “plant closing” (as defined by WARN) with respect to Everest or the Newco Companies within the six (6) months prior to Closing.

(i) Except as would not reasonably be expected to result in material liability to the Newco Companies or Athena, taken as a whole, each Newco Plan that is a “nonqualified deferred compensation plan” (as defined under Section 409A of the Code) has been operated in compliance in all material respects with Section 409A of the Code and has complied in all material respects with applicable documentary requirements of Section 409A of the Code.

Section 2.17 Environmental Matters. The conduct of the Newco Business by Everest and its Subsidiaries (including the Newco Companies) is, and since the Applicable Date has been, in compliance with all applicable Environmental Laws, including holding, maintaining and complying with all Governmental Authorizations required by applicable Environmental Laws, except where any such noncompliance would not, individually or in the aggregate, be reasonably expected to have a Newco Material Adverse Effect. There has been no Release of Hazardous Materials at any property currently or formerly owned, leased or otherwise operated by (x) Everest or any of its Subsidiaries (with respect to the Newco Business) or (y) by a Newco Company, or to the Knowledge of Everest, by any other Person, that would require Everest or any of its Subsidiaries (including the Newco Companies) to investigate and/or remediate such Release or otherwise subject Everest or any of its Subsidiaries (including the Newco Companies) to liability pursuant to Environmental Laws, in each case except where any such Release would not, individually or in the aggregate, be reasonably expected to have a Newco Material Adverse Effect. Neither Everest nor any of its Subsidiaries (with respect to the Newco Business) nor any Newco Company has received a request for information or claim with respect to any matter that could result in liability pursuant to Environmental Law, or, to the Knowledge of Everest, is otherwise subject to an investigation pursuant to applicable Environmental Law or with respect to a Release of or disposal of or arrangement for disposal of any Hazardous Material, except with respect to any such matter that would not, individually or in the aggregate, be reasonably expected to have a Newco Material Adverse Effect.

Section 2.18 Legal Proceedings; Orders. As of the date of this Agreement, there is no material pending and served Legal Proceeding affecting Everest or any of its Subsidiaries (relating to the Newco Business), the Newco Assets or the Newco Companies or, to the Knowledge of Everest, any such pending but not served material Legal Proceeding, and, to the Knowledge of Everest, as of the date of this Agreement, no Person has threatened to commence any such material Legal Proceeding. As of the date of this Agreement, there is no material Order to which any of Everest or any of its Subsidiaries (relating to the Newco Business), any of the Newco Assets or any of the Newco Companies is subject.

Section 2.19 Ownership of Athena Common Stock. None of Everest or, to the Knowledge of Everest, any of its respective “affiliates” or “associates” is or has been an “interested stockholder” (as defined in Section 203 of the DGCL) with respect to Athena.

Section 2.20 Financial Advisor. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the Merger or any of the other Contemplated Transactions based upon arrangements made by or on behalf of Everest or any of its Subsidiaries, other than any broker, finder or investment banker whose fees will be paid by Everest.

Section 2.21 Acknowledgement by Everest and Newco. Neither Everest nor Newco is relying or has relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in Article III. The representations and warranties by Athena and Merger Sub contained in Article III constitute the sole and exclusive representations and warranties of Athena, the other Athena Companies and their respective Representatives in connection with the Contemplated Transactions, and Everest and Newco understand, acknowledge and agree that all other representations and warranties of any kind or nature, whether express, implied or statutory, are specifically disclaimed by Athena and Merger Sub. Without limiting the generality of the foregoing, each of Everest and Newco acknowledges that, except for the representations and warranties of Athena and Merger Sub contained in Article III, no representations or warranties are made by Athena or Merger Sub or their respective Representatives with respect to the accuracy or completeness of any information, documents or other materials (including any such materials contained in any data room or otherwise reviewed by Everest or Newco or any of their respective Representatives) or any management presentations that have been or shall hereafter be provided to Everest or Newco or any of their respective Representatives.

(a) On or prior to the date of this Agreement, Newco has delivered to Athena true, complete and fully executed copies of the Newco Commitment Letter. As of the date of this Agreement, (x) the Newco Commitment Letter has not been amended, waived or modified in any respect; and (y) the respective commitments contained in the Newco Commitment Letter have not been withdrawn, terminated or rescinded in any respect. As of the date of this Agreement, except for the Newco Commitment Letter, there are no side letters or other contracts, instruments or other commitments, obligations or arrangements (whether written or oral) related to any portion of the funding of the full amount of the Newco Financing.

(b) As of the date of this Agreement, the Newco Commitment Letter is in full force and effect and is a legal, valid and binding obligation of Newco and, to the Knowledge of Everest, the other parties thereto (in each case, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and to general principles of equity). As of the date of this Agreement, (x) no event has occurred that, with or without notice, lapse of time or both, would reasonably be expected to constitute a default or breach on the part of Newco under any term or condition of the Newco Commitment Letter and (y) Newco is not aware of any fact, event or any other occurrence that makes any of the representations or warranties of Newco in the Newco Commitment Letter inaccurate in any material respect. Newco has fully paid, or caused to be fully paid, any and all commitment fees, any other fees or any other amounts required by the Newco Commitment Letter to be paid on or before the date of this Agreement. Other than as set forth in the Newco Commitment Letter, there are no conditions precedent to the funding of the full amount of the Newco Financing. As of the date of this Agreement, and subject to the satisfaction of all the conditions set forth in Article VI and Article VII, Newco has no reason to believe that any of the conditions to the Newco Financing that are required to be satisfied by it or any other party to the Newco Commitment Letter as a condition to the obligations under the Newco Commitment Letter will not be satisfied on a timely basis or that the Newco Financing contemplated by the Newco Commitment Letter will not be available to Newco immediately prior to, or on, the Closing Date.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF ATHENA AND MERGER SUB

Each of Athena and Merger Sub hereby represent and warrant to Everest and Newco as follows (it being understood that each representation and warranty contained in this Article III is subject to: (a) the exceptions and disclosures set forth in the section or subsection of the Athena Disclosure Letter corresponding to the particular section or subsection in this Article III in which such representation and warranty appears; (b) any exception or disclosure set forth in any other section or subsection of the Athena Disclosure Letter to the extent it is reasonably apparent that such exception or disclosure is relevant to such representation and warranty; and (c) any information set forth in the Athena SEC Documents filed on the SEC's EDGAR database on or after April 25, 2018 and publicly available at least two (2) Business Days prior to the date of this Agreement (but excluding any supplements or amendments thereto to the extent such supplement or amendment is not publicly filed at least two (2) Business Days prior to the date hereof), other than information set forth therein under the headings "Risk Factors" or "Forward-Looking Statements" and any other information or statement set forth therein that is primarily cautionary, predictive or forward-looking in nature):

Section 3.1 Organization and Good Standing.

(a) Each of the Athena Companies is (or, if formed after the date of this Agreement, shall be at the Effective Time) a corporation or other business organization duly organized, validly existing and in good standing (to the extent that the laws of the jurisdiction of its formation recognize the concept of good standing) under the laws of the jurisdiction of its formation, and has (or, if formed after the date of this Agreement, shall have at the Effective Time) all necessary organizational power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; (ii) to own and use its material assets in the manner in which such assets are currently owned and used; and (iii) to perform its obligations under all Contracts by which it is bound, other than in the case of clauses (i) through (iii) as would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect.

(b) Each of the Athena Companies is (or, if formed after the date of this Agreement, shall be at the Effective Time) qualified to do business as a foreign corporation or other foreign business organization, and is (or, if formed after the date of this Agreement, shall be at the Effective Time) in good standing (to the extent that the laws of the applicable jurisdiction recognize the concept of good standing), under the laws of all jurisdictions where the nature of its business requires such qualification, except for jurisdictions in which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect.

Section 3.2 Authority; Binding Nature of Agreement. Each of Athena and Merger Sub have all requisite corporate right, power and authority to enter into and perform their respective obligations under this Agreement, the Distribution Agreement and the other Transaction Documents, as applicable, to which it is a party and, subject to (i) obtaining the Required Athena Stockholder Vote and (ii) the adoption of this Agreement by Athena as the sole stockholder of Merger Sub, respectively, to consummate the Contemplated Transactions. The Athena Board (at a meeting duly called and held) and Athena, as the sole stockholder of Merger Sub, has (a) determined that this Agreement and the Merger are advisable and fair to, and in the best interests of, Athena, Merger Sub and their respective stockholders and (b) authorized and approved the execution, delivery and performance of this Agreement, the Distribution Agreement and the other Transaction Documents by Athena and Merger Sub, as applicable, and approved the Merger, the issuance of shares of Athena Common Stock pursuant to this Agreement and the other Contemplated Transactions; and (c) recommended the approval of the issuance of the Athena Common Stock pursuant to this Agreement for purposes of New York Stock Exchange Listed Company Manual Section 312.03 by the holders of Athena Common Stock and directed that the issuance of such shares be submitted for consideration by Athena's stockholders at the Athena Stockholders' Meeting. Assuming the due authorization, execution and delivery of this Agreement by Everest and Newco, this Agreement constitutes a legal, valid and binding obligation of each of Athena and Merger Sub, enforceable against each of Athena and Merger Sub in accordance with its terms, subject to: (i) laws of general application relating to bankruptcy, insolvency, the relief of debtors and creditors' rights generally; and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

Section 3.3 Non-Contravention; Consents. Assuming compliance with the applicable provisions of the DGCL, the HSR Act and all applicable foreign Competition Laws and the listing requirements of the New York Stock Exchange, neither (1) the execution, delivery or performance of this Agreement, nor (2) the consummation of the Merger or any of the other Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with or result in a violation of any of the provisions of the certificate of incorporation, bylaws, certificate of formation, limited liability company operating agreement, or other charter or organizational documents of any of the Athena Companies;

(b) contravene, conflict with or result in a violation of any Legal Requirement or any Order to which any of the Athena Companies, or any of the assets owned or used by any of the Athena Companies, is subject, except where such contravention, conflict or violation would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect;

(c) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by any of the Athena Companies or that otherwise relates to the business of the Athena Companies or to any of the assets owned or used by any of the Athena Companies, except where such contravention, conflict, violation, revocation, withdrawal, suspension, cancellation, termination or modification would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect;

(d) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Athena Material Contract, or give any Person the right to: (i) declare a default or exercise any remedy under any such Athena Material Contract; (ii) accelerate the maturity or performance of any such Athena Material Contract (other than any Athena Employee Plan); or (iii) cancel, terminate or modify any right, benefit, obligation or other term of such Athena Material Contract, in each case except as would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect; or

(e) result in the imposition or creation of any material Encumbrance (other than a Permitted Encumbrance) upon or with respect to any asset owned or used by any of the Athena Companies, except as would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect.

Except as may be required by the Securities Act, the Exchange Act, state securities laws or “blue sky” laws, the DGCL, the HSR Act, any applicable foreign Competition Laws and any applicable listing requirements of the New York Stock Exchange, neither Athena nor any of the Athena Companies is or will be required to make any filing with or give any notice to, or to obtain any Consent from, any Governmental Body in connection with: (x) the execution, delivery or performance of this Agreement; or (y) the consummation of the Merger or any of the other Contemplated Transactions, except where the failure to make any such filing or give any such notice or to obtain any such Consent would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect.

Section 3.4 Capitalization, Etc.

(a) The authorized capital stock of Athena consists of (i) 2,500,000,000 shares of Athena Common Stock, of which 77,464,244 shares have been issued and are outstanding as of December 17, 2019 and (ii) 250,000,000 shares of preferred stock, par value \$0.01 per share, none of which are issued and outstanding as of December 17, 2019. All of the outstanding shares of Athena Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable. The Athena Common Stock to be issued pursuant to the Merger has been duly authorized and, when issued in accordance with the provisions of this Agreement, will be validly issued, fully paid and nonassessable and will not be subject to any restriction on resale under the Securities Act, other than restrictions imposed by Rules 144 and 145 under the Securities Act.

(b) (i) None of the outstanding shares of Athena Common Stock is entitled or subject to any preemptive right, right of repurchase or forfeiture, right of participation, right of maintenance or any similar right; (ii) none of the outstanding shares of Athena Common Stock is subject to any right of first refusal in favor of Athena; and (iii) there is no Athena Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or from granting any option or similar right with respect to) any shares of Athena Common Stock. Athena is not under any obligation, and is not bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of Athena Common Stock or other securities, except for Athena's right to repurchase or reacquire restricted shares of Athena Common Stock held by an employee of Athena upon termination of such employee's employment or upon any other forfeiture.

(c) As of December 17, 2019, (i) Athena PSAs with respect to an aggregate of 174,726 shares of Athena Common Stock (assuming attainment of the applicable performance metrics at the target level of performance) are outstanding; (ii) Athena RSUs with respect to an aggregate of 435,806 shares of Athena Common Stock are outstanding; (iii) Athena SARs with respect to an aggregate of 424,795 shares of Athena Common Stock are outstanding; and (iv) 3,892,097 shares of Athena Common Stock are reserved for future issuance pursuant to equity awards not yet granted under the Athena Equity Plan.

(d) Except as set forth in Section 3.4(a) and 3.4(c), or as permitted from and after the date of this Agreement pursuant to Section 4.3, there is no (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of Athena; (ii) outstanding security, bond, debenture, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of Athena or that has the right to vote on any matter on which the stockholders of Athena have the right to vote; (iii) Contract under which Athena is or may become obligated to sell or otherwise issue any shares of its capital stock, membership interests or any other securities; or (iv) shareholder rights plan or agreement (*i.e.*, "poison pill") with respect to Athena Common Stock.

(e) All outstanding shares of Athena Common Stock, and all options and other Athena Equity Awards and other outstanding securities of Athena, have been issued and granted in compliance in all material respects with all applicable securities laws and other applicable Legal Requirements.

Section 3.5 Subsidiaries, Etc.

(a) All of the outstanding shares of capital stock, membership interests or other equity interests, as the case may be, of each of Athena's Subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable (to the extent applicable) and free of preemptive rights, with no personal liability attaching to the ownership thereof, and are owned beneficially and of record, directly or indirectly, by Athena, free and clear of any Encumbrances, other than Permitted Encumbrances and restrictions under applicable securities laws.

(b) None of the Athena Companies other than Athena is under any obligation, or is bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of Athena Common Stock or other securities.

(c) There are no outstanding stock appreciation, phantom stock, profit participation or similar rights or equity-based awards with respect to any shares of capital stock or other equity interests of any of the Athena Companies (other than Athena) or the value thereof.

(d) There is no (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock, membership interests or other securities of any of the Athena Companies other than Athena; (ii) outstanding security, bond, debenture, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock, membership interests or other securities of any of the Athena Companies other than Athena; or (iii) Contract under which any of the Athena Companies other than Athena is or may become obligated to sell or otherwise issue any shares of its capital stock, membership interests or any other securities.

(e) All outstanding securities of the Athena Companies other than Athena have been issued in compliance in all material respects with all applicable securities laws and other applicable Legal Requirements.

Section 3.6 SEC Filings; Financial Statements.

(a) Athena has delivered or Made Available to Everest accurate and complete copies of all registration statements, proxy statements, Athena Certifications and other statements, reports, schedules, forms and other documents filed by Athena with the SEC, including all amendments thereto, since April 25, 2018 (collectively, the “Athena SEC Documents”). All statements, reports, schedules, forms and other documents required to have been filed by Athena or its officers with the SEC since April 25, 2018 have been so filed on a timely basis. None of Athena’s Subsidiaries is required to file any documents with the SEC. As of the time it was filed with the SEC (or, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing): (i) each of the Athena SEC Documents complied as to form in all material respects with the applicable requirements of the Securities Act or the Exchange Act (as the case may be); and (ii) none of the Athena SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Each of the certifications and statements relating to the Athena SEC Documents required by: (A) Rule 13a-14 or Rule 15d-14 under the Exchange Act; (B) 18 U.S.C. §1350 (Section 906 of the Sarbanes-Oxley Act); or (C) any other rule or regulation promulgated by the SEC or applicable to the Athena SEC Documents (collectively, the “Athena Certifications”) is accurate and complete, and complies as to form in all material respects with all applicable Legal Requirements. As used in the introduction to this Article III and in this Section 3.6, the term “file” and variations thereof shall be broadly construed to include any manner in which a document or information is filed, furnished, submitted, supplied or otherwise made available to the SEC or any member of its staff.

(b) The financial statements (including any related notes) contained or incorporated by reference in the Athena SEC Documents: (i) complied as to form in all material respects with the published rules and regulations of the SEC applicable thereto; (ii) were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, as permitted by Form 10-Q, Form 8-K or any successor form under the Exchange Act, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments, none of which will be material); and (iii) fairly present, in all material respects, the consolidated financial position of Athena and its consolidated Subsidiaries as of the respective dates thereof and the consolidated results of operations and cash flows of Athena and its consolidated Subsidiaries for the periods covered thereby. No financial statements of any Person other than the Athena Companies are required by GAAP to be included in the consolidated financial statements of Athena. There are no comments from the SEC or its staff pending with respect to any statements, reports, schedules, forms or other documents filed by Athena with the SEC that remain outstanding and unresolved.

(c) Athena's auditor has at all times since the date of enactment of the Sarbanes-Oxley Act been: (i) a registered public accounting firm (as defined in Section 2(a)(12) of the Sarbanes-Oxley Act); (ii) "independent" with respect to Athena within the meaning of Regulation S-X under the Exchange Act; and (iii) to the Knowledge of Athena, in compliance with subsections (g) through (l) of Section 10A of the Exchange Act and the rules and regulations promulgated by the SEC and the Public Company Accounting Oversight Board thereunder. All non-audit services performed by Athena's auditors for the Athena Companies that were required to be approved in accordance with Section 202 of the Sarbanes-Oxley Act were so approved.

(d) Athena maintains a system of internal controls over financial reporting which is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, in each case, with respect to Athena and its Subsidiaries, taken as a whole. Since the Applicable Date, to the Knowledge of Athena, neither Athena nor any of its Subsidiaries has identified or been made aware of any material illegal act or fraud related to the business of the Athena Companies.

(e) None of the information to be supplied by or on behalf of Athena for inclusion or incorporation by reference in the Athena Form S-4 Registration Statement or the Newco Registration Statements will, after giving effect to any amendments that have theretofore been made thereto, (i) at the time the Athena Form S-4 Registration Statement or the Newco Registration Statements, respectively, is filed with the SEC; (ii) at the time it, or any amendment or supplement thereto, becomes effective under the Securities Act; or (iii) at the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. None of the information supplied or to be supplied by or on behalf of Athena for inclusion or incorporation by reference in the Proxy Statement/Prospectus will, at the time the Proxy Statement/Prospectus is mailed to the stockholders of Athena or at the time of the Athena Stockholders' Meeting (or any adjournment or postponement thereof), contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. The Proxy Statement/Prospectus will, at the time the Proxy Statement/Prospectus is mailed to the stockholders of Athena and at the time of the Athena Stockholders' Meeting (or any adjournment or postponement thereof), comply as to form in all material respects with the provisions of the Securities Act, the Exchange Act and the rules and regulations promulgated by the SEC thereunder, except that no representation or warranty is made by Athena or Merger Sub with respect to statements made or incorporated by reference therein based on information supplied by or on behalf of Everest for inclusion or incorporation by reference in the Proxy Statement/Prospectus.

(f) The Athena Companies have not incurred any liabilities or obligations (whether accrued, absolute, contingent or otherwise) that are required to be reflected in the financial statements contained in the Athena SEC Documents, except for (i) those liabilities that are reflected or reserved for in the financial statements contained in the Athena SEC Documents filed prior to the date of this Agreement; (ii) liabilities that have been incurred by the Athena Companies since September 30, 2019 in the ordinary course of the Athena Companies consistent with past practice; (iii) liabilities under this Agreement or incurred in connection with the Contemplated Transactions; and (iv) liabilities that are not, individually or in the aggregate, material to the Athena Companies, taken as a whole.

Section 3.7 Absence of Changes.

(a) Except as expressly contemplated by this Agreement, since September 30, 2019 through the date of this Agreement, except for discussions, negotiations and transactions related to this Agreement, the Athena Companies have conducted their business in all material respects in the ordinary course of business consistent with past practice.

(b) Since September 30, 2019 through the date of this Agreement, no Effect has occurred or exists that, individually or in the aggregate, has had or would reasonably be expected to have, an Athena Material Adverse Effect.

(c) Except as expressly contemplated by this Agreement, since September 30, 2019, through the date of this Agreement, none of the Athena Companies have taken any actions which, had such actions been taken after the date of this Agreement, would have required the written consent of Everest pursuant to Section 4.3(b)(v) through 4.3(b)(xvi).

Section 3.8 Assets. The Athena Companies own, and have good and valid title to, all material assets purported to be owned by them, including: (a) all such assets reflected on the Athena Interim Balance Sheet (except for inventory sold or otherwise disposed of in the ordinary course of business since the date of the Athena Interim Balance Sheet); and (b) all other such assets reflected in the books and records of the Athena Companies as being owned by the Athena Companies. All of said assets are owned by the Athena Companies free and clear of any Encumbrances, except (i) for Encumbrances securing the Athena Credit Agreement or (ii) any other Permitted Encumbrance. The Athena Companies are the lessees or licensees of, and hold valid leasehold interests in or license to, all assets purported to have been leased or licensed by them, except where the failure to have such valid leasehold interest or license results from any Permitted Encumbrance. No representation is made in this Section 3.8 with respect to infringement, misappropriation or other violation of third party Intellectual Property Rights, which solely is covered under Section 3.10.

Section 3.9 Real Property; Leasehold.

(a) With respect to the Athena Owned Real Property and Athena Leased Real Property all material buildings, structures, fixtures and improvements are in satisfactory condition sufficient to support the operations of the Athena Companies as presently conducted, except as would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect.

(b) With respect to each parcel of Athena Owned Real Property (i) there are no outstanding Contracts to sell, lease or otherwise transfer such Athena Owned Real Property and (ii) as of the date of this Agreement, there are no pending or, to the Knowledge of Athena, threatened condemnation or other Legal Proceedings relating to the Athena Owned Real Property, except as would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect.

(c) With respect to each lease, license or similar use or occupancy agreement (each an “Athena Lease”) pursuant to which an Athena Company leases or otherwise uses or occupies real property (all such real property that is the subject of any Athena Lease, the “Athena Leased Real Property”), (i) each Athena Lease is the legal, valid and binding obligation of the applicable Athena Company that is lessee thereunder and, to the Knowledge of Athena, any other party thereto, and (ii) the applicable Athena Company is not in default, and, to the Knowledge of Athena, no other party to such Athena Lease is in default, under such Athena Lease, except, in each case of (i) and (ii), as would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect.

Section 3.10 Intellectual Property; Data Privacy.

(a) Section 3.10(a) of the Athena Disclosure Letter identifies, as of the date of this Agreement, each material item of Registered IP which Athena or any of its Subsidiaries owns or purports to own (the "Athena Material Registered IP"). The Athena Material Registered IP is subsisting, and to the Knowledge of Athena, none of the Athena Material Registered IP is invalid or unenforceable.

(b) The Athena Companies solely and exclusively own all right, title, and interest to and in the material Athena IP free and clear of any Encumbrances other than Permitted Encumbrances, and the Athena Companies have valid rights to use, pursuant to an inbound Athena IP License (or Other IP Licenses), all other material Intellectual Property Rights used by or necessary for the conduct of the Athena Companies' business (provided that the foregoing is not a representation with respect to infringement, misappropriation or other violation of third party Intellectual Property Rights, which is covered under Section 3.10(f)).

(c) To the Knowledge of Athena, the Athena Companies have taken commercially reasonable steps to maintain the confidentiality of the material trade secrets included in the Athena IP. No such trade secret material to Athena as presently conducted and presently proposed to be conducted has been authorized to be (or has actually been) disclosed by the any of the Athena Companies to any other Person, other than pursuant to a written non-disclosure agreement (or obligations by operation of law) restricting the disclosure and use thereof.

(d) The Athena Companies have executed valid written agreements with each of their former and current employees, consultants and independent contractors (or such Persons have obligations by operation of law) to the extent engaged in the creation or development of any material Athena IP, pursuant to which each such Person has: (i) agreed to hold all material trade secrets of the Athena Companies in confidence both during and after such Person's employment or retention, as applicable; and (ii) assigned to Athena (or its applicable Subsidiary) all of such Person's rights, titles and interests in and to all such Athena IP, in each case created or developed for the Athena Companies in the course of such Person's employment or retention thereby. To the Knowledge of Athena, no party thereto is in default, violation or breach of any such agreements, except where such default, violation or breach would not be material to Athena. No government funding and no facilities of a university, college, other educational institution or research center were used in the development of any material Athena IP where, as a result of such funding or the use of such facilities, such government or university entity or organization has any material rights, title or interest in such Athena IP.

(e) To the Knowledge of Athena, as of the date of this Agreement, no Person has infringed, misappropriated, or otherwise violated any Athena IP in any material respect since the Applicable Date, and, as of the date of this Agreement, no claim or Legal Proceeding involving or alleging any of the foregoing is pending or, to the Knowledge of Athena, is threatened in writing by any of the Athena Companies against any other Person.

(f) To the Knowledge of Athena, the use and practice of the Athena IP and the conduct of the business of Athena and its Subsidiaries (including the Athena Companies, and including prior to giving effect to the Contemplated Transactions contemplated by the Distribution Agreement) as conducted since the Applicable Date, have not infringed, misappropriated, or otherwise violated any Intellectual Property Right of any other Person in any material respect, and, as of the date of this Agreement, no claim or Legal Proceeding is pending or, to the Knowledge of Athena, has since the Applicable Date been threatened in writing against any of the Athena Companies by any other Person either (i) involving or alleging any of the foregoing, or (ii) challenging the ownership, use, validity or enforceability of any material Athena IP.

(g) Neither Athena nor any of its Subsidiaries have used Open Source Code in connection with any Software included in the Athena IP developed, licensed, distributed, used or otherwise exploited by any of the Athena Companies in a manner that has resulted or will result in a requirement that any material proprietary source code included in the Athena IP (1) be disclosed or distributed in source code form, (2) be licensed for the purpose of making modifications or derivative works, or (3) be redistributable at no charge.

(h) To the Knowledge of Athena, (i) the Athena Companies have, at all times since the Applicable Date, materially complied with, and, as of the date of this Agreement, no Person has asserted a written claim against any of the Athena Companies alleging a material violation of, any public-facing privacy policy of any of the Athena Companies or applicable Privacy Laws, and (ii) as of the date of this Agreement, there have been no unauthorized intrusions or breaches of the security of any of the Athena Companies' IT Systems resulting in any material data breach, unauthorized access to or disclosure of, or other material misuse or breach of any Personal Data under the possession or control of Athena or its Subsidiaries (including the Athena Companies) or collected by or on their behalf. Athena (or its Subsidiaries) has implemented commercially reasonable disaster recovery and business continuity plans, and taken actions consistent with such plans in all material respects, intended to safeguard the IT Systems of Athena and material data and information (including any Personal Data) contained or stored therein, and enable the ongoing conduct of Athena in all material respects in the event of a disaster or IT Systems outage.

(i) This Section 3.10 contains the sole and exclusive representations and warranties of Athena and Merger Sub under this Agreement with respect to infringement, misappropriation or other violation of Intellectual Property Rights.

Section 3.11 Contracts.

(a) Section 3.11(a) of the Athena Disclosure Letter identifies each Athena Material Contract. For purposes of this Agreement, "Athena Material Contract" shall mean the following Contracts to which any of the Athena Companies is a party that is executory as of the date of this Agreement:

(i) any Contract with any distributor involving sales in excess of \$2,500,000 in the fiscal year ended December 31, 2018, in each case that provides exclusivity rights to any third party;

(ii) any Contract that is with a supplier of equipment, consumables, products or raw materials, which supplier is the only source of supply in the marketplace or only supplier to the Athena Companies or that imposes a minimum purchase order, in each case, involving payments in excess of \$2,500,000 in the fiscal year ended December 31, 2018;

(iii) any Contract imposing any material restriction on the right or ability of the Athena Companies: (A) to compete with any other Person; (B) to develop, sell, supply, distribute, offer, support or service any product or any technology or other asset to or for any other Person; (C) to perform services for any other Person; or (D) to transact business with any other Person, in each case which restriction would or would reasonably be expected to materially and adversely affect the conduct of the business of the Athena Companies as currently conducted;

(iv) any Contract relating to any currency hedging;

(v) any Contract concerning the establishment and/or operation of a partnership, joint venture or limited liability company with a third party that is not an Affiliate of Athena;

(vi) any Contract relating to the acquisition or disposition of any material assets (other than in the ordinary course of business) or businesses, and with any outstanding obligations of any of the Athena Companies (including indemnification, guarantee, “earn-out” or other similar contingent obligations);

(vii) any (A) material Contract containing any provision granting the other party “most favored nation” status or equivalent preferential pricing terms or (B) material Contract containing any provision granting the other party exclusivity or other similar rights;

(viii) any Contract related to third party Indebtedness in excess of \$5,000,000 (other than any Contract related to the matters described in Section 3.26);

(ix) any Contract containing material licenses of, covenants not to sue under or other grants to any Intellectual Property Rights that have been granted by or to any Athena Company (the “Athena IP Licenses”), except with regard to Other IP Licenses; and

(x) any Contract that resulted in revenue to or expenses of an Athena Company in excess of \$12,500,000 in the fiscal year ending December 31, 2018.

Athena has delivered or Made Available to Everest an accurate and complete copy of each Athena Contract that constitutes an Athena Material Contract.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect, each Athena Contract that constitutes an Athena Material Contract is valid and in full force and effect (except to the extent any such Athena Material Contract expires by its terms or is terminated in compliance with Section 4.3), and is enforceable against the applicable Athena Company in accordance with its terms, subject to: (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(c) Except as would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect, (i) neither Athena nor any of its Subsidiaries has violated or breached or committed any default under, any Athena Material Contract; and (ii) to the Knowledge of Athena, no other Person has violated or breached, or committed any default under, any Athena Material Contract.

Section 3.12 Compliance with Legal Requirements; Regulatory Matters. Each of the Athena Companies is, and since the Applicable Date has been, in compliance with all applicable Legal Requirements, except where the failure to so comply would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect. Since the Applicable Date through the date hereof, none of the Athena Companies has received any written notice or other written communication from any Governmental Body (i) regarding any actual or possible violation of, or failure to comply with, any Legal Requirement or (ii) that it is or has been the subject of any inspection, investigation, survey, audit, monitoring or other form of review by any Governmental Body.

Section 3.13 Anti-Corruption Compliance; Export Control and Sanctions Compliance.

(a) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Athena Companies, since the Applicable Date, neither any Athena Company, nor any of their officers or employees, nor, to the Knowledge of Athena, any of their respective agents, distributors or representatives with respect to the business of the Athena Companies (i) has directly or indirectly offered, promised or made any unlawful contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to any Person, private or public, regardless of what form, (ii) is or has otherwise been in violation of any applicable anti-bribery, anti-corruption or similar Legal Requirements, including the FCPA or the UK Bribery Act 2010 and (iii) has received any notice from, or voluntarily provided any notice to, a Governmental Body or other Person with respect to the business of the Athena Companies or an Athena Company that alleges any of the foregoing. With respect to any relevant portion of the business of the Athena Companies or an Athena Company that was acquired by Athena after the Applicable Date, the foregoing representation is made to the Knowledge of Athena with respect to the time period between the Applicable Date and such acquisition.

(b) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Athena Companies, since the Applicable Date, the Athena Companies have complied and are in compliance with applicable provisions of U.S. Sanctions and Export Control Laws. Since the Applicable Date, none of the Athena Companies has had any transactions, business or financial dealings that benefited, or directly or indirectly involved Cuba, Iran, North Korea, Sudan, Syria or the Crimea region of Ukraine.

Section 3.14 Governmental Authorizations. The Athena Companies hold all Governmental Authorizations necessary to enable the Athena Companies to conduct their respective businesses in the manner in which such businesses are currently being conducted, including all Governmental Authorizations required under Environmental Laws, except where the failure to so hold would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect. All such Governmental Authorizations are valid and in full force and effect, except as would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect. Each Athena Company is, and at all times since the Applicable Date has been, in compliance with the terms and requirements of such Governmental Authorizations, except where the failure to so comply would not, individually or in the aggregate, reasonably be expected to have an Athena Material Adverse Effect.

Section 3.15 Tax Matters.

(a) Each material Tax Return required to be filed by or on behalf of the respective Athena Companies with any Governmental Body with respect to any Taxable period ending on or before the Closing Date (the "Athena Company Returns"): (i) has been or will be filed on or before the applicable due date (including any extensions of such due date); and (ii) has been, or will be when filed, prepared in all material respects in compliance with all applicable Legal Requirements. All material Taxes shown on the Athena Company Returns or otherwise payable by or with respect to the Athena Companies that are due and owing have been duly paid except, in each case, for Taxes contested in good faith in appropriate proceedings and for which adequate reserves have been established in accordance with GAAP.

(b) As of the date of this Agreement, no Athena Company and no Athena Company Return is subject to a pending, ongoing, or, to the Knowledge of Athena, threatened, audit with respect to Taxes by any Governmental Body. No extension or waiver of the limitation period applicable to any of the Athena Company Returns has been granted (by Athena or any other Person) which currently remains in effect, and no such extension or waiver has been requested from any Athena Company.

(c) No claim or Legal Proceeding is pending or, to the Knowledge of Athena, has been threatened against or with respect to any Athena Company in respect of any material Tax. There are no unsatisfied liabilities for material Taxes with respect to any notice of deficiency or similar document received by any Athena Company with respect to any material Tax (other than liabilities for Taxes asserted under any such notice of deficiency or similar document which are being contested in good faith by the Athena Companies and with respect to which adequate reserves for payment have been established on the Athena Interim Balance Sheet). There are no Encumbrances for material Taxes upon any of the Athena Companies except Permitted Encumbrances.

(d) No written claim has ever been made by any Governmental Body in a jurisdiction where an Athena Company does not file a Tax Return that it is or may be subject to Taxation by that jurisdiction which has resulted or could reasonably be expected to result in an obligation to pay material Taxes.

(e) There are no Contracts relating to the allocating, sharing or indemnification of Taxes to which any Athena Company is a party, other than (i) the Tax Matters Agreement, and (ii) Contracts containing customary gross-up or indemnification provisions in credit agreements, derivatives, leases, and similar agreements entered into in the ordinary course of business.

(f) Other than as part of the Athena Separation, no Athena Company has constituted either a “distributing corporation” or a “controlled corporation” within the meaning of Section 355(a)(1)(A) of the Code.

(g) Athena is not and has not been a U.S. real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(h) No Athena Company has participated in, or is currently participating in, a “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b).

(i) The Athena Companies have withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder or other Person.

(j) No Athena Company has taken any action or knows, after consultation with outside legal counsel, of any fact that could reasonably be expected to prevent the Intended Tax Treatment.

(k) As of the date hereof, neither Athena nor Merger Sub knows, after consultation with outside legal counsel, of any reason why (i) Athena or Everest would not be able to deliver the Tax representation letters contemplated by [Section 5.5\(a\)](#) and [Section 5.5\(b\)](#), upon which the applicable law or accounting firms may rely in rendering the opinions contemplated by [Section 5.5\(b\)](#), [Section 7.6\(a\)](#) and [Section 7.6\(b\)](#), (ii) Athena would not be able to obtain any opinion contemplated by [Section 5.5\(b\)](#) or (iii) Everest would not be able to obtain (A) the opinion contemplated by [Section 7.6\(a\)](#), (B) the opinion contemplated by [Section 7.6\(b\)](#) or (C) the Tax ruling contemplated by [Section 5.5\(e\)](#).

(l) Athena has satisfied its obligations under Section 4.02(d) of the Athena Tax Matters Agreement with respect to the execution of this Agreement and with respect to the transactions contemplated by the Transaction Documents.

(m) This Section 3.15 and, to the extent relating to Tax matters, Section 3.16, contain the sole and exclusive representations and warranties of Athena and Merger Sub in this Agreement with respect to Tax matters.

Section 3.16 Employee and Labor Matters; Benefit Plans.

(a) (i) As of the date of this Agreement, none of the Athena Companies is a party to any collective bargaining agreement or other Contract with a labor organization, employee representative or works council representing any of its employees and there are no labor organizations, employee representatives or works councils representing, purporting to represent or, to the Knowledge of Athena, seeking to represent any employees of any of the Athena Companies; (ii) since the Applicable Date through the date hereof, there has not been any material strike, slowdown, work stoppage, lockout, job action, picketing, labor dispute, question concerning representation, union organizing activity, or any threat thereof, or any similar activity or dispute, affecting any of the Athena Companies or any of their employees; (iii) as of the date of this Agreement, there are no pending, and, to the Knowledge of Everest, no Person has threatened to commence, any such strike, slowdown, work stoppage, lockout, job action or picketing referred to in the preceding clause (ii); (iv) as of the date of this Agreement, no labor organization, employee representative, works council, or group of employees of the Athena Companies has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority; and (v) as of the date of this Agreement, there is no material unfair labor practice charge, or claim or grievance pending or, to the Knowledge of Athena, threatened against any Athena Company arising under any collective bargaining agreement or other Contract with a labor organization, employee representative or works council relating to any terms or conditions of employment. The execution and delivery of this Agreement and the performance of this Agreement do not require any of the Athena Companies to seek or obtain any consent, engage in consultation with, or issue any notice to or make any filing with (as applicable) any labor organization, employee representative or works council, or any Governmental Body, with respect to any employee of any of the Athena Companies.

(b) Section 3.16(b) of the Athena Disclosure Letter sets forth a list of each material Athena Employee Plan. Athena has Made Available to Everest the following items with respect to each material Athena Employee Plan maintained primarily in respect of individuals who are located in the United States: (i) all documents setting forth the terms of each such plan or agreement, including all amendments thereto and all related trust documents and funding arrangements; (ii) the most recent summary plan description; (iii) the most recent annual reports (Form 5500s and all schedules and financial statements attached thereto), if any; (iv) the most recent annual actuarial valuation; (v) all material correspondence in its possession regarding any such plan or agreement regarding any audit, investigation or proceeding before any Governmental Body regarding such plan or agreement or any fiduciary thereof; and (vi) in the case of any such plan intended to be qualified under Section 401(a) of the Code, the most recent IRS determination or opinion letter issued with respect to such plan.

(c) Except as would not reasonably be expected to result in material liability to the Athena Companies, taken as a whole, (i) each of the Athena Companies and Athena Affiliates has performed in all material respects all obligations required to be performed by it under each Athena Employee Plan in respect of which any Athena Associate is a beneficiary or a party, been established and maintained in all material respects in accordance with its terms and applicable Legal Requirements; (ii) as of the date of this Agreement, there are no material audits or inquiries pending or, to the Knowledge of Athena, threatened by the IRS, the DOL or any other Governmental Body with respect to any such Athena Employee Plan (or any fiduciary thereof) in respect of which any Athena Associate is a beneficiary or a party; (iii) as of the date of this Agreement, there are no material actions, suits or claims pending, or to the Knowledge of Athena, threatened or reasonably anticipated (other than routine claims for benefits) against any such Athena Employee Plan, or against the assets of any such Athena Employee Plan, of which any Athena Associate is a beneficiary or a party; (iv) full and timely payment has been made of all material amounts which Athena or the Athena Companies are required, under applicable Legal Requirements or under any Athena Employee Plan, to have paid as a contribution or payment for any Athena Associate, in respect of any Athena Employee Plan, and all such contributions or payments for any period that are not yet due have been made, paid or properly accrued in accordance with GAAP applied on a consistent basis; (v) no nonexempt “prohibited transaction” (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) or breach of fiduciary duty (as determined under ERISA) has occurred with respect to any Athena Employee Plan; and (vi) no events have occurred with respect to any Athena Employee Plan that would result in a payment or assessment by or against any of the Athena Companies of any material Taxes, liabilities or penalties (civil or otherwise).

(d) Each Athena Employee Plan that is intended to be qualified under Section 401(a) of the Code has obtained a favorable determination letter (or opinion letter, if applicable) as to its qualified status under the Code and, to the Knowledge of Athena, nothing has occurred that would adversely affect the qualification or Tax exemption of any such Athena Employee Plan.

(e) Except as would not reasonably be expected to result in material liability to the Athena Companies, taken as a whole, (i) none of the Athena Companies, and no Athena Affiliate, has ever maintained, established, sponsored, participated in or contributed to, or has any current or contingent liability under, any: (A) “defined benefit plan” (as defined in Section 3(35) of ERISA) or plan that is or was subject to Section 412 of the Code or Title IV of ERISA, (B) “multiemployer plan” (as defined in Section 3(37) of ERISA), (C) “multiple employer plan” (as defined in Section 210 of ERISA or Section 413(c) of the Code), or (D) “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA); (ii) no Athena Employee Plan provides (except at no cost to the Athena Companies or any Athena Affiliate), or reflects or represents any liability of any of the Athena Companies or any Athena Affiliate to provide, post-termination or retiree life insurance, post-termination or retiree health benefits or other post-termination or retiree employee welfare benefits to any Athena Associate, except as may be required by COBRA or other applicable Legal Requirements; (iii) none of Athena or any of its Subsidiaries has any liability as a result of at any time being treated as a single employer under Section 414 of the Code (other than with respect to Athena or any of its Subsidiaries, as applicable); and (iv) with respect to any Athena Employee Plan subject to the minimum funding requirements of Section 412 of the Code or Title IV of ERISA, (A) no such plan is, or is expected to be, in “at-risk” status (within the meaning of Section 303(i)(4)(A) of ERISA or Section 430(i)(4)(A) of the Code), (B) the PBGC has not instituted proceedings to terminate any such Athena Employee Plan, and (C) no “reportable event” within the meaning of Section 4043 of ERISA (excluding any such event for which the 30 day notice requirement has been waived under the regulations to Section 4043 of ERISA) has occurred, nor has any event described in Sections 4062, 4063 or 4041 of ERISA occurred.

(f) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement would, either alone or in combination with another event, (i) entitle any Athena Associate to severance, change in control, retention or incentive pay or bonuses or any increase in severance, change in control, retention or incentive pay or bonuses under any Athena Employee Plan; (ii) accelerate the time of payment or vesting, or increase the amount, of compensation or benefits due to any Athena Associate under any Athena Employee Plan; (iii) directly or indirectly require Athena or any of its Subsidiaries to transfer or set aside any assets to fund any benefits under any Athena Employee Plan; (iv) otherwise give rise to any material liability to Athena or any of its Subsidiaries under any Athena Employee Plan; or (v) result in the payment of any amount that could, individually or in combination with any other such payment, be an “excess parachute payment” as defined in Section 280G(b)(1) of the Code. None of the Athena Companies has any obligation to compensate any Person for excise Taxes payable pursuant to Section 4999 of the Code or for Taxes payable pursuant to Section 409A of the Code.

(g) There are no material complaints, charges, or claims against any of the Athena Companies pending or, to the Knowledge of Athena, threatened that could be brought or filed with any Governmental Body, based on, arising out of, in connection with or otherwise relating to the employment or termination of employment or failure to employ by any of the Athena Companies of any individual.

(h) Except as would not reasonably be expected to result in material liability to the Athena Companies, taken as a whole, since the Applicable Date, Athena and its Affiliates, including the Athena Companies, are in compliance in all material respects with all Legal Requirements relating to terms and conditions of employment, employment practices, employment discrimination and harassment, civil rights, WARN and any similar state or local plant closures and mass layoffs Legal Requirements, wages (including minimum wage and overtime), hours of work, withholdings and deductions, classification and payment of employees, independent contractors, and consultants, employment equity, collective bargaining, occupational health and safety, workers’ compensation, immigration, and all other labor related matters with respect to the Athena Employees. There has been no “mass layoff” or “plant closing” (as defined by WARN) with respect to any of the Athena Companies within the six (6) months prior to Closing.

(i) Except as would not reasonably be expected to result in material liability to the Athena Companies, taken as a whole, each Athena Employee Plan that is a “nonqualified deferred compensation plan” (as defined under Section 409A of the Code) has been operated in compliance in all material respects with Section 409A of the Code and has complied in all material respects with applicable documentary requirements of Section 409A of the Code.

Section 3.17 Environmental Matters. The Athena Companies are, and since the Applicable Date have been, in compliance with all applicable Environmental Laws, including holding, maintaining and complying with all Governmental Authorizations required by applicable Environmental Laws, except where any such noncompliance would not, individually or in the aggregate, be reasonably expected to have an Athena Material Adverse Effect. There has been no Release of Hazardous Materials at any property currently or formerly owned, leased or otherwise operated by an Athena Company, or to the Knowledge of Athena, by any other Person, that would require an Athena Company to investigate and/or remediate such Release or otherwise subject such Athena Company to liability pursuant to Environmental Laws, in each case except where any such Release would not, individually or in the aggregate, be reasonably expected to have an Athena Material Adverse Effect. None of the Athena Companies has received a request for information or claim with respect to any matter that could result in liability pursuant to Environmental Law, or, to the Knowledge of Athena, is otherwise subject to an investigation pursuant to applicable Environmental Law or with respect to a Release of or disposal of or arrangement for disposal of any Hazardous Material, except with respect to any such matter that would not, individually or in the aggregate, be reasonably expected to have an Athena Material Adverse Effect.

Section 3.18 Legal Proceedings; Orders. As of the date of this Agreement, there is no material pending and served Legal Proceeding affecting the assets of Athena, the business of Athena or any of the Athena Companies or, to the Knowledge of Athena, any such pending but not served material Legal Proceeding, and, to the Knowledge of Athena, as of the date of this Agreement no Person has threatened to commence any such material Legal Proceeding. As of the date of this Agreement, there is no material Order to which any of the Athena Companies, or any of the assets of Athena, is subject.

Section 3.19 Ownership of Everest Common Stock. None of Athena or, to the Knowledge of Athena, any of its respective “affiliates” or “associates” is or has been an “interested stockholder” (as defined in Section 203 of the DGCL) with respect to Everest. No “fair price,” “moratorium,” “control share acquisition” or other similar takeover statute or similar statute or regulation (each a “Takeover Statute”) applies to Athena or Merger Sub with respect to this Agreement, the other Transaction Documents or the Contemplated Transactions.

Section 3.20 Vote Required. The only vote of Athena’s stockholders required to consummate the Contemplated Transactions is the affirmative vote of the holders of a majority of the shares of Athena Common Stock present in person or by proxy at the Athena Stockholders’ Meeting in favor of the approval of the issuance of the Athena Common Stock pursuant to this Agreement for the purpose of approving such issuance pursuant to New York Stock Exchange Listing Rule 312.03 (the “Required Athena Stockholder Vote”). The affirmative vote of the holders of a majority of the voting power of the shares of common stock of Merger Sub is the only vote of the holders of any class or series of Merger Sub’s capital stock necessary to adopt this Agreement or consummate the Contemplated Transactions. Athena is the sole stockholder of record of Merger Sub. Athena shall, in its capacity as sole stockholder of Merger Sub, adopt this Agreement and approve the Merger by written consent as soon as practicable following execution and delivery of this Agreement.

Section 3.21 Financial Advisor. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the Merger or any of the other Contemplated Transactions based upon arrangements made by or on behalf of Athena or any of its Subsidiaries.

Section 3.22 Merger Sub. Merger Sub was formed solely for the purpose of engaging in the Contemplated Transactions and has not engaged in any business activities, incurred any liabilities or conducted any operations other than in connection with the Contemplated Transactions.

Section 3.23 Solvency. Assuming (i) the accuracy of the representations and warranties set forth in Article II and (ii) satisfaction of the conditions to Athena’s obligations to effect the Merger and otherwise consummate the Contemplated Transactions set forth in Article VI, or waiver of such conditions, upon the consummation of the Contemplated Transactions and the transactions contemplated by the other Transaction Documents, on a consolidated basis, (A) Athena will not be insolvent; (B) Athena will not be left with unreasonably small capital; (C) Athena will not have incurred debts or other liabilities beyond its ability to pay such debts or other liabilities as they mature; and (D) the capital of Athena will not be impaired.

Section 3.24 Opinion of Financial Advisor. The Athena Board has received the separate opinions (each, an “Opinion”) of each of Centerview Partners LLC and Lazard Frères & Co., each dated as of the date of this Agreement, to the effect that, based upon and subject to the various assumptions made, procedures followed, matters considered, and qualifications and limitations set forth in the applicable Opinion, as of the date of such Opinion, the Exchange Ratio provided for pursuant to this Agreement is fair, from a financial point of view, to Athena. A true, correct and complete copy of each of the Opinions has been delivered or made available to Everest promptly after delivery thereof.

Section 3.25 Acknowledgement by Athena. Neither Athena nor Merger Sub is relying or has relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in Article II. The representations and warranties by Everest and Newco contained in Article II constitute the sole and exclusive representations and warranties of Everest, the Newco Companies and their respective Representatives in connection with the Contemplated Transactions and each of Athena and Merger Sub understand, acknowledge and agree that all other representations and warranties of any kind or nature, whether express, implied or statutory, are specifically disclaimed by Everest and Newco. Without limiting the generality of the foregoing, each of Athena and Merger Sub acknowledges that, except for the representations and warranties of Everest and Newco contained in Article II, no representations or warranties are made by Everest, the Newco Companies or their respective Representatives with respect to the accuracy or completeness of any information, documents or other materials (including any such materials contained in any data room or otherwise reviewed by Athena or Merger Sub or any of their respective Representatives) or any management presentations that have been or shall hereafter be provided to Athena or Merger Sub or any of their respective Representatives.

Section 3.26 Athena Financing.

(a) On or prior to the date of this Agreement, Athena has delivered to Everest true, complete and fully executed copies of the Athena Commitment Letter. As of the date of this Agreement, (x) the Athena Commitment Letter has not been amended, waived or modified in any respect; and (y) the respective commitments contained in the Athena Commitment Letter have not been withdrawn, terminated or rescinded in any respect. As of the date of this Agreement, except for the Athena Commitment Letter, there are no side letters or other contracts, instruments or other commitments, obligations or arrangements (whether written or oral) related to any portion of the funding of the full amount of the Athena Financing.

(b) As of the date of this Agreement, the Athena Commitment Letter is in full force and effect and is a legal, valid and binding obligation of Athena and, to the Knowledge of Athena, the other parties thereto (in each case, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally and to general principles of equity). As of the date of this Agreement, (x) no event has occurred that, with or without notice, lapse of time or both, would reasonably be expected to constitute a default or breach on the part of Athena under any term or condition of the Athena Commitment Letter and (y) Athena is not aware of any fact, event or any other occurrence that makes any of the representations or warranties of Athena in the Athena Commitment Letter inaccurate in any material respect. Athena has fully paid, or caused to be fully paid, any and all commitment fees, any other fees or any other amounts required by the Athena Commitment Letter to be paid on or before the date of this Agreement. Other than as set forth in the Athena Commitment Letter, there are no conditions precedent to the effectiveness of the Athena Financing. As of the date of this Agreement, and subject to the satisfaction of all the conditions set forth in Article VI and Article VII, Athena has no reason to believe that any of the conditions to the Athena Financing that are required to be satisfied by it or any other party to the Athena Commitment Letter as a condition to the obligations under the Athena Commitment Letter will not be satisfied on a timely basis or that the Athena Financing contemplated by the Athena Commitment Letter will not be available to Athena immediately prior to, or on, the Closing Date to the extent Athena requests the proceeds of the Athena Financing. Notwithstanding anything in this Agreement to the contrary, in no event shall the receipt or availability of any funds or financing (including the Athena Financing contemplated by the Athena Commitment Letter) by or to Athena or any of its affiliates or any other financing transaction be a condition to any of the obligations of Athena or Merger Sub hereunder.

ARTICLE IV

CERTAIN COVENANTS OF THE PARTIES

Section 4.1 Access and Investigation. During the period commencing on the date of this Agreement and ending as of the earlier of the termination of this Agreement or the Closing (the "Pre-Closing Period"), subject to applicable Legal Requirements, upon reasonable notice Everest and Athena shall each, and shall cause each of their respective Subsidiaries to: (i) provide the Representatives of the other party with reasonable access during normal business hours (insofar as such access is reasonably required by the requesting party) to its Representatives and assets and to all existing books, records, work papers and other documents and information relating to such Entity or any of its Subsidiaries (but in the case of Everest and its Subsidiaries, solely to the extent it relates to the Newco Business or the Newco Companies), in each case as reasonably requested by Athena or Everest, as the case may be; and (ii) provide the Representatives of the other party with such copies of the existing books, records, work papers and other documents and information relating to such Entity and its Subsidiaries (but in the case of Everest and its Subsidiaries, solely to the extent it relates to the Newco Business or the Newco Companies) as reasonably requested by Athena or Everest, as the case may be. Nothing herein shall require Everest or Athena to disclose any information if such disclosure would jeopardize any attorney-client privilege or contravene any applicable Legal Requirement or binding Contract entered into prior to the date of this Agreement; provided that the parties shall cooperate to disclose such information to the extent possible without jeopardizing such privilege or contravening such Legal Requirements or binding Contracts. All information exchanged pursuant to this Section 4.1 shall be subject to the Confidentiality Agreement.

Section 4.2 Operation of the Newco Business and the Newco Companies.

(a) During the Pre-Closing Period, except as set forth in Section 4.2(a) of the Everest Disclosure Letter, as otherwise contemplated by this Agreement, the Distribution Agreement or the other Transaction Documents, as required by Legal Requirements or if Athena shall otherwise consent in writing (which consent shall not be unreasonably withheld, conditioned or delayed): (i) Everest shall use its commercially reasonable efforts to ensure that Everest and its Subsidiaries (including the Newco Companies) conduct the Newco Business in the ordinary course in all material respects; (ii) Everest shall use its commercially reasonable efforts to ensure that Everest and its Subsidiaries (including the Newco Companies) manage the Newco Business' working capital and maintain the Newco Companies' books and records consistent with past practice; and (iii) to the extent consistent therewith, Everest shall use its commercially reasonable efforts to ensure that Everest and its Subsidiaries (including the Newco Companies) preserve intact the material components of their respective current business organization (solely as it relates to the Newco Business) (it being understood that Everest shall not have any requirement to pay retention bonuses or enter into similar arrangements), and maintain their respective relations and goodwill (solely as they relate to the Newco Business) in all material respects with all material suppliers, material customers, material licensors, and Governmental Bodies; provided, however, that no action by Everest or any of its Subsidiaries with respect to matters specifically addressed by any provision of Section 4.2(b) shall be deemed a breach of this sentence unless such action would constitute a breach of such other provision.

(b) Except as set forth in Section 4.2(b) of the Everest Disclosure Letter, during the Pre-Closing Period, in each case, solely as it relates to the Newco Business, Everest shall not, and Everest shall ensure that each of the Newco Companies does not (in each case, except as otherwise contemplated by this Agreement, the Distribution Agreement or the other Transaction Documents, as required by Legal Requirements or with the prior written consent of Athena, which consent shall not be unreasonably withheld, conditioned or delayed):

(i) sell, issue, grant, authorize the sale, issuance or grant of, or publicly announce its intention to sell, issue, or grant: (A) any capital stock or other security to any Newco Associate; (B) any option, call, warrant or right to acquire any capital stock or other security to any Newco Associate; or (C) any instrument convertible into or exchangeable for any capital stock or other security to any Newco Associate, in each case, which would constitute Everest Equity Awards (except that Everest may issue shares of Everest Common Stock upon the exercise, vesting and settlement, as applicable, of Everest Equity Awards outstanding as of the date hereof or granted in accordance with the terms of this Agreement in accordance with their terms);

(ii) with respect to any Everest Equity Awards to Newco Associates, except as otherwise required by the terms of any Everest Employee Plan as in effect on the date of this Agreement or the Employee Matters Agreement, (A) amend or waive any of its rights under, or accelerate the vesting under, any provision of the Everest Employee Plans; (B) amend any provision of any agreement evidencing any outstanding Everest Equity Award; or (C) otherwise modify any of the terms of any outstanding Everest Equity Award, warrant or other security or any related Contract;

(iii) amend or permit the adoption of any amendment to the certificate of incorporation, bylaws, certificate of formation, limited liability company operating agreement, or other charter or organizational documents of any Newco Company to the extent reasonably likely to adversely affect the Contemplated Transactions;

(iv) make or commit to make any capital expenditure outside the ordinary course of business (except that the Newco Business may make any capital expenditure that: (A) is provided for in the Newco Business' capital expense budget delivered to Athena prior to the date of this Agreement; or (B) when added to all other capital expenditures made on behalf of Everest or any of its Subsidiaries with respect to the Newco Business since the date of this Agreement but not provided for in the Newco Business' capital expense budget delivered to Athena prior to the date of this Agreement, does not exceed an amount equal to 2.5% of the capital expense budget in the aggregate per calendar quarter);

(v) other than in the ordinary course of business, amend in any material respect (other than an extension), terminate, or waive any material right or remedy under, any Newco Material Contract or any other Contract that is material to the Newco Business, taken as a whole, other than termination thereof upon the expiration of any such Contract in accordance with its terms or upon a material breach thereof by the counterparty thereto;

(vi) (A) abandon, sell, assign or grant any security interest in, to or under any Newco Material Registered IP, including failing to perform or cause to be performed all necessary filings, recordings and other acts, or to pay or cause to be paid all required fees and Taxes, to maintain and protect its interest in any Newco Material Registered IP; or (B) grant to any third party any license, or enter into any covenant not to sue, with respect to any Newco Material Registered IP, in each case, except for licenses and covenants not to sue granted to customers, suppliers, distributors or vendors in the ordinary course of business and consistent with past practice;

(vii) except as required by the terms of any Newco Plan in effect as of the date hereof or the Employee Matters Agreement, (A) increase the compensation or benefits provided to any Newco Associate other than base salary increases in the ordinary course of business consistent with past practice for those employees with annual base salary not in excess of \$250,000, (B) grant or provide any change in control, severance, termination retention or similar payments or benefits (including any obligation to gross up, indemnify or otherwise reimburse any such individual for any Tax incurred by any such individual, including under Section 409A or 4999 of the Code) or any equity or equity-based awards to any Newco Associate, (C) accelerate the time of payment or vesting of, or the lapsing of restrictions with respect to, or fund or otherwise secure the payment of, any compensation or benefits (including any equity or equity-based awards) to any Newco Associate, (D) establish, adopt, enter into, terminate or amend any Newco Plan or establish, adopt or enter into any plan, agreement, program, policy or other arrangement that would be a Newco Plan if it were in existence as of the date hereof, other than (x) in connection with routine, immaterial or ministerial amendments to health and welfare plans that do not materially increase benefits or result in a material increase in administrative costs or (y) where such establishment, adoption, entering into or termination or amendment is not targeted to and has a substantially similar effect on Newco Associates relative to other employees and service providers of Everest and its Subsidiaries, (E) hire or engage, or make an offer to hire or engage, any officer, employee or individual independent contractor of any Newco Company whose annual base pay or fee exceeds \$250,000, or (F) terminate the employment of any Newco Associate whose annual base pay or fee exceeds \$250,000 other than for cause;

(viii) enter into, amend, extend, or modify any collective bargaining agreement or other Contract with a labor organization, employee representative or works council representing any Newco Employees, except in the ordinary course of business and consistent with past practice and as does not materially modify existing terms and conditions or materially increase existing payments or benefits provided thereunder;

(ix) acquire any equity interest or other interest in any other Entity, or acquire, lease or license any right or other asset from any other Person or sell or otherwise dispose of, or lease or license, any right or other asset to any other Person (except in each case for: (A) assets acquired, leased, licensed or disposed of by the Newco Business in the ordinary course of business; (B) assets that are immaterial to the business of the Newco Business; (C) sales of inventory or other assets in the ordinary course of business; (D) acquisitions for cash consideration that does not exceed \$10,000,000 in the aggregate); or (E) assets permitted to be acquired pursuant to Section 4.2(b)(iv);

(x) make any pledge of any of the material Newco Assets or permit any of the material Newco Assets to become subject to any Encumbrances, other than Permitted Encumbrances or Encumbrances that will be released prior to or at Closing;

(xi) incur any Indebtedness outstanding in excess of \$5,000,000 in the aggregate at any given time (other than (x) Indebtedness incurred in connection with working capital borrowings, overdraft facilities and letter of credit facilities or similar obligations in the ordinary course of business, (y) Indebtedness incurred in connection with the Newco Financing and (z) intercompany Indebtedness (i) owed to Everest or any of its wholly owned Subsidiaries (other than Newco and its Subsidiaries), solely to the extent such intercompany Indebtedness will be extinguished at or prior to Closing or (ii) owed by one of Newco and its Subsidiaries to another of Newco and its Subsidiaries;

(xii) lend money to any Person (other than (i) routine travel and business expense advances made to directors, employees or independent contractors in the ordinary course of business or (ii) loans to Everest of any of its wholly owned Subsidiaries);

(xiii) other than (A) changes made by Everest with respect to both the Newco Business and the Everest Retained Business or (B) as required by changes in GAAP or SEC rules and regulations, change any of its methods of accounting or accounting practices in any material respect;

(xiv) except as permitted pursuant to Section 5.12, settle any Legal Proceeding or other material claim in excess of \$2,500,000 or as would otherwise be material to the Newco Business, taken as a whole;

(xv) other than in the ordinary course of business and consistent with past practice, (A) make any change (or file any such change) in any method of Tax accounting; (B) make, change or rescind any Tax election; (C) settle or compromise any Tax liability or consent to any claim or assessment relating to Taxes; (D) file any amended income or other material Tax Return or claim for refund; (E) enter into any closing agreement relating to Taxes; or (F) waive or extend the statute of limitations in respect of Taxes; in each case, to the extent that doing so could reasonably be expected to result in a material incremental cost to any of the Newco Companies after the Closing;

(xvi) write down the value of inventory or write-off as uncollectible any accounts receivable, except for immaterial write-downs and write-offs consistent with past practice in the ordinary course of business;

(xvii) take actions to accelerate the payment of accounts receivable (by, for example, shortening payment terms or providing incentives for early payment), or delay the payments on accounts payable in a manner inconsistent with past practice in the ordinary course of business; or

(xviii) enter into any Contract to do any of the actions described in clauses (i) through (xv) of this Section 4.2(b).

(c) During the Pre-Closing Period, Everest shall promptly notify Athena in writing of any event, condition, fact or circumstance that would reasonably be expected to make the timely satisfaction of any of the conditions set forth in Article VI impossible or that has had or would reasonably be expected to have, individually or in the aggregate, a Newco Material Adverse Effect. No notification given to Athena pursuant to this Section 4.2(c) shall limit or otherwise affect any of the representations, warranties, covenants or obligations of Everest contained in this Agreement or the conditions to the obligations of the parties under this Agreement; provided, however, that a failure to comply with this Section 4.2(c) will not constitute the failure of any condition set forth in Article VI to be satisfied unless the underlying event, condition, fact or circumstance would independently result in the failure of a condition set forth in Article VI to be satisfied.

Section 4.3 Operation of the Business of the Athena Companies.

(a) During the Pre-Closing Period, except as set forth in Section 4.3(a) of the Athena Disclosure Letter, as otherwise contemplated by this Agreement, as required by Legal Requirements or if Everest shall otherwise consent in writing (which consent shall not be unreasonably withheld, conditioned or delayed): (i) Athena shall use its commercially reasonable efforts to ensure that the Athena Companies conduct their business and operations in the ordinary course in all material respects; and (ii) to the extent consistent therewith, Athena shall use its commercially reasonable efforts to ensure that the Athena Companies preserve intact the material components of their current business organization and maintain their relations and goodwill in all material respects with all material suppliers, material customers, material licensors, and Governmental Bodies; provided, however, that no action by Athena or any of its Subsidiaries with respect to matters specifically addressed by any provision of Section 4.3(b) shall be deemed a breach of this sentence unless such action would constitute a breach of such other provision.

(b) Except as set forth in Section 4.3(b) of the Athena Disclosure Letter, during the Pre-Closing Period, Athena shall not, and Athena shall ensure that each of the other Athena Companies does not (in each case, except as otherwise contemplated by this Agreement, as required by Legal Requirements or with the prior written consent of Everest, which consent shall not be unreasonably withheld, conditioned or delayed):

(i) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of capital stock or other securities, or repurchase, redeem or otherwise reacquire any shares of capital stock or other securities, other than: (A) dividends or distributions between or among any of the Athena Companies to the extent consistent with past practices or (B) in connection with the exercise, vesting and settlement, as applicable, of Athena Equity Awards in accordance with their terms;

(ii) sell, issue, grant, authorize the sale, issuance or grant of, or publicly announce its intention to sell, issue, or grant: (A) any capital stock or other security; (B) any option, call, warrant or right to acquire any capital stock or other security; or (C) any instrument convertible into or exchangeable for any capital stock or other security (except that Athena may issue shares of Athena Common Stock upon the exercise, vesting and settlement, as applicable, of Athena Equity Awards in accordance with their terms);

(iii) with respect to any Athena Equity Awards, except as otherwise required by the terms of any Athena Employee Plan as in effect on the date of this Agreement, (A) amend or waive any of its rights under, or accelerate the vesting under, any provision of the Athena Employee Plans; (B) amend any provision of any agreement evidencing any outstanding Athena Equity Award; or (C) otherwise modify any of the terms of any outstanding Athena Equity Award, warrant or other security or any related Contract;

(iv) amend or permit the adoption of any amendment to its certificate of incorporation, bylaws, certificate of formation, limited liability company operating agreement, or other charter or organizational documents to the extent reasonably likely to adversely affect the Contemplated Transactions;

(v) (A) abandon, sell, assign or grant any security interest in, to or under any Athena Material Registered IP, including failing to perform or cause to be performed all filings, recordings and other acts, or to pay or cause to be paid all required fees and Taxes, to maintain and protect its interest in any Athena Material Registered IP; or (B) grant to any third party any license, or enter into any covenant not to sue, with respect to any Athena Material Registered IP, in each case, except for non-exclusive licenses granted to customers, suppliers, distributors or vendors in the ordinary course of business and consistent with past practice;

(vi) make or commit to make any capital expenditure outside the ordinary course of business (except that the Athena Companies may make any capital expenditure that: (A) is provided for in Athena's capital expense budget delivered to Everest prior to the date of this Agreement; or (B) when added to all other capital expenditures made on behalf of all of the Athena Companies since the date of this Agreement but not provided for in Athena's capital expense budget delivered to Everest prior to the date of this Agreement, does not exceed 2.5% of the capital expense budget in the aggregate per calendar quarter);

(vii) other than in the ordinary course of business amend in any material respect (other than an extension), terminate, or waive any material right or remedy under, any Athena Material Contract or any other Contract that is material to the Athena Companies (taken as a whole), other than termination thereof upon the expiration of any such Contract in accordance with its terms or upon a material breach thereof by the counterparty thereto;

(viii) except as required by the terms of any Athena Employee Plan in effect as of the date hereof, (A) increase the compensation or benefits provided to any Athena Associate other than base salary increases in the ordinary course of business consistent with past practice for those employees with annual base salary not in excess of \$250,000, (B) grant or provide any change in control, severance, termination retention or similar payments or benefits to any Athena Associate (including any obligation to gross up, indemnify or otherwise reimburse any such individual for any Tax incurred by any such individual, including under Section 409A or 4999 of the Code), (C) accelerate the time of payment or vesting of, or the lapsing of restrictions with respect to, or fund or otherwise secure the payment of, any compensation or benefits (including any equity or equity-based awards) to any Athena Associate, (D) establish, adopt, enter into, terminate or amend any Athena Employee Plan or establish, adopt or enter into any plan, agreement, program, policy or other arrangement that would be an Athena Employee Plan if it were in existence as of the date hereof, other than (x) in connection with routine, immaterial or ministerial amendments to health and welfare plans that do not materially increase benefits or result in a material increase in administrative costs or (y) where such establishment, adoption, entering into, termination or amendment is not targeted to Athena Associates, (E) hire or engage, or make an offer to hire or engage, any officer, employee or individual independent contractor of any Athena Company whose annual base pay or fee exceeds \$250,000, or (F) terminate the employment of any Athena Associate whose annual base pay or fee exceeds \$250,000 other than for cause;

(ix) enter into, amend, extend, or modify any collective bargaining agreement or other Contract with a labor organization, employee representative or works council representing any Athena Employees, except in the ordinary course of business and consistent with past practice and as does not materially modify existing terms and conditions or materially increase existing payments or benefits provided thereunder;

(x) acquire any equity interest or other interest in any other Entity, or acquire, lease or license any right or other asset from any other Person or sell or otherwise dispose of, or lease or license, any right or other asset to any other Person (except in each case for: (A) assets acquired, leased, licensed or disposed of by the Athena Companies in the ordinary course of business; (B) assets that are immaterial to the business of the Athena Companies; (C) sales of inventory or other assets in the ordinary course of business; (D) acquisitions for cash consideration that does not exceed \$10,000,000 in the aggregate); or (E) assets permitted to be acquired pursuant to Section 4.3(b)(vi);

(xi) make any pledge of any of its material assets or permit any of its material assets to become subject to any Encumbrances, other than Permitted Encumbrances;

(xii) lend money to any Person (other than routine travel and business expense advances made to directors, employees or independent contractors in the ordinary course of business), or incur or guarantee any Indebtedness in excess of \$5,000,000 in the aggregate (other than revolving borrowings under the Athena Credit Agreement in the ordinary course of business);

(xiii) other as required by changes in GAAP or SEC rules and regulations, change any of its methods of accounting or accounting practices in any material respect;

(xiv) except as permitted pursuant to Section 5.12, settle any Legal Proceeding or other material claim in excess of \$2,500,000 or as would otherwise be material to the Athena Companies, taken as a whole;

(xv) other than in the ordinary course of business and consistent with past practice, (A) make any change (or file any such change) in any method of Tax accounting; (B) make, change or rescind any Tax election; (C) settle or compromise any Tax liability or consent to any claim or assessment relating to Taxes; (D) file any amended income or other material Tax Return or claim for refund; (E) enter into any closing agreement relating to Taxes; or (F) waive or extend the statute of limitations in respect of Taxes; in each case, to the extent that doing so could reasonably be expected to result in a material incremental cost to any of the Athena Companies; or

(xvi) enter into any Contract to do any of the actions described in clauses (i) through (xv) of this Section 4.3(b).

(c) During the Pre-Closing Period, Athena shall promptly notify Everest in writing of any event, condition, fact or circumstance that would reasonably be expected to make the timely satisfaction of any of the conditions set forth in Article VII impossible or that has had or would reasonably be expected to have, individually or in the aggregate, an Athena Material Adverse Effect. No notification given to Everest pursuant to this Section 4.3(c) shall limit or otherwise affect any of the representations, warranties, covenants or obligations of Athena contained in this Agreement or the conditions to the obligations of the parties under this Agreement; provided, however, that a failure to comply with this Section 4.3(c) will not constitute the failure of any condition set forth in Article VII to be satisfied unless the underlying event, condition, fact or circumstance would independently result in the failure of a condition set forth in Article VII to be satisfied.

Section 4.4 Control of Other Party's Business. Nothing contained in this Agreement shall give Everest or Newco, directly or indirectly, the right to control or direct Athena's business or operations prior to the Effective Time. Nothing contained in this Agreement shall give Athena, directly or indirectly, the right to control or direct the operations of the Newco Business, or the business of Newco and the Newco Companies prior to the Effective Time. Prior to the Effective Time, each of Everest, Newco and Athena shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its respective operations.

Section 4.5 No Solicitation.

(a) During the Pre-Closing Period, Everest shall not, directly or indirectly, and Everest shall cause its Subsidiaries and use reasonable best efforts to cause the respective Representatives of Everest not to, directly or indirectly:

(i) solicit, initiate, knowingly encourage or knowingly facilitate the making, submission or announcement of any Acquisition Proposal with respect to the Newco Business or Acquisition Inquiry with respect to the Newco Business;

(ii) furnish any information regarding the Newco Business to any Person in connection with or in response to an Acquisition Proposal with respect to the Newco Business or Acquisition Inquiry with respect to the Newco Business;

(iii) engage in discussions or negotiations with any Person relating to any Acquisition Proposal with respect to the Newco Business or Acquisition Inquiry with respect to the Newco Business;

(iv) approve, endorse or recommend any Acquisition Proposal with respect to the Newco Business or Acquisition Inquiry with respect to the Newco Business; or

(v) enter into any letter of intent or similar document or any Contract contemplating or otherwise relating to any Acquisition Transaction or Acquisition Inquiry with respect to the Newco Business;

provided, however, that, for the avoidance of doubt, nothing in this Agreement shall preclude Everest from considering, engaging in any discussions or negotiations regarding, or furnishing to any Person any information in connection with or in furtherance of, or entering into any agreement providing for or in connection with, any Acquisition Proposal or Acquisition Inquiry with respect to Everest, its Subsidiaries, assets or businesses, so long as such Acquisition Proposal or Acquisition Inquiry (i) relates to the acquisition by a third party, directly or indirectly, of outstanding shares of Everest Common Stock or assets of one or more other businesses of Everest (other than the Newco Business); (ii) would not require the termination of this Agreement; and (iii) would not prevent or materially impair Everest from complying with its obligations hereunder or consummating the Contemplated Transactions.

(b) During the Pre-Closing Period, Athena shall not, directly or indirectly, and Athena shall cause its Subsidiaries and use reasonable best efforts to cause the respective Representatives of the Athena Companies not to, directly or indirectly:

(i) solicit, initiate, knowingly encourage or knowingly facilitate the making, submission or announcement of any Acquisition Proposal with respect to Athena or Acquisition Inquiry with respect to Athena;

(ii) furnish any information regarding any of the Athena Companies to any Person in connection with or in response to an Acquisition Proposal with respect to Athena or Acquisition Inquiry with respect to Athena;

(iii) engage in discussions or negotiations with any Person relating to any Acquisition Proposal with respect to Athena or Acquisition Inquiry with respect to Athena;

(iv) approve, endorse or recommend, or submit to the shareholders of Athena for their approval, any Acquisition Proposal with respect to Athena or Acquisition Inquiry with respect to Athena; or

(v) enter into any letter of intent or similar document or any Contract contemplating or otherwise relating to any Acquisition Transaction or Acquisition Inquiry with respect to Athena;

provided, however, that, prior to the approval of the issuance of shares of Athena Common Stock pursuant to the Merger by the Required Athena Stockholder Vote (and in no event after obtaining the Required Athena Stockholder Vote), this Section 4.5(b) shall not prohibit Athena from furnishing information regarding the Athena Companies (it being understood that in no event shall any of the Athena Companies or their respective Representatives furnish any information regarding Everest or any of its Subsidiaries (including the Newco Companies) or the Newco Business) to, or entering into discussions and negotiations with, any Person in response to a bona fide written Acquisition Proposal made after the date of this Agreement that is submitted to Athena by such Person (and not withdrawn) which, after consultation with its financial advisor and outside legal counsel, the Athena Board determines in good faith is, or is reasonably expected to, result in an Athena Superior Offer if: (A) such Acquisition Proposal did not result from a material breach of any of the provisions set forth in this Section 4.5(b); (B) the Athena Board concludes in good faith, after having consulted with its outside legal counsel, that failure to take such action would be reasonably likely to constitute a breach of the fiduciary duties of the Athena Board to Athena's stockholders under applicable Legal Requirements; (C) prior to furnishing any such information to such Person, Athena receives from such Person an executed confidentiality agreement containing customary provisions (including nondisclosure provisions, use restrictions and non-solicitation provisions) at least as favorable to Athena as the provisions of the Confidentiality Agreement as in effect immediately prior to the execution of this Agreement and allowing for Athena to comply with its obligations in this Agreement; (D) Athena gives Everest written notice of the identity of such Person and (E) Athena furnishes such information to Everest prior to or substantially concurrent with the time it is provided or made available to such Person.

(c) Each of Athena and Everest shall promptly (and in any event within 24 hours) after receipt of any Acquisition Proposal with respect to either (i) the Newco Business or (ii) Athena, as the case may be, or Acquisition Inquiry with respect to either (x) the Newco Business or (y) Athena, as the case may be, advise the other party to this Agreement orally and in writing of any such Acquisition Proposal or Acquisition Inquiry (including the identity of the Person making or submitting such Acquisition Proposal or Acquisition Inquiry and the terms thereof, including a copy of any written Acquisition Proposal or Acquisition Inquiry and any other substantive documentation in respect of such Acquisition Proposal or Acquisition Inquiry received from the proponent thereof or its Representative) that is made or submitted by any Person during the Pre-Closing Period. Each party receiving an Acquisition Proposal or Acquisition Inquiry shall keep the other party reasonably informed on a reasonably prompt basis (and in any event within 24 hours) with respect to (i) the status of any such Acquisition Proposal or Acquisition Inquiry, including, with respect to an Acquisition Proposal or Acquisition Inquiry received by Athena only, any negotiations with respect thereto and (ii) the status and terms of any material modification or proposed material modification thereto (it being understood that any change in the purchase price or form of consideration shall be deemed a material modification), including copies of any written materials (including e-mail correspondence and copies of all drafts and final versions (and any comments thereon) of agreements (including schedules and exhibits thereto)) exchanged with the proponent thereof or its Representative in connection with any such Acquisition Proposal or Acquisition Inquiry. Athena agrees that the foregoing shall not apply to any Acquisition Proposal or Acquisition Inquiry subject to the proviso in Section 4.5(a).

(d) Each of Athena and Everest shall, and shall cause their respective Subsidiaries and use reasonable best efforts to cause their respective Representatives to, immediately cease and cause to be terminated any discussions conducted on or before the date of this Agreement with any Person that relate to any Acquisition Proposal with respect to either (i) the Newco Business or (ii) Athena, as the case may be, or Acquisition Inquiry with respect to either (x) the Newco Business or (y) Athena, as the case may be, and request the prompt return or destruction of all confidential information previously furnished.

(e) Athena agrees not to release or permit the release of any Person from, or to waive or permit the waiver of any provision of, any confidentiality, non-solicitation, no hire, "standstill" or similar Contract to which any Athena Company is a party or under which any Athena Company has any rights, and will use its reasonable efforts to cause each such agreement to be enforced at the request of Everest except to the extent that the Athena Board determines in good faith, after having consulted with its outside legal counsel, that failure to take such action would constitute a breach of the fiduciary duties of the Athena Board to its stockholders under applicable Legal Requirements.

ARTICLE V

ADDITIONAL COVENANTS AND AGREEMENTS OF THE PARTIES

Section 5.1 Registration Statements; Proxy Statement/Prospectus.

(a) As promptly as reasonably practicable after the date hereof (i) Athena shall cause to be filed with the SEC the Athena Form S-4 Registration Statement, in which the Proxy Statement/Prospectus will be included as a prospectus and (ii) Everest shall cause to be filed with the SEC a registration statement on Form 10 or a registration statement on Form S-1/S-4, as applicable (either, and together with any amendments, supplements, prospectus or information statements thereto, the "Newco Registration Statements") to register the shares of Newco Common Stock to be distributed in the Distribution. As promptly as reasonably practicable after the Athena Form S-4 Registration Statement and the Newco Registration Statements have been declared effective, Everest shall file with the SEC a Schedule TO (together with any amendments thereto, the "Schedule TO") if Everest elects to effect the Distribution in whole or in part by means of an Exchange Offer. Athena and Everest shall also file such other appropriate documents with the SEC as may be applicable. Each of Athena and Everest shall: (A) cause the Athena Form S-4 Registration Statement, the Proxy Statement/Prospectus, the Newco Registration Statements and the Schedule TO (if applicable) to comply with the applicable rules and regulations promulgated by the SEC; (B) promptly notify the other of, cooperate with each other with respect to, provide the other party (and its Representatives) with a reasonable opportunity to review and comment on, and respond promptly to any comments of the SEC or its staff with respect to the Athena Form S-4 Registration Statement, the Proxy Statement/Prospectus, the Newco Registration Statements or the Schedule TO (if applicable); (C) provide the other party (and its Representatives) with a reasonable opportunity to review and comment on the Athena Form S-4 Registration Statement, the Proxy Statement/Prospectus, the Newco Registration Statements or the Schedule TO (if applicable), prior to filing of any such document with the SEC; (D) have each of the Athena Form S-4 Registration Statement and the Newco Registration Statements become effective under the Securities Act and the Exchange Act, respectively, as promptly as reasonably practicable after each is filed with the SEC (it being understood that each of Athena and Everest shall use its reasonable best efforts to cause the Athena Form S-4 to become effective under the Securities Act prior to the date on which the financial statements included therein would become stale); and (E) keep each of the Athena Form S-4 Registration Statement and the Newco Registration Statements effective through the Closing in order to permit the consummation of the Contemplated Transactions. Athena shall cause to be filed with the SEC the Proxy Statement/Prospectus and shall cause the Proxy Statement/Prospectus to be mailed to Athena's stockholders, as promptly as reasonably practicable after the Athena Form S-4 Registration Statement becomes effective under the Securities Act. Each of Athena and Everest shall promptly furnish the other party all information concerning such party, its Subsidiaries and stockholders that may be required or reasonably requested in connection with any action contemplated by this Section 5.1. If, at any time prior to the Effective Time, any event or circumstance shall be discovered by either Athena or Everest, or either Athena or Everest becomes aware of any information furnished by it, in either case, that should be disclosed in an amendment or supplement to the Athena Form S-4 Registration Statement, the Proxy Statement/Prospectus, the Newco Registration Statements or the Schedule TO (if applicable) so that such document or documents would not include any untrue statement of a material fact or fail to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, then such party: (i) shall promptly inform the other party thereof; (ii) shall provide the other party (and its Representatives) with a reasonable opportunity to review and comment on any amendment or supplement to the Athena Form S-4 Registration Statement, the Proxy Statement/Prospectus, the Newco Registration Statements or the Schedule TO (if applicable) prior to it being filed with the SEC; (iii) shall provide the other party with a copy of such amendment or supplement promptly after it is filed with the SEC; and (iv) shall cooperate, if appropriate, in mailing such amendment or supplement to the stockholders of Athena or Everest (as the case may be).

(b) Each of Athena and Everest will also take all commercially reasonable actions (other than qualifying to do business in any jurisdiction in which it is not now so qualified) required to be taken under any applicable state securities laws in connection with, in the case of the Athena, the issuance of Athena Common Stock pursuant to the Merger and, in the case of Everest, the issuance of shares of Newco Common Stock in the Distribution. If any state Takeover Statute or similar Legal Requirement shall become applicable to the Contemplated Transactions, each of the parties and their respective boards of directors shall grant such approvals and take such actions within their control as are reasonably necessary so that the Contemplated Transactions may be consummated as promptly as practicable on the terms contemplated hereby or by the other Transaction Documents and otherwise take such actions within their control to eliminate or minimize the effects of such statute or regulation on the Contemplated Transactions.

(a) As promptly as reasonably practicable following the date on which the SEC shall clear (whether orally or in writing) the Proxy Statement/Prospectus, Athena: (i) shall take all action necessary under all applicable Legal Requirements to call, give notice of and hold a meeting of the holders of Athena Common Stock (the "Athena Stockholders' Meeting") to vote on a proposal to approve the issuance of shares of Athena Common Stock pursuant to the Merger pursuant to New York Stock Exchange Listing Rule 312.03 and (ii) shall submit such proposal to such holders at the Athena Stockholders' Meeting. Athena shall not submit any other proposals for approval at the Athena Stockholders' Meeting without the prior written consent of Everest, such consent not to be unreasonably withheld in the event the Athena Stockholders' Meeting is also an annual meeting of Athena's stockholders. Athena in consultation with Everest shall set a record date for Persons entitled to notice of, and to vote at, the Athena Stockholders' Meeting. Athena shall not change such record date for the Athena Stockholders' Meeting without the prior written consent of Everest and shall not adjourn or otherwise postpone or delay the Athena Stockholders' Meeting without the prior written consent of Everest; provided, however, that Athena may, without the prior written consent of Everest, adjourn or postpone the Athena Stockholders' Meeting (i) if as of the time for which the Athena Stockholders' Meeting is originally scheduled (as set forth in the Proxy Statement) there are insufficient shares of Athena Common Stock represented (either in person or by proxy) to constitute a quorum necessary to conduct the business of the Athena Stockholders' Meeting, (ii) after consultation with Everest, to the extent necessary to ensure the distribution of any supplement or amendment to the Proxy Statement required by Legal Requirements within a reasonable amount of time in advance of the Athena Stockholders' Meeting or, (iii) if there are insufficient affirmative votes represented (either in person or by proxy) at the Athena Stockholders' Meeting to approve the issuance of shares of Athena Common Stock pursuant to the Merger, or (iv) after consultation with Everest, to the extent otherwise required to comply with applicable Legal Requirements; provided, further, however, that (A) unless agreed to in writing by Everest, (x) any such adjournment or postponement under the preceding clause (i) or (iii) shall be for a period of no more than ten (10) Business Days each and (y) Athena shall only be permitted to effect up to two (2) such adjournments or postponements pursuant to the preceding clauses (i) and (iii) (in the aggregate), (B) no postponement contemplated by the preceding clause (i) or (iii) shall be permitted if it would require a change to the record date for the Athena Stockholders' Meeting and (C) if requested by Everest, Athena shall effect an adjournment or postponement of the Athena Stockholders' Meeting under the circumstances contemplated by the preceding clause (i) or (iii) for a period of up to ten (10) Business Days each (provided, however, that Everest shall only make up to two (2) such requests, and no such request for a postponement shall be permitted if it would require a change in the record date for the Athena Stockholders' Meeting). Athena shall use its reasonable best efforts to ensure that all proxies solicited by the Athena Companies and their Representatives in connection with the Athena Stockholders' Meeting are solicited in compliance with all applicable Legal Requirements. Athena agrees that, unless this Agreement shall have been terminated in accordance with Article VIII, its obligations to hold the Athena Stockholders' Meeting pursuant to this Section 5.2(a) shall not be affected by the commencement, public proposal, public disclosure or communication to Athena of any Acquisition Proposal with respect to Athena or Acquisition Inquiry with respect to Athena or by any Athena Change in Recommendation.

(b) Except to the extent expressly permitted by Section 5.2(c): (i) the Athena Board shall recommend that Athena's stockholders vote in favor of the issuance of shares of Athena Common Stock pursuant to the Merger at the Athena Stockholders' Meeting, (ii) the Proxy Statement/Prospectus shall include a statement to the effect that the Athena Board recommends that Athena's stockholders vote to approve the issuance of shares of Athena Common Stock pursuant to the Merger at the Athena Stockholders' Meeting (such determination and recommendation being referred to as the "Athena Board Recommendation") and (iii) the Athena Board Recommendation shall not be directly or indirectly withdrawn, modified or qualified (or proposed to be withdrawn, modified or qualified) by the Athena Board or any committee thereof in a manner adverse to Everest (an "Athena Change in Recommendation").

(c) Notwithstanding anything to the contrary contained in Section 5.2(a), at any time prior to the approval of the issuance of shares of Athena Common Stock pursuant to the Merger by the Required Athena Stockholder Vote, the Athena Board may (x) effect, or cause Athena to effect, as the case may be, an Athena Change in Recommendation and (y) only in the case of Section 5.2(c)(i), below, terminate or cause Athena to terminate this Agreement pursuant to Section 8.1(f) and concurrently with such termination cause Athena to enter into a definitive agreement providing for an Athena Superior Offer (subject to the satisfaction of its obligations under Section 8.3):

(i) if: (A) Athena has not materially breached its obligations under Section 4.5; (B) after the date of this Agreement, an unsolicited, bona fide written Acquisition Proposal is made to Athena and is not withdrawn; (C) the Athena Board determines in its good faith judgment, after consulting with its financial advisor and outside legal counsel, that such Acquisition Proposal constitutes an Athena Superior Offer; (D) the Athena Board does not effect, or cause Athena to effect, an Athena Change in Recommendation at any time within four (4) Business Days (together with any subsequent shorter period as contemplated by the proviso below in this clause (D), the “Notice Period”) after Everest receives (x) written notice from Athena that the Athena Board has determined that such Acquisition Proposal is an Athena Superior Offer and (y) a summary of the material terms and conditions of the Acquisition Proposal and other information required to be provided pursuant to Section 4.5 (provided that a new notice shall be required with respect to each material modification to such offer (it being understood that any change in the purchase price or form of consideration in such offer shall be deemed a material modification) and a new Notice Period (of two (2) Business Days) shall begin); (E) during the applicable Notice Period, if requested by Everest, Athena engages in good faith negotiations, and directs its financial advisors and outside legal advisors to, engage in good faith negotiations, with Everest to amend this Agreement in such a manner that the competing Acquisition Proposal does not constitute an Athena Superior Offer; (F) at the end of the applicable Notice Period, such Acquisition Proposal has not been withdrawn and constitutes an Athena Superior Offer (taking into account any changes to the terms of this Agreement proposed by Everest as a result of the negotiations required by clause (E) or otherwise); and (G) the Athena Board determines in good faith, after having consulted with its outside legal counsel, that, in light of such Athena Superior Offer, a failure to make an Athena Change in Recommendation and/or terminate this Agreement would reasonably be likely to constitute a breach of the fiduciary duties of the Athena Board to Athena stockholders under applicable Legal Requirements; or

(ii) if other than in connection with or as a result of the making of an Acquisition Proposal with respect to Athena or an Acquisition Inquiry with respect to Athena, a material development or change in circumstances that was not known or reasonably foreseeable (or if known or reasonably foreseeable, the probability or magnitude of consequences of which were not known or reasonably foreseeable) to the Athena Board on the date of this Agreement occurs or arises after the date of this Agreement, which material development or change in circumstances becomes known to the Athena Board prior to the approval of the issuance of shares of Athena Common Stock pursuant to the Merger by the Required Athena Stockholder Vote (such material development or change in circumstances being referred to as an “Intervening Event”) (it being understood that that in no event shall (x) any action taken by either party pursuant to and in compliance with the affirmative covenants set forth in Section 5.3, and the consequences of any such action or (y) the receipt, existence of or terms of an Acquisition Proposal with respect to Athena or an Acquisition Inquiry with respect to Athena or the consequences thereof constitute an Intervening Event); (A) the Athena Board determines in its good faith judgment, after consulting with its financial advisor and outside legal counsel that an Intervening Event has occurred; (B) the Athena Board does not effect, or cause Athena to effect, an Athena Change in Recommendation at any time within four (4) Business Days after Everest receives written notice from Athena that the Athena Board has determined that an Intervening Event requires the Athena Board to effect, or cause Athena to effect, an Athena Change in Recommendation (provided that a new notice shall be required with respect to any change in circumstances and a new notice period of two (2) Business Days shall begin); (C) during such applicable period, if requested by Everest, Athena engages in good faith negotiations, and directs its financial advisors and outside legal advisors to, engage in good faith negotiations, with Everest to amend this Agreement in such a manner that obviates the need for the Athena Board to effect, or cause Athena to effect, an Athena Change in Recommendation as a result of such Intervening Event; and (D) the Athena Board determines in good faith, after having consulted with its outside legal counsel, that, in light of such Intervening Event, a failure to make an Athena Change in Recommendation would reasonably be likely to constitute a breach of the fiduciary duties of the Athena Board to Athena’s stockholders under applicable Legal Requirements.

(d) Nothing contained in this Agreement shall prohibit the Athena Board from (i) taking and disclosing to its stockholders a position contemplated by Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act, or from issuing a “stop, look and listen” statement pending disclosure of its position thereunder or (ii) making any disclosure to its stockholders if the Athena Board determines in good faith, after consultation with outside legal counsel, that the failure of the Athena Board to make such disclosure would constitute a breach of the fiduciary duties of the Athena Board under applicable Legal Requirements; provided, however, that (A) in no event shall this Section 5.2(d) permit the Athena Board to make an Athena Change in Recommendation except as otherwise permitted expressly pursuant to Section 5.2(c), (B) in no event shall this Section 5.2(d) affect, modify or supplement the definition of Athena Change in Recommendation herein (or to the consequences thereof in accordance with this Agreement) and (C) any such public disclosure (other than issuance by Athena of a “stop, look and listen” or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act) that does not state that the Athena Board Recommendation has not changed shall be deemed to be an Athena Change in Recommendation. Athena shall provide Everest with a copy of the text of any disclosure proposed to be made pursuant to this Section 5.2(d) at the earliest practicable time in advance of such disclosure.

Section 5.3 Regulatory Approvals and Related Matters.

(a) Each party shall file all notices, reports and other documents required to be filed by such party with any Governmental Body with respect to the Merger and the other Contemplated Transactions, and to submit promptly any additional information requested by any such Governmental Body. Without limiting the generality of the foregoing or Section 5.3(b) below, Athena and Everest each shall, promptly (and in any event, with respect to clause (x), within 10 Business Days after the date of this Agreement), prepare and file (x) the notifications required under the HSR Act and (y) the mandatory notifications required under any applicable foreign Competition Laws (the “Antitrust Filings”) in connection with the Merger. Athena and Everest each shall use its reasonable best efforts to cause the expiration or early termination of any waiting period under the HSR Act, and Athena and Everest shall each (i) cooperate with the other party in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) promptly supply the other party with any information which may be required in order to effectuate notices, reports, documents or other filings with any Governmental Body required to be made pursuant to the HSR Act and the Antitrust Filings; and (iii) promptly supply any additional information which reasonably may be required by any Governmental Body in connection with Antitrust Filings or which the parties may reasonably deem appropriate. Each of Athena and Everest will notify the other party promptly upon the receipt of (and, if in writing, share a copy of) any material communication received by such party from, or given by such party to, any Governmental Bodies and of any material communication received or given in connection with any proceeding by a private party, in each case in connection with the Contemplated Transactions. Whenever any event occurs that is required to be set forth in an amendment or supplement to any Antitrust Filings, Athena or Everest, as the case may be, will promptly inform the other party of such occurrence and cooperate in filing with the applicable Governmental Body (and share a copy of) such amendment or supplement. Each of Athena and Everest shall give the other party prompt notice of the commencement or known threat of commencement of any Legal Proceeding by or before any Governmental Body with respect to the Merger or any of the other Contemplated Transactions, shall keep the other party reasonably informed as to the status of any such Legal Proceeding or threat, and, in connection with any such Legal Proceeding, will permit authorized representatives of the other party to be present at each meeting or conference relating to any such Legal Proceeding and to have access to and be consulted in connection with any document, opinion or proposal made or submitted to any Governmental Body in connection with any such Legal Proceeding.

(b) Upon the terms and subject to the conditions set forth in this Agreement, each of Athena, Everest, Merger Sub and Newco agrees to use its reasonable best efforts to take, or cause to be taken, all actions necessary or advisable to satisfy each of the conditions set forth in Articles VI and VII, consummate the Merger and make effective the other Contemplated Transactions (provided that no party shall be required to waive any of the conditions set forth in Articles VI or VII, as applicable, to its obligations to consummate the Merger and the other Contemplated Transactions) in each case as promptly as is reasonably practicable but in any event so as to permit the Closing to occur prior to the End Date. Without limiting the generality of the foregoing, but subject to this Section 5.3(b), each party to this Agreement agrees to use its reasonable best efforts to: (i) as promptly as practicable, prepare and file all filings (if any) and give all notices (if any) required to be made and given by such party in connection with the Merger and the other Contemplated Transactions; (ii) obtain each Consent (if any) required to be obtained (pursuant to any applicable Legal Requirement or Contract, or otherwise) by such party in connection with the Merger or any of the other Contemplated Transactions (including Athena providing a guarantee of Newco Companies' obligations reasonably necessary to obtain such Consents); and (iii) lift any restraint, injunction or other legal bar to the Merger (provided that, other than fees and expenses of outside counsel and other Representatives, except to the extent required pursuant to Section 5.3(d) but subject to Section 5.3(e), no party shall be required to make any payment, assume any material obligations or offer or grant any material concessions to any Person (other than any Governmental Bodies) to obtain any Consent). The parties shall jointly devise, control and direct the strategy and timing for, and the making of all material decisions relating to, obtaining any Consent of a Governmental Body contemplated by this Section 5.3.

(c) Each party shall not, and shall cause its Subsidiaries not to, acquire or agree to acquire any business or entity, or otherwise acquire or agree to acquire any assets, if doing so would reasonably be expected to delay or prevent consummation of the Contemplated Transactions, increase the risk of not obtaining any consents of any Governmental Body necessary to consummate the Contemplated Transactions or give rise to a requirement to obtain any additional Governmental Authorizations not currently required to consummate the Contemplated Transactions.

(d) Subject to the limitations set forth below in Section 5.3(e), Athena agrees to take, or cause to be taken (including by its Subsidiaries (including, for this purpose, from and after the Closing, the Newco Companies)), any and all steps and to make, or cause to be made (including by its Subsidiaries (including, for this purpose, from and after the Closing, the Newco Companies)), any and all undertakings necessary to resolve such objections, if any, that a Governmental Body may assert under any Competition Law with respect to the transactions contemplated by this Agreement, and to avoid or eliminate any impediment under any Competition Law that may be asserted by any Governmental Body with respect to the transactions contemplated by this Agreement, in each case, so as to enable the Closing to occur as promptly as practicable and in any event no later than the End Date, including (x) proposing, negotiating, committing to and effecting, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of any businesses, assets, equity interests, product lines or properties of the Athena Companies (including, for this purpose, from and after the Closing, the Newco Companies), (y) creating, terminating, or divesting relationships, ventures, contractual rights or obligations of any of the Athena Companies (including, for this purpose, from and after the Closing, the Newco Companies) and (z) otherwise taking or committing to take any action that would limit any of the Athena Companies' (including, for this purpose, from and after the Closing, the Newco Companies) freedom of action with respect to, or their ability to retain or hold, directly or indirectly, any businesses, assets, equity interests, product lines or properties of the Athena Companies (including, for this purpose, from and after the Closing, the Newco Companies), in each case as may be required in order to obtain all expirations or terminations of waiting periods required under any Competition Law or to avoid the commencement of any action by a Governmental Body to prohibit the transactions contemplated by the Agreement under any Competition Law, or, in the alternative, to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other Order in any action or Legal Proceeding seeking to prohibit the transactions contemplated by this Agreement or delay the Closing beyond the End Date (each, a "Divestiture Action").

(e) Notwithstanding anything in this Agreement to the contrary, none of the Athena Companies (including, for this purpose, from and after the Closing, the Newco Companies) shall be required to (and without the prior written consent of Everest shall not) take any Divestiture Action that would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Athena Companies, taken as a whole, after giving effect to the Contemplated Transactions (including, for this purpose, treating the Newco Companies as Athena Companies).

Section 5.4 Disclosure. Athena and Everest shall consult with each other before issuing any press release or otherwise making any public statement regarding this Agreement or the Contemplated Transactions. Everest shall consult with Athena and consider the views and comments of Athena before any of the Newco Companies or any of their Representatives sends any emails or other documents to the Newco Associates generally or otherwise communicate with the Newco Associates generally, with respect to the Merger or any of the other Contemplated Transactions. Athena shall consult with Everest and consider the views and comments of Everest before any of the Athena Companies or any of their Representatives sends any emails or other documents to the Everest Associates generally or otherwise communicate with the Everest Associates generally, with respect to the Merger or any of the other Contemplated Transactions. Notwithstanding the foregoing: (i) each party may, without such consultation or consent, make any public statement in response to questions from the press, analysts, investors or those attending industry conferences and make internal announcements to employees, so long as such statements are consistent with previous press releases, public disclosures or public statements made jointly by the parties (or individually, if approved by the other party); (ii) each party may, without the prior consent of the other party hereto, issue any such press release or make any such public announcement or statement as may be required by Legal Requirement or the rules and regulations of the New York Stock Exchange, in which case such party shall use its reasonable best efforts to consult in good faith with the other party hereto prior to issuing any such press release or making any such public announcement or statement; and (iii) Athena need not consult with Everest in connection with any press release, public statement or filing to be issued or made with respect to any Athena Change in Recommendation, provided that Athena shall provide Everest with a copy of the text of any disclosure proposed to be made pursuant to the foregoing at the earliest practicable time in advance of such disclosure.

Section 5.5 Tax Matters.

(a) Everest shall use reasonable best efforts to cause the delivery of (i) the Tax ruling contemplated by Section 5.5(e) and (ii) the opinions contemplated by Section 7.6(a) and Section 7.6(b), including using reasonable best efforts to deliver to Skadden, Arps, Slate, Meagher & Flom LLP and to KPMG LLP, or such other nationally recognized law firm(s) or accounting firm(s) reasonably acceptable to Everest, Tax representation letters dated as of the Closing Date and signed by an officer of Everest containing representations of Everest and Newco, in each case as reasonably necessary and appropriate to enable such advisors to render such opinions. Athena shall use reasonable best efforts to cause the delivery of (i) the Tax ruling contemplated by Section 5.5(e) and (ii) the opinions contemplated by Section 7.6(a) and Section 7.6(b), including using reasonable best efforts to (A) deliver to Skadden, Arps, Slate, Meagher & Flom LLP and to KPMG LLP, or such other nationally recognized law firm(s) or accounting firm(s) reasonably acceptable to Everest, Tax representation letters dated as of the Closing Date and signed by an officer of Athena containing representations of Athena and Merger Sub, in each case as reasonably necessary and appropriate to enable such advisors to render such opinions and (B) ensure that the terms and conditions of any Contract in respect of Indebtedness of Athena or any of its Subsidiaries (including any such Contract contemplated by Section 5.14) would not reasonably be expected to prevent such opinions from being delivered.

(b) Everest shall use reasonable best efforts to cause the delivery of any opinion required to be rendered in connection with the Athena Form S-4 Registration Statement or Newco Registration Statement (collectively, the “Registration Statements”), including using reasonable best efforts to deliver to Weil, Gotshal & Manges LLP, or such other nationally recognized law firm or accounting firm reasonably acceptable to Athena, Tax representation letters dated as of the date each Registration Statement is declared effective by the SEC and signed by an officer of Everest containing representations of Everest and Newco, in each case as reasonably necessary and appropriate to enable counsel to render any such opinion. Athena shall use reasonable best efforts to cause the delivery of any opinion required to be rendered in connection with the Registration Statements, including using reasonable best efforts to deliver to Weil, Gotshal & Manges LLP, or such other nationally recognized law firm or accounting firm reasonably acceptable to Athena, Tax representation letters dated as of the date each Registration Statement is declared effective by the SEC and signed by an officer of Athena containing representations of Athena and Merger Sub, in each case as reasonably necessary and appropriate to enable counsel to render any such opinion.

(c) In rendering the opinions referred to in Sections 5.5(a) and 5.5(b), counsel shall be permitted to rely upon covenants and assume the accuracy of the Tax representation letters provided by each of Everest and Athena pursuant to Sections 5.5(a) and 5.5(b), as applicable; provided, each of Everest and Athena, respectively, shall be entitled to a reasonable amount of time to provide the other party with written comments to the Tax representation letters in support of the opinions referred to in Sections 5.5(a) and 5.5(b).

(d) The parties hereto acknowledge that, prior to the date hereof, Everest has submitted the Ruling Requests set forth on Schedule 5.5(d). No Ruling Request shall be filed with a Taxing Authority after the date hereof unless, prior to such filing, Athena shall have agreed (which agreement shall not be withheld unreasonably, conditioned or delayed) as to the contents of such Ruling Request, to the extent that such contents include information about Athena or its Subsidiaries or the actions that Newco or its Subsidiaries will take (or refrain from taking) after the Distribution (each such Ruling Request, a “Specified Ruling Request”). Everest shall provide Athena with copies of any Specified Ruling Request promptly following the filing thereof (subject to the proviso regarding Redactable Information, below). Everest shall use its reasonable best efforts to notify Athena of any substantive communications with or from a Taxing Authority regarding any material issue arising with respect to any Specified Ruling Requests, provided, that Everest may redact from such Specified Ruling Requests any information that (x) Everest, in its good faith judgment, considers to be confidential information or legal analyses/qualifications which in either case are not information about Athena or its Subsidiaries or the actions that Newco or its Subsidiaries will take (or refrain from taking) after the Distribution or (y) is not (and is not reasonably expected to become) a part of any other publicly filed information (such information described in clauses (x) and (y), “Redactable Information”) prior to providing such Specified Ruling Requests to Athena.

(e) If Everest is notified by Skadden, Arps, Slate, Meagher & Flom LLP, KPMG LLP or a Taxing Authority that it expects the Tax ruling set forth on Schedule 5.5(e) will not be delivered by the Closing Date, or upon discovery by Everest of any other fact that could reasonably be expected to prevent the delivery of such Tax ruling, Everest shall promptly notify Athena.

(f) From and after the date of this Agreement and until the Effective Time, each of Athena, Everest, Newco, Merger Sub and their respective Affiliates shall use its reasonable best efforts to ensure that (i) the Newco Contribution and Distribution, taken together, will qualify as a transaction described in Sections 355 and 368(a)(1)(D) of the Code and none of Everest, the Everest stockholders, or Newco will recognize gain or loss in connection therewith (including, in the case of Everest, as a result of Everest’s receipt of the Cash Payment and excluding, in the case of the Everest stockholders, as a result of the receipt of cash in lieu of fractional shares of Athena Common Stock as contemplated by Section 1.5(c)) for U.S. federal income tax purposes and (ii) the Merger will be treated as a reorganization within the meaning of Section 368(a) of the Code (collectively, the “Intended Tax Treatment”), and shall not knowingly take any action, cause or permit any action to be taken, fail to take any action or cause any action to fail to be taken, which action or failure to act could prevent the Intended Tax Treatment.

Section 5.6 Listing. As promptly as practicable following the date hereof, Athena shall use reasonable best efforts to cause the shares of Athena Common Stock to be issued pursuant to the Merger, to be approved for listing (subject to notice of issuance) on the New York Stock Exchange at or prior to the Effective Time.

Section 5.7 Resignation of Officers, Managers and Directors. Everest shall use reasonable best efforts to obtain and deliver to Athena at or prior to the Effective Time the resignation of each officer, manager and/or director of each of the Newco Companies (other than those, if any, that are continuing as officers of Athena pursuant to Section 5.8 or as otherwise agreed upon by the parties).

Section 5.8 Board of Directors and Management of Athena following the Closing.

(a) The parties shall take all actions necessary to cause two (2) individuals designated by Everest (the “Everest Board Designees”) to be appointed as directors of Athena from the Effective Time; provided, however, that Everest shall provide Athena with the names of the Everest Board Designees within ninety (90) days following the date of this Agreement, or such other date as is mutually agreed in writing between Athena and Everest. Each of the Everest Board Designees must qualify as an “independent director,” as such term is defined in New York Stock Exchange Rule 303A.02. One of the Everest Board Designees shall be appointed as a Class I director of Athena and one of the Everest Board Designees shall be appointed as a Class II director of Athena. Athena shall take all actions reasonably necessary to ensure that the Athena Board nominates, to the extent consistent with its fiduciary duties, each of the Everest Board Designees to serve a full new term on the Athena Board immediately following the expiration of such director’s class term. In the event that an Everest Board Designee is (i) unwilling or unable to serve from and after the Closing, (ii) unwilling or unable to serve at the time of the commencement of such new term or (iii) not nominated to serve such new term, then Everest shall designate a replacement, reasonably acceptable to the Governance and Nominating Committee of the Athena Board, for such director prior to the Closing or the commencement of such new term, as applicable.

(b) The parties shall take all actions necessary to ensure that, effective upon or immediately following the Closing, the officers of Athena shall consist of the persons designated in accordance with the procedures set forth on Schedule 5.8(b), each to hold office from and after the Closing until such officer’s successor is elected and qualified or until such officer’s earlier death, resignation or removal.

Section 5.9 Section 16 Matters. Prior to the Effective Time, each of Athena, Everest and Newco shall take all such steps as may be required (to the extent permitted under applicable Legal Requirements) to approve in advance in accordance with the procedures set forth in Rule 16b-3 under the Exchange Act any dispositions of shares of Newco Common Stock (including derivative securities with respect to shares of Newco Common Stock) arising in connection with the Contemplated Transactions directly or indirectly made by each individual who is subject to Section 16 of the Exchange Act with respect to Newco as an officer or director of Newco, and any acquisitions of Athena Common Stock (including derivative securities with respect to Athena Common Stock) arising in connection with the Contemplated Transactions directly or indirectly made by each individual who is or will be subject to Section 16 of the Exchange Act with respect to Athena as an officer or director of Athena.

Section 5.10 Headquarters of the Combined Company. The headquarters of the Surviving Corporation after the Effective Time shall be located in The Woodlands, Texas.

Section 5.11 Obligations of Merger Sub and Newco. Athena shall take all action necessary to cause Merger Sub and, after the Effective Time, the Surviving Corporation, as applicable, to perform their respective obligations under this Agreement and to consummate the Contemplated Transactions upon the terms and subject to the conditions set forth in this Agreement. Everest shall take all action necessary to cause Newco, prior to the Effective Time, to perform its obligations under this Agreement and to consummate the Contemplated Transactions upon the terms and subject to the conditions set forth in this Agreement.

Section 5.12 Securityholder Litigation.

(a) Everest shall give Athena the right to participate in the defense or settlement of any securityholder litigation against Everest and/or the Everest Board relating to the Contemplated Transactions. In no event shall Everest enter into or agree to any settlement with respect to such securityholder litigation without Athena's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

(b) Athena shall give Everest the right to participate in the defense or settlement of any securityholder litigation against Athena and/or the Athena Board relating to the Contemplated Transactions. In no event shall Athena enter into or agree to any settlement with respect to such securityholder litigation without Everest's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) For purposes of this Section 5.12, "participate" means that the non-litigating party will be kept apprised of proposed strategy and other significant decisions with respect to any securityholder litigation by the litigating party (to the extent the attorney-client privilege between the litigating party and its counsel is not undermined or otherwise affected), and the non-litigating party may offer comments or suggestions with respect to the litigation but will not be afforded any decision making power or authority over the litigation, except for the right to consent to any settlement as set forth in Sections 5.12(a) or 5.12(b), as applicable.

Section 5.13 Financial Statements.

(a) Everest will use reasonable efforts to procure, at its expense, the delivery of the consents of its independent accountants required to be filed with the Athena Form S-4 Registration Statement or any future registration statement until such independent accountant consents are no longer required.

(b) Everest shall use its reasonable best efforts to, as promptly as reasonably practicable and no later than forty five (45) calendar days after the end of any fiscal quarter or ninety (90) calendar days after the end of any fiscal year (or as promptly thereafter as possible), prepare and furnish to Athena copies of financial statements of the Newco Business as of and for the periods ending on any fiscal quarterly and annual periods ending after the date of this Agreement and prior to the Closing Date, in each case together with the notes thereto, and prepared from the books and records of Everest and its Subsidiaries and in accordance with GAAP (it being understood, however, that the Newco Business has not been operating historically as a separate "standalone" entity or reporting segment and, therefore, the financial statements of the Newco Business will reflect certain allocations made that may not reflect what would have been incurred if the Newco Business had been a standalone business) applied on a consistent basis through the periods involved (except as may otherwise be required under GAAP) and the rules and regulations of the SEC, including the requirements of Regulation S-X, and, in the case of the combined financial statements of the Newco Business for any fiscal year, Everest shall use its reasonable best efforts to ensure that such financial statements shall be audited and accompanied by a report of the independent accountants for the Newco Business and for any quarterly period, Everest shall use its reasonable best efforts to ensure that such financial statements shall be reviewed by the independent accountants for the Newco Business. When delivered, such financial statements shall present fairly in all material respects the combined financial position and combined and consolidated results of operations of the Newco Business as of the dates and for the periods shown therein.

(c) In connection with the filing of the Athena Form S-4 Registration Statement and other SEC filings, Everest shall use reasonable efforts during the Pre-Closing Period and after the Closing to (i) cooperate with Athena to prepare pro forma financial statements that comply with the rules and regulations of the SEC to the extent required for SEC filings, including the requirements of Regulation S-X, and (ii) provide and make reasonably available upon reasonable notice the senior management employees of Everest to discuss the materials prepared and delivered pursuant to this [Section 5.13\(c\)](#).

Section 5.14 [Financing](#).

(a) Subject to the terms and conditions of this [Section 5.14](#), Newco shall use reasonable best efforts to (i) cause the conditions and comply with the obligations that are set forth in the Newco Commitment Letter applicable to, and within the control of, or that require the cooperation of, Newco to be fulfilled (or waived, if deemed advisable by Newco) in a timely fashion in accordance with its terms, (ii) maintain the Newco Commitment Letter in effect until the earlier of the initial funding of the Newco Financing or the date that the Newco Financing Agreements (as defined below) become effective, (iii) negotiate definitive agreements with respect thereto, on the terms and conditions contained therein (including the “market flex” provisions) or on such other terms that would not be prohibited by [Section 5.14\(e\)](#) (the “[Newco Financing Agreements](#)”) and (iv) if all conditions precedent under the Newco Commitment Letter or the Newco Financing Agreements have been satisfied, on the Closing Date, cause the Newco Financing Sources to fund the Newco Financing.

(b) Subject to the terms and conditions of this [Section 5.14](#), Athena shall use, prior to the Amendment Effective Date, reasonable best efforts to (i) cause the conditions and comply with the obligations that are set forth in the Athena Commitment Letter applicable to, and within the control of or that require the cooperation of, Athena to be fulfilled (or waived, if deemed advisable by Athena) in a timely fashion in accordance with its terms, (ii) maintain the Athena Commitment Letter in effect until the earlier of the initial funding of the Athena Financing or the occurrence of the Amendment Effective Date, (iii) negotiate definitive agreements with respect to the Athena Commitment Letter, on the terms and conditions contained therein or on such other terms that would not be prohibited by [Section 5.14\(f\)](#) (the “[Athena Financing Agreements](#)”) and (iv) if all conditions precedent under the Athena Commitment Letter or the Athena Financing Agreements have been satisfied cause the Athena Financing Sources to consummate the Athena Financing.

(c) Athena and Newco shall each give the other prompt written notice (i) of any material breach (or threatened material breach) or default (or any event or circumstance that, with or without notice, lapse of time or both, could reasonably be expected to give rise to any material breach or default) by any party to their respective Commitment Letters or their respective Financing Agreements, (ii) of the receipt of any written notice of any actual or threatened withdrawal, repudiation or termination of either Financing by any of the respective Financing Sources, (iii) of the receipt of any written notice of any material dispute or disagreement between or among any of the parties to their respective Commitment Letters or their respective Financing Agreements, (iv) of any amendment or modification of, or waiver under, their respective Commitment Letters or their respective Financing Agreements or (v) if for any reason either believes in good faith that it will not be able to timely obtain all or any portion of the Newco Financing or the Athena Financing (to the extent the Athena Commitment Letter is still in effect), as applicable, on the terms and conditions and in the manner or from the sources contemplated by the Newco Commitment Letter or the Athena Commitment Letter, as applicable, or the Newco Financing Agreements or the Athena Financing Agreements, as applicable.

(d) Newco and Athena shall keep one another informed upon reasonable request and in reasonable detail, as soon as reasonably practicable (but in any event within three Business Days upon receipt of such reasonable request) of the status of their efforts to arrange the Newco Financing and the Athena Financing, as applicable. In addition, Athena shall keep Newco informed upon reasonable request and in reasonable detail, as soon as reasonably practicable (but in any event within three Business Days upon receipt of such reasonable request) of the status of the effectiveness of the Athena Credit Agreement Amendment. The terms and conditions of (i) the Newco Financing Agreements shall be reasonably satisfactory in form and substance to Athena and (ii) the Athena Financing Agreements and any Athena Credit Agreement Amendment, in each case to the extent such agreement becomes effective, shall be reasonably satisfactory in form and substance to Newco.

(e) Newco may not amend, modify, replace, waive or change any material provision in the Newco Commitment Letter or any of the Newco Financing Agreements in any material respect without obtaining the prior written consent of Athena (such consent not to be unreasonably withheld, conditioned or delayed) (it being understood that, among other things, any amendment, modification, replacement, waiver or change to the ability of Newco or any of its affiliates to approve the selection of financial institutions or other entities that will participate as term lenders under the Newco Commitment Letter or the Newco Financing Agreements, and the allocations of commitments to the lenders thereunder, shall be an amendment, modification, replacement, waiver or change of a material provision in a material respect). Notwithstanding anything to the contrary set forth herein, Newco may modify, supplement, or amend the Newco Commitment Letter or any of the Newco Financing Agreements, to add lead arrangers, bookrunners, syndication agents, documentation agents, lenders or similar entities that have not executed the Newco Commitment Letter as of the date hereof. In such event, the term “Newco Commitment Letter” as used herein shall be deemed to include such new or amended commitment letters (including all exhibits, schedules, and attachments thereto) and fee letters entered into in accordance with this Section 5.14(e), the term “Newco Financing” as used herein shall be deemed to include any substitute financing obtained in accordance with this Section 5.14(e), and the term “Newco Financing Agreements” shall be deemed to include the new or amended definitive agreements with respect to the Newco Financing entered into in accordance with this Section 5.14(e).

(f) Athena may not amend, modify, replace, waive or change any material provision in the Athena Commitment Letter or any of the Athena Financing Agreements in any material respect without obtaining the prior written consent of Everest (such consent to be exercised in furtherance of Section 5.5(a) and Section 5.5(f) only and not to be unreasonably withheld, conditioned or delayed) (it being understood that, among other things, any amendment, modification, replacement, waiver or change to the ability of Athena or any of its affiliates to approve the selection of financial institutions or other entities that will participate as term lenders under the Athena Commitment Letter or the Athena Financing Agreements, and the allocations of commitments to the lenders thereunder, shall be an amendment, modification, replacement, waiver or change of a material provision in a material respect). Notwithstanding anything to the contrary set forth herein, Athena may modify, supplement, or amend the Athena Commitment Letter or any of the Athena Financing Agreements, to add lead arrangers, bookrunners, syndication agents, documentation agents, lenders or similar entities that have not executed the Athena Commitment Letter as of the date hereof. In such event, the term “Athena Commitment Letter” as used herein shall be deemed to include such new or amended commitment letters (including all exhibits, schedules, and attachments thereto) and fee letters entered into in accordance with this Section 5.14(f), the term “Athena Financing” as used herein shall be deemed to include any substitute financing obtained in accordance with this Section 5.14(f), and the term “Athena Financing Agreements” shall be deemed to include the new or amended definitive agreements with respect to the Athena Financing entered into in accordance with this Section 5.14(f).

(g) On and prior to (x) the Closing, Everest and Newco shall and shall cause their Subsidiaries, officers, employees, advisors and representatives (including legal and accounting) to provide such cooperation to Athena and Merger Sub as may reasonably be requested in connection with obtaining the Athena Financing and (y) the Distribution, Athena and Merger Sub shall and shall cause their Subsidiaries, officers, employees, advisors and representatives (including legal and accounting) to provide such cooperation to Everest and Newco as may reasonably be requested in connection with obtaining the Newco Financing, in each case of clause (x) and (y), including the following, as applicable: (i) furnishing as promptly as practicable financial information required in connection with such Financing and other financial and pertinent information regarding the applicable parties reasonably requested by Athena or Everest, as applicable, (ii) at reasonable times and upon reasonable notice, causing their management team, with appropriate seniority and expertise, to participate in, and assist in preparation for, a reasonable number of meetings, due diligence sessions, conference calls, drafting sessions, rating agency presentations and similar presentations to and with prospective lenders, (iii) using reasonable best efforts to (A) assist in negotiation, execution and delivery of definitive financing documentation and schedules and exhibits thereto (including collateral agreements and officer's certificates); provided, however, that no solvency certificate shall have to be required to be executed and delivered except as set forth below and (B) facilitate the pledging of collateral, (iv) in the case of Athena and Merger Sub, ensure that the syndication efforts for the Newco Financing benefit from Athena's existing lending and banking relationships, (v) in the case of Athena and Merger Sub, obtaining, prior to the launch of syndication of the Newco Financing, public corporate ratings of Athena from each of Moody's Investor Survives, Inc. and Standard & Poor's Ratings Services, (vi) furnishing Everest and Athena, as applicable, and the applicable Financing Sources promptly, and in any event no later than 10 Business Days prior to the Closing Date, with all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, that has been reasonably requested by Athena and Everest, as applicable, at least 3 Business Days prior to the Closing Date, (vii) causing the taking of corporate and other actions reasonably necessary to permit the consummation of the applicable Financing on the Closing Date and to permit the proceeds thereof to be made available (A) on or prior to the Distribution, in the case of Everest and Newco, or (B) the Closing, in the case of Athena and Merger Sub, (viii) supplementing the information required to be delivered pursuant to this Section 5.14(g) from time to time to ensure that it does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make such information not materially misleading in light of the circumstances under which such statements were made and (ix) in the case of Athena and Merger Sub, providing a customary letter authorizing the dissemination of Public Information Materials (as defined in the Newco Commitment Letter) and confirming the absence of material non-public information (within the meaning of the United States federal securities law) with respect to Athena and its subsidiaries; provided, however, that irrespective of the above, no obligation of Everest or its Subsidiaries (including the Newco Companies) or Athena or its Subsidiaries (including Merger Sub) under any certificate, document, agreement or instrument shall be effective until the Effective Time and none of Everest or its Subsidiaries (including the Newco Companies) nor Athena or its Subsidiaries (including Merger Sub) shall be required to take any action (A) under any certificate, document, agreement or instrument that is not contingent upon the Closing (including the entry into any agreement that is effective before the Effective Time) or that would be effective prior to the Effective Time or (B) that would reasonably be expected to cause any director, officer or employee of Everest or its Subsidiaries (including the Newco Companies) to incur any personal liability. None of Everest or its Subsidiaries (including the Newco Companies) shall be required to take any action (i) that would cause any representation in this Agreement to be breached by Everest or any of its Subsidiaries (including the Newco Companies) or (ii) that would result in a material violation or breach of, or default under, any material Contract to which Everest or any of its Subsidiaries (including the Newco Companies) is party, the organizational documents of Everest or its Subsidiaries or any applicable Legal Requirements. Neither Everest nor its Subsidiaries (including the Newco Companies) shall be required (i) to provide access to or disclose information that Everest or any of its Subsidiaries (including the Newco Companies) reasonably determines would jeopardize any attorney-client privilege of Everest or any of its Subsidiaries (including the Newco Companies) or (ii) to deliver or cause to be delivered any opinion of counsel in connection with the Athena Financing. Notwithstanding anything to the contrary in the foregoing, nothing contained in this Section 5.14 shall require cooperation to the extent it would interfere unreasonably with the business operations of the applicable party hereto (it being understood and agreed that compliance with the requirements set forth in this clause (g) will not unreasonably interfere with the business operations), encumber any of assets prior to Closing, require the applicable party to pay any commitment or similar fee in connection with the Financing prior to the Closing Date (unless simultaneously reimbursed pursuant to the terms of this Agreement), or impose any liability on the applicable party prior to the Closing (it being understood and agreed that compliance with the requirements set forth in this clause (g) will not impose any liability. Notwithstanding anything in the contrary to the foregoing, prior to the Distribution, Athena shall (x) on the Closing Date and prior to the closing of the Newco Financing, execute and deliver a solvency certificate, executed by the chief financial officer of Athena, in substantially the form attached as Exhibit C to the Newco Commitment Letter, and (y) deliver to Everest the financial statement referred to in clause (vi)(C) of Exhibit B to the Newco Commitment Letter.

(h) Other than pursuant to an Athena Credit Agreement Amendment that complies with Section 5.14(d), Athena shall not (i) amend, restate, amend and restate, replace, refinance, supplement or otherwise modify the Athena Credit Agreement, nor (ii) reprice, repay, pre-pay, pay down, redeem, retire, defease or otherwise satisfy any term loan obligations under the Athena Credit Agreement, other than as required thereunder, in each case, without the consent of Newco (such consent to be exercised in furtherance of Section 5.5(a) and Section 5.5(f)) only and not to be unreasonably withheld, conditioned or delayed); provided, that, it is understood and agreed that Athena may voluntarily prepay the terms loan obligations (other than with the proceeds of Indebtedness for borrowed money) under the Athena Credit Agreement in an amount not to exceed \$100,000,000.

Section 5.15 D&O Indemnification.

(a) From and after the Effective Time, Athena shall indemnify and hold harmless each Person who at the Effective Time is a present or former director or officer of any Newco Company (each a "D&O Indemnitee") against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that a D&O Indemnitee was a director or officer of a Newco Company at or prior to the Effective Time, in each case, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent that Everest or any of its Subsidiaries (including the Newco Companies), as the case may be, would have been permitted under the applicable Legal Requirements to indemnify such Person (including promptly advancing expenses as incurred to the fullest extent permitted under applicable Legal Requirements).

(b) Notwithstanding anything contained in this Agreement to the contrary, this Section 5.15(b) shall survive the consummation of the transactions contemplated hereby and shall be binding, jointly and severally, on all successors and assigns of Athena and Newco and are intended to be for the benefit of, and will be enforceable by, each present and former director and officer of any Newco Company and his or her heirs and representatives. In the event that Athena or Newco or any of their respective successors or assigns consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or transfers or conveys all or substantially all of its assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of Athena or Newco, as the case may be, shall succeed to the obligations set forth in this Section 5.15(b).

(c) Athena acknowledges that the D&O Indemnitees may have certain rights to indemnification, insurance and/or advancement of expenses from other Persons (directly or by insurance retained by such Person) (the "Other Indemnitors"). Athena hereby agrees and acknowledges that (i) it is the indemnitor of first resort with respect to the D&O Indemnitees, (ii) it shall be required to advance the full amount of expenses incurred by the D&O Indemnitees, as required by the terms of this Agreement, without regard to any rights the D&O Indemnitees may have against the Other Indemnitors and (iii) it irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims against the Other Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. Athena further agrees that no advancement or payment by the Other Indemnitors on behalf of Everest or any of its Subsidiaries with respect to any claim for which the D&O Indemnitees have sought indemnification from such Entities shall affect the foregoing and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of the D&O Indemnitees against Everest or any of its Subsidiaries.

ARTICLE VI

CONDITIONS PRECEDENT TO OBLIGATIONS OF ATHENA AND MERGER SUB

The obligations of Athena and Merger Sub to effect the Merger and otherwise consummate the Contemplated Transactions to be consummated at the Closing are subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

Section 6.1 Accuracy of Representations.

(a) The representation and warranty in Section 2.7(b) shall be true and correct in all respects as of the date of this Agreement.

(b) Each of the Everest Designated Representations (without giving effect to any materiality or “Newco Material Adverse Effect” qualifications therein) shall be true and correct in all material respects both as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date (except, in each case, for any such representations and warranties made as of a specific date, which shall be so true and correct in all material respects as of such date).

(c) The representations and warranties in Section 2.4 shall be true and correct, subject only to *de minimis* inaccuracies, both as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date (in each case except to the extent that any such representation and warranty speaks as of a particular date, in which case such representation and warranty shall be so true and correct subject only to *de minimis* inaccuracies as of such date).

(d) Each of the representations and warranties of Everest (other than the Everest Designated Representations and the representations and warranties in Section 2.4 and Section 2.7(b)) shall be true and correct in all respects (without giving effect to any materiality or “Newco Material Adverse Effect” qualifications therein) both as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date (except, in each case, for any such representations and warranties made as of a specific date, which shall have been so true and correct in all respects as of such date), except where the failure of such representations and warranties to be so true and correct in all respects has not had, and would not reasonably be expected to have, individually or in the aggregate, a Newco Material Adverse Effect.

Section 6.2 Performance of Covenants. The covenants and obligations in this Agreement that Everest, Newco or the other Newco Companies are required to comply with or to perform at or prior to the Closing shall have been complied with and performed in all material respects.

Section 6.3 Effectiveness of Registration Statements. (a) The Athena Form S-4 Registration Statement and the applicable Newco Registration Statement each shall have become effective in accordance with the provisions of the Securities Act and the Exchange Act, respectively; (b) no stop order shall have been issued by the SEC and each shall remain in effect; (c) no proceeding seeking such a stop order shall have been initiated by the SEC and remain pending or shall be threatened by the SEC; and (d) (i) if the Distribution is effected in whole or in part as an Exchange Offer, the applicable offer period and any extensions thereof in the Exchange Offer required by applicable securities laws shall have expired and (ii) if the Distribution is effected in whole or in part as a Spin-Off, the applicable notice periods required by applicable stock exchange rules or securities laws shall have expired.

Section 6.4 Athena Stockholder Approval. The issuance of shares of Athena Common Stock pursuant to the Merger shall have been duly approved by the Required Athena Stockholder Vote.

Section 6.5 Separation and Distribution. The transactions contemplated by the Distribution Agreement shall have been consummated in accordance with and subject to the terms of this Agreement and the Distribution Agreement, and the Tax Matters Agreement, the Transition Services Agreement, the Cross-Supply Agreement, and the Intellectual Property Matters Agreement each shall have been executed and delivered by the parties (other than Athena or Merger Sub) thereto.

Section 6.6 Certificate. Athena and Merger Sub shall have received a certificate executed by the Chief Executive Officer of Everest confirming that the conditions set forth in Sections 6.1, 6.2, 6.5 and 6.7 have been duly satisfied.

Section 6.7 No Newco Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Newco Material Adverse Effect, and no Effect shall have occurred or exist that would reasonably be expected to have, individually or in the aggregate, a Newco Material Adverse Effect.

Section 6.8 Governmental Approvals. Any waiting period (and any extensions thereof) applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated, and any applicable consents, authorizations, orders or approvals required under other Competition Laws that are listed on Schedule 6.8 (collectively, the "Additional Antitrust Consents") shall have been obtained.

Section 6.9 Listing. The shares of Athena Common Stock to be issued pursuant to the Merger shall have been approved for listing (subject to notice of issuance) on the New York Stock Exchange.

Section 6.10 No Restraints. No temporary restraining order, preliminary or permanent injunction or other Order preventing the consummation of the Merger shall have been issued by any court of competent jurisdiction or other Governmental Body and remain in effect, and there shall not be any Legal Requirement enacted or deemed applicable to the Merger that makes consummation of the Merger illegal.

Section 6.11 FIRPTA Matters. Everest shall have delivered to Athena a statement described in Section 1.1445-2(c)(3)(i) of the Treasury Regulations certifying that the interests of Newco are not U.S. real property interests.

ARTICLE VII

CONDITIONS PRECEDENT TO OBLIGATION OF EVEREST AND NEWCO

The obligations of Everest and Newco to effect the Merger and otherwise consummate the Contemplated Transactions to be consummated at the Closing are subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

Section 7.1 Accuracy of Representations.

(a) Each of the representations and warranties in Section 3.7(b) and Section 3.15(l) shall be true and correct in all respects as of the date of this Agreement.

(b) Each of the Athena Designated Representations (without giving effect to any materiality or “Athena Material Adverse Effect” qualifications therein) shall be true and correct in all material respects both as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date (except, in each case, for any such representations and warranties made as of a specific date, which shall be so true and correct in all material respects as of such date).

(c) The representations and warranties in Section 3.4 shall be true and correct, subject only to *de minimis* inaccuracies, both as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date (in each case except to the extent that any such representation and warranty speaks as of a particular date, in which case such representation and warranty shall be so true and correct subject only to *de minimis* inaccuracies as of such date).

(d) Each of the representations and warranties of Athena and Merger Sub (other than the Athena Designated Representations and the representations and warranties in Section 3.7(b), Section 3.4 and Section 3.15(l)) shall be true and correct in all respects (without giving effect to any materiality or “Athena Material Adverse Effect” qualifications therein) both as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing Date (except, in each case, for any such representations and warranties made as of a specific date, which shall have been so true and correct in all respects as of such date), except where the failure of such representations and warranties to be so true and correct in all respects, has not had, and would not reasonably be expected to have, individually or in the aggregate, an Athena Material Adverse Effect.

Section 7.2 Performance of Covenants. The covenants and obligations in this Agreement that Athena and Merger Sub are required to comply with or to perform at or prior to the Closing shall have been complied with and performed in all material respects.

Section 7.3 Effectiveness of Registration Statements. (a) The Athena Form S-4 Registration Statement and the applicable Newco Registration Statement each shall have become effective in accordance with the provisions of the Securities Act and the Exchange Act, respectively; (b) no stop order shall have been issued by the SEC and each shall remain in effect; (c) no proceeding seeking such a stop order shall have been initiated by the SEC and remain pending or shall be threatened by the SEC; and (d) (i) if the Distribution is effected in whole or in part as an Exchange Offer, the applicable offer period and any extensions thereof in the Exchange Offer required by applicable securities laws shall have expired and (ii) if the Distribution is effected in whole or in part as a Spin-Off, the applicable notice periods required by applicable stock exchange rules or securities laws shall have expired.

Section 7.4 Athena Stockholder Approval. The issuance of shares of Athena Common Stock pursuant to the Merger shall have been duly approved by the Required Athena Stockholder Vote.

Section 7.5 Separation and Distribution. The transactions contemplated by the Distribution Agreement shall have been consummated in accordance with and subject to the terms of this Agreement and the Distribution Agreement, and the Tax Matters Agreement, the Transition Services Agreement, the Cross-Supply Agreement and the Intellectual Property Matters Agreement each shall have been executed and delivered by the parties (other than Everest, Newco and the other Newco Companies) thereto.

Section 7.6 Opinions and Certificate. Everest shall have received the following opinions and certificate, each of which shall be in full force and effect:

(a) a written opinion of Skadden, Arps, Slate, Meagher & Flom LLP, or a written opinion of another nationally recognized law firm or accounting firm reasonably acceptable to Everest, in form and substance reasonably acceptable to Everest, dated as of the Closing Date to the effect that, on the basis of the facts, representations and assumptions set forth or referred to in such opinion, (i) the Newco Contribution and Distribution, taken together, will qualify as a transaction described in Sections 355 and 368(a)(1)(D) of the Code and none of Everest, the Everest stockholders, or Newco will recognize gain or loss in connection therewith (including, in the case of Everest, as a result of Everest's receipt of the Cash Payment, and excluding, in the case of the Everest stockholders, as a result of the receipt of cash in lieu of fractional shares of Athena Common Stock as contemplated by Section 1.5(c)) for U.S. federal income tax purposes and (ii) the Merger will be treated as a reorganization within the meaning of Section 368(a) of the Code;

(b) a written opinion of KPMG LLP, or a written opinion of another nationally recognized law firm or accounting firm reasonably acceptable to Everest, covering the matters set forth on Schedule 7.6(b) (the "KPMG Tax Opinion"); and

(c) a certificate executed by the Chief Executive Officer of Athena confirming that the conditions set forth in Sections 7.1, 7.2, 7.4, 7.5 and 7.7 have been duly satisfied.

Section 7.7 No Athena Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Athena Material Adverse Effect, and no Effect shall have occurred or exist that would reasonably be expected to have, individually or in the aggregate, an Athena Material Adverse Effect.

Section 7.8 Governmental Approvals. Any waiting period applicable (and any extensions thereof) to the consummation of the Merger under the HSR Act shall have expired or been terminated, and the Additional Antitrust Consents shall have been obtained.

Section 7.9 Listing. The shares of Athena Common Stock to be issued pursuant to the Merger shall have been approved for listing (subject to notice of issuance) on the New York Stock Exchange.

Section 7.10 No Restraints. No temporary restraining order, preliminary or permanent injunction or other Order preventing the consummation of the Merger shall have been issued by any court of competent jurisdiction or other Governmental Body and remain in effect, and there shall not be any Legal Requirement enacted or deemed applicable to the Merger that makes consummation of the Merger illegal.

Section 7.11 Directors. With respect to the initial appointment of the Everest Board Designees, Athena shall have complied in all respects with its obligations under Section 5.8(a); provided, however, that this condition shall be deemed to be satisfied if Everest has not complied in all respects with its obligations under Section 5.8(a) and/or if an Everest Board Designee refuses to serve as a director on the Athena Board.

ARTICLE VIII

TERMINATION

Section 8.1 Termination. This Agreement may be terminated prior to the Effective Time (except as indicated below, whether before or after approval of the issuance of shares of Athena Common Stock pursuant to the Merger by Athena's stockholders):

(a) by mutual written consent of Athena and Everest;

(b) by either Athena or Everest if the Merger shall not have been consummated by September 20, 2020 (as such date may be extended pursuant to the terms of this Agreement or by the mutual written consent of Athena and Everest, the "End Date"); provided, if on the End Date all of the conditions set forth in Sections 6.1, 6.2, 6.7, 7.1, 7.2 and 7.7 have been satisfied (or, with respect to the conditions that by their terms must be satisfied at the Closing, would have been so satisfied if the Closing would have occurred) or remain capable of being satisfied but any of the other conditions set forth in Article VI and/or Article VII has not been satisfied, then the End Date shall automatically be extended for an additional 90 days, in which case the End Date shall be deemed for all purposes to be such later date; provided, further, that a party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(b) if the failure to consummate the Merger by the End Date is primarily attributable to a failure on the part of such party to perform any covenant or obligation in this Agreement required to be performed by such party at or prior to the Effective Time;

(c) by either Athena or Everest if an Order having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger issued by a court of competent jurisdiction or other Governmental Body shall have become final and nonappealable;

(d) by either Athena or Everest if: (i) the Athena Stockholders' Meeting (including any adjournments and postponements thereof) shall have been held and completed and a vote of Athena's stockholders on the issuance of shares of Athena Common Stock pursuant to the Merger shall have been taken; and (ii) the issuance of shares of Athena Common Stock pursuant to the Merger shall not have been approved at the Athena Stockholders' Meeting (or shall not have been approved at any such adjournment or postponement thereof) by the Required Athena Stockholder Vote; provided that the right to terminate this Agreement pursuant to this Section 8.1(d) shall not be available to Athena if the failure to obtain the Required Athena Stockholder Vote is primarily attributable to a failure on the part of Athena to perform any covenant or obligation in this Agreement required to be performed by Athena at or prior to the Athena Stockholders' Meeting (including any adjournments and postponements thereof);

(e) by Everest (at any time prior to the approval of the issuance of shares of Athena Common Stock pursuant to the Merger by the Required Athena Stockholder Vote) if an Athena Triggering Event shall have occurred;

(f) by Athena if, at any time prior to the Required Athena Stockholder Vote being obtained, (i) if the board of directors of Athena authorizes Athena, to the extent permitted by and subject to complying with the terms of Section 5.2(c), to enter into a definitive agreement with respect to an Athena Superior Offer that did not result from a material breach of this Agreement, (ii) concurrently with the termination of this Agreement, Athena, subject to complying with the terms of Section 5.2(c), enters into such definitive agreement providing for an Athena Superior Offer that did not result from a material breach of this Agreement and (iii) prior to or concurrently with such termination, Athena pays to Everest in immediately available funds any fees and other amounts required to be paid pursuant to Section 8.3(a) and Section 8.3(b);

(g) by Athena if: (i) any of Everest or Newco's representations and warranties contained in this Agreement shall be inaccurate such that the conditions set forth in Section 6.1 would not then be satisfied or (ii) any of Everest's or Newco's covenants or obligations contained in this Agreement shall have been breached such that the condition set forth in Section 6.2 would not be satisfied; provided, however, that, for purposes of clauses (i) and (ii) above, if an inaccuracy in any of Everest's or Newco's representations and warranties or a breach of a covenant or obligation by Everest or Newco is curable by Everest or Newco and Everest and Newco are continuing to exercise their reasonable best efforts to cure such inaccuracy or breach, then Athena may not terminate this Agreement under this Section 8.1(g) on account of such inaccuracy or breach unless such inaccuracy or breach shall not have been cured prior to the earlier of (x) thirty (30) days commencing on the date that Athena gives Everest notice of such inaccuracy or breach and (y) the date that is three (3) Business Days prior to the End Date; or

(h) by Everest if: (i) any of Athena's or Merger Sub's representations and warranties contained in this Agreement shall be inaccurate such that the conditions set forth in Section 7.1 would not then be satisfied or (ii) any of Athena's or Merger Sub's covenants or obligations contained in this Agreement shall have been breached such that the condition set forth in Section 7.2 would not be satisfied; provided, however, that, for purposes of clauses (i) and (ii) above, if an inaccuracy in any of Athena's or Merger Sub's representations and warranties or a breach of a covenant or obligation by Athena or Merger Sub is curable by Athena or Merger Sub and Athena and Merger Sub are continuing to exercise their reasonable best efforts to cure such inaccuracy or breach, then Everest may not terminate this Agreement under this Section 8.1(h) on account of such inaccuracy or breach unless such inaccuracy or breach shall not have been cured prior to the earlier of (x) thirty (30) days commencing on the date that Everest gives Athena notice of such inaccuracy or breach and (y) the date that is three (3) Business Days prior to the End Date.

Section 8.2 Effect of Termination. In the event of the termination of this Agreement as provided in Section 8.1, this Agreement shall be of no further force or effect; provided, however, that: (i) this Section 8.2, Section 8.3 and Article IX shall survive the termination of this Agreement and shall remain in full force and effect; (ii) the Confidentiality Agreement shall survive the termination of this Agreement and shall remain in full force and effect in accordance with its terms; and (iii) the termination of this Agreement shall not relieve any party from any liability for fraud or any willful and material breach of any covenant or obligation contained in this Agreement.

Section 8.3 Fees and Expenses.

(a) Except as set forth in this Section 8.3 or otherwise in this Agreement, all fees and expenses incurred in connection with this Agreement and the Contemplated Transactions shall be paid by the party incurring such expenses, whether or not the Merger or the other Contemplated Transactions are consummated; provided, however, that (i) Athena and Everest shall share equally all (x) printing and mailing costs associated with the Newco Registration Statements, the Athena Form S-4 Registration Statement and the Proxy Statement/Prospectus and (y) SEC filing fees relating to the Contemplated Transactions; and (ii) all fees and expenses described in Section 8.4(ii) of the Distribution Agreement shall be treated as set forth therein. Notwithstanding the foregoing, Athena agrees that, in the event of any termination of this Agreement pursuant to Section 8.1(d) (and without any limitation of any other rights or remedies of Everest or Newco hereunder in connection with such termination (including, if applicable, Everest's right to receive payment of any Athena Termination Fee), Athena shall reimburse Everest for an amount equal to \$25,000,000 in the aggregate as partial reimbursement of Everest's fees and expenses incurred by Everest and its Subsidiaries (including on behalf of the Newco Companies) in connection with this Agreement and the Contemplated Transactions (including fees and expenses of Everest's or any of its Subsidiaries' (including the Newco Companies) Representatives, including financial advisors, legal counsels, accountants and auditors) (the "Everest Expense Reimbursement").

(b) In the event that:

(i) this Agreement is terminated (x) by Everest pursuant to Section 8.1(e), or (y) by Athena pursuant to Section 8.1(f); or

(ii) this Agreement is terminated (x) by either Athena or Everest pursuant to Section 8.1(b) or Section 8.1(d) or (y) by Everest pursuant to Section 8.1(h), and (A) after the date of this Agreement but before any such termination an Acquisition Proposal with respect to Athena shall have been made or communicated to Athena (and not withdrawn publicly if made or communicated publicly) or shall have become publicly known by the stockholders of Athena, and (B) within twelve (12) months after such termination Athena shall have entered into a definitive agreement to consummate, or shall have consummated an Acquisition Transaction; provided that for purposes of this clause (B) all references in the definition of Acquisition Transaction to 20% shall instead refer to 50%;

then Athena shall pay to Everest, in cash by wire transfer of same-day funds to an account or accounts designated by Everest, a nonrefundable fee in the amount of \$89,800,000 (the "Athena Termination Fee"), which shall be paid (1) in the case of a termination by Everest pursuant to clause (b)(i) above, within two Business Days after termination of this Agreement, (2) in the case of a termination by Athena pursuant to clause (b)(i) above, prior to or simultaneously with such termination, or (3) in the case of a termination pursuant to clause (b)(ii) above, upon the earlier of the entry into a definitive agreement to consummate, or the consummation of, an Acquisition Transaction; provided that, to the extent the Everest Expense Reimbursement was actually previously paid to and received by Everest, such amount shall be credited against the Athena Termination Fee.

(c) If Athena fails to pay when due any amount payable under this Section 8.3, then: (i) Athena shall reimburse Everest for all costs and expenses (including fees and disbursements of counsel) incurred in connection with the collection of such overdue amount and the enforcement by Everest of its rights under this Section 8.3; and (ii) Athena shall pay to Everest interest on such overdue amount (for the period commencing as of the date such overdue amount was originally required to be paid through the date such overdue amount is actually paid to the other party in full) at a rate per annum equal to the lower of: (A) 350 basis points over the “prime rate” (as published in the Wall Street Journal) in effect on the date such overdue amount was originally required to be paid or (B) the maximum rate permitted by applicable Legal Requirements.

(d) Notwithstanding anything to the contrary contained in this Agreement, in no event shall Athena be obligated to pay more than one Athena Termination Fee.

(e) Notwithstanding anything to the contrary in this Agreement, Everest’s right to receive payment of the Athena Termination Fee pursuant to Section 8.3(b) shall, in circumstances in which the Athena Termination Fee is payable hereunder and is paid in full (absent fraud or any willful and material breach of this Agreement), be deemed to be liquidated damages (and not a penalty) and shall, except as set forth in this Section 8.3(e), be the sole and exclusive monetary remedy of Everest and Newco against Athena and its Subsidiaries and any of their respective former, current or future general or limited partners, stockholders, controlling Persons, managers, members, directors, officers, employees, Affiliates, representatives, agents or assignees or successors (collectively, “Athena Related Parties”) for any loss or damage suffered as a result of the failure of the Merger and the other transactions contemplated by this Agreement to be consummated or for a breach of, or failure to perform under, this Agreement or any certificate or other document delivered in connection herewith or otherwise or in respect of any oral representation made or alleged to have been made in connection herewith or therewith, and upon payment of such amounts, none of the Athena Related Parties shall have any further liability or obligation relating to or arising out of this Agreement (except that Athena remains obligated to pay to Everest any amounts due and payable pursuant to Section 8.3(a) and Section 8.3(c), including as and if applicable the Everest Expense Reimbursement), whether in equity or at law, in contract, in tort or otherwise. For the avoidance of doubt, while Everest and Newco may pursue both a grant of specific performance and the payment of the Athena Termination Fee (in each case in accordance with the terms of this Agreement), under no circumstances shall Everest and Newco be permitted or entitled to receive both a grant of specific performance and the Athena Termination Fee.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1 Amendment. This Agreement may be amended with the approval of the respective Athena Board and Everest Board at any time prior to the Effective Time (whether before or after approval of the issuance of Athena Common Stock pursuant to the Merger by Athena’s stockholders); provided, however, that, after any such approval of the issuance of shares of Athena Common Stock pursuant to the Merger by Athena’s stockholders, no amendment shall be made which by law or regulation of the New York Stock Exchange requires further approval of Athena’s stockholders without the further approval of such stockholders. This Agreement may not be amended except by an instrument in writing signed by an authorized representative of each of the parties hereto. Notwithstanding anything to the contrary contained in this Agreement, Section 9.4(a), the last sentence of Section 9.6, the penultimate sentence of Section 9.8 and this sentence (and any other provision of this Agreement to the extent that an amendment, supplement or other modification of such provision would modify the substance of the foregoing specified provisions) may not be amended, supplemented or otherwise modified in any manner that is adverse in any material respect to any Athena Financing Source or any of its Athena Financing Source Related Parties without the prior written consent of such Athena Financing Source. Notwithstanding anything to the contrary contained in this Agreement, Section 9.4(b), the last sentence of Section 9.6, the last sentence of Section 9.8 and this sentence (and any other provision of this Agreement to the extent that an amendment, supplement or other modification of such provision would modify the substance of the foregoing specified provisions) may not be amended, supplemented or otherwise modified in any manner that is adverse in any material respect to any Newco Financing Source or any of its Newco Financing Source Related Parties without the prior written consent of such Newco Financing Source.

Section 9.2 Waiver.

(a) No failure on the part of any party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any party would otherwise have.

(b) No party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement (including under Article VI, with respect to Athena and Merger Sub and Article VII with respect to Everest and Newco), unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

Section 9.3 No Survival of Representations, Warranties and Agreements. The covenants and agreements that by their terms are to be performed following the Closing pursuant to this Agreement, the Distribution Agreement or any other Transaction Document shall survive the Closing in accordance with their terms, and all other covenants and agreements herein and therein shall terminate and shall not survive the Closing. None of the representations and warranties contained in this Agreement or in any certificate or instrument delivered pursuant to this Agreement shall survive the Closing. The Confidentiality Agreement shall survive the execution and delivery of this Agreement and any termination of this Agreement, and the provisions of the Confidentiality Agreement shall apply to all information and material furnished by any party or its representatives thereunder or hereunder.

Section 9.4 Financing Source Matters.

(a) Without limiting the rights of Athena under the Athena Commitment Letters and notwithstanding anything to the contrary contained in this Agreement, Everest agrees that none of (i) the Athena Financing Sources or (ii) any of the respective Affiliates of the Athena Financing Sources or any of such Athena Financing Sources' or their respective Affiliates' respective former, current or future general or limited partners, shareholders, managers, members, agents, officers, directors, employees, accountants, attorneys, advisors, or representatives or any of their respective successors or assigns (the Persons referred to in this clause (ii) being collectively referred to as the "Athena Financing Source Related Parties") shall have any liability or obligation to Everest, its stockholders or its Affiliates relating to this Agreement or any of the transactions contemplated hereby (including the Athena Financing), whether at law, in equity, in contract, in tort or otherwise.

(b) Without limiting the rights of Everest and Newco under the Newco Commitment Letter and notwithstanding anything to the contrary contained in this Agreement, Athena agrees that none of (i) the Newco Financing Sources or (ii) any of the respective Affiliates of the Newco Financing Sources or any of such Newco Financing Sources' or their respective Affiliates' respective former, current or future general or limited partners, shareholders, managers, members, agents, officers, directors, employees, accountants, attorneys, advisors, or representatives or any of their respective successors or assigns (the Persons referred to in this clause (ii) being collectively referred to as the "Newco Financing Source Related Parties") shall have any liability or obligation to Athena, its stockholders or its Affiliates relating to this Agreement or any of the transactions contemplated hereby (including the Newco Financing), whether at law, in equity, in contract, in tort or otherwise.

Section 9.5 Entire Agreement; Counterparts; Exchanges by Facsimile. This Agreement, the Distribution Agreement, the other Transaction Documents and the Confidentiality Agreement including the schedules, exhibits and amendments hereto and thereto the other agreements referred to herein and therein shall together constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter hereof and thereof. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the parties to the terms and conditions of this Agreement.

Section 9.6 Governing Law; Jurisdiction; Specific Performance; Remedies. This Agreement 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. In any Legal Proceeding between any of the parties arising out of or relating to this Agreement or any of the Contemplated Transactions: (a) each of the parties hereto irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or, if under applicable Legal Requirements, exclusive jurisdiction over such matter is vested in the federal courts, any federal court in the State of Delaware and any appellate court from any thereof; (b) each of the parties irrevocably waives the right to trial by jury; and (c) each of the parties hereto irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, any claim (i) that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason; (ii) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts; and (iii) that (x) the claim, action, suit or other Legal Proceeding in any such court is brought in an inconvenient forum; (y) the venue of such claim, action, suit or other Legal Proceeding is improper; or (z) this Agreement, the other Transaction Documents, or the subject matter hereof or thereof, may not be enforced in or by such courts. Each of the parties hereto further agrees that, to the fullest extent permitted by applicable Legal Requirements, service of any process, summons, notice or document by U.S. registered mail to such Person's respective address set forth in Section 9.9 will be effective service of process for any claim, action, suit or other Legal Proceeding in the Court of Chancery of the State of Delaware or, to the extent required by Legal Requirements, any federal court in the State of Delaware, with respect to any matters to which it has submitted to jurisdiction as set forth in this paragraph. The parties hereto hereby agree that a final judgment in any such claim, suit, action or other Legal Proceeding will be conclusive, subject to any appeal, and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to specific performance and injunctive or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement without the requirement for the posting of any bond, this being in addition to any other remedy to which they are entitled at law or in equity. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available. Notwithstanding anything to the contrary contained in this Agreement, each of the parties hereto agrees that: (i) it will not bring or support any legal proceeding against the Financing Sources or any of the Financing Source Related Parties arising out of or relating to this Agreement or any of the transactions contemplated hereby, including any dispute relating to the Financings, in any forum other than the United States federal court located in, or if that court does not have subject matter jurisdiction, in any New York state court located in, the Borough of Manhattan in the City of New York, New York; (ii) all claims or causes of action (whether at law, in equity, in contract, in tort or otherwise) against any of the Financing Sources or any of the Financing Source Related Parties arising out of or relating to this Agreement or any of the transactions contemplated hereby, including any claims or causes of action relating to the Financings, shall be exclusively governed by, and construed in accordance with, the laws of the State of New York, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof; and (iii) the provisions of this Section 9.6 relating to the waiver of jury trial shall apply to any legal proceeding described in clause (i) of this sentence.

Section 9.7 Disclosure Letters. For purposes of this Agreement: (a) each statement or other item of information set forth in the Everest Disclosure Letter is intended only to qualify and limit the representations, warranties, covenants and agreements of Everest and Newco contained in this Agreement and shall not be deemed to expand in any way the scope or effect of any such representations, warranties, covenants and agreements and (b) each statement or other item of information set forth in the Athena Disclosure Letter is intended only to qualify and limit the representations, warranties, covenants and agreements of Athena and Merger Sub contained in this Agreement and shall not be deemed to expand in any way the scope or effect of any such representations, warranties, covenants and agreements. The Everest Disclosure Letter and Athena Disclosure Letter shall each be delivered as of the date of this Agreement, and no amendments or modifications thereto shall be made without the prior written consent of Everest and Athena, as applicable.

Section 9.8 Assignability; No Third Party Rights. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that neither this Agreement nor any party's rights or obligations hereunder may be assigned or delegated by such party without the prior written consent of the other parties, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by any party without the prior written consent of the other parties shall be void and of no effect. Except as provided in Section 5.14, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Notwithstanding anything in this Agreement to the contrary, the Athena Financing Sources shall be third party beneficiaries of the penultimate sentence of Section 9.1, Section 9.4(a), the last sentence of Section 9.6 and this sentence. Notwithstanding anything in this Agreement to the contrary, the Newco Financing Sources shall be third party beneficiaries of the last sentence of Section 9.1, Section 9.4(b), the last sentence of Section 9.6 and this sentence.

Section 9.9 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the U.S. return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier (such as Federal Express), two Business Days after mailing; (c) if sent by facsimile transmission or e-mail before 5:00 p.m. Eastern Time, when transmitted and receipt is confirmed; (d) if sent by facsimile transmission or e-mail after 5:00 p.m. Eastern Time and receipt is confirmed, on the following Business Day; or (e) if otherwise actually personally delivered, when delivered; provided that such notices, requests, demands and other communications are delivered to the physical address, e-mail address or facsimile number set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

if to Athena or Merger Sub:

Apergy Corporation
2445 Technology Forest Blvd., 12th Floor
The Woodlands, TX 77381
Attn: General Counsel
Email: general.counsel@apergy.com

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

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attn: Michael J. Aiello
Sachin Kohli
Email: michael.aiello@weil.com
sachin.kohli@weil.com
Fax: (212) 310-8007

if to Everest or Newco:

c/o Ecolab Inc.
1 Ecolab Place
Saint Paul, MN 55102
Attn: General Counsel
Email: general.counsel@ecolab.com

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

Skadden, Arps, Slate, Meagher & Flom LLP
Attn: Charles W. Mulaney, Jr.
Richard C. Witzel, Jr.
155 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Email: charles.mulaney@skadden.com
rich.witzel@skadden.com
Fax: (312) 407-0411

Section 9.10 Cooperation. Athena and Merger Sub, on the one hand, and Everest and Newco, on the other hand, agree to cooperate fully with Everest and Newco and Athena and Merger Sub, respectively, and to execute and deliver such further documents, certificates, agreements and instruments and to take such other actions as may be reasonably requested by the other parties to evidence or reflect the Contemplated Transactions and to carry out the intent and purposes of this Agreement.

Section 9.11 Severability. Any term or provision of this Agreement (or part thereof) that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision (or part thereof) in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement (or part thereof) is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit such term or provision (or part thereof), to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision (or part thereof), and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision (or part thereof) with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

Section 9.12 Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(d) As used in this Agreement, 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.”

(e) As used in this Agreement, the word “will” shall be deemed to have the same meaning and effect as the word “shall.”

(f) As used in this Agreement, the terms “or,” “any” or “either” are not exclusive.

(g) Except as otherwise indicated, all references in this Agreement to “Articles,” “Sections,” “Exhibits” and “Schedules” are intended to refer to Sections or Articles of this Agreement and Exhibits or Schedules to this Agreement.

(h) As used in this Agreement, the terms “hereunder,” “hereof,” “hereto,” herein and words of similar import shall be deemed to refer to this Agreement as a whole and not to any particular Section or other provision.

(i) The headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

funds. (j) Any payment to be made pursuant hereto shall be made in U.S. dollars and by wire transfer of immediately available

[Remainder of page intentionally left blank]

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

APERGY CORPORATION

By: /s/ Sivasankaran Somasundaram
Name: Sivasankaran Somasundaram
Title: President and Chief Executive Officer

ATHENA MERGER SUB, INC.

By: /s/ Sivasankaran Somasundaram
Name: Sivasankaran Somasundaram
Title: President

ECOLAB INC.

By: /s/ Douglas M. Baker, Jr
Name: Douglas M. Baker, Jr
Title: Chairman of the Board and Chief Executive Officer

CHAMPIONX HOLDING INC.

By: /s/ Douglas M. Baker, Jr
Name: Douglas M. Baker, Jr
Title: Chairman of the Board

EXHIBIT A – CERTAIN DEFINITIONS

For purposes of this Agreement (including this Exhibit A):

“Acquisition Inquiry” shall mean an inquiry, indication of interest or request for information (other than an inquiry, indication of interest or request for information made or submitted by Athena to Everest or by Everest to Athena) that would reasonably be expected to lead to an Acquisition Proposal.

“Acquisition Proposal” shall mean any offer or proposal (other than an offer or proposal made or submitted by Athena to Everest or by Everest to Athena) contemplating or otherwise relating to any Acquisition Transaction.

“Acquisition Transaction” with respect to an Entity shall mean any transaction or series of transactions (other than the Contemplated Transactions) involving, directly or indirectly:

(a) any merger, exchange, consolidation, business combination, issuance of securities, acquisition of securities, reorganization, recapitalization, takeover offer, tender offer, exchange offer or other similar transaction: (i) in which such Entity is a constituent corporation and which would result in a third party, or the stockholders of that third party, beneficially owning 20% or more of any class of equity or voting securities of such Entity, or the Entity resulting from such transaction or the parent of such Entity; (ii) in which a Person or “group” (as defined in the Exchange Act and the rules promulgated thereunder) of Persons directly or indirectly acquires beneficial or record ownership of securities representing more than 20% of the outstanding securities of any class of voting securities of such Entity; or (iii) in which such Entity issues securities representing more than 20% of the outstanding securities of any class of voting securities of such Entity;

(b) any sale, lease, exchange, transfer, exclusive license, acquisition or disposition of any business or businesses or assets of such Entity that constitute or account for 20% or more of the consolidated net revenues, or consolidated net income for the 12 full months immediately prior to the receipt of the related Acquisition Proposal or 20% or more of the fair market value of the consolidated assets of such Entity; or

(c) any liquidation or dissolution of such Entity;

provided, however, that as such definition applies to Everest (except with respect to the proviso in Section 4.5(a)) or the Newco Business, references to “Entity” or “Entity or any of its Subsidiaries” shall be deemed to be references solely to the “Newco Business, taken as a whole.”

“Actual Knowledge” shall mean actual knowledge, without any duty of investigation, of those individuals listed on Section A-2 of the Everest Disclosure Letter.

An “Affiliate” of any Person shall mean any other Person, that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such Person, and, for the purposes of this definition only, “control” (including the terms “controlling,” “controlled by” and “under common control with”) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a Person whether through the ownership of securities, by contract or agency or otherwise.

“Agreement” shall mean the Agreement and Plan of Merger and Reorganization to which this Exhibit A is attached, as it may be amended from time to time.

“Amendment Effective Date” shall have the meaning assigned to such term in the Athena Commitment Letter as in effect on the date of this Agreement.

“Applicable Date” means January 1, 2018.

“Athena Affiliate” shall mean any Person under common control with any of the Athena Companies within the meaning of Section 414(b), Section 414(c), Section 414(m) or Section 414(o) of the Code, and the regulations issued thereunder.

“Athena Associate” shall mean any current officer or other employee, or any individual who is a current independent contractor, consultant or director, of or to any of the Athena Companies.

“Athena Board” shall mean Athena’s board of directors.

“Athena Commitment Letter” shall mean the debt commitment letter, including (A) all exhibits, schedules, annexes, joinders and amendments thereto in effect as of the date of this Agreement; and (B) any associated fee letter, in each case, by and between Athena and the financing sources party thereto (together with all additional agents, lenders and financing sources joined to the Athena Commitment Letter, the “Athena Financing Sources”), pursuant to which, among other things and on the terms and subject only to the conditions set forth therein, the Athena Financing Sources have committed to provide Athena with financing in the amount set forth therein (the “Athena Financing”).

“Athena Common Stock” shall mean the common stock, par value \$0.01 per share, of Athena.

“Athena Companies” shall mean: (a) Athena; and (b) each of Athena’s Subsidiaries, including Merger Sub.

“Athena Contract” shall mean any Contract: (a) to which any of the Athena Companies is a party; or (b) by which any of the Athena Companies is bound.

“Athena Credit Agreement” shall mean the Credit Agreement, dated as of May 9, 2018, among Athena, as borrower, the lenders and issuing banks party thereto and JPMorgan Chase Bank, N.A., as administrative agent, as amended, modified or supplemented prior to the date hereof.

“Athena Credit Agreement Amendment” shall mean the amendment to the Athena Credit Agreement amending only the terms described in items 1 through 8 on Schedule I of the Athena Commitment Letter as in effect on the date of this Agreement.

“Athena Designated Representations” shall mean the representations and warranties set forth in Sections 3.2, 3.19, 3.20, 3.21, 3.23 and 3.24.

“Athena Disclosure Letter” shall mean the Athena Disclosure Letter that has been delivered by Athena to Everest concurrently with the execution of this Agreement.

“Athena Employee” shall mean any director or any officer or any other employee of any of the Athena Companies.

“Athena Employee Plan” shall mean each plan, program, policy, practice or Contract providing for employment, consulting services, compensation, severance, termination pay, retention or transaction bonuses, relocation, repatriation or expatriation, deferred compensation, performance awards, stock or stock-related awards, fringe benefits, change in control payments, sick pay, paid time off, vacation pay, retirement benefits or other benefits or remuneration of any kind, whether or not in writing and whether or not funded, including each “employee benefit plan,” within the meaning of Section 3(3) of ERISA (whether or not ERISA is applicable to such plan): (a) that is or has been maintained or contributed to, or required to be maintained or contributed to, by any of the Athena Companies for the benefit of any Athena Employee; or (b) with respect to which any of the Athena Companies has or may incur or become subject to any liability or obligation; provided, however, that in no event shall any plan, program, policy, practice, Contract or other arrangement mandated by a Governmental Body be considered to be an Athena Employee Plan.

“Athena Equity Award” shall mean each Athena PSA, Athena RSU and Athena SAR.

“Athena Equity Plan” shall mean the Athena 2018 Equity and Cash Incentive Plan.

“Athena Financing” shall have the meaning set forth in the definition of Athena Commitment Letter.

“Athena Financing Sources” shall have the meaning set forth in the definition of Athena Commitment Letter.

“Athena Form S-4 Registration Statement” shall mean the registration statement on Form S-4 to be filed with the SEC by Athena in connection with the issuance of Athena Common Stock pursuant to the Merger, as said registration statement may be amended prior to the time it becomes effective under the Securities Act.

“Athena Interim Balance Sheet” shall mean the unaudited consolidated balance sheet of Athena and its consolidated Subsidiaries as of September 30, 2019.

“Athena IP” shall mean all Intellectual Property Rights with respect to which any of the Athena Companies has an ownership interest.

“Athena Material Adverse Effect” shall mean any effect, change, development, event or circumstance (collectively, “Effect”) that, considered together with all other Effects, (a) has or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, financial condition or results of operations of Athena and its Subsidiaries taken as a whole; provided, however, that in no event shall any Effects resulting from any of the following, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has occurred or exists, an Athena Material Adverse Effect: (i) conditions generally affecting the industry in which Athena competes or the U.S. or global economy as a whole, to the extent that such conditions (including any changes arising out of acts of terrorism, war, weather conditions or other force majeure events) do not have a disproportionate impact on the Athena Companies, taken as a whole, relative to other companies in the industry in which the Athena Companies operate; (ii) general conditions in the financial markets, and any changes therein (including any changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent that such conditions do not have a disproportionate impact on the Athena Companies, taken as a whole, relative to other companies in the industry in which the Athena Companies operate; (iii) changes in the trading price or trading volume of Athena Common Stock (it being understood, however, that, except as otherwise provided in clauses (i), (ii), (iv), (v), (vi), (vii) or (viii) of this sentence, any Effect giving rise to or contributing to such changes in the trading price or trading volume of Athena Common Stock may give rise to an Athena Material Adverse Effect and may be taken into account in determining whether an Athena Material Adverse Effect has occurred or exists); (iv) changes in GAAP (or any interpretations of GAAP) or Legal Requirements applicable to Athena or any of its Subsidiaries, to the extent that such conditions do not have a disproportionate impact on the Athena Companies, taken as a whole, relative to other companies in the industry in which the Athena Companies operate; (v) the failure to meet public estimates or forecasts of revenues, earnings of other financial metrics, in and of itself, or the failure to meet internal projections, forecasts or budgets of revenues, earnings or other financial metrics, in and of itself (it being understood, however, that, except as otherwise provided in clauses (i), (ii), (iii), (iv), (vi), (vii) or (viii) of this sentence, any Effect giving rise to or contributing to any such failure may give rise to an Athena Material Adverse Effect and may be taken into account in determining whether an Athena Material Adverse Effect has occurred or exists); (vi) any stockholder or derivative litigation arising from or relating to this Agreement or the Contemplated Transactions; (vii) Effects resulting directly from the announcement or pendency of this Agreement or the Contemplated Transactions, including loss of employees, suppliers or customers; or (viii) any items disclosed in the Athena Disclosure Letter, or (b) would prevent or materially impair Athena from complying with its obligations hereunder or consummating the Contemplated Transactions.

“Athena Owned Real Property” shall mean all material Owned Real Property owned by any Athena Company.

“Athena PSA” shall mean a performance-based restricted stock unit granted pursuant to the Athena Equity Plan or otherwise that vests on the basis of time and the achievement of performance and pursuant to which the holder has a right to receive shares of Athena Common Stock or cash following the vesting or lapse of restrictions applicable to such performance-based restricted stock unit.

“Athena Real Property” shall mean the Athena Owned Real Property and the Athena Leased Real Property.

“Athena RSU” shall mean a restricted stock unit granted pursuant to the Athena Equity Plan or otherwise that vests solely on the basis of time and pursuant to which the holder has a right to receive shares of Athena Common Stock or cash following the vesting or lapse of restrictions applicable to such restricted stock unit.

“Athena SAR” shall mean a stock appreciation right granted pursuant to the Athena Equity Plan or otherwise that vests solely on the basis of time and pursuant to which the holder has a right to receive shares of Athena Common Stock or cash upon exercise.

“Athena Separation” shall mean the series of transactions carried out pursuant to that certain Separation and Distribution Agreement, dated as of May 9, 2018, by and between Delta and Athena.

“Athena Superior Offer” shall mean an unsolicited bona fide written offer by a third party to purchase at least a majority of the outstanding shares of Athena Common Stock or at least a majority of the assets of Athena (whether through a tender offer, merger or otherwise), that is determined by the Athena Board, in its good faith judgment, after consulting with its financial advisor and outside legal counsel, and after taking into account the terms and conditions of the offer, including the likelihood and anticipated timing of consummation, (i) to be more favorable, from a financial point of view, to Athena stockholders than the Contemplated Transactions and (ii) is reasonably likely to be completed, taking into account any financing and approval requirements that the Athena Board determines to be relevant and all other financial, legal, regulatory and other aspects of such proposal that the Athena Board determines to be relevant.

“Athena Tax Matters Agreement” shall mean that certain Tax Matters Agreement, dated as of May 9, 2018, by and between Delta and Athena.

An “Athena Triggering Event” shall be deemed to have occurred if (a) the Athena Board shall have failed to recommend that Athena’s stockholders vote in favor of the issuance of shares of Athena Common Stock pursuant to the Merger at the Athena Stockholders’ Meeting, or shall have made an Athena Change in Recommendation, (b) Athena shall have failed to include in the Proxy Statement/Prospectus the Athena Board Recommendation, (c) Athena shall have failed to publicly recommend against any publicly announced Acquisition Proposal with respect to Athena or publicly announced Acquisition Inquiry with respect to Athena, and reaffirm the Athena Board Recommendation in connection therewith, within ten (10) Business Days of the request of Everest, (d) the Athena Board shall have approved, endorsed or recommended any Acquisition Proposal, (e) Athena shall have entered into any letter of intent or similar document or any Contract relating to any Acquisition Proposal (other than any confidentiality agreement contemplated by Section 4.5(b)) or (f) Athena shall have materially breached Section 4.5 or Section 5.2.

“Business Day” shall mean any day other than (i) a Saturday or a Sunday or (ii) a day on which commercial banking institutions are authorized or required by applicable Legal Requirements to be closed in the State of Minnesota or State of Texas.

“Cash Payment” shall have the meaning set forth in the Distribution Agreement.

“COBRA” shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or any similar state or local law.

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

“Commitment Letters” mean, collectively, the Athena Commitment Letter and the Newco Commitment Letter.

“Competition Laws” shall mean applicable supranational, national, federal, state, provincial or local Laws designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolizing or restraining trade or lessening competition of any other country or jurisdiction, to the extent applicable to the Merger and the other Contemplated Transactions.

“Confidentiality Agreement” shall mean that certain Confidentiality Agreement dated as of June 7, 2019, between Everest and Athena.

“Consent” shall mean any approval, consent, ratification, permission, waiver or authorization (including any Governmental Authorization).

“Contemplated Transactions” shall mean the Merger, the Distribution and the other transactions contemplated by the Transaction Documents including, for the avoidance of doubt, the Separation Plan.

“Contract” shall mean any written, oral or other agreement, contract, subcontract, lease, instrument, note, option, warranty, purchase order, license, sublicense, insurance policy, benefit plan or legally binding commitment or undertaking of any nature.

“Cross-Supply Agreement” shall mean a Cross-Supply Agreement to be negotiated and entered into at or prior to Closing pursuant to Section 2.7(b) of the Distribution Agreement.

“Delta” shall mean that certain Delaware corporation that is the common parent of the affiliated group of corporations of which Athena was a member prior to the consummation of the spin-off of Athena on May 9, 2018.

“DGCL” shall mean the General Corporation Law of the State of Delaware.

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

“Distribution Agreement” shall mean the Separation and Distribution Agreement by and among Everest, Athena and Newco dated as of the date of this Agreement, as it may be amended from time to time in accordance with the terms thereof.

“DOL” shall mean the U.S. Department of Labor.

“Effect” shall have the meaning set forth in the definition of Athena Material Adverse Effect.

“Employee Matters Agreement” shall mean the Employee Matters Agreement, dated as of the date hereof, by and among Everest, Newco and Athena.

“Encumbrance” shall mean any lien, pledge, hypothecation, charge, mortgage, easement, encroachment, imperfection of title, title exception, title defect, right of possession, lease, tenancy license, security interest, encumbrance, claim, infringement, interference, option, right of first refusal, preemptive right, community property interest or restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

“Entity” shall mean any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any company limited by shares, limited liability company or joint stock company), firm, society or other enterprise, association, organization or entity.

“Environmental Laws” means all Legal Requirements relating to pollution or protection of human health or safety or the environment, including Legal Requirements relating to the exposure to, or Release, threatened Release or the presence of Hazardous Materials, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, transport or handling of Hazardous Materials and all Legal Requirements with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials, and all Legal Requirements relating to endangered or threatened species of fish, wildlife and plants and the management or use of natural resources.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Everest Affiliate” shall mean any Person under common control with any of the Newco Companies within the meaning of Section 414(b), Section 414(c), Section 414(m) or Section 414(o) of the Code, and the regulations issued thereunder.

“Everest Associate” shall mean any current or former officer or other employee, or any individual who is a current or former independent contractor, consultant or director, of or to Everest or its Subsidiaries. For the avoidance of doubt, “Everest Associate” includes each Newco Associate.

“Everest Board” shall mean Everest’s board of directors.

“Everest Common Stock” shall mean the common stock, par value \$1.00 per share, of Everest.

“Everest Designated Representations” shall mean the representations and warranties set forth in Sections 2.2, 2.19 and 2.20.

“Everest Disclosure Letter” shall mean the Everest Disclosure Letter that has been delivered by Everest to Athena concurrently with the execution of this Agreement.

“Everest Employee Plan” shall mean each plan, program, policy, practice or Contract providing for employment, consulting services, compensation, severance, termination pay, retention or transaction bonuses, relocation, repatriation or expatriation, deferred compensation, performance awards, stock or stock-related awards, fringe benefits, change in control payments, sick pay, paid time off, vacation pay, retirement benefits or other benefits or remuneration of any kind, whether or not in writing and whether or not funded, including each “employee benefit plan,” within the meaning of Section 3(3) of ERISA (whether or not ERISA is applicable to such plan): (a) that is or has been maintained or contributed to, or required to be maintained or contributed to, by Everest or any of its Subsidiaries; or (b) with respect to which Everest or its Subsidiaries has or may incur or become subject to any liability or obligation; provided, however, that in no event shall any plan, program, policy, practice, Contract or other arrangement mandated by a Governmental Body be considered to be an Everest Employee Plan.

“Everest Equity Award” shall mean any Everest Option, Everest PBRUSU, Everest RSU and other equity or equity-based award issued by Everest or its Subsidiaries that is outstanding as of immediately prior to the Effective Time, and which is assumed by Athena or converted by Athena into an equity award relating to Athena Common Stock, in each case in accordance with the Employee Matters Agreement.

“Everest Option” shall mean an option to purchase shares of Everest Common Stock granted pursuant to an Everest Stock Incentive Plan or otherwise.

“Everest PBRUSU” shall mean a performance-based restricted stock unit granted pursuant to the Everest Stock Incentive Plan or otherwise that vests on the basis of time and the achievement of performance and pursuant to which the holder has a right to receive shares of Everest Common Stock or cash following the vesting or lapse of restrictions applicable to such performance-based restricted stock unit.

“Everest Retained Business” shall have the meaning set forth in the Distribution Agreement.

“Everest RSU” shall mean a restricted stock unit granted pursuant to the Everest Stock Incentive Plan or otherwise that vests solely on the basis of time and pursuant to which the holder has a right to receive shares of Everest Common Stock or cash following the vesting or lapse of restrictions applicable to such restricted stock unit.

“Everest SEC Documents” shall mean all registration statements, proxy statements, Everest certifications and other statements, reports, schedules, forms and other documents filed by Everest with the SEC, including all amendments thereto, since the Applicable Date.

“Everest Stock Incentive Plans” shall mean, collectively, (i) the Everest 2010 Stock Incentive Plan, as amended and restated, and (ii) the Second Amended and Restated Nalco Holding Company 2004 Stock Incentive Plan.

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

“Exchange Offer” shall mean the consummation of the Distribution through an offer to exchange shares of Newco Common Stock for outstanding shares of Everest Common Stock as contemplated by the Distribution Agreement.

“Exchange Ratio” shall mean the New Issuance divided by the aggregate number of shares of Newco Common Stock issued and outstanding immediately prior to the Effective Time, subject to adjustment as set forth herein.

“Financing” shall mean, collectively, the Athena Financing and the Newco Financing.

“Financing Agreements” shall mean, collectively, the Athena Financing Agreements and the Newco Financing Agreements.

“Financing Sources” shall mean, collectively, the Athena Financing Sources and the Newco Financing Sources.

“Financing Source Related Parties” shall mean, collectively, the Athena Financing Source Related Parties and the Newco Financing Source Related Parties.

“Fully Diluted Athena Shares” shall mean the number of outstanding shares of Athena Common Stock as of immediately before the Effective Time on a fully-diluted, as converted and as exercised basis in accordance with the treasury stock method, calculated by reference to the closing price per share of Athena Common Stock on the trading day immediately prior to the Distribution, including shares of Athena Common Stock underlying outstanding Athena Equity Awards and any other outstanding securities convertible into or exercisable for shares of Athena Common Stock.

“GAAP” shall mean generally accepted accounting principles in the United States.

“Governmental Authorization” shall mean any: (a) permit, license, certificate, franchise, permission, variance, clearance, registration, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement; or (b) right under any Contract with any Governmental Body.

“Governmental Body” shall mean any: (a) nation, state, commonwealth, province, territory, county, political subdivision, municipality, district, judiciary, executive branch, legislature or other jurisdiction of any nature; (b) federal, state, local, municipal, domestic, foreign, multinational, supranational or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal); or (d) self-regulatory organization (including the New York Stock Exchange).

“Hazardous Materials” shall mean (a) any substances defined, listed, classified or regulated as “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants,” “wastes,” “radioactive materials,” “petroleum,” “oils” or designations of similar import under any Environmental Law, or (b) any other chemical, material or substance that is regulated or for which liability can be imposed under any Environmental Law.

“HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Indebtedness” shall mean, with respect to any Person: (i) any indebtedness for borrowed money, including any such obligations evidenced by bonds, debentures, notes, letters of credit, banker’s acceptances or similar obligations; (ii) all obligations under any interest rate cap, swap, collar or similar transactions or currency hedging transactions; (iii) all obligations of such Person under a lease agreement that would be treated as “finance leases” under to GAAP; (iv) all related accrued and unpaid interest, premiums, penalties, charges, fees, expenses and other amounts due in connection with the payment and satisfaction in full of the obligations described in the foregoing clauses (i) through (iii) of this definition; and (v) all guarantee obligations of such Person in respect of obligations of the kind referred to in clauses (i) through (iv) above.

“Intellectual Property Matters Agreement” shall mean the Intellectual Property Matters Agreement between Everest and Newco in the form attached to the Distribution Agreement as Exhibit C.

“Intellectual Property Rights” shall mean and include all rights, titles and interests in or relating to intellectual property, whether protected, created or arising under the laws of the United States or any other jurisdiction in the world, including: (a) rights associated with works of authorship or other copyrightable work (whether or not registered or published), including exploitation rights, copyrights, moral rights, and mask works; (b) trademark and trade name rights and similar rights, including all trademarks, service marks, logos, trade names, brand names, corporate names, internet domain names, trade dress, trade styles, and other identifiers indicating the business or source of goods or services, and other indicia of commercial source or origin (whether registered, arising under common law or statutory law, or otherwise) and general intangibles of a like nature, and all registrations and applications to register, and renewals of, and all goodwill associated with, any of the foregoing; (c) trade secret rights and corresponding rights in non-public or proprietary information, including non-public or proprietary ideas, formulas, compositions, discoveries and improvements, know-how, manufacturing and production processes and techniques, testing information, research and development information, inventions, invention disclosures, inventor’s notes, specifications, designs, plans, proposals and technical data, business and marketing plans, market know-how and customer lists and information; (d) patents and industrial property rights; (e) other similar proprietary rights; and (f) all registrations, renewals, revisions, extensions, continuations, continuations-in-part, divisions, or reissues of, and applications for issuance or registration of, any of the rights referred to in clauses (a) through (e) above.

“Internal Restructuring” shall have the meaning set forth in the Distribution Agreement.

“IRS” shall mean the United States Internal Revenue Service.

“IT Systems” shall mean all computer systems, networks, hardware, Software, databases, websites, and equipment used to process, store, maintain and operate all data, information and functions of a business.

“Knowledge of Athena” or a similar phrase shall mean the actual knowledge, after reasonable investigation, of those individuals listed on Section A-1 of the Athena Disclosure Letter.

“Knowledge of Everest” or a similar phrase shall mean the actual knowledge, after reasonable investigation, of those individuals listed on Section A-2 of the Everest Disclosure Letter.

“Legal Proceeding” shall mean any action, complaint, suit, demand, claim, countersuit, litigation, subpoena, case, mediation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, review, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Body, or grand jury, or mediation tribunal, or any arbitrator or arbitration panel.

“Legal Requirement” shall mean any federal, state, local, municipal, provincial, domestic, foreign, multinational, supranational, or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, binding directives, Order, award, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (or under the authority of the New York Stock Exchange).

Any statement in this Agreement to the effect that any information, document or other material has been “Made Available” shall mean that: (a) with respect to any information, document or other material to which Everest has given Athena or its Representatives access, such information, document or material was made available by Everest for review by Athena or Athena’s Representatives prior to the execution of this Agreement in the virtual data room maintained by Everest on the data site provided by Donnelley Financial Solutions Venue in connection with the transactions contemplated by this Agreement and (b) with respect to any information, document or other material to which Athena has given Everest access, such information, document or material was made available by Athena for review by Everest or Everest’s Representatives prior to the execution of this Agreement in the virtual data room maintained by Athena on the data site provided by Donnelley Financial Solutions Venue in connection with the transactions contemplated by this Agreement.

“New Issuance” shall mean a number of shares of Athena Common Stock equal to (i) the Fully Diluted Athena Shares, *multiplied by* (ii) the quotient of 62 divided by 38, *minus* (iii) the number of shares of Athena Common Stock subject to issuance pursuant to Sections 4.1 to 4.3 of the Employee Matters Agreement; provided, that, with respect to the Everest Options, the number of shares of Athena Common Stock subject to issuance shall be determined in accordance with the treasury stock method, calculated by reference to the closing price per share of Athena Common Stock on the trading day immediately prior to the Distribution.

“Newco Assets” shall mean the assets, properties and rights of the Newco Companies after giving effect to the Contemplated Transactions described in or contemplated by the Distribution Agreement.

“Newco Associate” shall mean any current or former officer or other employee, or any individual who is a current or former independent contractor, consultant or director, of or to Everest or any of its Subsidiaries (with respect to the Newco Business) or any of the Newco Companies.

“Newco Business” shall mean (i) Everest’s upstream energy business described in the two paragraphs set forth immediately below as conducted prior to the Separation Effective Time (as defined in the Distribution Agreement), (ii) any business established by or for Newco or any of its Subsidiaries after the Separation Effective Time (as defined in the Distribution Agreement) and (iii) the Newco Former Businesses.

The upstream energy business provides applications and technology for drilling, production and midstream, both onshore and offshore. The upstream energy business’s facilities are owned or leased in locations both domestically and internationally, and the upstream energy business’s products and services are sold in the U.S., Canada, Europe, Asia Pacific, Latin America, the Middle East and Africa. Upstream energy business product offerings address the many critical processes and challenges in the oil and natural gas lifecycle, including corrosion, oil and water separation, paraffin and asphaltene control, scale deposits, hydrogen sulfide impurities, drilling and well stimulation, hydrate control, foaming control, flow restrictions and water treatment needs. Upstream energy business customers include many of the largest publicly traded exploration and production and service companies, as well as national and independent oil and natural gas companies of all sizes.

The upstream energy business consists of two operating segments: oilfield performance and specialty performance. Oilfield Performance provides exploration and production companies solutions to manage and control corrosion, oil and water separation, flow assurance, sour gas treatment and a host of water-related issues. Specialty performance provides service and equipment companies that support global exploration and production companies with products that support well stimulation, construction (including drilling and cementing) and remediation needs in the oil and natural gas industry.

“Newco Commitment Letter” shall mean the debt commitment letter, including (A) all exhibits, schedules, annexes, joinders and amendments thereto in effect as of the date of this Agreement; and (B) any associated fee letter, in each case, by and between Newco and the financing sources party thereto (together with all additional agents, lenders and financing sources joined to the Newco Commitment Letter, the “Newco Financing Sources”), pursuant to which, among other things and on the terms and subject only to the conditions set forth therein, the Newco Financing Sources have committed to provide Newco with financing in the amount set forth therein (the “Newco Financing”) for purposes of funding the Cash Payment.

“Newco Common Stock” shall mean the common stock of Newco, par value \$0.01 per share.

“Newco Companies” shall mean Newco and its Subsidiaries after giving effect to the Newco Contribution.

“Newco Contract” shall mean any Contract: (a) to which any of the Newco Companies is a party; or (b) by which any of the Newco Companies is bound.

“Newco Contribution” shall have the meaning set forth in the Distribution Agreement.

“Newco Employee” shall mean each individual who is employed by Everest or any of its Subsidiaries (with respect to the Newco Business) or any of the Newco Companies as of the date on which Everest determines to transfer the employment of applicable individuals to a Newco Company and who Everest determines as of such date is either (i) exclusively or primarily engaged in the Newco Business or (ii) necessary for the ongoing operation of the Newco Business, in each case regardless of whether any such employee is actively at work or is not actively at work as a result of disability or illness, an approved leave of absence (including military leave with reemployment rights under federal Legal Requirements and leave under the Family and Medical Leave Act of 1993), vacation, personal day or similar short- or long-term absence.

“Newco Financing” shall have the meaning set forth in the definition of Newco Commitment Letter.

“Newco Financing Sources” shall have the meaning set forth in the definition of Newco Commitment Letter.

“Newco IP” shall mean all Intellectual Property Rights with respect to which Everest or any of its Subsidiaries (including the Newco Companies) has or purports to have (including as a result of the transfers under the Distribution Agreement) an ownership interest in and are (a) included in the Newco Assets or (b) otherwise used in the conduct or operation of the Newco Business.

“Newco Material Adverse Effect” shall mean any Effect that, considered together with all other Effects, (a) has or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, financial condition or results of operations of the Newco Business taken as a whole; provided, however, that in no event shall any Effects resulting from any of the following, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has occurred or exists, a Newco Material Adverse Effect: (i) conditions generally affecting the industry in which the Newco Business compete, or the U.S. or global economy as a whole, to the extent that such conditions (including any changes arising out of acts of terrorism, war, weather conditions or other force majeure events) do not have a disproportionate impact on the Newco Business, taken as a whole, relative to other companies in the industry in which the Newco Business operates; (ii) general conditions in the financial markets, and any changes therein (including any changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent that such conditions do not have a disproportionate impact on the Newco Business, taken as a whole, relative to other companies in the industry in which the Newco Business operates; (iii) changes in the trading price or trading volume of Everest Common Stock (it being understood, however, that, except as otherwise provided in clauses (i), (ii), (iv), (v), (vi), (vii) or (viii) of this sentence, any Effect giving rise to or contributing to such changes in the trading price or trading volume of Everest Common Stock may give rise to a Newco Material Adverse Effect and may be taken into account in determining whether a Newco Material Adverse Effect has occurred or exists); (iv) changes in GAAP (or any interpretations of GAAP) or Legal Requirements applicable to the Newco Business, to the extent that such conditions do not have a disproportionate impact on the Newco Business, taken as a whole, relative to other companies in the industry in which the Newco Business operates; (v) the failure to meet public estimates or forecasts of revenues, earnings or other financial metrics, in and of itself, or the failure to meet internal projections, forecasts or budgets of revenues, earnings or other financial metrics, in and of itself (it being understood, however, that, except as otherwise provided in clauses (i), (ii), (iii), (iv), (vi), (vii) or (viii) of this sentence, any Effect giving rise to or contributing to any such failure may give rise to a Newco Material Adverse Effect and may be taken into account in determining whether a Newco Material Adverse Effect has occurred or exists); (vi) any stockholder or derivative litigation arising from or relating to this Agreement, the Distribution Agreement or the Contemplated Transactions; (vii) Effects resulting directly from the announcement or pendency of this Agreement or the Contemplated Transactions, including loss of employees, suppliers or customers; or (viii) any items disclosed in the Everest Disclosure Letter, or (b) would prevent or materially impair Everest from complying with its obligations hereunder or consummating the Contemplated Transactions.

“Newco Owned IP” shall mean all Newco IP included in the Newco Assets.

“Newco Owned Real Property” shall mean all material Owned Real Property that is intended to be conveyed to Newco by Everest or its Subsidiaries in the Internal Restructuring and Newco Contribution pursuant to the Distribution Agreement.

“Newco Real Property” shall mean the Newco Owned Real Property and the Newco Leased Real Property.

“Open Source Code” shall mean any software code that is distributed as “free software” or “open source software” or is otherwise distributed publicly in source code form under terms that permit modification and redistribution of such software. Open Source Code includes software code that is licensed under the GNU General Public License, GNU Lesser General Public License, Mozilla License, Common Public License, Apache License, BSD License, Artistic License, or Sun Community Source License.

“Order” shall mean any order, writ, injunction, judgment or decree of a Governmental Body of competent jurisdiction.

“Owned Real Property” shall mean all land, together with all buildings, structures, improvements and fixtures located thereon, that is owned.

“Permitted Encumbrances” shall mean (i) any Encumbrance for current Taxes, assessments or other governmental charges not yet due and payable as of the Closing Date or that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established to the extent required by GAAP; (ii) mechanics’, carriers’, workmen’s, warehousemen’s, repairmen’s or other like Encumbrances arising or incurred in the ordinary course of business with respect to amounts not yet due or that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (iii) zoning, building codes and other land use Legal Requirements regulating the use or occupancy of any Newco Real Property or Athena Real Property, as applicable, that are not violated by the current use or occupancy of such Newco Real Property or Athena Real Property, as applicable; (iv) easements, covenants, conditions, restrictions and other similar nonmonetary matters of record, or matters that would be disclosed by a true and correct survey, affecting title to any Newco Real Property or Athena Real Property, as applicable, that do not or would not materially impair the use or occupancy of such Newco Real Property or Athena Real Property, as applicable, in the operation of the business conducted thereon; (v) licenses in Intellectual Property Rights granted in the ordinary course of the Newco Business or by Athena, as applicable; and (vi) solely with respect to the Newco Companies, Encumbrances described in Section 2.8(a) of the Everest Disclosure Letter, and solely with respect to the Athena Companies, Encumbrances described in Section 3.8 of the Athena Disclosure Letter.

“Person” shall mean any individual, Entity or Governmental Body.

“Personal Data” shall mean, in addition to any definition for any similar term (e.g., “personally identifiable information” or “PII”) provided by applicable Legal Requirements, or in applicable privacy policies or notices or other similar public-facing statements, all information, in any form, regarding or capable of being associated with or identifying an individual person, including a natural person’s name, street address, telephone number, e-mail address, social security number (or other government-issued identifier), driver’s license number, passport number, financial or bank account information, or customer or account number, or any other piece of information that allows the identification of a natural person.

“Privacy Laws” means any and all applicable laws, Legal Requirements, and self-regulatory guidelines (including of any applicable foreign jurisdiction) relating to data privacy and security, and Personal Data, including with respect to the receipt, collection, compilation, use, storage, processing, sharing, safeguarding, security, disposal, destruction, disclosure or transfer (including cross-border) of Personal Data, including the Federal Trade Commission Act, Payment Card Industry Data Security Standard (PCI-DSS), Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act, Telephone Consumer Protection Act (TCPA), General Data Protection Regulation, Regulation 2016/679/EU on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR), and any and all applicable laws or Legal Requirements governing breach notification in connection with Personal Data.

“Proxy Statement/Prospectus” shall mean the proxy statement/prospectus to be sent to Athena’s stockholders in connection with the Athena Stockholders’ Meeting.

“Registered IP” shall mean all Intellectual Property Rights that are registered, applied for, filed or issued with, by or under the authority of any Governmental Body, including all patents, registered copyrights, registered mask works and registered trademarks, domain name registrations and all applications for any of the foregoing.

“Release” shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

“Representatives” shall mean with respect to an Entity, the directors, officers, other employees, agents, attorneys, accountants, investment bankers, other advisors and representatives of such Entity.

“Ruling Request” shall mean any letter filed by Everest (or any of its Subsidiaries) with a Taxing Authority requesting a ruling regarding certain tax consequences of the Contemplated Transactions and any amendment or supplement to such ruling request letter.

“Sarbanes-Oxley Act” shall mean the Sarbanes-Oxley Act of 2002, as it may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

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

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

“Software” means any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source or object code; (b) databases and compilations in any form, including any and all data and collections of data, whether machine readable or otherwise; (c) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, including Internet web sites, web content and links, source code, object code, operating systems and specifications, data, databases, database management code, utilities, graphical user interfaces, menus, images, icons, forms, methods of processing, software engines, platforms, development tools, library functions, compilers, and data formats, all versions, updates, corrections, enhancements and modifications thereof, and (d) all related documentation, user manuals, training materials, developer notes, comments and annotations related to any of the foregoing.

“Spin-Off” shall mean the consummation of the Distribution through a dividend of shares of Newco Common Stock to Everest stockholders on a pro rata basis as contemplated by the Distribution Agreement.

An Entity shall be deemed to be a “Subsidiary” of another Person if such Person directly or indirectly owns, beneficially or of record: (a) an amount of voting securities of or other interests in such Entity that is sufficient to enable such Person to elect at least a majority of the members of such Entity’s board of directors or other governing body; or (b) more than 50% of the outstanding equity, voting or financial interests in such Entity. Additionally, in the case of Everest, the Entities set forth on Section 2.5(a) of the Everest Disclosure Letter under the heading “Joint Ventures” shall be considered a “Subsidiary” under this Agreement solely for purposes of the representations and warranties Section 2.12 and Section 2.13; provided, that any such representations and warranties shall, with respect to the Entities set forth on Section 2.5(a) of the Everest Disclosure Letter under the heading “Joint Ventures”, be made only to the Actual Knowledge of Everest.

“Tax” shall mean (i) all taxes, charges, fees, duties, levies, imposts, rates or other assessments or governmental charges of any kind imposed by any U.S. federal, state, local or non-U.S. Taxing Authority, including, without limitation, income, gross receipts, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, custom duties, property, sales, use, license, capital stock, transfer, franchise, registration, payroll, withholding, social security, unemployment, disability, value added, alternative or add-on minimum or other taxes, whether disputed or not, and including any interest, penalties, charges or additions attributable thereto, (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 clauses (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.

“Tax Matters Agreement” shall mean the Tax Matters Agreement by and among Everest, Newco and Athena, in the form attached to the Distribution Agreement as Exhibit A.

“Tax Return” shall mean any return, report, certificate, election, 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 Documents” shall mean this Agreement, the Distribution Agreement, the Tax Matters Agreement, the Transition Services Agreement, the Employee Matters Agreement, the Intellectual Property Matters Agreement, the Cross-Supply Agreement and the other Ancillary Agreements (as defined in the Distribution Agreement).

“Transition Services Agreement” shall mean the Transition Services Agreement by and between Everest and Newco, in the form attached to the Distribution Agreement as Exhibit B.

“Treasury Regulations” shall mean the regulations promulgated under the Code.

Other Defined Terms. In addition, each of the following terms shall have the meaning given to such term in the applicable Section of this Agreement listed opposite such term:

Term	Section
Additional Antitrust Consents	Section 6.8
Antitrust Filings	Section 5.3(a)
Athena	Preamble
Athena Board Recommendation	Section 5.2(b)
Athena Certifications	Section 3.6(a)
Athena Change in Recommendation	Section 5.2(b)
Athena Company Returns	Section 3.15(a)
Athena Financing Source Related Parties	Section 9.4(a)
Athena IP Licenses	Section 3.11(a)(ix)
Athena Lease	Section 3.9(c)
Athena Leased Real Property	Section 3.9(c)
Athena Material Contract	Section 3.11(a)
Athena Material Registered IP	Section 3.10(a)
Athena Related Parties	Section 8.3(e)
Athena SEC Documents	Section 3.6(a)

Term	Section
Athena Stockholders' Meeting	Section 5.2(a)
Athena Termination Fee	Section 8.3(b)(ii)
Closing	Section 1.3
Closing Date	Section 1.3
D&O Indemnitee	Section 5.15(a)
Divestiture Action	Section 5.3(d)
Effective Time	Section 1.3
End Date	Section 8.1(b)
Everest	Preamble
Everest Board Designees	Section 5.8(a)
Everest Expense Reimbursement	Section 8.3(a)
Exchange Agent	Section 1.6(b)
Exchange Fund	Section 1.6(b)
FCPA	Section 2.13(a)
Intended Tax Treatment	Section 5.5(f)
Intervening Event	Section 5.2(c)(ii)
KPMG Tax Opinion	Section 7.6(b)
Merger Sub	Preamble
Merger	Recitals
Newco	Preamble
Newco Business Financial Statements	Section 2.6(a)
Newco Company Returns	Section 2.15(a)
Newco Financing Agreements	Section 5.14(a)
Newco Financing Source Related Parties	Section 9.4(b)
Newco Lease	Section 2.9(c)
Newco Leased Real Property	Section 2.9(c)
Newco Material Contract	Section 2.11(a)
Newco Material Registered IP	Section 2.10(a)
Newco Registration Statements	Section 5.1(a)
Newco Plans	Section 2.16(b)
Opinion	Section 3.24
Notice Period	Section 5.2(c)(i)
Other Indemnitors	Section 5.15(c)
Other IP Licenses	Section 2.11(a)(ix)
PBGC	Section 2.16(e)
Pre-Closing Period	Section 4.1
Redactable Information	Section 5.5(d)
Registration Statements	Section 5.5(b)
Required Athena Stockholder Vote	Section 3.20
Schedule TO	Section 5.1(a)
Specified Ruling Request	Section 5.5(d)
Surviving Corporation	Section 1.1
Takeover Statute	Section 3.19
U.S. Sanctions and Export Control Laws	Section 2.13(b)

SEPARATION AND DISTRIBUTION AGREEMENT

BY AND AMONG

ECOLAB INC.,

CHAMPIONX HOLDING INC.,

AND

APERGY CORPORATION

DATED AS OF DECEMBER 18, 2019

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Exhibit B	Form of Transition Services Agreement
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Exhibit D	Separation Plan

This **SEPARATION AND DISTRIBUTION AGREEMENT** (this "Agreement") is entered into as of December 18, 2019, by and among: (i) Ecolab Inc., a Delaware corporation ("Everest"); (ii) ChampionX Holding Inc., a Delaware corporation and wholly owned Subsidiary of Everest ("Newco"); and (iii) Apergy Corporation, a Delaware corporation ("Athena") (each a "Party" and together, the "Parties"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Merger Agreement.

RECITALS

WHEREAS, Everest is engaged, directly and indirectly, in the Newco Business;

WHEREAS, the Board of Directors of Everest (the "Everest Board") has determined that it is advisable and in the best interests of Everest and Everest's stockholders to separate the Newco Business from the other businesses of Everest and to divest the Newco Business in the manner contemplated by this Agreement and the Agreement and Plan of Merger and Reorganization, dated the date hereof (as it may be amended, modified or supplemented from time to time, the "Merger Agreement"), by and among Everest, Newco, Athena and Athena Merger Sub, Inc., a Delaware corporation and a direct wholly owned Subsidiary of Athena ("Merger Sub");

WHEREAS, Everest currently owns all of the shares of common stock of Newco (the "Newco Common Stock");

WHEREAS, on the terms and subject to the conditions set forth herein, in order to effect such separation, Everest will undertake the Internal Restructuring and, in connection therewith, effect the Newco Contribution and, in exchange therefor, Newco shall (i) issue to Everest additional shares of Newco Common Stock and (ii) pay to Everest the Cash Payment;

WHEREAS, on the terms and subject to the conditions set forth herein, following the completion of the Internal Restructuring, the Newco Contribution and the payment of the Cash Payment, Everest shall own all of the issued and outstanding shares of Newco Common Stock and shall effect the distribution of all of such outstanding shares of Newco Common Stock to the holders of Everest Common Stock in accordance with Article III hereof (the "Distribution");

WHEREAS, the Parties contemplate that, pursuant to the Merger Agreement, immediately after the Distribution and at the Effective Time, Merger Sub shall be merged (the "Merger") with and into Newco, with Newco surviving the Merger as a wholly owned Subsidiary of Athena, and the shares of Newco Common Stock shall be converted into the right to receive shares of common stock of Athena on the terms and subject to the conditions of the Merger Agreement and in accordance with the Delaware General Corporation Law;

WHEREAS, for U.S. federal income tax purposes (i) the Newco Contribution and the Distribution, taken together, are intended to qualify as a transaction described in Sections 355 and 368(a)(1)(D) of the Code, (ii) the Merger is intended to qualify as a "reorganization" within the meaning of Section 368(a) of the Code and (iii) each of this Agreement and the Merger Agreement constitute "a plan of reorganization" within the meaning of Section 368 of the Code and Treasury Regulations Section 1.368-2(g); and

WHEREAS, the Parties desire to set forth the principal arrangements among them regarding the foregoing transactions and to make certain covenants and agreements specified herein in connection therewith and to prescribe certain conditions relating thereto.

Now, THEREFORE, in consideration of the foregoing and the covenants and agreements contained herein, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 General. As used in this Agreement, the following terms shall have the respective meanings set forth or referenced below:

(1) “Affiliate” shall mean, when used with respect to a specified Person and at a point in, or with respect to a period of, time, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person at such point in or during such period of time. For the purposes of this definition, “control,” when used with respect to any specified Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other interests, by Contract or otherwise. It is expressly agreed that no Party or member of its Group shall be deemed to be an Affiliate of another Party or member of such other Party’s Group solely by reason of having one or more directors in common or by reason of having been under common control of Everest or Everest’s stockholders prior to or, in the case of Everest’s stockholders, after, the Separation Effective Time.

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

(3) “Agreement Disputes” shall have the meaning set forth in Section 7.1.

(4) “Ancillary Agreements” shall mean the Transition Services Agreement, the Employee Matters Agreement, the Tax Matters Agreement, the Intellectual Property Matters Agreement, the Cross-Supply Agreement, the agreements contemplated by Section 2.7(b) that have been agreed upon by the Parties, any and all Conveyancing and Assumption Instruments and any other agreements to be entered into by and between any member of the Everest Group, on one hand, and any member of the Newco Group (and/or the Athena Group), on the other hand, at, prior to or after the Distribution in connection with the Distribution and/or the Merger.

(5) “Applicable Period” shall have the meaning set forth in Section 5.2.

(6) “Appointed Representative” shall have the meaning set forth in Section 7.1.

(7) “Asset Transferors” shall mean the Entities transferring Assets to Newco or Everest, as the case may be, or one of their respective Subsidiaries in order to consummate the transactions contemplated hereby or by the Ancillary Agreements.

(8) “Assume” shall have the meaning set forth in Section 2.1(c); and the terms “Assumed” and “Assumption” shall have their correlative meanings.

(9) “Assets” shall mean all rights, title and ownership interests (including Intellectual Property rights) in and to all properties, claims, Contracts, businesses or assets (including goodwill), wherever located (including in the possession of vendors or other third parties or elsewhere), of every kind, character and description, whether real, personal or mixed, tangible or intangible, whether accrued, contingent or otherwise, in each case, whether or not recorded or reflected on the books and records or financial statements of any Entity.

(10) “Athena” shall have the meaning set forth in in the Preamble.

(11) “Athena Group” shall mean Athena and each Entity that is or becomes a direct or indirect Subsidiary of Athena (including, after the Effective Time, the Newco Group).

(12) “Audited Party” shall have the meaning set forth in Section 5.2(a).

(13) “Athena Restricted Business” shall have the meaning set forth in Section 2.13(a).

(14) “Business” shall mean the Everest Retained Business or the Newco Business, as applicable.

(15) “Business Day” shall have the meaning set forth in the Merger Agreement.

(16) “Cash Equivalents” shall mean consolidated (i) cash and (ii) checks, certificates of deposit having a maturity of less than one year, money orders, marketable securities, money market funds, commercial paper, short-term instruments and other cash equivalents, funds in time and demand deposits or similar accounts, and any evidence of indebtedness issued or guaranteed by any Governmental Body, *minus* the amount of any outbound checks, *plus* the amount of any deposits in transit.

(17) “Cash Payment” shall mean an amount equal to (i) \$525 million, *plus* (ii) the Estimated Tax Amount, with such Cash Payment to be paid, in part, from the proceeds of the Newco Financing (including any substitute financing therefor permitted pursuant to the Merger Agreement).

(18) “Chemical Product or Substance Registrations” shall mean any and all chemical substance registrations, biocide active ingredient registrations, and product authorizations, licenses, approvals, registrations, or certification with any Governmental Body or international political or economic organization (such as the European Union or the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic).

(19) “Clean-Up Spin-Off” shall mean the distribution by Everest, pro rata to its stockholders, of any unsubscribed shares of Newco Common Stock immediately following the consummation of the Exchange Offer.

(20) “Closing” shall have the meaning set forth in the Merger Agreement.

(21) “Closing Date” shall have the meaning set forth in the Merger Agreement.

(22) “Code” shall have the meaning set forth in the Merger Agreement.

(23) “Commission” shall mean the United States Securities and Exchange Commission.

(24) “Company Policies” shall mean all insurance contracts of any kind (including claim administration contracts), including primary, excess and umbrella policies, commercial general liability policies, fiduciary liability, directors’ and officers’ liability, automobile, property and casualty, workers’ compensation and employee dishonesty insurance policies and bonds, together with the rights, benefits and privileges thereunder of any kind of any member of the Everest Group.

(25) “Competing Athena Business” shall have the meaning set forth in Section 2.13(a)(i).

(26) “Competing Everest Business” shall have the meaning set forth in Section 2.13(b)(i).

(27) “Confidential Information” shall mean all non-public, confidential or proprietary Information (a) with respect to Athena and Newco (and members of their respective Groups), that is included in the Newco Assets or that was acquired by Everest or any member of its Group after the Separation Effective Time pursuant to Article V or otherwise in accordance with this Agreement or any Ancillary Agreement and (b) with respect to Everest (and any member of its Group), that relates to the Everest Group, the Everest Retained Business, any Everest Retained Assets or any Everest Retained Liabilities or that was acquired by Athena or Newco (or any member of their respective Groups) after the Separation Effective Time pursuant to Article V or otherwise in accordance with this Agreement or any Ancillary Agreement; except for any Information that is (i) in the public domain or known to the public through no fault of the receiving Party or any member of its Group, (ii) lawfully acquired after the Separation Effective Time by such Party or any member of its Group from other sources not known to be subject to confidentiality obligations with respect to such Information or (iii) independently developed by the receiving Party or any member of its Group after the Separation Effective Time without reference to any Confidential Information.

(28) “Consent” shall have the meaning set forth in the Merger Agreement.

(29) “Continuing Arrangements” shall mean:

(i) those arrangements set forth on Schedule 1.1(29)(i);

(ii) this Agreement and the Ancillary Agreements (and each other Contract expressly contemplated by this Agreement or any Ancillary Agreement to be entered into or continued by any of the Parties or any of the members of their respective Groups);

(iii) any Contracts or intercompany accounts solely between or among members of the Newco Group;

(iv) any Contracts between: (A) a Subsidiary or Affiliate of Everest that is in the business of selling or buying products or services to or from third parties and (B) a member of the Newco Group, and which Contract is related primarily to the provision of such products or services and was or is entered into in the ordinary course of business and on arms’-length terms; and

(v) such other commercial arrangements among the Parties or their Groups that are intended to survive and continue following the Separation Effective Time; provided that none of the intercompany Contracts set forth on Schedule 1.1(29)(v) shall be deemed to be Continuing Arrangements, it being understood that Schedule 1.1(29)(v) is not intended to be an exhaustive list of arrangements that are to be terminated at or prior to the Separation Effective Time; provided, however, that, for the avoidance of doubt, any Third-Party Agreements shall not be considered Continuing Arrangements for purposes of this definition.

(30) “Contract” shall have the meaning set forth in the Merger Agreement.

(31) “Conveyancing and Assumption Instruments” shall mean, collectively, the various Contracts, including the related local asset transfer agreements, local assumption agreements, local stock transfer agreements, and other documents entered into prior to the Separation Effective Time or to be entered into to effect the Transfer of Assets and the Assumption of Liabilities in the manner contemplated by this Agreement.

(32) “Credit Support Instruments” shall mean any letters of credit, performance bonds, surety bonds (including, with respect to the surety bonds, letters of credit and performance bonds set forth on Schedule 1.1(32)), the allocable portion of the surety bonds, letters of credit and performance bonds as set forth on Schedule 1.1(32)), bankers’ acceptances, or other similar arrangements.

(33) “Cross-Supply Agreement” shall mean a Cross-Supply Agreement to be negotiated and entered into at or prior to Closing pursuant to Section 2.7(b).

(34) “Cut-Off Time” shall have the meaning set forth in Section 3.3(a).

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

(36) “Distribution Date” shall mean the date, as shall be determined by the Everest Board (or its designee), on which the Distribution occurs.

(37) “Effective Time” shall have the meaning set forth in the Merger Agreement.

(38) “Employee Matters Agreement” shall mean the Employee Matters Agreement, dated as of the date hereof, by and among Everest, Newco and Athena, dated as of the date hereof.

(39) “Entity” shall have the meaning set forth in the Merger Agreement.

(40) “Environmental Compliance Liabilities” shall mean any and all Liabilities relating to, resulting from or arising out of actual or alleged violations of or non-compliance with any Environmental Law, including a failure to obtain, maintain or comply with any Environmental Permits, including fines, penalties, mitigation damages and the costs and expenses (including capital expenditures) required to address such actual or alleged violations or non-compliance; provided that Environmental Compliance Liabilities do not include Liabilities that would also be considered Remediation Liabilities.

(41) “Environmental Deductible Amount” shall have the meaning set forth in Section 4.2(b).

(42) “Environmental Laws” shall mean all Legal Requirements relating to pollution or protection of human health or safety or the environment, including Legal Requirements relating to the exposure to, or Release, threatened Release or the presence of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, transport or handling of Hazardous Substances and all Legal Requirements with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Substances, and all Legal Requirements relating to endangered or threatened species of fish, wildlife and plants and the management or use of natural resources.

(43) “Environmental Liabilities” shall mean Remediation Liabilities, Environmental Compliance Liabilities, Hazardous Substance Damage Liabilities and Off-Site Environmental Liabilities. The term “Environmental Liabilities” does not include Liabilities arising in connection with claims for injuries to natural persons or property from products sold by or services provided by the Newco Group, the Everest Group or their predecessors.

(44) “Environmental Permit” shall mean any permit, license, approval or other authorization under any applicable Legal Requirement or of any Governmental Body relating to Environmental Laws or Hazardous Substances.

(45) “Estimated Tax Amount” shall mean Everest’s estimate as of the Separation Effective Time of the Tax Amount (which shall not exceed \$12,000,000).

(46) “Everest” shall have the meaning set forth in the Preamble.

(47) “Everest Asset Transferee” shall mean any Entity that is or will be a member of the Everest Group to which Everest Retained Assets shall be or have been transferred, directly or indirectly, at or prior to the Separation Effective Time by an Asset Transferor in order to consummate the transactions contemplated hereby or by any Ancillary Agreement.

(48) “Everest Board” shall have the meaning set forth in the Recitals.

(49) “Everest CSIs” shall have the meaning set forth in Section 2.9(d).

(50) “Everest Common Stock” shall mean the common stock of Everest, par value \$0.01 per share.

(51) “Everest Former Business” shall mean any Former Business that, at the time of sale, conveyance, assignment, transfer, disposition, divestiture (in whole or in part) or discontinuation, abandonment, completion or termination of the operations, activities or production thereof, was primarily operated or managed by, or primarily associated with, the Everest Retained Business as then conducted, excluding any Newco Former Businesses.

(52) “Everest Group” shall mean (i) Everest, the Everest Retained Business and each Entity that is a direct or indirect Subsidiary of Everest as of immediately following the Effective Time and (ii) each Entity that becomes a Subsidiary of Everest after the Effective Time.

(53) “Everest Group Former Real Property” shall mean any real property that at the time of sale, conveyance, assignment, transfer, disposition, divestiture (in whole or in part) or discontinuation, abandonment, completion or termination of the operations, activities or production thereof, was primarily owned, leased or operated in connection with the Everest Retained Business or the Everest Former Business.

(54) “Everest Group Landlord Property” shall mean any real properties owned or leased by the Everest Group as to which the Newco Group will (i) lease pursuant to a lease or sublease (which in each case is subject to Section 2.7(a)), or (ii) occupy under other agreement (but not including the Transition Services Agreement) from a member of the Everest Group to conduct business operations after the Separation Effective Time. An exhaustive list of the Everest Group Landlord Property is set forth on Schedule 1.1(54).

(55) “Everest Group Leased Real Property” shall mean all rights, title, and interest in and to any real property used or occupied by the Everest Group pursuant to a lease, license, or similar use or occupancy agreement, and excluding any Newco Owned Real Property.

(56) “Everest Group Owned Real Property” shall mean all rights, title and interest in and to any real property owned by any member of the Everest Group, including all land, structures, buildings and other improvements located thereon and appurtenances thereto, and excluding any Newco Owned Real Property.

(57) “Everest Indemnitees” shall mean each member of the Everest Group from and after the Separation Effective Time and each of their respective successors and permitted assigns, except, for the avoidance of doubt, the Newco Indemnitees.

(58) “Everest Released Liabilities” shall have the meaning set forth in Section 4.1(a)(i).

(59) “Everest Restricted Business” shall have the meaning set forth in Section 2.13(b).

(60) “Everest Retained Assets” shall mean:

- (i) the Assets listed or described on Schedule 1.1(60);
- (ii) any and all Assets that are expressly contemplated by this Agreement or any Ancillary Agreement as Assets to be retained by Everest or any other member of the Everest Group;
- (iii) any and all Assets that are owned, leased or licensed, at or prior to the Separation Effective Time, by Everest and/or any of its Subsidiaries, that are not Newco Assets;
- (iv) any and all Assets that are acquired or otherwise become an Asset of the Everest Group after the Separation Effective Time;
- (v) any and all Everest Retained IP;
- (vi) any and all Everest Retained Regulatory Property; and
- (vii) any and all Company Policies.

(61) “Everest Retained Business” shall mean (i) those businesses operated by the Everest Group prior to the Separation Effective Time other than the Newco Business and (ii) those businesses acquired or established by or for any member of the Everest Group after the Separation Effective Time.

(62) “Everest Retained Environmental Liability” shall mean the following:

- (i) any and all Hazardous Substance Damage Liabilities, Environmental Compliance Liabilities and Remediation Liabilities relating to events, conduct, conditions or occurrences from before, at or after the Separation Effective Time, at (A) the Everest Group Leased Real Property (excluding the Newco Group Landlord Property), and (B) the Everest Group Former Real Property;
- (ii) any and all Environmental Compliance Liabilities and Remediation Liabilities relating to events, conduct, conditions or occurrences from before, at or after the Separation Effective Time, at the Everest Group Owned Real Property (excluding the Everest Group Landlord Property);
- (iii) subject to Section 4.3(b), any and all Hazardous Substance Damage Liabilities relating to or associated with events, conduct, conditions or occurrences that arose on or before the Separation Effective Time, at the Everest Group Owned Real Property (excluding the Everest Group Landlord Property), where the Liability Primarily Relates to the Everest Retained Business; provided that for purposes of clarification, at the Everest Group Owned Real Property located at the site specified on Item 1 of Schedule 1.1(62)(a), all of the operations prior to the Separation Effective Time related to the Newco Business with any Hazardous Substance Damage Liabilities as described in this clause shall be Newco Environmental Liabilities;

(iv) any and all Remediation Liabilities relating to events, conduct, conditions or occurrences that arose at or before the Separation Effective Time at the Everest Group Landlord Property. A non-exhaustive list of currently known matters that fall within the scope of this clause is set forth on Schedule 1.1(62)(iv);

(v) subject to Section 4.3(b), any and all Hazardous Substance Damage Liabilities and Environmental Compliance Liabilities relating to or associated with events, conduct, conditions or occurrences that arose at or before the Separation Effective Time, at the Everest Group Landlord Property or the Newco Group Landlord Property, where the Liability Primarily Relates to the Everest Retained Business. A non-exhaustive list of currently known matters that fall within the scope of this clause is set forth on Schedule 1.1(62)(v);

(vi) subject to Section 4.3(b), any and all Off-Site Environmental Liabilities arising out of or in connection with or relating to disposal, recycling, reclamation, treatment or storage of Hazardous Substances, or the arrangement for the same, before the Separation Effective Time, where the Liability Primarily Relates to the Everest Retained Business, provided that (i) with respect to the site specified on Item 2 of Schedule 1.1(62)(a), the Newco Group and the Everest Group shall be liable for their respective share of Liability based on their respective contribution of waste to the site, as set forth on Schedule 1.1(62)(vi); and (ii) with respect to the site specified on Item 3 of Schedule 1.1(62)(a), the Newco Group shall be responsible for the entire share of Liability allocated to the Newco Business and the Everest Retained Business; provided, further, that the Newco Group will receive the benefit of the indemnification owed to Nalco Energy by the party specified on Item 4 of Schedule 1.1(62)(a) with respect to the share of Liability attributed to Nalco Energy at this site; and

(vii) any agreement or operation of law pursuant to which the Newco Group or the Everest Group becomes liable for any of the foregoing, including as a successor-in-interest any agreements pursuant to which the Everest Group or any predecessor has retained Liability or provided an indemnification with respect to a counterparty, which Liability would fall within the scope of any of the foregoing provisions as an Everest Retained Environmental Liability. A non-exhaustive list of such agreements is set forth on Schedule 1.1(62)(vii).

(63) “Everest Retained IP” shall mean all Intellectual Property owned or controlled by the Everest Group, other than Newco IP, including (i) the Intellectual Property listed on Schedule 1.1(63) and (ii) any Intellectual Property licensed to Newco or the Newco Group pursuant to any Ancillary Agreement .

(64) “Everest Retained Liabilities” shall mean (i) any and all Liabilities of Everest and each of its Subsidiaries that are not Newco Liabilities, and (ii) the Liabilities listed on Schedule 1.1(64).

(65) “Everest Retained Regulatory Property” shall mean (i) all Regulatory Property other than Newco Regulatory Property, including the Regulatory Property listed on Schedule 1.1(65), and (ii) any Regulatory Property licensed to Newco or the Newco Group pursuant to any Ancillary Agreement.

(66) “Exchange Agent” shall have the meaning set forth in the Merger Agreement.

(67) “Exchange Offer” shall mean the consummation of the Distribution through an offer to exchange shares of Newco Common Stock for outstanding shares of Everest Common Stock.

(68) “Final Closing Cash” shall have the meaning set forth in Section 3.3(b).

(69) “Final Closing Indebtedness” shall have the meaning set forth in Section 3.3(b).

(70) “Final Tax Amount” shall have the meaning set forth in Section 3.3(b).

(71) “Former Business” shall mean any corporation, partnership, entity, division, business unit or business (in each case, including any assets and liabilities comprising the same) that has been sold, conveyed, assigned, transferred or otherwise disposed of or divested (in whole or in part) to a Person that is not a member of the Newco Group or the Everest Group or the operations, activities or production of which has been discontinued, abandoned, completed or otherwise terminated (in whole or in part), in each case, prior to the Separation Effective Time.

(72) “Governmental Authorization” shall have the meaning set forth in the Merger Agreement.

(73) “Governmental Body” shall have the meaning set forth in the Merger Agreement.

(74) “Governmental Filing” shall have the meaning set forth in Section 4.5(d).

(75) “Group” shall mean (i) with respect to Everest, the Everest Group, (ii) with respect to Newco, the Newco Group and (iii) with respect to Athena, the Athena Group.

(76) “Guaranteed Obligations” shall have the meaning set forth in Section 2.10.

(77) “Guaranty Release” shall have the meaning set forth in Section 2.9(b).

(78) “Hazardous Substance” shall mean (a) any substances defined, listed, classified or regulated as “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants,” “wastes,” “radioactive materials,” “petroleum,” “oils” or designations of similar import under any Environmental Law, or (b) any other chemical, material or substance that is regulated or for which Liability can be imposed under any Environmental Law.

(79) “Hazardous Substance Damage Liabilities” shall mean any and all Liabilities relating to, resulting from or arising out of claims for personal or bodily injury (including claims for medical monitoring and associated costs therewith, including mandated scientific inquiries or panels), wrongful death or property damage associated with the Release or threatened Release of Hazardous Substances to the environment or exposure to or presence of Hazardous Substances. Hazardous Substance Damage Liabilities do not include Remediation Liabilities or claims for injuries to natural persons or property from products sold by the Newco Group or the Everest Group or their respective predecessors.

(80) “Indebtedness” shall mean, with respect to any Person: (i) any indebtedness for borrowed money, including any such obligations evidenced by bonds, debentures, notes or letters of credit, banker’s acceptances or similar obligations, in each case that are drawn or funded; (ii) all obligations under any interest rate cap, swap, collar or similar transactions or currency hedging transactions; (iii) all obligations of such Person under a lease agreement that would be treated as a “finance lease” under GAAP; (iv) other than in respect of the Newco Financing or any substitute financing pursuant to Section 5.14(e) of the Merger Agreement, all related accrued and unpaid interest, premiums, penalties, charges, fees, expenses and other amounts due in connection with the payment and satisfaction in full of the obligations described in the foregoing clauses (i) through (iii) of this definition; and (v) all guarantee obligations of such Person in respect of obligations of the kind referred to in clauses (i) through (iv) of this definition, but in the case of this clause (v), only to the extent drawn upon. For the avoidance of doubt, no Liabilities of the Newco Group under any Ancillary Agreement shall be considered “Indebtedness”.

(81) “Indemnifiable Loss” and “Indemnifiable Losses” shall mean any and all damages, losses, deficiencies, Liabilities, obligations, penalties, judgments, settlements, claims, payments, fines, interest, costs and expenses (including the costs and expenses of any and all Legal Proceedings and demands, assessments, judgments, settlements and compromises relating thereto) provided, however, that “Indemnifiable Loss” and “Indemnifiable Losses” shall not include any (A) punitive or exemplary special damages or (B) any speculative damages or damages that are not reasonably foreseeable, in each case, except to the extent awarded by a court of competent jurisdiction in connection with a Third-Party Claim.

(82) “Indemnifying Party” shall have the meaning set forth in Section 4.4(a).

(83) “Indemnitee” shall have the meaning set forth in Section 4.4(a).

(84) “Indemnity Payment” shall have the meaning set forth in Section 4.7(a).

(85) “Independent Accounting Firm” shall mean Ernst & Young or if such firm is not available or is unwilling to serve, then a mutually acceptable expert in public accounting upon which Everest and Newco mutually agree.

(86) “Information” shall mean information, content, and data in written, oral, electronic, computerized, digital or other tangible or intangible media, including (i) books and records, whether accounting, legal or otherwise, ledgers, studies, reports, surveys, designs, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, marketing plans, customer names and information (including prospects), technical information relating to the design, operation, testing, test results, development, and manufacture of any Party’s or its Group’s product or facilities (including product or facility specifications and documentation; engineering, design, and manufacturing drawings, diagrams, layouts, maps and illustrations; formulations and material specifications; laboratory studies and benchmark tests; quality assurance policies, procedures and specifications; evaluation and/validation studies; process control and/or shop-floor control strategy, logic or algorithms; assembly code, software, firmware, programming data, databases, and all information referred to in the same); product costs, margins and pricing; as well as product marketing studies and strategies; all other methodologies, procedures, techniques and Know-How related to research, engineering, development and manufacturing; communications, correspondence, materials, product literature, artwork, files and documents; and (ii) financial and business information, including earnings reports and forecasts, macro-economic reports and forecasts, all cost information (including supplier records and lists), sales and pricing data, business plans, market evaluations, surveys, credit-related information, and other such information as may be needed for reasonable compliance with reporting, disclosure, filing or other requirements, including under applicable securities laws or regulations of securities exchanges.

(87) “Insurance Proceeds” shall mean those monies (i) received by an insured from an insurance carrier or (ii) paid by an insurance carrier on behalf of an insured, in either case net of any applicable deductible or retention.

(88) “Intellectual Property” shall mean all U.S. and foreign intellectual property of any kind or nature, including all: (i) trademarks, trade dress, service marks, certification marks, logos, slogans, design rights, names, brand names, corporate names, trade names, internet domain names, social media accounts and addresses and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing (collectively, “Trademarks”); (ii) patents and patent applications, industrial property rights, and any and all related national or international counterparts thereto, including any renewals, divisionals, continuations, continuations-in-part, reissues, reexaminations, substitutions and extensions thereof (collectively, “Patents”); (iii) copyrights and copyrightable subject matter, excluding Know-How; (iv) trade secrets, and all other confidential or proprietary information, know-how, inventions, processes, formulae (including product formulations), data, models, methodologies, inventor’s notes, specifications, designs, plans, proposals and technical data, business and marketing plans, market know-how and customer lists and information, excluding Patents and Regulatory Property (collectively, “Know-How”); (v) applications and registrations for the foregoing; and (vi) rights, titles and interests in or relating to any of the foregoing, whether protected, created or arising under the laws of the U.S. or any foreign jurisdiction, and all remedies against past, present, and future infringement, misappropriation, or other violation thereof.

(89) “Intellectual Property Matters Agreement” shall mean the Intellectual Property Matters Agreement between Everest and Newco in the form attached hereto as Exhibit C.

(90) “Intercompany Account” shall mean any receivable, payable or loan between any member of the Everest Group, on the one hand, and any member of the Newco Group, on the other hand, in effect at or immediately prior to the Separation Effective Time, except for any such receivable, payable or loan that arises pursuant to any Continuing Arrangement and provided that, for avoidance of doubt, guarantees and Credit Support Instruments described in Section 2.9 shall not be considered Intercompany Accounts.

(91) “Internal Restructuring” shall mean the allocation and transfer or assignment of Assets and Liabilities in accordance with the terms of this Agreement, including by means of the Conveyancing and Assumption Instruments and/or pursuant to the Newco Contribution, resulting in (i) the Newco Group owning and operating the Newco Business, and (ii) the Everest Group continuing to own and operate the Everest Retained Business, in each case, in accordance with the Separation Plan.

(92) “IT Assets” shall mean all software, computer systems, telecommunications equipment, databases, internet protocol addresses, data rights and documentation, reference, resource and training materials relating thereto, and all Contracts (including Contract rights) relating to any of the foregoing (including software license agreements, source code escrow agreements, support and maintenance agreements, electronic database access contracts, domain name registration agreements, website hosting agreements, software or website development agreements, outsourcing agreements, service provider agreements, interconnection agreements, governmental permits, radio licenses and telecommunications agreements).

(93) “Legal Proceeding” shall have the meaning set forth in the Merger Agreement.

(94) “Legal Requirement” shall have the meaning set forth in the Merger Agreement.

(95) “Liabilities” shall mean any and all Indebtedness, liabilities, costs, expenses, interest and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, known or unknown, reserved or unreserved, or determined or determinable, including those arising under any Legal Requirement (including Environmental Law), Legal Proceeding, whether asserted or unasserted, or order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Body and those arising under any Contract or any fines, damages or equitable relief which may be imposed and including all costs and expenses related thereto.

(96) “Merger Agreement” shall have the meaning set forth in the Recitals.

(97) “Merger Sub” shall have the meaning set forth in the Recitals.

(98) “Merger” shall have the meaning set forth in the Recitals.

(99) “Net Debt Adjustment” shall have the meaning set forth in Section 3.3(e).

(100) “Newco” shall have the meaning set forth in the Preamble.

(101) “Newco Asset Transferee” shall mean any Entity that is or will be a member of the Newco Group to which Newco Assets shall be or have been transferred, directly or indirectly, at or prior to the Separation Effective Time by an Asset Transferor in order to consummate the transactions contemplated hereby or by any Ancillary Agreement.

(102) “Newco Assets” shall mean, without duplication:

(i) all interests in the capital stock of, or any other equity interests in, (x) the members of the Newco Group held, directly or indirectly, by Everest immediately prior to the Distribution (other than Newco) and (y) the Entities set forth on Schedule 1.1(102)(i)(y) held, directly or indirectly, by Everest immediately prior to the Distribution (the interests described in this clause (y), the “Other Interests”);

(ii) the Assets set forth on Schedule 1.1(102)(ii);

(iii) all Newco Current Assets;

(iv) any and all Assets that are expressly provided by this Agreement or any Ancillary Agreement as Assets which have been or are to be Transferred to or retained by any member of the Newco Group;

(v) all rights, title and interest in and to the owned real property set forth on Schedule 1.1(102)(v), including all land, structures, buildings and other improvements located thereon and appurtenances thereto (the “Newco Owned Real Property”);

(vi) all rights, title and interest in the real property which is leased, subleased or otherwise used and occupied pursuant to the leases, subleases, or other occupancy agreements set forth on Schedule 1.1(102)(vi) (the “Newco Leased Real Property”);

(vii) all Contracts to which any member of the Newco Group or the Everest Group is a party or by which it or any such member’s Assets is bound, in each case, as of immediately prior to the Separation Effective Time that is exclusively related to the Newco Business or the Newco IP, and any rights or claims arising thereunder, and any Contracts set forth on Schedule 1.1(102)(vii);

(viii) all Intellectual Property (other than Patents) exclusively related to the Newco Business, including the Intellectual Property applications, issuances and registrations set forth on Schedule 1.1(102)(viii) (the “Newco IP”);

(ix) the Patents set forth on Schedule 1.1(102)(ix);

(x) all Regulatory Property exclusively related to the Newco Business and the Regulatory Property identified on Schedule 1.1(102)(x) (the “Newco Regulatory Property”);

(xi) all licenses, permits, registrations, approvals and authorizations which have been issued by any Governmental Body and (1) which relate exclusively to, or are used exclusively in, the Newco Business or (2) which are solely associated with or related to any Newco Owned Real Property or Newco Leased Real Property, but, in each case of clauses (1) and (2), only to the extent transferable;

(xii) all Information exclusively related to, or exclusively used in, the Newco Business;

(xiii) excluding any Intellectual Property (which is addressed in Section 1.1(102)(viii) and Section 1.1(102)(ix) above), all IT Assets that are exclusively used or exclusively held for use in the Newco Business, and the IT Assets listed on Schedule 1.1(102)(xiii) (“Newco IT Assets”);

(xiv) excluding any IT Assets (which are addressed in Section 1.1(102)(xiii) above) all office equipment and furnishings located at any Newco Owned Real Property or Newco Leased Real Property, whether owned or leased;

(xv) any and all goodwill of the Newco Business and Newco IP;

(xvi) all rights to causes of action, lawsuits, judgments, claims and demands that are, in each case, related exclusively to the Newco Business; and

(xvii) all other Assets (other than any Assets that are of the type that would be listed in clauses (i) through (xvi) of this Section 1.1(102)) that are held by the Newco Group or the Everest Group immediately prior to the Separation Effective Time and that are exclusively used and exclusively held for use in the Newco Business as conducted immediately prior to the Separation Effective Time; provided that no Asset shall be a Newco Asset solely as a result of this clause (xvii) unless a written claim with respect thereto is made by Newco on or prior to the date that is twelve (12) months after the Distribution.

Notwithstanding anything to the contrary herein, the Newco Assets shall not include (i) any Assets that are expressly provided by this Agreement or by any Ancillary Agreement (or the Schedules hereto or thereto) as Assets to be retained by or Transferred to any member of the Everest Group (including all Everest Retained Assets) or (ii) any Assets that are expressly listed on Schedule 1.1(102)(a).

(103) “Newco Balance Sheet” shall mean the unaudited interim combined balance sheet of the Newco Group, including the notes thereto, as of September 30, 2019.

(104) “Newco Business” shall have the meaning set forth in the Merger Agreement.

(105) “Newco Common Stock” shall mean the common stock of Newco, par value \$0.01 per share.

(106) “Newco Contribution” shall mean the Transfer of Assets from Everest to Newco and the Assumption of Liabilities by Newco from Everest pursuant to the Internal Restructuring or otherwise arising out of or resulting from the transactions contemplated by this Agreement.

(107) “Newco CSIs” shall have the meaning set forth in Section 2.9(e).

(108) “Newco Current Assets” shall mean the current Assets as of the Separation Effective Time of the Newco Business as described on Schedule 1.1(108), to the extent (1) reflected on the Newco Balance Sheet or (2) acquired subsequent to the date of the Newco Balance Sheet which, had they been so acquired on or before such date and owned as of such date, would have been reflected on the Newco Balance Sheet if prepared on a consistent basis, subject to any dispositions of any of such Assets subsequent to the date of the Newco Balance Sheet.

(109) “Newco Current Liabilities” shall mean the current Liabilities as of the Separation Effective Time of the Newco Business as described on Schedule 1.1(109), to the extent (1) reflected on the Newco Balance Sheet or (2) incurred subsequent to the date of the Newco Balance Sheet which, had they been so incurred on or before such date, would have been reflected on the Newco Balance Sheet if prepared on a consistent basis, subject to any discharge of any of such Liabilities subsequent to the date of the Newco Balance Sheet.

(110) “Newco Debt” shall mean, as of the applicable time, the aggregate amount of all outstanding consolidated Indebtedness of the Newco Group.

(111) “Newco Environmental Liabilities” shall mean the following:

- (i) any and all Hazardous Substance Damage Liabilities, Environmental Compliance Liabilities and Remediation Liabilities relating to events, conduct, conditions or occurrences from before, at or after the Separation Effective Time, at (A) the Newco Owned Real Property (excluding the Newco Group Landlord Property), (B) the Newco Leased Real Property (excluding Everest Group Landlord Property), and (C) the Newco Former Real Property. A non-exclusive list of currently known matters that fall within the scope of this clause is set forth on Schedule 1.1(111).
- (i);

(ii) any and all Remediation Liabilities relating to events, conduct, conditions or occurrences that arose at or before the Separation Effective Time at the Newco Group Landlord Property. A non-exclusive list of currently known matters that fall within the scope of this clause is set forth on Schedule 1.1(111)(ii);

(iii) subject to Section 4.2(b), any and all Hazardous Substance Damage Liabilities and Environmental Compliance Liabilities relating to or associated with events, conduct, conditions or occurrences that arose at or before the Separation Effective Time, at the Newco Group Landlord Property or the Everest Group Landlord Property, where the Liability Primarily Relates to the Newco Business. A non-exclusive list of currently known matters that fall within the scope of this clause is set forth on Schedule 1.1(111)(iii);

(iv) subject to Section 4.2(b), any and all Hazardous Substance Damage Liabilities relating to or associated with events, conduct, conditions or occurrences that arose at or before the Separation Effective Time, at the Everest Group Owned Real Property (excluding the Everest Group Landlord Property), where the Liability Primarily Relates to the Newco Business; provided that, for purposes of clarification, at the Everest Group Owned Real Property located at the site specified on Item 1 of Schedule 1.1(62)(a), all of the operations prior to the Separation Effective Time related to the Newco Business with any Hazardous Substance Damage Liabilities as described in this clause shall be Newco Environmental Liabilities. A non-exclusive list of currently known matters that fall within the scope of this clause is set forth on Schedule 1.1(111)(iv);

(v) subject to Section 4.2(b), any and all Off-Site Environmental Liabilities arising out of or in connection with or relating to disposal, recycling, reclamation, treatment or storage of Hazardous Substances, or the arrangement for the same, before the Separation Effective Time, where the Liability Primarily Relates to the Newco Business, provided that (A) with respect to the site specified on Item 2 of Schedule 1.1(62)(a), the Newco Group and the Everest Group shall be liable for their respective share of Liability based on their respective contribution of waste to the site, as set forth on Schedule 1.1(111)(v); and (B) with respect to the site specified on Item 3 of Schedule 1.1(62)(a), the Newco Group shall be responsible for the entire share of Liability allocated to the Newco Business and the Everest Retained Business; provided, further, that the Newco Group will receive the benefit of the indemnification owed to Nalco Energy by the party specified on Item 4 of Schedule 1.1(62)(a) with respect to the share of Liability attributed to Nalco Energy at this site. A non-exclusive list of currently known matters that fall within the scope of this clause is set forth on Schedule 1.1(111)(v); and

(vi) any agreement or operation of law pursuant to which the Newco Group or the Everest Group becomes liable for any of the foregoing, including as a successor-in-interest any agreements pursuant to which the Everest Group or any predecessor has retained Liability or provided an indemnification with respect to a counterparty, which Liability would fall within the scope of any of the foregoing provisions as a Newco Environmental Liability. A non-exclusive list of such agreements is set forth on Schedule 1.1(111)(vi).

(112) “Newco Former Businesses” shall mean (i) any Former Business that, at the time of sale, conveyance, assignment, transfer, disposition, divestiture (in whole or in part) or discontinuation, abandonment, completion or termination of the operations, activities or production thereof, was primarily operated or managed by, or primarily associated with, the Newco Business as then conducted and (ii) the Former Businesses set forth on Schedule 1.1(112).

(113) “Newco Former Real Property” shall mean any real property that at the time of sale, conveyance, assignment, transfer, disposition, divestiture (in whole or in part) or discontinuation, abandonment, completion or termination of the operations, activities or production thereof, was primarily owned, leased or operated in connection with the Newco Business or the Newco Former Business.

(114) “Newco Group” shall mean Newco and each Entity that is a direct or indirect Subsidiary of Newco as of immediately prior to the Effective Time (but after giving effect to the Internal Restructuring), and each Entity that becomes a Subsidiary of Newco after the Effective Time.

(115) “Newco Group Landlord Property” shall mean any real properties owned or leased by the Newco Group as to which the Everest Group will (i) lease pursuant to a lease or sublease (which in each case is subject to Section 2.7(a)), or (ii) occupy under other agreement (but not including the Transition Services Agreement) from a member of the Newco Group to conduct business operations after the Separation Effective Time. An exhaustive list of the Newco Group Landlord Property is set forth on Schedule 1.1(115).

(116) “Newco Indemnitees” shall mean each member of the Newco Group from and after the Separation Effective Time and each of their respective successors and permitted assigns.

(117) “Newco IP” shall have the meaning set forth in Section 1.1(102)(viii).

(118) Newco IT Assets” shall have the meaning set forth in Section 1.1(102)(xiii).

(119) “Newco Leased Real Property” shall have the meaning set forth in Section 1.1(102)(vi).

(120) “Newco Liabilities” shall mean:

(i) any and all Liabilities: (a) to the extent arising out of or resulting from the operation or conduct of the Newco Business, as conducted at any time prior to, at or after the Separation Effective Time (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent, distributor or representative (whether or not such act or failure to act is or was within such Person’s authority) of the Newco Group); (b) relating to the operation or conduct of any business (other than the Newco Business) conducted by any member of the Newco Group at any time after the Separation Effective Time (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent, distributor or representative (whether or not such act or failure to act is or was within such Person’s authority) of the Newco Group); or (c) to the extent arising out of or relating to any Newco Asset, whether arising before, at or after the Separation Effective Time;

(ii) the Liabilities set forth on Schedule 1.1(120)(ii);

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

(iv) the Newco Current Liabilities;

(v) any and all Liabilities relating to, arising out of, or resulting from, whether prior to, at or after the Separation Effective Time, any infringement, misappropriation or other violation of any Intellectual Property of any other Person related to the conduct of the Newco Business;

(vi) any and all Newco Environmental Liabilities;

(vii) any and all Liabilities relating to, arising out of or resulting from any Legal Proceeding related to the Newco Business, including the Legal Proceedings listed on Schedule 1.1(120)(vii); and

(viii) any and all Liabilities relating to, arising out of or resulting from any Indebtedness (as defined in the Merger Agreement) of the Newco Business or any member of the Newco Group or any Indebtedness (as defined in the Merger Agreement) secured by any of the Newco Assets.

Notwithstanding the foregoing, the Newco Liabilities shall not include any Liabilities that are expressly provided by this Agreement or by any Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be Assumed by any member of the Everest Group.

(121) “Newco Owned Real Property” shall have the meaning set forth in Section 1.1(102)(v).

(122) “Newco Regulatory Property” shall have the meaning set forth in Section 1.1(102)(x).

(123) “Newco Released Liabilities” shall have the meaning set forth in Section 4.1(a)(ii).

(124) “Know-How” shall have the meaning set forth in Section 1.1(88).

(125) “Notice of Objections” shall have the meaning set forth in Section 3.3(a).

(126) “Off-Site Environmental Liabilities” shall mean any and all Liabilities relating to, resulting from or arising out of the Release, threatened Release, transport, disposal, recycling, reclamation, treatment or storage of Hazardous Substances, or the arrangement for same, at the Off-Site Locations, including Remediation Liabilities, Environmental Compliance Liabilities and Hazardous Substance Damage Liabilities at such locations.

(127) “Other Party’s Auditors” shall have the meaning set forth in Section 5.2(a).

(128) “Off-Site Location” shall mean any third-party location that is not now nor has ever been owned, leased or operated by the Everest Group or the Newco Group or any of their respective predecessors. “Off-Site Location” does not include any property that is adjacent to or neighboring any property currently or formerly owned, leased or operated by the Everest Group or the Newco Group or any of their respective predecessors that has been impacted by Hazardous Substances Released from such properties.

(129) “Party” and “Parties” shall have the respective meanings set forth in the Preamble.

(130) “Patents” shall have the meaning set forth in Section 1.1(88).

(131) “Person” shall have the meaning set forth in the Merger Agreement.

(132) “Pre-Closing Policies” shall have the meaning set forth in Section 6.1(a).

(133) “Primarily Relates” when used in the definition of Newco Environmental Liability or Everest Retained Environmental Liability, means that more than fifty percent (50%) of the responsibility for a particular Liability, reasonably determined based on the source of a Liability, is attributable to the Newco Group or the Everest Group, as the case may be. Where a Liability has been caused by the actions or operations of both the Newco Group and the Everest Group, the determination of the Group that is Primarily Related shall be based on reasonably objective factors that are customarily relied upon with respect to such determinations, including: (i) relative amounts of Hazardous Substances that were transported to an Off-Site Location, where such Off-Site Location has become the source of an Off-Site Environmental Liability, or (ii) with respect to a Hazardous Substance Damage Liability, the Group responsible for the larger share (based on volume or mass, as appropriate) of the Release of or exposure to the Hazardous Substance or Hazardous Substances that are claimed to be the cause of the Liability and the relative toxicity of the Hazardous Substances Released by the respective Groups.

(134) “Privilege” shall have the meaning set forth in Section 5.7(a)(i).

(135) “Privileged Information” shall have the meaning set forth in Section 5.7(a)(i).

(136) “Proposed Closing Cash” shall have the meaning set forth in Section 3.3(a).

(137) “Proposed Closing Indebtedness” shall have the meaning set forth in Section 3.3(a).

(138) “Proposed Statement” shall have the meaning set forth in Section 3.3(a).

(139) “Proposed Tax Amount” shall have the meaning set forth in Section 3.3(a).

(140) “Record Date” shall mean the close of business on date determined by the Everest Board to be the record date for determining the holders of Everest Common Stock entitled to receive Newco Common Stock in the Distribution if it is effected by a Spin-Off or Clean-Up Spin-Off.

(141) “Record Holders” shall mean holders of Everest Common Stock on the Record Date.

(142) “Records” shall mean any Contracts, documents, books, records or files.

(143) “Regulatory Data” shall mean any and all regulatory data, including studies, data, raw data, efficacy data, reports, physical samples, reviews (including business risk reviews), opinions, registration dossiers, chemical safety reports, toxicity reports, information or other compliance requirements, including safety, risk and exposure assessments and modeling for product contamination or impurity issues, in written, electronic, computerized, digital, or other tangible or intangible media, actually submitted to, or maintained to support a submission to (whether submitted or not), a Governmental Body or a third party to seek, obtain or maintain a Consent from a Governmental Body or demonstrate regulatory compliance.

(144) “Regulatory Property” shall mean all Chemical Product or Substance Registrations and Regulatory Data related thereto.

(145) “Release” shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of Hazardous Substances through or in the air, soil, surface water, groundwater or property.

(146) “Remediation” shall mean all actions required to: (1) cleanup, remove, treat or remediate Hazardous Substances in the indoor or outdoor environment; (2) prevent the Release of Hazardous Substances (including by way of vapor intrusion) so that they do not migrate, endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (3) perform pre-remedial studies and investigations and post-remedial monitoring and care; or (4) respond to requests of any Governmental Body for information or documents in any way relating to cleanup, removal, treatment or remediation or potential cleanup, removal, treatment or remediation of Hazardous Substances in the indoor or outdoor environment.

(147) “Remediation Liabilities” shall mean any and all Liabilities relating to, resulting from or arising out of (i) Remediation of Hazardous Substances that are present or have been Released, or as to which there has been or is a threatened Release, at, in, on, under or migrating from or to any real property or facility, and (ii) natural resource damages associated with the presence or Release or threatened Release of Hazardous Substances in the environment.

(148) “Representatives” shall have the meaning set forth in the Merger Agreement.

(149) “Separation Effective Time” shall mean the time the Distribution occurs on the Distribution Date; provided, that for accounting purposes, the Distribution shall be deemed to have occurred at 12:01 a.m. Eastern Time on the Distribution Date, unless another time is selected by the Parties.

(150) “Separation Plan” shall mean the Separation Plan set forth as Exhibit D hereto, as amended, supplemented or modified by mutual agreement of the Parties; provided that (i) each of the Parties shall consider any amendments, supplements or modification proposed by the other Parties in good faith and (ii) Everest shall be permitted to amend, supplement or modify the Separation Plan with Athena’s written consent (such consent not to be unreasonably withheld, conditioned or delayed, it being understood that Athena, in making its determination, may take into account any material adverse effect on Athena or the Newco Business of the proposed amendment, supplement or modification); provided, however, that Everest shall be entitled to make (x) amendments, supplements or modifications that are not material and (y) any of the amendments, supplements or modifications set forth on Schedule 1.1(150), in each case, without any such written consent in its sole and absolute discretion.

(151) “Shared Contract” shall have the meaning set forth in Section 2.2(a).

(152) “Spin-Off” shall mean the consummation of the Distribution through a dividend of shares of Newco Common Stock to Everest stockholders on a pro rata basis.

(153) “Subsidiary” shall have the meaning set forth in the Merger Agreement.

(154) “Tax” or “Taxes” shall have the meaning set forth in the Merger Agreement.

(155) “Tax Amount” shall mean the aggregate amount paid prior to the Separation Effective Time to one or more applicable Taxing Authorities by any member of the Everest Group or the Newco Group with respect to Taxes allocated to Newco pursuant to Section 2.3 of the Tax Matters Agreement (which shall not exceed \$12,000,000).

(156) “Tax Contest” shall mean a pending or threatened audit, claim, suit, action, proposed assessment or other proceeding concerning Taxes.

(157) “Tax Matters Agreement” shall mean the Tax Matters Agreement by and among Everest, Newco and Athena, in the form attached hereto as Exhibit A.

(158) “Tax Return” shall have the meaning set forth in the Merger Agreement.

(159) “Third-Party Agreements” shall mean any agreements, arrangements, commitments or understandings between or among a Party (or any member of its Group) and any other Persons (other than a Party or any member of its respective Group) (it being understood that to the extent that the rights and obligations of the Parties and the members of their respective Groups under any such Contracts constitute Newco Assets or Newco Liabilities, or Everest Retained Assets or Everest Retained Liabilities, such Contracts shall be assigned or retained in accordance with Article II).

(160) “Third-Party Claim” shall have the meaning set forth in Section 4.4(b).

(161) “Third-Party Proceeds” shall have the meaning set forth in Section 4.7(a).

(162) “Trademarks” shall have the meaning set forth in Section 1.1(88).

(163) “Transfer” shall have the meaning set forth in Section 2.1(b); and the term “Transferred” shall have its correlative meaning.

(164) “Transition Services Agreement” shall mean the Transition Services Agreement by and between Everest and Newco, in the form attached hereto as Exhibit B.

(165) “Treasury Regulations” shall mean the regulations promulgated under the Code.

ARTICLE II

THE SEPARATION

Section 2.1 Restructuring; Transfer of Assets; Assumption of Liabilities.

(a) At or prior to the Separation Effective Time, to the extent not already completed, each of Everest and Newco shall complete the Internal Restructuring, including by taking the actions referred to in Sections 2.1(b) and 2.1(c) below, in accordance with the Separation Plan and the terms of this Agreement.

(b) At or prior to the Separation Effective Time (it being understood that some of such Transfers may occur following the Separation Effective Time in accordance with [Section 2.2](#) or [Section 2.5](#)), in connection with the Internal Restructuring, Everest shall, and shall cause the applicable Asset Transferors to, transfer, contribute, distribute, assign and/or convey or cause to be transferred, contributed, distributed, assigned and/or conveyed (“[Transfer](#)”) to (i) the respective Everest Asset Transferees, all of the applicable Asset Transferors’ right, title and interest in and to the Everest Retained Assets and (ii) Newco and/or the respective Newco Asset Transferees, all of its and the applicable Asset Transferors’ right, title and interest in and to the Newco Assets; and the applicable Everest Asset Transferees and Newco Asset Transferees shall accept from Everest and the applicable members of the Everest Group, all of Everest’s and the other members of the Everest Group’s respective direct or indirect rights, title and interest in and to the applicable Assets, including all of the outstanding shares of capital stock or other ownership interests.

(c) Except as otherwise specifically set forth in any Ancillary Agreement, in connection with the Internal Restructuring, from and after the Separation Effective Time, (i) Everest shall, or shall cause a member of the Everest Group to, accept, assume (or, as applicable, retain) and perform, discharge and fulfill, in accordance with their respective terms (“[Assume](#)”), all of the Everest Retained Liabilities and (ii) Newco shall, or shall cause a member of the Newco Group to, Assume all of the Newco Liabilities, in each case, regardless of (A) when or where such Liabilities arose or arise, (B) whether the facts upon which they are based occurred prior to, at or subsequent to the Separation Effective Time, (C) where or against whom such Liabilities are asserted or determined, (D) whether arising from or alleged to arise from negligence, gross negligence, recklessness, violation of Legal Requirement, fraud or misrepresentation by any member of the Everest Group or the Newco Group, as the case may be, or any of their past or present respective directors, officers, employees, agents, Subsidiaries or Affiliates and (E) which Entity is named in any Legal Proceeding associated with any Liability.

(d) In connection with the Internal Restructuring and in exchange for the Newco Contribution, at or prior to the Separation Effective Time, Newco shall (i) issue to Everest additional shares of Newco Common Stock such that the number of shares of Newco Common Stock (together with such shares previously held by Everest) shall be equal to the number of shares of Newco Common Stock determined by Everest to be appropriate to effect the Distribution, which shares as of the date of issuance shall represent all of the issued and outstanding shares of Newco Common Stock, and (ii) make the Cash Payment to Everest.

(e) It is understood and agreed by the Parties that certain of the Transfers referenced in [Section 2.1\(b\)](#) or Assumptions referenced in [Section 2.1\(c\)](#) have heretofore occurred and, as a result, in such cases no additional Transfers or Assumptions by any member of the Everest Group or the Newco Group, as applicable, shall be deemed to occur with respect thereto pursuant to this Agreement. Moreover, to the extent that any Subsidiary of Everest or Newco, as applicable, is liable for any Everest Retained Liability or any Newco Liability, respectively, by operation of law immediately following any Transfer in accordance with this Agreement or any Conveyancing and Assumption Instruments, there shall be no need for any other member of the Everest Group or the Newco Group, as applicable, to Assume such Liability in connection with the operation of [Section 2.1\(c\)](#) and, accordingly, no other member of such Group shall Assume such Liability in connection with [Section 2.1\(c\)](#). The Parties agree that, as of the Separation Effective Time, each of Newco and Everest, as applicable, shall be deemed to have acquired complete and sole beneficial ownership over all of the Assets, together with all rights, powers and privileges incident thereto (subject to [Section 2.2](#) and [Section 2.5\(a\)](#)), and shall be deemed to have Assumed in accordance with the terms of this Agreement all of the Liabilities, and all duties, obligations and responsibilities incident thereto, which such Party is entitled to acquire or required to assume pursuant to the terms of this Agreement. The Parties further agree that, except as otherwise specifically provided in the Separation Plan, no Assets or Liabilities of any Entity that is not a wholly owned Subsidiary shall be Transferred or Assumed pursuant to [Section 2.1](#), but instead any Transfer or Assumption with respect to such Entity shall be implemented by means of a Transfer of the equity interests in such Entity.

Section 2.2 Treatment of Shared Contracts. Without limiting the generality of the obligations set forth in Sections 2.1(a) and (b):

(a) Any Contract (or category of Contract, where applicable and described on Schedule 2.2(a)) that is listed on Schedule 2.2(a) (a “Shared Contract”) shall be assigned in part to the applicable member(s) of the applicable Group, if so assignable, or appropriately amended prior to, at or after the Separation Effective Time, so that each of Everest or Newco or the members of their respective Group as of the Separation Effective Time shall be entitled to the rights and benefits, and shall Assume the related portion of any Liabilities, inuring to their respective Businesses; provided, however, that (x) in no event shall any member of any such Group be required to assign (or amend) any Shared Contract in its entirety or to assign a portion of any Shared Contract which is not assignable (or cannot be amended to effect an assignment or other transfer) by its terms (including any terms imposing Consent requirements or conditions on an assignment where such Consents or conditions have not been obtained or fulfilled, subject to Section 2.5), and (y) if any Shared Contract cannot be so partially assigned by its terms or otherwise, cannot be amended or has not for any other reason been assigned or amended, or if such assignment or amendment would impair the benefit the parties thereto derive from such Shared Contract, (A) at the reasonable request of Everest or Newco (or the member of such Party’s Group) to which the benefit of such Shared Contract inures in part, Everest or Newco, as applicable, for which such Shared Contract is, as applicable, an Everest Retained Asset or Newco Asset shall, and shall cause each of its respective Subsidiaries to, for a period ending not later than six (6) months after the Separation Effective Time, take such other reasonable and permissible actions to cause such member of the Newco Group or the Everest Group, as the case may be, to receive the benefit of that portion of each Shared Contract that relates to the Newco Business or the Everest Retained Business, as the case may be (in each case, to the extent so related) as if such Shared Contract had been assigned (or amended to allow such assignment) to a member of the applicable Group pursuant to this Section 2.2 and to bear the burden of the corresponding Liabilities (including any Liabilities that may arise by reason of such arrangement) as if such Liabilities had been Assumed by a member of the applicable Group pursuant to this Section 2.2; provided that the Party for which such Shared Contract is an Everest Retained Asset or a Newco Asset, as applicable, shall be indemnified for all Indemnifiable Losses or other Liabilities arising out of any actions (or omissions to act) of such retaining Party taken at the direction of the other Party (or relevant member of its Group) in connection with and relating to such Shared Contract, as the case may be, and (B) the Party to which the benefit of such Shared Contract inures in part shall use commercially reasonable efforts to enter into a separate Contract pursuant to which it procures such rights and obligations as are necessary such that it no longer needs to avail itself of the arrangements provided pursuant to this Section 2.2(a); provided that, the Party for which such Shared Contract is, as applicable, an Everest Retained Asset or Newco Asset, and such Party’s applicable Subsidiaries shall not be liable for any actions or omissions taken in accordance with clause (y) of this Section 2.2(a).

(b) Each of Everest and Newco shall, and shall cause the members of its Group to, (i) treat for all Tax purposes the portion of each Shared Contract inuring to its respective Businesses as Assets owned by, and/or Liabilities of, as applicable, such Party as of the Separation Effective Time and (ii) neither report nor take any Tax position (on a Tax Return or otherwise) inconsistent with such treatment (unless required by applicable Legal Requirement or good faith resolution of a Tax Contest).

Section 2.3 Intercompany Accounts. Each Intercompany Account shall be satisfied, settled or otherwise terminated by the relevant members of the Everest Group and the Newco Group no later than the Separation Effective Time with no further liability of any member of either the Everest Group or the Newco Group in a manner determined by Everest.

Section 2.4 Intercompany Contracts. No member of the Everest Group or the Newco Group shall be liable to any member of the other Group based upon, arising out of or resulting from any Contract, arrangement, course of dealing or understanding between or among it and any member of the other Group existing at or prior to the Separation Effective Time (other than, pursuant to this Agreement, any Ancillary Agreement, any Continuing Arrangements, any Third-Party Agreements, as set forth in Section 4.1(b) or pursuant to any other Contract entered into in connection herewith or in order to consummate the transactions contemplated hereby or thereby) and Everest and Newco, on behalf of the themselves and each member of their Group, hereby terminates any and all Contracts, arrangements, courses of dealing or understandings between or among it or any member of its Group and any member of the other Group effective as of the Separation Effective Time (other than as set forth on Schedule 2.4, this Agreement, any Ancillary Agreement, any Continuing Arrangements, any Third-Party Agreements, as set forth in Section 4.1(b) or pursuant to any Contract entered into in connection herewith or in order to consummate the transactions contemplated hereby or thereby). With respect to the items set forth on Schedule 2.4, the Parties agree that any applicable covenants or other provisions specifically set forth on such Schedule 2.4 shall apply.

Section 2.5 Transfers of Assets Not Effected at or Prior to the Separation Effective Time; Transfers Deemed Effective as of the Separation Effective Time.

(a) To the extent that any Transfers contemplated by this Article II shall not have been consummated in accordance with the Separation Plan at or prior to the Separation Effective Time, Everest and Newco shall use commercially reasonable efforts to effect such Transfers as promptly following the Separation Effective Time as shall be practicable. Nothing herein shall be deemed to require or constitute the Transfer of any Assets which by their terms or operation of Legal Requirements cannot be Transferred; provided, however, that each of the Everest Group and the Newco Group shall cooperate and use their respective commercially reasonable efforts to seek to obtain, in accordance with applicable Legal Requirement, any necessary Consents or Governmental Authorizations for the Transfer of all Assets contemplated to be Transferred pursuant to this Article II to the fullest extent permitted by applicable Legal Requirements; provided, further, however, that no Party shall be obligated to pay any consideration (or otherwise incur any Liability or obligation) therefor to any third party from whom any such Consent or Governmental Authorization is required. In the event that any such Transfer of Assets has not been consummated, from and after the Separation Effective Time, the Party (or relevant member in its Group) retaining such Asset shall thereafter hold (or shall cause such member in its Group to hold) such Asset for the use and benefit of the Party entitled thereto (at the expense of the Party entitled thereto). In addition, the Party retaining such Asset (or relevant member of its Group) shall (or shall cause such member in its Group to) treat, insofar as reasonably possible and to the extent permitted by applicable Legal Requirements, such Asset in the ordinary course of business in accordance with past practice and take such other actions as may be reasonably requested by the Party to which such Asset is to be Transferred in order to place such Party, insofar as reasonably possible and to the extent permitted by applicable Legal Requirements, in the same position as if such Asset had been Transferred as contemplated hereby and so that all the benefits and burdens relating to such Asset, including possession, use, risk of loss, potential for income and gain, and dominion, control and command over such Asset, are to inure from and after the Separation Effective Time to the relevant member or members of the Everest Group or the Newco Group entitled to the receipt of such Asset. If and when the Consents, Governmental Authorizations and/or conditions, the absence or non-satisfaction of which caused the deferral of Transfer of any Asset pursuant to this Section 2.5(a), are obtained or satisfied, the Transfer of the applicable Asset shall, except as otherwise set forth in the Separation Plan, be effected without further consideration in accordance with and subject to the terms of this Agreement (including Section 2.1) and/or the applicable Ancillary Agreement. The Parties' obligations under this Section 2.5(a) shall terminate (i) on the date that is 18 months after the Separation Effective Time with respect to any Assets other than Contracts, and (ii) with respect to Contracts, the date that the applicable Contract expires or terminates in accordance with its terms (as in effect at the Separation Effective Time).

(b) In retaining any Asset due to the deferral of the Transfer of such Asset pursuant to Section 2.5(a), Everest or Newco (or relevant member of its Group) shall (i) not be obligated, in connection with the foregoing, to expend any money unless the necessary funds are advanced, or agreed in advance to be reimbursed by the Party (or relevant member of its Group) entitled to such Asset, other than reasonable attorneys' fees and recording or similar or other incidental fees, all of which shall be promptly reimbursed by the Party (or relevant member of its Group) entitled to such Asset and (ii) be indemnified for all Indemnifiable Losses or other Liabilities arising out of, in connection with and relating to such retained Asset.

(c) With respect to Assets described in Section 2.5(a), each of Everest and Newco shall, and shall cause the members of its respective Group to, (i) treat for all Tax purposes the deferred Assets as assets having been Transferred to and owned by the Party (or applicable member of its Group) entitled to such Assets as of the Separation Effective Time and (ii) neither report nor take any Tax position (on a Tax Return or otherwise) inconsistent with such treatment (unless required by a change in applicable Legal Requirements or good faith resolution of a Tax Contest).

Section 2.6 Conveyancing and Assumption Instruments. In connection with, and in furtherance of, the Transfers of Assets and the Assumptions of Liabilities contemplated by this Agreement, the Parties shall execute or cause to be executed, on or after the date hereof by the appropriate entities to the extent not executed prior to the date hereof, any Conveyancing and Assumption Instruments reasonably necessary to evidence the valid Transfer to the applicable Party or member of such Party's Group of all right, title and interest in and to its Transferred Assets and the valid and effective Assumption by the applicable Party of Liabilities it has Assumed for Transfers and Assumptions to be effected pursuant to applicable Legal Requirements, in such form as reasonably determined by Everest, including the Transfer of real property by deeds as may be appropriate and in form and substance as may be required by the jurisdiction in which the real property is located. All Conveyancing and Assumption Instruments shall be prepared, executed and delivered in a manner reasonably determined by Everest. The Conveyancing and Assumption Instruments shall not contain (i) any indemnities that conflict with this Agreement or (ii) any representations or warranties and, to the extent that any provision of a Conveyancing and Assumption Instrument does conflict with any provision of this Agreement, this Agreement shall govern and control. The Transfer of capital stock shall be effected by means of executed stock powers and notation on the record books of the corporation or other legal entities involved, or by such other means as may be required in any non-U.S. jurisdiction to Transfer title to equity and, only to the extent required by applicable Legal Requirement, by notation on public registries.

Section 2.7 Ancillary Agreements.

(a) Concurrently with the execution and delivery of this Agreement, the Parties have executed and delivered the Employee Matters Agreement. At or prior to the Separation Effective Time, each of Everest, Newco and Athena shall execute and deliver the other Ancillary Agreements (in each case to the extent to which it is a party), to be effective at the Separation Effective Time or the Effective Time, as applicable.

(b) As promptly as reasonably practicable after the date of this Agreement, the Parties shall (i) negotiate in good faith to agree upon definitive terms of certain arrangements described on Schedule 2.7(b)(i) in substantial conformance with the arrangements described on such schedule together with such other terms or conditions reasonably agreed upon by the Parties, (ii) negotiate in good faith to agree upon terms of certain leasing, services and supply arrangements described on Schedule 2.7(b)(ii), (iii) negotiate in good faith to implement certain arrangements described on Schedule 2.7(b)(iii) and (iv) negotiate in good faith to implement a mutually satisfactory distributorship or other business arrangement between the Parties to facilitate the continued conduct, transition or wind-down of the Newco Business and/or the Everest Retained Business in the jurisdictions described on Schedule 2.7(b)(iv).

Section 2.8 Further Assurances.

(a) In addition to and without limiting the actions specifically provided for elsewhere in this Agreement and subject to the limitations expressly set forth in this Agreement, including Section 2.5, each of the Parties shall cooperate with each other in good faith and use (and shall cause its respective Group to use) commercially reasonable efforts, at and after the Separation Effective Time, to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements.

(b) Without limiting the foregoing, at and after the Separation Effective Time, each Party shall cooperate with the other Parties, and without any further consideration, but at the expense of the requesting Party (except as provided in Section 2.5(b)) from and after the Separation Effective Time, to execute and deliver, or use commercially reasonable efforts to cause to be executed and delivered, all instruments and to take all such other actions as such Party may reasonably be requested to take by any other Party from time to time, consistent with the terms of this Agreement and the Ancillary Agreements, in order to effectuate the provisions and purposes of this Agreement and the Ancillary Agreements and the Transfers of the applicable Assets and the assignment and Assumption of the applicable Liabilities and the other transactions contemplated hereby and thereby.

(c) Without limiting the foregoing, in the event that after the Separation Effective Time any Party (or member of such Party's Group) receives any Assets (including the receipt of payments made pursuant to Contracts and proceeds from accounts receivable with respect to such Asset) to which another Party is entitled pursuant to this Agreement, such Party agrees to promptly Transfer, or cause to be Transferred such Asset to such other Party so entitled thereto (or member of such other Party's Group as designated by such other Party) at such other Party's expense. Prior to any such Transfer, such Asset shall be held in accordance with the provisions of Section 2.5.

(d) After the Separation Effective Time, each Party (or any member of its Group) may receive mail, packages, electronic mail and any other written communications properly belonging to another Party (or any member of its Group). Accordingly, at all times after the Separation Effective Time, each Party is hereby authorized to receive and, if reasonably necessary to identify the proper recipient in accordance with this Section 2.8(d), open all mail, packages, electronic mail and any other written communications received by such Party that belongs to such other Party, and to the extent that they do not relate to the business of the receiving Party, the receiving Party shall promptly deliver such mail, packages, electronic mail or any other written communications (or, in case the same also relates to the business of the receiving Party or another Party, copies thereof) to such other Party as provided for in Section 8.5. The provisions of this Section 2.8(d) are not intended to, and shall not be deemed to, constitute an authorization by any Party to permit the other to accept service of process on its behalf and no Party is or shall be deemed to be the agent of any other Party for service of process purposes.

Section 2.9 Guarantees; Credit Support Instruments.

(a) Except as otherwise specified in any Ancillary Agreement, at or prior to the Separation Effective Time or as soon as reasonably practicable thereafter, (i) Everest shall (with the reasonable cooperation of the applicable member of the Newco Group) use reasonable best efforts to have each member of the Newco Group removed as guarantor of or obligor for any Everest Retained Liability to the fullest extent permitted by applicable Legal Requirement, including in respect of those guarantees set forth on Schedule 2.9(a)(i), to the extent that they relate to Everest Retained Liabilities and (ii) Newco shall (with the reasonable cooperation of the applicable member of the Everest Group) use reasonable best efforts to have each member of the Everest Group removed as guarantor of or obligor for any Newco Liability, to the fullest extent permitted by applicable Legal Requirement, including in respect of those guarantees set forth on Schedule 2.9(a)(ii), to the extent that they relate to Newco Liabilities; provided, however, that no Party shall be obligated to pay any consideration (or otherwise incur any Liability or obligation) therefor to any third party from whom any such Guaranty Release is requested (unless such Party is fully reimbursed or otherwise made whole by the requesting Party).

(b) Without limitation of Section 2.9(a), at or prior to the Separation Effective Time, to the extent required to obtain a release from a guaranty (a "Guaranty Release"):

(i) of any member of the Everest Group, Newco shall execute a guaranty agreement substantially in the form of the existing guaranty or such other form as is reasonably agreed to by the relevant parties to such guaranty agreement, except to the extent that such existing guaranty contains representations, covenants or other terms or provisions either (A) with which Newco would be reasonably unable to comply or (B) which would be reasonably expected to be breached; and

(ii) of any member of the Newco Group, Everest shall execute a guaranty agreement substantially in the form of the existing guaranty or such other form as is reasonably agreed to by the relevant parties to such guaranty agreement, except to the extent that such existing guaranty contains representations, covenants or other terms or provisions either (A) with which Everest would be reasonably unable to comply or (B) which would be reasonably expected to be breached.

(c) If Everest or Newco is unable to obtain, or to cause to be obtained, any such required removal as set forth in clauses (a) and (b) of this Section 2.9, (i) Everest, to the extent a member of the Everest Group, has assumed the underlying Liability with respect to such guaranty or Newco, to the extent a member of the Newco Group, has assumed the underlying Liability with respect to such guaranty, as the case may be, shall indemnify and hold harmless the guarantor or obligor from and against any Indemnifiable Loss arising from or relating thereto (in accordance with the provisions of Article IV) and shall, or shall cause one of its Subsidiaries, 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) each of Everest and Newco, on behalf of themselves and the members of their respective Group, agree not to renew or extend the term of, increase its obligations under, or Transfer to a third party, any loan, guaranty, lease, contract or other obligation for which the other Party or member of such Party's Group is or may be liable without the prior written consent of such other Party, unless all obligations of such other Party and the other members of such Party's Group with respect thereto are thereupon terminated by documentation reasonably satisfactory in form and substance to such Party.

(d) Everest and Newco shall cooperate and Newco shall use reasonable best efforts to replace all Credit Support Instruments issued by Everest or other members of the Everest Group on behalf of or in favor of any member of the Newco Group or the Newco Business (the "Everest CSIs") as promptly as reasonably practicable with Credit Support Instruments from Newco or a member of the Newco Group as of the Separation Effective Time. With respect to any Everest CSIs that remain outstanding after the Separation Effective Time, (i) Newco shall, and shall cause the members of the Newco Group to, jointly and severally indemnify and hold harmless the Everest Indemnitees for any Liabilities arising from or relating to such Credit Support Instruments, including any fees in connection with the issuance and maintenance thereof and any funds drawn by (or for the benefit of), or disbursements made to, the beneficiaries of such Everest CSIs in accordance with the terms thereof; (ii) Newco shall reimburse the applicable member of the Everest Group for all reasonable and documented out-of-pocket expenses incurred by it arising out of or related to any such Credit Support Instrument; and (iii) without the prior written consent of Everest, Newco shall not, and shall not permit any member of the Newco Group to, enter into, renew or extend the term of, increase its obligations under, or Transfer to a third party, any loan, lease, Contract or other obligation in connection with which Everest or any member of the Everest Group has issued any Credit Support Instruments which remain outstanding. Neither Everest nor any member of the Everest Group will have any obligation to renew any Credit Support Instruments issued on behalf of or in favor of any member of the Newco Group or the Newco Business after the expiration of any such Credit Support Instrument.

(e) Everest and Newco shall cooperate and Everest shall use reasonable best efforts to replace all Credit Support Instruments issued by Newco or other members of the Newco Group on behalf of or in favor of any member of the Everest Group or the Everest Retained Business (the "Newco CSIs") as promptly as reasonably practicable with Credit Support Instruments from Everest or a member of the Everest Group as of the Separation Effective Time. With respect to any Newco CSIs that remain outstanding after the Separation Effective Time, (i) Everest shall, and shall cause the members of the Everest Group to, jointly and severally indemnify and hold harmless the Newco Indemnitees for any Liabilities arising from or relating to such Credit Support Instruments, including any fees in connection with the issuance and maintenance thereof and any funds drawn by (or for the benefit of), or disbursements made to, the beneficiaries of such Newco CSIs in accordance with the terms thereof; (ii) Everest shall reimburse the applicable member of the Newco Group for all reasonable and documented out-of-pocket expenses incurred by it arising out of or related to any such Credit Support Instrument; and (iii) without the prior written consent of Newco, Everest shall not, and shall not permit any member of the Everest Group to, enter into, renew or extend the term of, increase its obligations under, or Transfer to a third party, any loan, lease, Contract or other obligation in connection with which Newco or any member of the Newco Group has issued any Credit Support Instruments which remain outstanding. Neither Newco nor any member of the Newco Group will have any obligation to renew any Credit Support Instruments issued on behalf of or in favor of any member of the Everest Group or the Everest Retained Business after the expiration of any such Credit Support Instrument.

Section 2.10 Athena Guarantee. Following the Closing, Athena unconditionally, absolutely and irrevocably guarantees to Everest the prompt payment, in full, when due, of any payment obligations of all members of the Newco Group under this Agreement, the Merger Agreement and the Ancillary Agreements after the Closing and the prompt performance, when due, of all other obligations of any member of the Newco Group under this Agreement, the Merger Agreement and the Ancillary Agreements after the Closing. Athena's obligations to Everest under this Section 2.10 are referred to as the "Guaranteed Obligations." The Guaranteed Obligations are absolute and unconditional, irrespective of, and Athena hereby expressly waives any defense to its obligations under this Section 2.10, any circumstance whatsoever which might otherwise constitute a legal or equitable defense available to, or discharge of, a surety or a guarantor, including any right to require or claim that Everest seek recovery directly from any member of the Newco Group in respect of the Guaranteed Obligations.

Section 2.11 Disclaimer of Representations and Warranties.

(a) EACH OF THE PARTIES (ON BEHALF OF ITSELF AND EACH MEMBER OF ITS GROUP) UNDERSTANDS AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, IN THE MERGER AGREEMENT OR IN ANY ANCILLARY AGREEMENT, NO PARTY TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT, ANY ANCILLARY AGREEMENTS OR OTHERWISE, IS REPRESENTING OR WARRANTING IN ANY WAY, AND HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, AS TO THE ASSETS, BUSINESSES OR LIABILITIES CONTRIBUTED, TRANSFERRED OR ASSUMED AS CONTEMPLATED HEREBY OR THEREBY, AS TO ANY CONSENTS OR GOVERNMENTAL APPROVALS REQUIRED IN CONNECTION HEREWITH OR THEREWITH, AS TO THE VALUE OR FREEDOM FROM ANY SECURITY INTERESTS OR ENCUMBRANCES OF, AS TO NON-INFRINGEMENT, VALIDITY OR ENFORCEABILITY OR ANY OTHER MATTER CONCERNING, ANY ASSETS OR BUSINESS OF SUCH PARTY OR ITS GROUP, OR AS TO THE ABSENCE OF ANY DEFENSES OR RIGHT OF SETOFF OR FREEDOM FROM COUNTERCLAIM WITH RESPECT TO ANY ACTION OR OTHER ASSET, INCLUDING ACCOUNTS RECEIVABLE, OF ANY PARTY OR ITS GROUP, OR AS TO THE LEGAL SUFFICIENCY OF ANY CONTRIBUTION, ASSIGNMENT, DOCUMENT, CERTIFICATE OR INSTRUMENT DELIVERED HEREUNDER TO CONVEY TITLE TO ANY ASSET OR THING OF VALUE UPON THE EXECUTION, DELIVERY AND FILING HEREOF OR THEREOF. EXCEPT AS MAY EXPRESSLY BE SET FORTH HEREIN OR IN THE MERGER AGREEMENT OR ANY ANCILLARY AGREEMENT, ALL SUCH ASSETS ARE BEING TRANSFERRED ON AN "AS IS, WHERE IS" BASIS AND THE RESPECTIVE TRANSFEREES SHALL BEAR THE ECONOMIC AND LEGAL RISKS THAT (I) ANY CONVEYANCE SHALL PROVE TO BE INSUFFICIENT TO VEST IN THE TRANSFEREE GOOD TITLE, FREE AND CLEAR OF ANY SECURITY INTEREST OR OTHER ENCUMBRANCE AND (II) ANY NECESSARY CONSENTS OR GOVERNMENTAL APPROVALS ARE NOT OBTAINED OR THAT ANY LEGAL REQUIREMENTS OR JUDGMENTS ARE NOT COMPLIED WITH.

(b) Each of the Parties (on behalf of itself and each member of its Group) further understands and agrees that if the disclaimer of express or implied representations and warranties contained in Section 2.11(a) is held unenforceable or is unavailable for any reason under the Legal Requirements of any jurisdiction or if, under the Legal Requirements of a jurisdiction, both Everest or any member of the Everest Group, on the one hand, and Newco or any member of the Newco Group, on the other hand, are jointly or severally liable for any Everest Liability or any Newco Liability, respectively, then the Parties intend that, notwithstanding any provision to the contrary under the Legal Requirements of such jurisdictions, the provisions of this Agreement and the Ancillary Agreements (including any disclaimer of representations and warranties, allocation of Liabilities among the Parties and their respective Groups, releases and indemnification of Liabilities) shall prevail for any and all purposes among the Parties and their respective Groups.

(c) Everest hereby waives compliance by itself and each and every member of the Everest Group with the requirements and provisions of any “bulk-sale” or “bulk transfer” Legal Requirements of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the Everest Retained Assets to Everest or any member of the Everest Group.

(d) Newco hereby waives compliance by itself and each and every member of the Newco Group with the requirements and provisions of any “bulk-sale” or “bulk transfer” Legal Requirements of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the Newco Assets to Newco or any member of the Newco Group.

Section 2.12 Cash Management. From the date of this Agreement until the Cut-Off Time, Everest and its Subsidiaries shall be entitled to use, retain or otherwise dispose of all Cash Equivalents generated by the Newco Business and the Newco Assets in accordance with Everest’s cash management systems. Subject to any adjustment in accordance with Section 3.3, all Cash Equivalents held by any member of the Newco Group as of the Cut-Off Time shall be a Newco Asset and all Cash Equivalents held by any member of the Everest Group as of the Cut-Off Time shall be an Everest Retained Asset. Everest shall cause the Newco Group to have at least \$45,000,000 in Cash Equivalents as of immediately prior to the Separation Effective Time. Everest shall provide Athena with an estimate of the estimated Cash Equivalents of the Newco Group as of the Cut-Off Time at least ten (10) Business Days prior to the Separation Effective Time.

Section 2.13 Non-Compete.

(a)

(i) For a period of three (3) years following the Separation Effective Time, without the prior written consent of Everest, Athena agrees not to, and not to permit any of its Group to, engage in, manage or operate, anywhere in the world, or own an equity interest in any Person who engages in, manages or operates anywhere in the world, in any business that directly competes with the Athena Restricted Business (a “Competing Athena Business”); provided, however, that nothing herein shall preclude Athena or any of its Group from:

(1) acquiring and, after such acquisition, owning an interest in any Person (or its successor) that is engaged in a Competing Athena Business if such Competing Athena Business generated less than five percent (5%) of such Person’s consolidated annual revenues in the last completed fiscal year of such Person;

(2) owning ten percent (10%) or less of the outstanding securities of any Person whose shares are listed on a stock exchange; provided, that such shares are held for passive investment purposes only and none of the Athena Companies exercise control of (or otherwise manage, operate or engage in the Competing Athena Business of) such Person;

(3) acquiring and, after such acquisition, owning an interest in any Person (or its successor) that is (directly or indirectly through controlled Affiliates) engaged in a Competing Athena Business if (A) such Competing Athena Business generated five percent (5%) or more (but in no event greater than twenty percent (20%)) of such Person's consolidated annual revenues in the last completed fiscal year of such Person and (B) Athena, within one (1) year after the consummation of such acquisition, discontinues, or enters into a definitive agreement to cause the divestiture of, a sufficient portion of the Competing Athena Business of such Person such that the restrictions set forth in this Section 2.13(a)(i) would not operate to restrict such ownership;

(4) exercising its rights or performing or complying with its obligations under or as contemplated by this Agreement or any of the Transaction Documents; or

(5) entering into or participating in a joint venture, partnership or other strategic business relationship with any Person engaged in a Competing Athena Business, if such joint venture, partnership or other strategic business relationship does not engage in the Competing Athena Business.

(ii) The parties acknowledge that the restrictions contained in this Section 2.13(a) are reasonable in scope and duration. The parties further acknowledge that the restrictions contained in this Section 2.13(a) are necessary to protect Everest's significant interest in the Athena Restricted Business, including its goodwill. It is the desire and intent of the parties that the provisions of this Section 2.13(a) be enforced to the fullest extent permissible under applicable Legal Requirements. If any covenant in this Section 2.13(a) is found to be invalid, void or unenforceable in any situation in any jurisdiction by a final determination of a Governmental Body of competent jurisdiction, the parties agree that: (i) such determination will not affect the validity or enforceability of (A) the offending term or provision in any other situation or in any other jurisdiction or (B) the remaining terms and provisions of this Section 2.13(a) in any situation in any jurisdiction; (ii) the offending term or provision will be reformed rather than voided and the Governmental Body making such determination will have the power to reduce the scope, duration or geographical area of any invalid or unenforceable term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable provision, in order to render the restrictive covenants set forth in this Section 2.13(a) enforceable to the fullest extent permitted by applicable Legal Requirements; and (iii) the restrictive covenants set forth in this Section 2.13(a) will be enforceable as so modified.

For purposes hereof, “Athena Restricted Business” means the businesses of manufacturing, distribution and sale of the products described in the terms “Water” and “Downstream Field” as defined in the Intellectual Property Matters Agreement.

(b)

(i) For a period of three (3) years following the Separation Effective Time, without the prior written consent of Athena, Everest agrees not to, and not to permit any of its Group to, engage in, manage or operate, anywhere in the world, or own an equity interest in any Person who engages in, manages or operates anywhere in the world, in any business that directly competes with the Everest Restricted Business (a “Competing Everest Business”); provided, however, that nothing herein shall preclude Everest or any of its Group from:

(1) acquiring and, after such acquisition, owning an interest in any Person (or its successor) that is engaged in a Competing Everest Business if such Competing Everest Business generated less than five percent (5%) of such Person’s consolidated annual revenues in the last completed fiscal year of such Person;

(2) owning ten percent (10%) or less of the outstanding securities of any Person whose shares are listed on a stock exchange; provided, that such shares are held for passive investment purposes only and none of the Everest Group exercise control of (or otherwise manage, operate or engage in the Competing Everest Business of) such Person;

(3) acquiring and, after such acquisition, owning an interest in any Person (or its successor) that is (directly or indirectly through controlled Affiliates) engaged in a Competing Everest Business if (A) such Competing Everest Business generated five percent (5%) or more (but in no event greater than twenty percent (20%)) of such Person’s consolidated annual revenues in the last completed fiscal year of such Person and (B) Everest, within one (1) year after the consummation of such acquisition, discontinues, or enters into a definitive agreement to cause the divestiture of, a sufficient portion of the Competing Everest Business of such Person such that the restrictions set forth in this Section 2.13(b)(i) would not operate to restrict such ownership;

(4) exercising its rights or performing or complying with its obligations under or as contemplated by this Agreement or any of the Transaction Documents; or

(5) entering into or participating in a joint venture, partnership or other strategic business relationship with any Person engaged in a Competing Everest Business, if such joint venture, partnership or other strategic business relationship does not engage in the Competing Everest Business.

(ii) The parties acknowledge that the restrictions contained in this Section 2.13(b) are reasonable in scope and duration. The parties further acknowledge that the restrictions contained in this Section 2.13(b) are necessary to protect Athena's significant interest in the Everest Restricted Business, including its goodwill. It is the desire and intent of the parties that the provisions of this Section 2.13(b) be enforced to the fullest extent permissible under applicable Legal Requirements. If any covenant in this Section 2.13(b) is found to be invalid, void or unenforceable in any situation in any jurisdiction by a final determination of a Governmental Body of competent jurisdiction, the parties agree that: (i) such determination will not affect the validity or enforceability of (A) the offending term or provision in any other situation or in any other jurisdiction or (B) the remaining terms and provisions of this Section 2.13(b) in any situation in any jurisdiction; (ii) the offending term or provision will be reformed rather than voided and the Governmental Body making such determination will have the power to reduce the scope, duration or geographical area of any invalid or unenforceable term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable provision, in order to render the restrictive covenants set forth in this Section 2.13(b) enforceable to the fullest extent permitted by applicable Legal Requirements; and (iii) the restrictive covenants set forth in this Section 2.13(b) will be enforceable as so modified.

For purposes hereof, "Everest Restricted Business" means the businesses of manufacturing, distribution and sale of the products described in the term "Upstream Field" as defined in the Intellectual Property Matters Agreement.

(c) No Restrictions on Athena Business. The Parties acknowledge and agree that, notwithstanding anything in this Agreement or otherwise, nothing in this Agreement (including this Section 2.13) prohibits or restricts Athena or any of its Affiliates (other than Newco or its Subsidiaries), on or after the Effective Time, in any manner whatsoever, from engaging in any business of Athena or any such Affiliate in any area or market with respect to any equipment (such as, for example and without limitation, pumps, valves, filters, seals, bearings, rotating and reciprocating machinery and components) and related after-market services, digital hardware, software, analytics and services, including the development, manufacture, use, sale, offering for sale, marketing, promotion, distribution, importation, exportation, maintenance, commercialization and exploitation of any of the foregoing.

ARTICLE III

THE DISTRIBUTION

Section 3.1 Form of Distribution.

(a) Everest shall elect, in its sole discretion, to effect the Distribution in the form of either (i) the Spin-Off or (ii) the Exchange Offer, including any Clean-Up Spin-Off. Everest shall provide written notice to Athena of the form of the Distribution no later than forty-five (45) days from the date of this Agreement.

(b) If Everest elects to effect the Distribution in the form of the Spin-Off, the Everest Board (or a committee of the Everest Board acting pursuant to delegated authority), in accordance with all applicable Legal Requirements, shall set the Record Date and the Distribution Date, and Everest shall establish appropriate procedures in connection with the Distribution, and shall declare, make and otherwise effectuate the Distribution, in accordance with all applicable Legal Requirements. In connection with the Spin-Off, all shares of Newco Common Stock held by Everest as of immediately prior to the Separation Effective Time will be distributed to Record Holders in the manner determined by Everest.

(c) If Everest elects to effect the Distribution in the form of the Exchange Offer, Everest shall determine the terms and conditions of the Exchange Offer, including the number of shares of Newco Common Stock that will be offered for each validly tendered share of Everest Common Stock, the period during which the Exchange Offer will remain open, the procedures for the tender and exchange of shares and all other terms and conditions of the Exchange Offer, which terms and conditions shall comply with all applicable Legal Requirements. In the event Everest's stockholders subscribe for less than all of the Newco Common Stock in the Exchange Offer, Everest shall consummate the Clean-Up Spin-Off on the Distribution Date immediately following consummation of the Exchange Offer, and the Record Date for the Clean-Up Spin-Off shall be set as of such date in the same manner as provided in Section 3.1(a). The terms and conditions of any Clean-Up Spin-Off shall be as determined by Everest (provided that any shares of Newco Common Stock that are not subscribed for in the Exchange Offer must be distributed to Everest's stockholders in the Clean-Up Spin-Off) and shall comply with all applicable Legal Requirements.

(d) Upon the consummation of the Distribution, Everest will deliver to the transfer agent or Exchange Agent, as applicable, a book-entry authorization representing the shares of Newco Common Stock being distributed in the Distribution for the account of the Everest stockholders that are entitled thereto. The transfer agent or Exchange Agent will hold such book-entry shares for the account of the Everest stockholders pending the Merger (as defined in the Merger Agreement), as provided in Section 1.6 of the Merger Agreement. Immediately after the time of the Distribution and prior to the Effective Time, the shares of Newco Common Stock will not be transferable and the transfer agent for the shares of Newco Common Stock will not transfer any shares of Newco Common Stock. The Distribution will be deemed to be effective upon written authorization from Everest to the transfer agent or the Exchange Agent.

(e) The Parties shall keep each other reasonably informed with respect to the transactions contemplated by this Section 3.1 in order to coordinate the timing of such transactions to the extent reasonably practicable and desirable and otherwise consistent with the other provisions of this Section 3.1.

(f) Notwithstanding anything to the contrary in this Agreement, without any further action required by any Party, effective as of immediately prior to the Effective Time, Section 3.1(b) through Section 3.1(e) shall automatically terminate and be of no further force and the Parties shall cease to have any rights or obligations thereunder.

(g) Nothing under this Section 3.1 shall be deemed to limit or affect the Parties' rights and obligations under the Merger Agreement.

Section 3.2 Conditions to the Distribution. The obligations of Everest to effect the Distribution pursuant to this Agreement shall be subject to the fulfillment, or waiver, at or prior to the Separation Effective Time of each the following conditions:

- (a) the Newco Contribution (including the execution and delivery of the Ancillary Agreements) shall have been consummated;
- (b) Everest shall have received the Cash Payment from Newco; and
- (c) each of the conditions in Articles VI and VII of the Merger Agreement shall have been satisfied or waived (other than those conditions that by their nature are to be satisfied contemporaneously with the Distribution and/or the Merger; provided that such conditions are capable of being satisfied at such time).

Section 3.3 Net Debt Adjustment.

(a) Promptly following the Distribution Date, but in no event later than ninety (90) days thereafter, Newco shall, at its expense, prepare and submit to Everest a proposed statement (the "Proposed Statement") setting forth Newco's calculation of (i) the Cash Equivalents of the Newco Group and (ii) the Newco Debt, in each case, as of 11:59 p.m. on the day prior to the Distribution Date (but giving effect (regardless of whether occurring prior to the Cut-Off Time) to the receipt of the Newco Financing and the payment of the Cash Payment) (the "Cut-Off Time," and such calculation of the Cash Equivalents of the Newco Group and the Newco Debt, the "Proposed Closing Cash" and the "Proposed Closing Indebtedness", respectively) and (iii) the Tax Amount as of immediately prior to the Separation Effective Time (the "Proposed Tax Amount"). In the event Everest disputes any matter set forth in the Proposed Statement, Everest shall notify Newco in writing of its objections within forty-five (45) days after receipt of the Proposed Statement, and shall set forth, in writing and in reasonable detail, the reasons for Everest's objections (the "Notice of Objections"); provided, however, that such forty-five (45) day period shall be tolled for any period during which Newco shall fail to make available to Everest all books, records, documents and work papers required to be made available to Everest under Section 3.3(g). If Everest fails to deliver such Notice of Objections within such time, Everest shall be deemed to have accepted the Proposed Statement and the matters set forth therein. To the extent Everest does not object within the time period contemplated by this Section 3.3 to a matter set forth in the Proposed Statement, Everest shall be deemed to have accepted Newco's calculation in respect of the matter and the matter shall not be considered to be in dispute. Everest and Newco shall endeavor to resolve any disputed matters within thirty (30) days after Newco's receipt of any Notice of Objections. If Everest and Newco are unable to resolve the disputed matters for any reason, Everest and Newco jointly shall, as soon as practicable and in any event within fifteen (15) days after the expiration of such thirty (30) day period, engage the Independent Accounting Firm to resolve the matters in dispute in a manner consistent with this Section 3.3(a). Any dispute with respect to the scope of the matters to be resolved by the Independent Accounting Firm pursuant to this Section 3.3(a) shall be resolved in accordance with Article VII and Section 8.14 not by the Independent Accounting Firm. Promptly after joint engagement of the Independent Accounting Firm, Everest and Newco shall provide the Independent Accounting Firm with a copy of this Agreement, the Proposed Statement and the Notice of Objections. Within fifteen (15) days of the engagement of the Independent Accounting Firm for the purposes of this Section 3.3, each of Everest and Newco shall deliver to the Independent Accounting Firm and to each other simultaneously a written submission of its final position with respect to each of the matters in dispute (which position may be different from the position set forth in or contemplated by the Proposed Statement or the Notice of Objections, but may not be outside of the range of the Proposed Statement or the Notice of Objections, as applicable).

The Independent Accounting Firm may request additional information solely to the extent necessary to resolve the matter in dispute from either such Party, but absent such a request no Party may make (nor permit any of its Representatives to make) any additional submission to the Independent Accounting Firm or otherwise communicate with the Independent Accounting Firm, and in no event shall a Party (i) communicate (or permit any of its Representatives to communicate) with the Independent Accounting Firm without providing the other Party with a reasonable opportunity to participate in such communication or (ii) make (or permit any of its Representatives to make) a written submission to the Independent Accounting Firm unless a copy of such submission is simultaneously provided to the other Party. The Independent Accounting Firm shall have thirty (30) days following submission of the Parties' rebuttals to review the documents provided to it pursuant to this Section 3.3(a) and to deliver its written determination, acting as an arbitrator, with respect to each of the items in dispute submitted to it for resolution, as well as its determination of the Newco Debt and the Cash Equivalents of the Newco Group as described above, as well as the Tax Amount. The Independent Accounting Firm shall resolve the differences regarding the Party's submissions based solely on the information provided to the Independent Accounting Firm by the Parties pursuant to the terms of this Agreement and not by independent review, and the Independent Accounting Firm may not assign a value for Newco Debt, the Cash Equivalents of the Newco Group, or the Tax Amount, in each case, greater than the greatest value claimed for an item by either Party or smaller than the smallest value for such item claimed by the other Party. The determination of the Independent Accounting Firm and any required adjustments resulting therefrom shall be final, conclusive and binding on all of the Parties hereto. The fees and expenses of the Independent Accounting Firm shall be allocated between and borne by the Parties based on the inverse of the percentage that the Independent Accounting Firm's determination (before such allocation) bears to the total amount of the total items in dispute as originally submitted to the Independent Accounting Firm; provided that such fees and expenses shall not include, so long as a Party complies with the procedures of this Section 3.3(a), the other Party's outside counsel or fees of any Representatives.

(b) The Newco Debt as of the Cut-Off Time and the Cash Equivalents of the Newco Group as of the Cut-Off Time (in each case giving effect (regardless of whether occurring prior to the Cut-Off Time) to the receipt of the Newco Financing and the payment of the Cash Payment), in each case as finally determined pursuant to this Section 3.3 (whether by failure of Everest to deliver notice of objection, by agreement of Everest and Newco or by determination of the Independent Accounting Firm) are referred to herein as, respectively, the "Final Closing Indebtedness" and "Final Closing Cash." The Tax Amount, as finally determined pursuant to this Section 3.3 (whether by failure of Everest to deliver notice of objection, by agreement of Everest and Newco or by determination of the Independent Accounting Firm) is referred to herein as the "Final Tax Amount."

(c) The Proposed Closing Indebtedness and the Final Closing Indebtedness, and the Proposed Closing Cash and the Final Closing Cash, shall each be determined in accordance with the definitions in this Agreement (including Cash Equivalents and Indebtedness) and to the extent not inconsistent therewith, GAAP (applied consistently with the principles applied to the Newco Business Financial Statements), subject to the adjustments described above to give effect (regardless of whether occurring prior to the Cut-Off Time) to the receipt of the Newco Financing and the payment of the Cash Payment.

(d) Not later than five (5) Business Days after the determination of the Final Closing Indebtedness, the Final Closing Cash, and the Final Tax Amount, a payment by wire transfer in respect thereof shall be made as follows:

- (i) If the Net Debt Adjustment is negative, such amount shall be paid to Newco by Everest;
- (ii) If the Net Debt Adjustment is positive, such amount shall be paid to Everest by Newco; and
- (iii) If the Net Debt Adjustment is zero, no payment by any Party shall be due.

(e) For purposes of this Agreement, "Net Debt Adjustment" shall mean an amount equal to (i) \$480 million *plus* (ii) the Final Closing Cash, *plus* (iii) the Final Tax Amount, *minus* (iv) the Final Closing Indebtedness, which sum of (i) through (iv) can be either a positive or negative number or zero.

(f) Any payment pursuant to Section 3.3(d) shall be made in immediately available funds by wire transfer to a bank account designated in writing by the Party entitled to receive the payment. For Tax purposes, (i) any such payment to Everest by Newco shall be treated as an increase in the Cash Payment, and (ii) any such payment to Newco by Everest shall be treated as a decrease to the Cash Payment to the extent thereof (with any excess treated in the manner provided under Section 8.17).

(g) Newco shall provide reasonable access to Everest and, if applicable, to the Independent Accounting Firm, to the books, records, documents and work papers (subject to, in the case of independent accountant work papers, Everest or the Independent Accounting Firm, as applicable, entering into a customary release agreement with respect thereto) (i) transferred by members of the Everest Group to Newco in connection with the Internal Restructuring and the Distribution and any of the other transactions contemplated under this Agreement, the Merger Agreement and the Ancillary Agreements or otherwise in the possession of the Newco Group as of the Closing, or (ii) created or prepared by or for Newco in connection with the preparation of the Proposed Statement and the calculation of the Proposed Closing Indebtedness, the Proposed Closing Cash, the Proposed Tax Amount, and the other matters contemplated by this Section 3.3.

ARTICLE IV

INDEMNIFICATION

Section 4.1 Release of Pre-Distribution Claims.

(a) Except (i) as provided in Section 4.1(b):

(i) Everest, for itself and each member of the Everest Group, as of the Separation Effective Time and, to the extent permitted by law, all Persons who at any time prior to the Separation Effective Time were directors, officers, agents or employees of any member of the Everest Group (in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, successors and assigns, does hereby remise, release and forever discharge Newco and the other members of the Newco Group and all Persons who at any time prior to the Separation Effective Time were stockholders, directors, officers or employees of any member of the Newco Group (in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, successors and assigns, from any and all Liabilities, whether at law or in equity, whether arising under any Contract, by operation of law or otherwise, in each case, 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 at or before the Separation Effective Time, including in connection with the Internal Restructuring and the Distribution and any of the other transactions contemplated under this Agreement, the Merger Agreement and the Ancillary Agreements (such Liabilities, the “Everest Released Liabilities”) and in any event shall not, and shall cause its respective Subsidiaries not to, bring any Legal Proceeding against any member of the Newco Group in respect of any Everest Released Liabilities; provided, however, that nothing in this Section 4.1(a)(i) shall relieve any Person released in this Section 4.1(a)(i) who, after the Separation Effective Time, is a director, officer or employee of any member of the Newco Group and is no longer a director, officer or employee of any member of the Everest Group from Liabilities arising out of, relating to or resulting from his or her service as a director, officer or employee of any member of the Newco Group after the Separation Effective Time. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to limit Everest or any member of the Everest Group from commencing any Legal Proceedings against any Newco Group officer, director, agent or employee, or his or her respective heirs, executors, administrators, successors and assigns with regard to matters arising from, or relating to, (i) theft of Everest Know-How or (ii) intentional criminal acts by any such officers, directors, agents or employees.

(ii) Each of Athena and Newco, for itself and each member of its respective Group as of the Separation Effective Time and, to the extent permitted by law, all Persons who at any time prior to the Separation Effective Time were directors, officers, agents or employees of any member of the Newco Group (in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, successors and assigns, does hereby remise, release and forever discharge Everest and the other members of the Everest Group and all Persons who at any time prior to the Separation Effective Time were stockholders, directors, officers or employees of any member of the Everest Group (in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, successors and assigns, from any and all Liabilities, whether at law or in equity, whether arising under any Contract, by operation of law or otherwise, in each case, 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 at or before the Separation Effective Time, including in connection with the Internal Restructuring and the Distribution and any of the other transactions contemplated under this Agreement, the Merger Agreement and the Ancillary Agreements (such Liabilities, the “Newco Released Liabilities”) and in any event shall not, and shall cause its respective Subsidiaries not to, bring any Legal Proceeding against any member of the Everest Group in respect of any Newco Released Liabilities. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to limit Athena or any member of the Athena Group from commencing any Legal Proceedings against any Everest Group officer, director, agent or employee, or his or her respective heirs, executors, administrators, successors and assigns with regard to matters arising from, or relating to, (i) theft of Newco Know-How or (ii) intentional criminal acts by any such officers, directors, agents or employees.

(b) Nothing contained in this Agreement, including Section 4.1(a), Section 2.3 or Section 2.4, shall impair or otherwise affect any right of any Party and, as applicable, a member of such Party's Group, as well as their respective heirs, executors, administrators, successors and assigns, to enforce this Agreement, the Merger Agreement, any Ancillary Agreement or any agreements, arrangements, commitments or understandings contemplated in this Agreement, the Merger Agreement or in any Ancillary Agreement to continue in effect after the Separation Effective Time. In addition, nothing contained in Section 4.1(a) shall release any Person from:

(i) any Liability Assumed, Transferred or allocated to a Party or a member of such Party's Group pursuant to or as contemplated by, or any other Liability of any member of such Group under, this Agreement or any Ancillary Agreement including (A) with respect to Everest, any Everest Retained Liability and (B) with respect to Newco, any Newco Liability;

(ii) any Liability provided for in or resulting from any other Contract or understanding that is entered into after the Separation Effective Time between any Party (and/or a member of such Party's or Parties' Group), on the one hand, and any other Party or Parties (and/or a member of such Party's or Parties' Group), on the other hand;

(iii) any Liability with respect to any Continuing Arrangements;

(iv) any Liability that the Parties may have with respect to indemnification pursuant to this Agreement or otherwise for claims brought against the Parties by third parties, which Liability shall be governed by the provisions of this Agreement and, in particular, this Article IV and, if applicable, the appropriate provisions of the Ancillary Agreements or Continuing Arrangements; and

(v) any Liability the release of which would result in a release of any Person other than the Persons released in Section 4.1(a); provided that the Parties agree not to bring any Legal Proceeding or permit any other member of their respective Group to bring any Legal Proceeding against a Person released in Section 4.1(a) with respect to such Liability.

In addition, nothing contained in Section 4.1(a) shall release Everest from indemnifying any director, officer or employee of the Newco Group who was a director, officer or employee of Everest or any of its Subsidiaries prior to the Separation Effective Time, as the case may be, to the extent such director, officer or employee is or becomes a named defendant in any Legal Proceeding with respect to which he or she was entitled to such indemnification pursuant to then-existing obligations; it being understood that if the underlying obligation giving rise to such Legal Proceeding is a Newco Liability, Newco shall indemnify Everest to the fullest extent permitted by law for such Liability (including Everest's costs to indemnify the director, officer or employee) in accordance with the provisions set forth in this Article IV.

(c) From and after the Separation Effective Time, each Party shall not, and shall not permit any member of its Group to, make any claim for offset, or commence any Legal Proceeding, including any claim of indemnification, against any other Party or any member of any other Party's Group, or any other Person released pursuant to Section 4.1(a), with respect to any Liabilities released pursuant to Section 4.1(a).

(d) From and after the Separation Effective Time, if any Person associated with a Party (including any director, officer or employee of a Party) initiates any Legal Proceeding with respect to claims released by this Section 4.1, the Party with which such Person is associated shall be responsible for the fees and expenses of counsel of the other Party (and/or the members of such Party's Group, as applicable) and such other Party shall be indemnified for all Liabilities incurred in connection with such Legal Proceeding in accordance with the provisions set forth in this Article IV.

(e) The release in this Section 4.1 includes a release of any rights and benefits with respect to such Liabilities that each Party and each member of such Party's Group, and its successors and assigns, now has or in the future may have conferred upon them by virtue of any statute or common law principle which provides that a general release does not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the release, if knowledge of such claims would have materially affected such party's settlement with the obligor. In this connection, each Party hereby acknowledges that it is aware that factual matters now unknown to it may have given or may hereafter give rise to Liabilities that are presently unknown, unanticipated and unsuspected, and further agrees that this release has been negotiated and agreed upon in light of that awareness and each such Party nevertheless hereby intends to release the Persons described in Section 4.1(a) from the Liabilities described in Section 4.1(a).

Section 4.2 Indemnification by Everest.

(a) In addition to any other provisions of this Agreement requiring indemnification and except as otherwise specifically set forth in any provision of the Merger Agreement, this Agreement or any Ancillary Agreement, from and after the Separation Effective Time, Everest shall to the fullest extent permitted by law indemnify, defend and hold harmless the Newco Indemnitees from and against any and all Indemnifiable Losses of the Newco Indemnitees to the extent relating to, arising out of, by reason of or otherwise in connection with (a) the Everest Retained Liabilities, including, after the Separation Effective Time, the failure of any member of the Everest Group or any other Person to pay, perform or otherwise discharge any Everest Retained Liability in accordance with its respective terms, whether arising prior to, at or after the Separation Effective Time; (b) any Everest Retained Asset or Everest Retained Business, whether arising prior to, at or after the Separation Effective Time; (c) any breach by Everest or any member of the Everest Group after the Separation Effective Time of any provision of this Agreement or any Ancillary Agreement unless such Ancillary Agreement expressly provides for separate indemnification therein, in which case any such indemnification claims shall be made thereunder; or (d) any breach by Everest of any covenant or agreement in the Merger Agreement that survives the Closing under Section 9.3 of the Merger Agreement.

(b) In addition, from and after the Separation Effective Time, Everest shall indemnify the Newco Indemnitees for a share of any specific Newco Environmental Liability, where said Liability is a Newco Environmental Liability pursuant to Section 1.1(111)(iii), (iv) or (v) because the Liability Primarily Relates to the Newco Business, when the Indemnifiable Losses incurred by the Newco Indemnitees for such matter exceed \$1,000,000 (the "Environmental Deductible Amount"). Everest shall only be obligated to indemnify the Newco Indemnitees for its share of the Indemnifiable Losses (as determined pursuant to Section 4.10(d)) in excess of the Environmental Deductible Amount. The Newco Group member that is responsible for the Liability shall be responsible for managing the defense of the Liability and the Parties shall cooperate with each other with respect to the claim in accordance with applicable provisions of this Agreement, including Section 4.5.

Section 4.3 Indemnification by Newco Group.

(a) In addition to any other provisions of this Agreement requiring indemnification and except as otherwise specifically set forth in any provision of the Merger Agreement, this Agreement or any Ancillary Agreement, from and after the Separation Effective Time, Newco and each member of the Newco Group shall, on a joint and several basis, indemnify, defend and hold harmless the Everest Indemnitees to the fullest extent permitted by law from and against any and all Indemnifiable Losses of the Everest Indemnitees to the extent relating to, arising out of, by reason of or otherwise in connection with (a) the Newco Liabilities, including, after the Separation Effective Time, the failure of any member of the Newco Group or any other Person to pay, perform or otherwise discharge any Newco Liability in accordance with its respective terms, whether arising prior to, at or after the Separation Effective Time; (b) any Newco Asset or Newco Business, whether arising prior to, at or after the Separation Effective Time; (c) any breach by Newco or any member of the Newco Group or Athena Group after the Separation Effective Time of any provision of this Agreement or any Ancillary Agreement unless such Ancillary Agreement expressly provides for separate indemnification therein, in which case any such indemnification claims shall be made thereunder; or (d) any breach by any member of the Newco Group or the Athena Group of any covenant or agreement in the Merger Agreement that survives the Closing under Section 9.3 of the Merger Agreement.

(b) In addition, from and after the Separation Effective Time, Newco and each member of the Newco Group, shall, on a joint and several basis, indemnify the Everest Indemnitees for a share of any specific Everest Retained Environmental Liability, where said Liability is an Everest Retained Environmental Liability pursuant to Section 1.1(62)(iii), (v) or (vi) because the Liability Primarily Relates to the Everest Business, when the Indemnifiable Losses incurred by the Everest Indemnitees for such matter exceed the Environmental Deductible Amount. Newco shall only be obligated to indemnify the Everest Indemnitees for its share of the Indemnifiable Losses (as determined pursuant to Section 4.10(d)) in excess of the Environmental Deductible Amount. The Everest Group member that is responsible for the Liability shall be responsible for managing the defense of the Liability and the Parties shall cooperate with each other with respect to the claim in accordance with applicable provisions of this Agreement, including Section 4.5.

(a) Other than with respect to Third-Party Claims, which shall be governed by Section 4.4(b), an Everest Indemnitee or a Newco Indemnitee (each, as applicable, an “Indemnitee”) shall notify in writing, with respect to any matter that such Indemnitee has determined has given or would reasonably be expected to give rise to a right of indemnification under this Agreement, the Party which is or may be required pursuant to this Article IV to make such indemnification (the “Indemnifying Party”), within thirty (30) days of such determination, stating in such written notice the amount of the Indemnifiable Loss claimed, if known, and, to the extent practicable, method of computation thereof, and referring to the provisions of this Agreement in respect of which such right of indemnification is claimed by such Indemnitee or arises; provided, however, that the failure to provide such written notice shall not release the Indemnifying Party from any of its obligations except and solely to the extent the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure.

(b) If a claim or demand is made against an Indemnitee by any Person who is not a Party or an Affiliate of a Party (a “Third-Party Claim”) as to which such Indemnitee is or reasonably expects to be entitled to indemnification pursuant to this Agreement, such Indemnitee shall notify the Indemnifying Party in writing (which notice obligation may be satisfied by providing copies of all notices and documents received by the Indemnitee relating to the Third-Party Claim), and in reasonable detail, of the Third-Party Claim promptly (and in any event within the earlier of (x) thirty (30) days or (y) two (2) Business Days prior to the final date of the applicable response period under such Third-Party Claim) after receipt by such Indemnitee of written notice of the Third-Party Claim; provided, however, that the failure to provide notice of any such Third-Party Claim pursuant to this or the preceding sentence shall not release the Indemnifying Party from any of its obligations except and solely to the extent the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure. Thereafter, the Indemnitee shall deliver to the Indemnifying Party, promptly (and in any event within ten (10) Business Days) after the Indemnitee’s receipt thereof, copies of all notices and documents (including court papers) received by the Indemnitee relating to the Third-Party Claim; provided, however, that the failure to deliver such notices and documents shall not release the Indemnifying Party from any of its obligations except and solely to the extent the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure.

(c) Other than in the case of indemnification by a beneficiary Party of a guarantor Party pursuant to Section 2.9(c) (the defense of which shall be controlled by the beneficiary Party), the Indemnifying Party shall be entitled, if it so chooses, to assume the defense thereof, and if it does not assume the defense of such Third-Party Claim, to participate in the defense of any Third-Party Claim in accordance with the terms of Section 4.5 at such Indemnifying Party’s own cost and expense and by such Indemnifying Party’s own counsel, that is reasonably acceptable to the Indemnitee, within thirty (30) days of the receipt of an indemnification notice from such Indemnitee; provided, however, that the Indemnifying Party shall not be entitled to assume the defense of any Third-Party Claim if (x) in the reasonable judgment of the Indemnitee, after consultation with outside counsel, there exists a conflict of interest between the Indemnifying Party and the applicable Indemnitee(s) in the defense of such Third-Party Claim by the Indemnifying Party, (y) the party making such Third-Party Claim is a Governmental Body with regulatory or other authority over the Indemnitee or any of its material assets or (z) the Third-Party Claim seeks injunctive or other non-monetary relief that, if granted, would reasonably be expected to have a material and adverse effect on the Indemnitee’s business. In connection with the Indemnifying Party’s defense of a Third-Party Claim, such Indemnitee shall have the right to employ separate counsel and to participate in (but not control) the defense, compromise, or settlement thereof, at its own expense and, in any event, shall reasonably cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party all witnesses, pertinent materials and information (subject to Section 5.7 as applicable) in such Indemnitee’s possession or under such Indemnitee’s control relating thereto as are reasonably required by the Indemnifying Party. To the extent permitted by law, no Indemnifying Party shall settle or compromise any Third-Party Claim without the written consent of the Indemnitee, such consent not to be unreasonably withheld, conditioned or delayed, unless such settlement (A) completely and unconditionally releases the Indemnitee in connection with such matter, (B) provides relief consisting solely of money damages borne by the Indemnifying Party and (C) does not involve any admission by the Indemnitee of any wrongdoing or violation of a Legal Requirement.

(d) If an Indemnifying Party does not (or is not entitled to) assume responsibility for defending a Third-Party Claim within the period specified in this [Section 4.4](#), such Indemnitee may defend such Third-Party Claim. If the Indemnitee is conducting the defense against any such Third-Party Claim, the Indemnifying Party shall reasonably cooperate with the Indemnitee in such defense and make available to the Indemnitee all witnesses, pertinent materials and information (subject to [Section 5.7](#) as applicable) in such Indemnifying Party's possession or under such Indemnifying Party's control relating thereto as are reasonably required by the Indemnitee. To the extent permitted by law, no Indemnitee may settle or compromise any Third-Party Claim without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld, conditioned or delayed.

(e) Except as otherwise set forth in [Section 5.6](#) or to the extent set forth in any Ancillary Agreement, following the Closing, the indemnification provisions of this [Article IV](#) shall be the sole and exclusive remedy of any Party or member of its Group for any monetary damages or Indemnifiable Losses arising out of, relating to or resulting from this Agreement, the Merger Agreement, any Ancillary Agreement or the transactions contemplated hereby or thereby and each Party expressly waives and relinquishes any and all rights, claims or remedies such Party or any member of its Group may have with respect to the foregoing other than under this [Article IV](#) against any Indemnifying Party.

(f) The provisions of this [Article IV](#) shall apply to Third-Party Claims that are already pending or asserted as well as Third-Party Claims brought or asserted after the date of this Agreement. There shall be no requirement under this [Section 4.4](#) to give a notice with respect to any Third-Party Claim that exists as of the Separation Effective Time. Neither Everest nor Athena shall, nor shall either permit any member of its Group to, file Third-Party Claims or cross-claims against the other Party or its Subsidiaries in a Legal Proceeding in which a Third-Party Claim is being resolved.

Section 4.5 [Cooperation in Defense and Settlement.](#)

(a) With respect to any Third-Party Claim that implicates two or more Parties in any respect due to the allocation of Liabilities, responsibilities for management of defense and related indemnities pursuant to this Agreement or any of the Ancillary Agreements, the applicable Parties agree to use commercially reasonable efforts to cooperate fully and maintain a joint defense (in a manner that will appropriately preserve for all Parties any applicable Privilege with respect thereto). The Party that is not responsible for managing the defense of any such Third-Party Claim shall, upon reasonable request, be consulted with respect to matters relating thereto and may, if necessary or helpful, retain counsel to assist in the defense of such claims. Notwithstanding the foregoing, nothing in this [Section 4.5\(a\)](#) shall derogate from any Party's rights to control the defense of any Legal Proceeding in accordance with [Section 4.4](#).

(b) Notwithstanding anything to the contrary in this Agreement, the Merger Agreement or the Ancillary Agreements, with respect to any Legal Proceeding by a Governmental Body or any other Legal Proceeding against, or involving, Newco (i) where the facts and circumstances giving rise to the Legal Proceeding occurred (in whole or in part) prior to the Separation Effective Time or (ii) that would reasonably be expected to adversely impact the Everest Retained Businesses, Everest, unless not permitted by law, shall be provided reasonably prompt notice of any disclosure or submission and have, at Everest's expense, the reasonable opportunity to consult, advise and comment in all preparation, planning and strategy regarding any such Legal Proceeding, including with regard to any drafts of notices and other conferences and communications to be provided or submitted by or on behalf of Newco or Athena to any third party involved in such Legal Proceeding (including any Governmental Body). To the extent that such Legal Proceeding involves any Privileged Information or potentially Privileged Information or material in any way, such Information or material will only be submitted in accordance with Section 5.7. With regard to the matters specified in the preceding clauses (i) and (ii), which may include matters indemnifiable under Section 4.2, Everest shall have a right to consent to any compromise or settlement related thereto to the extent permitted by law.

(c) Notwithstanding anything to the contrary in this Agreement, the Merger Agreement or the Ancillary Agreements, with respect to any Legal Proceeding by a Governmental Body or any other Legal Proceeding against, or involving, Everest (i) where the facts and circumstances giving rise to the Legal Proceeding occurred (in whole or in part) prior to the Separation Effective Time or (ii) that would reasonably be expected to adversely impact the Newco Businesses, Newco, unless not permitted by law, shall be provided reasonably prompt notice of any disclosure or submission and have, at Newco's expense, the reasonable opportunity to consult, advise and comment in all preparation, planning and strategy regarding any such Legal Proceeding, including with regard to any drafts of notices and other conferences and communications to be provided or submitted by or on behalf of Everest to any third party involved in such Legal Proceeding (including any Governmental Body). To the extent that such Legal Proceeding involves any Privileged Information or potentially Privileged Information or material in any way, such Information or material will only be submitted in accordance with Section 5.7. With regard to the matters specified in the preceding clauses (i) and (ii), which may include matters indemnifiable under Section 4.2, Newco shall have a right to consent to any compromise or settlement related thereto to the extent permitted by law.

(d) Notwithstanding anything to the contrary in this Agreement, the Merger Agreement or the Ancillary Agreements, with respect to any notices or reports to be submitted to, or reporting, disclosure, filing or other requirements to be made with, any Governmental Body by Newco or its Subsidiaries (or Athena or its Subsidiaries with respect to the Newco Business) ("Governmental Filing") where the Governmental Filing requires disclosure of facts, information or data that relate, in whole or in part, to periods prior to the Separation Effective Time, except to the extent prohibited by any applicable Legal Requirement, Everest shall have the reasonable opportunity to comment on the preparation and content of any such Governmental Filing (solely with respect to those aspects that relate to the Newco Business). To the extent the Governmental Filing would involve disclosing Privileged Information that Everest provided to Newco, it will only be submitted as approved by Everest in its reasonable discretion and in accordance with Section 5.7.

(e) The Parties each agree that at all times from and after the Separation Effective Time, if a Legal Proceeding is commenced by a third party naming two (2) or more Parties (or any member of such Parties' respective Groups) as defendants and with respect to which one or more named Parties (or any member of such Party's respective Group) is a nominal defendant and/or such Legal Proceeding is otherwise not a Liability allocated to such named Party under this Agreement or any Ancillary Agreement, then the other Party or Parties shall use commercially reasonable efforts to cause such nominal defendant to be removed from such Legal Proceeding, as soon as reasonably practicable.

Section 4.6 Indemnification Payments. Indemnification required by this Article IV shall be made by periodic payments of the amount of Indemnifiable Losses in a timely fashion during the course of the investigation or defense, as and when bills are received or an Indemnifiable Loss is incurred.

Section 4.7 Indemnification Obligations Net of Insurance Proceeds and Other Amounts.

(a) Any recovery by any Indemnitee for any Indemnifiable Loss subject to indemnification pursuant to this Article IV shall be calculated (i) net of Insurance Proceeds actually received by such Indemnitee with respect to any Indemnifiable Loss (which such proceeds shall be reduced by the present value, based on that Party's then cost of short-term borrowing, of future premium increases known at such time) and (ii) net of any proceeds actually received by the Indemnitee from any third party with respect to any such Liability corresponding to the Indemnifiable Loss ("Third-Party Proceeds"). Accordingly, the amount which any Indemnifying Party is required to pay pursuant to this Article IV to any Indemnitee pursuant to this Article IV shall be reduced by any Insurance Proceeds or Third-Party Proceeds theretofore actually recovered by or on behalf of the Indemnitee corresponding to the related Indemnifiable Loss. If an Indemnitee receives a payment required by this Agreement from an Indemnifying Party corresponding to any Indemnifiable Loss (an "Indemnity Payment") and subsequently receives Insurance Proceeds or Third-Party Proceeds, then the Indemnitee shall pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payment received over the amount of the Indemnity Payment that would have been due if the Insurance Proceeds or Third-Party Proceeds had been received, realized or recovered before the Indemnity Payment was made.

(b) The Parties hereby agree that an insurer or other third party that would otherwise be obligated to pay any amount shall not be relieved of the responsibility with respect thereto or have any subrogation rights with respect thereto by virtue of any provision contained in this Agreement or any Ancillary Agreement, and that no insurer or any other third party shall be entitled to a "windfall" (e.g., a benefit they would not otherwise be entitled to receive, or the reduction or elimination of an insurance coverage obligation that they would otherwise have, in the absence of the indemnification or release provisions) by virtue of any provision contained in this Agreement or any Ancillary Agreement. Each Party shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to collect or recover, or allow the Indemnifying Party to collect or recover, or cooperate with each other in collecting or recovering, any Insurance Proceeds that may be collectible or recoverable in respect of the Liabilities for which indemnification may be available under this Article IV. Notwithstanding the foregoing, an Indemnifying Party may not delay making any indemnification payment required under the terms of this Agreement, or otherwise satisfying any indemnification obligation, pending the outcome of any Legal Proceedings to collect or recover Insurance Proceeds, and an Indemnitee need not attempt to collect any Insurance Proceeds prior to making a claim for indemnification or receiving any Indemnity Payment otherwise owed to it under this Agreement or any Ancillary Agreement.

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

Section 4.9 Additional Matters; Survival of Indemnities.

(a) The indemnity agreements contained in this Article IV shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Indemnitee; and (ii) the knowledge by the Indemnitee of Indemnifiable Losses for which it might be entitled to indemnification hereunder.

(b) The rights and obligations of each Party and their Indemnitees under this Article IV shall survive (i) the sale or other Transfer by any Party or its Subsidiaries of any Assets or businesses or the assignment by it of any Liabilities and (ii) any merger, consolidation, business combination, restructuring, recapitalization, reorganization or similar transaction involving any Party or any of its Subsidiaries.

(c) No Party hereto shall have any right to set off any losses (including Indemnifiable Losses) under this Article IV against any payments to be made by such Party pursuant to this Agreement or any other agreement between or among the Parties, including the Merger Agreement or any of the Ancillary Agreements.

Section 4.10 Environmental Matters.

(a) Without limiting any other provision of this Agreement, each Party agrees to provide, or cause to be provided, at any time at or after the Separation Effective Time, as soon as reasonably practicable after written request therefor, reasonable access to any non-privileged information in the possession or under the control of its respective Group and reasonable access to its employees to the extent that (i) such information relates to, or such employees have relevant knowledge regarding, specific alleged Environmental Liabilities, including the requesting Party's alleged or potential link to environmental contamination at an Off-Site Location or real property that was allegedly owned or operated by the Everest Group and any operating group, business unit, division, Subsidiary, line of business or investment of Everest or any of its Subsidiaries (including, prior to the Separation Effective Time, any member of the Newco Group) prior to the Separation Effective Time; or (ii) such information relates to, or such employees have relevant knowledge regarding, the impact that any alleged Environmental Liability could have on the operations, activities or liability exposure of the requesting Party; and (iii) the information and access to employees can be provided without significant disruption to the respective Group's business or operations.

(b)

(i) Newco shall use commercially reasonable efforts to obtain any consents, transfers, assignments, assumptions, waivers, or other legal instruments necessary to cause Newco or the appropriate Subsidiary of Newco to be fully substituted for Everest or other member of the Everest Group with respect to: (i) any order, decree, judgment, agreement or Legal Proceeding with respect to Newco Environmental Liabilities that are in effect as of the Separation Effective Time; or (ii) Environmental Permits, financial assurance obligations or instruments, or other environmental approvals or filings associated with the Newco Assets. Newco shall inform the applicable Governmental Body about its assumption of the Environmental Liabilities associated with the matters covered by this Section 4.10(b) and request that the Governmental Bodies direct all communications, requirements, notifications and/or official letters related to such matters to Newco. Everest shall use its commercially reasonable efforts to provide necessary assistance or signatures to Newco to achieve the purposes of this Section 4.10(b).

(ii) Until such time as Newco and Everest complete the substitutions outlined in Section 4.10(b)(i) above, Newco shall comply with all applicable Environmental Laws, including all reporting obligations, and the terms and conditions of all orders, decrees, judgments, agreements, actions, Environmental Permits, financial assurances, obligations, instruments or other environmental approvals or filings that remain in Everest's name relating to the Newco Assets and the Newco Environmental Liabilities.

(c)

(i) Everest shall use commercially reasonable efforts to obtain any consents, transfers, assignments, assumptions, waivers, or other legal instruments necessary to cause Everest or the appropriate Subsidiary of Everest to be fully substituted for Newco or other member of the Newco Group with respect to: (i) any order, decree, judgment, agreement or Legal Proceeding with respect to Everest Retained Environmental Liabilities that are in effect as of the Separation Effective Time; or (ii) Environmental Permits, financial assurance obligations or instruments, or other environmental approvals or filings associated with the Everest Retained Assets. Everest shall inform the applicable Governmental Body about its assumption of the Environmental Liabilities associated with the matters covered by this Section 4.10(c) and request that the Governmental Bodies direct all communications, requirements, notifications and/or official letters related to such matters to Everest. Newco shall use its commercially reasonable efforts to provide necessary assistance or signatures to Everest to achieve the purposes of this Section 4.10(c).

(ii) Until such time as Everest and Newco complete the substitutions outlined in Section 4.10(c)(i) above, Everest shall comply with all applicable Environmental Laws, including all reporting obligations, and the terms and conditions of all orders, decrees, judgments, agreements, actions, Environmental Permits, financial assurances, obligations, instruments or other environmental approvals or filings that remain in Newco's name relating to the Everest Retained Assets and the Everest Retained Environmental Liabilities.

(d) For any Environmental Liability that is a Newco Environmental Liability or an Everest Retained Environmental Liability because the Liability Primarily Relates to the Newco Business or the Everest Retained Business, respectively, a determination shall be made in each case as to what percentage of the Liability should be attributed to the Newco Group and the Everest Group, respectively. The determination of these shares shall be made on a fair and objective basis as is customary when allocating the specific liability at issue, including, but not limited to, consideration of the factors identified in the definition of “Primarily Relates.” The Parties shall work cooperatively to establish the appropriate shares with respect to any such Liability; provided that the foregoing shall not limit any Party’s rights under this Agreement if the Parties cannot so agree. The allocation of shares between the Newco Group and the Everest Group shall be relevant in assessing the indemnification obligation of the Party as to which said Liability is not Primarily Related pursuant to Section 4.2 or Section 4.3, respectively.

ARTICLE V

PRESERVATION OF RECORDS; ACCESS TO INFORMATION; CONFIDENTIALITY; PRIVILEGE

Section 5.1 Preservation of Corporate Records.

(a) Except to the extent otherwise contemplated by any Ancillary Agreement, a Party providing Records or access to Information to another Party under this Article V shall be entitled to receive from the recipient, upon the presentation of invoices therefor, payments for such amounts, relating to supplies, disbursements and other out-of-pocket expenses (which shall include the costs of any discovery vendor but shall not include the costs of salaries and benefits of employees of such Party or any pro rata portion of overhead or other costs of employing such employees which would have been incurred by such employees’ employer regardless of the employees’ service with respect to the foregoing), as are reasonably incurred in providing such Records or access to Information.

(b) From and after the Effective Time, except as otherwise required or agreed upon in writing, or as otherwise provided in any Ancillary Agreement, with regard to any Information referenced in Section 5.3, each Party shall use commercially reasonable efforts, at such Party’s sole cost and expense, to retain, until the latest of, as applicable, (i) the date on which such Information is no longer required to be retained pursuant to the applicable record retention policy of Everest or such other member of the Everest Group, respectively, as in effect immediately prior to the Distribution, including pursuant to any “litigation hold” issued by Everest or any of its Subsidiaries prior to the Distribution, (ii) the concluding date of any period as may be required by any applicable Legal Requirement, (iii) the concluding date of any period during which such Information relates to a pending or threatened Legal Proceeding which is known to the members of such Party’s Group, as applicable, in possession of such Information at the time any retention obligation with regard to such Information would otherwise expire, and (iv) the concluding date of any period during which the destruction of such Information could interfere with a pending or threatened investigation by a Governmental Body which is known to the members of such Party’s Group, as applicable, in possession of such Information at the time any retention obligation with regard to such Information would otherwise expire; provided that with respect to any pending or threatened Legal Proceeding arising after the Effective Time, clause (iii) of this sentence applies only to the extent that whichever member of the applicable Party or its Group, as applicable, is in possession of such Information has been notified in writing pursuant to a “litigation hold” by the other Party of the relevant pending or threatened Legal Proceeding. The Parties hereto agree that from and after the Effective Time, upon written request from the other that certain Information relating to the Newco Business, the Everest Retained Businesses or the transactions contemplated hereby be retained in connection with a Legal Proceeding, the Parties shall use reasonable efforts to preserve and not to destroy or dispose of such Information without the consent of the requesting Party.

(c) Everest and Newco intend that any transfer between Everest and Newco (including between their attorneys, Representatives and agents), of Information that is subject to the protections of the attorney-client or attorney work product privileges shall not operate as a waiver of any potentially applicable privilege and will be completed in accordance with Section 5.7.

Section 5.2 Financial Statements and Accounting. Each of (x) the members of the Everest Group and (y) the members of the Athena Group agrees to provide the following reasonable assistance and, subject to Section 5.6, reasonable access to its properties, Records, other Information and personnel set forth in this Section 5.2, from the Effective Time until Everest's or Athena's (as applicable) Form 10-K filing deadline for the end of the first full fiscal year occurring after the Effective Time (the "Applicable Period"). (i) in connection with the preparation and review or audit of such Party's quarterly and annual financial statements, and the filing of such financial statements and the audit of such Party's internal controls over financial reporting and management's assessment thereof and management's assessment of such Party's disclosure controls and procedures, if required, and (ii) to the extent reasonably necessary to respond (and for the limited purpose of responding) to any written request or official comment from a Governmental Body, such as in connection with responding to a comment letter from the Commission. Notwithstanding the foregoing, in the event that either such Party changes its independent auditors within one (1) year following the Distribution Date, then such Party may request reasonable access on the terms set forth in this Section 5.2 for a period of up to one hundred and eighty (180) days from such change. Without limiting the foregoing, during the Applicable Period, each Party agrees as follows:

(a) Except to the extent otherwise contemplated by the Ancillary Agreements and subject to Section 5.6 and Section 5.7, (i) each of Everest and Athena shall authorize and request its respective auditors to make reasonably available to the other Party's auditors (the "Other Party's Auditors") both the personnel who performed or are performing the annual audits of such audited Party (each Party with respect to its own audit, the "Audited Party") and work papers related to the annual audits of such Audited Party (subject to the execution of any reasonable and customary access letters that such Audited Party's auditors may require in connection with the review of such work papers by such Other Party's Auditors), in all cases within a reasonable time prior to such Audited Party's auditors' opinion date, so that the Other Party's Auditors are able to perform the procedures they reasonably consider necessary to take responsibility for the work of the Audited Party's auditors as it relates to their auditors' report on such other Party's financial statements, all within sufficient time to enable such other Party to meet its timetable for the filing of its annual financial statements with the Commission and (ii) until all governmental audits are complete, Athena will provide reasonable access during normal business hours for Everest's internal auditors, counsel and other designated Representatives to (x) the premises of the Newco Group and all Information (and duplicating rights) within the knowledge, possession or control of the Athena and its Subsidiaries (including the Newco Group) in respect of the Newco Business and (y) the officers and employees of Athena and its Subsidiaries (including the Newco Group) in respect of the Newco Business, so that Everest may conduct reasonable audits relating to the financial statements in relation to the Newco Business.

(b) Without limitation of Section 5.6, nothing in this Article V shall require any Party to violate any agreement with any third party regarding the confidentiality of confidential and proprietary Information relating to that third party or its business; provided, however, that in the event that a Party is required under this Section 5.2 to disclose any such Information, such Party shall use commercially reasonable efforts to seek to obtain such third party's written consent to the disclosure of such Information.

(c) The Parties acknowledge that Information provided under this Section 5.2 may constitute material, non-public information, and trading in the securities of a Party (or the securities of its affiliates, subsidiaries or partners) while in possession of such material, non-public material information may constitute a violation of the U.S. federal securities laws.

Section 5.3 Provision of Corporate Records. Other than in circumstances in which indemnification is sought pursuant to Article IV (in which event the provisions of such Article IV shall govern) and subject to appropriate restrictions for Privileged Information or Confidential Information in Section 5.6 and Section 5.7:

(a) After the Effective Time, and subject to compliance with the terms of the Ancillary Agreements, upon the prior written reasonable request by, and at the expense of, Athena for specific and identified Information:

(i) that (x) relates to Newco or the Newco Business, as the case may be, prior to the Separation Effective Time or (y) is necessary for Athena and/or Newco to comply with the terms of, or otherwise perform under, any Ancillary Agreement to which Everest and/or Newco and/or Athena are parties, Everest shall provide, as soon as reasonably practicable following the receipt of such request, appropriate copies of such Information (or the originals thereof if Athena has a reasonable need for such originals) in the possession or control of the Everest Group, but only to the extent such items so relate and are not already in the possession or control of the Athena Group; provided that, to the extent any originals are delivered to the Athena Group pursuant to this Agreement or the Ancillary Agreements, Athena shall, at its own expense, return them to Everest within a reasonable time after the need to retain such originals has ceased; provided, further, that, such obligation to provide any requested Information shall terminate and be of no further force and effect on the date that is the later of (x) the first anniversary of the Closing Date and (y) three (3) months after the earlier termination or expiration of this Agreement or the Ancillary Agreement to which the Information relates; provided, further, that, in the event that any such access or the provision of any such Information would violate any Legal Requirement or would reasonably be expected to result in the waiver of any attorney-client privilege, rights under the work product doctrine or other applicable privilege, Everest shall not be obligated to provide such Information requested by Athena; or

(ii) that (x) is required by Athena with regard to reasonable compliance with reporting, disclosure, filing or other Legal Requirements imposed on Athena (including under applicable securities laws) by a Governmental Body having jurisdiction over Athena, or (y) is for use in any other judicial, regulatory, administrative or other proceeding or in order to satisfy audit, accounting, claims, regulatory, litigation, Legal Proceeding or other similar requirements, as applicable, Everest shall provide, as soon as reasonably practicable following the receipt of such request, appropriate copies of such Information (or the originals thereof if Athena has a reasonable need for such originals) in the possession or control of the Everest Group, but only to the extent such items so relate and are not already in the possession or control of the Athena Group; provided that, to the extent any originals are delivered to the Athena Group pursuant to this Agreement or the Ancillary Agreements, Athena shall, at its own expense, return them to Everest within a reasonable time after the need to retain such originals has ceased; provided, further, that, in the event that any such access or the provision of any such Information would violate any Legal Requirement or would reasonably be expected to result in the waiver of any attorney-client privilege, rights under the work product doctrine or other applicable privilege, Everest shall not be obligated to provide such Information requested by Athena.

(b) After the Effective Time, and subject to compliance with the terms of the Ancillary Agreements, upon the prior written reasonable request by, and at the expense of, Everest for specific and identified Information:

(i) that (x) relates to Everest or the Everest Retained Business, as the case may be, prior to the Separation Effective Time or (y) is necessary for Everest to comply with the terms of, or otherwise perform under, any Ancillary Agreement to which Everest and/or Newco and/or Athena are parties, Athena shall provide, as soon as reasonably practicable following the receipt of such request, appropriate copies of such Information (or the originals thereof if Everest has a reasonable need for such originals) in the possession or control of the Athena Group, but only to the extent such items so relate and are not already in the possession or control of Everest; provided that, to the extent any originals are delivered to the Everest Group pursuant to this Agreement or the Ancillary Agreements, Everest shall, at its own expense, return them to Athena within a reasonable time after the need to retain such originals has ceased; provided, further, that, such obligation to provide any requested Information shall terminate and be of no further force and effect on the date that is the later of (x) the first anniversary of the Closing Date and (y) three (3) months after the earlier termination or expiration of this Agreement or the Ancillary Agreement to which the Information relates; provided, further, that, in the event that any such access or the provision of any such Information would violate any Legal Requirement or would reasonably be expected to result in the waiver of any attorney-client privilege, rights under the work product doctrine or other applicable privilege, Athena shall not be obligated to provide such Information requested by Everest; or

(ii) that (x) is required by Everest with regard to reasonable compliance with reporting, disclosure, filing or other Legal Requirements imposed on Everest (including under applicable securities laws) by a Governmental Body having jurisdiction over Everest, or (y) is for use in any other judicial, regulatory, administrative or other proceeding or in order to satisfy audit, accounting, claims, regulatory, litigation, Legal Proceeding or other similar requirements, as applicable, Athena shall provide, as soon as reasonably practicable following the receipt of such request, appropriate copies of such Information (or the originals thereof if Everest has a reasonable need for such originals) in the possession or control of the Athena Group, but only to the extent such items so relate and are not already in the possession or control of Everest; provided that, to the extent any originals are delivered to Everest pursuant to this Agreement or the Ancillary Agreements, Everest shall, at its own expense, return them to Athena within a reasonable time after the need to retain such originals has ceased; provided, further, that, in the event that any such access or the provision of any such Information would violate any Legal Requirement or would reasonably be expected to result in the waiver of any attorney-client privilege, rights under the work product doctrine or other applicable privilege, Athena shall not be obligated to provide such Information requested by Everest.

(c) From and after the Effective Time, each Party shall have the right to request in writing (including on behalf of any member of its Group) that the other Parties make available for inspection any non-privileged books, records, or other documents within its control or that it otherwise has the ability to make available, to the extent such books, records or other documents may reasonably be required in connection with any Legal Proceeding or threatened or contemplated Legal Proceeding (including preparation for such Legal Proceeding) in which the Everest Group or Athena Group (with respect to the Newco Business), as applicable, may from time to time be involved, regardless of whether such Legal Proceeding 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. Any such disclosure of books, records and documents shall be made subject to Section 5.6.

(d) Subject to the conditions and limitations in this Article V, the Parties agree to make their respective personnel reasonably available during regular business hours to discuss any Information exchanged pursuant to this Section 5.3. Each of Everest and Athena shall inform their and their Groups' respective officers, employees, agents, consultants, advisors, authorized accountants, counsel and other designated Representatives who have or have access to the other Party's Confidential Information or other information provided this Article V of their obligation to hold such information confidential in accordance with the provisions of this Agreement.

Section 5.4 Witness Cooperation. At all times from and after the Effective Time, each Party shall have the right to request in writing (including on behalf of any member of its Group) that the other Party make available for consultation or witness purposes, its (or its applicable member of its Group's) directors, officers, employees, consultants or agents (current and future and to the extent possible former) who have expertise or knowledge with respect to the other Party's (or its Group's) Legal Proceedings or business or products or matters in litigation or alternative dispute resolution to the extent that the requesting Party believes any such persons may reasonably be useful or required in connection with any Legal Proceeding, legal, administrative, internal investigation or other proceedings in which the requesting Party (or its Group) may from time to time be involved. Upon such request, the affected Party shall select a person or persons to provide the requested assistance after conferring in good faith to determine which person or persons should provide such assistance, and if commercially reasonable shall use its efforts to make such person or persons available. A Party providing a witness to the other Party (or its Group) under this Section 5.4 shall be entitled to receive from the recipient of such witness services, upon the presentation of invoices therefor, payments for such amounts, relating to supplies, disbursements and other reasonable and documented out-of-pocket expenses (which shall not include the costs of salaries and benefits of employees who are witnesses or any pro rata portion of overhead or other costs of employing such employees which would have been incurred by such employees' employer regardless of the employees' service as witnesses), as may be reasonably incurred and properly paid under applicable Legal Requirements. Further, any applicable privilege or immunity will be protected and shared only in accordance with Section 5.7.

Section 5.5 Reimbursement. Except to the extent otherwise contemplated by this Agreement or any Ancillary Agreement, a Party (or its Group) providing Information or access to Information to the other Party (or its Group) under this Article V shall be entitled to receive from the recipient, upon the presentation of invoices therefor, payments for such amounts, relating to supplies, disbursements and other reasonable and documented out-of-pocket expenses (which shall not include the costs of salaries and benefits of employees of such Party (or its Group) or any pro rata portion of overhead or other costs of employing such employees which would have been incurred by such employees' employer regardless of the employees' service with respect to the foregoing), as may be reasonably incurred in providing such Information or access to such Information.

Section 5.6 Confidentiality.

(a) From and after the Effective Time, except as otherwise provided in the Ancillary Agreements, each of Everest and Athena shall hold, and shall cause their respective members of their Group and their and their Group's respective officers, employees, agents, consultants and advisors to hold, in strict confidence (and not to disclose or release or, except as otherwise permitted by this Agreement or any Ancillary Agreement, use, including for any ongoing or future commercial purpose, without the prior written consent of the Party to whom the Confidential Information relates (which may be withheld in such Party's sole and absolute discretion, except where disclosure is required by applicable Legal Requirements)), any and all Confidential Information to the extent concerning or belonging to the other Party or its Group that is provided to the other Party or its Group; provided that each Party may disclose, or may permit disclosure of, Confidential Information (i) to its respective auditors, attorneys, financial advisors, bankers and other appropriate consultants and advisors who have a need to know such Information for auditing and other non-commercial purposes and are informed of the obligation to hold such Information confidential and in respect of whose failure to comply with such obligations, the applicable Party will be responsible, (ii) if any Party or any member of its Group is required or compelled to disclose any such Confidential Information by judicial or administrative process or by other Legal Requirements or stock exchange rules or is advised by outside counsel in connection with a Legal Proceeding brought by a Governmental Body that it is advisable to do so, (iii) as required in connection with any legal or other proceeding by one Party (or its Group) against any other Party (or its Group) or in respect of claims by one Party (or its Group) against the other Party (or its Group) brought in a Legal Proceeding, (iv) as necessary in order to permit a Party (or its Group) to prepare and disclose its financial statements in connection with any regulatory filings or Tax Returns or (v) as necessary for a Party to enforce its rights or perform its obligations under this Agreement (including pursuant to Section 2.2) or an Ancillary Agreement. Notwithstanding the foregoing, in the event that any demand or request for disclosure of Confidential Information is made by a third party pursuant to clause (ii), (iii) or (v) above, each Party, as applicable, shall promptly notify (to the extent permissible by Legal Requirements) the Party to whom the Confidential Information relates of the existence of such request, demand or disclosure requirement and shall provide such affected Party a reasonable opportunity to seek an appropriate protective order or other remedy, which such Party will cooperate in obtaining to the extent reasonably practicable. In the event that such appropriate protective order or other remedy is not obtained, the Party which faces the disclosure requirement shall furnish only that portion of the Confidential Information that is required to be disclosed and shall take commercially reasonable steps to ensure that confidential treatment is accorded such Confidential Information. Further, as to Privileged Information nothing in this Section 5.6 replaces or diminishes the Parties' obligations and limitations set forth in Section 5.7.

(b) Each Party acknowledges that it and the other members of its Group may have in its or their possession confidential or proprietary Information of third parties that was received under confidentiality or non-disclosure agreements with such third party while such Party and/or members of its Group were part of the Everest Group. From and after the Effective Time, each Party shall comply, and shall cause the other members of its Group to comply, and shall cause its and their respective officers, employees, agents, consultants and advisors to comply, with all terms and conditions of any such third-party agreements entered into prior to the Separation Effective Time, with respect to any confidential and proprietary Information of third parties to which it or any other member of its Group has had access.

(c) Notwithstanding anything to the contrary set forth herein, (i) the Parties shall be deemed to have satisfied their obligations hereunder with respect to Confidential Information if they exercise at least the same degree of care that applies to Everest's confidential and proprietary information pursuant to policies in effect as of the Separation Effective Time and (ii) confidentiality obligations provided for in any Contract between each Party or member of its Group and their respective employees shall remain in full force and effect from and after the Separation Effective Time.

(d) The Parties agree that irreparable damage may occur in the event that the provisions of this Section 5.6 were not performed in accordance with their specific terms. Accordingly, it is hereby agreed that the Parties shall be entitled to seek an injunction or injunctions to enforce specifically the terms and provisions hereof in any court having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

(e) For the avoidance of doubt and notwithstanding any other provision of this Section 5.6, (i) the disclosure and sharing of Privileged Information shall be governed solely by Section 5.7, and (ii) Information that is subject to any confidentiality provision or other disclosure restriction in any Ancillary Agreement shall be governed by the terms of such Ancillary Agreement.

Section 5.7 Privilege Matters.

(a)

(i) The Parties recognize that legal and other professional services that have been and will be provided prior to the Separation Effective Time have been and will be rendered for the collective benefit of each of the members of the Everest Group and the Newco Group, and that each of the members of the Everest Group and the Newco Group should be deemed to be the client with respect to such pre-separation services for the purposes of asserting all privileges, immunities, or other protections from disclosure which may be asserted under applicable Legal Requirement, including attorney-client privilege, business strategy privilege, joint defense privilege, common interest privilege, and protection under the work-product doctrine ("Privilege"). The Parties shall have a shared Privilege with respect to all Information subject to Privilege ("Privileged Information") which relates to such pre-separation services. For the avoidance of doubt, Privileged Information within the scope of this Section 5.7 includes, but is not limited to, services rendered by legal counsel retained or employed by any Party (or any member of such Party's respective Group), including outside counsel and in-house counsel.

(ii) The Parties recognize that legal and other professional services will be provided following the Separation Effective Time to each of Everest and Newco. The Parties further recognize that certain of such post-separation services will be rendered solely for the benefit of Everest or Newco, as the case may be, while other such post-separation services may be rendered with respect to claims, proceedings, litigation, disputes or other matters which involve both Everest and Newco.

(b) The Parties agree, notwithstanding the definition of Newco Assets, as follows:

(i) Everest 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 Everest Retained Business, whether or not the Privileged Information is in the possession or under the control of Everest or Athena or a member of their respective Group, agent, or representative of either. Everest 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 Everest Retained Liabilities resulting from any Legal Proceedings that are now pending or may be asserted in the future, whether or not the Privileged Information is in the possession or under control of Everest or Athena or a member of their respective Group, agent, or representative of either.

(ii) Athena 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 Newco Business, whether or not the Privileged Information is in the possession or under the control of Everest or Athena or a member of their respective Group, agent, or representative of either. Athena 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 Newco Liabilities resulting from any Legal Proceedings that are now pending or may be asserted in the future, whether or not the Privileged Information is in the possession or under control of Everest or Athena or a member of their respective Group, agent, or representative of either.

(iii) If Everest and Athena do not agree as to whether certain information is Privileged Information, then the information shall be treated as Privileged Information, and that Party who believes such information is Privileged shall be entitled to control the assertion or waiver of all privileges and immunities in connection with any such information unless the Parties otherwise agree. The Parties shall utilize the procedures set forth in Article VII and Section 8.14 to resolve any disputes as to whether any information relates solely to the Everest Retained Business, solely to the Newco Business, or to both the Everest Retained Business and the Newco Business.

(c) Subject to Sections 5.7(d) and 5.7(e), the Parties agree that they shall have a shared privilege or immunity with respect to all privileges not otherwise allocated pursuant to Section 5.7(b), and all privileges and immunities relating to any Legal Proceeding, claims, disputes, or other matters that involve both Everest and Athena (or one or more of the members of their respective Group).

(d) The Parties agree that no such shared privilege or immunity may be waived by either Party or any member of its respective Group without the consent of the other Party.

(e) If any dispute arises between Everest and Athena, or the members of their respective Group, regarding whether a privilege or immunity should be waived to protect or advance the interests of either Party and/or the members of their respective Group, each such Party agrees that it shall (i) negotiate with the other applicable Party in good faith; (ii) endeavor to minimize any prejudice to the rights of the other Party or any of the members of its Group; and (iii) not unreasonably withhold consent to any request for waiver by the other Party. Further, each Party specifically agrees that it shall not (and shall cause each member of its Group not to), without the other Party's consent, agree to the waiver of a privilege or immunity for any purpose except to protect its own legitimate interests.

(f) Upon receipt by Athena or any member of its Group of any subpoena, discovery or other request that may reasonably be expected to result in the production or disclosure of information subject to a shared privilege or immunity or as to which Everest or any member of the Everest Group has the sole right hereunder to assert a privilege or immunity or if Athena obtains knowledge that it or any member of its Group's current or former directors, officers, agents or employees has received any subpoena, discovery or other requests that may reasonably be expected to result in the production or disclosure of such Privileged Information, Athena shall promptly provide notice to Everest of the existence of the request (which notice shall be delivered to Everest no later than three (3) Business Days following the receipt of any such subpoena, discovery or other request) and shall provide Everest with a reasonable opportunity to review the information and to assert any rights it or they may have, including under this [Section 5.7](#) or otherwise, to prevent the production or disclosure of such Privileged Information.

(g) Upon receipt by Everest or by any member of the Everest Group, of any subpoena, discovery or other request that may reasonably be expected to result in the production or disclosure of information subject to a shared privilege or immunity or as to which Athena or any member of the Athena Group has the sole right hereunder to assert a privilege or immunity or if Everest obtains knowledge that it or any member of its Group's current or former directors, officers, agents or employees has received any subpoena, discovery or other requests that may reasonably be expected to result in the production or disclosure of such Privileged Information, Everest shall promptly provide notice to Athena of the existence of the request (which notice shall be delivered to Athena no later than three (3) Business Days following the receipt of any such subpoena, discovery or other request) and shall provide Athena with a reasonable opportunity to review the information and to assert any rights it or they may have, including under this [Section 5.7](#) or otherwise, to prevent the production or disclosure of such Privileged Information.

(h) The Parties agree that they have or may in the future have common legal interests in the Everest Retained Liabilities and any corresponding legal rights, in the Newco Liabilities and any corresponding legal rights, in the Privileged Information and in the preservation of the protected status of the Privileged Information. The Parties have disclosed and exchanged and will disclose and exchange certain Privileged Information between and among themselves in order to further the Parties' common legal interests.

(i) Any furnishing of, or access to, information pursuant to this Agreement is made in reliance on the agreement of Everest, Athena and/or Newco set forth in [Section 5.6](#) and this [Section 5.7](#) to maintain the confidentiality of Privileged Information and to assert and maintain all applicable privileges and immunities. The Parties further agree that (i) the exchange by Everest or Athena (or any member of its respective Group) to the other Party (or any member of its Group) of any Privileged Information that should not have been transferred pursuant to the terms of this [Article V](#) 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 (or for which a member of its Group has received) such Privileged Information shall promptly return such Privileged Information to the Party (or the applicable member of its Group) who has the right to assert the privilege or immunity.

(j) In furtherance of, and without limitation to, the Parties' agreement under this Section 5.7, Everest and Athena shall, and shall cause the applicable members of their respective Groups to, use reasonable efforts to maintain their respective separate and joint privileges and immunities, including by executing joint defense and/or common interest agreements where necessary or useful for this purpose.

(k) In the event of any litigation or dispute between the Parties, or any members of their respective Groups, either such Party may waive a Privilege in which the other Party or member of such Group has a shared Privilege, without obtaining the consent of the other Party; provided that such waiver of a shared Privilege shall be effective only as to the use of Privileged Information with respect to the litigation or dispute between the Parties and/or the applicable members of their respective Groups, and shall not operate as a waiver of the shared Privilege with respect to third parties. The Parties agree to treat such information as Confidential Information in accordance with Section 5.6, including, but not limited to obtaining appropriate protective orders and sealing of the information to protect the Privilege as to others. The Parties agree to protect the Privileged Information to prevent waivers as to third parties to the fullest extent permitted by law.

(l) The transfer of all Information pursuant to this Agreement is made in reliance on the agreement of Everest, Athena and/or Newco as set forth in Section 5.6 and this Section 5.7, to maintain the confidentiality of Privileged Information and to assert and maintain any applicable Privilege. The access to Information being granted pursuant to Sections 4.5, 5.2 and 5.3 hereof, the agreement to provide witnesses and individuals pursuant to Sections 4.5 and 5.4 hereof, the furnishing of notices and documents and other cooperative efforts contemplated by Section 4.5 hereof, and the transfer of Privileged Information between the Parties and their respective members of their Group 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.

(m) The provisions of this Section 5.7 shall become effective as of the Effective Time.

Section 5.8 Ownership of Information. Any Information owned by one Party or any of its Subsidiaries that is provided to a requesting Party pursuant to this Article V shall be deemed to remain the property of the providing Party. Unless expressly set forth herein, nothing contained in this Agreement shall be construed as granting a license or other rights to any Party with respect to any such Information, whether by implication, estoppel or otherwise.

Section 5.9 Other Agreements. The rights and obligations granted under this Article V are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange or confidential treatment of Information set forth in any Ancillary Agreement.

ARTICLE VI

INSURANCE

Section 6.1 Insurance Matters.

(a) Newco and Athena acknowledge and agree that, from and after the Separation Effective Time, neither Newco nor any member of the Newco Group shall have any rights to or under any Company Policies, other than (i) as expressly provided in Section 4.7 or (ii) for a period of three (3) years following the Separation Effective Time, Company Policies issued by a third party providing coverage on an occurrence basis, including defense and indemnity benefits attributable to or arising from or under such Company Policies (such policies or programs, the “Pre-Closing Policies”). Everest, on behalf of itself and each member of the Everest Group agrees that with respect to acts, omissions, events or circumstances relating to the Newco Business that occurred prior to the Separation Effective Time and that would reasonably be expected to be covered by Pre-Closing Policies under which the Newco Business was insured prior to the Separation Effective Time, Newco and the members of the Newco Group may make claims under such Pre-Closing Policies subject to the terms and conditions of such Pre-Closing Policies and this Agreement; provided that the applicable member of the Newco Group shall notify Athena in writing of all such claims and shall be solely responsible for the amount of any deductibles, retentions, premium increases, claim administration, claims handling, costs and expenses of any letters of credit or other collateral arrangements (to the extent related to any claims or potential claims related to the Newco Business) and all other out-of-pocket costs and expenses incurred in connection with such claims and any uninsured, uncovered or uncollectible amounts related to such claims. If so requested by Everest, Newco shall promptly enter into assumption agreements (and provide for letters of credit or other collateral arrangements as required by such assumption agreements), required by any insurers under such Pre-Closing Policies for the purpose of transferring, or acknowledging and accepting the transfer of, the liabilities and obligations of Everest with respect to the Pre-Closing Policies to the extent related to the Newco Business, including all liabilities with respect to the payment, reimbursement and indemnification obligations for losses, deductibles, retained amounts, administration, allocated loss adjustment expenses and the provision of collateral. To the extent any such assumption agreements contemplated by the preceding sentence are entered into, and Everest actually receives a refund of premium as a result of Newco assuming the applicable portion of the polic(ies) as between Everest, Newco and the applicable insurer, Everest shall offset against the amounts due from Newco in respect of Newco’s portion of any Pre-Closing Policies the amount of such premium refund actually received. For the avoidance of doubt, (i) except with respect to the Pre-Closing Policies to the extent provided above, Newco acknowledges and agrees that, from and after the Separation Effective Time the Newco Group and not any member of the Everest Group shall be responsible for establishing any and all insurance programs required to comply with the Newco Group’s contractual obligations and such other Company Policies required by Legal Requirements or as necessary or appropriate to operate the Newco Business, including, without limitation, with respect to general liability, workers’ compensation, directors’ and officers’ liability and fiduciary liability; (ii) for purposes of this Section 6.1, Company Policies shall not include any self-insurance or captive insurance; and (iii) nothing in this Section 6.1 shall prevent Everest or any member of the Everest Group, in their sole discretion, from accessing, amending, commuting, cancelling, eroding, exhausting or otherwise taking any action under or in connection with a Company Policy.

(b) If requested by Everest, Newco shall procure, at Newco's sole cost and expense, a prepaid, non-cancelable six (6)-year "tail" insurance policy, endorsement or otherwise, effective as of the Effective Time, containing terms not less favorable than the terms of directors' and officers' liability insurance, fiduciary liability insurance or employment practices liability insurance covering any directors and officers, fiduciaries or employees of the Newco Group who are covered by the directors' and officers' liability insurance, fiduciary liability insurance or employment practices liability insurance policies of Everest and its Subsidiaries (including the Newco Group) with respect to matters existing or occurring at or prior to the Effective Time. If any claim is asserted or made within such six (6)-year period, then any insurance required to be maintained under this Section 6.1(b) shall be continued in respect of such claim until the final disposition thereof.

ARTICLE VII

DISPUTE RESOLUTION

Section 7.1 Negotiation. Each Party shall appoint a representative who shall be responsible for administering this dispute resolution provision (the "Appointed Representative") after the Closing. The Appointed Representative shall have the authority to resolve any such disputes. Except as otherwise provided in this Agreement or in any Ancillary Agreement, in the event of a controversy, dispute or claim after the Closing arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity, termination or breach of this Agreement or any Ancillary Agreement or otherwise arising out of, or in any way related to, this Agreement or any Ancillary Agreement or the transactions contemplated hereby or thereby (but, for the avoidance of doubt, specifically excluding the Merger Agreement where any disputes under the Merger Agreement shall be resolved pursuant to the terms thereof) (collectively, the "Agreement Disputes"), the Appointed Representatives shall negotiate in good faith for a reasonable period of time to settle such Agreement Dispute; provided, however, that such reasonable period shall not, unless otherwise agreed to by the relevant Parties in writing, exceed ninety (90) calendar days from the time of receipt by a Party of written notice of such Agreement Dispute. Nothing said or disclosed, nor any document produced, in the course of any negotiations, conferences and discussions in connection with efforts to settle an Agreement Dispute that is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose, but shall be considered as to have been disclosed for settlement purposes. The Parties agree that (i) this Article VII is included for the convenience of the Parties, (ii) no Party shall have any Liability for any breach of this Article VII and (iii) no breach of, or failure to comply with this Article VII shall affect any of the rights or remedies under this Agreement, the Merger Agreement or any Ancillary Agreement, including the right to have the dispute resolved pursuant to Section 8.14.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Entire Agreement; Counterparts; Exchanges by Facsimile. This Agreement, the Merger Agreement, the Ancillary Agreements and the Confidentiality Agreement, including the exhibits and schedules hereto and thereto and the other agreements referred to herein and therein shall constitute the entire agreement and shall supersede all prior agreements and understandings, both written and oral, among or between any of the Parties with respect to the subject matter hereof and thereof. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

Section 8.2 Ancillary Agreements; Precedence of Agreements. Except as expressly set forth herein, this Agreement is not intended to address, and should not be interpreted to address, the matters specifically and expressly covered by the Ancillary Agreements. In the event and to the extent that there shall be a conflict between the provisions of (a) this Agreement and the provisions of any Ancillary Agreement or Continuing Arrangement, such Ancillary Agreement or Continuing Arrangement shall control (except with respect to any Conveyancing and Assumption Instruments, in which case this Agreement shall control) and (b) this Agreement and any agreement which is not an Ancillary Agreement, this Agreement shall control unless specifically stated otherwise in such agreement. For the avoidance of doubt, the Conveyancing and Assumption Instruments are intended to be ministerial in nature and only to effect the transactions contemplated by this Agreement with respect to the applicable local jurisdiction and shall not expand or modify the rights and obligations of the Parties under this Agreement or any of the Ancillary Agreements that are not Conveyancing and Assumption Instruments.

Section 8.3 Survival. The covenants and agreements that by their terms are to be performed following the Separation Effective Time pursuant to this Agreement or any other Ancillary Agreement shall survive the Separation Effective Time in accordance with their terms, and all other covenants and agreements herein and therein shall terminate and shall not survive the Separation Effective Time.

Section 8.4 Expenses. Except as otherwise provided in this Agreement, the Merger Agreement (including Section 8.3 thereof, including the fees and expense payment and reimbursement requirements therein) or any Ancillary Agreement, (i) all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby or thereby shall be paid by the Party incurring such expenses, whether or not the transactions contemplated hereby or by the Merger Agreement are consummated and (ii) all investment banking, debt financing, legal, regulatory advisory, finance, accounting and tax advisory, audit, project management consulting, human resources consulting, and IT, ERP and supply chain consulting fees and expenses incurred but not paid prior to the Closing by or on behalf of the Newco Companies in connection with this Agreement and the Contemplated Transactions shall be deemed to be fees and expenses of Everest.

Section 8.5 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the U.S. return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier (such as Federal Express), two (2) Business Days after mailing; (c) if sent by facsimile transmission or e-mail before 5:00 p.m. Eastern Time, when transmitted and receipt is confirmed; (d) if sent by facsimile transmission or e-mail after 5:00 p.m. Eastern Time and receipt is confirmed, on the following Business Day; or (e) if otherwise actually personally delivered, when delivered; provided that such notices, requests, demands and other communications are delivered to the physical address, e-mail address or facsimile number set forth below, or to such other address as any Party shall provide by like notice to the other Parties to this Agreement:

if to Athena or Newco (after the Separation Effective Time):

Apergy Corporation
2445 Technology Forest Blvd., 12th Floor
The Woodlands, TX 77381
Attn: General Counsel
Email: general.counsel@apergy.com

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

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attn: Michael J. Aiello
Sachin Kohli
Email: michael.aiello@weil.com
sachin.kohli@weil.com
Fax: (212) 310-8007

if to Everest or Newco (prior to the Separation Effective Time):

c/o Ecolab Inc.
1 Ecolab Place
Saint Paul, MN 55102
Attn: General Counsel
Email: generalcounsel@ecolab.com

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

Skadden, Arps, Slate, Meagher & Flom LLP
Attn: Charles W. Mulaney, Jr.
Richard C. Witzel, Jr.
155 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Email: charles.mulaney@skadden.com
rich.witzel@skadden.com
Fax: (312) 407-0411

Section 8.6 Waiver.

(a) No failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any Party would otherwise have.

(b) No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

Section 8.7 Assignment. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any Party's rights or obligations hereunder may be assigned or delegated by such Party without the prior written consent of the other Parties, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by any Party without the prior written consent of the other Parties shall be void and of no effect.

Section 8.8 Termination. This Agreement shall terminate without further action at any time before the Separation Effective Time upon termination of the Merger Agreement. If so terminated, no Party shall have any Liability of any kind to any other Party or any other Person on account of this Agreement, except as provided in the Merger Agreement.

Section 8.9 Amendment. This Agreement may not be amended except by an instrument in writing signed by an authorized Representative of each of the Parties.

Section 8.10 Payment Terms.

(a) Except as set forth in Article IV or as otherwise expressly provided to the contrary in this Agreement or in any Ancillary Agreement, any amount to be paid or reimbursed by a Party (and/or a member of such Party's Group), on the one hand, to the other Party (and/or a member of such Party's Group), on the other hand, under this Agreement shall be paid or reimbursed hereunder within 30 days after presentation of an invoice or a written demand therefor and setting forth, or accompanied by, reasonable documentation or other reasonable explanation supporting such amount.

(b) Except as set forth in Article IV or as expressly provided to the contrary in this Agreement or in any Ancillary Agreement, any amount not paid when due pursuant to this Agreement (and any amount billed or otherwise invoiced or demanded and properly payable that is not paid within sixty (60) days of such bill, invoice or other demand) shall bear interest on such overdue amount (for the period commencing as of the date such overdue amount was originally required to be paid through the date such overdue amount is actually paid to the other Party in full) at a rate per annum equal to the lower of: (i) 350 basis points over the "prime rate" (as published in *The Wall Street Journal*) in effect on the date such overdue amount was originally required to be paid; or (ii) the maximum rate permitted by applicable Legal Requirements.

(c) Without the consent of the Party receiving any payment under this Agreement specifying otherwise, all payments to be made by either Everest or Newco under this Agreement shall be made in U.S. dollars. Except as expressly provided herein, any amount which is not expressed in U.S. dollars shall be converted into U.S. dollars by using the exchange rate published on Bloomberg at 5:00 p.m. Eastern Time on the day before the relevant date or in *The Wall Street Journal* on such date if not so published on Bloomberg. Except as expressly provided herein, in the event that any indemnification payment required to be made hereunder or under any Ancillary Agreement may be denominated in a currency other than U.S. dollars, the amount of such payment shall be converted into U.S. Dollars on the date in which notice of the claim is given to the Indemnifying Party.

Section 8.11 Subsidiaries. Each of the Parties shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Subsidiary of such Party or by any entity that becomes a Subsidiary of such Party at and after the Separation Effective Time, to the extent such Subsidiary remains a Subsidiary of the applicable Party.

Section 8.12 Third-Party-Beneficiaries. Except (i) as provided in Article IV relating to Indemnitees and for the release under Section 4.1 of any Person provided therein, and (ii) as specifically provided in any Ancillary Agreement, this Agreement is solely for the benefit of the Parties and nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.13 Exhibits and Schedules. The Exhibits and Schedules shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein. Nothing in the Exhibits or Schedules constitutes an admission of any liability or obligation of any member of the Everest Group or the Newco Group or any of their respective Affiliates to any third party, nor, with respect to any third party, an admission against the interests of any member of the Everest Group or the Newco Group or any of their respective Affiliates. The inclusion of any item or liability or category of item or liability on any Exhibit or Schedule is made solely for purposes of allocating potential liabilities among the Parties and shall not be deemed as or construed to be an admission that any such liability exists.

Section 8.14 Governing Law; Jurisdiction; Specific Performance; Remedies. This Agreement 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. In any Legal Proceeding between any of the Parties arising out of or relating to this Agreement or any of the transactions contemplated hereby: (a) each of the Parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or, if under applicable Legal Requirements, exclusive jurisdiction over such matter is vested in the federal courts, any federal court in the State of Delaware and any appellate court from any thereof; (b) each of the Parties irrevocably waives the right to trial by jury; and (c) each of the Parties irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, any claim (i) that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason; (ii) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts; and (iii) that (x) the claim, action, suit or other Legal Proceeding in any such court is brought in an inconvenient forum; (y) the venue of such claim, action, suit or other Legal Proceeding is improper; or (z) this Agreement, the Ancillary Agreements, or the subject matter hereof or thereof, may not be enforced in or by such courts. Each of the Parties further agrees that, to the fullest extent permitted by applicable Legal Requirements, service of any process, summons, notice or document by U.S. registered mail to such Entity's respective address set forth in Section 8.5 will be effective service of process for any claim, action, suit or other Legal Proceeding in the Court of Chancery of the State of Delaware or, to the extent required by Legal Requirements, any federal court in the State of Delaware, with respect to any matters to which it has submitted to jurisdiction as set forth in this paragraph. The Parties hereby agree that a final judgment in any such claim, suit, action or other Legal Proceeding will be conclusive, subject to any appeal, and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. The Parties agree that irreparable damage would occur and that the Parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to specific performance and injunctive or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement without the requirement for the posting of any bond, this being in addition to any other remedy to which they are entitled at law or in equity. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

Section 8.15 Severability. Any term or provision of this Agreement (or part thereof) that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision (or part thereof) in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement (or part thereof) is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision (or part thereof), to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision (or part thereof), and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision (or part thereof) with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

Section 8.16 No Duplication; No Double Recovery. Nothing in this Agreement is intended to confer to or impose upon any Party a duplicative right, entitlement, obligation or recovery with respect to any matter arising out of the same facts and circumstances (including with respect to the rights, entitlements, obligations and recoveries that may arise out of one or more of the following Sections: Section 4.2; Section 4.3; and Section 4.4).

Section 8.17 Tax Treatment of Payments. The Parties agree that any payment made among the Parties pursuant to this Agreement (other than any payment of interest pursuant to Section 8.10) shall be treated, to the extent permitted by applicable Legal Requirement, for all U.S. federal income tax purposes as either (i) a non-taxable contribution by Everest to Newco, or (ii) a distribution by Newco to Everest, in each case, made immediately prior to the Distribution. Any Indemnity Payment made by a Party under this Agreement shall be increased as necessary so that after making all payments in respect of Taxes imposed on or attributable to such Indemnity Payment, the recipient Party receives an amount equal to the sum it would have received had no such Taxes been imposed.

Section 8.18 Advisors. It is acknowledged and agreed by each of the Parties hereto that Everest, on behalf of itself and the other members of the Everest Group, has retained each of the Persons identified on Schedule 8.18 to act as counsel in connection with this Agreement, the Merger Agreement, the Ancillary Agreements, the Internal Restructuring and the other transactions contemplated hereby and thereby and that the Persons listed on Schedule 8.18 have not acted as counsel for Newco or any other member of the Newco Group in connection with this Agreement, the Merger Agreement, the Ancillary Agreements, the Internal Restructuring and the other transactions contemplated hereby and thereby and that none of Newco or any member of the Newco Group has the status of a client of the Persons listed on Schedule 8.18 for conflict of interest or any other purposes as a result thereof. Newco hereby agrees, on behalf of itself and each other member of the Newco Group that, in the event that a dispute arises after the Separation Effective Time in connection with this Agreement, the Merger Agreement, the Ancillary Agreements, the Internal Restructuring and the other transactions contemplated hereby and thereby between Everest and Newco or any of the members of their respective Groups, each of the Persons listed on Schedule 8.18 may represent any or all of the members of the Everest Group in such dispute even though the interests of the Everest Group may be directly adverse to those of the Newco Group. Newco further agrees, on behalf of itself and each other member of the Newco Group that, with respect to this Agreement, the Merger Agreement, the Ancillary Agreements, the Internal Restructuring and the other transactions contemplated hereby and thereby, the attorney-client privilege and the expectation of client confidence belongs to Everest or the applicable member of the Everest Group and may be controlled by Everest or such member of the Everest Group and shall not pass to or be claimed by Newco or any member of the Newco Group.

Section 8.19 Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include masculine and feminine genders.

(b) The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, unless otherwise specified, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(d) As used in this Agreement, 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.”

(e) As used in this Agreement, the word “will” shall be deemed to have the same meaning and effect as the word “shall.”

(f) As used in this Agreement, the terms “or,” “any” or “either” are not exclusive.

(g) Except as otherwise indicated, all references in this Agreement to “Articles,” “Sections,” “Exhibits” and “Schedules” are intended to refer to Sections or Articles of this Agreement and Exhibits or Schedules to this Agreement.

(h) As used in this Agreement, the terms “hereunder,” “hereof,” “hereto,” “herein” and words of similar import shall be deemed to refer to this Agreement as a whole and not to any particular Section or other provision.

(i) The headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

(j) Any payment to be made pursuant hereto shall be made in U.S. dollars and by wire transfer of immediately available funds.

(k) Unless the context requires otherwise, references in this Agreement to “Everest” shall also be deemed to refer to the applicable member of the Everest Group, references to “Newco” shall also be deemed to refer to the applicable member of the Newco Group and, in connection therewith, any references to actions or omissions to be taken, or refrained from being taken, as the case may be, by Everest or Newco shall be deemed to require Everest or Newco, as the case may be, to cause the applicable members of the Everest Group or the Newco Group, respectively, to take, or refrain from taking, any such action. In the event of any inconsistency or conflict which may arise in the application or interpretation of any of the definitions set forth in Section 1.1, for the purpose of determining what is and is not included in such definitions, any item explicitly included on a Schedule referred to in any such definition shall take priority over any provision of the text thereof.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

ECOLAB INC.

By: /s/ Douglas M. Baker, Jr

Name: Douglas M. Baker, Jr

Title: Chairman of the Board and Chief Executive Officer

CHAMPIONX HOLDING INC.

By: /s/ Douglas M. Baker, Jr

Name: Douglas M. Baker, Jr

Title: Chairman of the Board

APERGY CORPORATION

By: /s/ Sivasankaran Somasundaram

Name: Sivasankaran Somasundaram

Title: President and Chief Executive Officer

EMPLOYEE MATTERS AGREEMENT

by and among

ECOLAB INC.,

CHAMPIONX HOLDING INC.,

and

APERGY CORPORATION

Dated as of December 18, 2019

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EMPLOYEE MATTERS AGREEMENT

This **EMPLOYEE MATTERS AGREEMENT** (this "Agreement") is entered into as of December 18, 2019 by and among: (i) Ecolab Inc., a Delaware corporation ("Everest"); (ii) ChampionX Holding Inc., a Delaware corporation and wholly owned Subsidiary of Everest ("Newco"); and (iii) Apergy Corporation, a Delaware corporation ("Athena") (each a "Party" and together, the "Parties"). Terms used but not defined herein shall have the meaning ascribed to them in the Separation and Distribution Agreement.

WITNESSETH:

WHEREAS, Everest is engaged, directly and indirectly, in the Newco Business;

WHEREAS, the Board of Directors of Everest (the "Everest Board") has determined that it is appropriate, desirable and in the best interests of Everest and Everest's stockholders to separate the Newco Business from the other businesses of Everest and to divest the Newco Business in the manner contemplated by the Agreement and Plan of Merger and Reorganization, dated as of December 18, 2019 (as it may be amended, modified or supplemented from time to time, the "Merger Agreement"), by and among Everest, Newco, Athena, and Athena Merger Sub, Inc., a Delaware corporation and a wholly owned Subsidiary of Athena ("Merger Sub"), and the Separation and Distribution Agreement by and among the Parties, dated as of December 18, 2019 (the "Separation and Distribution Agreement");

WHEREAS, Everest currently owns all of the shares of common stock of Newco (the "Newco Common Stock");

WHEREAS, on the terms and subject to the conditions set forth in the Separation and Distribution Agreement, in order to effect such separation, Everest will undertake the Internal Restructuring and, in connection therewith, effect the Newco Contribution and, in exchange therefor, Newco shall (i) issue to Everest additional shares of Newco Common Stock and (ii) pay to Everest the Cash Payment;

WHEREAS, on the terms and subject to the conditions set forth in the Separation and Distribution Agreement, following the completion of the Internal Restructuring, the Newco Contribution and the payment of the Cash Payment, Everest shall own all of the issued and outstanding shares of Newco Common Stock and shall effect the distribution of all of such outstanding shares of Newco Common Stock to the holders of Everest Common Stock in accordance with the Separation and Distribution Agreement (the "Distribution");

WHEREAS, the Parties contemplate that, pursuant to the Merger Agreement, immediately after the Distribution and at the Separation Effective Time, Merger Sub shall be merged (the "Merger") with and into Newco, with Newco surviving the Merger as a wholly owned subsidiary of Athena, and the shares of Newco Common Stock shall be converted into the right to receive shares of common stock of Athena ("Athena Common Stock") on the terms and subject to the conditions of the Merger Agreement and in accordance with the Delaware General Corporation Law; and

WHEREAS, pursuant to the Separation and Distribution Agreement, the Parties have agreed to enter into this Agreement for the purpose of allocating Assets, Liabilities and responsibilities with respect to certain employee matters and employee compensation and benefit plans and programs between them and to address certain other employment-related matters.

NOW, THEREFORE, in consideration of the foregoing and 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 1.1 General. As used in this Agreement, the following terms shall have the following meanings:

(1) “Accrued Incentive Amount” shall mean the aggregate amount accrued by Everest through the Separation Effective Time consistent with past practice in respect of all Newco Employees under any incentive compensation and sales commission programs, including those material incentive compensation and sales commissions programs listed on Schedule 2.16(b) of the Everest Disclosure Letter, that are applicable to such Newco Employees and unpaid as of the Separation Effective Time.

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

(3) “Automatic Transfer Newco Employees” shall mean any Newco Employee, where local employment Legal Requirements, including the Transfer Regulations, provide for an automatic transfer of such employees to a member of the Newco Group by operation of law upon the transfer of a business and such business transfer occurs as a result of the transactions contemplated by the Separation and Distribution Agreement.

(4) “Automatic Transfer Everest Employees” shall mean any Everest Employee, where local employment Legal Requirements, including the Transfer Regulations, provide for an automatic transfer of such employees to a member of the Everest Group by operation of law upon the transfer of a business as a going concern and such business transfer occurs as a result of the transactions contemplated by the Separation and Distribution Agreement.

(5) “Athena Adjusted Performance-Based Restricted Stock Unit” shall have the meaning set forth in Section 4.3.

(6) “Athena Common Stock” shall have the meaning set forth in the Recitals.

(7) “Athena Group” shall have the meaning set forth in the Separation and Distribution Agreement.

- (8) “Athena Option” shall have the meaning set forth in Section 4.1.
- (9) “Athena Restricted Stock Unit” shall have the meaning set forth in Section 4.2.
- (10) “Benefit Arrangement” shall mean each Benefit Plan and PTO Policy.

(11) “Benefit Plan” shall mean, with respect to an Entity, each compensation or employee benefit plan, program, policy, agreement or other arrangement, whether or not “employee benefit plans” (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA), including any benefit plan, program, policy, agreement or arrangement providing cash- or equity-based compensation or incentives, health, medical (including self-funded medical with stop-loss insurance), dental, vision, disability, accident or life insurance benefits, severance, retention, change in control, termination, deferred compensation, individual employment or consulting, retirement, pension or savings benefits, supplemental income, retiree benefit or other fringe benefit (whether or not taxable), that are sponsored or maintained by such Entity (or to which such Entity contributes or is required to contribute or in which it participates), and excluding workers’ compensation plans, policies, programs and arrangements.

- (12) “Closing Date” shall have the meaning set forth in the Merger Agreement.

(13) “Collective Bargaining Agreement” shall mean all agreements with the collective bargaining representatives, employee representatives, trade unions, labor or management organizations, groups of employees, or works councils or similar representative bodies of Newco Employees, including all national or sector specific collective agreements which are applicable to Newco Employees, in each case in effect immediately prior to the date on which the applicable Newco Employees become employed by a member of the Newco Group, that set forth terms and conditions of employment of Newco Employees, and all modifications of, or amendments to, such agreements and any rules, procedures, awards or decisions of competent jurisdiction interpreting or applying such agreements.

(14) “Delayed Transfer Date” shall mean the date on which it is determined by Everest in consultation with Athena that (i) a Delayed Transfer Newco Employee or Delayed Transfer Everest Employee is permitted to transfer from the Everest Group to the Newco Group or from the Newco Group to the Everest Group, respectively, in accordance with applicable Legal Requirements, or (ii) the necessary business operations are set up in the relevant jurisdiction to enable employment of the Everest Employee by the Everest Group. Delayed Transfer Everest Employees and Delayed Transfer Newco Employees shall become Everest Employees or Newco Employees, respectively, if such employees return to active service within twelve (12) months following the Separation Effective Time or such longer period as required by applicable Legal Requirements or otherwise agreed to by the Parties (including as agreed to in the Transition Services Agreement).

(15) “Delayed Transfer Everest Employee” shall mean any Everest Employee whose employment is determined by Everest in consultation with Athena to not be eligible to be transferred from a member of the Newco Group to a member of the Everest Group at or prior to the Separation Effective Time as a result of (i) requirements under applicable Legal Requirements, (ii) the Everest Employee being on a disability, workers’ compensation or similar leave, (iii) a delay in a transferring or obtaining a visa in order to work for a member of the Everest Group, (iv) a delay in setting up Everest operations in a particular jurisdiction sufficient to employ such Everest Employee, or (v) any delay as a result of the Transition Services Agreement.

(16) “Delayed Transfer Equity Award Effective Date” shall have the meaning set forth in Section 4.5.

(17) “Delayed Transfer Newco Employee” shall mean any Newco Employee whose employment is determined by Everest in consultation with Athena to not be eligible to be transferred to a member of the Newco Group at or prior to the Separation Effective Time as a result of (i) requirements under applicable Legal Requirements, (ii) the Newco Employee being on a disability, workers compensation, or similar leave, (iii) a delay in a transferring or obtaining a visa in order to work for a member of the Newco Group, (iv) a delay in setting up Newco operations in a particular jurisdiction sufficient to employ such Newco Employee, or (v) any delay as a result of the Transition Services Agreement.

(18) “Designated Individual Agreements” shall mean those Individual Newco Agreements set forth on Exhibit A hereto.

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

(20) “Effective Time” shall have the meaning set forth in the Merger Agreement.

(21) “Employee Representative” shall mean any works council, employee representative, trade union, labor or management organization, group of employees or similar representative body for Newco Employees.

(22) “Equity Award Adjustment Ratio” shall mean (A) the closing trading price per share of Everest Common Stock immediately prior to the Separation Effective Time divided by (B) the closing trading price per share of Athena Common Stock immediately prior to the Separation Effective Time.

(23) “ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

(24) “Everest” shall have the meaning set forth in the Preamble.

(25) “Everest Benefit Arrangement” shall mean any Benefit Arrangement sponsored, maintained or contributed to by any member of the Everest Group.

(26) “Everest Board” shall have the meaning set forth in the Recitals.

(27) “Everest Deferred Compensation Plan” shall mean the Everest Mirror Savings Plan.

- (28) “Everest Employee” shall mean each employee of Everest or any of its Subsidiaries or Affiliates who does not qualify as a Newco Employee.
- (29) “Everest Independent Contractor” shall mean each independent contractor or consultant of Everest or any of its Subsidiaries or Affiliates who does not qualify as a Newco Independent Contractor.
- (30) “Everest Option” shall mean an option to purchase shares of Everest Common Stock granted pursuant to an Everest Stock Incentive Plan.
- (31) “Everest Performance Based Restricted Stock Unit” shall mean an award granted by Everest pursuant to an Everest Stock Incentive Plan that was denominated as a “Performance Stock Unit” under the terms of such plan and the related award agreement.
- (32) “Everest Restricted Stock Unit” shall mean an award granted by Everest pursuant to an Everest Stock Incentive Plan that was denominated as a “Restricted Stock Unit” under the terms of such plan and the related award agreement and vests solely based on the continued employment or service of the recipient.
- (33) “Everest Stock Purchase Plan” shall mean the Everest Stock Purchase Plan as amended through February 28, 2004.
- (34) “Everest Stock Incentive Plans” shall mean, collectively, (i) the Everest Inc. 2010 Stock Incentive Plan, as amended and restated, and (ii) the Second Amended and Restated Nalco Holding Company 2004 Stock Incentive Plan.
- (35) “Everest U.S. OPEB Plan” shall mean the Everest Post Retirement Benefits Plan, or any other Everest Benefit Arrangement maintained primarily in respect of individuals who are located in the United States that provides for post-termination or post-retirement health and welfare benefits.
- (36) “Everest U.S. Retirement Plan” shall mean the Everest Pension Plan.
- (37) “Everest U.S. Savings Plans” shall mean (i) the Everest Savings Plan and ESOP, (ii) the Everest Savings Plan and ESOP for Traditional Benefit Employees, and (iii) any other defined contribution retirement plan maintained by Everest or any of its Affiliates (other than a member of the Newco Group) that is intended to be qualified under Section 401(a) of the Code.
- (38) “Everest Welfare Plans” shall mean any Welfare Plan maintained by Everest or any member of the Everest Group.
- (39) “Former Everest Service Provider” shall mean any former employee, independent contractor or consultant of Everest or any of its Subsidiaries or Affiliates who is not a Former Newco Service Provider.
- (40) “Former Newco Service Provider” shall mean (i) any individual who would qualify as a Newco Employee or Newco Independent Contractor, but whose employment or service with Everest or any of its Subsidiaries or Affiliates terminated for any reason prior to the date on which such individual’s employment or service would otherwise have transferred to Newco pursuant to this Agreement and (ii) any former employee, independent contractor or consultant of Everest or any of its Subsidiaries or Affiliates who was exclusively or primarily engaged in a Newco Former Business (A) at the time either (x) such business was sold, conveyed, assigned, transferred or otherwise disposed of or divested (in whole or in part) to a Person that is not a member of the Newco Group or the Everest Group or (y) the operations, activities or production of which were discontinued, abandoned, completed or otherwise terminated (in whole or in part), or (B) at any other time, but in such case only to the extent relating to his or her service with such Newco Former Business.

(41) “Individual Agreement” shall mean each Individual Everest Agreement and each Individual Newco Agreement.

(42) “Individual Everest Agreement” shall mean any individual (i) employment contract, (ii) retention, severance or change of control agreement, (iii) expatriate (including any international assignee) contract or agreement (including agreements and obligations regarding repatriation, relocation, equalization of taxes and living standards in the host country), or (iv) other agreement containing restrictive covenants (including confidentiality, non-competition and non-solicitation provisions) by and between a member of the Newco Group and an Everest Group Employee, as in effect immediately prior to the Individual Agreement Effective Time.

(43) “Individual Newco Agreement” shall mean any individual (i) employment contract, (ii) retention, severance or change of control agreement, (iii) expatriate (including any international assignee) contract or agreement (including agreements and obligations regarding repatriation, relocation, equalization of taxes and living standards in the host country), or (iv) other agreement containing restrictive covenants (including confidentiality, non-competition and non-solicitation provisions) by and between a member of the Everest Group and a Newco Group Employee, as in effect immediately prior to the Individual Agreement Effective Time but, in each case, other than the Excluded Individual Agreements.

(44) “Individual Agreement Effective Time” shall have the meaning set forth in Section 3.9(a).

(45) “Key Athena Employee” shall mean those employees of Athena who are in the Athena compensation bands N, N-1, N-2 and N-3, as well as all employees of Athena with a title of “Manager.”

(46) “Key Everest Employee” shall mean those Everest Employees who are in the following Everest compensation bands: E1, E2, E3, S1, S2 and C5.

(47) “Merger” shall have the meaning set forth in the Recitals.

(48) “Merger Agreement” shall have the meaning set forth in the Recitals.

(49) “Merger Sub” shall have the meaning set forth in the Recitals.

(50) “Newco” shall have the meaning set forth in the Preamble.

- (51) “Newco Benefit Arrangement” shall mean any Benefit Arrangement sponsored, maintained or contributed to exclusively by any member of the Newco Group including, from and after the Closing, any member of the Athena Group.
- (52) “Newco Common Stock” shall have the meaning set forth in the Recitals.
- (53) “Newco Contribution” shall have the meaning set forth in the Recitals.
- (54) “Newco Deferred Compensation Plan” shall have the meaning set forth in Section 3.5(a).
- (55) “Newco Employee” shall mean each individual who is employed by Everest or any of its Subsidiaries (with respect to the Newco Business) or any of the Newco Companies as of the date on which Everest determines to transfer the employment of applicable individuals to a Newco Company and who Everest determines as of such date (or as of prior to the Separation Effective Time for those individuals who are hired by a Newco Company in accordance with the terms of the Merger Agreement) (i) is exclusively or primarily engaged in the Newco Business, or (ii) is necessary for the ongoing operation of the Newco Business following the Separation Effective Time, in each case regardless of whether any such employee is actively at work or is not actively at work as a result of disability or illness, an approved leave of absence (including military leave with reemployment rights under federal Law and leave under the Family and Medical Leave Act of 1993), vacation, personal day or similar short- or long-term absence.
- (56) “Newco Group” shall have the meaning set forth in the Separation and Distribution Agreement.
- (57) “Newco Independent Contractor” shall mean each individual who is engaged as an independent contractor or consultant by Everest or any of its Subsidiaries (with respect to the Newco Business) or any of the Newco Companies as of the date on which Everest determines to transfer the contracts of service of applicable individuals to the Newco Group and who Everest determines as of such date (i) is exclusively or primarily engaged in the Newco Business, or (ii) is necessary for the ongoing operation of the Newco Business following the Separation Effective Time.
- (58) “Newco RSP” shall have the meaning set forth in Section 3.6(a).
- (59) “Newco U.S. Savings Plan” shall have the meaning set forth in Section 3.2(a).
- (60) “Newco Welfare Plans” shall mean any Welfare Plan maintained exclusively by Newco or any member of the Newco Group including, from and after the Closing, any member of the Athena Group.
- (61) “Non-Automatic Transfer Newco Employee” shall mean any Newco Employee who is not an Automatic Transfer Newco Employee.

- Employee.
- (62) “Non-Automatic Transfer Everest Employee” shall mean any Everest Employee who is not an Automatic Transfer Everest Employee.
- (63) “Non-Solicit Period” shall have the meaning set forth in Section 5.12.
- (64) “Non-U.S. Plans” shall have the meaning set forth in Section 3.7.
- (65) “Non-U.S. Defined Benefit Plans” shall have the meaning set forth in Section 3.8.
- (66) “Party” and “Parties” shall have the meanings set forth in the Preamble.
- (67) “PTO Policy” shall mean, with respect to an Entity, each plan, program, arrangement, agreement or commitment that is a vacation pay or other paid or unpaid leave policy or practice, excluding disability pay or leave, sponsored or maintained by such Entity (or to which such Entity contributes or is required to contribute) or in which it participates.
- (68) “Replacement Award” shall have the meaning set forth in Section 4.5.
- (69) “Separation and Distribution Agreement” shall have the meaning set forth in the Recitals.
- (70) “Transfer Regulations” shall mean (i) all Legal Requirements of any EU Member State or, if it is no longer an EU Member State, the United Kingdom, implementing the EU Council Directive 2001/23/EC of 12 March 2001 on the approximation of the Legal Requirements of the Member States or, if it is no longer an EU Member State, the United Kingdom, relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (the “Acquired Rights Directive”) and legislation and regulations of any EU Member State or, if it is no longer an EU Member State, the United Kingdom, implementing such Acquired Rights Directive, and (ii) any similar Legal Requirements in any jurisdiction providing for an automatic transfer, by operation of law, of employment in the event of a transfer of business.
- (71) “Transferred Newco Employee” shall mean all (i) Newco Employees that are employed by the Newco Group as of immediately following the Separation Effective Time and (ii) Delayed Transfer Newco Employees who commence employment with the Newco Group following the Separation Effective Time.
- (72) “Transferred Newco Independent Contractor” shall mean all Newco Independent Contractors that are retained by or otherwise provide services to the Newco Group as of immediately following the Separation Effective Time.
- (73) “Welfare Plan” shall mean, where applicable, a “welfare plan” (as defined in Section 3(1) of ERISA and in 29 C.F.R. §2510.3-1) or a “cafeteria plan” under Section 125 of the Code, and any benefits offered thereunder, and any other plan offering health benefits (including medical, prescription drug, dental, vision and mental health and substance use disorder), disability benefits, or life, accidental death and disability, pre-tax premium conversion benefits, dependent care assistance programs, employee assistance programs, contribution funding toward a health savings account, flexible spending accounts, tuition reimbursement or adoption assistance programs or cashable credits.

ARTICLE II

GENERAL PRINCIPLES

Section 2.1 Nature of Liabilities and Assets. All Liabilities and Assets assumed or retained by a member of the Everest Group under this Agreement shall be Everest Retained Liabilities or Everest Retained Assets, respectively, for purposes of the Separation and Distribution Agreement. All Liabilities and Assets assumed or retained by a member of the Newco Group under this Agreement shall be Newco Liabilities or Newco Assets, respectively, for purposes of the Separation and Distribution Agreement.

Section 2.2 Transfers of Employees and Independent Contractors Generally.

(a) Subject to applicable Legal Requirements, through and until immediately prior to the Separation Effective Time, Everest shall use its reasonable best efforts to (i) cause the employment of any Newco Employee and the contract of services of any Newco Independent Contractor to be transferred to a member of the Newco Group and (ii) cause the employment of any Everest Employee who is employed by a member of the Newco Group and the contract of services between any independent contractor or consultant that does not qualify as a Newco Independent Contractor and a member of the Newco Group to be transferred to a member of the Everest Group.

(b) Everest shall use its reasonable best efforts to cause each Automatic Transfer Newco Employee to be employed by a member of the Newco Group no later than the Separation Effective Time in accordance with applicable Legal Requirements, or as of the applicable Delayed Transfer Date, if applicable, and Newco agrees to take all actions reasonably necessary to cause the Newco Employees to be so employed. If an Automatic Transfer Newco Employee objects to the transfer of employment to a member of the Newco Group as permitted under applicable law and consequently does not become an employee of the Newco Group and is terminated from employment by the Everest Group as a result, then Newco or a member of the Newco Group shall reimburse the Everest Group in accordance with Section 2.3(c) in an amount equal to fifty percent (50%) of any severance or termination costs incurred by the Everest Group in connection with such termination of employment.

(c) Everest shall use its reasonable best efforts to cause each Automatic Transfer Everest Employee to be employed by a member of the Everest Group no later than the Separation Effective Time in accordance with applicable Legal Requirements, or as of the applicable Delayed Transfer Date, if applicable, and Everest agrees to take all actions reasonably necessary to cause the Everest Employees to be so employed. If an Automatic Transfer Everest Employee objects to the transfer of employment to a member of the Everest Group as permitted under applicable law and consequently does not become an employee of the Everest Group and is terminated from employment by the Newco Group as a result, then Everest or a member of the Everest Group shall reimburse Newco or a member of the Newco Group in accordance with Section 2.3(c) for any severance or termination costs incurred by the Newco Group in connection with such termination of employment.

(d) A member of the Newco Group shall make a qualifying offer of employment in accordance with Section 2.4 to each Non-Automatic Transfer Newco Employee prior to the Separation Effective Time to become employed by a member of the Newco Group effective as of no later than the Separation Effective Time, or as of the applicable Delayed Transfer Date, if applicable; provided that if (i) the consent of such Non-Automatic Transfer Newco Employee is required by the applicable Legal Requirements and (ii) such Non-Automatic Transfer Newco Employee does not consent and does not become employed by a member of the Newco Group and is terminated by the Everest Group as a result, then Newco or a member of the Newco Group shall reimburse Everest or a member of the Everest Group in accordance with Section 2.3(c) in an amount equal to fifty percent (50%) of any severance or termination costs incurred by the Everest Group in connection with such termination of employment (provided that Everest shall consult with Athena prior to terminating the employment of any such Non-Automatic Transfer Newco Employee); provided, further, that Newco or a member of the Newco Group shall reimburse Everest or a member of the Everest Group in accordance with Section 2.3(c) for any statutory severance or termination indemnity incurred by the Everest Group in connection with the transfer of any Non-Automatic Transfer Newco Employee to Newco.

(e) Everest shall make an offer of employment in accordance with applicable Law to each Non-Automatic Transfer Everest Employee prior to the Separation Effective Time to become employed by a member of the Everest Group effective as of no later than the Separation Effective Time, or as of the applicable Delayed Transfer Date, if applicable; provided that if (i) the consent of such Non-Automatic Transfer Everest Employee is required by the applicable Legal Requirements and (ii) such Non-Automatic Transfer Everest Employee does not consent and does not become employed by a member of the Everest Group and is terminated by the Newco Group as a result, then Everest or a member of the Everest Group shall reimburse Newco or a member of the Newco Group in accordance with Section 2.3(c) for any severance or termination costs incurred by Newco in connection with such termination of employment; provided, further, that Everest or a member of the Everest Group shall reimburse Newco or a member of the Newco Group in accordance with Section 2.3(c) for any statutory severance or termination indemnity incurred by Newco or a member of the Newco Group in connection with the transfer of any Non-Automatic Transfer Everest Employee to Everest.

(f) The Everest Group and Newco Group agree to execute, and to seek to have the applicable Newco Employees and Everest Employees execute, such documentation, if any, as may be necessary to reflect the transfer of employment described in this Section 2.2. Notwithstanding any provision of the Merger Agreement or this Agreement to the contrary, to the extent that an Automatic Transfer Newco Employee or Non-Automatic Transfer Newco Employee does not agree to the transfer of employment in accordance with this Section 2.2, Everest, following consultation with Athena, shall be permitted to, or shall be permitted to cause the Newco Group to, increase the annual compensation or provide incentive bonuses (in the form of cash or equity-based awards) to incentivize such transfer of employment, with any such increases in annual compensation limited to no more than 10% and any such incentive bonuses limited to a maximum of \$750,000 in the aggregate and \$75,000 per employee; provided, that (x) fifty percent (50%) of the Liability of any such compensatory payments that are one-time payments shall be assumed or retained by the Newco Group or Everest Group, respectively, and (y) Newco Group shall be solely liable for any such compensatory payments that are not one-time payments.

Section 2.3 Assumption and Retention of Liabilities Generally.

(a) Except as otherwise provided pursuant to this Agreement, any Ancillary Agreement, Exhibit or appendix hereto, in connection with the Internal Restructuring and the Newco Contribution, or, if applicable, from and after the Separation Effective Time, Everest shall, or shall cause one or more members of the Everest Group to, accept, assume (or, as applicable, retain) and perform, discharge and fulfill (i) all Liabilities under all Everest Benefit Arrangements, whenever incurred; (ii) all Liabilities not associated with an Everest Benefit Arrangement or Newco Benefit Arrangement but with respect to the employment, service, termination of employment or termination of service of all Everest Employees, Former Everest Service Providers and Everest Independent Contractors and their respective dependents and beneficiaries (and any alternate payees in respect thereof), whenever incurred; and (iii) all other Liabilities or obligations expressly assigned to or assumed by a member of the Everest Group under this Agreement.

(b) Except as otherwise provided pursuant to this Agreement, any Ancillary Agreement, Exhibit or appendix hereto, in connection with the Internal Restructuring and the Newco Contribution, or, if applicable, from and after the Separation Effective Time, Newco shall, or shall cause one or more members of the Newco Group to, accept, assume (or, as applicable, retain) and perform, discharge and fulfill (i) all Liabilities under all Newco Benefit Arrangements, whenever incurred; (ii) all Liabilities not associated with a Newco Benefit Arrangement or Everest Benefit Arrangement but with respect to the employment, service, termination of employment or termination of service of all Newco Employees, Former Newco Service Providers and Newco Independent Contractors and their respective dependents and beneficiaries (and any alternate payees in respect thereof), whenever incurred; and (iii) all other Liabilities or obligations expressly assigned to or assumed by a member of the Newco Group under this Agreement.

(c) The Parties shall promptly reimburse one another, upon reasonable request of the Party requesting reimbursement and the presentation by such Party of such substantiating documentation as the other Party shall reasonably request, for the cost of any obligations or Liabilities satisfied or assumed by the Party requesting reimbursement or its Group that are, or that have been made pursuant to this Agreement, the responsibility of the other Party or any of its Group.

(d) Notwithstanding that a Delayed Transfer Newco Employee or Delayed Transfer Everest Employee shall not become employed by a member of the Newco Group or Everest Group, respectively, until the Delayed Transfer Date applicable to such employee, (i) the Newco Group or the Everest Group shall be responsible for, and shall timely reimburse the other for, all Liabilities incurred by the Everest Group or Newco Group, respectively, with regard to each such Delayed Transfer Newco Employee or Delayed Transfer Everest Employee from the Separation Effective Time to the Delayed Transfer Date applicable to such employee and (ii) the Parties shall use their reasonable efforts to effect the provisions of this Agreement with respect to the compensation and benefits of such Delayed Transfer Newco Employees and Delayed Transfer Everest Employees following the Delayed Transfer Date applicable to such employee, it being understood that it may not be possible to replicate the effect of such provisions under such circumstances. Notwithstanding the foregoing, for compensation subject to Section 409A of the Code, any such subsequent transfer (including as of the applicable Delayed Transfer Date) shall be a "separation from service" (within the meaning of Section 409A of the Code) from the applicable employer for purposes of such compensation, and the consequences of such separation from service shall be determined in accordance with the terms of the applicable plan or agreement.

Section 2.4 Treatment of Compensation and Benefit Arrangements; Terms of Employment.

(a) Except as otherwise (i) required by a Collective Bargaining Agreement, the Transfer Regulations or applicable Legal Requirements, or (ii) expressly provided for in this Agreement, any Ancillary Agreement, Exhibit or appendix hereto, for the period commencing on the Separation Effective Time and ending on the first anniversary of the Closing Date (or if shorter, during the period of employment), Newco (and, following the Effective Time, Athena) shall, or shall cause a member of the Newco Group to provide or cause to be provided to each Transferred Newco Employee (A) a base salary or hourly wage rate, as applicable, that is at least equal to the base salary or hourly wage rate provided to such Newco Employee immediately prior to the Separation Effective Time, (B) subject to Section 5.1, an annual or short-term cash incentive target opportunity or sales commission opportunity no less favorable than the annual or short-term cash incentive target opportunity or sales commission opportunity in effect for such Newco Employee, if any, immediately prior to the Separation Effective Time, (C) health, welfare, and retirement benefits that are substantially similar to those provided to such Newco Employee immediately prior to the Separation Effective Time (without regard to any employee stock purchase plan, defined benefit pension plan benefits or post-employment benefit plan (including retiree medical and retiree death benefit or life insurance arrangements)), and (D) severance benefits that are no less favorable than those that would have been provided to such Newco Employee under an Everest Benefit Arrangement or Newco Benefit Arrangement immediately prior to the Separation Effective Time. Notwithstanding the foregoing, (i) except as otherwise set forth in ARTICLE IV, nothing contained in this Agreement shall require Athena to make any grants of equity awards relating to shares of Newco Common Stock or Athena Common Stock to Newco Employees following the Separation Effective Time, (ii) Athena, Newco and each member of the Newco Group shall be permitted to suspend the compensation contemplated under clauses (A)-(B) of this Section 2.4 in connection with customary furloughs and work stoppages and (iii) subject to the terms of any Newco Benefit Arrangement (including any Individual Newco Agreement), a Collective Bargaining Agreement, the Transfer Regulations or applicable Legal Requirements, Athena, Newco and each member of the Newco Group shall be permitted to decrease the compensation provided in clauses (A)-(B) of this Section 2.4 in connection with any reduction in such compensation that similarly affects similarly situated employees of Athena Group (provided that any such reduction shall not exceed ten percent (10%) of the base salary, hourly wage rate, annual or short-term cash incentive target opportunity or sales commission opportunity, as applicable, in effect prior to the Separation Effective Time).

(b) To the extent that the Effective Time occurs prior to April 1, 2020, Athena shall implement the 2020 global annual merit compensation increases for Newco Employees listed on Exhibit 2.4(b) hereto.

Section 2.5 Participation in Everest Benefit Arrangements. Effective no later than the Separation Effective Time, (i) Newco and each member of the Newco Group, to the extent applicable, shall cease to be a participating company in any Everest Benefit Arrangement and (ii) each Newco Employee shall cease to participate in, be covered by, accrue benefits under, be eligible to contribute to or have any rights under any Everest Benefit Arrangement (except to the extent of previously accrued obligations that remain a Liability of any member of the Everest Group pursuant to this Agreement).

Section 2.6 Service Recognition.

(a) In addition to any applicable obligations under the Transfer Regulations or other applicable Legal Requirements, the Newco Group shall provide each Newco Employee who was employed by the Newco Group as of the Distribution with full credit for purposes of eligibility, vesting, and determination of level of benefits (including for purposes of vacation and separation/end of service Liabilities but not for other benefit accruals) under any Newco Benefit Arrangement for such Newco Employee's prior service with any member of the Everest Group or Newco Group or any predecessor thereto, to the same extent such service was recognized by the applicable Everest Benefit Arrangement; provided, that, such service shall not be recognized to the extent it would result in the duplication of benefits.

(b) Except to the extent prohibited by applicable Legal Requirements, as soon as administratively practicable on or after the Separation Effective Time (or, following the Effective Time, Athena): (i) the Newco Group shall use commercially reasonable efforts to waive or cause to be waived all limitations as to preexisting conditions or waiting periods with respect to participation and coverage requirements applicable to each Transferred Newco Employee under any Newco Welfare Plan in which Newco Employees participate (or are eligible to participate) to the same extent that such conditions and waiting periods were satisfied or waived under an analogous Everest Welfare Plan, and (ii) Athena and Newco shall use commercially reasonable efforts to provide or cause each Transferred Newco Employee to be provided with credit for any co-payments, deductibles or other out-of-pocket amounts paid during the plan year in which the Newco Employees become eligible to participate in the Newco Welfare Plans in satisfying any applicable co-payments, deductibles or other out-of-pocket requirements under any such plans for such plan year.

Section 2.7 Collective Bargaining Agreements.

(a) Notwithstanding anything in this Agreement to the contrary, Athena, Everest and Newco shall, to the extent required by applicable Legal Requirements, take or cause to be taken all actions that are necessary (if any) for Everest or a member of the Everest Group and Newco or a member of the Newco Group to continue to maintain or to assume and honor any Collective Bargaining Agreements and any pre-existing collective bargaining relationships (in each case including obligations that arise in respect of the period both before and after the date of employment by the Newco Group) in respect of any Everest Employees or Newco Employees, respectively, and any Employee Representatives.

(b) Effective no later than the Separation Effective Time, Athena and Newco shall, or shall cause a member of the Newco Group to, continue to maintain or to assume and honor, to the extent required by applicable Legal Requirements or the terms of any Collective Bargaining Agreement, all Collective Bargaining Agreements and pre-existing collective bargaining relationships (in each case including obligations that arise in respect of the period both before and after the date of a Newco Employee's employment by the Newco Group) that are applicable to any Newco Employee.

(c) Nothing in this Agreement is intended to alter the provisions of any Collective Bargaining Agreement or modify in any way the obligations of the Everest Group or the Newco Group to any Employee Representative or any other Person as described in such agreement.

Section 2.8 Information and Consultation; Notification. The Parties shall comply with all requirements and obligations to inform, consult or otherwise notify any Newco Employees or Employee Representatives in relation to the transactions contemplated by this Agreement and the Separation and Distribution Agreement, whether required pursuant to any Collective Bargaining Agreement, the Transfer Regulations or other applicable Legal Requirements. From and after the Separation Effective Time, Newco Group, at its earliest reasonable opportunity, shall notify Everest Group of any union organizing activities regarding which it becomes aware at or in connection with Newco Leased Real Property or any other facility shared with a member of the Everest Group, and shall cooperate in good faith with Everest Group regarding such matters.

Section 2.9 WARN. Notwithstanding anything set forth in this Agreement to the contrary, none of the transactions contemplated by or undertaken by this Agreement is intended to and shall not constitute or give rise to an "employment loss" or employment separation within the meaning of the federal Worker Adjustment and Retraining Notification (WARN) Act, or any other federal, state, or local Legal Requirement addressing mass employment separations.

Section 2.10 Non-U.S. Jurisdictions. Except as expressly set forth herein, the provisions of this Agreement shall apply in respect of all jurisdictions wherever situated; provided, however, that to the extent of any Ancillary Agreement, Exhibit or appendix attached hereto, the terms of such Ancillary Agreement, Exhibit or appendix shall govern in respect of matters relating to employees employed in the applicable jurisdiction. Following consultation with Athena, until the Separation Effective Date Everest shall have authority to (i) adjust the treatment described in this Agreement (including any appendix attached hereto) or an Ancillary Agreement with respect to Newco Employees who are located outside of the United States in order to address different plans or benefits not addressed herein or to address applicable plans and benefits in a manner appropriate to the jurisdiction; provided that no such adjustment shall increase the cost of any such plans or benefits in any material respect, (ii) ensure compliance with the applicable Legal Requirements of countries outside of the United States, and (iii) preserve the tax benefits provided under local tax law or regulation prior to the Separation Effective Time.

ARTICLE III

CERTAIN BENEFIT PLAN PROVISIONS

Section 3.1 Health and Welfare Benefit Plans.

(a) (i) Effective no later than the Separation Effective Time, the participation of each Newco Employee who is a participant in an Everest Welfare Plan shall automatically cease and (ii) Everest shall cause Newco or a member of the Newco Group (A) to have in effect, no later than the earlier of the date of cessation described in subsection (i) above or the Business Day immediately prior to the Separation Effective Time, Newco Welfare Plans providing health and welfare benefits for the benefit of each Newco Employee with terms that are substantially similar to those provided to the applicable Newco Employee immediately prior to the date on which such Newco Welfare Plans become effective (excepting any benefits under an Everest U.S. OPEB Plan); and (B) effective on and after the date of cessation described in subsection (i) above, to fully perform, pay and discharge all claims of Newco Employees or Former Newco Service Providers (excepting any claims of any Former Newco Service Providers under an Everest U.S. OPEB Plan) where such claims are incurred on or following the date of cessation described in subsection (i) above. For the avoidance of doubt, and except as otherwise required by the Transfer Regulations, Everest and the Everest Welfare Plans shall retain, fully perform, pay and discharge all claims of Newco Employees and Former Newco Service Providers incurred under any Everest Welfare Plan on or prior to the date of such cessation described in subsection (i) above.

(b) For any claims related to Newco Employees or Former Newco Service Providers paid by an Everest Welfare Plan prior to the Separation Effective Time, where the cost of coverage applicable to such claim(s) have not been previously charged to the applicable member of the Newco Group prior to the Separation Effective Time in the ordinary course of business, the Everest Welfare Plan will retain the right, for no longer than one (1) year after the Separation Effective Time, to receive reimbursement from the applicable member of the Newco Group for any claims described in this Section 3.1(b).

Section 3.2 U.S. Savings Plans.

(a) (i) Effective no later than the Separation Effective Time, Everest shall cause a member of the Newco Group to have in effect one or more defined contribution savings plans and related trusts that satisfy the requirements of Sections 401(a) and 401(k) of the Code in which each Newco Employee who participated in an Everest U.S. Savings Plan immediately prior thereto shall be eligible to participate (the "Newco U.S. Savings Plan"), with terms that are substantially similar to those provided by the applicable Everest Savings Plan and ESOP immediately prior to the date on which such Newco U.S. Savings Plan becomes effective (other than the ability to make additional investments in an investment fund invested primarily in Everest Common Stock) and which also provides for a 3% nonelective contribution, (ii) the participation of each Newco Employee who is a participant in an Everest U.S. Savings Plan shall automatically cease effective upon the date on which the Newco U.S. Savings Plan becomes effective, (iii) as soon as practicable after the Newco U.S. Savings Plan becomes effective, Everest shall cause the accounts (including any outstanding participant loan balances) in the Everest U.S. Savings Plans attributable to such Newco Employees and all of the Assets in the Everest U.S. Savings Plans related thereto to be transferred in-kind to the applicable Newco U.S. Savings Plan, provided that Athena shall have the right to participate in any administrative procedures related to such transfer, and any required adjustments or true-ups related to such transfer shall be made by Everest and its Subsidiaries or Athena or a member of the Newco Group to be mutually agreed as promptly as possible following the Closing Date, and (iv) effective as of the Separation Effective Time, Everest shall cause the Newco U.S. Savings Plan (including all applicable accounts and underlying Assets) to be transferred to Newco and Newco shall thereafter fully pay, perform and discharge, all obligations thereunder.

(b) The respective investment committees and other fiduciaries of the Newco U.S. Savings Plan and the Everest U.S. Savings Plan shall determine (i) the period of time, if any, following the adoption of the Newco U.S. Savings Plan, during which Newco Employees and Everest Employees may receive distributions in kind from, respectively, the Newco U.S. Savings Plan and the Everest U.S. Savings Plan, if, and to the extent, investments under such plans are comprised of Athena Common Stock or Everest Common Stock, and (ii) the extent to which and when Everest Common Stock (in the case of the Newco U.S. Savings Plans) and Athena Common Stock (in the case of the Everest U.S. Savings Plans) shall cease to be investment alternatives in the respective plans.

(c) Everest shall retain all accounts and all Assets and Liabilities relating to the Everest U.S. Savings Plans in respect of each Former Newco Service Provider; provided, that if any Newco Employee whose account balance is transferred from the Everest U.S. Savings Plans to the applicable Newco U.S. Savings Plan as set forth in Section 3.2(a) thereafter terminates employment prior to the Separation Effective Time, such individual's account balance shall nonetheless continue to be held in, and subject to the terms and conditions of, the applicable Newco U.S. Savings Plan.

Section 3.3 U.S. Defined Benefit Plans(a). Effective no later than the Separation Effective Time, and except as provided in an Ancillary Agreement, Exhibit or appendix hereto, no Newco Employee shall accrue benefits under the Everest U.S. Retirement Plan. Everest shall retain all Assets and Liabilities relating to the Everest U.S. Retirement Plan, including Liabilities in respect of pension benefits accrued thereunder by each Newco Employee and Former Newco Service Provider. No Assets or Liabilities of any Everest U.S. Retirement Plan shall be transferred to a retirement plan maintained by any member of the Newco Group.

Section 3.4 U.S. OPEB Plan. Effective no later than the Separation Effective Time, no Newco Employee shall accrue benefits under the Everest U.S. OPEB Plan. Everest shall retain all Assets and Liabilities relating to the Everest U.S. OPEB Plan, including Liabilities in respect of benefits accrued thereunder by each Newco Employee and Former Newco Service Provider. No Assets or Liabilities of the Everest U.S. OPEB Plan shall be transferred to a post-employment benefit plan (including retiree medical and retiree life insurance arrangements) maintained by any member of the Newco Group.

Section 3.5 Everest Deferred Compensation Plans.

(a) (i) Effective no later than the Separation Effective Time, the active participation of each Newco Employee who is a Participant in an Everest Deferred Compensation Plan shall cease (except that the deferral elections for such Newco Employee Participants shall remain in effect in respect of the deferral of 2019 annual incentive bonuses) and (ii) effective no later than the date of such cessation, Newco shall or shall cause a member of the Newco Group to have in effect one or more non-qualified deferred compensation plans for the benefit of Transferred Newco Employees (the “Newco Deferred Compensation Plans”) with terms that are substantially similar to those provided to the applicable Newco Employee under the Everest Mirror Savings Plan (and as though such plan provided for a 3% nonelective contribution) immediately prior to the date on which the Newco Deferred Compensation Plans become effective.

(b) Except as provided in an Exhibit or appendix hereto, Everest shall retain all Assets and Liabilities relating to the Everest Deferred Compensation Plans in respect of Everest Employees (including any Assets relating to corporate owned life insurance policies) and all Assets and Liabilities relating to the Everest Deferred Compensation Plans in respect of Newco Employees and Former Newco Service Providers (including any Assets relating to corporate owned life insurance policies).

(c) The Parties acknowledge and agree that the consummation of the transactions contemplated by the Separation and Distribution Agreement shall not trigger a payment or distribution of compensation under any Everest Deferred Compensation Plan or any other nonqualified deferred compensation plan sponsored or maintained by any member of the Everest Group in which any Newco Employee participates. Following the Separation Effective Time, Athena and Newco shall, or shall cause the applicable member of the Newco Group to, notify Everest as soon as reasonably practicable if any Transferred Newco Employee who participates in any Everest Deferred Compensation Plan or any other nonqualified deferred compensation plan sponsored or maintained by any member of the Everest Group experiences a “separation from service” within the meaning of Section 409A of the Code on or following the Separation Effective Time.

Section 3.6 Everest Canadian Retirement Plans.

(a) (i) Effective no later than the Separation Effective Time, the active participation of each Newco Employee who is a Participant in any Canadian savings, registered savings or pension plan sponsored or maintained by a member of the Everest Group (the “Everest Canadian Retirement Plans”) shall cease, (ii) effective no later than the date of such cessation, Newco shall or shall cause a member of the Newco Group to have in effect one or more Canadian savings and or pension plans (the “Newco Canadian Retirement Plans”) with terms that are substantially similar to those provided to the applicable Newco Employee under the Everest Canadian Savings Plans immediately prior to the date on which the applicable Newco Canadian Retirement Plans become effective, and (iii) as soon as practicable after the Newco Canadian Retirement Plans become effective, Everest shall cause the accounts (including any outstanding participant loan balances) in the Everest Canadian Retirement Plans attributable to such Newco Employees and all of the Assets in the Everest Canadian Retirement Plans related thereto to be transferred in-kind to the applicable Newco Canadian Retirement Plan, provided that Athena shall have the right to participate in any administrative procedures related to such transfer, and any required adjustments or true-ups related to such transfer shall be made by Everest and its Subsidiaries or Athena or a member of the Newco Group to be mutually agreed as promptly as possible following the Closing Date and transfer of such assets.

(b) Everest shall retain all Assets and Liabilities relating to the Everest Canadian Savings Plans in respect of each Former Newco Service Provider.

Section 3.7 Non-U.S. Plans. Except as expressly provided in Section 3.6, Section 3.8, or Section 3.9, the treatment of each Everest Benefit Arrangement and Newco Benefit Arrangement that is maintained primarily in respect of individuals who are located outside of the United States (together, the “Non-U.S. Plans”) shall be subject to the terms and conditions set forth in the applicable Ancillary Agreement, Exhibit or an appendix attached hereto; provided, that if the treatment of any such Non-U.S. Plan is not specifically covered by such Ancillary Agreement, Exhibit or an appendix attached hereto, then unless otherwise agreed by the Parties or as required by applicable Legal Requirements, (i) Athena and Newco shall fully perform, pay and discharge all obligations of the Non-U.S. Plans relating to Newco Employees, Newco Independent Contractors and Former Newco Service Providers, whenever incurred, (ii) Everest shall fully perform, pay and discharge all obligations of the Non-U.S. Plans relating to Everest Employees, Everest Independent Contractors and Former Everest Service Providers whenever incurred, and (iii) any Assets held in respect of such Non-U.S. Plans related to Newco Employees, Newco Independent Contractors and Former Newco Service Providers shall be transferred to Newco.

Section 3.8 Non-U.S. Defined Benefit Plans. Effective no later than the Separation Effective Time, and except as required by applicable Legal Requirements or the terms of a Collective Bargaining Agreement, no Newco Employee shall accrue benefits under any Non-U.S. Plan that is a defined benefit pension plan (each, a “Non-U.S. Defined Benefit Plan”). Except as required by applicable Legal Requirements or as provided in an Ancillary Agreement, Exhibit or an appendix attached hereto, Everest shall retain all Assets and Liabilities relating to any Non-U.S. Defined Benefit Plan, including Liabilities in respect of pension benefits accrued thereunder by each Newco Employee and Former Newco Service Provider.

Section 3.9 Individual Agreements.

(a) To the extent permissible by the terms of any Individual Agreement and by applicable Legal Requirements, (i) Everest shall, or shall cause a member of the Everest Group to, assign to Newco or another member of the Newco Group, as designated by Newco, all Individual Newco Agreements and (ii) Newco shall, or shall cause a member of the Newco Group to, assign to Everest or another member of the Everest Group, as designated by Everest, all Individual Everest Agreements, in either case, with such assignment to be effective no later than the Separation Effective Time (the date of such assignment, the “Individual Agreement Effective Time”). Effective as of the Individual Agreement Effective Time, (i) Newco shall, or shall cause a member of the Newco Group to, assume and honor each Individual Newco Agreement assigned by Everest or a member of the Everest Group and (ii) Everest shall, or shall cause a member of the Everest Group to, assume and honor each Individual Everest Agreement assigned by Newco or a member of the Newco Group, in either case, in accordance with this Section 3.9(a).

(b) To the extent that assignment of any such Individual Agreement is not permitted by the terms of such Individual Agreement or by applicable Legal Requirements, effective as of the Separation Effective Time, each member of the Newco Group or the Everest Group, respectively, shall be considered to be a successor to each member of the Everest Group or the Newco Group, respectively, for purposes of, and a third-party beneficiary with respect to, such Individual Agreement, such that each member of the Newco Group or the Everest Group, respectively, shall enjoy all of the rights and benefits under such agreement (including rights and benefits as a third-party beneficiary), with respect to the business operations of the Newco Group or the Everest Group, respectively; provided, however, that in no event shall (i) Everest be permitted to enforce any Individual Agreement (including any agreement containing non-competition or non-solicitation covenants) against a Newco Employee or Former Newco Service Provider for action taken in such individual's capacity as a Newco Employee or Former Newco Service Provider, or (ii) Newco be permitted to enforce any Individual Agreement (including any agreement containing non-competition or non-solicitation covenants) against an Everest Employee or Former Everest Service Provider for action taken in such individual's capacity as an Everest Employee or Former Everest Service Provider; provided, further, that Everest and Newco, respectively, shall only be permitted to enforce any Individual Agreement on Everest's or Newco's own behalf for twelve (12) months following the Separation Effective Time.

(c) To the extent that any such Individual Agreement is assigned to Newco or another member of the Newco Group or Everest or another member of the Everest Group, as applicable, then each member of the Everest Group or Newco Group, as applicable, shall be considered to be a third-party beneficiary with respect to such Individual Agreement, such that each member of the Everest Group or the Newco Group, as applicable, shall enjoy all of the rights and benefits under such agreement (including rights and benefits as a third-party beneficiary), with respect to the business operations of the Everest Group or the Newco Group, as applicable; provided, however, that in no event shall (i) Everest be permitted to enforce any Individual Agreement (including any agreement containing non-competition or non-solicitation covenants) against a Newco Employee or Former Newco Service Provider for action taken in such individual's capacity as a Newco Group Employee or Former Newco Service Provider, or (ii) Newco be permitted to enforce any Individual Agreement (including any agreement containing non-competition or non-solicitation covenants) against an Everest Employee or Former Everest Service Provider for action taken in such individual's capacity as an Everest Group Employee or Former Everest Service Provider; provided, further, that Everest or Newco, as applicable shall only be considered a third-party beneficiary with respect to any such Individual Agreement for twelve (12) months following the Separation Effective Time.

(d) Notwithstanding any provision in Section 3.9(a) or Section 3.9(c) to the contrary, effective as of the Separation Effective Time, Newco shall expressly assume in writing the Designated Individual Agreements and honor the obligations of Everest in accordance with the terms of the Designated Individual Agreements in respect of each Transferred Newco Employee who is a party to such agreements, in the same manner and to the same extent that Everest would be required to perform if no assumption had taken place. For purposes of the Designated Individual Agreements, each Party hereby acknowledges and agrees that (i) the consummation of the transactions contemplated by the Merger Agreement and the Separation and Distribution Agreement constitute an RMT Separation (within the meaning of the Designated Individual Agreements), and (ii) from and after the Separation Effective Time, the "Company" and the "Company Group" (each as defined in the Designated Individual Agreements) shall mean Athena and the Athena Group.

(e) Notwithstanding any provision of this Agreement to the contrary, Everest shall retain the Excluded Individual Agreements and all Liabilities associated therewith.

ARTICLE IV

EQUITY INCENTIVE AWARDS

Section 4.1 Treatment of Everest Stock Options. Each Everest Option that is outstanding immediately prior to the Effective Time and that is held by a Newco Employee (other than a Delayed Transfer Newco Employee) who continues in employment through the Effective Time, whether vested or unvested, shall automatically be assumed by Athena at the Effective Time (each, an “Athena Option”) and shall have, and be subject to, the same terms and conditions as were applicable to the corresponding Everest Option immediately prior to the Effective Time, except that each Athena Option shall (i) relate to a number of shares of Athena Common Stock (with each discrete grant rounded down to the nearest whole share) equal to the product of (x) the number of shares of Everest Common Stock issuable upon the exercise of the corresponding Everest Option immediately prior to the Effective Time and (y) the Equity Award Adjustment Ratio and (ii) have a per-share exercise price (rounded up to the nearest whole cent) equal to the quotient determined by dividing (x) the per share exercise price of the corresponding Everest Option by (y) the Equity Award Adjustment Ratio.

Section 4.2 Treatment of Everest Restricted Stock Units. Each Everest Restricted Stock Unit that is outstanding immediately prior to the Effective Time and that is held by a Newco Employee (other than a Delayed Transfer Newco Employee) who continues in employment through the Effective Time, whether vested or unvested, shall automatically be assumed by Athena at the Effective Time (each, an “Athena Restricted Stock Unit”) and shall have, and be subject to, the same terms and conditions as were applicable to the corresponding Everest Restricted Stock Unit immediately prior to the Effective Time, except that each grant of Athena Restricted Stock Units shall (i) relate to that number of shares of Athena Common Stock (with each discrete grant rounded up to the nearest whole share) equal to the product of (x) the number of shares of Everest Common Stock that were issuable upon the vesting of such Everest Restricted Stock Units immediately prior to the Effective Time and (y) the Equity Award Adjustment Ratio and (ii) be subject to vesting solely based upon the satisfaction of any applicable continued employment requirements that apply to the corresponding Everest Restricted Stock Units immediately prior to the Effective Time.

Section 4.3 Treatment of Everest Performance Based Restricted Stock Units. Each Everest Performance Based Restricted Stock Unit that is outstanding immediately prior to the Effective Time and that is held by a Newco Employee (other than a Delayed Transfer Newco Employee) who continues in employment through the Effective Time, whether vested or unvested, shall be assumed by Newco at the Effective Time and converted into a restricted stock unit denominated in shares of Athena Common Stock (each, an “Athena Adjusted Performance Based Restricted Stock Unit”) and shall have, and be subject to, the same terms and conditions as were applicable to the corresponding Everest Performance Based Restricted Stock Unit immediately prior to the Effective Time, except that (i) the performance-based vesting conditions applicable to such Everest Performance Based Restricted Stock Unit immediately prior to the Effective Time shall not apply from and after the Effective Time, and (ii) each grant of Athena Adjusted Performance Based Restricted Stock Units shall (x) relate to that number of shares of Athena Common Stock (with each discrete grant rounded up to the nearest whole share) equal to the product of (A) the number of shares of Everest Common Stock that were issuable upon the vesting of such Everest Performance Based Restricted Stock Unit immediately prior to the Effective Time assuming attainment of the applicable performance metrics at the target level of performance and (B) the Equity Award Adjustment Ratio and (y) be subject to vesting solely based upon the satisfaction of any applicable continued employment or service requirements that apply to the corresponding Everest Performance-Based Restricted Stock Unit immediately prior to the Effective Time.

Section 4.4 Everest Stock Purchase Plan. The administrator of the Everest Stock Purchase Plan shall take all actions necessary and appropriate to provide that: (i) the purchase period (if any) established for the Everest Stock Purchase Plan during which the Record Date is to occur shall end at a reasonable time before the Record Date to allow participants to purchase shares of Everest Common Stock under the Everest Stock Purchase Plan prior to the Record Date; (ii) all participant payroll deductions and other contributions under the Everest Stock Purchase Plan shall cease on or before the Record Date described in clause (i) of this Section 4.4; (iii) Newco Group Employees in the Everest Stock Purchase Plan shall not be eligible to participate in any future purchase period that begins following the Record Date; (iv) any cash remaining in the Everest Stock Purchase Plan account of any Newco Group Employee described in clause (iii) shall be refunded to such Newco Group Employee without interest as soon as administratively practicable; and (v) the next following purchase period shall be established by the administrator of the Everest Stock Purchase Plan in its sole discretion.

Section 4.5 Replacement Awards. Each Everest Stock Option, Everest Restricted Stock Unit and Everest Performance Based Restricted Stock Unit that is outstanding immediately prior to the Effective Time and that is held by a Delayed Transfer Newco Employee shall remain outstanding in accordance with the terms of applicable Everest Stock Incentive Plan and award agreement thereunder (including with respect to terms applicable to termination of employment or service). Effective as of the Delayed Transfer Date applicable to any such Delayed Transfer Newco Employee, (i) each then outstanding Everest Stock Option, Everest Restricted Stock Unit and Everest Performance Based Restricted Stock Unit shall vest or be forfeited by such Delayed Transfer Newco Employee in accordance with its terms (such date, "Delayed Transfer Equity Award Effective Date") and (ii) as soon as administratively practicable following the Delayed Transfer Equity Award Effective Date, Athena shall grant such Delayed Transfer Newco Employee an incentive award (each, a "Replacement Award") that is equivalent in value to the value of, and has substantially the same terms and conditions as were applicable to, the Everest Stock Options, Everest Restricted Stock Units and Everest Performance Based Restricted Stock Units forfeited by such Delayed Transfer Newco Employee as of the Delayed Transfer Equity Award Effective Date.

Section 4.6 General Terms.

(a) At or prior to the Effective Time, Athena shall take such actions as are necessary for the grant of the Athena Options, Athena Restricted Stock Units, and Athena Adjusted Performance-Based Restricted Stock Units pursuant to this ARTICLE IV, including the reservation, issuance and listing of Athena Common Stock issuable pursuant to the awards granted pursuant this ARTICLE IV in compliance with applicable Legal Requirements and the rules and regulations of any applicable United States securities exchange. As soon as reasonably practicable following the date of this Agreement, Athena shall file with the SEC a registration statement on Form S-3 or Form S-8, as the case may be (or any successor form), or another appropriate form with respect to such Athena Common Stock issuable pursuant to this ARTICLE IV and shall use commercially reasonable efforts to have such registration statement declared effective as soon as practicable following each such filing (as applicable) but in any event before the Closing and, thereafter, Athena shall use commercially reasonable efforts to maintain the effectiveness of such registration statements.

(b) All of the adjustments described in this ARTICLE IV shall be effected in accordance with Sections 424 and 409A of the Code, in each case to the extent applicable. Notwithstanding the foregoing, (i) if the treatment set forth in this ARTICLE IV would cause adverse Tax consequences to any Newco Employee located outside of the United States, the Parties shall use their reasonable best efforts to cause the treatment to be conformed in a manner that does not give rise to such adverse Tax consequences, to the extent practicable; (ii) each Everest Option, Everest Restricted Stock Unit and Everest Performance-Based Restricted Stock Unit held by a Newco Employee located in Canada shall be assumed and adjusted as described in this ARTICLE IV immediately prior to, but contingent upon the occurrence of, the Effective Time; and (iii) each discrete grant of Newco Restricted Stock Units and Newco Adjusted Performance-Based Restricted Stock Units held by a Newco Employee located in Canada shall in all events be rounded down to the nearest whole share.

(c) For purposes of the vesting and termination provisions of the Athena Options, Athena Restricted Stock Units, and Athena Adjusted Performance-Based Restricted Stock Units, (i) continued service with a member of the Athena Group shall be considered to be continued service for purposes of such award (and prior service with a member of the Everest Group and Newco Group shall be credited for purposes of any Athena Group award), (ii) all references in such awards to the “Company” shall be references to Athena, and (iii) any reference to a “change in control,” “change of control,” or similar definition in any agreement applicable to such awards shall be deemed to refer to a “Change in Control” as defined in the Athena 2018 Equity and Cash Incentive Plan or any successor thereto.

(d) The Parties hereby acknowledge that the provisions of this ARTICLE IV are intended to achieve certain tax, legal and accounting objectives and, in the event such objectives are not achieved, the Parties agree to negotiate in good faith regarding such other actions that may be necessary or appropriate to achieve such objectives.

ARTICLE V

ADDITIONAL MATTERS

Section 5.1 Cash Incentive Programs. Prior to the Separation Effective Time, Everest shall transfer to Newco the Accrued Incentive Amount. For the remainder of the applicable cash incentive or sales commission period in effect as of the date on which the transfer of such employment occurs, and in addition to any applicable obligations under the Transfer Regulations or other applicable Legal Requirements, Athena and Newco shall provide that each applicable Transferred Newco Employee shall continue to be eligible to receive an annual and/or short-term cash incentive bonus or sales commission payment in accordance with similar terms and conditions (except with regard to any performance-related metrics) as applied to such Newco Employee under the corresponding Everest annual or short-term incentive or sales commission program as in effect immediately prior to the date of such transfer, as equitably adjusted by the Compensation Committee of the Board of Everest in consultation with Athena prior to the Separation Effective Time to the extent necessary to reflect the effect of the transactions contemplated by the Separation and Distribution Agreement and the Merger Agreement on the applicable performance metrics; provided that in no event shall the aggregate incentive amounts paid to the applicable Newco Employees in respect of such applicable period be less than the Accrued Incentive Amount; provided, further, that this provision is only effective to the extent that these annual and/or short-term cash incentive bonus or sales commission programs were established in the ordinary course of business consistent with past practice.

Section 5.2 Time-Off Benefits. Unless otherwise required in a Collective Bargaining Agreement, the Transfer Regulations or applicable Legal Requirements, Athena and Newco shall (i) credit each Transferred Newco Employee with the amount of accrued but unused vacation time, paid time-off and other time-off benefits as such Newco Employee had with the Everest Group as of immediately before the date on which the employment of the Newco Employee transfers to Newco (the "PTO Accruals") and (ii) permit each such Newco Employee to use such accrued but unused vacation time, paid time off and other time-off benefits in the same manner and upon substantially the same terms and conditions as the Newco Employee would have been so permitted under the terms and conditions of the applicable Everest policies in effect for the year in which such transfer of employment occurs. Effective no later than the Separation Effective Time, Athena and Newco shall assume all Liabilities for the PTO Accruals.

Section 5.3 Workers' Compensation Liabilities. Effective no later than the Separation Effective Time, Athena and Newco shall assume all Liabilities for Transferred Newco Employees, Transferred Newco Independent Contractors and Former Newco Service Providers related to any and all workers' compensation injuries, incidents, conditions, claims or coverage, on and after the Separation Effective Time, and Newco shall be fully responsible for the administration, management and payment of all such claims and satisfaction of all such Liabilities.

Section 5.4 COBRA Compliance in the United States. Effective no later than the Separation Effective Time, Athena and Newco shall assume and be responsible for administering compliance with the health care continuation requirements of COBRA in accordance with the provisions of the Newco Welfare Plans, with respect to Transferred Newco Employees or Newco Former Service Providers who incurred a COBRA qualifying event or loss of coverage under an Everest Welfare Plan at any time on or after the Separation Effective Time. Newco shall also be responsible for administering and ensuring compliance with the health care continuation requirements of COBRA and the corresponding provisions of the Newco Welfare Plans with respect to Transferred Newco Employees and their covered dependents who incur a COBRA qualifying event or loss of coverage under the Newco Welfare Plans at any time after the Separation Effective Time.

Section 5.5 Retention Bonuses. Any retention bonuses payable to any Newco Employees that become payable after the date on which the employment of the Newco Employee transfers to a member of the Newco Group shall be assumed by the Newco Group as of the date of such transfer and the applicable member of the Newco Group shall pay all amounts payable thereunder to the applicable Newco Employees in accordance with the terms thereof; provided, that such bonuses (i) do not exceed \$2,000,000 in the aggregate and \$75,000 per employee, (ii) are subject to continued employment through the date that is six (6) months following the Separation Effective Time unless earlier terminated without just cause, and (iii) are awarded in consultation with Athena, including with respect to the terms and conditions thereof.

Section 5.6 Code Section 409A. Notwithstanding anything in this Agreement to the contrary, the Parties shall negotiate in good faith regarding the need for any treatment different from that otherwise provided herein with respect to the payment of compensation to ensure that the treatment of such compensation does not cause the imposition of a Tax under Section 409A of the Code. In no event, however, shall any Party be liable to another in respect of any Taxes imposed under, or any other costs or Liabilities relating to, Section 409A of the Code; provided, that the Newco Group shall promptly reimburse Everest for any Taxes, costs or Liabilities incurred by Everest as a result of the failure to timely notify Everest of a “separation from service” in accordance with Section 3.5(c).

Section 5.7 Payroll Taxes and Reporting. The Parties shall, to the extent practicable, (i) treat Newco or a member of the Newco Group as a “successor employer” and Everest (or the appropriate member of the Everest Group) as a “predecessor,” within the meaning of Sections 3121(a) (1) and 3306(b)(1) of the Code, with respect to Transferred Newco Employees for purposes of Taxes imposed under the United States Federal Unemployment Tax Act or the United States Federal Insurance Contributions Act, and (ii) agree to implement this treatment by utilizing solely Section 4 of Revenue Procedure 2004-53, STANDARD PROCEDURE FOR PREDECESSORS AND SUCCESSORS.

Section 5.8 Regulatory Filings. Subject to applicable Legal Requirements and the Tax Matters Agreement, Everest shall retain responsibility for all employee-related regulatory filings for reporting periods ending at or prior to the Separation Effective Time, except for Equal Employment Opportunity Commission EEO-1 reports and affirmative action program (AAP) reports and responses to Office of Federal Contract Compliance Programs (OFCCP) submissions, for which the Parties shall cooperate in good faith to provide data and information (to the extent permitted by applicable Legal Requirements) to Newco, which shall be responsible for making such filings in respect of Newco Employees.

Section 5.9 Disability.

(a) Except as required by applicable Legal Requirements and notwithstanding any provision of Section 2.5 or Section 3.1(a) to the contrary, to the extent any Newco Welfare Plan is underwritten to only cover disability claims incurred following the Separation Effective Time, with respect to any Newco Employee that has, as of the Separation Effective Time, incurred a claim as part of any short- or long-term disability program under an Everest Welfare Plan, such Newco Employee's rights to continued short- or long-term disability benefits shall remain with, and be according to the terms of, the applicable Everest Welfare Plan as of the Separation Effective Time and to the extent such Newco Employee is able to return to work within twelve (12) months of the disability event, Newco shall provide a qualifying offer of employment to such Newco Employee in accordance with Section 2.2; provided, that to the extent the applicable Newco Welfare Plan accepts claims incurred prior to the Separation Effective Time, such claims shall transfer to a Newco Welfare Plan on or before the Separation Effective Time, and the remainder (if any) of such Transferred Newco Employee's short- or long-term disability benefits will be paid by a Newco Welfare Plan. If the claims described in the first sentence of this Section 5.9(a) transfer to a Newco Welfare Plan effective on or before the Separation Effective Time and if any Newco Employee described above shall have any dispute with such benefits that such Newco Employee is receiving or has filed a claim to receive under a Newco Welfare Plan, any and all appeal rights of such Newco Employee shall be realized through the Newco Welfare Plans (and any appeal rights such Newco Employee may have under any Everest Welfare Plan will be limited to benefits received and time periods occurring prior to the Separation Effective Time). If the claims described in the first sentence of this Section 5.9(a) do not transfer to a Newco Welfare Plan effective as of the Separation Effective Time, then a member of the Newco Group shall promptly reimburse the Everest Welfare Plan for the cost of such continued coverage.

(b) For any Newco Employee or Former Newco Service Provider who is, as of the Separation Effective Time, receiving payments as part of any short- or long-term disability program that is part of an Everest Welfare Plan, and has been receiving short- or long-term disability payments from such plan for twelve (12) months or fewer before the Separation Effective Time, and to the extent such Newco Employee or Former Newco Service Provider is able to return to work within twelve (12) months of the disability event, Newco shall provide a qualifying offer of employment to such Newco Employee or Former Newco Service Provider in accordance with Section 2.2; provided, however that, notwithstanding the foregoing, no Newco Employee or Former Newco Service Provider described in this Section 5.9(b) will be eligible for re-employment as described in this subsection after the first anniversary of the Separation Effective Time.

Section 5.10 Certain Requirements. Notwithstanding anything in this Agreement to the contrary, if the Transfer Regulations, the terms of a Collective Bargaining Agreement or applicable Legal Requirements require that any Assets or Liabilities be retained by the Everest Group or transferred to or assumed by the Newco Group in a manner that is different from that set forth in this Agreement, such retention, transfer or assumption shall be made in accordance with the terms of such Collective Bargaining Agreement or applicable Legal Requirement and shall not be made as otherwise set forth in this Agreement.

Section 5.11 Fiduciary Matters. The Parties each acknowledge that actions required to be taken pursuant to this Agreement may be subject to fiduciary duties or standards of conduct under ERISA or other applicable Legal Requirement, and no Party shall be deemed to be in violation of this Agreement if it fails to comply with any provisions hereof based upon its good-faith determination (as supported by advice from counsel experienced in such matters) that to do so would violate such a fiduciary duty or standard. Subject to Section 5.6, each Party shall be responsible for taking such actions as are deemed necessary and appropriate to comply with its own fiduciary responsibilities and shall fully release and indemnify the other Party for any Liabilities caused by the failure to satisfy any such responsibility.

Section 5.12 No Hire and No Solicitation of Employees. Everest and Athena each agree that, except as specifically set forth below, for a period of (i) twenty-four (24) months for those Key Everest Employees in compensation band E3 and for those Key Athena Employees in compensation bands N, N-1 and N-2 and (ii) eighteen (18) months for each other Key Everest Employee and Key Athena Employee, in either case, from and after the Closing Date (the "Non-Solicit Period"), without the prior written consent of the other applicable party, they shall not, and they shall cause their respective Subsidiaries not to, directly or indirectly, hire or solicit to hire (or cause or seek to cause to leave the employ of the other party or the other party's Subsidiary), or solicit to enter, or enter into, a consulting agreement with, any employee who is a Key Everest Employee or Key Athena Employee on the Closing Date, as applicable. The restrictions set forth in this Section 5.12 shall not apply to (i) any Key Everest Employee or Key Athena Employee whose employment has been involuntarily terminated by a party or a party's Subsidiary without cause, including in connection with a layoff or reduction in force; or (ii) Key Everest Employee or Key Athena Employee who has voluntarily terminated his or her employment with a party or a party's Subsidiary, after six (6) months from the date of termination of such employee's employment, or such longer period as required by applicable law.

ARTICLE VI

GENERAL AND ADMINISTRATIVE

Section 6.1 Employer Rights. Nothing in this Agreement shall be deemed to be an amendment to any Everest Benefit Arrangement or Newco Benefit Arrangement or to prohibit any member of the Everest Group or Newco Group, as the case may be, from amending, modifying or terminating any Everest Benefit Arrangement or Newco Benefit Arrangement at any time within its sole discretion.

Section 6.2 Effect on Employment. Nothing in this Agreement is intended to or shall confer upon any employee or former employee of Everest, Newco or any of their respective Affiliates any right to continued employment, or any recall or similar rights to any such individual on layoff or any type of approved leave.

Section 6.3 Consent of Third Parties. If any provision of this Agreement is dependent on the Consent of any third party and such Consent is withheld, the Parties shall use their reasonable best efforts to implement the applicable provisions of this Agreement to the fullest extent practicable. If any provision of this Agreement cannot be implemented due to the failure of such third party to consent, the Parties hereto shall negotiate in good faith to implement the provision (as applicable) in a mutually satisfactory manner.

Section 6.4 Access to Employees. On and after the Separation Effective Time, Everest and Newco shall, or shall cause each of their respective Affiliates to, make available to each other those of their employees who may reasonably be needed in order to defend or prosecute any legal or administrative action (other than a legal action between Everest and Newco) to which any employee or director of the Everest Group or the Newco Group or any Everest Benefit Arrangement or Newco Benefit Arrangement is a party and which relates to an Everest Benefit Arrangement or Newco Benefit Arrangement. The Party to whom an employee is made available in accordance with this Section 6.4 shall pay or reimburse the other Party for all reasonable expenses which may be incurred by such employee in connection therewith, including all reasonable travel, lodging, and meal expenses, but excluding any amount for such employee's time spent in connection herewith.

Section 6.5 Beneficiary Designation/Release of Information/Right to Reimbursement. To the extent permitted by applicable Legal Requirements and except as otherwise provided for in this Agreement, all beneficiary designations, authorizations for the release of Information and rights to reimbursement made by or relating to Transferred Newco Employees under Everest Benefit Arrangements shall be transferred to and be in full force and effect under the corresponding Newco Benefit Arrangements until such beneficiary designations, authorizations or rights are replaced or revoked by, or no longer apply, to the relevant Newco Employee.

Section 6.6 No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties and, except to the extent otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer any rights, benefits, remedies, obligations or Liabilities under this Agreement upon any Person, including any Newco Employee or other current or former employee, officer, director or contractor of the Athena Group, Everest Group or Newco Group, other than the Parties and their respective successors and assigns.

Section 6.7 No Acceleration of Benefits. Except as otherwise provided in this Agreement, no provision of this Agreement shall be construed to create any right, or accelerate vesting or entitlement, to any compensation or benefit whatsoever on the part of any Newco Employee or other former, current or future employee of the Everest Group or Newco Group under any Benefit Arrangement of the Everest Group or Newco Group.

Section 6.8 Employee Benefits Administration. At all times following the date hereof, the Parties will cooperate in good faith as necessary to facilitate the administration of employee benefits and the resolution of related employee benefit claims with respect to Transferred Newco Employees, Former Newco Service Providers and employees and other service providers of Everest, as applicable, including with respect to the provision of employee level information necessary for the other Party to manage, administer, finance and file required reports with respect to such administration.

Section 6.9 Exhibits. Everest Group shall, or shall cause Newco Group, to provide the Exhibits, Schedules and appendices contemplated by this Agreement to Athena no later than thirty (30) days prior to the Separation Effective Time; provided, that, to the extent any Exhibit, Schedule or appendix is not attached hereto as of the date this Agreement is entered into, or if any such Exhibit, Schedule or appendix is amended (in each case, a "Subsequent Exhibit"), Everest shall consult with Athena regarding such Subsequent Exhibit and shall consider any comment from Athena in good faith; provided, further, that, to the extent that the terms of or actions contemplated by any such Subsequent Exhibit materially increase the cost to Athena under this Agreement or are otherwise materially inconsistent with this Agreement, such Subsequent Exhibit shall be subject to the consent of Athena, which shall not be unreasonably withheld.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Entire Agreement; Counterparts; Exchanges by Facsimile. This Agreement and the Separation and Distribution Agreement, including the Exhibits and Schedules thereto and the other agreements referred to herein and therein, shall constitute the entire agreement and shall supersede all prior agreements and understandings, both written and oral, among or between any of the Parties with respect to the subject matter hereof and thereof. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

Section 7.2 Survival of Agreements. The covenants and agreements that by their terms are to be performed following the Separation Effective Time pursuant to this Agreement shall survive the Separation Effective Time in accordance with their terms, and all other covenants and agreements herein shall terminate and shall not survive the Separation Effective Time.

Section 7.3 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the U.S. return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier (such as Federal Express), two Business Days after mailing; (c) if sent by facsimile transmission or e-mail before 5:00 p.m. Eastern Time, when transmitted and receipt is confirmed; (d) if sent by facsimile transmission or e-mail after 5:00 p.m. Eastern Time and receipt is confirmed, on the following Business Day; or (e) if otherwise actually personally delivered, when delivered; provided that such notices, requests, demands and other communications are delivered to the physical address, e-mail address or facsimile number set forth below, or to such other address as any Party shall provide by like notice to the other Parties to this Agreement:

if to Athena or Newco (after the Separation Effective Time):

Apergy Corporation
2445 Technology Forest Blvd., 12th Floor
The Woodlands, TX 77381
Attn: General Counsel
Email: general.counsel@apergy.com

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

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attn: Michael J. Aiello
Sachin Kohli
Email: michael.aiello@weil.com
sachin.kohli@weil.com
Fax: (212) 310-8007

if to Everest or Newco (prior to the Separation Effective Time):

c/o Ecolab Inc.
1 Ecolab Place
Saint Paul, MN 55102
Attn: General Counsel
Email: generalcounsel@ecolab.com

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

Skadden, Arps, Slate, Meagher & Flom LLP
Attn: Charles W. Mulaney, Jr.
Richard C. Witzel, Jr.
155 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Email: charles.mulaney@skadden.com
rich.witzel@skadden.com
Fax: (312) 407-0411

Section 7.4 Waiver.

(a) No failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any Party would otherwise have.

(b) No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

Section 7.5 Assignment. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any Party's rights or obligations hereunder may be assigned or delegated by such Party without the prior written consent of the other Parties, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by any Party without the prior written consent of the other Parties shall be void and of no effect.

Section 7.6 Termination. This Agreement shall terminate without further action at any time before the Separation Effective Time upon termination of the Merger Agreement. If so terminated, no Party shall have any Liability of any kind to any other Party or any other Person on account of this Agreement, except as provided in the Merger Agreement.

Section 7.7 Amendment. This Agreement may not be amended except by an instrument in writing signed by an authorized Representative of each of the Parties.

Section 7.8 Subsidiaries. Each of the Parties shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Subsidiary of such Party or by any Entity that becomes a Subsidiary of such Party at and after the Separation Effective Time, to the extent such Subsidiary remains a Subsidiary of the applicable Party.

Section 7.9 Governing Law; Jurisdiction; Specific Performance; Remedies. This Agreement 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. In any Legal Proceeding between any of the Parties arising out of or relating to this Agreement or any of the transactions contemplated hereby: (a) each of the Parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or, if under applicable Legal Requirements, exclusive jurisdiction over such matter is vested in the federal courts, any federal court in the State of Delaware and any appellate court from any thereof; (b) each of the Parties irrevocably waives the right to trial by jury; and (c) each of the Parties irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, any claim (i) that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason; (ii) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts; and (iii) that (x) the claim, action, suit or other Legal Proceeding in any such court is brought in an inconvenient forum; (y) the venue of such claim, action, suit or other Legal Proceeding is improper; or (z) this Agreement or the subject matter hereof may not be enforced in or by such courts. Each of the Parties further agrees that, to the fullest extent permitted by applicable Legal Requirements, service of any process, summons, notice or document by U.S. registered mail to such Person's respective address set forth in Section 7.3 will be effective service of process for any claim, action, suit or other Legal Proceeding in the Court of Chancery of the State of Delaware or, to the extent required by Legal Requirements, any federal court in the State of Delaware, with respect to any matters to which it has submitted to jurisdiction as set forth in this paragraph. The Parties hereby agree that a final judgment in any such claim, suit, action or other Legal Proceeding will be conclusive, subject to any appeal, and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. The Parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to specific performance and injunctive or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement without the requirement for the posting of any bond, this being in addition to any other remedy to which they are entitled at law or in equity. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

Section 7.10 Severability. Any term or provision of this Agreement (or part thereof) that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision (or part thereof) in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement (or part thereof) is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision (or part thereof), to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision (or part thereof), and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision (or part thereof) with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

Section 7.11 No Duplication; No Double Recovery. Nothing in this Agreement is intended to confer to or impose upon any Party a duplicative right, entitlement, obligation or recovery with respect to any matter arising out of the same facts and circumstances.

Section 7.12 Tax 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 applicable Legal Requirement, for all U.S. federal income tax purposes as either (i) a non-taxable contribution by Everest to Newco, or (ii) a distribution by Newco to Everest, in each case, made immediately prior to the Distribution. Any such payment made by a Party under this Agreement shall be increased as necessary so that after making all payments in respect to Taxes imposed on or attributable to such payment, the recipient Party receives an amount equal to the sum it would have received had no such Taxes been imposed.

Section 7.13 Construction.

- (a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include masculine and feminine genders.
- (b) The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.
- (c) As used in this Agreement, unless otherwise specified, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”
- (d) As used in this Agreement, 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.”
- (e) As used in this Agreement, the word “will” shall be deemed to have the same meaning and effect as the word “shall.”
- (f) As used in this Agreement, the terms “or,” “any” or “either” are not exclusive.
- (g) Except as otherwise indicated, all references in this Agreement to “Articles,” “Sections,” “Exhibits” and “Schedules” are intended to refer to Sections or Articles of this Agreement and Exhibits or Schedules to this Agreement.
- (h) As used in this Agreement, the terms “hereunder,” “hereof,” “hereto,” herein and words of similar import shall be deemed to refer to this Agreement as a whole and not to any particular Section or other provision.
- (i) The headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.
- (j) Any payment to be made pursuant hereto shall be made in U.S. dollars and by wire transfer of immediately available funds.

(k) Unless the context requires otherwise, references in this Agreement to “Athena” shall also be deemed to refer to the applicable member of the Athena Group, references to “Everest” shall also be deemed to refer to the applicable member of the Everest Group, references to “Newco” shall also be deemed to refer to the applicable member of the Newco Group and, in connection therewith, any references to actions or omissions to be taken, or refrained from being taken, as the case may be, by Athena, Everest or Newco shall be deemed to require Everest or Newco, as the case may be, to cause the applicable members of the Athena Group, the Everest Group or the Newco Group, respectively, to take, or refrain from taking, any such action. In the event of any inconsistency or conflict which may arise in the application or interpretation of any of the definitions set forth in Section 1.1, for the purpose of determining what is and is not included in such definitions, any item explicitly included on a Schedule referred to in any such definition shall take priority over any provision of the text thereof.

Section 7.14 Relation to Other Documents. To the extent there is any inconsistency between this Agreement and the terms of another agreement pertaining to the Distribution or Mergers (other than any Collective Bargaining Agreement) that is the subject of this Agreement and such inconsistency (i) arises in connection with or as a result of employment with or the performance of services before or after the Distribution for any member of the Athena Group, Everest Group or Newco Group and (ii) relates to the allocation of Liabilities attributable to the employment, service, termination of employment or termination of service of all present or former Everest Employees or Newco Employees or any of their dependents and beneficiaries (and any alternate payees in respect thereof) and other service providers (including any individual who is, or was or is determined to be an independent contractor, temporary employee, temporary service worker, consultant, freelancer, agency employee, leased employee, on-call worker, incidental worker, or non-payroll worker or in any other employment, non-employment, or retainer arrangement, or relationship with any member of the Everest Group or the Newco Group), the terms of this Agreement shall prevail.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

ECOLAB INC.

By: /s/ Douglas M. Baker, Jr
Name: Douglas M. Baker, Jr
Title: Chairman of the Board and Chief Executive Officer

CHAMPIONX HOLDING INC.

By: /s/ Douglas M. Baker, Jr
Name: Douglas M. Baker, Jr
Title: Chairman of the Board

APERGY CORPORATION

By: /s/ Sivasankaran Somasundaram
Name: Sivasankaran Somasundaram
Title: President and Chief Executive Officer

[EMPLOYEE MATTERS AGREEMENT SIGNATURE PAGE]
