

INTRODUCTION

1. The Debtors commenced this adversary proceeding to extend the automatic stay to the Non-Debtor Defendants in the Securities Litigation for the purpose of preventing harm to the Debtors, their estates, and their stakeholders in the form of potentially significant indemnification claims; avoiding the risk of prejudice and preclusion in the related Securities Litigation if it were allowed to proceed; and averting distraction from the primary goal of these chapter 11 cases—the successful sale of the Debtors’ valuable assets.²

2. Fifth Circuit law extends the automatic stay to a non-debtor “where such identity between the debtor and the third-party defendant exists that the debtor may be said to be the real party defendant and that a *judgment against the third-party defendant will in effect be a judgment or finding against the debtor.*” *Arnold v. Garlock, Inc.*, 278 F.3d 426, 436 (5th Cir. 2001) (emphasis added). The Defendants³ in this adversary proceeding cannot credibly dispute that Debtor Cobalt’s obligations to indemnify nearly all of the Non-Debtor Defendants in the Securities Litigation satisfy this standard. Instead, Defendants resort to making inapposite arguments that are legally and factually flawed.

3. *First*, Defendants argue that Cobalt’s indemnification obligations in the Securities Litigation will be subordinated to its creditors’ claims or disallowed altogether. (*See, e.g.*, Opp. at ¶¶ 6, 31-33.) The ultimate subordination or disallowance of a claim has no bearing on the Debtors’ request to stay the Securities Litigation, and Defendants misstate both the applicable legal standard

² Unless otherwise set forth herein, capitalized terms are as defined in the Debtors’ opening brief. (*See* Dkt. 2.)

³ The defendants in this adversary proceeding, GAMCO Global Gold, Natural Resources & Income Trust, GAMCO Natural Resources, Gold & Income Trust, St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H., are collectively referred to herein as (the “Defendants”).

and the facts. The relevant questions for extending the automatic stay are whether the Securities Litigation's continuation is, in effect, an action "to recover a claim against the debtor that arose before the commencement of [these chapter 11 cases]," 11 U.S.C. § 362(a)(1), and/or whether the Non-Debtor Defendants' assertion of an indemnification claim constitutes an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate," 11 U.S.C. § 362(a)(3), regardless of where the claim might fall in the prioritization "waterfall" or whether, down the road, the Court might subordinate or disallow the claim. Given Cobalt's indemnification obligations, the Securities Litigation effectively "seeks to recover" against Cobalt, and the resulting indemnification claims on defense costs and any judgments constitute acts to "obtain possession" of estate property.

4. In addition to being legally irrelevant, Defendants' argument is wrong. It presumes that such indemnification claims will necessarily be subordinated or disallowed. If the Securities Litigation were allowed to proceed, determinations as to subordination or disallowance would be made later in these proceedings, and likely would be the subject of material dispute. Moreover, there is no question that litigating in these chapter 11 cases whether large indemnification claims should be prioritized or disallowed would itself consume meaningful estate resources.

5. *Second*, Defendants assert that because they have merely *alleged* violations of the federal securities laws, their allegations invalidate Cobalt's indemnification obligations to the Non-Debtor Defendants. (*See, e.g.*, Opp. at ¶ 29.) Again, Defendants misstate the law. They ignore that contractual indemnification obligations are enforceable unless the party seeking indemnification (1) is *adjudicated* liable, and (2) is found to have acted with actual knowledge of falsity or reckless disregard for the truth. Here, there has been no finding of liability. To the contrary, the Debtor and Non-Debtor Defendants vigorously dispute Defendants' claims. If the

Securities Litigation were to proceed, the Non-Debtor Defendants would continue to dispute the claims through fact and expert discovery, on summary judgment, in *Daubert* and other pretrial motions, and, if necessary, at trial. Along the way, the Debtor Cobalt would face mounting indemnification demands from no fewer than four of the nation's leading law firms. And, if Defendants were ultimately successful on their claims, Cobalt could face an indemnification claim on an adverse judgment, including for claims that do not require a showing of actual knowledge or scienter.

6. Defendants advance a related argument, claiming that because Cobalt disagrees with the so-called Controlling Entity Defendants about whether Section 20A claims are covered by the indemnification terms that run in the Controlling Entity Defendants' favor, this potential indemnification obligation does not warrant an extension of the automatic stay. (*See, e.g.*, Opp. at ¶ 30.) This argument is likewise groundless. Even if Cobalt had no indemnification obligation on the Section 20A claim (and the Controlling Entity Defendants say that it does), that is just one claim of many against certain Non-Debtor Defendants. In addition to the Section 20A claim, the Defendants also are pursuing against the Controlling Entity Defendants a claim under Section 15 of the Securities Act, and claims under Sections 10(b) and 20(a) of the Exchange Act and Sections 11 and 12(a)(2) of the Securities Act against the other Non-Debtor Defendants—for which Cobalt's contractual indemnification obligations have not been disputed. (Dkt. 2, Ex. 1, *In re Cobalt Int'l Energy Inc. Secs. Litig.* (Case No. 4:14-cv-03428, S.D. Tex.) Docket 200, Second Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws, at ¶¶ 43-44, 270-376.)

7. **Finally**, Defendants argue the automatic stay should not be extended because Cobalt has requested stays of litigation outside of, and prior to commencing, these chapter 11

cases. (*See, e.g.*, Opp. at ¶¶ 15-16, 35-36.) But whether Cobalt sought and was successful in obtaining a stay in the Securities Litigation before its chapter 11 filing is irrelevant; that motion involved an entirely different legal standard and factual circumstances. And the fact that, in its action to enforce insurance coverage (the “Coverage Litigation”), which is not subject to the automatic stay, Cobalt obtained the insurance-carrier defendant’s agreement to a 60-day extension to the current schedule, subject to further extension requests, does not contradict the relief sought here. To the contrary, obtaining a consensual stay illustrates that Cobalt, even as the plaintiff, has sought a respite from other litigation so that management may devote its full attention to these chapter 11 cases and the related sale process.

8. Accordingly, Cobalt’s indemnification obligations to nearly all of the Non-Debtor Defendants in the Securities Litigation warrant an extension of the automatic stay.

9. Defendants cannot answer the Debtors’ other arguments that independently support the requested extension, either: that allowing the Securities Litigation to proceed (1) would prejudice Cobalt in its ability and opportunity to defend itself in the Securities Litigation regardless of whether it remains a defendant in that litigation, and (2) would distract Cobalt’s management team and board of directors when their attention must be focused on these chapter 11 cases and the related sale process.

10. As an initial matter, Defendants’ argument that the Court should treat Cobalt as having been dismissed from the Securities Litigation is misleading and baseless. While Cobalt would welcome its dismissal from the lawsuit, that outcome is not as simple as Defendants filing a motion for voluntary dismissal. Because a putative class has been certified, the Defendants must give notice so that class members have an opportunity to object to the dismissal. Unless and until that process is completed, Cobalt remains a party in the Securities Litigation. Contrary to

Defendants' suggestion that discovery is nearly over, at least 10 fact depositions remain (before counting the requested depositions of current members of Cobalt's management team), followed by months of expert discovery (disclosures and depositions), which Cobalt anticipates could involve a dozen or more experts across the parties; then, summary judgment motions by all defendants and briefing on those motions will follow, as will, potentially, *Daubert* motions, trial preparation, and trial.⁴ Thus, if the Securities Litigation were to proceed without Cobalt (before Cobalt were finally dismissed), Cobalt would be prejudiced by its omission from fact and expert depositions. And, given the overlap of Defendants' allegations and legal theories across Cobalt and the Non-Debtor Defendants, Cobalt would face a material risk of prejudice by any district court rulings against the Non-Debtor Defendants on summary judgment, *Daubert*, or other issues.

11. Moreover, the continued prosecution of the Securities Litigation would distract Cobalt's officers and directors from the urgent tasks at hand in these chapter 11 cases. The close of fact discovery, expert discovery, and summary judgment would occur on essentially the same timeline as Cobalt's time-intensive sale process. The continuation of the Securities Litigation seeking "billions of dollars in damages" against Cobalt and its board members (Opp. at ¶¶ 2, 9, 50), would, in these critical stages of discovery and dispositive motion practice, necessarily divert management's and the board's attention from the sale process that may be the lynchpin of these entire chapter 11 cases.

12. Further, even if Cobalt, at some point, were dismissed from the Securities Litigation, key Cobalt personnel still would be meaningfully involved in the lawsuit. Defendants seek to depose half of Cobalt's four-member senior management team—General Counsel (Jeffery

⁴ On December 15, 2017, Judge Atlas vacated all deadlines in the Securities Litigation. (*See In re Cobalt Int'l Energy, Inc. Secs. Litig.* (Case No. 4:14-cv-03428, S.D. Tex.) Docket 305, Order.)

Starzec) and its Vice President of Strategy and Business Development (Richard Smith) (Opp. at ¶¶ 18, 37)—each of whom has leading responsibilities in navigating Cobalt through these chapter 11 cases and for the related sale process. Moreover, *six* of Cobalt’s nine directors are defendants against whom Defendants continue to assert claims. And Cobalt’s management, especially its General Counsel, would need to devote meaningful time to monitoring the lawsuit through the key next stages, given Cobalt’s “identity of interest” with the Non-Debtor Defendants, who face mounting defense costs and, according to Defendants, “billions of dollars” of claims.

13. At bottom, Defendants have not—because they cannot—avoid the fact that Debtor Cobalt, whether dismissed or not, shares an “identity of interest” with the Non-Debtor Defendants in the Securities Litigation by virtue of its indemnification obligations, and that the ongoing legal fees incurred by and the possibility for massive judgments against the indemnified Non-Debtor Defendants would result in material new claims against the Debtors’ estate. These circumstances alone warrant an extension of the automatic stay to the Non-Debtor Defendants or an injunction against the continuation of the Securities Litigation. Separately, this result is supported by the substantive prejudice to Cobalt if the Securities Litigation proceeds without it, regardless of whether Cobalt remains a defendant, and by the distraction to the Cobalt’s management and board members participating in critical phases of the litigation while the company is undertaking a time-sensitive sale process in these chapter 11 cases. The Debtors’ motion should be granted.

FACTUAL BACKGROUND

14. At the December 14, 2017 first-day hearing, the Court requested further information about the Debtors’ indemnification obligations and insurance available to cover those obligations. (*See* 12/14/17 Hr’g Tr. at 89:24-90:18.) The Debtors endeavor to answer those questions here.

15. As the following chart demonstrates, Cobalt must indemnify almost all of the 54

Non-Debtor Defendants in the Securities Litigation:

	Indemnified Non-Debtor Defendants	Sources of Indemnification
Current Directors and Officers	<ul style="list-style-type: none"> • Jack E. Golden • Jon A. Marshall • Kenneth W. Moore • Myles W. Scoggins • D. Jeff Van Steenbergen • William P. Utt 	<ul style="list-style-type: none"> • Amended and Restated Certificate of Incorporation Article 7, § 2 (December 2009)⁵ • Cobalt Second Amended and Restated Certification of Incorporation, Article 7, § 2 (May 2017)⁶ • Director Indemnification Agreements⁷
Former Directors and Officers⁸	<ul style="list-style-type: none"> • Joseph H. Bryant • James W. Farnsworth • John P. Wilkison • Peter R. Coneway • Henry Cornell • N. John Lancaster • J. Hardy Murchison • Michael G. France • Kenneth A. Pontarelli • Scott L. Lebovitz • Martin H. Young, Jr. 	<ul style="list-style-type: none"> • Amended and Restated Certificate of Incorporation Article 7, § 2 (December 2009)⁹ • Cobalt Second Amended and Restated Certification of Incorporation, Article 7, § 2 (May 2017)¹⁰ • Director Indemnification Agreements¹¹

⁵ See Dkt. 2, Ex. 3, Cobalt Amended and Restated Certificate of Incorporation, Article 7, § 2 (December 2009).

⁶ See Dkt. 2, Ex. 4, Cobalt Second Amended and Restated Certification of Incorporation, Article 7, § 2 (May 2017).

⁷ See Exs. 1-6, Director Indemnification Agreements for Golden, Marshall, Moore, Scoggins, Van Steenbergen, and Utt.

⁸ As the Debtors previously noted, Defendants do not name Michael G. France and Scott L. Lebovitz in the “Parties” section of the Second CAC, but they are referenced in later paragraphs and are identified as defendants on the docket for the Securities Litigation. (See Dkt. 2 at 4 n.7.) To the extent France and Lebovitz are defendants in the Securities Litigation, they also are “Director Defendants.”

⁹ See Dkt. 2, Ex. 3, Article 7, § 2.

¹⁰ See Dkt. 2, Ex. 4, Article 7, § 2.

¹¹ See Exs. 7-14, Director Indemnification Agreements for Bryant, Coneway, Cornell, France, Lebovitz, Murchison, Pontarelli, and Young. The Debtors have not been able to locate a Director Indemnification Agreement for Lancaster, but he remains indemnified by Cobalt’s obligations in its Amended and Restated Certificate of Incorporation and Second Amended and Restated Certificate of Incorporation.

		<ul style="list-style-type: none"> December 15, 2009 Registration Rights Agreement (Bryant, Farnsworth, and Wilkirson)¹²
“Controlling Entity” Defendants	<ul style="list-style-type: none"> Goldman Sachs Group, Inc. Riverstone Holdings LLC The Carlyle Group First Reserve Corporation (now FRC Founders Corp.) KERN Partners Ltd. (now ATM, Ltd.)¹³ 	<ul style="list-style-type: none"> December 15, 2009 Registration Rights Agreement¹⁴
“Underwriter” Defendants	<ul style="list-style-type: none"> Goldman, Sachs & Co. Morgan Stanley & Co. LLC Credit Suisse Securities (USA) LLC Citigroup Global Markets Inc. J.P. Morgan Securities LLC Tudor, Pickering, Holt & Co. Securities, Inc. Deutsche Bank Securities Inc. RBC Capital Markets, LLC UBS Securities LLC Howard Weil Incorporated Stifel, Nicolaus & Company, Incorporated Capital One Southcoast, Inc. 	<ul style="list-style-type: none"> February 23, 2012 Common Stock Underwriting Agreement (all but Lazard Capital Markets LLC)¹⁵ December 11, 2012 2.625% Convertible Senior Notes due 2019 Underwriting Agreement (Morgan Stanley & Co. LLC and Goldman, Sachs & Co.)¹⁶ January 15, 2013 Common Stock Underwriting Agreement (Morgan Stanley & Co. LLC)

¹² See Dkt. 2, Ex. 5, December 15, 2009 Registration Rights Agreement, § 2.9(a), A-1.

¹³ Defendants do not name the following entities as defendants in the Second CAC: GS Capital Partners V Institutional, L.P.; GS Capital Partners VI Parallel, L.P.; Riverstone Energy Coinvestment III, L.P.; Carlyle Energy Coinvestment III, L.P.; C/R Energy III Cobalt Partnership, L.P.; Carlyle/Riverstone Global Energy and Power Fund III, L.P.; C/R Energy Coinvestment II, L.P.; C/R Cobalt Investment Partnership, L.P.; First Reserve Fund XI, L.P.; FR XI Onshore AIV L.P.; KERN Cobalt Co-Invest Partners AP LP. (See Dkt. 2, Ex. 1.) To the extent these entities remain defendants in the Securities Litigation, they also are indemnified pursuant to the December 15, 2009 Registration Rights Agreement. (See Dkt. 2, Ex. 5, § 2.9(a), A-1.)

Defendants also do not name as defendants in the Second CAC GS Capital Partners V Fund, L.P.; GS Capital Partners V Offshore Fund, L.P.; GS Capital Partners V GmbH & Co. KG; GS Capital Partners VI Fund, L.P.; GS Capital Partners VI Offshore Fund, L.P.; GS Capital Partners VI GmbH & Co. KG. (See Dkt. 2, Ex. 1.) To the extent these entities remain defendants, the Debtors are not presently aware of indemnification obligations as to them.

¹⁴ See Dkt. 2, Ex. 5, § 2.9(a), A-1.

¹⁵ See Dkt. 2, Ex. 6, February 23, 2012 Common Stock Underwriting Agreement, § 8(a), B-1.

¹⁶ See Dkt. 2, Ex. 7, December 11, 2012 2.635% Convertible Senior Notes due 2019 Underwriting Agreement, § 8(a), A-1.

	<ul style="list-style-type: none"> • Lazard Capital Markets LLC 	<p>and Citigroup Global Markets Inc.)¹⁷</p> <ul style="list-style-type: none"> • May 7, 2013 Common Stock Underwriting Agreement (Citigroup Global Markets Inc.)¹⁸ • May 8, 2014 3.125% Convertible Senior Notes due 2024 Underwriting Agreement (Goldman, Sachs & Co., RBC Capital Markets, LLC, Credit Suisse Securities (USA) LLC, Lazard Capital Markets LLC, Citigroup Global Markets Inc.)¹⁹
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16. The Non-Debtor Defendants have requested that Cobalt fulfill these indemnification obligations with respect to the Securities Litigation. For example, the Controlling Entity Defendants have requested indemnity from Cobalt, “including but not limited to the reimbursement of all counsel fees and disbursements as they are incurred.”²⁰ The so-called Underwriter Defendants also have sought indemnity from Cobalt, “including, but not limited to the reimbursement of all counsel fees and disbursements as they are incurred.”²¹ Cobalt has not disputed its indemnity obligations to any of the Non-Debtor Defendants on the asserted securities claims, except for one claim. The claim as to which Cobalt disputes any indemnity obligation is

¹⁷ See Dkt. 2, Ex. 8, January 15, 2013 Common Stock Underwriting Agreement, § 8(a), B-1.

¹⁸ See Dkt. 2, Ex. 9, May 7, 2013 Common Stock Underwriting Agreement, § 8(a), B-1.

¹⁹ See Dkt. 2, Ex. 10, May 8, 2014 3.125% Convertible Senior Notes due 2024 Underwriting Agreement, § 8(a), A-1.

²⁰ Ex. 15, Jan. 12, 2015 G. Conway Letter to D. Sterling at 2.

²¹ Ex. 16, Jan. 7, 2015 C. Schwartz Letter to D. Sterling at 2.

the Section 20A insider-trading claim against the Controlling Entity Defendants.²² The Controlling Entity Defendants dispute Cobalt's position and assert Cobalt's indemnity obligations run to the Section 20A claim, as well.²³

17. Debtor Cobalt had two primary insurers between December 15, 2010 and December 15, 2014, XL Specialty Insurance Co. ("XL") (2010-2012) and Illinois National Insurance Co. ("AIG") (2012-2014). Cobalt supplemented this coverage by obtaining excess insurance from, among others, Axis Insurance Company ("Axis"). Cobalt's 2010-2011 policies with XL and the affiliated excess insurers cover the claims in the Securities Litigation related to the alleged relationship between Angolan officials, Nazaki Oil and Gas, and Cobalt (the "Nazaki Claims"). Cobalt's 2012-2014 policies with AIG and the affiliated excess insurers, by contrast, cover the separate claims in the Securities Litigation related to the alleged statements by Cobalt about the Lontra and Loengo wells (the "Well Disclosure Claims"). Together, these policies provide insurance coverage for all of the claims in the Securities Litigation made against Cobalt and its current and former directors and officers. Cobalt does not believe these policies, or any others, apply to indemnification claims by the Controlling Entity Defendants or the Underwriter Defendants.

18. The XL tower of insurance has denied coverage for the Nazaki Claims, and the AIG tower of insurance has denied coverage for the Well Disclosure Claims. Therefore, Cobalt's insurers have denied coverage with respect to all claims in the Securities Litigation.²⁴

²² Ex. 17, June 2, 2017 D. Sterling Letter to J. Williams and G. Conway.

²³ Ex. 18, June 15, 2017 C. Reilly Letter to D. Sterling; Ex. 19, June 15, 2017 R. Van Kirk Letter to D. Sterling.

²⁴ Ex. 20, Mar. 23, 2015 L. Jones Letter to G. Zamora; Ex. 21, Feb. 17, 2015 J. Fleming Letter to G. Zamora; Ex. 22, July 16, 2015 S. Dandelles Letter to J. Dotson.

19. Cobalt, as well as several of its current and former directors and officers, sued XL, AXIS, and AIG to enforce coverage.²⁵ Cobalt and the current and former directors and officers ultimately settled with XL and Axis. On April 18, 2017 and October 27, 2017, XL and Axis deposited approximately \$15.4 million into escrow accounts that, as relevant here, can be used by any past, present or future director, officer, or employee of Cobalt to cover any obligations arising out of, relating, to, or in connection with their service to the Company in the role that qualifies them to be an Insured Person. Presently, these funds remain in the escrow accounts.

20. On November 1, 2017, Cobalt and the director and officer plaintiffs filed their Fourth Amended Petition against AIG to enforce coverage obligations.²⁶ On December 21, 2017, as a direct result of the Debtors commencing these chapter 11 cases, and the demands of these proceedings and the related sale process on Cobalt's management and directors, Cobalt sought to extend the schedule in the Coverage Litigation. AIG agreed to extend most of the then-pending deadlines by 60 days.²⁷ In their joint motion, those parties expressly noted that "[t]he demands of the Chapter 11 proceedings may require additional extensions in the future."²⁸

²⁵ This lawsuit did not name all of Cobalt's excess insurance carriers as defendants. The excess carriers all denied coverage for the Securities Litigation, as well. Cobalt is still considering its options with respect to those denials and reserves all rights.

²⁶ Ex. 23, *Cobalt Int'l Energy, Inc. et al. v. Ill. Nat'l Ins. Co. and Axis Ins. Co.* (Case No. 4:17-cv-01450, S.D. Tex.) Docket 44, Cobalt's Fourth Amended Petition. Note that although this petition continues to name Axis as a defendant, the only remaining claims in the Coverage Litigation pend against AIG.

²⁷ Ex. 24, *Cobalt Int'l Energy, Inc. v. Ill. Nat'l Ins. Co.* (Case No. 4:17-cv-01450, S.D. Tex.) Docket 54, Agreed Motion for Modification to Rule 16 Scheduling Order.

²⁸ *Id.* at 3 n.2.

ARGUMENT

I. THIS COURT SHOULD EXTEND THE AUTOMATIC STAY TO THE NON-DEBTOR DEFENDANTS.

A. The Debtors' Indemnification Obligations Mean That Any Judgment Against the Indemnified Non-Debtor Defendants is a Judgment Against the Debtors.

21. There is no question that Cobalt's indemnification obligations to almost all of the 54 Non-Debtor Defendants in the Securities Litigation would render a judgment against one of those Non-Debtor Defendants a judgment or finding against Cobalt. *See* 11 U.S.C. § 362(a)(1); *Arnold v. Garlock, Inc.* 278 F.3d 426, 436 (5th Cir. 2001). Tellingly, Defendants avoid addressing this standard and the core question of whether the Debtors have "a formal tie or contractual indemnification" that "create[s] an identity of interests between the debtor and nondebtor." *See Reliant Energy Servs. Inc. v. Enron Canada Corp.*, 349 F.3d 816, 825 (5th Cir. 2003). Cobalt's formal ties and contractual indemnification obligations to the Non-Debtor Defendants are clear. *See supra*, ¶ 15.

22. Defendants cite no case holding that, under this legal standard, contractual indemnification obligations like the ones between Cobalt and the Non-Debtor Defendants are insufficient to justify an extension of the automatic stay, and Defendants' attempt to distinguish the Debtors' cases is unavailing. (*See Opp.* at 13 n.8.) *Reliant Energy* (cited at *id.*), for example, explicitly recognizes that extending the automatic stay is appropriate if "a judgment against the **third-party defendant** will in effect be a judgment or finding against the debtor." 349 F.3d at 825 (internal quotation omitted) (emphasis added). While the *Reliant Energy* court declined to extend the automatic stay from the debtor Enron entities to include a non-debtor Enron affiliate (and the entity that the plaintiffs chose to sue), it did so precisely because it could not tell whether the contract at issue imposed between the debtors and the non-debtor "an affirmative obligation on one party to cover all the debts of another." *Id.* at 821, 826-27. There is no such issue here.

23. Similarly, in *National Oilwell* (cited at Opp. at 13 n.8), the court *extended* the automatic stay to a debtor's co-defendant employees and directors, recognizing that the debtor's amended bylaws established indemnity obligations to those non-debtor defendants and that, "[i]f the indemnity is enforceable and applicable, there is an 'actual' identity of interests between [them]." *Nat'l Oilwell Varco, L.P. v. Mud King Prods, Inc.*, 2013 WL 1948766, at *5 (S.D. Tex. May 9, 2013) (Atlas, J.). The court declined to extend the stay to other non-debtor co-defendants that could not demonstrate, as the debtor's employees and directors had done (and as the Non-Debtor Defendants have done), a "formal or contractual relationship" with the debtor. *Id.* at *6.

24. In *Beran* (cited at Opp. at 13 n.8), the court applied the same analysis. The court there recognized the automatic stay should extend to non-debtor defendants "when there is a formal or contractual relationship between the debtor and nondebtors," and held that the non-debtor defendants "ha[d] not demonstrated such a relationship." *Beran v. World Telemetry, Inc.*, 747 F. Supp. 2d 719, 723-24 (S.D. Tex. 2010).

25. In sum, Debtor Cobalt has formal and/or contractual indemnification obligations to almost all of the Non-Debtor Defendants in the Securities Litigation. Under these circumstances, as a matter of law, the automatic stay should be extended to those Non-Debtor Defendants. *See* 11 U.S.C. §§ 362(a)(1), (a)(3).

26. Defendants raise three categories of challenges to the Debtors' indemnification obligations: (1) bankruptcy code-related arguments about the potential subordination or disallowance of the indemnification claims, and their dilutive effect; (2) assertions about whether the indemnification obligations are enforceable; and (3) arguments related to the Debtors' pre-chapter 11 efforts to stay the Securities Litigation and its recent motion to stay the Coverage

Litigation. None of Defendants' arguments disputing the Debtors' indemnification obligations supports denying an extension of the automatic stay.

1. Defendants' Subordination, Disallowance, and Dilution Arguments are Unavailing.

27. Defendants argue that Cobalt's indemnification obligations in the Securities Litigation, in the future, may be subordinated to its creditors' claims such that "there is no evidence in the record indicating that the Debtors will ever actually indemnify the Non-Debtor Defendants." (Opp. at ¶ 31.) They similarly argue that the Court may ultimately disallow the Non-Debtor Defendants' indemnification claims under section 502(e)(1)(B) of the Bankruptcy Code. (*Id.* at ¶ 33.) Finally, Defendants argue the indemnification claims' dilutive effect on other creditors does not constitute an injury to the estate. (*Id.* ¶ 34.) These arguments ignore the governing legal standard and are substantively groundless.

28. To begin, the standard for determining whether an extension of the automatic stay should issue does not entail assessing the extent to which an indemnified party may ultimately recover on its indemnification claim. Simply put, the question of where an indemnification claim against the estate might eventually fall in the distribution "waterfall" does not bear on the determinative issues of (i) whether the action, in effect, seeks to "recover a claim against the debtor," 11 U.S.C. § 362(a)(1), and/or (ii) whether the indemnification claim seeks to "obtain possession of" or to "exercise control over" the property of the estate, *see* 11 U.S.C. § 362(a)(3); *see also In re S.I. Acquisition, Inc.*, 817 F.2d 1142, 1148-50 (5th Cir. 1987) (recognizing that section 362(a)(3) operates to extend the automatic stay where "property of the debtor estate [is] involved"); *see also A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994, 1001 (4th Cir. 1986) (section 362(a)(3) "directs stays of any action, *whether against the debtor or third-parties*, to obtain possession or to exercise control over property of the debtor" (emphasis in original)). Defendants

do not cite a single authority recognizing an exception to the statutory text or the case law interpreting it where there exists a possibility that the indemnification claims might, in the future, possibly be subordinated or disallowed. (*See Opp.* at ¶¶ 31-33.) In short, the applicable legal standard turns on the existence of indemnification obligations, not on speculation about how claims on those obligations might theoretically be prioritized down the road.

29. Furthermore, Defendants have made no factual showing, under the applicable legal standard, that would justify the Court presuming, or pre-judging, at this stage, that the indemnification claims should ultimately be subordinated or disallowed. At this stage, no proofs of claim on Cobalt's indemnification obligations have been filed, nor has the process even begun for resolving filed claims. There can be no certainty as to how those issues will ultimately be resolved.²⁹ For instance, as to subordination, Defendants do not explain why defense costs that continue to be incurred by the Non-Debtor Defendants, and for which Cobalt owes indemnification, would be subordinated. *See, e.g., In re Amfesco Indus., Inc.*, 81 B.R. 777, 785 (Bankr. E.D.N.Y. 1988) (describing a debtor's officers and directors seeking indemnification for pre-petition events as "general creditors who rendered services or supplied goods in reliance upon the expectation of payment"); *see also In re Noram Resources, Inc.*, 2011 WL 5357895, at *12 (Bankr. S.D. Tex. Nov. 7, 2011) (Isgur, J.) (discussing a director's indemnification claim as an "unsecured claim").³⁰

30. Disallowance also is uncertain. Claims are disallowed under section 502(e)(1)(b) of the Bankruptcy Code only if three conditions are satisfied: (1) the claim is for reimbursement

²⁹ The Debtors reserve all rights for the time these matters may appropriately be brought before the Court.

³⁰ To the extent Defendants raise subordination as an argument against any prejudice to Cobalt if the Securities Litigation continues (*see Opp.* at ¶ 43), that argument fails for the reasons already discussed.

or contribution, (2) the claim is contingent at the time of its allowance or disallowance, and (3) the claimant is co-liable with the debtor for the claim. *See, e.g., In re Hercules Offshore, Inc.*, 571 B.R. 633, 639 (Bankr. D. Del. 2017); *In re Lyondell Chem. Co.*, 442 B.R. 236, 243 (Bankr. S.D.N.Y. 2011).

31. There likely is no dispute that the first element is satisfied. On the second element, however, many of Cobalt's indemnification obligations might not be contingent. The defense costs that the Non-Debtor Defendants have incurred and would continue to incur if the Securities Litigation continues likely would be paid by the Non-Debtor Defendants on an ongoing basis, and would be fixed at the time this Court would determine whether to allow or disallow the indemnification claims. *See In re Lyondell Chem. Co.*, 442 B.R. at 248 (claim as contingent "until and unless amounts *are actually paid.*") (emphasis in original).

32. Defendants also fail to articulate why the third element (debtor co-liable) would be satisfied. The question here is whether "the causes of action in the underlying lawsuit assert claims upon which, if proven, the debtor could be liable but for the automatic stay." *See, e.g., In re Hercules Offshore, Inc.*, 571 B.R. at 640. If Defendants here prevail on their motion for voluntary dismissal, Cobalt would not, itself, face any liability in the Securities Litigation. Additionally, even if Cobalt were not dismissed, Defendants name Cobalt only in Counts 1 and 4 of the six alleged in the Second CAC.³¹ That means Cobalt could not be co-liable on the remaining four claims.³² Thus, Defendants have not established whether the indemnification claims will necessarily be subordinated or disallowed. That is a question for another day.

³¹ *See* Dkt. 2, Ex. 1, ¶ 22.

³² These four claims are: (1) violations of Section 20(a) of the Exchange Act against Bryant, Farnsworth, and Wilkison; (2) violations of Section 20A of the Exchange Act against the Controlling Entity Defendants; (3) violations of Section 15 of the Securities Act against Bryant, Farnsworth, Wilkison, Goldman Sachs, the so-

33. Additionally, it bears noting that any litigation, in the future, over whether indemnification claims for many millions in defense costs and, at least theoretically, a judgment against one or more Non-Debtor Defendants should be subordinated or disallowed would, itself, deplete estate resources, further harming the estate regardless of the outcome.

34. Finally, Defendants' argument that diluting unsecured creditors' recovery does not represent harm to the estate is plainly wrong. (Opp. at ¶ 34.) *See, e.g., In re S.I. Acquisition, Inc.*, 817 F.2d at 1150, 1153 (recognizing the Bankruptcy Code's policies of "securing and preserving the debtor's property and of ensuring equal distribution of the debtor's assets to similarly-situated creditors," as well as "of ensuring that all similarly-situated creditors are *treated fairly*" (emphasis added)); *In re Lion Capital Grp.*, 44 B.R. 690, 703 (Bankr. S.D.N.Y. 1984) (discussing as a "drain on the estate" and "irreparable injur[y]" "a lower dividend return to all creditors of th[e] estates"). Again, in many cases in which courts have held an indemnification obligation warranted extending the automatic stay, the obligation is on a prepetition contract; thus, in these cases, the harm to the estate would, at most, be an unsecured claim that dilutes the recovery of other unsecured creditors. *See, e.g., Nat'l Oilwell Varco, L.P.*, 2013 WL 1948766, at *1-2 (prepetition indemnification obligation); *In re Calpine Corp.*, 354 B.R. 45, 46-47 (Bankr. S.D.N.Y. 2006) (same).

35. The cases on which Defendants rely to suggest these outcomes are not damage to the estate are not controlling, and they are distinguishable. In *First Century Financial* (cited at Opp. at ¶ 34), for example, the Eastern District of New York, reached a conclusion at odds with Fifth Circuit precedent. *In re First Cent. Fin. Corp.*, 238 B.R. 9, 19 (Bankr. E.D.N.Y. 1999). In questioning whether "potential indemnification demands would damage the estate," the court

called Director Defendants, and the Controlling Entity Defendants; and (4) violations of Section 12(a)(2) of the Securities Act against the Underwriter Defendants. (*See* Dkt. 2 at 3-4.)

relied, incorrectly, on *In re Louisiana World Exposition, Inc.*, 832 F.2d 1391 (5th Cir. 1987). 238 B.R. at 20. In *Louisiana*, the Fifth Circuit identified as “key” the distinction between a suit brought *on behalf* of the debtor (as the one before it was), and a suit, like the Securities Litigation, where injured persons seek recovery for themselves. 832 F.2d at 1400. In the former case, the “object of th[e] action is to enlarge the debtor’s estate.” But, in the latter, particularly where liability coverage may be exhausted and the indemnified parties may turn to the bankrupt corporation for indemnification, “an asset of the estate—the indemnification proceeds—*would be threatened*.” *Id.* (emphasis added). It is this latter scenario that is applicable here.³³

36. Additionally, to the extent the court in *Reliance Acceptance Group* (cited at Opp. at ¶ 34) considered whether diluting the pool of funds available for distribution to creditors would constitute harm to the estate, it observed only that an increase in the magnitude of indemnification claims against the estate “d[id] not appear to be a basis for *permanently* enjoining the [litigation].” *See In re Reliance Acceptance Grp., Inc.*, 235 B.R. 548, 557 (Bankr. D. Del. 1999) (emphasis added). The court said nothing about whether this impact on the estate constituted harm for purposes of a preliminary injunction. Indeed, the parties in that case had agreed to preliminarily enjoin the lawsuits, and that preliminary injunction was extended “a number of times.” *Id.* at 552.

2. Defendants are Incorrect that the Debtors’ Indemnification Obligations are Unenforceable Under the Federal Securities Laws.

37. Defendants assert that the Debtors’ indemnification obligations are unenforceable because the Second CAC alleges violations of the federal securities laws. (*See, e.g.*, Opp. at ¶ 29.) They further argue that because Cobalt disputes whether Section 20A of the Exchange Act claims

³³ *First Century Financial* also supports the alternative bases for extending the automatic stay discussed below. 238 B.R. at 19 (explaining that, in cases where the stay was extended, “[p]ermitting the maintenance of those suits would have, in all likelihood, resulted in a massive depletion of estate assets and inhibited key personnel from the important business of getting the corporate debtor back on its feet”).

are covered by the indemnification agreements with the Controlling Entity Defendants, Cobalt may not rely on this potential indemnification obligation as a basis for extending the automatic stay. (*E.g.*, *id.* at ¶ 30.) Both arguments are meritless.

38. To start, Defendants are wrong that “indemnification for violations of the federal securities laws is contrary to public policy and invalid.” (Opp. at ¶ 29.) To the contrary, courts generally hold that that “federal securities laws ***do not*** operate to bar all claims of indemnification as a matter of law, but bar only those claims where the defendant acted with ***actual knowledge of falsity or reckless disregard*** for the truth.” *See In re Wedtech Corp.* 87 B.R. 279, 288 (Bankr. S.D.N.Y. 1988) (emphasis added); *Globus v. Law Research Servs., Inc.*, 418 F.2d 1276, 1288 (2d Cir. 1969) (recognizing indemnification for alleged violations of the securities laws as contrary to public policy where the indemnified party “has committed a sin graver than ordinary negligence”).

39. Here, Defendants are pursuing claims that they assert ***do not require scienter***, such as those under Sections 11, 12(a)(2), and 15 of the Securities Act. For example, Defendants have repeatedly asserted in the Securities Litigation that their “[c]laims brought under the Securities Act do not require as showing of . . . scienter.” (Dkt. 2, Ex. 1, ¶ 27; *see also id.* at ¶ 186 (“Because scienter is not an element of [their] claims under the Securities Act,” their allegations of scienter “pertain only to [their] claims under the Exchange Act.”).) Thus, Defendants’ own assertions about their Securities Litigation claims refute their public-policy arguments against the enforceability of Cobalt’s indemnification obligations to the Non-Debtor Defendants.

40. Separately and independently, Defendants’ argument fails because a public policy bar to indemnification would not apply unless and until the parties seeking indemnification have been ***adjudicated*** to have engaged in the misconduct with scienter. *See, e.g., Cambridge Fund, Inc. v. Abella*, 501 F. Supp. 598, 618-19 (S.D.N.Y. 1980) (emphasizing an “adjudication of

willfulness” as key to whether any public policy bar applies). There is no such public policy bar where, as here, a plaintiff has levied accusations against a defendant that have not been proven.

41. Defendants’ cases do not establish otherwise. In the only Fifth Circuit case Defendants cite, *Stowell* (cited at Opp. at ¶ 29), the court dismissed a claim by an individual defendant seeking indemnification from a plaintiff in the litigation, ruling that he had “fail[ed] to show the existence of any express or implied contract for indemnity or any duty imposed by law giving rise to a basis for indemnity.” *Stowell v. Ted S. Finkel Inv. Servs., Inc.*, 641 F.2d 323, 325 (5th Cir. 1981). The court noted only that, absent a **contractual** right to indemnification, like those that exist here, “indemnification tends to frustrate the policy of securities legislation.” *Id.* The court said nothing at all to suggest that allegations of securities-law violations would somehow void contractual obligations to indemnify for defense costs. Here, under numerous agreements, Cobalt is contractually obligated to indemnify virtually all defendants in the Securities Litigation.

42. Defendants’ citations from other jurisdictions do not support a different result. In *Tucker* (cited at Opp. at ¶ 29), four insurance companies sued defendant Arthur Andersen for violations of Sections 17(a) of the 1933 Act and 10(b) of the 1934 Act. *Tucker v. Arthur Andersen & Co.*, 646 F.2d 721, 724 (2d Cir. 1981). Andersen sued various third parties, seeking indemnification and contribution. *Id.* The court found that Andersen failed to state a claim for indemnification, and, in the process, observed that “allowing a person **who has violated** the securities laws to obtain complete reimbursement **for a judgment** against him would be inconsistent with the policies underlying those laws.” *Id.* (emphasis added).

43. In *Continental* (cited at Opp. at ¶ 29), the debtors moved to prevent the plaintiffs’ class action lawsuits against non-debtor director and officer defendants from interfering with their reorganization process, and they **succeeded** in temporarily enjoining that litigation. *In re*

Continental Airlines, 203 F. 3d 203, 206 (3d Cir. 2000). There, the debtors' plan of reorganization included a provision that would release and **permanently** enjoin pending securities fraud class actions against the non-debtor directors and officers. *Id.* at 206. In rejecting that provision, the Third Circuit ruled that the evidence did not establish that the debtors had a contractual obligation to indemnify their directors and officers, and, regardless, such an obligation would not justify permanently enjoining the lawsuits. *Id.* at 215-16. The court in no way suggested that an obligation to indemnify defense costs would be unenforceable on public policy grounds without a finding of liability. Further, this discussion of indemnification obligations arose only in the inapposite context of evaluating whether to permanently enjoin a lawsuit as part of a plan of reorganization. Notably, the Third Circuit **affirmed** the trial court's earlier order granting the debtors' motion to temporarily enjoin the securities litigation. *See id.* at 206. Consequently, the securities litigation remained pending, but inactive, for the balance of the debtor's reorganization proceedings. *See id.*

44. *Laventhol* and *Eichenholtz* are likewise distinguishable (cited Opp. at ¶ 29). As an initial matter, neither case says anything about the enforceability of contractual indemnification obligations to a company's directors, officers and equity sponsors. *See Laventhol, Krekstein, Horwath & Horwath v. Horwitch*, 637 F.2d 672 (9th Cir. 1980); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995). And rightly so. In securities lawsuits, courts consistently uphold "a corporation's ability voluntarily to indemnify an officer or director for defense and settlement costs so long as the act of indemnification complies with the general corporate law of the issuer's state of incorporation." *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 273, 284 (D.N.J. 2000), *aff'd sub nom. In re Cendant Corp. Litig.*, 264 F.3d 286 (3d Cir. 2001); *Raychem Corp. v. Fed. Ins. Co.*, 853 F. Supp. 1170, 1176-77 (N.D. Cal. 1994) (holding that "federal law does not prohibit

[company's] indemnification of its officers and directors for settlement payments and defense costs" in securities class action, and that state law controls). Delaware law, which governs here, expressly allows indemnification absent a finding of intentional wrongdoing. 8 Del. C. § 145(a), (b); *see also* Dkt. 2, Ex. 1 at ¶ 22 ("Cobalt International Energy, Inc. is a Delaware corporation . . ."). Similarly, an equity sponsor's liability under Section 15 of the Securities Act is derivative of a director's or officer's liability. *See* 15 U.S.C. § 77(o) (controlling persons are liable "to the same extent as such controlled person" unless "the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist"). Not surprisingly, then, it appears no court has held that indemnification of such claims against an equity sponsor would violate public policy, especially where, as here, there has been no finding of wrongdoing.

45. Moreover, to the extent that the cases Defendants cite suggest that indemnification obligations to underwriters are unenforceable regardless of a finding of liability (and it is not clear that *Laventhol* is even considering **contractual** indemnification obligations), they break with the plain language of the PSLRA, which states that "[i]n any case in which a contractual relationship permits, a covered person **that prevails** in any private action may recover the attorney's fees and costs of that covered person in connection with the action." 15 U.S.C. § 78u-4(2)(B)(ii) (emphasis added); *see also* *Fischler v. AmSouth Bancorporation*, 971 F. Supp. 533, 538 (M.D. Fla. 1997) (enforcing contractual obligation to indemnify bank under PLSRA) (distinguishing *Stowell*). They also break with other cases that stand for the common sense principle that indemnification obligations, even against underwriters, are enforceable until the defendant is **found liable** for the wrongdoing alleged. *See, e.g.,* *Adalman v. Baker, Watts & Co.*, 599 F. Supp. 752, 754-55 (D. Md. 1984) (distinguishing cases where indemnification held unenforceable as ones in which "there had

already been a determination that the defendants were guilty of some wrongdoing” and recognizing that a finding of scienter is required to render indemnification unenforceable); *Arden Way Assocs. v. Boesky*, 664 F. Supp. 863, 865 (S.D.N.Y. 1987) (“As a matter of federal law, the crucial relevant fact in determining whether indemnification for violations of the securities laws is available is whether the defendant acted with actual knowledge of falsity or reckless disregard for the truth. Under both federal securities laws and New York law whether indemnification is available may depend on various questions of fact such as whether a party is personally at fault, actually contributed to an injury, incurred merely vicarious or imputed liability, or had actual knowledge of alleged material misstatements.” (internal citations omitted)); *Kearney v. Jandernoa*, 957 F. Supp. 116, 120 (W.D. Mich. 1997) (“[T]he characterization that ‘as a matter of law indemnity is not available for securities law violations’ has been held to be overbroad and too simplistic.”) (following *Arden Way* and distinguishing *Eichenholtz*).

46. It appears that one court in this circuit likewise called Defendants’ line of authority into question. In *Federal Deposit Insurance Corp. v. Ally Securities LLC*, the court stated that it is “far from certain” that the Fifth Circuit would follow *Eichenholtz* on the enforceability of indemnification obligations to underwriters. 2012 WL 12883136, at *3 (W.D. Tex. Dec. 6, 2012). Notably, the court went on to hold that, where an indemnification agreement “appear[s] to require payment of defense costs regardless of the outcome of the litigation,” an indemnified underwriter “is able to seek reimbursement.” *Id.* (finding that underwriter’s indemnification claims “affect[] the administration of the bankruptcy estate and meet[] the Fifth Circuit’s ‘related to’ test” for jurisdiction over litigation).

47. The fact that Cobalt and the Controlling Entity Defendants have opposing views as to whether Cobalt is obligated to indemnify the Controlling Entity Defendants for the Section 20A

claim does not help Defendants, either. Courts recognize that “the possibility of a right of indemnification is sufficient” to warrant the extension of the automatic stay. *In re Jefferson Cty. Ala.*, 491 B.R. 277, 289 (Bankr. N.D. Ala. 2013). Thus, where a debtor’s indemnity obligations are unclear, and their interpretation may be the subject of dispute or litigation, “prudence dictates that the [d]ebtor treat its obligations as very real and substantial, even if those obligations are ultimately treated as pre-petition claims.” *See In re Sudbury, Inc.*, 140 B.R. 461, 463 (Bankr. N.D. Ohio 1992) (enjoining litigation against non-debtor defendants until debtor was able to reorganize). Furthermore, even if Cobalt ultimately prevails on its position that it has no obligation to indemnify for the alleged Section 20A violation, that is hardly the only claim pending against the Controlling Entity Defendants. Defendants’ Section 15 claim, for which Cobalt has acknowledged its indemnification obligations, is pending, as well. (Dkt. 2, Ex. 1 at ¶¶ 43-44, 358-65.) Likewise, Cobalt does not dispute its indemnification obligations as to Defendants’ five other claims pending against the other Non-Debtors Defendants.

3. Defendants Cannot Avoid an Extension of the Automatic Stay By Invoking the Debtors’ Efforts to Stay or Postpone the Securities Litigation and the Coverage Litigation.

48. Defendants argue that Cobalt’s requests for stays of litigation or for time extensions outside of, and prior to commencing, these chapter 11 cases are relevant to whether the automatic stay must now be extended here. (Opp. at ¶¶ 15-16, 35-36.) Defendants misrepresent those requests. *First*, Defendants mistakenly suggest that Cobalt seeking a stay in the Securities Litigation while it appealed an adverse class certification ruling—months before it filed for chapter 11 bankruptcy—bears on whether the automatic stay should be extended to the Non-Debtor Defendants. (*Id.* at ¶¶ 15-16.) It does not.

49. Defendants ignore that Cobalt’s stay request was governed by an entirely different standard than section 362(a) of the Bankruptcy Code. In particular, the standard that Judge Atlas

applied did not consider whether the stay would implicate the property of Cobalt as a debtor—as Cobalt had not filed for bankruptcy protection. Nor did the court consider, much less decide, the ultimate question here: whether Cobalt shares an identity of interest with the Non-Debtor Defendants and/or any indemnification obligations owed to those Non-Debtor Defendants impact the Debtors’ estate. *See, e.g., Arnold*, 278 F.3d at 436; *Reliant Energy Servs. Inc.*, 349 F.3d at 825; *In re S.I. Acquisition, Inc.*, 817 F.2d at 1148-50. Instead, Judge Atlas’ opinion denying the motion was understandably based on considerations that are not germane to this motion. For instance, the court focused on the question of whether non-Cobalt defendants were in financial distress.³⁴ Here, that question is inapposite to whether the automatic stay under section 362 of the Bankruptcy Code should be extended.³⁵

50. Defendants next argue that it is somehow relevant that Cobalt, upon filing for chapter 11 protection, requested that the defendant in the Coverage Litigation agree to extend current deadlines in that case, and that the defendant there agreed to an initial 60-day extension of most of the pending deadlines. (Opp. at ¶ 35.) In particular, Defendants challenge that Cobalt has not moved to stay or enjoin that litigation. (*Id.*) Plainly, Cobalt is not entitled to the benefit of the automatic stay in the Coverage Litigation because Cobalt is a plaintiff in that litigation. That Cobalt sought to extend these deadlines to provide management with immediate breathing space from the Coverage Litigation to focus on navigating these chapter 11 cases and the related sale

³⁴ Ex. 25, *In re Cobalt Int’l Energy, Inc. Secs. Litig.* (Case No. 4:14-cv-03428, S.D. Tex.) Docket 273, Cobalt’s Memorandum and Order at 11.

³⁵ Defendants quote Judge Atlas’ statement that “[f]urther delay will jeopardize [their] ability to obtain discovery from individuals whose memories may be fading as time passes.” (Opp. at ¶ 16.) But two paragraphs later, Defendants simultaneously argue that “discovery is virtually complete, with all documents produced and only a few depositions remaining.” (*Id.* at ¶ 18.) Defendants cannot have it both ways. Nor have they made any specific showing of harm from delaying by a few months further discovery on claims initially brought in November 2014 (*see id.* at ¶ 11).

process underscores the importance of the relief the Debtors seek here. While Cobalt and its co-plaintiffs were able to obtain the defendant’s agreement only to 60 days for now, the parties made explicit in their motion that “[t]he demands of the Chapter 11 cases may require additional extensions in the future.”³⁶

51. Simply put, Cobalt’s indemnification obligations to almost all of the 54 Non-Debtor Defendants in the Securities Litigation renders any judgment against those Non-Debtor Defendants a judgment against Cobalt, and any assertion of such indemnification claim seeks to “obtain possession of” or “exercise control over” Debtor Cobalt’s property. These reasons alone warrant extending the automatic stay to the Non-Debtor Defendants.

B. The Continuation of the Securities Litigation Would Prejudice Cobalt.

52. In addition, the automatic stay should be extended for the independent reason that the continuation of the Securities Litigation would prejudice Cobalt’s position in that litigation. *First*, Defendants’ argument that Cobalt’s dismissal “would moot Debtors’ prejudice argument by ensuring there is no remaining litigation risk to Cobalt” ignores that Cobalt has not been dismissed from the Securities Litigation. (Opp. at ¶ 42.) Prior to any dismissal, Defendants would need to provide notice to the now-certified class so that class members may object. *See, e.g.*, FED. R. CIV. P. 23(e) (requiring notice providing class members the opportunity to object to voluntary

³⁶ Ex. 24 at 3.

For several reasons, Defendants’ argument that the Non-Debtor Defendants can “take up the mantel” of the Coverage Litigation fails. (Opp. at ¶ 36.) For instance, Cobalt’s and the Non-Debtor Defendants’ claims against AIG are not identical. Cobalt’s claims include a demand for reimbursement of at least approximately \$4 million in costs that would be owed directly to Cobalt. (Ex. 23 at ¶¶ 85, 103-04.) Cobalt also is uniquely situated to pursue what is, at bottom, a breach of contract claim against its insurers. (*See id.* at ¶¶ 100-05.) In particular, Cobalt sought, negotiated, and paid for D&O coverage to protect it and its officers and directors in cases just like the Securities Litigation. Moreover, Defendants’ argument that Cobalt can simply assign to them its rights in the Coverage Litigation (Opp. at ¶ 36) is both inapposite and, at best, uncertain; it is not clear that such an assignment would even be valid under Texas law. *See, e.g., State Farm Fire & Cas. Co. v. Gandy*, 925 S.W.2d 696, 714 (Tex. 1996) (setting forth a three part test to determine whether an assignment of claims is valid).

dismissal). This process could take months to complete, at which point any objections would presumably have to be scheduled for hearing.³⁷

53. **Second**, Defendants’ argument that the “law of the case doctrine is discretionary” such that the court’s rulings may not have a preclusive effect against Cobalt misses the point. (Opp. at ¶ 44 (internal quotation omitted).) To start, Defendants ignore that, irrespective of any court rulings, proceeding with fact and expert depositions in a case in which Cobalt is a party, but does not participate in the depositions, would prejudice Cobalt’s position in that litigation. That is especially true where, as here, Defendants allege the same two sets of distinct claims against Cobalt and the Non-Debtor Defendants: (i) the Nazaki Claims, and (ii) the Well Disclosure Claims.³⁸ Defendants’ argument also ignores the Debtors’ cited authority holding that the automatic stay should be extended because rulings on motions as to non-debtor defendants (*e.g.*, here, on summary judgment) could prejudice the debtor. These cases make clear that it is **this risk and uncertainty** that justifies the extension of the automatic stay. *See, e.g., In re Calpine Corp.*, 354 B.R. at 50 (noting that if the litigation at issue advanced without the debtor, “issues regarding [the debtor’s] liability, its defenses and any damages that may be awarded, will be determined in [its] absence, exposing [the debtor] **to a significant risk** of collateral estoppel, stare decisis and evidentiary prejudice” (emphasis added)); *In re Lion Capital Grp.*, 44 B.R. at 703-04 (recognizing “**the risk of** collateral estoppel, the consequent drain on the debtor’s resources through having to monitor . . . other actions, and **the risk** that testimony by employees or agents might be

³⁷ Judge Atlas has ordered briefing on the motion to dismiss, and Defendants’ replies are not due until January 16, 2018. *See In re Cobalt Int’l Energy, Inc. Secs. Litig.* (Case No. 4:14-cv-03428, S.D. Tex.) Docket 307, Order. The Debtors also note that Defendants have moved to dismiss Cobalt **without prejudice**, which, at a minimum, creates an opportunity for Defendants to attempt to rename Cobalt as a defendant after the conclusion of these chapter 11 cases, presenting the same risk of prejudice that is set forth below.

³⁸ *See, e.g.*, Dkt. 2, Ex. 1.

subsequently employed against the debtor would irreparably injure the estate[] and thus warranted the issuance of a stay” (emphasis added)).

54. Defendants say nothing about *Calpine* here. And they attempt to distinguish *Lion Capital* on the grounds that the defendants in that case conceded they would seek to collaterally estop the Trustee from litigating certain issues. (Opp. at ¶ 44 n.12.) However, the *Lion Capital* court did not, as Defendants suggest, hold that absent such a concession, the automatic stay would not be extended. *In re Lion Capital Grp.* 44 B.R. at 703; *see also In re Calpine Corp.*, 354 B.R. at 50 (extending automatic stay based on law of the case concerns, without defendant representing it would seek to collaterally estop the debtor).

55. Thus, unless and until Cobalt is dismissed from the lawsuit with prejudice, the resumption of the Securities Litigation without Cobalt’s participation would materially prejudice Cobalt. For this additional reason, the Securities Litigation should not proceed.

C. The Continuation of the Securities Litigation Would Distract the Debtors From Their Chapter 11 and Sale Responsibilities.

56. Defendants do not respond meaningfully to the Debtors’ argument that the automatic stay should be extended because the Securities Litigation would otherwise distract the Debtors from these chapter 11 cases and the related sale process. Defendants contend that they recently “moot[ed]” any distraction of Cobalt by voluntarily dismissing it from the Securities Litigation. (*See, e.g.*, Opp. at ¶ 37-40.) Their argument fails. *First*, and most significantly, Cobalt has not been dismissed from the Securities Litigation. As noted, Defendants’ dismissal motion (which requests dismissal without prejudice) is pending and will now be subject to full briefing, followed, presumably, by a period of notice to members of the certified class and, possibly, hearings on any class members’ objections. Unless and until Cobalt is dismissed, Cobalt’s

management and its board obviously will need to focus on litigation that, as Defendants have repeatedly asserted, exposes Cobalt to “billions of dollars” of liability (*see, e.g., id.* at ¶¶ 2, 9, 50).

57. Defendants also try to downplay the substantial litigation tasks remaining by arguing that “four days” remained in fact discovery when the Debtors filed for bankruptcy protection. (Opp. at ¶ 3.) In reality, at least ten depositions remained, plus the depositions that Defendants sought of Cobalt’s General Counsel, Jeffrey Starzec, and current Vice President of Strategy and Business Development, Richard Smith (*id.* at ¶¶ 8, 37), each an essential member of Cobalt’s four-person management team and each with heavy responsibility for the sale process in these chapter 11 cases.³⁹ Moreover, in addition to concluding fact discovery, the parties in the Securities Litigation had planned for expert discovery, *Daubert* briefing, and summary judgment briefing all to occur by May 2018. (*See* Opp. at ¶ 3).⁴⁰ Proceeding through these crucial litigation stages would significantly burden Cobalt’s management and board, especially Mr. Starzec, as they provide input and direction on the litigation, including, in particular, expert reports and summary judgment briefing. And these litigation demands would unfold over precisely the same time period in which the Debtors must focus intensively on soliciting and evaluating bids for the Debtors’ assets.⁴¹

58. Moreover, even if Cobalt were dismissed from the Securities Litigation at some point, Cobalt would still be distracted by the continuation of the Securities Litigation. Cobalt’s General Counsel and Vice President of Strategy and Business Development, and one of its current

³⁹ *See* Ex. 26, Cobalt First Day Presentation at 4.

⁴⁰ *See also* Ex. 27, *In re Cobalt Int’l Energy, Inc. Secs. Litig.*, (Lead Case No. 4:14-cv-3428, S.D. Tex.) Docket 276, Sept. 5, 2017 Joint Proposed Docket Control Order.

⁴¹ *See* Ex. 26 at 21.

directors, potentially would be deposed.⁴² (See Opp. at ¶¶ 18, 37, 39.) And Cobalt's current board of directors would be heavily distracted as *two thirds of the board* (six of nine members) are defendants in the Securities Litigation.⁴³

59. In addition, given its potential exposure on judgment against the Non-Debtor Defendants, Cobalt's General Counsel and other members of management would need to watch carefully as the litigation develops and likely provide input on, at a minimum, the expert reports regarding Cobalt's alleged conduct that underlies the claims against all of the Securities Litigation defendants.

60. Thus, regardless of whether Cobalt remains a defendant in the Securities Litigation or simply shares an identity of interest as to those claims, continuing the Securities Litigation, which presents many millions of dollars of exposure (and, according to Defendants, billions in the case of a judgment) would distract Cobalt and its management and board of directors from their responsibilities in these chapter 11 cases. Given that distraction, an extension of the automatic stay is warranted. See *In re Calpine Corp.*, 354 B.R. at 50 (extending automatic stay to non-debtors where "continuation of the case w[ould] distract key personnel" from their chapter 11

⁴² Defendants cite *In re Divine Ripe, L.L.C.*, 538 B.R. 300, 314 (Bankr. S.D. Tex. 2015), and *In re University Medical Center*, 82 B.R. 754, 756 (Bankr. E.D. Pa. 1988), to support a claim that the Debtors failed to identify how its director Jeff van Steenbergen would be involved in its chapter 11 cases and sale process. (Opp. at ¶ 39 n.10.) Neither case is on point. In *Divine*, the court found "scant evidence and testimony" providing "any hints of contributions" from the non-debtor to the debtor, and the court actually ruled on the grounds that, unlike here, there was "no basis to conclude that a judgment against the individual defendant Jimenez would in effect be a judgment against the Debtor." 538 B.R. at 306, 310. And, in *University Medical Center*, the non-debtor at issue did not "point to any new, particularly time-consuming duties which arose as a result of the Chapter 11 filing." 82 B.R. at 756. Cobalt has made clear both that it has an identity of interest with this director and that the chapter 11 filing and related sale process do impose substantial "time consuming duties" on Cobalt's board and management.

⁴³ See Dkt. 2, Ex. 1 at ¶ 34 (naming Jack E. Golden, Jon A. Marshall, Kenneth W. Moore, Myles W. Scoggins, D. Jeff van Steenbergen, and William P. Utt as so-called Director Defendants).

obligations);⁴⁴ *In re Continental Airlines*, 177 B.R. 475, 481 (Bankr. D. Del. 1993) (staying securities class actions based in part on distraction to key personnel); *cf. In re Lomas Fin. Corp.*, 117 B.R. 64, 67 (Bankr. S.D.N.Y. 1990) (enjoining litigation against non-debtor defendants where “key personnel would be distracted from participating in the reorganization process causing [debtor] and its creditors both immediate and irreparable harm”).

* * *

61. In sum, the Debtors’ formal indemnification obligations to almost all of the 54 Non-Debtor Defendants, the risk of prejudice to Cobalt’s position in the Securities Litigation, and the inevitable distraction of its management and board separately and collectively necessitate extending the automatic stay to the Non-Debtor Defendants in the Securities Litigation.

II. THE SECURITIES LITIGATION SHOULD BE ENJOINED PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE.

62. Defendants’ challenges to the Debtors’ request that the Court enjoin the Securities Litigation pursuant to section 105(a) are likewise meritless. As with the Debtors’ request for an extension of the automatic stay, a section 105 injunction to stay the Securities Litigation against the Non-Debtor Defendants is necessary where, as here, allowing the litigation to advance is essentially a suit against the debtor. *See In re Zale Corp.*, 62 F.3d 746, 761 (5th Cir. 1995); *see also* 11 U.S.C. § 105(a). A section 105 injunction is thus necessary here, and, contrary to Defendants’ arguments, the Debtors satisfy each of the elements required to obtain that relief.

⁴⁴ Defendants’ attempt to distinguish *Calpine* fails. They argue that the Debtors here “present no evidence” and do not “attempt to identify how key personnel can or will be distracted.” (Opp. at ¶ 40 n.11.) Defendants either missed or ignore the Debtors’ repeated representations to the Court that it is engaged in a sale process for its assets (*e.g.* Dkt. 2 at ¶ 24; *see also* Ex. 26 at 21).

A. Allowing the Securities Litigation to Proceed Would Pose a Substantial Likelihood of Irreparable Injury.

63. Cobalt has demonstrated that it has formal indemnification obligations to almost all of the Non-Debtor Defendants in the Securities Litigation; that the indemnified parties are seeking indemnification; that Cobalt has acknowledged its indemnification obligations to nearly all of the Non-Debtor Defendants; and that Cobalt has made claims on the relevant insurance policies, but the relevant carriers have all denied coverage. Allowing the Securities Litigation to continue would give rise to further indemnification claims against the Debtors' estate, constituting irreparable harm. *See, e.g., A.H. Robins Co., Inc.*, 788 F.2d at 1008 (upholding preliminary injunctive relief against litigation because irreparable harm would be suffered by the debtor where, by virtue of debtor's indemnification obligations, "any of th[e] suits against th[e] co-defendants, if successful, would reduce and diminish the insurance fund or pool . . . and thereby affect the property of the debtor to the detriment to the debtor's creditors as a whole"); *In re Sudbury, Inc.* 140 B.R. at 465 (discussing as irreparable harm circumstances that "would directly frustrate the purpose of section 362 and would sanction what is in effect, if not intent, an end run around the proscription of that section").

64. Cobalt also has demonstrated that allowing the Securities Litigation to proceed against the Non-Debtor Defendants likely would cause irreparable injury to Cobalt by prejudicing it in ongoing litigation. *In re Lion Capital Grp.*, 44 B.R. at 703 (discussing risk of collateral estoppel, drain on debtor's resources through having to monitor or participate in an action, and risk of testimony being employed against a debtor as "irreparabl[e] injur[y]").

65. In addition, Cobalt has demonstrated that permitting the Securities Litigation to continue would invite irreparable injury by distracting key members of management and directors from their obligations in these chapter 11 cases and the sale process. *See In re Sudbury, Inc.*, 140

B.R. at 465 (“In a bankruptcy context, irreparable harm may be discerned if the action sought to be enjoined would so consume the time, energy and resources of the debtor that it would substantially hinder the debtor’s reorganization effort” (internal quotation omitted)).

66. Defendants’ only argument against these irreparable injuries is to invoke the “reasons set forth in Part I” of their brief. (Opp. at ¶ 48.) For the reasons the Debtors have already discussed, none of Defendants’ arguments about the Debtors’ indemnification obligations, distraction of key management and directors, or prejudice if the Securities Litigation advances refute that the injuries here to the Debtors would be irreparable.

B. The Debtors Have a Reasonable Likelihood of Success on the Merits.

67. As explained in the Debtors’ opening brief, this element depends on “the purpose of the requested injunction.” *In re FiberTower Network Servs. Corp.*, 482 B.R. 169, 182 (Bankr. N.D. Tex. 2012) (quoting *Collier on Bankruptcy* ¶ 105.03[1][a] (16th ed. 2012)). In particular, whether the Debtors have demonstrated a likelihood of success on the merits depends on “whether this court is authorized and likely to grant the requested relief.” *Id.* at 183. This element does not, as Defendants appear to argue (Opp. at ¶ 49), depend on whether the Debtors’ are likely to be successful in their chapter 11 cases and the related sale process. *See In re FiberTower Network Servs. Corp.*, 482 B.R. at 183 (“Nor is the question whether Debtors can show a reasonable likelihood of a successful reorganization.”). For the reasons set forth above, the Debtors here are likely to prevail on the merits of their request for declaratory relief and/or for an injunction until the completion of the Debtors’ sale and chapter 11 process.

C. The Balance of Equities Favors the Debtors.

68. Defendants would suffer no material harm if the automatic stay is extended, as they would be free to pursue their claims against the Non-Debtor Defendants at the conclusion of the Debtors’ chapter 11 cases. *See, e.g., In re Am. Film Techs., Inc.*, 175 B.R. 847, 849 (Bankr. D.

Del. 1994) (weighing this factor in favor of enjoining the litigation where non-debtor plaintiff was “not being asked to forego his prosecution against the individual defendants, only to delay it”). In response to this point, however, Defendants direct the Court to *In re Rail Freight Fuel Surcharge Antitrust Litigation*. (Opp. at ¶ 50). This case is inapposite, as the defendants there did not argue for an extension of the automatic stay, but, rather, attempted, outside the bankruptcy context, to stay litigation pursuant to Federal Rule of Civil Procedure 23(f), while they appealed an adverse class certification ruling. 286 F.R.D. 88, 91 (D.D.C. 2012). Given the differences in legal standards and balancing considerations, the case has no application here.

69. Moreover, Defendants admit that the crux of this element is weighing this putative harm against that suffered by the Debtors. (Opp. at ¶ 46 (“A party seeking an injunction under section 105(a) must satisfy . . . [a] balance of equities favoring the movant” (internal quotation omitted)).) The non-specific, speculative harm to Defendants that might result from some delay in the Securities Litigation is far outweighed by the harm to the Debtors if that litigation goes forward, including the consequences to the Debtors’ indemnification obligations, prejudice to their position in that litigation, and distraction from the chapter 11 cases and related sale process.

D. Injunctive Relief Would Serve the Public Interest.

70. The injunctive relief the Debtors seek here would serve the public interest by promoting the Debtors’ speedy and successful conclusion of these bankruptcy proceedings, thereby helping to preserve their assets for distribution to creditors. *See In re OGA Charters, LLC*, 554 B.R. 415, 426 (Bankr. S.D. Tex. July 27, 2016) (“[P]ublic interest may be served where the purpose of the preliminary injunction is such that it serves to uphold the twin pillars of bankruptcy by preserving a debtor’s . . . assets that can be potentially used to satisfy valid claims against the bankruptcy estate.”).

71. The Debtors do not dispute that the public may have an interest in the resolution of the Securities Litigation—as it would in resolving any litigation. But advancing the public’s interest in achieving the successful conclusion to these chapter 11 cases would not thwart any public interest in having the Securities Litigation resolved. After all, if the Securities Litigation were stayed, Defendants could pick up where they left off at the conclusion of these chapter 11 cases. Allowing the Securities Litigation to advance now, by contrast, would interfere with the public’s interest in orderly and efficient bankruptcy proceedings and the related, time-sensitive sale process, which turns on events occurring now and in the coming months, and cannot be paused and then resumed at some date in the future.

72. Finally, Defendants cite several cases to support an argument that “class actions on behalf of investors in chapter 11 debtors routinely are vigorously litigated outside of the bankruptcy court.” (Opp. at ¶ 53 (internal quotation omitted).) These citations miss the mark. For example, in *Teledyne*, the plaintiff sued four directors and officers of the debtor in their individual capacities. *Teledyne Indus., Inc. v. Eon Corp.*, 401 F. Supp. 729, 730-31 (S.D.N.Y. 1975). The court held that because the plaintiff sought to impose liability on the individual defendants personally, “[a] judgment in favor of the plaintiff **will in no way affect Eon or its property**, and obviously will not interfere with the bankruptcy court’s order of arrangement.” *Id.* at 734 (emphasis added).

73. In *King Resources*, the litigation at issue did not co-exist with the bankruptcy proceedings. To the contrary, the litigation was “abated” for approximately two years while the bankruptcy proceedings were underway, after which “[p]artial stays emanating from the various bankruptcy courts continued . . . to affect the progress of th[e] case.” *In re King Res. Co. Secs. Litig.*, 420 F. Supp. 610, 615 (D. Colo. 1976).

74. In *Hirsch*, the debtor made no request for an automatic stay or an injunction. Rather, the bankruptcy trustee *sought* to bring claims against the debtor, which was Arthur Andersen. The court held, and the Second Circuit affirmed, that the trustee lacked standing to bring the desired claims. *Hirsh v. Arthur Anderson & Co.*, 72 F.3d 1085, 1087, 1096 (2d Cir. 1995). Similarly, *In re Equity Funding Corporation of America Securities Litigation*, 438 F. Supp. 1303 (C.D. Cal. 1977), and *In re Penn Central Securities Litigation*, 347 F. Supp. 1327 (E.D. Pa. 1972), apparently did not involve requests to extend the automatic stay or to enjoin litigation against non-debtor defendants. To the extent they are relevant at all, these cases stand for the proposition that the automatic stay is not extended when debtors do not request that relief.⁴⁵

75. Finally, *Northwest Airlines* is distinguishable. See *In re N.W. Airlines Corp. et al.*, Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. 2009), Dkt. 8644 (July 20, 2009 Hr’g Tr.). There, the court declined to stay the securities litigation against non-debtor defendants because it determined that the debtors had not established any circumstances that would warrant this relief. (See *id.* at 65:5-8, 68:8-9.). The court ruled, however, that the debtors could renew their request “on a showing that their officers and directors’ attention to critical reorganization issues is, in fact, being diverted.” (*Id.* at 67:4-7; see also *id.* at 68:15-18.) It also recognized that exposure to its indemnified directors and officers in the form of a \$5 million insurance deductible could constitute “an immediate distraction.” (*Id.* at 68:19-69:3.)

⁴⁵ Defendants generally reference *In re Enron Corporation*, *In re WorldCom, Inc.*, *In re Delphi Corporation*, *In re Washington Mutual Inc.*, *In re Lehman Brothers Holdings, Inc.*, and *In re New Century TRS Holdings, Inc.*, without directing the Debtors’ or this Court to any specific authority and without clarifying (1) whether extensions of the automatic stay or injunctive relief were sought in these cases; (2) whether the debtors had indemnification obligations to the litigation defendants; (3) whether the debtors were defendants in that litigation; or (4) whether any members of management or the board remained during the pendency of the bankruptcy proceedings. (Opp. at ¶ 53.)

76. Here, by contrast, the Debtors owe indemnification obligations to nearly all of the 54 Non-Debtor Defendants, including, potentially, for judgments that Defendants claim could total “billions of dollars.” Separately and independently, the Debtors have demonstrated the Securities Litigation would distract Cobalt’s management and board of directors, including its General Counsel, Vice President of Strategy and Business Development, and six directors who remain defendants in the Securities Litigation. And, here, the Debtors’ insurance carriers have denied coverage altogether.

77. The Debtors have satisfied each element of 11 U.S.C. § 105 necessary to enjoin the Securities Litigation until the Debtors’ sale process and these chapter 11 cases are completed. The Court should grant the requested relief.

CONCLUSION

For the foregoing reasons, the Debtors respectfully request that the Court grant their motion and order the Securities Litigation stayed pursuant to 11 U.S.C. § 362, until the Debtors’ sale and these chapter 11 cases are completed, and/or enjoin Defendants from prosecuting the Securities Litigation claims against the Non-Debtor Defendants pursuant to 11 U.S.C. § 105 for the same duration.

Houston, Texas
Dated: January 2, 2018

/s/ Zack A. Clement

Zack A. Clement (Texas Bar No. 04361550)

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Proposed Counsel to the Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

I certify that on January 2, 2018, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Zach. A. Clement

Zach. A. Clement

EXHIBIT 1

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "**Agreement**"), dated as of February 2, 2010 between Cobalt International Energy, Inc., a Delaware corporation (the "**Company**"), and Jack E. Golden ("**Indemnitee**").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will

serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

(a) As used in this Agreement:

“Change of Control” means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term “person” shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions; (v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either

the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"Liabilities" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"Proceeding" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the **"Company"** shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to **"director, officer, employee, consultant or agent"** shall include, in addition to directors, officers, employees, consultants and agents, a trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**serving at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2 SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3 INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and
- (ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4
ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such

Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case

payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as

Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. *Presumptions and Burdens of Proof; Effect of Certain Proceedings.* (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or

an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the

Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with reputable insurance companies providing liability insurance for directors of the Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in

respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

ARTICLE 8 MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or

otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right,

power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10 days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail (“e-mail”) transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the “**Delaware Court**”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of

the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 

Name:

Title:

Chairman & CEO

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

JACK E. GOLDEN

c/o Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

[Signature Page to Director Indemnification Agreement for Jack E. Golden.]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY, INC.

By: _____
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

JACK E. GOLDEN

 _____ Feb 1, 2010

c/o Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant

[Signature Page to Director Indemnification Agreement for Jack E. Golden.]
(NY) 05649/002/AGTS/Dir.Indem.Agt.Golden.doc

EXHIBIT 2

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "**Agreement**"), dated as of May 18, 2010 between Cobalt International Energy, Inc., a Delaware corporation (the "**Company**"), and Jon A. Marshall ("**Indemnitee**").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will

serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE 1 CERTAIN DEFINITIONS

(a) As used in this Agreement:

"Change of Control" means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term "person" shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions; (v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either

the Company or Indemnatee in an action to determine Indemnatee's rights under this Agreement.

"Liabilities" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"Proceeding" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnatee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnatee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnatee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the **"Company"** shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnatee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnatee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnatee would have with respect to such constituent corporation if its separate existence had continued.

References to **"director, officer, employee, consultant or agent"** shall include, in addition to directors, officers, employees, consultants and agents, a trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**serving at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2 SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3 INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and
- (ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(b) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4
ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such

Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

- (b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request Truesdell, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request Truesdell.

(d) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(d). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and

timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(e) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. *Presumptions and Burdens of Proof; Effect of Certain Proceedings.* (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(c) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such

entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(d) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(e) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(f) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under

this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request Truesdell, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with

reputable insurance companies providing liability insurance for directors of the Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

ARTICLE 8 MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy,

and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall

operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10 days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section

of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail ("e-mail") transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be

brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the “**Delaware Court**”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party’s agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (1) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY, INC.

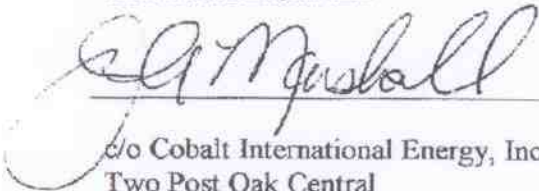
By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

JON A. MARSHALL



c/o Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant

[Signature Page to Director Indemnification Agreement]

EXHIBIT 3

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "**Agreement**"), dated as of November 11, 2009 between Cobalt International Energy, Inc., a Delaware corporation (the "**Company**"), and Kenneth W. Moore ("**Indemnitee**").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

WHEREAS, Indemnitee has certain rights to indemnification and/or insurance provided by the Sponsor Indemnitors (as defined below) which Indemnitee and the Sponsor Indemnitors intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

(a) As used in this Agreement:

"Change of Control" means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term "person" shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions;

(v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses

hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"**Liabilities**" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"**person**" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"**Proceeding**" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the "**Company**" shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to "**director, officer, employee, consultant or agent**" shall include, in addition to directors, officers, employees, consultants and agents, a

trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**serving at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2 SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3 INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in

the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4

ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the

Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and

timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. Presumptions and Burdens of Proof; Effect of Certain Proceedings. (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such

entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under

this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with reputable insurance companies providing liability insurance for directors of the

Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

(d) The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of expenses and/or insurance provided by First Reserve Corporation and/or certain of its affiliates (collectively, the "**Sponsor Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Sponsor Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses and Liabilities to the extent legally permitted and as required by the terms of this Agreement and the Company's certificate of incorporation and bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Sponsor Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Sponsor Indemnitors from any and all claims against the Sponsor Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Sponsor Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Sponsor 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 Indemnitee against the Company. The Company and Indemnitee agree that the Sponsor Indemnitors are express third party beneficiaries of the terms of this Section 7.01(d).

ARTICLE 8
MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) Except as provided in Section 7.01(d), in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee (other than against the Sponsor Indemnitors), who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) Except as provided in Section 7.01(d), the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) Except as provided in Section 7.01(d), the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of

any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10

days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail ("e-mail") transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an

original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

KENNETH W. MOORE

c/o First Reserve Corporation
One Lafayette Place
Greenwich, CT 06830
Attn: Kenneth W. Moore

With a copy to:

[Signature Page to Director Indemnification Agreement for Kenneth W. Moore]

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richard.truesdell@davispolk.com

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Fried, Frank, Harris, Shriver & Jacobson
LLP

One New York Plaza
New York, New York 10004

Attention: Robert C. Schwenkel
Murray Goldfarb

Facsimile No.: (212) 859-4000

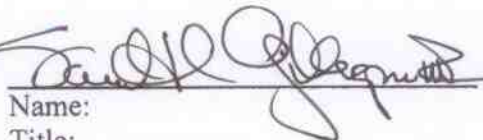
E-mail:

robert.schwenkel@friedfrank.com
murray.goldfarb@friedfrank.com

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KENNETH W. MOORE

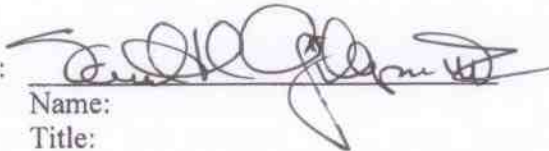
c/o First Reserve Corporation
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KENNETH W. MOORE

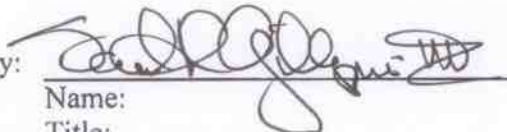
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richard.truesdell@davispolk.com

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With a copy to:

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EXHIBIT 4

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "**Agreement**"), dated as of March 1, 2010 between Cobalt International Energy, Inc., a Delaware corporation (the "**Company**"), and Myles W. Scoggins ("**Indemnitee**").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will

serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE I CERTAIN DEFINITIONS

(a) As used in this Agreement:

"Change of Control" means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term "person" shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions; (v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either

the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"Liabilities" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"Proceeding" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the **"Company"** shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to **"director, officer, employee, consultant or agent"** shall include, in addition to directors, officers, employees, consultants and agents, a trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**servicing at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2
SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3
INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and
- (ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4

ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such

Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and

timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnatee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnatee may petition a court of competent jurisdiction (or, at Indemnatee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnatee is entitled to indemnification, payment to Indemnatee shall be made within 10 days after such determination.

Section 5.03. *Presumptions and Burdens of Proof; Effect of Certain Proceedings.* (a) In making any determination as to Indemnatee's entitlement to indemnification hereunder, Indemnatee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnatee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnatee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnatee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnatee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnatee shall be deemed to have acted in good faith if Indemnatee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnatee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such

entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under

this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with

reputable insurance companies providing liability insurance for directors of the Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

ARTICLE 8 MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy,

and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall

operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10 days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section

of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail (“e-mail”) transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be

brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

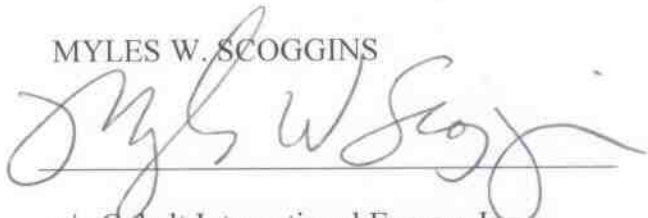
By: 
Name: _____
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

MYLES W. SCOGGINS



c/o Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant

EXHIBIT 5

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "**Agreement**"), dated as of November 11, 2009 between Cobalt International Energy, Inc., a Delaware corporation (the "**Company**"), and D. Jeff van Steenbergen ("**Indemnitee**").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

WHEREAS, Indemnitee has certain rights to indemnification and/or insurance provided by the Sponsor Indemnitors (as defined below) which Indemnitee and the Sponsor Indemnitors intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE I
CERTAIN DEFINITIONS

(a) As used in this Agreement:

"Change of Control" means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term "person" shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions;

(v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses

hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"Liabilities" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"Proceeding" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the **"Company"** shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to **"director, officer, employee, consultant or agent"** shall include, in addition to directors, officers, employees, consultants and agents, a

trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**serving at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2 SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3 INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in

the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4

ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the

Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and

timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. *Presumptions and Burdens of Proof; Effect of Certain Proceedings.* (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such

entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under

this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with reputable insurance companies providing liability insurance for directors of the

Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

(d) The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of expenses and/or insurance provided by KERN Partners Ltd. and/or certain of its affiliates (collectively, the "**Sponsor Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Sponsor Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses and Liabilities to the extent legally permitted and as required by the terms of this Agreement and the Company's certificate of incorporation and bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Sponsor Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Sponsor Indemnitors from any and all claims against the Sponsor Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Sponsor Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Sponsor 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 Indemnitee against the Company. The Company and Indemnitee agree that the Sponsor Indemnitors are express third party beneficiaries of the terms of this Section 7.01(d).

ARTICLE 8
MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) Except as provided in Section 7.01(d), in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee (other than against the Sponsor Indemnitors), who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) Except as provided in Section 7.01(d), the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) Except as provided in Section 7.01(d), the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10 days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior

to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail ("e-mail") transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger,

consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

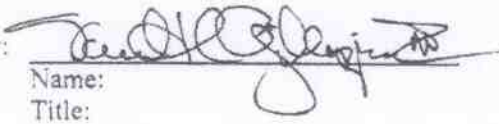
Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

D. JEFF VAN STEENBERGEN

KERN Partners Ltd.
200 Doll Block
116-8th Avenue
Calgary, Alberta, Canada T26 0K4
Attn: D. Jeff van Steenbergen

[Signature Page to Director Indemnification Agreement for D. Jeff Van Steenbergen]

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With a copy to:

Fried. Frank, Harris, Shriver & Jacobson
LLP

One New York Plaza

New York, New York 10004

Attention: Robert C. Schwenkel
Murray Goldfarb

Facsimile No.: (212) 859-4000

E-mail:

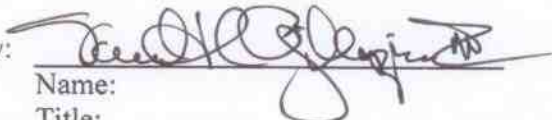
robert.schwenkel@friedfrank.com

murray.goldfarb@friedfrank.com

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E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

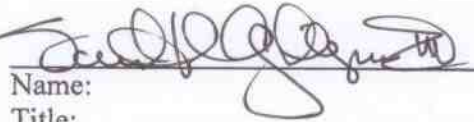
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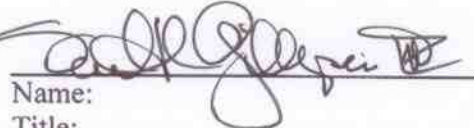
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EXHIBIT 6

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "Agreement"), dated as of MARCH 11, 2013 between Cobalt International Energy, Inc., a Delaware corporation (the "Company"), and William P. Uhl ("Indemnitee").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("DGCL"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be adequately protected.



WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

(a) As used in this Agreement:

"Change of Control" means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term "person" shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions; (v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

"Continuing Directors" means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by

the Company's stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

"Corporate Status" means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

"Enterprise" means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

"Exchange Act" means the Securities Exchange Act of 1934.

"Expenses" means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

"Independent Counsel" means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.



“Liabilities” means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

“person” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

“Proceeding” includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the **“Company”** shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to **“director, officer, employee, consultant or agent”** shall include, in addition to directors, officers, employees, consultants and agents, a trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to **“serving at the request of the Company”** shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee

benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as used herein.

References to "hereof", "herein" and "hereunder" and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to "includes" or "including" shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2 SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3 INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding. The phrase "to the fullest extent permitted by applicable law" shall include:

(i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or

otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. Exclusions. Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case,

Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4
ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee

has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall



be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent

Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. *Presumptions and Burdens of Proof; Effect of Certain Proceedings.* (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be



deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial



proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with reputable insurance companies providing liability insurance for directors of the Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof;

provided that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

ARTICLE 8 MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.



Section 8.02. Subrogation, etc. (a) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. Amendment. This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. Waivers. The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.



Section 8.06. Expenses. (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10 days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. Notices. All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or



electronic mail ("e-mail") transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party

is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

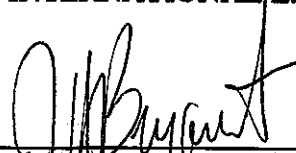
Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.



IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

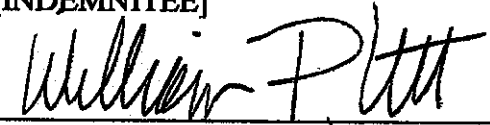
COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name: Joseph H. Bryant
Title: Chairman and Chief Executive Officer
Address: 920 Memorial City Way, Suite 100
Facsimile: 713-579-9184 Houston, TX
Attention: Joseph H. Bryant 77024

With a copy to:

Address: 920 Memorial City Way, Suite 100 Houston, TX
Facsimile: 713-579-9184
Attention: General Counsel 77024

[INDEMNITEE]



Address: 601 Jefferson, Suite #3401, Houston
Facsimile: 713-753-2939 77002

With a copy to:

Address: 5432 Tupper Lake Drive, Houston 77056
Facsimile: 713-877-8724
Attention: William P. UTT



EXHIBIT 7

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "**Agreement**"), dated as of November 11, 2009 between Cobalt International Energy, Inc., a Delaware corporation (the "**Company**"), and Joseph H. Bryant ("**Indemnitee**").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will

serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE I CERTAIN DEFINITIONS

(a) As used in this Agreement:

"Change of Control" means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term "person" shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions; (v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either

the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"Liabilities" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"Proceeding" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the **"Company"** shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to **"director, officer, employee, consultant or agent"** shall include, in addition to directors, officers, employees, consultants and agents, a trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**servicing at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2
SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3
INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and
- (ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnatee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnatee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnatee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnatee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnatee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnatee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnatee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnatee's rights provided for in Section 3.01(a).

(d) If Indemnatee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnatee for the portion thereof to which Indemnatee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnatee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnatee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnatee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnatee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4
ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnatee or on Indemnatee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnatee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnatee's ability to repay such amounts and without regard to Indemnatee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnatee agrees that Indemnatee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnatee is not entitled to be indemnified by the Company for such Expenses. If Indemnatee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnatee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnatee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnatee upon delivery of written notice to the Indemnatee. After the Company assumes the defense, the Company will not be liable to Indemnatee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnatee with respect to such

Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case

payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as

Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. *Presumptions and Burdens of Proof; Effect of Certain Proceedings.* (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or

an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the

Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with reputable insurance companies providing liability insurance for directors of the Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in

respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

ARTICLE 8 MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or

otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right,

power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10 days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail ("e-mail") transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of

the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

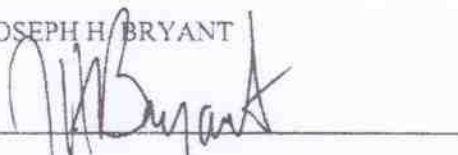
By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Samuel H. Gillespie
Facsimile No.: (713) 579-9103
E-mail: sam.gillespie@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

JOSEPH H. BRYANT



c/o Cobalt International Energy, Inc.
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Attention: Joseph H. Bryant
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E-mail: joe.bryant@cobaltintl.com

[Signature Page to Director Indemnification Agreement for Joseph H. Bryant]

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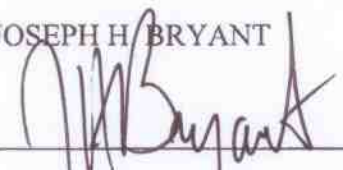
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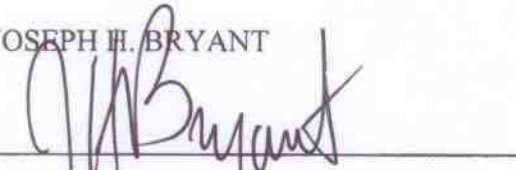
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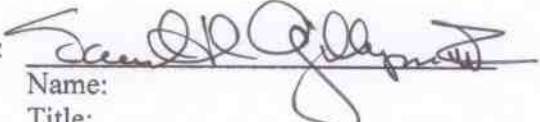


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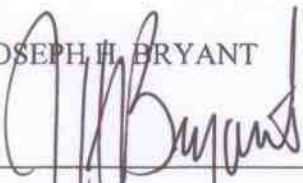
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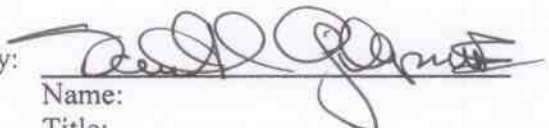
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EXHIBIT 8

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "**Agreement**"), dated as of November 11, 2009 between Cobalt International Energy, Inc., a Delaware corporation (the "**Company**"), and Peter R. Coneway ("**Indemnitee**").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

WHEREAS, Indemnitee has certain rights to indemnification and/or insurance provided by the Sponsor Indemnitors (as defined below) which Indemnitee and the Sponsor Indemnitors intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE 1 CERTAIN DEFINITIONS

(a) As used in this Agreement:

"Change of Control" means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term "person" shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions;

(v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses

hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"Liabilities" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"Proceeding" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the **"Company"** shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to **"director, officer, employee, consultant or agent"** shall include, in addition to directors, officers, employees, consultants and agents, a

trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**serving at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2 SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3 INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in

the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4

ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the

Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and

timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. *Presumptions and Burdens of Proof; Effect of Certain Proceedings.* (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such

entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under

this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with reputable insurance companies providing liability insurance for directors of the

Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

(d) The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of expenses and/or insurance provided by Riverstone Holdings LLC and/or certain of its affiliates (collectively, the "**Sponsor Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Sponsor Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses and Liabilities to the extent legally permitted and as required by the terms of this Agreement and the Company's certificate of incorporation and bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Sponsor Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Sponsor Indemnitors from any and all claims against the Sponsor Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Sponsor Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Sponsor 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 Indemnitee against the Company. The Company and Indemnitee agree that the Sponsor Indemnitors are express third party beneficiaries of the terms of this Section 7.01(d).

ARTICLE 8
MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) Except as provided in Section 7.01(d), in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee (other than against the Sponsor Indemnitors), who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) Except as provided in Section 7.01(d), the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) Except as provided in Section 7.01(d), the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of

any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10

days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail ("e-mail") transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.


Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an

original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

PETER R. CONEWAY

c/o Riverstone Holdings LLC
712 Fifth Avenue, 51st Floor
New York, NY 10019
Attn: Peter R. Coneway

With a copy to:

[Signature Page to Director Indemnification Agreement for Peter R. Coneway]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

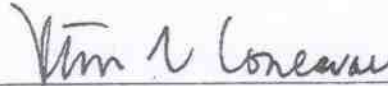
By: _____
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

PETER R. CONEWAY



c/o Riverstone Holdings LLC
712 Fifth Avenue, 51st Floor
New York, NY 10019
Attn: Peter R. Coneway

With a copy to:

[Signature Page to Director Indemnification Agreement for Peter R. Coneway]

Fried, Frank, Harris, Shriver & Jacobson
LLP

One New York Plaza
New York, New York 10004

Attention: Robert C. Schwenkel
Murray Goldfarb

Facsimile No.: (212) 859-4000

E-mail:

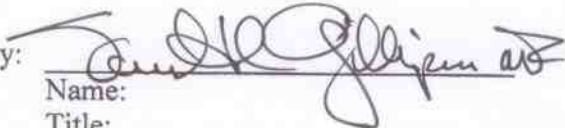
robert.schwenkel@friedfrank.com

murray.goldfarb@friedfrank.com

[Signature Page to Director Indemnification Agreement for Peter R. Coneway]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

PETER R. CONEWAY


c/o Riverstone Holdings LLC
712 Fifth Avenue, 51st Floor
New York, NY 10019
Attn: Peter R. Coneway

With a copy to:

[Signature Page to Director Indemnification Agreement for Peter R. Coneway]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
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E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

PETER R. CONEWAY

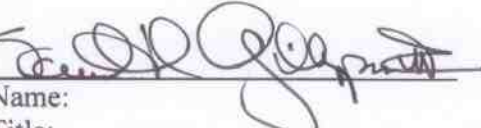
c/o Riverstone Holdings LLC
712 Fifth Avenue, 51st Floor
New York, NY 10019
Attn: Peter R. Coneway

With a copy to:

[Signature Page to Director Indemnification Agreement for Peter R. Coneway]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

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450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
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PETER R. CONEWAY

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Attn: Peter R. Coneway

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EXHIBIT 9

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "**Agreement**"), dated as of November 11, 2009 between Cobalt International Energy, Inc., a Delaware corporation (the "**Company**"), and Henry Cornell ("**Indemnitee**").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

WHEREAS, Indemnitee has certain rights to indemnification and/or insurance provided by the Sponsor Indemnitors (as defined below) which Indemnitee and the Sponsor Indemnitors intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE I
CERTAIN DEFINITIONS

(a) As used in this Agreement:

"Change of Control" means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term "person" shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions;

(v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses

hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"Liabilities" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"Proceeding" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the **"Company"** shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to **"director, officer, employee, consultant or agent"** shall include, in addition to directors, officers, employees, consultants and agents, a

trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**serving at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2 SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3 INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in

the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4

ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the

Company will not be liable to Indemnatee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnatee with respect to such Proceeding; *provided that* (i) Indemnatee shall have the right to employ separate counsel in respect of any Proceeding at Indemnatee's expense and (ii) if the employment of counsel by Indemnatee has been previously authorized in writing by the Company or Indemnatee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnatee in the conduct of the defense of such Proceeding or (y) Indemnatee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnatee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnatee without Indemnatee's prior written consent, such consent not to be unreasonably withheld. Indemnatee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however,* that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnatee of written notice that Indemnatee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnatee intends to seek indemnification or advancement of Expenses hereunder, Indemnatee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnatee to so notify the Company will not relieve the Company from any liability which it may have to Indemnatee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnatee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnatee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnatee and reasonably necessary to determine Indemnatee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnatee deems appropriate in his sole discretion. Indemnatee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and

timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. *Presumptions and Burdens of Proof; Effect of Certain Proceedings.* (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such

entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under

this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7
DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with reputable insurance companies providing liability insurance for directors of the

Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

(d) The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of expenses and/or insurance provided by Goldman, Sachs & Co. and/or certain of its affiliates (collectively, the "**Sponsor Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Sponsor Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses and Liabilities to the extent legally permitted and as required by the terms of this Agreement and the Company's certificate of incorporation and bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Sponsor Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Sponsor Indemnitors from any and all claims against the Sponsor Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Sponsor Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Sponsor 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 Indemnitee against the Company. The Company and Indemnitee agree that the Sponsor Indemnitors are express third party beneficiaries of the terms of this Section 7.01(d).

ARTICLE 8
MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) Except as provided in Section 7.01(d), in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee (other than against the Sponsor Indemnitors), who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) Except as provided in Section 7.01(d), the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) Except as provided in Section 7.01(d), the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10 days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior

to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail ("e-mail") transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger,

consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

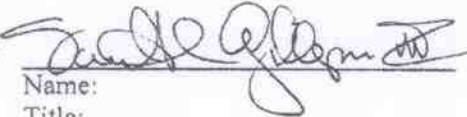
Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the “**Delaware Court**”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party’s agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

HENRY CORNELL

Goldman, Sachs & Co.
85 Broad Street, 10th Floor
New York, NY 10004
Attn: Henry Cornell

With a copy to:

[Signature Page to Director Indemnification Agreement for Henry Cornell]

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COBALT INTERNATIONAL ENERGY,
INC.

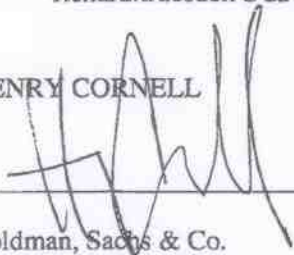
By: _____
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richard.truesdell@davispolk.com

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Fried, Frank, Harris, Shriver & Jacobson
LLP

One New York Plaza
New York, New York 10004

Attention: Robert C. Schwenkel
Murray Goldfarb

Facsimile No.: (212) 859-4000

E-mail:

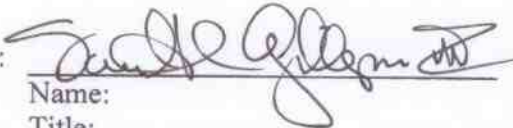
robert.schwenkel@friedfrank.com

murray.goldfarb@friedfrank.com

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EXHIBIT 10

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this “**Agreement**”), dated as of April 28, 2011 between Cobalt International Energy, Inc., a Delaware corporation (the “**Company**”), and Michael G. France (“**Indemnitee**”).

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the “**Board**”) has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company’s directors have certain existing indemnification arrangements pursuant to the Company’s certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“**DGCL**”). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company’s liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company’s ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will

serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

(a) As used in this Agreement:

“Change of Control” means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term “person” shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions; (v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either

the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"Liabilities" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"Proceeding" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the **"Company"** shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to **"director, officer, employee, consultant or agent"** shall include, in addition to directors, officers, employees, consultants and agents, a trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**servicing at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2 SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3 INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and
- (ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4

ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such

Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and

timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. Presumptions and Burdens of Proof; Effect of Certain Proceedings. (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such

entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under

this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with

reputable insurance companies providing liability insurance for directors of the Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

ARTICLE 8 MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy,

and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall

operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10 days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section

of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail (“e-mail”) transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be

brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the “**Delaware Court**”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party’s agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: _____
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com


MICHAEL G. FRANCE

c/o Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

[Signature Page to Director Indemnification Agreement for Michael G. France]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name: Samuel H. Gillespie
Title: Exec. VP and Gen'l Counsel

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com


MICHAEL G. FRANCE

c/o Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

[Signature Page to Director Indemnification Agreement for Michael G. France]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name: Samuel (H.) Gillespie
Title: Exec VP and Gen'l Counsel

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

MICHAEL G. FRANCE

c/o Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

[Signature Page to Director Indemnification Agreement for Michael G. France]

[Signature Page to Director Indemnification Agreement for Michael G. France]

EXHIBIT 11

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this “**Agreement**”), dated as of April 28, 2011 between Cobalt International Energy, Inc., a Delaware corporation (the “**Company**”), and Scott L. Lebovitz (“**Indemnitee**”).

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the “**Board**”) has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company’s directors have certain existing indemnification arrangements pursuant to the Company’s certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“**DGCL**”). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company’s liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company’s ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will

serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

(a) As used in this Agreement:

“Change of Control” means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term “person” shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions; (v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either

the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"Liabilities" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"Proceeding" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the **"Company"** shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to **"director, officer, employee, consultant or agent"** shall include, in addition to directors, officers, employees, consultants and agents, a trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**serving at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2
SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3
INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

(i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4

ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such

Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and

timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. Presumptions and Burdens of Proof; Effect of Certain Proceedings. (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such

entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnatee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnatee for purposes of determining Indemnatee's right to indemnification under this Agreement.

(e) If a determination as to Indemnatee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnatee, and Indemnatee shall be entitled to such indemnification, absent a misstatement by Indemnatee of a material fact or an omission by Indemnatee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnatee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnatee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnatee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnatee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnatee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under

this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with

reputable insurance companies providing liability insurance for directors of the Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

ARTICLE 8 MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy,

and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall

operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10 days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section

of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail (“e-mail”) transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be


brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the “**Delaware Court**”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party’s agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name: Samuel H. Gillespie
Title: Exec. VP + Gen'l Counsel

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com


SCOTT L. LEBOVITZ

c/o Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

[Signature Page to Director Indemnification Agreement for Scott L. Lebovitz]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY, INC.

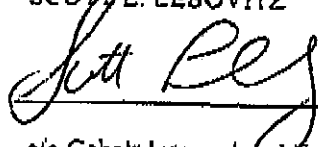
By: 
Name: Samuel H. Gillette
Title: Vice President (General Counsel)

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
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New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

SCOTT L. LEBOVITZ

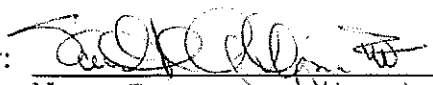


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{Signature Page to Director Indemnification Agreement for Scott L. Lebovitz}

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name: Samuel H. Gillespie
Title: Exec. VP + Gen'l Counsel

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chris.mayer@davispolk.com
richard.truesdell@davispolk.com

SCOTT L. LEBOVITZ

c/o Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
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E-mail: joe.bryant@cobaltintl.com

[Signature Page to Director Indemnification Agreement for Scott L. Lebovitz]

EXHIBIT 12

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "**Agreement**"), dated as of November 11, 2009 between Cobalt International Energy, Inc., a Delaware corporation (the "**Company**"), and J. Hardy Murchison ("**Indemnitee**").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

WHEREAS, Indemnitee has certain rights to indemnification and/or insurance provided by the Sponsor Indemnitors (as defined below) which Indemnitee and the Sponsor Indemnitors intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

(a) As used in this Agreement:

"Change of Control" means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term "person" shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions;

(v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses

hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnatee in an action to determine Indemnatee's rights under this Agreement.

"**Liabilities**" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"**person**" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"**Proceeding**" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnatee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnatee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnatee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the "**Company**" shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnatee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnatee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnatee would have with respect to such constituent corporation if its separate existence had continued.

References to "**director, officer, employee, consultant or agent**" shall include, in addition to directors, officers, employees, consultants and agents, a

trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**serving at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2 SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3 INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in

the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4 ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the

Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and

timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. Presumptions and Burdens of Proof: Effect of Certain Proceedings. (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such

entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under

this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with reputable insurance companies providing liability insurance for directors of the

Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

(d) The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of expenses and/or insurance provided by First Reserve Corporation and/or certain of its affiliates (collectively, the "**Sponsor Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Sponsor Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses and Liabilities to the extent legally permitted and as required by the terms of this Agreement and the Company's certificate of incorporation and bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Sponsor Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Sponsor Indemnitors from any and all claims against the Sponsor Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Sponsor Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Sponsor 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 Indemnitee against the Company. The Company and Indemnitee agree that the Sponsor Indemnitors are express third party beneficiaries of the terms of this Section 7.01(d).

ARTICLE 8
MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) Except as provided in Section 7.01(d), in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee (other than against the Sponsor Indemnitors), who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) Except as provided in Section 7.01(d), the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) Except as provided in Section 7.01(d), the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of

any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10

days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail ("e-mail") transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an

original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

J. HARDY MURCHISON

c/o First Reserve Corporation
One Lafayette Place
Greenwich, CT 06830
Attn: J. Hardy Murchison

With a copy to:

[Signature Page to Director Indemnification Agreement for J. Hardy Murchison]

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By: _____
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E-mail: joc.bryant@cobaltintl.com

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Attn: J. Hardy Murchison

With a copy to:


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Fried, Frank, Harris, Shriver & Jacobson
LLP
One New York Plaza
New York, New York 10004
Attention: Robert C. Schwenkel
Murray Goldfarb
Facsimile No.: (212) 859-4000
E-mail:
robert.schwenkel@friedfrank.com
murray.goldfarb@friedfrank.com

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(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

J. HARDY MURCHISON

c/o First Reserve Corporation
One Lafayette Place
Greenwich, CT 06830
Attn: J. Hardy Murchison

With a copy to:

[Signature Page to Director Indemnification Agreement for J. Hardy Murchison]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

J. HARDY MURCHISON

c/o First Reserve Corporation
One Lafayette Place
Greenwich, CT 06830
Attn: J. Hardy Murchison

With a copy to:

[Signature Page to Director Indemnification Agreement for J. Hardy Murchison]

EXHIBIT 13

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "**Agreement**"), dated as of November 11, 2009 between Cobalt International Energy, Inc., a Delaware corporation (the "**Company**"), and Kenneth A. Pontarelli ("**Indemnitee**").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

WHEREAS, Indemnitee has certain rights to indemnification and/or insurance provided by the Sponsor Indemnitors (as defined below) which Indemnitee and the Sponsor Indemnitors intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE 1 CERTAIN DEFINITIONS

(a) As used in this Agreement:

"Change of Control" means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term "person" shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions;

(v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses

hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"**Liabilities**" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"**person**" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"**Proceeding**" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the "**Company**" shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to "**director, officer, employee, consultant or agent**" shall include, in addition to directors, officers, employees, consultants and agents, a

trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to "**servicing at the request of the Company**" shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as used herein.

References to "**hereof**", "**herein**" and "**hereunder**" and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to "**includes**" or "**including**" shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2 SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3 INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding. The phrase "to the fullest extent permitted by applicable law" shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in

the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4 ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the

Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and

timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. *Presumptions and Burdens of Proof; Effect of Certain Proceedings.* (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such

entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under

this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with reputable insurance companies providing liability insurance for directors of the

Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

(d) The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of expenses and/or insurance provided by Goldman, Sachs & Co. and/or certain of its affiliates (collectively, the "**Sponsor Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Sponsor Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses and Liabilities to the extent legally permitted and as required by the terms of this Agreement and the Company's certificate of incorporation and bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Sponsor Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Sponsor Indemnitors from any and all claims against the Sponsor Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Sponsor Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Sponsor 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 Indemnitee against the Company. The Company and Indemnitee agree that the Sponsor Indemnitors are express third party beneficiaries of the terms of this Section 7.01(d).

ARTICLE 8
MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) Except as provided in Section 7.01(d), in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee (other than against the Sponsor Indemnitors), who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) Except as provided in Section 7.01(d), the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) Except as provided in Section 7.01(d), the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10 days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior

to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail ("e-mail") transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger,

consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

KENNETH A. PONTARELLI

Goldman, Sachs & Co.
85 Broad Street, 10th Floor
New York, NY 10004
Attn: Kenneth Pontarelli

With a copy to:

[Signature Page to Director Indemnification Agreement for Kenneth A. Pontarelli]

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richard.truesdell@davispolk.com

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Attn: Kenneth Pontarelli

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Fried, Frank, Harris, Shriver & Jacobson
LLP
One New York Plaza
New York, New York 10004
Attention: Robert C. Schwenkel
Murray Goldfarb
Facsimile No.: (212) 859-4000
E-mail:
robert.schwenkel@friedfrank.com
murray.goldfarb@friedfrank.com

*[Signature Page to Director Indemnification Agreement for Kenneth A.
Pontarelli]*

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richard.truesdell@davispolk.com

KENNETH A. PONTARELLI

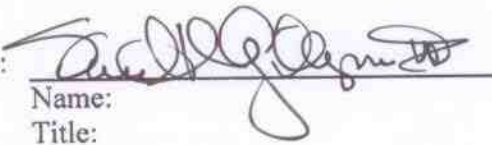
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Attn: Kenneth Pontarelli

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Attn: Kenneth Pontarelli

With a copy to:

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Attn: Kenneth Pontarelli

With a copy to:

*[Signature Page to Director Indemnification Agreement for Kenneth A.
Pontarelli]*

EXHIBIT 14

DIRECTOR INDEMNIFICATION AGREEMENT

Indemnification Agreement (this "**Agreement**"), dated as of November 11, 2009 between Cobalt International Energy, Inc., a Delaware corporation (the "**Company**"), and Martin H. Young, Jr. ("**Indemnitee**").

WITNESSETH:

WHEREAS, highly competent persons have become more reluctant to serve as directors of publicly held corporations unless they are provided with adequate protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, directors are increasingly being subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the corporation itself.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. At the same time, the Board recognizes the limitations on the protection provided by liability insurance and the uncertainties as to the scope and level of such coverage that may be available in the future.

WHEREAS, the Company's directors have certain existing indemnification arrangements pursuant to the Company's certificate of incorporation and bylaws and may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**"). At the same time, the Board recognizes the limitations on the protection provided by such indemnification and the uncertainties as to its availability in any particular situation.

WHEREAS, the Board believes that in light of the limitations and uncertainties about the protection provided by the Company's liability insurance and existing indemnification arrangements and the impact these uncertainties may have on the Company's ability to attract and retain qualified individuals to serve as directors, the Company should act to assure such persons that there will be increased certainty of protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will

serve or continue to serve the Company free from undue concern that they will not be adequately protected.

WHEREAS, Indemnitee is concerned that the protection provided under the Company's liability insurance and existing indemnification arrangements may not be adequate and may not be willing to serve as a director of the Company without greater certainty concerning such protection, and the Company desires Indemnitee to serve in such capacity and is willing to provide such greater certainty.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE 1 CERTAIN DEFINITIONS

(a) As used in this Agreement:

"Change of Control" means any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any other schedule or form) under the Exchange Act, regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall have become, without prior approval of a majority of the Continuing Directors, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing a majority or more of the combined voting power of the Company's then outstanding voting securities (provided that for purposes of this clause (ii), the term "person" shall exclude a trustee or other fiduciary holding securities under an employee benefit plan of the Company); (iii) there occurs a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or resulting entity) more than 51% of the combined voting power of the voting securities of the surviving or resulting entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or resulting entity; (iv) all or substantially all the assets of the Company are sold or otherwise disposed of in a transaction or series of related transactions; (v) the approval by the stockholders of the Company of a complete liquidation of the Company; or (vi) the Continuing Directors cease for any reason to constitute at least a majority of the members of the Board.

“Continuing Directors” means the directors who are on the Board on the date hereof and any new directors whose election or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who were directors on the date hereof or whose election or nomination was so approved.

“Corporate Status” means the status of a person who is or was a director, officer, employee, consultant or agent of the Company or who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise.

“Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement of expenses is sought by Indemnitee.

“Enterprise” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other person or enterprise.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expenses” means all costs and expenses (including fees and expenses of counsel, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement) incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses shall also include expenses incurred in connection with any appeal resulting from any Proceeding (including the premium, security for and other costs relating to any cost bond, supersedeas bond or other appeal bond or its equivalent). Expenses, however, shall not include Liabilities.

“Independent Counsel” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (provided that acting as an Independent Counsel under this Agreement or in a similar capacity with respect to any other indemnification arrangements between the Company and its present or former directors shall not be deemed a representation of the Company or Indemnitee) or (ii) any other party to the Proceeding giving rise to a claim for indemnification or advancement of expenses hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either

the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"Liabilities" means all judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties and amounts paid in settlement and other liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of any such amounts) arising out of or in connection with any Proceeding; *provided* that Liabilities shall not include any Expenses.

"person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

"Proceeding" includes any threatened, pending or completed action, suit or other proceeding (which shall include an arbitration or other alternate dispute resolution mechanism or an inquiry, investigation or administrative hearing), whether civil, criminal, administrative, legislative or investigative (formal or informal) in nature (including any and all appeals therefrom) and whether instituted by or on behalf of the Company or any other party, in any such case, in which Indemnitee was, is or may be involved as a party or otherwise by reason of any Corporate Status of Indemnitee or by reason of any action taken (or failure to act) by him or on his part while serving in any Corporate Status or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding; *provided* that Proceeding shall not include an action, suit or other proceeding contemplated by Section 8.06(b).

(b) For the purposes of this Agreement:

References to the **"Company"** shall include, in addition to the surviving or resulting corporation in any merger or consolidation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, consultant or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, consultant or agent of another Enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the surviving or resulting corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to **"director, officer, employee, consultant or agent"** shall include, in addition to directors, officers, employees, consultants and agents, a trustee, general partner, manager, managing member, fiduciary or member of a committee of a board of directors.

References to “**servicing at the request of the Company**” shall include any service as a director, officer, employee, consultant or agent of the Company or any other Enterprise which imposes duties on, or involves services by, such director, officer, employee, consultant or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as used herein.

References to “**hereof**”, “**herein**” and “**hereunder**” and words of like import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to “**includes**” or “**including**” shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. Unless otherwise expressly stated herein, references to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder.

ARTICLE 2 SERVICES BY INDEMNITEE

Section 2.01. *Services by Indemnitee.* Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his resignation or is removed.

ARTICLE 3 INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless, to the fullest extent permitted by applicable law, from and against any and all Expenses and Liabilities actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding. The phrase “to the fullest extent permitted by applicable law” shall include:

- (i) to the fullest extent permitted by the DGCL as in effect on the date of this Agreement, and
- (ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement.

(b) To the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in the defense of any Proceeding or any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in any Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and any claim, issue or matter related to each such successfully resolved claim, issue or matter. For purposes of this Section 3.01(b) and without limitation, the termination of any Proceeding or any claim, issue or matter in a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Proceeding, claim, issue or matter. Nothing in this Section 3.01(b) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(c) To the extent that Indemnitee is, by reason of his Corporate Status, a witness in or is otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. Nothing in this Section 3.01(c) is intended to limit Indemnitee's rights provided for in Section 3.01(a).

(d) If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement to the contrary (including Section 3.01), the Company shall not be obligated under this Agreement to indemnify in connection with:

(a) any claim made against Indemnitee for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(b) except for an action, suit or other proceeding contemplated by Section 8.06(b), any action, suit or other proceeding (or part thereof) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees unless (i) the Board authorizes the action, suit or other proceeding (or part thereof), (ii) the Company provides the indemnification or advancement of Expenses, in its sole discretion, pursuant to the powers vested in the Company under applicable law, or (iii) such indemnification or advancement of Expenses is otherwise required under the DGCL; or

(c) any claim, issue or matter in a Proceeding by or in the right of the Company to procure a judgment in its favor as to which Indemnitee shall have been finally adjudged by a court of competent jurisdiction to be liable to the Company unless and only to the extent the Delaware Chancery Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Delaware Chancery Court or such other court shall deem proper.

ARTICLE 4
ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* The Company shall advance any Expenses that shall be actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with any Proceeding within 20 days after receipt by the Company of a written request for advancement of Expenses, which request may be delivered to the Company at such time and from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such Proceeding). Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under this Agreement or otherwise. Any such advances shall be made on an unsecured basis and be interest free. Nothing in this Section 4.01 shall require the Company to advance Expenses in any case in which indemnification would not be permitted under Section 3.02(a) or (b) or following the entry of a final, nonappealable judgment of the type described in Section 3.02(c).

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all amounts advanced by the Company pursuant to Section 4.01 if it is ultimately determined, by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company for such Expenses. If Indemnitee seeks a judicial adjudication or an arbitration pursuant to Section 6.01, or if the Company initiates an action, suit or other proceeding against Indemnitee to recover any amounts advanced by the Company pursuant to Section 4.01, Indemnitee shall not be required to reimburse the Company pursuant to this Section 4.02 until a final determination (as to which all rights of appeal have been exhausted or lapsed) has been made.

Section 4.03. *Defense Of Claims.* (a) If a Change of Control shall not have occurred, the Company shall be entitled to assume the defense of any Proceeding with counsel reasonably acceptable to Indemnitee upon delivery of written notice to the Indemnitee. After the Company assumes the defense, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such

Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if the employment of counsel by Indemnitee has been previously authorized in writing by the Company or Indemnitee shall have reasonably concluded upon the advice of counsel that (x) there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding or (y) Indemnitee has one or more legal defenses available to him which are different from or additional to those available to the Company in such Proceeding, then, in each such case, the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any Proceeding (in whole or in part) which would impose any Expense, Liability or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(b) If a Change of Control shall have occurred, the Company shall not have the right to assume the defense of any Proceeding; *provided, however*, that the Company will be entitled to participate in any Proceeding at its own expense.

ARTICLE 5

REQUEST FOR INDEMNIFICATION AND DETERMINATION OF ENTITLEMENT

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that Indemnitee is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof (including the nature and facts underlying such matter). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee under this Agreement or otherwise than under this Agreement. Any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement or otherwise than under this Agreement.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered at such times and from time to time as Indemnitee deems appropriate in his sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Except with respect to requests for indemnification pursuant to Sections 3.01(b) or (c), in which case

payment of indemnification shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor, as soon as reasonably practicable (but in no event later than 60 days) after the later of request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, a determination shall be made with respect to Indemnitee's entitlement thereto in the specific case. If a Change in Control shall not have occurred, such determination shall be made (i) by a majority vote of the Disinterested Directors or of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors (in either case, even though less than a quorum of the Board) or (ii) if there are no Disinterested Director or the Disinterested Directors so direct, by Independent Counsel. If a Change in Control shall have occurred, such determination shall be made by Independent Counsel. Any determination made by Independent Counsel pursuant to this Section 5.02 shall be in the form of a written opinion to the Board, a copy of which shall be delivered to Indemnitee. Indemnitee shall reasonably cooperate with the person or persons making such determination including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including fees and expenses of counsel) incurred by Indemnitee in so cooperating with the person or persons making such determination shall be deemed "Expenses" hereunder and shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Indemnification for the Expenses referred to in the immediately preceding sentence shall be made by the Company automatically within 10 days of receipt by the Company of a written request therefor.

(b) If the determination is to be made by Independent Counsel, such Independent Counsel shall be selected as provided in this Section 5.02(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, the party receiving the notice may, within 10 days after receipt thereof, deliver to the other a written objection to such selection; *provided* that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a proper and timely objection is made, the counsel selected may not serve as

Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) has determined that such objection is without merit. If, within 20 days after the later of the receipt by the Company of a request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction (or, at Indemnitee's option pursuant to Section 6.01, an arbitration) for resolution of any objection which shall have been made to the selection of Independent Counsel and/or for the appointment of another person as Independent Counsel, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel. The Company agrees to pay the reasonable fees and expenses of any Independent Counsel appointed pursuant to this Section and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(c) If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 days after such determination.

Section 5.03. *Presumptions and Burdens of Proof; Effect of Certain Proceedings.* (a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall, to the fullest extent not prohibited by law, be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b), and the Company shall, to the fullest extent not prohibited by law, have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal Proceeding, Indemnitee had reasonable cause to believe that his conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based (i) on the records or books of account of the Company or other Enterprise, as applicable, including financial statements, (ii) on information supplied to Indemnitee by the officers of the Company or other Enterprise, as applicable, in the course of their duties, (iii) on the advice of legal counsel for the Company or other Enterprise, as applicable, or counsel selected by any committee of the board of directors of such entity, or (iv) on information or records given or reports made to the Company or other Enterprise, as applicable, by an independent certified public accountant or

an appraiser, investment banker or other expert selected with reasonable care by such entity or the board of directors or any committee of the board of directors of such entity. The provisions of this Section 5.03(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee, consultant or agent of the Company or other Enterprise, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

(e) If a determination as to Indemnitee's entitlement to indemnification shall not have been made pursuant to this Agreement within 60 days after the later of the request for indemnification pursuant to Section 5.01(b) and the final disposition of the matter that is the subject of the request for indemnification, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made in favor of Indemnitee, and Indemnitee shall be entitled to such indemnification, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification; *provided* that such 60-day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person or persons making the determination in good faith requires such additional time to obtain or evaluate any documentation or information relating thereto.

ARTICLE 6 REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) Indemnitee shall be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) of any determination pursuant to Section 5.02 that Indemnitee is not entitled to indemnification under this Agreement. Any such adjudication shall be conducted in all respects as a *de novo* trial or arbitration on the merits, and any prior adverse determination shall not be referred to or introduced into evidence, create a presumption that Indemnitee is not entitled to indemnification or advancement of expenses, be a defense or otherwise adversely affect Indemnitee. In addition, neither the failure of the Company, the Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel to have made a determination prior to the commencement of any such adjudication that indemnification under this Agreement is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company, the

Disinterested Directors, a committee of the Disinterested Directors or Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct in such adjudication. In any such judicial proceeding or arbitration, the provisions of Section 5.03 (including the presumption in favor of Indemnitee and the burdens on the Company) shall apply.

(b) Indemnitee shall also be entitled to an adjudication (by a court of competent jurisdiction or, at Indemnitee's option, through an arbitration as described above) of any other disputes under this Agreement, including any disputes arising because (i) advancement of Expenses is not timely made pursuant to Section 4.01, (ii) no determination of entitlement to indemnification shall have been made pursuant to Section 5.02 of this Agreement within the required time period, (iii) payment of indemnification is not made pursuant to Section 3.01(b) or (c) or the last two sentences of Section 5.02(a) within 10 days after receipt by the Company of written request therefor, (iv) payment of indemnification pursuant to Section 3.01(a) is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, or (v) the Company takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder.

(c) If a determination shall have been made pursuant to Section 5.02 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent a misstatement by Indemnitee of a material fact or an omission by Indemnitee of a material fact necessary in order to make the information provided not misleading in connection with the request for indemnification.

(d) In connection with any judicial proceeding or arbitration commenced pursuant to this Section 6.01, the Company shall not oppose Indemnitee's right to seek such adjudication, shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

ARTICLE 7

DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* (a) The Company shall obtain and maintain a policy or policies of insurance ("**D&O Liability Insurance**") with reputable insurance companies providing liability insurance for directors of the Company in their capacities as such (and for any capacity in which any director of the Company serves any other Enterprise at the request of the Company), in

respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof; *provided* that such coverage and amounts are available on commercially reasonable terms.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director under such policy or policies. The Company shall, promptly after receiving notice of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such Proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

ARTICLE 8 MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification and advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's certificate of incorporation or bylaws, any other agreement, any vote of stockholders or resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under this Agreement, it is the intent of the parties hereto that Indemnitee shall be entitled under this Agreement to the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or

otherwise shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Subrogation, etc.* (a) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all actions necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(b) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(c) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee, consultant or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.03. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee or on his behalf, whether for Liabilities and/or Expenses in connection with a Proceeding or other expenses relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such action, suit or other proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.04. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto.

Section 8.05. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right,

power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.06. *Expenses.* (a) The Company shall pay all costs and expenses (including fees and expenses of counsel) incurred by the Company and Indemnitee in connection with the preparation of this Agreement.

(b) The Company shall indemnify and hold Indemnitee harmless from any and all Expenses (including fees and expenses of counsel and expenses incurred in connection with the preparation and forwarding of statements to the Company to support an advancement of Expenses hereunder) actually and reasonably incurred by Indemnitee or on his behalf in seeking (whether through a judicial proceeding or arbitration (including any and all appeals resulting therefrom) or otherwise) to enforce, interpret or defend any rights against the Company for indemnification or advancement of Expenses (whether under this Agreement or otherwise) or to recover under any liability insurance policy maintained by any person for the benefit of Indemnitee in connection with the performance of his duties for or on behalf of the Company. The Company shall pay (or reimburse Indemnitee for the payment of) any such Expenses within 10 days after receipt by the Company of a written request for the payment of such amounts, which request may be delivered to the Company at such time or from time to time as Indemnitee deems appropriate in his sole discretion (whether prior to or after final disposition of any such matter). Indemnitee shall have no obligation to reimburse any amounts paid by the Company pursuant to this Section 8.06(b).

Section 8.07. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein and supersedes all prior oral, written or implied understandings or agreements with respect to the matters covered herein. This Section 8.07 shall not be construed to limit any other rights Indemnitee may have under the Company's certificate of incorporation or bylaws, applicable law or otherwise.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests and other communications under this Agreement shall be in writing (including facsimile transmission or electronic mail (“e-mail”) transmission so long as a confirmation of receipt of such e-mail is requested and received). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, heirs, executors, administrators or other successors. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all or a substantial part of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification and advancement of expenses provided by this Agreement shall continue as to a person who has ceased to be a director, officer, employee, consultant or agent or is deceased and shall inure to the benefit of the heirs, executors, administrators or other successors of the estate of such person.

Section 8.11. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action, suit or other proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Chancery Court and any court to which an appeal may be taken in such action, suit or other proceeding (the “**Delaware Court**”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of


the Delaware Court for purposes of any action, suit or other proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action, suit or other proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action, suit or other proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

MARTIN H. YOUNG, JR.

c/o Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

[Signature Page to Director Indemnification Agreement for Martin H. Young, Jr.]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY, INC.

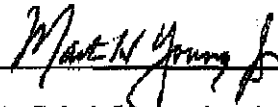
By: _____
Name:
Title:

Cobalt International Energy, Inc.
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1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
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E-mail: joe.bryant@cobaltintl.com

With a copy to:

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450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
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chris.mayer@davispolk.com
richard.truesdell@davispolk.com

MARTIN H. YOUNG, JR.

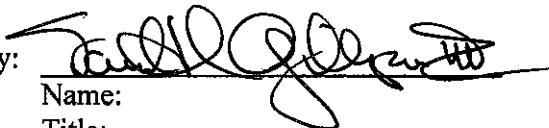


c/o Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

[Signature Page to Director Indemnification Agreement for Martin H. Young, Jr.]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

COBALT INTERNATIONAL ENERGY,
INC.

By: 
Name:
Title:

Cobalt International Energy, Inc.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, TX 77056
Attention: Joseph H. Bryant
Facsimile No.: (713) 579-9184
E-mail: joe.bryant@cobaltintl.com

With a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Christopher Mayer
Richard D. Truesdell, Jr.
Facsimile No.: (212) 701-5338
(212) 701-5674
E-mail:
chris.mayer@davispolk.com
richard.truesdell@davispolk.com

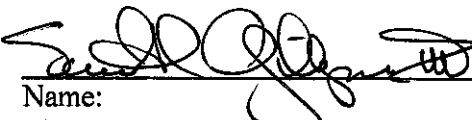
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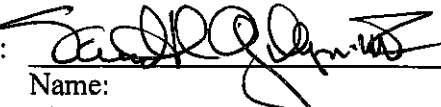
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[Signature Page to Director Indemnification Agreement for Martin H. Young, Jr.]

EXHIBIT 15

WACHTELL, LIPTON, ROSEN & KATZ

MARTIN LIPTON
HERBERT M. WACHTELL
LAWRENCE B. PEDOWITZ
PAUL VIZCARRONDO, JR.
PETER C. HEIN
HAROLD S. NOVIKOFF
MEYER G. KOPLOW
THEODORE N. MIRVIS
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JODI J. SCHWARTZ
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RACHELLE SILVERBERG
STEVEN A. COHEN
DEBORAH L. PAUL
DAVID C. KARP
RICHARD K. KIM
JOSHUA R. CAMMAKER

**51 WEST 52ND STREET
NEW YORK, N.Y. 10019-6150
TELEPHONE: (212) 403 - 1000
FACSIMILE: (212) 403 - 2000**

GEORGE A. KATZ (1965-1989)
JAMES H. FOGELSON (1967-1991)
LEONARD M. ROSEN (1965-2014)

OF COUNSEL

WILLIAM T. ALLEN
PETER C. CANELLOS
DAVID M. EINHORN
KENNETH B. FORREST
THEODORE GEWERTZ
MAURA R. GROSSMAN
RICHARD D. KATCNER
THEODORE A. LEVINE
DOUGLAS K. MAYER
ROBERT B. MAZUR

PHILIP MINDLIN
ROBERT M. MORGENTHAU
BERNARD W. NUSSBAUM
ERIC S. ROBINSON
PATRICIA A. ROBINSON*
MICHAEL W. SCHWARTZ
ELLIOTT V. STEIN
WARREN R. STERN
PATRICIA A. VLAHAKIS
AMY R. WOLF

* ADMITTED IN THE DISTRICT OF COLUMBIA

COUNSEL

DAVID M. ADLERSTEIN
AMANDA K. ALLEXON
LOUIS J. BARASH
DIANNA CHEN
ANDREW J.H. CHEUNG
PAMELA EHRENKRANZ
KATHRYN GETTLES-ATWA
PAULA N. GORDON

NANCY B. GREENBAUM
MARK A. KOENIG
J. AUSTIN LYONS
ALICIA C. McCARTHY
SABASTIAN V. NILES
AMANDA N. PERSAUD
JEFFREY A. WATIKER

MARK GORDON
JOSEPH D. LARSON
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JEANNEMARIE O'BRIEN
WAYNE M. CARLIN
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NICHOLAS G. DEMMO
IGOR KIRMAN
JONATHAN M. MOSES
T. EIKO STANGE
DAVID A. SCHWARTZ
JOHN F. LYNCH
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ELAINE P. GOLIN
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DONGJU SONG
BRADLEY R. WILSON
GRAHAM W. MELI
GREGORY E. PESSIN
CARRIE M. REILLY
MARK F. VEBLER

DIRECT DIAL: (212) 403-1260
DIRECT FAX: (212) 403-2260
E-MAIL: GTCONWAY@WLRK.COM

January 12, 2015

BY EMAIL

David D. Sterling, Esq.
Baker Botts LLP
One Shell Plaza
910 Louisiana Street
Houston, Texas 77002

Re: Cobalt International Energy, Inc. Securities Litigation

Dear David:

Thank you for your courtesy in agreeing to accept this formal notification, on behalf of your client Cobalt International Energy, Inc. ("Cobalt"), regarding the securities lawsuit arising from Cobalt's February 23, 2012, January 16, 2013, and May 8, 2013 stock offerings and its December 12, 2012 and May 8, 2014 bond offerings. As you are already aware, we have been retained by The Goldman Sachs Group, Inc., Riverstone Holdings LLC, The Carlyle Group, First Reserve Corporation, KERN Partners Ltd., as well as certain of their related entities (collectively, the "Sponsor Entities"), to represent them in connection with that litigation. We are currently aware of the following action in which the Sponsor Entities are named as defendants:

WACHTELL, LIPTON, ROSEN & KATZ

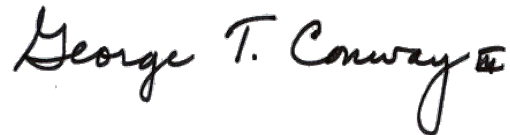
David D. Sterling, Esq.
January 12, 2015
Page 2

St. Lucie County Fire District Firefighters' Pension Trust Fund et. al v. Joseph H. Bryant, et al., Civ. No. 14-3428 (S.D. Tex. filed Nov. 30, 2014)

In accordance with Section 2.9(d) of the Registration Rights Agreement between and among the Sponsor Entities and Cobalt dated as of December 15, 2009 (the "Agreement"), the Sponsor Entities have asked me to notify you, on behalf of Cobalt, of the Sponsor Entities' intention to seek indemnity from Cobalt pursuant to Section 2.9(a) of the Agreement, including but not limited to the reimbursement of all counsel fees and disbursements as they are incurred. In that respect, this will confirm our arrangement for Wachtell, Lipton to forward its statements directly to your firm for payment.

We look forward to continuing to coordinate closely with you in the defense of the litigation.

Very truly yours,

A handwritten signature in black ink that reads "George T. Conway" followed by a small square symbol.

cc: Jonathan Schorr, Esq. (by email)
Francis S. Chlapowski, Esq. (by email)

EXHIBIT 16

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1000 LOUISIANA, SUITE 6800
HOUSTON, TEXAS 77002- 5026

TEL: (713) 655-5100
FAX: (713) 655-5200
www.skadden.com

FIRM/AFFILIATE OFFICES

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NEW YORK
PALO ALTO
SAN FRANCISCO
WASHINGTON, D.C.
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BEIJING
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FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

January 7, 2015

BY HAND DELIVERY AND EMAIL

David D. Sterling, Esq.
BAKER BOTTS L.L.P.
One Shell Plaza
910 Louisiana Street
Houston, Texas 77002-4995

Re: *St. Lucie County Fire District Firefighters' Pension Trust Fund, et al. v. Bryant, et al.*, 14-cv-03428 (NFA) (S.D. Tex.)

Dear David:

Thank you for your courtesy in agreeing to accept this formal notification, on behalf of your client, Cobalt International Energy, Inc. ("Cobalt"), of the above-captioned securities lawsuit arising from the five securities offerings described below. As you are already aware, this firm has been retained by the lead underwriters of the various offerings to represent the underwriters in connection with that litigation. (Although the offerings were separate, at different times, involving multiple securities and varying underwriters, we and the underwriters are hopeful that our firm can represent all of the underwriters across the five offerings in the interest of efficiency and avoiding needless cost, but the underwriters reserve their rights to retain additional counsel should circumstances warrant.)

The relevant offerings and Underwriting Agreement provisions are as follows:

Offering	Lead Underwriters	UA Indemnity Provision
February 2012 Common Stock	Goldman, Sachs & Co., Morgan Stanley & Co. LLC, Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc. and J.P. Morgan Securities LLC	Articles 8(a), 8(d) and 11
January 2013 Common Stock	Morgan Stanley & Co. LLC and Citigroup Global Markets Inc.	Articles 8(a), 8(d) and 12
May 2013 Common Stock	Citigroup Global Markets Inc.	Articles 8(a), 8(d) and 12
December 2012 2.625% Convertible Senior Notes due 2019	Morgan Stanley & Co. LLC and Goldman, Sachs & Co.	Articles 8(a), 8(c) and 12
May 2014 3.125% Convertible Senior Notes due 2024	Goldman, Sachs & Co. and RBC Capital Markets, LLC	Articles 8(a), 8(c) and 11

In accordance with the applicable provisions of the respective Underwriting Agreements relating to the offerings, the various underwriters have asked me to notify you, on behalf of Cobalt, of the underwriters' intention to seek indemnity from Cobalt pursuant to the Underwriting Agreements, including but not limited to the reimbursement of all counsel fees and disbursements as they are incurred. In that respect, this will confirm our arrangement for this firm to forward its statements to you for direct payment (please advise where invoices should be sent).

We look forward to continuing to coordinate closely with you in the defense of the litigation.

Very truly yours,



Charles Schwartz

cc: Richard D. Truesdell, Jr., Esq.
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
(by Federal Express)

EXHIBIT 17

BAKER BOTTS L.L.P.

ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS
77002-4995

TEL +1 713.229.1234
FAX +1 713.229.1522
BakerBotts.com

AUSTIN	LONDON
BEIJING	MOSCOW
BRUSSELS	NEW YORK
DALLAS	PALO ALTO
DUBAI	RIYADH
HONG KONG	SAN FRANCISCO
HOUSTON	WASHINGTON

June 2, 2017

VIA EMAIL

John S. Williams
Williams and Connolly LLP
725 Twelfth Street NW
Washington, DC 20005

David D. Sterling
TEL +1 713.229.1946
FAX +1 713.229.7946
David.Sterling@bakerbotts.com

George T. Conway III
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019

Re: Indemnification of Section 20A Claim Against Sponsor Defendants in *In re Cobalt International Energy, Inc. Securities Litigation*; Lead Case No. 4:14-cv-03428, in the United States District Court for the Southern District of Texas, Houston Division

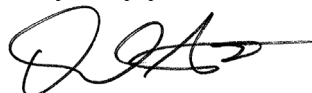
Dear Counsel:

As you know, Cobalt International Energy, Inc. (“Cobalt”) has been indemnifying your clients, The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation, ACM Ltd., and The Carlyle Group L.P (collectively, “Sponsors”), in the above-referenced lawsuit. On March 15, 2017, Plaintiffs amended their complaint to add a claim against the Sponsors under Section 20A of the Securities Exchange Act of 1934.

While Cobalt will continue to satisfy its obligations under the Registration Rights Agreement, Cobalt does not believe that agreement requires it to indemnify the Sponsors with respect to the newly-asserted Section 20A claim. Cobalt therefore requests that all bills for the above-referenced matter segregate time spent on the Section 20A claim, including all time spent on the recently-filed Motion to Dismiss.

Please let me know if you have any questions.

Very truly yours,



David D. Sterling

EXHIBIT 18

WACHTELL, LIPTON, ROSEN & KATZ

MARTIN LIPTON
HERBERT M. WACHTELL
PAUL VIZCARRONDO, JR.
PETER C. HEIN
HAROLD S. NOVIKOFF
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ALISON ZIESKE PREISS
TIJANA J. DVORNIC
JENNA E. LEVINE
RYAN A. McLEOD

* ADMITTED IN THE DISTRICT OF COLUMBIA

COUNSEL

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J. AUSTIN LYONS
ALICIA C. McCARTHY
S. CHRISTOPHER SZCZERBAN
JEFFREY A. WATIKER

DIRECT DIAL: (212) 403-1399

DIRECT FAX: (212) 403-2399

E-MAIL: CMREILLY@WLRK.COM

June 15, 2017

BY EMAIL

David D. Sterling, Esq.
Baker Botts LLP
One Shell Plaza
910 Louisiana Street
Houston, Texas 77002

Re: Indemnification of Section 20A Claim in In re Cobalt
International Energy, Inc. Securities Litigation, Lead Case
No. 4:14-cv-03428 (S.D. Tex.)

Dear David:

I am writing in response to your June 2, 2017 letter, regarding Cobalt's belief that the Registration Rights Agreement does not require it to indemnify The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation and ACM Ltd. (collectively, the "Sponsors"), with respect to the newly-asserted claim against the Sponsors under Section 20A of the Securities Exchange Act of 1934.

David D. Sterling, Esq.
June 15, 2017
Page 2

The Sponsors believe that Cobalt's indemnification obligations under the Registration Rights Agreement cover the Section 20A claim and reserve all rights in that regard. Nonetheless, as to your request concerning bills, we will endeavor to segregate time spent exclusively on the Section 20A claim for time incurred in May 2017 and going forward, with the understanding that our agreement to do so is without prejudice and should not be interpreted as an agreement with Cobalt's belief on the scope of its indemnification obligation.

We look forward to continuing to coordinate closely with you in the defense of the litigation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Reilly', with a long horizontal flourish extending to the right.

Carrie M. Reilly

EXHIBIT 19

LAW OFFICES
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.

WASHINGTON, D. C. 20005-5901

(202) 434-5000

FAX (202) 434-5029

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

ROBERT A. VAN KIRK
(202) 434-5163
rvankirk@wc.com

June 15, 2017

Via Email

David D. Sterling, Esq.
Baker Botts LLP
One Shell Plaza
910 Louisiana Street
Houston, Texas 77002

Re: Indemnification of Section 20A Claim in *In re Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 4:14-cv-03428 (S.D. Tex.)

Dear David,

I am writing in response to your June 2, 2017 correspondence regarding the Section 20A claim recently asserted by the plaintiffs in the above-referenced case (the "Section 20A Claim"). As you request, we will segregate time spent on the Section 20A matter for time incurred in May 2017 and going forward.

We disagree, however, with the position of Cobalt International Energy, Inc. ("Cobalt") that the Registration Rights Agreement does not require it to indemnify The Carlyle Group L.P. ("Carlyle") with respect to the Section 20A Claim. Carlyle believes that Cobalt's indemnification obligations pursuant to that agreement include the Section 20A Claim and reserves all rights in that regard. Our willingness to accede to your request regarding billing practices is without prejudice to those rights and does not affect Carlyle's position that Cobalt is required to indemnify Carlyle for the Section 20A claim.

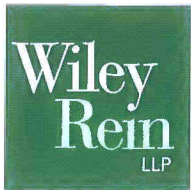
We look forward to continuing to work closely with you in the defense of this litigation.

Very truly yours,



Robert A. Van Kirk

EXHIBIT 20



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

March 23, 2015

**VIA E-MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Gabriel Zamora
Insurance and Risk Management
Cobalt International Energy
920 Memorial City Way, Suite 100
Houston, TX 77024

Re: Insured: Cobalt International Energy, Inc. (“Cobalt”)
Policy No.: ELU119786-10 (the “Policy”)
Ref. No.: 3474199
Matters: (1) *In Re Cobalt International Energy, Inc. Securities
Litigation*, No. 14-cv-3428 (S.D. Tex.) (the “Securities
Action”); (2) *Ogden v. Joseph H. Bryant, et al.*, No. 4:15-cv-
139 (S.D. Tex.) (the “Derivative Action”)

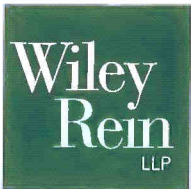
Dear Mr. Zamora:

This firm has been retained by XL Specialty Insurance Company (“XL Specialty”) in connection with the above-referenced matters. Please direct all future correspondence in connection with these matters to our attention as well as to the attention of Jaime Morgan. On behalf of XL Specialty, this letter further acknowledges receipt of your December 23, 2014 and February 10, 2015 correspondence providing notice of these matters to XL Specialty and seeking coverage under the Policy. For the reasons set forth below, no coverage is available under the Policy for these matters.

I. The Securities and Derivative Actions

A. The Securities Action

On November 30, 2014, the St. Lucie County Fire District and Firefighters Pension Trust Fund filed a purported securities class action lawsuit against Cobalt, Cobalt’s directors and officers, and others in the United States District Court for the Southern District of Texas. On December 5, 2014, Steven Neuman filed a purported securities class action complaint against Cobalt, Joseph H. Bryant, and John P. Wilkerson. On March 3, 2015, the court consolidated the complaints into the Securities Action because they were related.



Gabriel Zamora
March 23, 2015
Page 2

The complaints in the Securities Action allege that Cobalt and its directors and officers violated federal securities laws by making false or misleading statements from February 2012 through late 2014. The Securities Action asserts that misrepresentations were made concerning the true value of oil in Cobalt's Angolan offshore wells after learning that the wells contained little or no oil. In addition, plaintiffs allege that defendants failed to disclose the purportedly corrupt nature of Cobalt's Angolan operations and misled investors by stating that Cobalt's Angolan operations complied with all laws, including the Foreign Corrupt Practices Act.

B. The Derivative Action

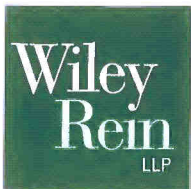
On January 16, 2015, Edward Ogden, derivatively on behalf of Cobalt, filed a complaint against Cobalt's directors and officers in the United States District Court for the Southern District of Texas. The complaint in the Derivative Action alleges that Cobalt's directors and officers breached their fiduciary duties by failing to disclose that Cobalt obtained access to Angolan wells in violation of the Foreign Corrupt Practices Act. It also alleges that defendants breached their fiduciary duties to Cobalt by failing to timely disclose the true amount of oil in Cobalt's Angolan wells.

II. Coverage Discussion

XL Specialty issued Management Liability and Company Reimbursement Insurance Policy Number ELU119786-10 to Cobalt for the Policy Period from December 15, 2010 to December 15, 2011.¹ Policy, Declarations, Items 1, 2. The Policy has a maximum aggregate Limit of Liability of \$20 million inclusive of Defense Expenses, which is excess of a \$1 million per-Claim retention under Insuring Agreements I(B) and (C). *Id.*, Items 3, 4. Subject to its terms, conditions and exclusions, the Policy provides specified coverage for Claims first made against Insured Persons and Securities Claims first made against the Company during the Policy Period. *Id.*, Section I(A)–(C).

Neither the Securities Action nor the Derivative Action was first made during the Policy Period of the Policy. Subject to all of its terms and conditions, the Policy provides coverage only for Claims first made against the Insureds from December 15, 2010 to December 15, 2011. The complaints in the Securities Action were filed on November 30, 2014 and December 5, 2014. The complaint in the Derivative

¹ Capitalized terms are defined in the Policy, unless otherwise defined in this letter.



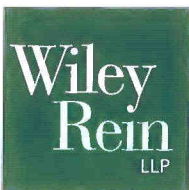
Gabriel Zamora
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 Page 3

Action was filed on February 16, 2015. Accordingly, no coverage is available under the Policy for the Securities and Derivative Actions because they were filed after the Policy Period.

When tendering these matters to XL Specialty, Cobalt stated that “certain allegations [in the complaints] related back to the Nazaki FCPA SEC investigation.” On October 26, 2011, the United States Securities & Exchange Commission issued an Order Directing Private Investigation and Designating Officers to Take Testimony, *In re Cobalt International Energy, Inc.*, LA-3993 (the “SEC Investigation”). The order in the SEC Investigation alleges that, from at least 2007, current and former officers, directors, employees, agents and/or other persons and entities may have violated sections 30A, 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Securities Exchange Act of 1934 and of Rule 13b2-1 promulgated thereunder. In its July 30, 2012 notice to XL Specialty of the SEC Investigation, Cobalt indicated that the SEC was investigating connections between Angolan government officials and one of Cobalt’s partners in Angolan offshore oil concessions. XL Specialty understands that, in January 2015, the SEC informed Cobalt that it was terminating the SEC Investigation and was not recommending an enforcement action against Cobalt.

The Policy provides that all Claims arising from Interrelated Wrongful Acts are deemed to constitute a single Claim first made on the date on which the earliest Claim is made. Specifically, the Policy states that “[a]ll Claims . . . arising from Interrelated Wrongful Acts shall be deemed to constitute a single Claim . . . and shall be deemed to have been made at the earliest time at which the earliest such Claim . . . is made or deemed to have been made” Policy, Section VI(B). “Interrelated Wrongful Acts” is defined as “any Wrongful Act, Company Wrongful Act, or Employment Practices Wrongful Act based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related or series of related facts, circumstances, situations, transactions or events.” Policy, Section I(K).

The Securities and Derivative Actions do not arise from Interrelated Wrongful Acts in the SEC Investigation because the litigation and the investigation involve distinct actions taken during entirely different periods of time. The acts at issue in the SEC Investigation are the alleged payment of bribes to Angolan officials for offshore oil concessions, failure to keep adequate books and records to ensure business in compliance with the FCPA, and failure to adopt compliance procedures to prevent



Gabriel Zamora
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Page 4

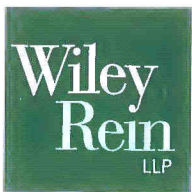
violations of the FCPA. Those purported acts occurred from 2007 through October 2011. In contrast, the Securities and Derivative Actions are based on alleged misrepresentations by Cobalt and its directors and officers concerning the viability of the SEC Investigation and whether Cobalt's activities were in compliance with the FCPA. In addition, the Securities and Derivative Actions allege misrepresentations concerning the viability of Cobalt's Angolan oil wells, which were not an issue in the SEC Investigation. The allegedly misleading statements were made from February 2012 through late 2014. Because the SEC Investigation and Securities and Derivative Actions do not arise from Interrelated Wrongful Acts, the Securities and Derivative Actions are not deemed first made during the Policy Period of the Policy.

Even if the Securities and Derivative Actions were deemed first made during the Policy Period because they arise from Interrelated Wrongful Acts as the SEC Investigation, no coverage would be available for these matters because Cobalt did not provide timely notice of the SEC Investigation to XL Specialty. The Policy provides that, "[a]s a condition precedent to any right to payment under this Policy with respect to any Claim, the Insureds shall give written notice to the Insurer of any Claim as soon as practicable after it is first made." *Id.*, Section VI(A)(1). However, Cobalt did not provide notice of the SEC Investigation to XL Specialty until August 1, 2012, nearly 17 months after the SEC first contacted Cobalt, more than 9 months after the SEC Order was issued, and more than 7 months after the Policy expired. Cobalt's failure to provide timely notice of the SEC Investigation precludes coverage under the Policy for any later, related Claim made against Cobalt.

Since no coverage is available for the reasons set forth above, XL Specialty is not addressing other provisions in the Policy that could apply to bar or limit coverage. However, XL Specialty continues to reserve all of its rights under its Policy and at law.

III. Conclusion

If there is additional information that you would like XL Specialty to consider in connection with these matters, please provide it to us, and XL Specialty will give it careful consideration. As additional information becomes available, other terms, conditions, or exclusions of the Policy may be implicated. This letter, as well as all



Gabriel Zamora
March 23, 2015
Page 5

past and future communications, is sent subject to a complete reservation of all of XL Specialty's rights under the Policy, at law, and in equity.

If you have any questions regarding this letter, please feel free to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leland H. Jones IV".

David H. Topol
Leland H. Jones IV

cc: Jaime B. Morgan (via e-mail)
John D. Shugrue (via e-mail)

EXHIBIT 21



AIG Property Casualty
Financial Lines Claims
32 Old Slip
New York, NY 10005
www.aig.com

Jamie Fleming
Complex Claim Director
Directors & Officers

T 646 857 2360
F 646 857 2112
Jamie.Fleming@aig.com

Correspondence Address:
AIG Property Casualty
Financial Lines Claims
P.O. Box 25947
Shawnee Mission, KS 66225

eMail new notices to
c-Claim@aig.com

Fax new notices to
866 227 1750

February 17, 2015

VIA: ELECTRONIC MAIL [GABRIEL.ZAMORA@COBALTINTL.COM]

Mr. Gabriel Zamora
Insurance and Risk Management
Cobalt International Energy, Inc.
920 Memorial City Way Ste. 100
Houston, TX 77024

RE: INSURED: COBALT INTERNATIONAL ENERGY, INC.
MATTER: SECURITIES CLASS ACTION RE. ANGOLAN
WELLS
POLICY No.: 01-739-05-86
CLAIM No.: 4752390056US

Dear Mr. Zamora:

AIG Claims, Inc., (“AIG”) is the claims administrator for Illinois National Insurance Company (“Illinois National” or “Insurer”), which issued the above-referenced Executive Edge Policy No. 01-739-05-86 to Cobalt International Energy, Inc. (“Cobalt”) for the Policy Period¹ of December 15, 2013 to December 15, 2014. Cobalt has provided notice to Illinois National under the Policy of certain securities class action litigation initiated against Cobalt and others in the U.S. District Court for the Southern District of Texas (the “Securities Litigation”). I am the Complex Claims Director handling this matter and all future correspondence should be directed to my attention. The purpose of this letter is to provide you, as the authorized representative of Cobalt, with Illinois National’s preliminary position regarding coverage for this matter.

We would like you to know that we appreciate and value Cobalt as a customer and are committed to working closely with you on this matter. We expect that you may have questions after reading this letter regarding our preliminary coverage position and the practical impact regarding the reservation of rights. Please feel free to contact me regarding any questions about our coverage position.

In considering your request for coverage, we have carefully reviewed the Policy as well as the allegations asserted. No other policies were considered. If you assert a right to coverage under any other policy issued by Illinois National or any other member company of AIG, please submit notice pursuant to the notice provisions contained in that policy.

Background

Based on the information we have received to date, the following sets forth a summary of the claim. We stress that our analysis does not imply any validity to the allegations made in the underlying matters.

Cobalt has placed Illinois National on notice of two separate putative securities class action complaints. The first was filed by St. Lucie County Fire District

¹ Any capitalized terms not herein defined have meanings ascribed to them in the Policy. Kindly refer to the Policy for its complete terms and conditions.



February 17, 2015
4752390056US
Page 2

Firefighters' Pension Trust Fund on November 30, 2014 (the "St. Lucie Complaint") and reported to Illinois National on December 3, 2014, and the second was filed by Steven Neuman on December 5, 2014 (the "Neuman Complaint") and reported to Illinois National on December 15, 2014.

We understand that Cobalt is an oil exploration company dealing with oil wells in and near, among other places, the Republic of Angola. Cobalt gained access to explore for oil in "Blocks" off the coast of Angola in 2010, and as part of its efforts, struck partnerships to explore certain Blocks, 9 and 21, with the Angolan state oil company Sonangol and Angolan companies Nazaki and Alper.

Cobalt disclosed to the public on February 21, 2012 that it was under investigation by the Securities and Exchange Commission ("SEC") and U.S. Department of Justice ("DOJ") for potential violations of the Foreign Corrupt Practices Act ("FCPA") in relation to dealings with Angolan officials through its business partners in Angola. In August 2014, Cobalt announced that it had received a "Wells Notice" from the SEC recommending an enforcement action and violations of federal securities laws as a result of the investigation conducted by the SEC.

Plaintiffs in both the Neuman Complaint and St. Lucie Complaint seek relief on behalf of purchasers of Cobalt's securities who were allegedly damaged by misrepresentations made by Cobalt in relation to its dealings with Angolan officials and Nazaki, which conduct was at issue in the investigations by the SEC and DOJ, disclosed on February 21, 2012, and leading to the Wells Notice in August 2014.

The St. Lucie plaintiffs also seek relief on behalf of purchasers of Cobalt securities damaged by alleged misrepresentations made by Cobalt about the oil composition and viability of its offshore Angolan oil wells, including the Lontra and Loengo oil wells. Specifically, on December 1, 2013, Cobalt disclosed the Lontra oil well had more natural gas than previously thought, thus making such well less valuable to Cobalt, allegedly resulting in a stock drop. And on November 4, 2014, Cobalt disclosed that its Loengo well lacked oil or gas, allegedly resulting in a stock drop.

The Court presiding over the St. Lucie Complaint is scheduled to consider pending motions for consolidation and appointment of lead counsel in a scheduling conference set for March 2, 2015. It therefore appears that no lead plaintiff will be appointed until at least early March 2015, and a consolidated amended complaint will presumably be filed sometime thereafter in the Securities Litigation.

The Policy

The matters were reported under Illinois National Excess Edge Insurance Policy Number 01-739-05-86. Subject to its terms, conditions, limitations and exclusions, the Policy provides certain coverage to Cobalt for the Policy Period December 15, 2013 to December 15, 2014. The Policy has a Limit of Liability of Ten Million Dollars (\$10,000,000) in the aggregate (inclusive of Defense Costs), and requires that any applicable self-insured-retention or deductible and/or applicable primary and/or underlying insurance be exhausted before any



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defense and/or indemnity obligation exists. The Limit of Liability is subject to a Retention of Two Million Five Hundred Thousand Dollars (\$2,500,000) for Indemnifiable Loss arising from all Claims alleging the same Wrongful Act(s) or Related Wrongful Act(s).

Coverage Evaluation

The Policy includes an Endorsement #34 titled "Specific Investigation/Claim/Litigation/Event or Act Exclusion" (the "Events Exclusion"), which provides that Illinois National "shall not be liable to make any payment for Loss in connection with" specifically defined "Events" and including "any Wrongful Act, underlying facts, circumstances, acts or omissions in any way relating to any Event(s)."

The Events Exclusion further excludes coverage for any Loss in connection with "any restatement, retraction, amendment or revision of in part or in whole" any document or statement resulting from, arising out of, based upon or attributable to any Event or the resolution of Events.

It also excludes coverage for any Loss in connection with "any Claim alleging, arising out of, based upon attributable to or in any way related directly or indirectly, in part or in whole, to an Interrelated Wrongful Act" regardless of the commonality of insureds, claims or claimants involved in such Claims. Under the Endorsement, an "Interrelated Wrongful Act" means "(i) any fact, circumstance, act or omission alleged in any Event(s) and/or (ii) any Wrongful Act which is the same as, similar or related to or a repetition of any Wrongful Act alleged in any Event(s)."

Events are defined in Endorsement #34 as:

1. The notice of Claim and/or circumstances submitted by Cobalt on December 13, 2012, including the enclosed (1) subpoena dated November 28, 2012 served by the US Attorney for the Southern District of New York, (2) email communication from the SEC dated December 10, 2012 and captioned "Re: Cobalt International Energy, Inc., TISO (HO-12009); and (3) Wall Street Journal article dated November 27, 2012 titled "Executives' Good Luck in Trading Own Stock."
2. Arising out of, based upon or attributable to any and all alleged violations of federal securities laws and FCPA oriented around, and with respects to, the relationship between Angolan officials, Nazaki Oil and Gazthe, and Cobalt International Energy Inc.
3. Matters underlying the investigation by Levi & Korsinsky into Cobalt International Energy, Inc. regarding possible breaches of fiduciary duties by Cobalt's board of directors as noted in the letter and attachments from Aaron K. Skidmore dated December 11, 2013.



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The Neuman Complaint and St. Lucie Complaint both seek relief for securities law violations for alleged misrepresentations by Cobalt regarding its relationship with Angolan officials at Nazaki, which conduct was the subject of the SEC and DOJ investigations of Cobalt for FCPA and securities law violations. That conduct and related investigations are the Event defined at paragraph 2. of the Events Exclusion, and therefore all Claims related in any way to such Event are excluded from coverage under the Policy by the Events Exclusion.

The St. Lucie Complaint also seeks relief for securities law violations based upon alleged misrepresentations by Cobalt about the viability of Cobalt's oil wells, including those facts underlying a stock drop accompanying a disclosure about the Lontra oil well made on December 1, 2013. That stock drop appears to have been the subject of the investigation by Levi & Korsinsky into securities violations at Cobalt that was noticed on December 11, 2013, and is a defined Event in paragraph 3. of the Events Exclusion. Any claims based upon misrepresentations and subsequent disclosures regarding oil wells in the St. Lucie Complaint are for the same Event, or arising out of, directly or indirectly, such Event, or otherwise arising out of, directly or indirectly, an Interrelated Wrongful Act to such Event. All such Claims and related conduct are therefore also excluded under the Policy by the Events Exclusion.

Based on the above, it appears that the Events Exclusion operates to exclude all coverage under the Policy for the Securities Litigation as presently pled. Illinois National will, however, re-evaluate this coverage position as appropriate once the anticipated consolidated and amended complaint is filed.

Reservation of Rights

Please be advised that Illinois National's coverage position set forth herein is necessarily preliminary, and Illinois National does not attempt to raise each and every term and condition under the Policy which may apply to the Securities Litigation. Illinois National instead continues to reserve all of its rights under the Policy with respect to the Securities Litigation, including as appropriate the right to an allocation and enforcement of the operative \$2.5 million retention. Nothing said or left unsaid herein should be considered a waiver of Illinois National's rights in any way.

Should you have any additional information that you feel would either cause us to review our position or would assist us in our investigation or determination, we ask that you advise us as soon as possible. Also, if you are served with any additional demands or amended complaints or pleadings, please forward them to us immediately, so that we can review our coverage position.

If you have any other insurance policies which may respond to this claim asserted, you should report this matter to the issuing carrier[s] immediately.

In closing, allow me to reiterate that we value you as a customer and encourage you to contact us should you have any questions or concerns regarding the contents of this letter. Thank you for your cooperation in this matter.



February 17, 2015
4752390056US
Page 5

Very truly yours,

A handwritten signature in black ink, appearing to read "Jamie Fleming".

Jamie Fleming
Financial Lines Claims
Complex Claims - Central

cc: gregory.a.spore@marsh.com

EXHIBIT 22



Kaufman Dolowich & Voluck, LLP
55 E. Monroe Street, Suite 2950
Chicago, Illinois 60603-5979

Main: (312) 646-6744
Fax: (312) 896-9403

www.kdvlaw.com

Stefan R. Dandelles

Email: sdandelles@kdvlaw.com
Direct: (312) 646-6742
Mobile: (312) 206-4976

July 16, 2015

VIA EMAIL

Jennifer Dotson
REED SMITH LLP
811 Main Street
Houston, TX 77002
jdotson@reedsmith.com

Insured:	Cobalt International Energy, Inc.
Matters:	Securities Litigation – 4:14-cv-3428 (S.D. Tex.) Derivative Litigation – 4:15-cv-00139 (S.D. Tex.)
Policy Nos.:	01-499-94-38 (“2012-2013 Policy”) 01-739-05-86 (“2013-2014 Policy”)
AIG Claim No.:	4752390056US
Our File No.:	006807-0196

Dear Ms. Dotson:

We are retained by AIG, the claims administrator for Illinois National Insurance Company (“Illinois National”), with respect to the above-referenced matters. We are in receipt of your May 28, 2015 correspondence, which submits on behalf of your client Cobalt International Energy, Inc. (“Cobalt”), defense and indemnity coverage for the consolidated pleadings filed in the Derivative Litigation (U.S.D.C., S.D. Texas Case No. 4:15-cv-00139) and the shareholder Securities Litigation (USDC, S.D. Texas Case No. 4:14-cv-03428) under the above-captioned 2012-2013 and 2013-2014 Policies issued by Illinois National to Cobalt. We also understand that Cobalt has submitted the Securities Litigation and Derivative Litigation to its insurers under the 2010-2011 and 2011-2012 policies. We write now to advise, on behalf of Illinois National, that no coverage is available under either the 2012-2013 Policy or the 2013-2014 Policy for the Derivative Litigation or the Securities Litigation. Illinois National’s position is explained below.

NATURE OF CLAIMS

The Securities Litigation was initiated on November 30, 2014, and the Derivative Litigation was initiated thereafter in January 2015. Both actions are now pending under consolidated pleadings that Cobalt submitted to Illinois National with your May 28, 2015 correspondence. Illinois National has previously reserved its rights regarding both matters, pre-consolidation, in correspondence to Cobalt and your firm, respectively, dated February 27, 2015 and April 24, 2015.

Jennifer Dotson

July 16, 2015

Page 2

Generally, the lead plaintiffs in the Derivative Litigation and Securities Litigation allege that Cobalt represented at all material times that it was an oil exploration company with oil-focused wells located in the Republic of Angola, and that Cobalt had gained access to those wells in compliance with applicable laws. Lead plaintiffs allege that Cobalt failed to disclose that it had gained access to the Angolan wells through bribery and by partnering with shell companies in Angola that were owned by high-level Angolan officials.

Angola's state-owned oil company, Sonangol, is a partner in Cobalt's oil exploration activities in Angola, and headed by Manuel Domingos Vicente. Lead plaintiffs allege that Vicente and two other high-ranking government officials commonly referred to as General Kopelipa and General Dino used Sonangol as a vehicle to amass fortunes by obtaining personal benefits when awarding Sonangol's contracts with private oil companies, and through shell companies (such as Nazaki) they involved in such deals.

Lead plaintiffs allege that, both before and during a Class Period running from March 1, 2011 through November 3, 2014, Cobalt falsely denied allegations that two of its private partners in Angola – Nazaki and Alper – were owned and/or controlled by Vicente, Kopelipa and Dino, and had been included in the contract with Cobalt at the direction of Sonangol. Lead plaintiffs allege that by November 2011, the SEC informed Cobalt that it had recommended a formal order of investigation for possible FCPA violations involving its dealings with Angolan government officials. Lead plaintiffs also allege that Cobalt disclosed on February 21, 2012 that United States regulators and the DOJ had commenced formal investigations into Nazaki's connections with Cobalt's Angolan dealings. Lead plaintiffs also refer to an April 15, 2012 *Financial Times* article in which Vicente, Kopelipa and Dino admitted they were the true owners of Nazaki, and that immediately thereafter, the United States Department of Justice ("DOJ") and the Securities and Exchange Commission ("SEC") launched criminal and civil investigations into the relationship between Cobalt and these entities.

Lead plaintiffs allege that, despite its knowledge of improper relationships and the noted disclosures, Cobalt continued to misrepresent its knowledge about improper dealings with government officials. Lead plaintiffs also allege that Cobalt sought to deflect from issues raised about its government ties by simultaneously misrepresenting the oil content of its Angolan wells during the Class Period, and that these misrepresentations were pursuant to a directive from Sonangol for Cobalt to "sit" on negative information about its oil well exploration efforts in Angola.

COVERAGE DENIAL

For the reasons set forth herein, Illinois National hereby advises that no coverage is afforded under the 2012-2013 or 2013-2014 Policies for the Securities Litigation or Derivative Litigation.

Both Policies include a "Specific Investigation/Claim/Litigation/Event or Act Exclusion" (the "Events Exclusion"). The Events Exclusion (except where noted below) provides as follows in both Policies:

In consideration of the premium charged, it is hereby understood and agreed that, without limiting the effectiveness of Clause 4., EXCLUSIONS, Exclusion (2) of the policy, the **Insurer** shall not be liable to make any payments for **Loss** in connection with: (i) any of the **Claim(s)**, notices, events, investigations or actions listed under EVENTS below (hereinafter "**Events**"); (ii) the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any **Event(s)**; or (b) any **Claim(s)** arising from any **Event(s)**; or (iii) any **Wrongful Act**, underlying facts, circumstances, acts or omissions in any way relating to any **Event(s)**.

EVENTS

1. The notice of **Claim** and/or circumstances submitted by Cobalt on December 13, 2012, including the enclosed (1) subpoena dated November 28, 2012 served by the US Attorney for the Southern District of New York, (2) email communication from the SEC dated December 10, 2012 and captioned “Re: Cobalt International Energy, Inc., TISO (HO-12009); and (3) Wall Street Journal article dated November 27, 2012 titled “Executives’ Good Luck in Trading Own Stock.”
2. Arising out of, based upon or attributable to any and all alleged violations of federal securities laws and FCPA oriented around, and with respects to, the relationship between Angolan officials, Nazaki Oil and Gazthe, and Cobalt International Energy Inc.
- [3. Matters underlying the investigation by Levi & Korsinsky into Cobalt International Energy, Inc. regarding possible breaches of fiduciary duties by Cobalt’s board of directors as noted in the letter and attachments from Aaron K. Skidmore dated December 11, 2013.]¹

It is further understood and agreed that the **Insurer** shall not be liable for any **Loss** in connection with:

- (A) any restatement, retraction, amendment or revision of in part or in whole:
 - (i) any document or statement filed or submitted or required to be filed or submitted with the Securities and Exchange Commission or any other similar federal, state or local agency (including but not limited to any 10K’s, 10Q’s or annual reports); or
 - (ii) any written or oral statement made regarding the assets, revenues, sales or financial condition of the **Organization**,

resulting from, arising out, based upon or attributable to any **Event** or the resolution of said **Events**; and

- (B) any **Claim** alleging, arising out of, based upon, attributable to or in any way related directly or indirectly, in part or in whole, to an **Interrelated Wrongful Act** (as that term is defined below), regardless of whether or not such **Claim** involved the same or different **Insureds**, the same or different legal causes of action or the same or different claimants or is brought in the same or different venue or resolved in the same or different forum.

For the purposes of this endorsement an “**Interrelated Wrongful Act**” means: (i) any fact, circumstance, act or omission alleged in any **Event(s)** and/or (ii) any **Wrongful Act** which is the same as, similar or related to or a repetition of any **Wrongful Act** alleged in any **Event(s)**.

The Securities and Derivative Litigation are both **Claims** alleging failures by Cobalt to disclose improper dealings with Angolan government officials. The Litigation specifically refers to dealings with Angolan

¹ This paragraph 3. is included only in the 2013-2014 Policy and later Policies not at issue here.

Jennifer Dotson

July 16, 2015

Page 4

officials and Nazaki, as well as the DOJ and SEC actions referenced as **Events** in the Events Exclusion, in which government officials were investigating Cobalt's allegedly improper dealings with Angolan officials. The Litigation also alleges violations of federal securities laws with respect to Cobalt's relationship with Angolan officials, and it alleges a failure to timely disclose negative findings in Angolan oil wells at the direction of Angolan officials, implicating **Events**. Also in this respect, the Wall Street Journal article listed in **Event 1** was regarding a Cobalt announcement on July 27, 2011 that it had abandoned an exploratory well it was drilling off the coast of West Africa, and that an executive had engaged in heavy trading leading up to the disclosure. Moreover, as to the 2013-2014 Policy, one of the disclosures regarding oil wells was allegedly made days before the noticed December 11, 2014 Levi Korsinsky notice of circumstances listed in **Event 3**.

The Securities Litigation and Derivative Litigation are therefore each **Claims** that constitute specifically defined **Events**, they are **Claims** arising from listed **Events**, and/or they are **Claims** that allege **Wrongful Acts**, facts, circumstances, acts or omissions related in any way to **Events**. The Securities Litigation and Derivative Litigation are also **Claims** that seek to recover for conduct that is related, directly and indirectly, "in part or in whole," to **Interrelated Wrongful Acts** (including facts and circumstances) alleged in the described **Events** in the Events Exclusion. For these reasons and others, the Events Exclusion applies to exclude coverage for the Securities Litigation and Derivative Litigation under the 2012-2013 and 2013-2014 Policies.²

Because the Events Exclusions in the Policies are dispositive of coverage for these matters, Illinois National does not attempt to raise each and every term and condition under the Policies which may apply to the Securities Litigation or Derivative Litigation herein. Illinois National instead continues to reserve all of its rights under the Policies with respect to the Securities Litigation and the Derivative Litigation. Nothing said or left unsaid herein should be considered a waiver of Illinois National's rights in any way.

Please do not hesitate to contact the undersigned with any questions regarding this letter or the matters at issue herein.

Very truly yours,

Kaufman Dolowich & Voluck, LLP



Stefan R. Dandelles
Managing Partner – Chicago Office

cc: Jamie Fleming
AIG

² Your May 28 letter does not submit these matters under the 2014-2015 Policy issued by Illinois National to Cobalt (Policy No. 02-140-52-36) and appears to concede no coverage thereunder. However, Cobalt's initial notice of the Derivative Litigation referenced the 2014-2015 Policy, so out of an abundance of caution, Illinois National advises that the 2014-2015 Policy would not apply to the Derivative Litigation (or Securities Litigation) because, among other reasons, the Events Exclusion specifically excludes coverage for any **Claim** related in any way to the Securities Litigation and the facts alleged therein, among other applicable **Events**. Illinois National therefore confirms herein that the 2014-2015 Policy affords no coverage for the Securities Litigation and the Derivative Litigation, and Illinois National otherwise reserves all rights without waiver under the 2014-2015 Policy.

EXHIBIT 23

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

COBALT INTERNATIONAL §
ENERGY, INC., §

Plaintiff, §

and §

JACK E. GOLDEN, JON A. §

MARSHALL, D. JEFF VAN §

STEENBERGEN, MYLES W. §

SCOGGINS, MARTIN H. YOUNG, §

WILLIAM P. UTT, KENNETH W. §

MOORE, JR., JAMES W. §

FARNSWORTH, JOSEPH H. §

BRYANT, JOHN P. WILKIRSON, J. §

HARDY MURCHISON, PETER R. §

CONWAY, N. JOHN §

LANCASTER, JR., HENRY §

CORNELL, AND KENNETH A. §

PONTARELLI, §

Intervenor – Plaintiffs, §

v. §

ILLINOIS NATIONAL INSURANCE §

COMPANY AND AXIS §

INSURANCE COMPANY, §

Defendants. §

C.A. NO. 4:17-cv-01450

Cobalt’s Fourth Amended Petition

Plaintiff Cobalt International Energy, Inc. (“Cobalt”) files this fourth amended petition against defendants Illinois National Insurance Company (“Illinois National”) and Axis Insurance Company (“Axis”):

Parties

1. Cobalt is a Delaware corporation with its principal place of business in Harris County, Texas.

2. Intervenor-plaintiff Jack E. Golden is a current Director of Cobalt and a resident of Texas.

3. Intervenor-plaintiff Jon A. Marshall is a current Director of Cobalt and a resident of Texas.

4. Intervenor-plaintiff D. Jeff van Steenberg is a current Director of Cobalt and a resident of Alberta, Canada.

5. Intervenor-plaintiff Myles W. Scoggins is a current Director of Cobalt and a resident of Colorado.

6. Intervenor-plaintiff Martin H. Young, Jr. is a current Director of Cobalt and a resident of Texas.

7. Intervenor-plaintiff William P. Utt is a current Director of Cobalt and a resident of Texas.

8. Intervenor-plaintiff Kenneth W. Moore is a current Director of Cobalt and a resident of Connecticut.

9. Intervenor-plaintiff James W. Farnsworth is a current Officer of Cobalt and a resident of Texas.

10. Intervenor-plaintiff Joseph H. Bryant is a former Director and Officer of Cobalt and a resident of Texas.

11. Intervenor-plaintiff John P. Wilkirson is a former Officer of Cobalt and a resident of Texas.

12. Intervenor-plaintiff J. Hardy Murchison is a former Director of Cobalt and a resident of Texas.

13. Intervenor-plaintiff Peter R. Coneway is a former Director of Cobalt and a resident of Texas.

14. Intervenor-plaintiff N. John Lancaster, Jr. is a former Director of Cobalt and a resident of Connecticut.

15. Intervenor-plaintiff Henry Cornell is a former Director of Cobalt and a resident of New York.

16. Intervenor-plaintiff Kenneth A. Pontarelli is a former Director of Cobalt and a resident of New York.

17. Illinois National is an Illinois corporation with, as Illinois National maintains, its principal place of business in New York. Illinois National does business in the state of Texas and may be served through its registered agent for service of process in Texas: United States Corporation Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

18. Axis is an Illinois corporation with its principal place of business in Georgia. Axis does business in the state of Texas and may be served through its registered agent for service of process in Texas: Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

Jurisdiction and Venue

19. The Harris County District Courts have subject matter jurisdiction over this dispute because the amount in controversy exceeds their minimum jurisdictional requirement exclusive of interest and costs. Cobalt seeks monetary relief over \$1,000,000. This Court, however, lacks subject-matter jurisdiction to hear this dispute because there is no federal question raised by plaintiffs' complaint and there is not complete diversity among the parties. Pursuant to 28 U.S.C. § 1332(c)(1), defendant Illinois National is deemed a citizen of New York for diversity purposes. Intervenor-plaintiffs Henry Cornell and Kenneth A. Pontarelli are also citizens of New York. Therefore, there is not complete diversity among the parties.

20. This Court – like the Harris County District Court – has personal jurisdiction over Illinois National because Illinois National has purposefully availed itself of the benefits of conducting business in Texas by entering into contracts with Cobalt that were to be performed in whole or in part in Texas. *See* TCPRC § 17.042.

21. This Court – like the Harris County District Court – has personal jurisdiction over Axis because Axis has purposefully availed itself of the benefits of conducting business in Texas by entering into contracts with Cobalt that were to be performed in whole or in part in Texas. *See* TCPRC § 17.042.

22. Harris County is a proper venue because a substantial part of the events or omissions giving rise to the claims against Illinois National and Axis occurred in Harris County. *See* TCPRC § 15.002.

Facts

A. Summary of Cobalt’s Insurance Coverage and the Claims Made Against Cobalt

23. Cobalt is a publicly traded independent exploration and production company with operations in the deepwater Gulf of Mexico and offshore Angola and Gabon in West Africa. Cobalt procures management liability insurance to protect Cobalt and its directors and officers in the event of, among other things, government investigations and private lawsuits.

24. In 2007, Cobalt acquired a 40% interest in three development blocks offshore of Angola (Blocks 9, 20, and 21). The Angolan government subsequently assigned interests in two of the three blocks (Blocks 9 and 21) to Nazaki Oil and Gas (“Nazaki”) and two other Angolan companies.

25. Between 2010 and 2014, Cobalt had two primary insurers: XL (2010-2012) and Illinois National (2012-2014). This case is about XL and Illinois National's improper denial of insurance coverage.

26. Two different groups of claims made against Cobalt are at issue in this case. The first involves Cobalt's relationship with Nazaki and Nazaki's purported association with senior Angolan government officials (the "Nazaki Claims"). The Nazaki Claims accrued when XL was Cobalt's primary insurer, and therefore Cobalt is entitled to coverage for the Nazaki Claims under its insurance agreements with XL (the "XL Policies"). XL has improperly denied coverage for the Nazaki Claims based on factually incorrect and legally flawed assertions about the notice Cobalt provided to XL.

27. The second, and separate, group of claims relates to Cobalt's disclosures about two wells that Cobalt drilled in 2013 and 2014 (the "Well Disclosure Claims"). The Well Disclosure Claims accrued after Cobalt ended its coverage with XL and during the period of time when Illinois National was Cobalt's primary insurer. The Well Disclosure Claims are therefore covered by Cobalt's insurance policies with Illinois National (the "Illinois National Policies").

28. Illinois National has improperly denied coverage for the Well Disclosure Claims based on the false assertion that these disclosures somehow relate to Nazaki, even though Nazaki owned no interest in one of the wells and had

transferred its potential interest in the other before the disclosure of drilling results. It is clear that Nazaki had no role whatsoever in the disclosures. Moreover, Illinois National has continued to deny coverage even after Cobalt demonstrated to Illinois National that the Well Disclosure Claims are not related in any way to Nazaki or to the circumstances surrounding the Nazaki Claims.

B. Cobalt Obtains Insurance Coverage from XL

29. Effective December 15, 2010, XL and Cobalt entered into a claims made “Management Liability and Company Reimbursement Insurance Policy,” policy number ELU119786-10, a true and correct copy of which is attached as Exhibit A. Cobalt renewed its coverage from XL in December 2011, and XL continued to serve as Cobalt’s primary insurer through December 15, 2012.

30. Section I of the XL Policies includes within coverage, among other things, “Loss resulting from a Claim first made against the Insured Persons during the Policy Period or, if applicable, the Optional Extension Period” and “Loss resulting solely from any Securities Claim first made against the Company during the Policy Period or, if applicable, the Optional Extension Period, for a Company Wrongful Act,” without any requirement that the Claim also be reported to XL during the Policy Period or Optional Extension Period.

31. Section VI(A)(2) of the XL Policies treats “as if it had been first made during the Policy Period” any Claim made against Cobalt (or an Insured Person)

after the Policy Period, if during the Policy Period Cobalt learned of and notified XL of the circumstances potentially giving rise to that Claim.¹

32. The 2010-2011 XL policy provides \$20,000,000 in coverage, with a \$1,000,000 retention for each Claim against the company (and no retention for each Claim against an Insured Person). The renewed 2011-2012 XL policy provides \$15,000,000 in coverage, with the same \$1,000,000 retention.

33. Cobalt supplemented its coverage under the 2010-2011 XL policy by obtaining excess insurance coverage from, among others, Axis. Cobalt's policy with Axis (the "Axis Policy"), policy number MHN749342/01/2010, a true and correct copy of which is attached as Exhibit B, provides an additional \$10,000,000 in coverage after \$20,000,000 of Loss.

¹ Section II of the XL Policies contains the following relevant definitions:

- "Claim" is defined to include, among other things, any "written demand or notice for monetary or non-monetary relief," "civil proceeding," "administrative or regulatory proceeding commenced by a complaint, notice of charges or any similar document," "civil, criminal, administrative or regulatory investigation of an Insured Person once such Insured Person is identified by name in a Wells Notice, notice of charges, formal investigative order, subpoena, target letter or any similar document," and "investigation of the Company for a Company Wrongful Act by the Securities Exchange Commission or any similar state, federal or foreign agency" Sections II(Q) and III(G) confirm that this definition includes shareholder derivative actions.
- "Loss" is defined to include "damages, judgments, settlements, pre-judgment and post-judgment interest or other amounts" as well as "Defense Expenses in excess of the Retention that the Insured is legally obligated to pay."
- "Defense Expenses" is defined to include "reasonable legal fees and expenses incurred in the defense of any Claim"

C. The SEC Begins its Nazaki-Related Investigation

34. In March 2011, Cobalt disclosed in both its Form 8-K and its Form 10-K that it was aware of allegations concerning a connection between Nazaki and senior Angolan government officials and that the SEC was investigating the allegations. Cobalt also disclosed that it had voluntarily contacted the DOJ and offered to respond to any requests from the agency.

35. On October 26, 2011, the SEC issued a non-public Order Directing Private Investigation and Designating Officers to Take Testimony (the “SEC Order”), a copy of which Cobalt received on November 7, 2011. Cobalt disclosed the SEC Order and Cobalt’s cooperation with both the SEC and DOJ investigations in its February 21, 2012 Form 10-K.

36. Effective December 15, 2011, XL and Cobalt renewed its XL coverage. A true and correct copy of the renewed XL policy, policy number ELU124020-11, is attached as Exhibit C.

37. On Sunday, April 15, 2012, the Financial Times published two articles related to the potential connection between Nazaki and Angolan government officials.

38. On May 8, 2012, Cobalt received an inspection of books and records demand from two purported shareholders. In response, Cobalt produced a limited set of records subject to a confidentiality agreement.

39. On July 30, 2012, Cobalt provided XL and Axis² with a “notice of Claim and/or notice of circumstances that may give rise to a Claim” (the “First SEC Notice”). Cobalt expressly identified:

- a. Cobalt’s cooperation with the ongoing SEC and DOJ investigations;
- b. The SEC Order;
- c. The April 2012 Financial Times articles;
- d. Internet postings suggesting that several shareholders were considering claims against Cobalt and/or its directors or officers; and
- e. The May 8, 2012 demand for inspection of books and records.

40. Cobalt attached a copy of the SEC Order, the Financial Times articles, the Internet postings, and the shareholder demand to the First SEC Notice.

41. On September 19, 2012, XL sent Cobalt a letter denying coverage on the grounds that XL was not notified “as soon as practicable” after the SEC made a claim against Cobalt.

42. On November 5, 2012, Cobalt rebutted XL’s rationale for denying coverage, stating, among other arguments, that “XL has not been prejudiced by

² Cobalt provided notice to Axis each time it notified XL under the XL Policies.

receiving the SEC Order” no later than August 1, 2012 and therefore XL remained obligated to provide coverage under the XL Policies.

43. On November 12, 2012, XL responded to Cobalt’s letter and again denied coverage.

44. On November 19, 2012, Cobalt responded to XL’s repeated improper denials of coverage by reserving all of its rights and remedies with respect to the dispute.

45. Axis, who was timely notified of these Claims, either already has denied or intends to deny coverage.

D. Cobalt Obtains Insurance Coverage from Illinois National

46. On December 15, 2012, Cobalt chose not to renew or to otherwise continue its insurance coverage with XL. Instead, Cobalt obtained management liability insurance from Illinois National.

47. Effective December 15, 2012, Illinois National and Cobalt entered into a “Broad Form Management Liability Insurance Policy,” policy number 01-499-94-38, a true and correct copy of which is attached as Exhibit D. Illinois National continued to serve as Cobalt’s primary insurer through December 15, 2015.

48. Section 1 of the Illinois National Policies lists the coverage provided by the policy, which includes “Insured Person Coverage,” “Indemnification Of

Insured Person Coverage,” and “Organization Coverage.” Insured Person Coverage includes “the Loss of any Insured Person that no Organization has indemnified or paid, and that arises from any (1) Claim (including any Insured Person Investigation) made against such Insured Person . . . for any Wrongful Act of such Insured Person; or (2) Pre-Claim Inquiry” Indemnification of Insured Person Coverage includes “the Loss of an Organization that arises from any (1) Claim (including any Insured Person Investigation) made against any Insured Person . . . for any Wrongful Act of such Insured Person; and (2) Pre-Claim Inquiry” Organization Coverage includes “the Loss of any Organization: (1) arising from any Securities Claim made against such Organization for any Wrongful Act of such Organization; (2) incurred as Derivative Investigation Costs, subject to a \$250,000 aggregate sublimit of liability; or (3) incurred by an Organization or on its behalf by any Executives of the Organization (including through any special committee) as Defense Costs in seeking the dismissal of any Derivative Suit against an Insured.”

49. Section 7 of the Illinois National Policies provides that, if a Claim was first made and reported in accordance with the policy’s notice requirements, then any Related Claim that is subsequently made and reported in accordance with the

requirements “shall be deemed to have been first made at the time that such previously reported Claim was first made.”³

50. Section 9 of the Illinois National Policies provides that, once Illinois National “has received written notice of a Claim or Pre-Claim Inquiry . . . , it shall

³ Section 13 of the Illinois National Policies contains the following relevant definitions:

- “Claim” is defined to include, among other things, “a written demand for monetary, non-monetary or injunctive relief,” “a civil . . . proceeding for monetary, non-monetary, or injunctive relief which is commenced by . . . service of a complaint or similar pleading,” “an Insured Person Investigation,” and “a Derivative Demand.”
- “Related Claim” is defined as “a Claim alleging, arising out of, based upon or attributable to any facts or Wrongful Acts that are the same as or related to those that were either: (i) alleged in another Claim made against an Insured; or (ii) the subject of a Pre-Claim Inquiry received by an Insured Person.”
- “Insured Person Investigation” is defined to include “any civil, criminal, administrative, or regulatory investigation of an Insured Person . . . once the Insured Person is identified in writing by an Enforcement Body as a target of an investigation that may lead to a criminal, civil, administrative, regulatory or other enforcement proceeding.”
- “Derivative Demand” is defined as “a written demand by any shareholder of an Organization upon the board of directors . . . of such Organization to commence a civil action on behalf of the Organization against any Executive of the Organization for any actual or alleged wrongdoing on the part of such Executive.”
- “Loss” is defined to include “damages, settlements, judgments,” “Defense Costs,” “Derivative Investigation Costs,” and “Pre-Claim Inquiry Costs.”
- “Defense Costs” is defined to include “reasonable and necessary fees, costs and expenses consented to by the Insurer”
- “Derivative Investigation Costs” is defined to include “reasonable and necessary costs, charges, fees, and expenses consented to by the Insurer and incurred by the Organization . . . in connection with a Derivative Investigation.”
- “Derivative Investigation” is defined to include, “after receipt by any Insured of a Claim that is either a Derivative Suit or a Derivative Demand, any investigation conducted by the Organization . . . as to how the Organization should respond.”

advance, excess of any applicable Retention, covered Defense Costs or Pre-Claim Inquiry Costs, respectively, on a current basis, but no later than 90 days after the Insurer has received itemized bills for those Defense Costs or Pre-Claim Inquiry Costs.”

51. Endorsement 25 of the 2012-2013 Illinois National policy excludes from coverage the Nazaki Claims (which are instead covered instead by the XL Policies). Specifically, the Illinois National Policies provide that any Claim or Wrongful Act “[a]rising out of, based upon or attributable to any and all alleged violations of federal securities laws and FCPA oriented around, and with respects to, the relationship between Angolan officials, Nazaki Oil and Gazthe [sic], and Cobalt International Energy Inc.” is excluded from coverage (the “Nazaki Exclusion”). This Endorsement provides that Claims related to the Nazaki Claims are also subject to the Nazaki Exclusion.

52. The Illinois National Policies provide \$10,000,000 in coverage, with a \$2,500,000 retention for each Claim. That retention does not apply to Derivative Investigation Costs, which are subject to a \$250,000 aggregate sublimit of liability for each policy year.

E. Cobalt Drills the Lontra Well in Block 20

53. In 2013, Cobalt, Sonangol, and British Petroleum drilled the Lontra well in Angolan offshore Block 20.

54. Nazaki did not own an interest in Block 20 and did not participate in the well.

55. On December 1, 2013, Cobalt announced that its Lontra well “contain[ed] more gas than [its] pre-drill estimates.”

F. Cobalt Renews Its Insurance Coverage with Illinois National

56. Effective December 15, 2013, Illinois National and Cobalt renewed the Illinois National policy. A true and correct copy of the 2013-2014 Illinois National policy, policy number 01-739-05-86, is attached as Exhibit E.

57. Endorsement 34 of the 2013-2014 Illinois National policy includes the Nazaki Exclusion.

G. The SEC Continues Its Nazaki-Related Investigation

58. On August 4, 2014, the SEC issued a “Wells Notice” to Cobalt based on the alleged connection between Nazaki and senior Angolan government officials. (A Wells Notice, named after the Wells Committee of the SEC, is a letter sent by the SEC to inform a person or firm that the SEC is planning to bring an enforcement action against them.)

59. The Wells Notice stated that SEC staff had “made a preliminary determination to recommend that the Commission file an enforcement action” against Cobalt.

60. On August 14, 2014, Cobalt notified XL of the SEC's Wells Notice and of Cobalt's intent to make a submission to the SEC in response to the notice (the "Second SEC Notice"). Cobalt also informed XL that a number of law firms had announced related investigations of Cobalt.

61. On September 8, 2014, XL denied coverage for both the Wells Notice and the SEC investigation. XL said it was denying coverage because both the Wells Notice and the SEC investigation related back to the SEC Order and therefore, according to XL, "Cobalt did not provide timely notice."

H. Cobalt Drills the Loengo Well in Block 9

62. In 2014, Cobalt drilled the Loengo well in Angolan offshore Block 9.

63. Nazaki initially owned an interest in Block 9, but Nazaki transferred its interest to Sonangol before Cobalt finished drilling operations on the Loengo well. Cobalt received notification of this transfer on August 26, 2014.

64. Cobalt finished drilling the Loengo well in October 2014, with only Cobalt and Sonangol owning any interest in the well.

65. On November 4, 2014, Cobalt announced that the Loengo well "contained neither oil nor gas." Nazaki had no interest in the well at this time, and played no role in this announcement.

I. Purported Shareholders File Demands and Lawsuits Against Cobalt

66. Starting in November 2014, purported Cobalt shareholders brought demands for investigation and/or actions against Cobalt and several of its directors and officers (the “Securities Litigation”).

67. The Securities Litigation consists of the following civil actions brought in state and federal courts:

- a. *St. Lucie County Fire District Firefighters’ Pension Trust Fund v. Bryant*, Civ. A. No. 4:14-cv-03428 (U.S. District Court for the Southern District of Texas, November 30, 2014);
- b. *Neuman v. Cobalt*, Civ. A. No. 4:14-cv-03488 (U.S. District Court for the Southern District of Texas, December 5, 2014) (consolidated with *St. Lucie* into *In re Cobalt International Energy, Inc. Securities Litigation*, Civ. A. No. 4:14-cv-03428, on March 3, 2015);
- c. *Ogden v. Bryant*, Civ. A. No. 4:15-cv-00139 (U.S. District Court for the Southern District of Texas, January 16, 2015);
- d. *Gaines v. Bryant*, Cause No. 2016-29850 (Harris County District Court, May 6, 2016); and
- e. *McDonaugh v. Bryant*, Cause No. 2016-82186 (Harris County District Court, November 29, 2016).

68. The Securities Litigation also consists of several internal investigation demands:

- a. Ira Gaines as Trustee for Paradise Wire and Cable Defined Benefit Pension Plan (served an initial demand on July 21, 2015 and a supplement on March 8, 2016);
- b. Karen McDonough (served on March 21, 2016); and
- c. Michael Hafkey (served on July 11, 2016).

69. Each of the cases and demands that constitute the Securities Litigation sought relief based on at least one, and usually both, of the following:

(1) alleged misrepresentations and omissions about Nazaki's relationship with senior Angolan government officials, and/or (2) alleged public misrepresentations and omissions about the Lontra and Loengo wells.

70. Cobalt timely notified XL and Illinois National of these Claims and both XL and Illinois National have repeatedly denied coverage.

71. XL has denied coverage for these Claims on the grounds that, according to XL, Cobalt did not timely notify XL of the Nazaki Claims and that the Well Disclosure Claims were brought against Cobalt after the XL Policy Period, do not relate to the Nazaki Claims, and therefore are covered by Illinois National, not XL. Axis either has denied or intends to deny coverage for these claims, too.

72. Illinois National has repeatedly denied coverage for both the Nazaki Claims and the Well Disclosure Claims based on the Nazaki Exclusion.

73. On January 22, 2015, the SEC informed Cobalt that it had concluded its investigation and did “not intend to recommend an enforcement action by the Commission against Cobalt.”

Cobalt’s Causes of Action Against Axis

Count One – Declaratory Judgment Against Axis

74. Cobalt incorporates the allegations in the paragraphs above.

75. Cobalt has incurred and will continue to incur Defense Expenses and Derivative Investigation Expenses due to the circumstances, investigations, and claims described above.

76. The Axis Policy follows from to the terms and conditions of the 2010-2011 XL policy. Because Cobalt is entitled to coverage for the Claims described above under the 2010-2011 XL policy, it is therefore also entitled to coverage by Axis.

77. Pursuant to TCPRC Chapter 37, Cobalt seeks and is entitled to a declaration that Axis must cover the circumstances, investigations, and claims described above.

78. In accordance with TCPRC § 37.009, Cobalt seeks and is entitled to an equitable and just award of costs and attorney’s fees.

Cobalt's Causes of Action Against Illinois National

Count One – Breach of Contract Against Illinois National

79. Cobalt incorporates the allegations in the paragraphs above.

80. Cobalt and Illinois National executed a valid and enforceable written contract, effective December 15, 2012, which they renewed on December 15, 2013.

81. The contract provided that, in exchange for Cobalt's payment of the policy premium, Illinois National would pay on behalf of Cobalt Losses (including Defense Costs) resulting from Claims made against Cobalt and/or its current and former employees, directors, officers, and board members.

82. Illinois National breached the contract by (1) repeatedly denying coverage to Cobalt for Claims that were not subject to the Nazaki Exclusion and (2) refusing to pay Cobalt's Losses associated with the relevant circumstances, investigations, and claims described above.

83. As a direct and proximate result of Illinois National's breaches, Cobalt has suffered damages in excess of this Court's jurisdictional limits, and they are increasing. In accordance with TCPRC § 38.002, Cobalt "presents" its breach of contract claim to Illinois National and demands that Illinois National agree to cover the Well Disclosure Claims and pay the sum of \$800,000 to Cobalt within 30 days of this demand. Cobalt has retained counsel and is entitled to recover its

reasonable attorney's fees and expenses under TCPRC Chapter 38. Illinois National is advised that if it fails to tender the amount demanded within 30 days, Cobalt will seek an award of attorney's fees in accordance with TCPRC Chapter 38.

Count Two – Declaratory Judgment Against Illinois National

84. Cobalt incorporates the allegations in the paragraphs above.

85. Cobalt has incurred and will continue to incur Defense Costs and Derivative Investigation Costs due to the circumstances, investigations, and claims described above.

86. Pursuant to TCPRC Chapter 37, Cobalt seeks and is entitled to a declaration that Illinois National is obligated to pay any additional Loss, including Defense Costs and Derivative Investigation Costs, suffered by Cobalt due to the relevant circumstances, investigations, and claims described above.

87. In accordance with TCPRC § 37.009, Cobalt seeks and is entitled to an equitable and just award of costs and attorney's fees.

Count Three – Violation of the Texas Prompt Payment of Claims Act Against Illinois National

88. Cobalt incorporates the allegations in the paragraphs above.

89. The Texas Prompt Payment of Claims Act requires insurers to, among other things, (1) notify a claimant in writing of acceptance or rejection of a claim

within 15 days, Tex. Ins. Code § 542.056, and (2) pay claims within 60 days of notice from the insured, Tex. Ins. Code § 542.058.

90. Illinois National failed to provide timely notice of acceptance or rejection in response to the notices sent regarding the following lawsuits and demands: *St. Lucie, Neuman, Ogden, Gaines*, the initial and supplemental Gaines shareholder demands, and the McDonough shareholder demand.

91. Illinois National improperly has denied coverage on all of the Well Disclosure Claims, and therefore has failed to pay these Claims within 60 days of notice from the insured.

92. As a result of these violations of the Texas Prompt Payment of Claims Act, and in addition to the Losses described above, Illinois National must also pay 18% annual interest under Section 542.060 of the Texas Insurance Code.

Count Four – Violation of Chapter 541 of the Texas Insurance Code and the DTPA
Against Illinois National

93. Cobalt incorporates the allegations in the paragraphs above.

94. Illinois National has improperly denied coverage for the Well Disclosure Claims, despite the fact that the Illinois National Policies unambiguously cover those Claims.

95. In formal correspondence between Cobalt and Illinois National, Illinois National has wrongly insisted that the Well Disclosure Claims fall within the Nazaki Exclusion. This is no more than a bad faith effort to avoid providing

Cobalt the coverage Cobalt is due under the Illinois National Policies. As Cobalt repeatedly has explained to Illinois National, the Well Disclosure Claims are not plausibly subject to the Nazaki Exclusion because they are not related in any way to the relationship between Cobalt, Nazaki, and Angolan government officials:

- a. The Lontra well is not related to the Nazaki Claims. Nazaki does not and never did own an interest in this well or even in the surrounding block. Indeed, Nazaki did not participate in this well in any way.
- b. The Loengo well is not related to the Nazaki Claims. Nazaki originally owned an interest in the block surrounding the Loengo well, but Nazaki transferred its interest in that block before Cobalt completed drilling operations, and Nazaki was in no way involved in the completion of the well or the subsequent disclosures about production from the Loengo well.

96. Cobalt has provided Illinois National information confirming that the Well Disclosure Claims do not fall within the Nazaki Exclusion. Illinois National is therefore aware that it has wrongly denied coverage, and Illinois National's decision to continue to deny coverage demonstrates bad faith.

97. Illinois National's knowing and bad faith refusal to provide coverage for the Well Disclosure Claims is a direct violation of Chapter 541 of the Texas Insurance Code and the Texas Deceptive Trade Practices-Consumer Protection Act

(“DTPA”). Specifically, Illinois National has engaged in the following unfair methods of competition and/or unfair or deceptive acts or practices in the business of insurance, which was a producing cause of Cobalt’s damages:

- a. Engaging in unfair settlement practices (Tex. Ins. Code § 541.060);
and
- b. Misrepresenting an insurance policy (Tex. Ins. Code § 541.061).

98. Illinois National engaged in the foregoing conduct knowingly and intentionally.

99. As a result of Illinois National’s knowing violation of Sections 541.060 and 541.061 of the Texas Insurance Code and the DTPA, Plaintiff is entitled to recover treble damages.

Count Five – Breach of Contract Against Illinois National

100. Cobalt incorporates the allegations in the paragraphs above.

101. The Illinois National Policies require Illinois National to advance defense costs. Section 9(A)(2) provides:

Once the Insurer has received written notice of a Claim or Pre-Claim Inquiry under this policy, it shall advance, excess of any applicable Retention, covered Defense Costs or Pre-Claim Inquiry Costs, respectively, on a current basis, but no later than 90 days after the Insurer has received itemized bills for those Defense Costs or Pre-Claim Inquiry Costs.

102. Cobalt has incurred covered Defense Costs in excess of the Illinois National policy’s retention.

103. On July 14, 2017, Cobalt presented a written demand to Illinois National for the advancement of Defense Costs and Pre-Claim Inquiry Costs already incurred in excess of the applicable Retention. Cobalt included in its demand the actual paid and itemized invoices demonstrating the amount owed by Illinois National.

104. Illinois National was contractually obligated to advance the expense costs identified in Cobalt's July 14, 2017 letter no later than October 12, 2017 (90 days after Illinois National received Cobalt's itemized bills for those Defense Costs).

105. In breach of its insurance agreements with Cobalt, Illinois National has refused to advance Defense Costs and Pre-Claim Inquiry Costs.

Conditions Precedent

106. Cobalt satisfied all conditions precedent under the XL Policies and the Illinois National Policies, including, but not limited to, the payment of premiums, notice, and exceedance of any required retention. Therefore, all conditions precedent to Cobalt's claims for relief have been performed or have occurred.

107. Section 12(F)(1) of the Illinois National Policies requires that all disputes or differences arising under or in connection with the policies be submitted to an alternative dispute resolution process of the insured's choosing. Section 12(F)(1) additionally states that, in the event of mediation, either party

shall have the right to commence a judicial proceeding once the mediation has terminated and at least 90 days have passed since its termination.

108. On May 13, 2016, Cobalt sent a mediation demand letter to Illinois National. The parties mediated this dispute on September 19, 2016 in Houston, Texas. On September 20, 2016, the mediator declared that the mediation had “ended in impasse and that the 90 day cooling off period under the policy has begun to run.” 90 days have passed since that impasse.

Jury Demand

109. Cobalt demands a trial by jury and tenders the appropriate fee with this petition.

Prayer

110. Cobalt respectfully requests that the Court enter judgment in favor of Cobalt and against Illinois National:

- a. Ordering Illinois National to advance Defense Costs and Pre-Claim Inquiry Costs as required by Section 9(A)(2) of the Illinois National policies.
- b. Awarding Cobalt actual damages, punitive damages, costs and attorney’s fees, all other costs and expenses as allowed by law, and pre- and post-judgment interest at the maximum legal rate.

- c. Awarding Cobalt treble damages pursuant to Section 541.152 of the Texas Insurance Code and Section 17.50 of the DTPA.
- d. Awarding Cobalt 18% annual interest pursuant to the Texas Prompt Payment of Claims Act.
- e. Declaring that Illinois National is obligated to pay any additional Loss, including Defense Costs and Derivative Investigation Costs, suffered by Cobalt due to the circumstances, investigations, and claims described above.
- f. Awarding Cobalt all other relief, legal and equitable, to which Cobalt is justly entitled.

111. Cobalt respectfully requests that the Court enter judgment in favor of Cobalt and against Axis:

- a. Declaring that Axis is obligated to cover the Claims described above.
- b. Awarding Cobalt all other relief, legal and equitable, to which Cobalt is justly entitled.

Dated: November 1, 2017

Respectfully submitted,

By: /s/ Eric J. Mayer

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**ATTORNEYS FOR COBALT
INTERNATIONAL ENERGY, INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document has been served electronically via the Court's CM/ECF system on Wednesday, November 01, 2017 on all current counsel of record.

/s/ Eric J. Mayer

Eric J. Mayer

EXHIBIT 24

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**COBALT INTERNATIONAL
ENERGY, INC.,**

Plaintiff,

v.

**ILLINOIS NATIONAL INSURANCE
COMPANY,**

Defendant.

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C.A. NO. 4:17-cv-01450

**AGREED MOTION FOR MODIFICATION TO
RULE 16 SCHEDULING ORDER**

Plaintiff Cobalt International Energy, Inc. (“Cobalt”), Intervenors Jack E. Golden, Jon A. Marshall, D. Jeff Van Steenberg, Myles W. Scoggins, Martin H. Young, William P. Utt, Kenneth W. Moore, Jr., James W. Farnsworth, Joseph H. Bryant, John P. Wilkirson, J. Hardy Murchison, Peter R. Coneway, N. John Lancaster, Jr., Henry Cornell, and Kenneth A. Pontarelli (“Intervenors”), and Defendant Illinois National Insurance Co. (“Illinois National”) request the Court to modify the scheduling order in this case (C.A. No. 4:17-cv-01450) to extend the remaining discovery and motion deadlines by sixty (60) days.

On December 14, 2017, Plaintiff Cobalt filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code. The Chapter 11 proceedings and a related sales process have since demanded—and will continue to demand—near

round-the-clock attention from Cobalt's in-house legal team, officers, and directors. In particular, as part of the Chapter 11 proceedings, the Cobalt team is attempting to negotiate a sale of the company's assets, exacerbating the demands on the company's management and directors.

Under the current scheduling order, Cobalt would need to conduct substantial expert and fact discovery simultaneously with the Chapter 11 proceedings. Reports from each of Cobalt's four experts are due on January 2, 2018, and Illinois National plans to depose three of Cobalt's corporate officers,¹ seven Intervenors, and four additional current or former employees or board members. With the discovery deadline two months away (March 1, 2018) and the motion cut-off following quickly behind it (April 2, 2018), keeping the current deadlines would present a challenging (but manageable) timeline under conventional circumstances. But given the pressing demands of the Chapter 11 proceedings and the company's sale obligations, the parties request a change to the current deadlines.

¹ AIG plans to depose two of Cobalt's current officers, Lynne L. Hackedorn, Vice President, Government and Public Affairs, and Richard A. Smith, Senior Vice President, Strategy and Business Development. AIG also plans to depose a corporate representative of Cobalt under Fed. R. Civ. P. 30(b)(6). Although Cobalt has not yet identified its 30(b)(6) representative, Cobalt expects that the representative will be a corporate officer who is heavily involved in the sale of the company and Chapter 11 proceedings.

To account for the delays caused by the bankruptcy, the parties seek a sixty (60) day extension to all remaining deadlines in the Rule 16 Scheduling Order in this case:

Current Deadline	Proposed Deadline
January 2, 2018: Plaintiffs serve expert reports.	March 5, 2018: Plaintiffs serve expert reports.
January 30, 2018: Defendants serve expert reports.	April 2, 2018: Defendants serve expert reports.
March 1, 2018: Discovery completed.	April 30, 2018: Discovery completed.
April 2, 2018: Motion cut-off.	June 1, 2018: Motion cut-off.
June 29, 2018: Joint Pre-Trial Order.	August 28, 2018: Joint Pre-Trial Order.
July/August 2018: Trial Term.	September/October 2018: Trial Term.

The parties have been working cooperatively on discovery, and this motion is not sought for purposes of unnecessary delay. Because this is the first request for an extension of deadlines in this case, and because the request is for good cause arising out of Cobalt's bankruptcy filing, the parties jointly request the Court's approval to extend the remaining deadlines in this case by sixty (60) days.²

² The demands of the Chapter 11 proceedings may require additional extensions in the future.

Respectfully submitted,

SUSMAN GODFREY L.L.P.

/s/ Eric J. Mayer

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NORTON ROSE FULBRIGHT US LLP

/s/ Robert S. Harrell

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Telephone: (713) 651-5151
Facsimile: (713) 651-5246

CERTIFICATE OF SERVICE

I certify that, on December 21, 2018, a true and correct copy of this Agreed Motion was served on all counsel of record via the Court's electronic filing system.

/s/ Eric J. Mayer

Eric J. Mayer

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**COBALT INTERNATIONAL
ENERGY, INC.,**

Plaintiff,

v.

**ILLINOIS NATIONAL
INSURANCE CO.,**

Defendant.

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CIVIL ACTION NO. 4:17-cv-01450

AMENDED RULE 16 SCHEDULING ORDER

The following amended schedule shall be followed. All communications concerning the case shall be directed in writing to Ellen Alexander, Case Manager for United States District Judge David Hittner, P.O. Box 61010, Houston, TX 77208.

- 1. October 2, 2017 NEW PARTIES shall be joined, with leave of court, by this date. The attorney causing such joinder shall provide copies of this ORDER to the new parties.
- 2A. November 1, 2017 PLAINTIFF shall designate EXPERT WITNESSES. Designation shall be in writing to opponent. Expert reports shall be served by March 5, 2018.
- B. December 1, 2017 DEFENDANT shall designate EXPERT WITNESSES. Designation shall be in writing to opponent. Expert reports shall be served by April 2, 2018.

3. October 2, 2017 AMENDMENTS to pleadings, **with** leave of court, shall be made by this date.
4. April 30, 2018 DISCOVERY shall be completed by this date.
5. June 1, 2018 MOTION CUT-OFF. No motion, including motions to exclude or limit expert testimony under Fed. R. Evid. 702, shall be filed after this date except for good cause shown. *See* LR 7.
6. August 28, 2018 The JOINT PRETRIAL ORDER shall be filed on or before this date notwithstanding that a motion for continuance may be pending. Parties shall exchange all trial exhibits on or before this date notwithstanding that a motion for continuance may be pending. **NO LATE EXCHANGES OF EXHIBITS WILL BE PERMITTED.** All motions in limine shall be submitted with the pretrial order. Failure to file timely a joint pretrial order, motions in limine, or exchange all trial exhibits may result in this case being dismissed or other sanctions imposed, in accordance with all applicable rules.
7. September/October 2018 TRIAL TERM. Cases will be set for trial at a docket call, conducted prior to the trial term or by order of the Court. Your position on the docket will be announced at that time.

Jury ETT: One Week

All documents filed must be 14 point font, double spaced with not less than one inch margins.

SIGNED on _____, 20__.

U.S. DISTRICT JUDGE DAVID HITTNER

EXHIBIT 25

ENTERED

August 23, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE COBALT INTERNATIONAL	§	
ENERGY, INC. SECURITIES	§	CIVIL ACTION NO. H-14-3428
LITIGATION	§	

MEMORANDUM AND ORDER

This securities case is before the Court on Defendants’ Motion to Reconsider the Court’s Memorandum and Order Granting Class Certification (“Motion to Reconsider”) [Doc. # 251], to which Plaintiffs filed an Opposition [Doc. # 256], and Defendants filed a Reply [Doc. # 263]. Also pending is Defendants’ Motion to Stay Discovery Pending Appeal of Class Certification Order (“Motion to Stay”) [Doc. # 252], to which Plaintiffs filed an Opposition [Doc. # 257], and Defendants filed a Reply [Doc. # 264]. Having reviewed the record and the relevant legal authorities, the Court **denies** both Motions.

I. BACKGROUND

The background of this case has been set forth fully in the Court’s prior rulings, including the Memorandum and Order granting class certification. *See* Memorandum and Order [Doc. # 244], entered June 15, 2017. Briefly, Cobalt International Energy, Inc. (“Cobalt”), is an exploration and production company that was formed in 2005

as a private company. Cobalt conducted an initial public offering (“IPO”) of its shares in December 2009.

In 2007, Cobalt entered into an agreement with Sonangol E.P. (“Sonangol”), the Angolan national oil company, to acquire a 40% interest in oil exploration Blocks 9, 20, and 21 in offshore Angola. In 2009, the Angolan Parliament issued two decrees assigning an interest in the Blocks to Nazaki Oil & Gaz (“Nazaki”), Sonangol P&P, and Alper Oil, Limitada (“Alper”). In February 2010, Cobalt and these other companies signed Risk Services Agreements (“RSAs”) with Sonangol.

On January 4, 2011, Cobalt filed a Registration Statement and Prospectus (“January 2011 Registration Statement”) with the Securities and Exchange Commission (“SEC”). Based on this 2011 Registration Statement, Cobalt conducted, *inter alia*, a stock offering in late February 2012 (“February 2012 Stock Offering”). Additionally, Cobalt conducted registered public offerings of Cobalt convertible senior notes (“Cobalt Notes”) in December 2012 and May 2014.

On March 10, 2011, Cobalt learned that the SEC was conducting an informal inquiry into allegations that there existed a connection between Nazaki and senior government officials in Angola. The next day, Cobalt contacted the Department of Justice (“DOJ”) regarding the same allegations. Both the SEC and the DOJ later began formal investigations into whether Cobalt had violated the Foreign Corrupt

Practices Act of 1977 (“FCPA”). These SEC and DOJ investigations regarding FCPA violations ended with no recommendation for enforcement action against Cobalt.

Meanwhile, Cobalt drilled two exploration wells in the offshore Angola drilling region: Lontra on Block 20 and Loengo on Block 9. Cobalt had no rights to gas discoveries and, instead, had rights only to any oil that was discovered in the Blocks. Ultimately, Lontra was found to contain a substantially higher percentage of gas than originally estimated, and drilling at Loengo failed to discover oil.

On April 15, 2012, the *Financial Times* published two reports that Nazaki was owned by Angolan officials, who had admitted their ownership interest to the *Financial Times*. On December 1, 2013, Cobalt issued a press release disclosing that the Lontra well contained primarily gas to which Cobalt had no rights. On August 5, 2014, Bloomberg reported that the SEC had issued a “Wells Notice” recommending the institution of an enforcement action, and that “social payments” that Cobalt was required to make to the Angolan government to fund a research center were for a center that did not exist. On November 4, 2014, Cobalt issued a press release disclosing that the Loengo well was a “dry hole” with no oil. The price of Cobalt shares declined after each of these reports.

On November 30, 2014, Plaintiffs St. Lucie County Fire District Firefighters’ Pension Trust Fund and Fire and Police Retiree Health Care Fund of San Antonio

filed this Class Action lawsuit. By Orders [Docs. # 67 and # 68] entered March 3, 2015, the Court consolidated all pending securities lawsuits against Cobalt into the *St. Lucie* case and appointed lead plaintiffs, lead counsel, and liaison counsel. On May 1, 2015, Plaintiffs filed their Consolidated Amended Class Action Complaint [Doc. # 72].

On March 15, 2017, Plaintiffs filed their Second Amended Complaint. Plaintiffs assert a claim under Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5; Section 20(a) of the Exchange Act; Section 20A of the Exchange Act; Section 11 of the Securities Act of 1933 (“Securities Act”); Section 15 of the Securities Act; and Section 12(a)(2) of the Securities Act. Plaintiffs moved for class certification, appointment of class representatives, and appointment of class counsel. The Court granted the requests by Memorandum and Order [Doc. # 244] entered June 15, 2017.¹

¹ The Court certified the following class with exclusions not relevant to the Motion to Reconsider:

All persons and entities who purchased or otherwise acquired Cobalt securities between March 1, 2011 and November 3, 2014, inclusive, and were damaged thereby. Included within the Class are all persons and entities who purchased shares of Cobalt common stock on the open market and/or pursuant or traceable to the registered public offerings on or about (i) February 23, 2012; (ii) January 16, 2013; and (iii) May 8, 2013. Also included within the Class are all persons and entities

(continued...)

Defendants filed a petition pursuant to Rule 23(f) of the Federal Rules of Civil Procedure with the United States Court of Appeals for the Fifth Circuit, seeking to appeal this Court's class certification ruling. The Fifth Circuit granted the petition on August 4, 2017.

Defendants also moved in this Court for reconsideration of specific issues, and for a stay of all discovery pending their appeal of the Court's class certification order. The pending Motions have been fully briefed and are now ripe for decision.

II. MOTION TO RECONSIDER CLASS CERTIFICATION

A. Applicable Legal Standard

Rule 54(b) of the Federal Rules of Civil Procedure allows a district court to revise an interlocutory order at any time before entry of final judgment. *See* FED. R. CIV. P. 54(b). Some courts, including district courts in the Southern District of Texas, apply the legal standards of Rule 59(e) to Rule 54(b) motions for reconsideration of interlocutory orders. *See, e.g., Banik v. Tamez*, 2017 WL 1228498, *1 (S.D. Tex. Apr. 4, 2017). Under Rule 59(e), a motion for reconsideration may be granted if there has been an intervening change in controlling law, there exists new evidence not

¹ (...continued)

who purchased Cobalt convertible senior notes on the open market and/or pursuant or traceable to registered public offerings on or about (i) December 12, 2012; and (ii) May 8, 2014.

previously available, or there exists a clear error of law. *See id.* (citing *In re Benjamin Moore & Co.*, 318 F.3d 626, 629 (5th Cir. 2002)).

B. CalPERS Decision

Relying on the recent Supreme Court decision in *Cal. Pub. Emp. Ret. Sys. v. ANZ Sec., Inc.*, ___ U.S. ___, 137 S. Ct. 2042 (June 26, 2017) (“*CalPERS*”), Defendants seek reconsideration of the class certification ruling in connection with the February 2012 Offerings. Defendants argue that the Securities Act claims of unnamed class members were not filed individually within the three-year statute of repose.² Again relying on *CalPERS*, Defendants also seek reconsideration of the class certification ruling, based on an argument that class members’ Exchange Act claims based on purchases before June 15, 2012, are likewise barred by the statute of repose.

Defendants’ reliance on the Supreme Court’s decision in *CalPERS* as an intervening change in controlling law is misplaced. In *CalPERS*, a class action complaint was filed prior to the expiration of the statute of repose. Later, after the statute of repose expired, a member of the putative class filed a separate, individual action in a different court. When the case settled and an agreed class was certified as part of the settlement, the same class member opted out in order to pursue its

² The Securities Act provides that “[i]n no event shall any such action be brought to enforce a liability created under [§ 11] more than three years after the security was bona fide offered to the public. . . .” 15 U.S.C. § 77m.

individual lawsuit. The Supreme Court, noting that equitable tolling does not apply to a statute of repose, held that the pending class action did not toll the statute of repose for putative class members who opted out and filed individual actions. *See id.* at 2054-55. The Supreme Court noted that the statute of repose in the Securities Act requires that an “action” must be brought within three years after the relevant securities offering. *See id.* at 2054. The Supreme Court held that the opt-out plaintiff’s individual lawsuit was a separate “action” from the putative class action, and that the separate “action” was not filed within three years. *See id.* There is nothing in the Supreme Court’s decision in *CalPERS* that suggests that the putative class action, filed within the three-year statute of repose, does not protect putative class members who remain in the class and do not opt out to pursue individual lawsuits. Indeed, the majority and dissenting opinions both rely on a presumption that the plaintiff was a proper class member and could have pursued his claims as a member of the class even though the class was not certified within the statute of repose. As a result, there is nothing in the *CalPERS* decision that suggests a timely-filed class “action” does not satisfy the statute of repose for class members who do not opt out. Moreover, there is nothing in the *CalPERS* decision that suggests class certification in a timely-filed putative class action is precluded once the statute of

repose expires. Defendants' Motion to Reconsider based on the *CalPERS* decision is **denied**.³

C. Class Certification of Certain Cobalt Noteholders

Defendants seek reconsideration of the class certification ruling regarding Cobalt noteholders based on a recent decision from the Second Circuit in *In re Petrobras Sec.*, 862 F.3d 250 (2d Cir. 2017). Initially, it is noted that the Second Circuit's recent decision is not an intervening change in controlling law in the *Fifth* Circuit that would support reconsideration.

Moreover, the Court does not find reconsideration appropriate under the Second Circuit's decision in *Petrobras*. In that case, investors in a Brazilian company filed securities fraud claims in connection with purchases of shares that traded on the Brazilian stock exchange, and purchases of Petrobras Notes that are not traded on any exchange in the United States. The Second Circuit noted in *Petrobras*, 862 F.3d at 262, as did this Court in its Memorandum and Order granting class certification, that federal securities laws apply only to conduct "in connection with the purchase or sale of a security listed on an American stock exchange, and the purchase or sale of any other security in the United States." *Morrison v. Nat'l Austl. Bank. Ltd.*, 561 U.S.

³ Clearly, the *CalPERS* decision would operate to bar any class member who now opts out of this class action and files a separate lawsuit. This, however, is not the situation currently presented in this case.

247, 273 (2010). The Second Circuit in *Petrobras* remanded the case to the district court for consideration regarding whether the *Morrison* issue predominated over common issues.

This Court, in considering the predominance factor for class certification, recognized that there could conceivably be a member of the proposed class who engaged in foreign transactions, as opposed to foreign purchasers who engaged in domestic transactions. The Court further noted the ease of determining whether that was the case, and noted that the Cobalt Notes were convertible upon maturity into shares of Cobalt's common stock, which are listed and traded on a domestic exchange.⁴ Based on these considerations, as well as the significant issues of law and fact that were common to putative class members, the Court held that the multiple, significant common issues of law and fact were more substantial than the *Morrison* issue and that the predominance factor was therefore satisfied. Nothing in the Second Circuit's decision in *Petrobras* leads the Court to reconsider its prior ruling. The Motion to Reconsider based on the Second Circuit's *Petrobras* ruling is **denied**.

⁴ See Memorandum and Order [Doc. # 244], pp. 16-17 (citing *Valentini v. Citigroup, Inc.*, 837 F. Supp. 2d 304, 323 (S.D.N.Y. 2011)).

D. Dismissed Claims

Defendants note correctly that this Court previously dismissed certain claims in this case. Defendants ask the Court to revise the class definition to “make clear that class members whose claims this Court already dismissed are not included in the class definition.” *See* Motion to Reconsider, p. 2. The class definition includes purchasers of certain Cobalt securities during the Class Period who “were damaged” by those purchases. A class member may have purchased a variety of Cobalt securities. Such a class member may, therefore, have both live claims and dismissed claims. The class member may not recover based on dismissed claims, but the existence of the dismissed claims does not preclude the purchaser from being a class member as to the live claims. As a result, the Motion to Reconsider the class definition is **denied**.

III. MOTION TO STAY

Rule 23(f) of the Federal Rules of Civil Procedure provides that a court of appeals “may permit an appeal from an order granting or denying class-action certification” *See* FED. R. CIV. P. 23(f). The Fifth Circuit has granted leave for Defendants to pursue an interlocutory appeal of this Court’s class certification ruling. Rule 23(f) provides further that an appeal “does not stay proceedings in the district court unless the district judge or the court of appeals so orders.” *See id.* Defendants have filed a Motion to Stay Discovery pending their Rule 23(f) appeal.

Stays issued pursuant to Rule 23(f) are discretionary and rare. *See M.D. v. Perry*, 2011 WL 7047039, *1 (S.D. Tex. July 21, 2011); *In re Mounce*, 2008 WL 2714423, *6 (Bankr. W.D. Tex. July 10, 2008). When deciding a motion to stay, the district court considers the following factors: “(1) whether the movant has made a showing of likelihood of success on the merits; (2) whether the movant has made a showing of irreparable injury if the stay is not granted; (3) whether the granting of the stay would substantially harm the other parties; and (4) whether the granting of the stay would serve the public interest.” *Id.* (citing *In re First South Sav. Ass’n*, 820 F.2d 700, 704 (5th Cir. 1987)).

In this case, for the reasons stated in the Court’s Memorandum and Order on class certification and in this Memorandum and Order, Defendants have failed to demonstrate a likelihood of success on the merits. Although Defendants may possibly succeed on certain issues, it is unlikely that they will succeed in their attempt to have the class certification order fully reversed or otherwise vacated.

Defendants have failed to demonstrate irreparable injury if the stay is not granted. Defendants have shown that Cobalt is suffering financial difficulties, but no such showing has been made for any of the other Defendants. Defendants argue that they will be required to participate in discovery, but the prospect of having to engage in discovery is not irreparable harm for purposes of a stay pending appeal. *See, e.g.,*

In re BP P.L.C. Sec. Litig., 2016 WL 164109, *2 (S.D. Tex. Jan. 14, 2016); *Perry*, 2011 WL 7047039 at *2. This is particularly true where, as here, the Rule 23(f) appeal will, at best, eliminate the class certification. It will not eliminate the claims of the individual named Plaintiffs. As a result, the discovery will be necessary whether or not the appeal is successful.

Plaintiffs, on the other hand, will be prejudiced by a stay of discovery. The case was originally filed in November 2014. Further delay will jeopardize Plaintiffs' ability to obtain discovery from individuals whose memories may be fading as time passes, as well as their ability to obtain and collect a judgment against Cobalt who, by Defendants' own arguments, is currently in a negative financial condition.

Defendants argue that a stay will serve the public interest because it will promote judicial economy. The public interest, however, also favors speedy resolution of disputes. Moreover, the Court finds that a stay will not further judicial economy because, as noted above, most of the discovery will need to be conducted even if the Rule 23(f) appeal is successful.

The Court has carefully considered each of the factors that are relevant to a stay pending appeal. The Court finds that none of the factors favors a stay of discovery in this case.⁵ As a result, the Motion to Stay is **denied**.

IV. CONCLUSION AND ORDER

Based on the foregoing, it is hereby

ORDERED that Defendants' Motion to Reconsider [Doc. # 251] and Motion to Stay [Doc. # 252] are **DENIED**.

SIGNED at Houston, Texas, this **23rd** day of **August, 2017**.



NANCY F. ATLAS
SENIOR UNITED STATES DISTRICT JUDGE

⁵ Defendants rely on a Northern District of Texas court's decision to stay consideration of a motion to certify a class until the Rule 23(f) appeal in this case is completed. *See* Motion to Stay, p. 2 (citing *Deka Inv. GMBH v. Santander Consumer USA Holdings Inc.*, No. 3:15-cv-2129 (N.D. Tex. July 11, 2017)). The Northern District court's decision to await guidance before ruling on the class certification issue does not convince this Court to stay discovery during the Rule 23(f) appeal of a class certification ruling that has already been made.

EXHIBIT 26

Cobalt International Energy, Inc., et al.,

Case No. 17-36714 (MI)



United States Bankruptcy Court for the Southern District of Texas

Judge Marvin Isgur

December 14, 2017



- I. Business Overview**
- II. Events Leading to Filing**
 - A. Industry downturn**
 - B. Attempted Sonangol sale**
 - C. Debtors' prepetition efforts**
- III. Chapter 11 Cases**
 - A. Next steps**
 - B. Key players**
 - C. Projected case timeline**



Business Overview





Business Overview

History and Operations

- Cobalt is an independent oil and gas **exploration and production** company operating in the U.S. Gulf of Mexico and in the waters off the coasts of the Republic of Angola and the Gabonese Republic in West Africa.
 - Cobalt **focuses on deepwater offshore** areas where geology exhibits the potential for subsalt or pre-salt discoveries.
 - Offshore drilling is generally **more capital intensive** than onshore drilling and has a correspondingly **longer period for return on investment**.
 - Significant resources spent to prepare assets for development.
- Cobalt International Energy, Inc. is a publicly-traded company organized under the laws of Delaware.



Business Overview (cont'd)

Cobalt's Assets



Gulf of Mexico Assets (Debtor)

- Approx. 500 million barrels net
- Four major discoveries
 - North Platte – Cobalt operator
 - Anchor
 - Shenandoah
 - Heidelberg – currently producing
- Approximately 111 other leasehold interests



West Africa (Non-Debtor)

- Approx. 500 million barrels net
- Angola
 - Block 20
 - Block 21
- Gabon - Diaba



Business Overview (cont'd)

Management Team



Timothy J. Cutt
Chief Executive Officer and Director



David D. Powell
Chief Financial Officer



Jeffrey A. Starzec
Executive Vice President and General Counsel

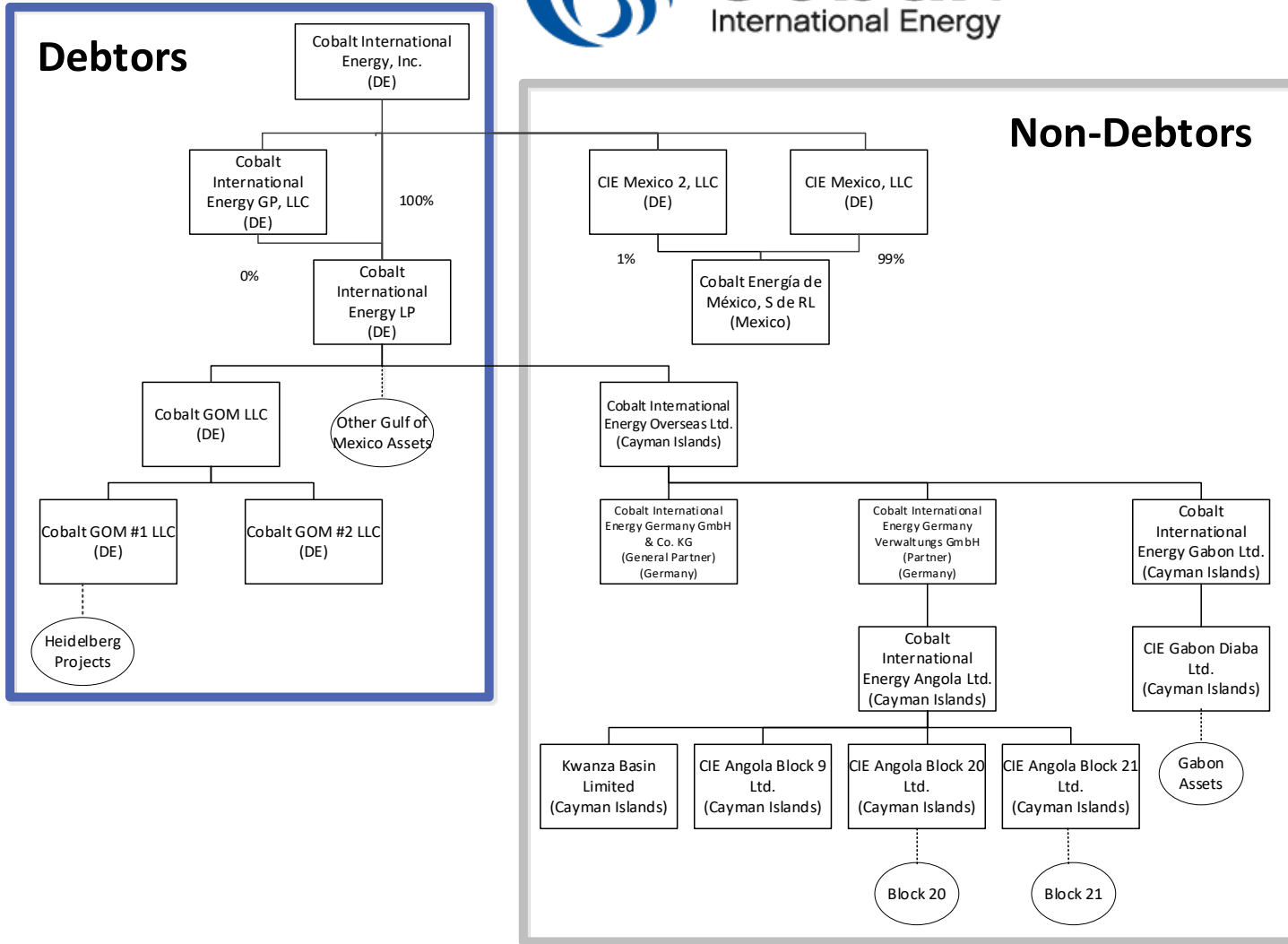


Richard A. Smith
Senior Vice President, Strategy and Business Development



Business Overview (cont'd)

Corporate Structure





Business Overview (cont'd)

Capital Structure

- Approximately **\$2.81 billion in funded-debt obligations**
- Capital structure the result of a series of debt exchanges in 2016 and 2017

Funded Debt Obligations	
10.75% First Lien Notes	\$500 million
7.75% Second Lien Notes	\$935 million
2.625% Unsecured Senior Convertible Notes	\$619 million
3.125% Unsecured Senior Convertible Notes	\$787 million
Total	\$2.81 billion

Events Leading to Filing

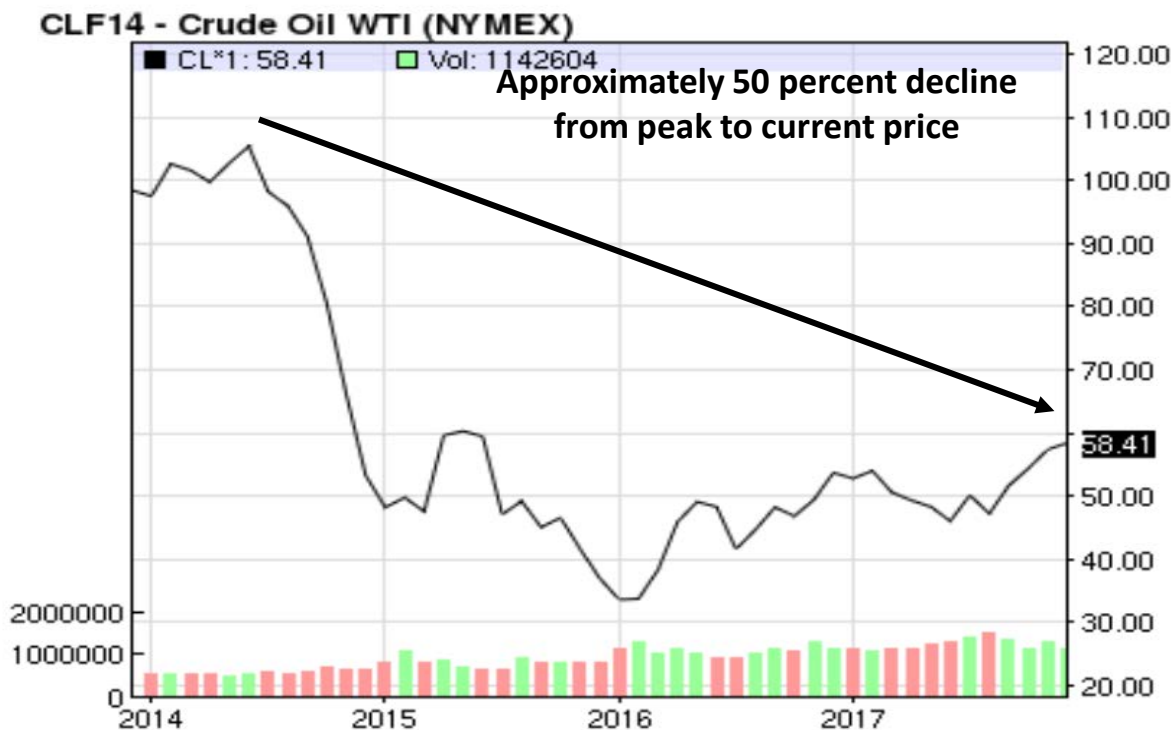




Events Leading to Filing

Industry Downturn

- Sustained downward cycle.
- Prices dropped to approximately \$35 per barrel in 2016. Current price \$58 per barrel.
- Price decline made marketing and sale of Cobalt’s assets and obtaining funding more difficult.





Events Leading to Filing (cont'd)

Litigation Pending Against the Debtors

- The Debtors are currently defendants to **three types of legal proceedings**:

Securities Litigation

- Two since-consolidated proceedings in U.S. District Court for Southern District of Texas
- Allegations center on misrepresentation and omissions regarding Angolan operations and performance

Derivative Actions

- Three separate actions: Gaines lawsuit, McDonough lawsuit, Hafkey lawsuit; each in Texas state court
- Allegations center on breaches of fiduciary duties regarding Angolan operations and performance

SEC Investigation

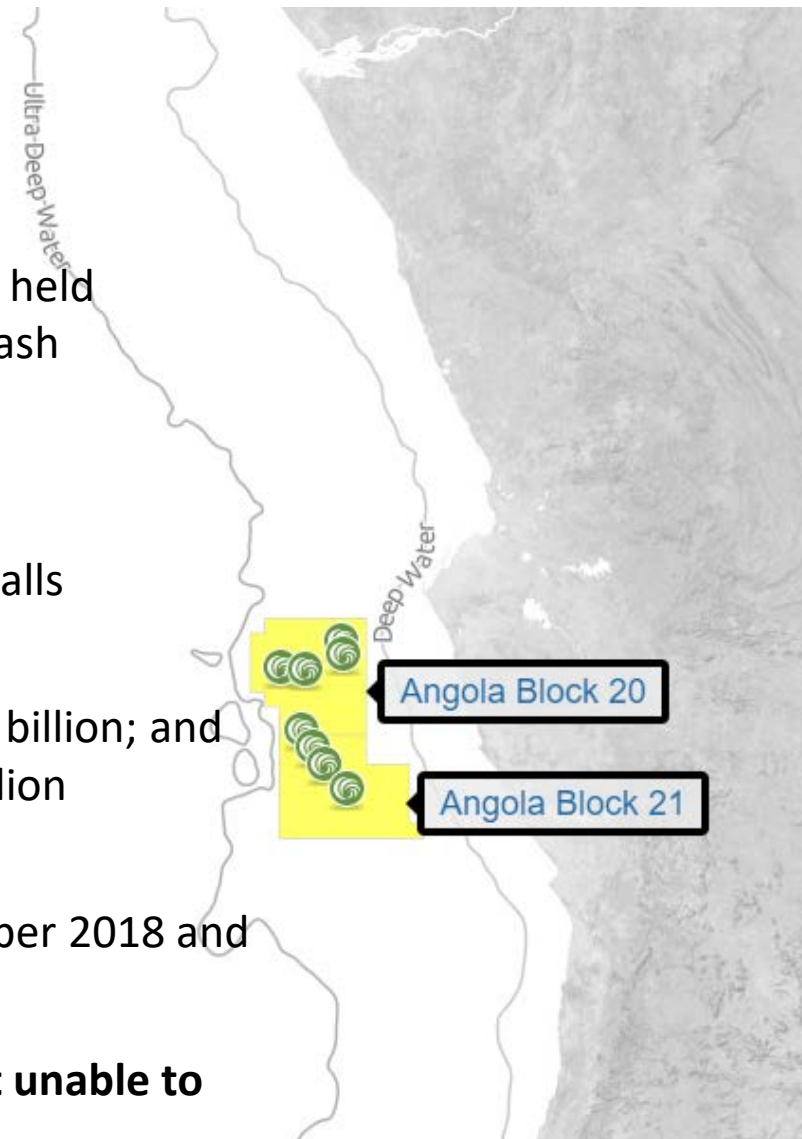
- March 2017, SEC informed Cobalt it initiated an informal inquiry focused on the Sonangol Research and Technology Center
- Cobalt currently cooperating with SEC's inquiry in all respects



Events Leading to Filing (cont'd)

Attempted Sonangol Sale

- August 22, 2015 – Enter into **\$1.75 billion purchase agreement** with Sonangol
- Sonangol pays \$250 million deposit, which is not held in escrow and is comingled with Cobalt's other cash
- August 2016 – **Sonangol refuses to close** citing failure to obtain Angolan government approvals
- **Sonangol refuses to pay \$180 million** in capital calls
- Cobalt **commences two arbitrations:**
(1) for breach of contract seeking in excess of \$2 billion; and
(2) for failure to pay capital call seeking \$160 million plus interest and costs
- Arbitrations remain pending (hearings in December 2018 and October 2019)
- Failure to monetize Angolan assets leaves **Cobalt unable to develop its Gulf of Mexico assets**





Events Leading to Filing (cont'd)

Debtors' Prepetition Efforts

- As an **initial response** to the failed sale of the Angolan assets to Sonangol, deteriorating market conditions, their significant debt obligations, and their ongoing expenditure issues, the Debtors took aggressive and proactive steps including:
 - significant cost-cutting measures including a substantial workforce reduction;
 - a strategic review of its assets; and
 - select asset sales
- In August 2016, the Debtors hired Kirkland & Ellis LLP and financial advisors to assist in asset marketing efforts and evaluating strategic alternatives
- In September 2017, the Debtors hired Houlihan Lokey Capital, Inc. to assist with marketing efforts and a potential chapter 11 sale



Events Leading to Filing (cont'd)

Debtors' Prepetition Efforts

- Four debt exchange transactions
- Secured additional runway for implementation of potential strategic transactions
- Funded expenses required to develop their assets on schedule
- \$500 million in new liquidity
- Captured approximately \$340 million of discount on account of funded indebtedness
- Deferred maturities of large chunk of indebtedness from 2019 to 2023



Events Leading to Filing (cont'd)

2016/2017 Exchange Transactions

December 2016

- issued \$500.0 million of the first lien notes
- issued (i) approximately \$584.7 million of the second lien notes and (ii) 30.0 million shares of common stock in exchange for:
 - \$616.6 million aggregate principal amount of the 2.625% unsecured notes
 - \$95.9 million aggregate principal amount of the 3.125% unsecured notes

January 2017

- issued approximately \$139.2 million of additional second lien notes in exchange for:
 - \$137.8 million of the 2.625% unsecured notes
 - \$60.0 million of the 3.125% unsecured notes

April 2017

- issued approximately \$178.6 million of additional second lien notes in exchange for:
 - \$6.4 million of the 2.625% unsecured notes
 - \$296.3 million of the 3.125% unsecured notes

May 2017

- issued approximately \$32.1 million of additional second lien notes in exchange for:
 - \$60.9 million of the 3.125% unsecured notes



Events Leading to Filing (cont'd)

External Forces Impeding Potential Sale of the Assets

- Continued depression of commodity prices
- Significant development capital requirements
- Failed Sonangol sale and arbitrations
- Unsustainable debt burden of \$2.8 billion
- Ongoing derivative and securities litigation



Events Leading to Filing (cont'd)

Goals of Chapter 11

- Court-approved timeline for completion of sale and restructuring process
- Sale of assets free and clear of debt obligations and other claims and encumbrances
- A single public forum addressing competing interests, preventing interference with the sale and marketing process, and ensuring maximum exposure for the assets with the participation of creditor constituents

Chapter 11 Cases

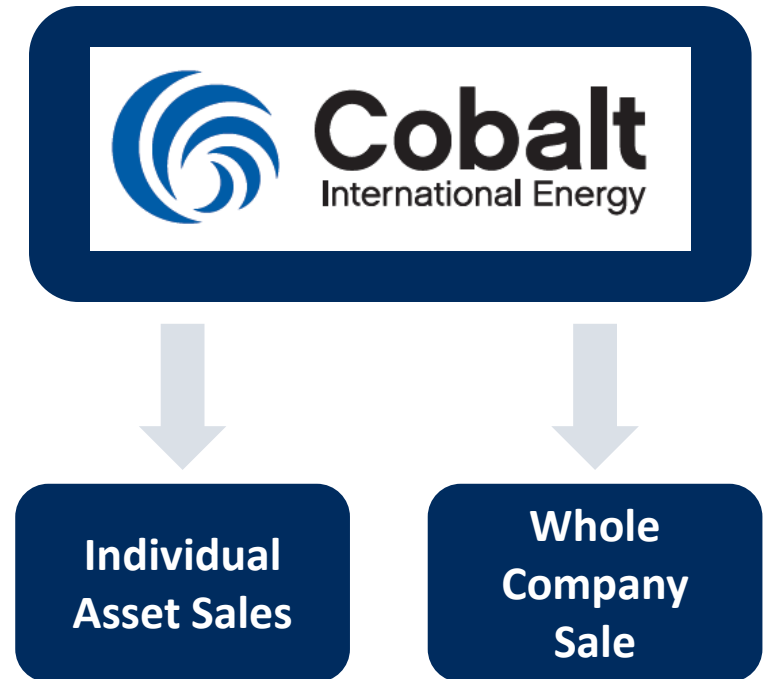




Chapter 11 Cases

Next Steps

- Continue **discussions with stakeholders**
- Continue **marketing efforts** for all, or substantially all of the Debtors assets
- Extend **stay of Securities Litigation**
 - Filed adversary complaint and motion for preliminary injunction
 - Status conference today
- Continue to **engage with debt holders** and their respective advisors, including:
 - an ad hoc group of first lien noteholders;
 - an ad hoc group of second lien noteholders; and
 - an ad hoc group convertible senior unsecured noteholders.





Chapter 11 Cases (cont'd)

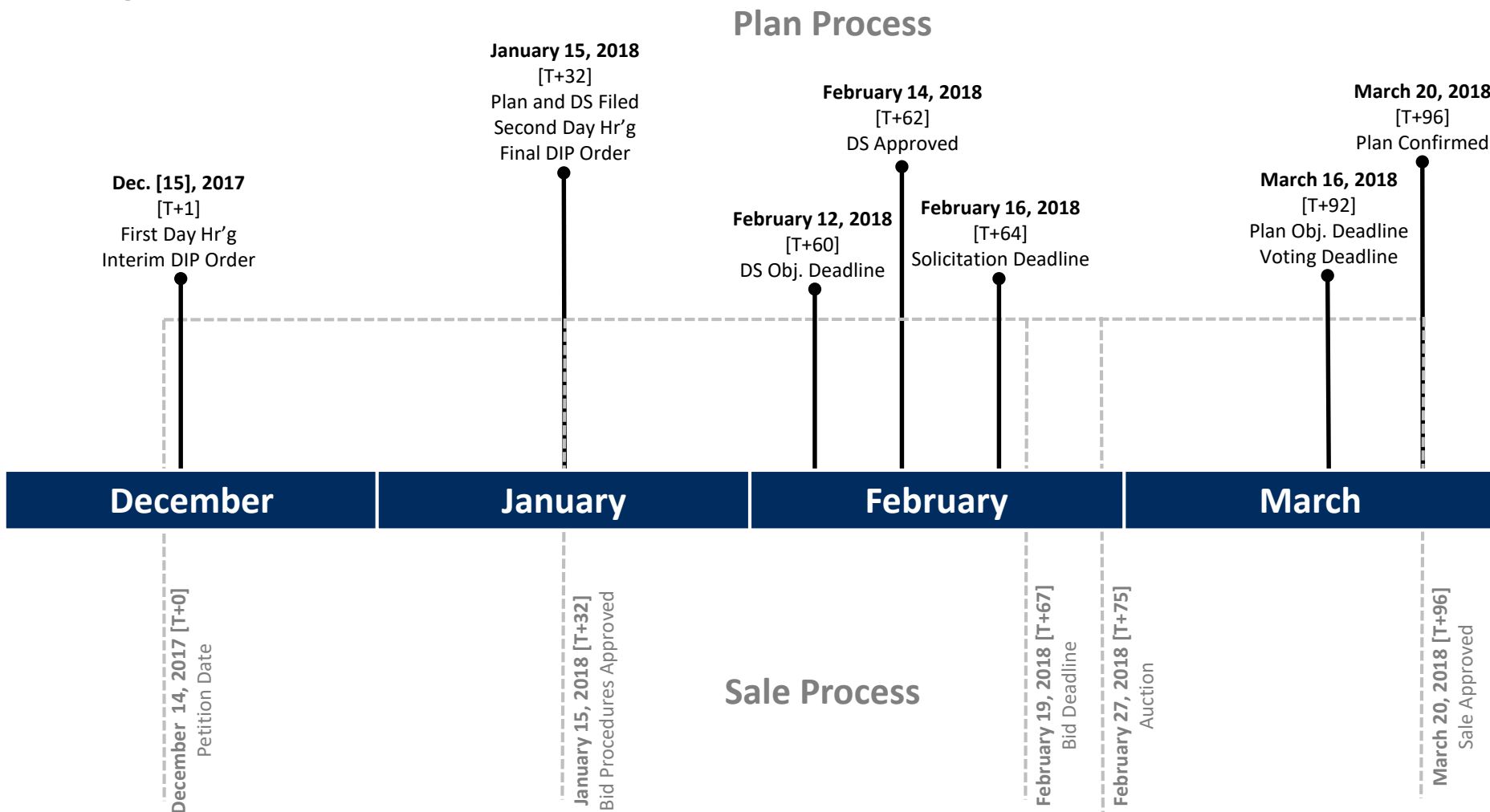
Key Players

	Legal Advisors	Financial Advisors
Debtors	<ul style="list-style-type: none"> • Kirkland & Ellis LLP – bankruptcy counsel • Zack A. Clement PLLC – local counsel • Baker Botts LLP – special litigation counsel 	<ul style="list-style-type: none"> • Houlihan Lokey Capital, Inc.
Indenture Trustee for the First Lien Notes	<ul style="list-style-type: none"> • Wilmer Cutler Pickering Hale and Dorr LLP 	
Ad Hoc Group of First Lien Notes	<ul style="list-style-type: none"> • Weil, Gotshal & Manges LLP 	<ul style="list-style-type: none"> • PJT Partners LP
Ad Hoc Group of Second Lien Noteholders	<ul style="list-style-type: none"> • Akin Gump Strauss Hauer & Feld LLP 	<ul style="list-style-type: none"> • Moelis & Company LLC
Ad Hoc Group of Unsecured Noteholders	<ul style="list-style-type: none"> • Milbank, Tweed, Hadley & McCloy LLP 	<ul style="list-style-type: none"> • Centerview Partners LLC



Chapter 11 Cases (cont'd)

Projected Case Timeline*



*For illustrative purposes only and is subject to the availability of the Bankruptcy Court.

EXHIBIT 27

ENTERED

September 05, 2017

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE COBALT INTERNATIONAL
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 4:14-cv-03428 (NFA)

JOINT PROPOSED DOCKET CONTROL ORDER

I. PLAINTIFFS' PRELIMINARY STATEMENT

Plaintiffs and Defendants conferred and, while Plaintiffs initially proposed a shorter set of dates for the schedule, in the interest of moving forward, have agreed to Defendants' proposals subject to the Court's approval.

Defendants have advised that they anticipate filing a motion to stay discovery in this action pending a ruling on their Rule 23(f) petition to appeal this Court's June 15 class certification Order. Plaintiffs are opposing as meritless Defendants' Rule 23(f) petition and will oppose any motion by Defendants to stay discovery in this action.

II. DEFENDANTS' PRELIMINARY STATEMENT

On June 29, 2017, Defendants filed in the Fifth Circuit a Rule 23(f) Petition for Permission to Appeal the District Court's June 15, 2017 Order Granting Plaintiffs' Motion for Class Certification. The Defendants anticipate filing in this Court a motion to stay further discovery in this action pending a ruling by the Fifth Circuit on the Rule 23(f) Petition and ensuing appeal. Accordingly, this proposed Docket Control Order is being submitted subject to the Defendants' anticipated stay motion.

III. PROPOSED DOCKET CONTROL ORDER

Anticipated Length of Trial: 21 Days


Jury: X Non-Jury:

This Docket Control Order supersedes the prior Docket Control Order (ECF No. 212) for the following, remaining case deadlines. The disposition of this case will be controlled by the following schedule:

1. Fact discovery must be completed. The parties may take up to 30 depositions each, per side, not including experts, without further leave of court. Written discovery and document requests are not timely if they are served at a time where the recipient would not be required under the Federal Rules of Civil Procedure to respond until after this deadline. December 18, 2017
2. Expert reports due for party or parties who bear the burden of proof on issues. January 19, 2018
3. Expert reports due for party or parties who do not bear the burden of proof on issues. February 19, 2018
4. Rebuttal reports by existing experts to reports by party or parties who bear the burden of proof on issues. March 16, 2018
5. Expert discovery cut-off. April 20, 2018
6. Daubert/Summary judgment motions will be filed. May 25, 2018
7. Daubert/Summary judgment oppositions will be filed (parties may file their oppositions on a rolling basis after May 25, 2018). June 22, 2018
8. Daubert/Summary judgment replies will be filed (or four (4) weeks following applicable opposition is filed on a rolling basis). July 20, 2018
9. Joint Pre-Trial Order will be filed (or two (2) weeks following a ruling on all summary judgment motions, whichever is later). Plaintiffs are responsible for timely filing the complete Joint Pre-trial Order. September 10, 2018
10. Mediation/ADR: Required; Strongly suggested; Parties' option. September 24, 2018

Parties to report at the upcoming conference on the status of potential mediation.
11. Docket Call is held in Courtroom 9-F at 2:00 p.m. on the date listed here. Absent parties' agreement, no documents filed within 5 days before the Docket Call will be considered as Docket Call without prior permission of the Court to late file. October 22, 2018

August 24, 2017
Date


HON. NANCY F. ATLAS
UNITED STATES DISTRICT JUDGE

APPROVAL REQUESTED:

/s/ Andrew J. Entwistle
Counsel for Plaintiffs



July 7, 2017
Date

/s/ David D. Sterling
Counsel for Cobalt Defendants



July 7, 2017
Date

/s/ Robert A. Van Kirk
Counsel for The Carlyle Group, L.P.



July 7, 2017
Date

/s/ Karl Stern
Counsel for Joseph H. Bryant

July 7, 2017
Date

/s/ Noelle M. Reed
Counsel for Underwriter Defendants



July 7, 2017
Date

/s/ George T. Conway
Counsel for Sponsor Defendants



July 7, 2017
Date