

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): July 31, 2008**

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**FMC Technologies, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**1-16489**  
(Commission File Number)

**36-4412642**  
(I.R.S. Employer  
Identification No.)

**1803 Gears Road**  
**Houston, Texas 77067**  
(Address, Including Zip Code, of Principal Executive Offices)

**Registrant's telephone number, including area code: (281) 591-4000**

**Not Applicable**  
(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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**Item 1.01 Entry Into Material Definitive Agreement.**

On July 31, 2008, FMC Technologies, Inc. (“FMC Technologies”) and John Bean Technologies Corporation (“JBT Corporation”) entered into a Separation and Distribution Agreement (the “Separation Agreement”) and a Tax Sharing Agreement (the “Tax Sharing Agreement”) in connection with FMC Technologies’ spin-off (the “spin-off”) of JBT Corporation. The descriptions set forth below are qualified in their entirety by reference to the copies of the Separation Agreement and the Tax Sharing Agreement attached hereto as Exhibit 2.1 and Exhibit 10.1, respectively.

**Separation and Distribution Agreement**

The Separation Agreement sets forth the agreement between FMC Technologies and JBT Corporation with respect to the principal corporate transactions required to effect JBT Corporation’s separation from FMC Technologies; the transfer of certain assets and liabilities required to effect such separation; the distribution of JBT Corporation’s shares to FMC Technologies stockholders; JBT Corporation’s dividend to FMC Technologies; and other agreements governing the relationship between FMC Technologies and JBT Corporation following the separation.

***The Contribution; Allocation of Assets and Liabilities; No Representations and Warranties***

The Separation Agreement required FMC Technologies to contribute to JBT Corporation certain business segments and assets to be included in JBT Corporation’s business. As a result of the contribution, FMC Technologies will have no interest in JBT Corporation’s assets and business and, subject to certain exceptions described below, generally will have no obligation with respect to JBT Corporation’s liabilities. Similarly, JBT Corporation will have no interest in the assets of FMC Technologies and generally will have no obligation with respect to the liabilities of FMC Technologies’ retained businesses after the distribution.

The Separation Agreement required that, on or before the completion of the spin-off, JBT Corporation would pay a cash dividend to FMC Technologies, adjusted by the value of JBT Corporation’s after-tax operating cash flow for the period from and including January 1, 2008 to and including the distribution date. The amount of this dividend that was paid on July 31, 2008 was approximately \$150.5 million. This payment is subject to certain potential true-up adjustments pursuant to the terms of the Separation Agreement.

FMC Technologies generally made no representations or warranties as to the assets, businesses or liabilities transferred or assumed as part of the contribution, and generally made the transfers on an “as is, where is” basis, and the respective transferees agreed to bear the economic and legal risks (1) that any conveyance is insufficient to vest in the transferee good and marketable title, free and clear of any security interest, and (2) that any necessary consents or approvals were not obtained or that requirements of laws or judgments were not complied with.

***The Distribution***

In connection with the spin-off, each FMC Technologies stockholder received 0.216 shares of JBT Corporation’s common stock for each share of FMC Technologies’ common stock such stockholder owned as of the record date of the spin-off. No fractional shares of JBT Corporation’s common stock were distributed in the distribution. FMC Technologies was required by the Separation Agreement to direct the distribution agent to determine, as soon as practicable, the sum of fractional shares of JBT Corporation’s common stock that would have been issued in the distribution and sell the nearest number of whole shares equal to such sum in open market transactions or otherwise, in each case at then prevailing trading prices, with the net proceeds to be distributed to the holders of FMC Technologies’ common stock entitled to receive such proceeds in lieu of fractional shares.

***Indemnification and Survival***

FMC Technologies agreed to generally indemnify, defend and hold harmless JBT Corporation, its affiliates, its respective representatives and each of the heirs, executors, successors and assigns of any of the foregoing from and against all indemnifiable losses relating to, arising out of or resulting from:

(a) the failure of FMC Technologies:

(i) to pay or otherwise promptly discharge any of FMC Technologies’ liabilities, whether such indemnifiable losses relate to events, occurrences or circumstances occurring or existing, or whether such indemnifiable losses are asserted, before or after the distribution; or

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(ii) to perform any of its obligations under the Separation Agreement; or

(b) FMC Technologies' business and liabilities, except to the extent such liabilities relate to JBT Corporation's businesses or except as otherwise specifically provided in the Separation Agreement.

JBT Corporation will generally indemnify, defend and hold harmless FMC Technologies, its affiliates, their respective representatives and each of the heirs, executors, successors and assigns of any of the foregoing from and against all indemnifiable losses relating to, arising out of or resulting from:

(a) the failure by JBT Corporation:

(i) to pay or otherwise promptly discharge any of JBT Corporation's liabilities (which liabilities shall include all liabilities, whether incurred before or after the spin-off, of JBT Corporation and of the former FoodTech and Airport Systems business segments of FMC Technologies, and whether or not currently owned, used or occupied by FMC Technologies and its subsidiaries or affiliates), whether such indemnifiable losses relate to events, occurrences or circumstances occurring or existing, or whether such indemnifiable losses are asserted, before or after the distribution; or

(ii) to perform any of its obligations under the Separation Agreement; or

(b) any untrue statement or alleged untrue statement of a material fact, or omission or alleged omission to state a material fact required to be stated, in any portion of the registration statement or information statement (or any preliminary or final form thereof or any amendment thereto) to be filed with the SEC, or necessary to make any assertions in the registration statement or information statement not misleading.

All covenants and agreements of the parties contained in the Separation Agreement will survive the contribution, separation and distribution, and will survive the sale or other transfer by any party or its respective subsidiaries of any assets or businesses or the assignment by it of any liabilities. Additionally, indemnity and contribution provisions contained in the Separation Agreement will remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any indemnitee; (ii) the knowledge by the indemnitee of indemnifiable losses for which it might be entitled to indemnification or contribution hereunder; or (iii) any termination of the Separation Agreement.

#### **Tax Sharing Agreement**

The Tax Sharing Agreement sets forth the responsibilities of FMC Technologies and JBT Corporation with respect to, among other things, liabilities for federal, state, local and foreign taxes for periods before and including the spin-off, the preparation and filing of tax returns for such periods and disputes with taxing authorities regarding taxes for such periods. FMC Technologies will generally be responsible for the filing of tax returns and the payment of JBT Corporation's federal, state, local and foreign income taxes for periods before and including the spin-off. JBT Corporation will generally be responsible for making payments to FMC Technologies for income tax liabilities with respect to such periods to the extent such income tax liabilities are attributable to taxable income generated by JBT Corporation's operations, after adjustment for any losses, credits, or other tax attributes generated by JBT Corporation's operations in such periods. JBT Corporation will generally be responsible for the payment of all other taxes relating to JBT Corporation's business. FMC Technologies will generally be responsible for managing disputes with taxing authorities that relate to liabilities for federal, state, local and foreign income taxes for such periods. However, under the agreement, JBT Corporation will have rights to control and contest certain audit or tax proceedings that relate to income taxes for which JBT Corporation is responsible. Under certain circumstances, FMC Technologies and JBT Corporation may jointly control disputes relating to income taxes for which both parties are responsible. JBT Corporation will generally be responsible for managing disputes relating to all other taxes for which JBT Corporation is responsible. The Tax Sharing Agreement also provides that JBT Corporation will have to indemnify FMC Technologies for some or all of the taxes resulting from the transactions related to the distribution

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of JBT Corporation's common stock if JBT Corporation takes certain actions which ultimately result in disqualifying the distribution as tax-free under Sections 355 and 368 of the U.S. Internal Revenue Code, as amended (the "Code"). The Tax Sharing Agreement also requires FMC Technologies to indemnify JBT Corporation against any liability for tax if FMC Technologies' actions cause the disqualification of the spin-off as tax-free under the Code.

To maintain the qualification of the distribution as tax-free under sections 368(a)(1)(D) and 355 of the Code, there are material limitations on transactions in which JBT Corporation may be involved during the two-year period following the distribution date. Specifically, during this two-year period, JBT Corporation agrees in the Tax Sharing Agreement to refrain from engaging in any of the transactions listed below unless it first obtains a private letter ruling from the Internal Revenue Service (the "IRS") or an opinion reasonably acceptable in substance to FMC Technologies from a tax advisor reasonably acceptable to FMC Technologies providing that the transaction will not affect the tax-free treatment of the distribution.

JBT Corporation is restricted from entering into any negotiations, agreements, understandings, or arrangements with respect to transactions or events that may cause the spin-off to be treated as part of a plan pursuant to which one or more persons acquire (other than pursuant to the spin-off) directly or indirectly JBT Corporation's stock representing a "50-percent or greater interest" therein within the meaning of Section 355(d)(4) of the Code, including stock issuances pursuant to the exercise of options, lapsing of restrictions on restricted stock or option grants (excluding option grants made pursuant to compensatory equity incentive arrangements satisfying specified conditions and stock issuances made pursuant to the exercise of options or the lapse of restrictions on stock granted under any such arrangement), capital contributions or acquisitions, entering into any partnership or joint venture arrangements or a series of such transactions or events, and any of the following:

- Merging or consolidating with or into another corporation;
- Liquidating or partially liquidating;
- Selling or transferring all or substantially all of JBT Corporation's assets in a single transaction or series of related transactions, or selling or transferring any portion of JBT Corporation's assets that would violate certain continuity requirements imposed by the Code; or
- Redeeming or otherwise repurchasing any of JBT Corporation's capital stock other than pursuant to open market stock repurchase programs meeting certain IRS requirements.

If JBT Corporation enters into any of these transactions, with or without the required private letter ruling or opinion from tax counsel, JBT Corporation will be responsible for, and will indemnify FMC Technologies from and against, any tax liability resulting from any such transaction, under terms reasonably acceptable to FMC Technologies, including, in certain circumstances, the posting of an acceptable letter of credit or other security.

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

On July 31, 2008, FMC Technologies completed the spin-off of its wholly owned subsidiary, JBT Corporation, which was accomplished through a special dividend of all outstanding shares of JBT Corporation to FMC Technologies shareholders. Holders of FMC Technologies' common stock of record at the close of business on July 22, 2008 received a dividend of 0.216 shares of JBT Corporation's common stock for each share of FMC Technologies' common stock that they owned. As a result of the spin-off, JBT Corporation is no longer owned by FMC Technologies and is now an independent public company. Shares of JBT Corporation's common stock began trading on a when-issued basis on the New York Stock Exchange ("NYSE") on July 18, 2008, and began trading "regular way" on the NYSE on August 1, 2008 under the symbol "JBT."

A copy of the press release announcing the completion of the spin-off is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

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

(b) Effective July 31, 2008 upon the spin-off, Charles H. Cannon, Jr. resigned from his position as FMC Technologies' Senior Vice President to dedicate himself solely to his position as Chairman of the Board, Chief Executive Officer and President of JBT Corporation. Also effective July 31, 2008 upon the spin-off, Ronald D. Mambu resigned from his position as FMC Technologies' Vice President and Controller to dedicate himself solely to his position as Vice President, Chief Financial Officer, Treasurer and Controller of JBT Corporation.

(c) On July 31, 2008, FMC Technologies announced that Jay A. Nutt would become FMC Technologies' Controller effective August 1, 2008. Mr. Nutt, 45, has been Assistant Controller of FMC Technologies since January 2008. Prior to that time, he was the Controller of FMC Technologies' Energy Systems division since 2007, and was the Division Controller of FMC Technologies' Energy Production Systems division since the 2001 spin-off of FMC Technologies from FMC Corporation. A copy of the press release is attached as Exhibit 99.2 to this report and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(b) Pro Forma Financial Information

The unaudited pro forma condensed consolidated financial statements of FMC Technologies reflecting the spin-off of JBT Corporation from FMC Technologies described under Item 2.01 above are attached as Exhibit 99.3 hereto and are incorporated herein by reference.

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
2.1	Separation and Distribution Agreement between FMC Technologies, Inc. and John Bean Technologies Corporation, dated July 31, 2008
10.1	Tax Sharing Agreement between FMC Technologies, Inc. and John Bean Technologies Corporation, dated July 31, 2008
99.1	Press Release issued by FMC Technologies, Inc., dated August 1, 2008
99.2	Press Release issued by FMC Technologies, Inc., dated July 31, 2008
99.3	Unaudited Pro Forma Condensed Consolidated Financial Information of FMC Technologies, Inc.

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SIGNATURE

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

FMC TECHNOLOGIES, INC.

By: /s/ William H. Schumann, III

Name: William H. Schumann, III

Title: Executive Vice President and Chief Financial Officer

Dated: August 6, 2008

SEPARATION AND DISTRIBUTION AGREEMENT

by and between

FMC TECHNOLOGIES, INC.

and

JOHN BEAN TECHNOLOGIES CORPORATION

Dated as of July 31, 2008

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Exhibits to Separation and Distribution Agreement

Exhibit A	Form of Tax Sharing Agreement
Exhibit B	Form of Transition Services Agreement
Exhibit C	Amended and Restated Certificate of Incorporation
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Exhibit E	Form of Preferred Share Purchase Rights Agreement
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Exhibit H	Forms of Subleases
Exhibit I	Forms of Distributor Agreements
Exhibit J	After Tax Operating Cash Flow Methodology and Dividend Amount Methodology

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## SEPARATION AND DISTRIBUTION AGREEMENT

This **SEPARATION AND DISTRIBUTION AGREEMENT** (this "Agreement"), dated as of July 31, 2008, is by and between **FMC TECHNOLOGIES, INC.**, a Delaware corporation ("Parent"), and **JOHN BEAN TECHNOLOGIES CORPORATION**, a Delaware corporation and a wholly owned subsidiary of Parent ("Spinco") (each of Parent and Spinco, a "Party" and together, the "Parties").

### RECITALS

WHEREAS, the Board of Directors of Parent has determined that it is in the best interests of Parent and its stockholders to separate Parent's existing businesses into two independent companies (the "Separation"), pursuant to the terms and subject to the conditions set forth in this Agreement;

WHEREAS, to effect the Separation, Parent intends to cause the transfer to Spinco of certain assets of Parent and its subsidiaries, and the assumption by Spinco of certain liabilities of Parent and its subsidiaries associated with the assets being transferred, all of which are primarily related to the Spinco Business (the "Contribution") as contemplated by this Agreement and the Ancillary Agreements;

WHEREAS, in connection with the Separation, the Board of Directors of Parent has determined that it would be advisable and in the best interests of Parent and its stockholders for Parent to distribute to the holders of the issued and outstanding shares of common stock, par value \$0.01 per share, of Parent (the "Parent Common Stock") as of the Record Date 100% of the issued and outstanding shares of common stock, par value \$0.01 per share, of Spinco (the "Spinco Common Stock"), together with the associated preferred stock purchase rights (each share of such stock, together with the associated preferred stock purchase right, a "Spinco Share"), on the basis of 0.216 Spinco Shares for every share of Parent Common Stock (the "Distribution");

WHEREAS, it is the intention of the parties to this Agreement that, for United States federal income tax purposes, the Distribution shall qualify as a tax-free spin-off under Section 355 of the Internal Revenue Code of 1986, as amended;

WHEREAS, the Boards of Directors of Parent and Spinco have each determined that the Separation, the Contribution, the Distribution and the other transactions contemplated by this Agreement and the Ancillary Agreements are in furtherance of and consistent with their respective business strategies and are in the best interests of their respective companies and stockholders and have approved this Agreement and the Ancillary Agreements; and

WHEREAS, it is appropriate and desirable to set forth the principal corporate transactions required to effect the Separation and certain other agreements that will govern certain matters relating to the Separation, the Contribution, the Distribution and the relationship of Parent and Spinco and their respective subsidiaries following the Separation and the Distribution.

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NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements set forth in this Agreement, the Parties hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

SECTION 1.1 General. As used in this Agreement, the following terms shall have the following meanings:

*Action*: any claim, demand, action, lawsuit, countersuit, arbitration, inquiry, proceeding or investigation by or before any governmental or regulatory authority or any arbitration or mediation tribunal.

*After Tax Operating Cash Flow*: the sum of, based on Parent's financial reporting system for the period from and including January 1, 2008 to and including the close of business on the Distribution Date, with all business transactions accounted for according Parent's established cut-off, accounting and reporting procedures and protocols, the Net Operating Income of the Spinco Business's continuing operations, plus or minus each of the following (as specified below):

- (1) plus, Net Operating Income of Spinco's discontinued businesses,
- (2) plus, Spinco's incremental corporate staff expense, after tax,
- (3) plus the decrease or minus the increase in Spinco's capital employed for its continuing operations, excluding cash and cash equivalents,
- (4) plus the decrease or minus the increase in Spinco's capital employed for its discontinued operations, excluding cash and cash equivalents,
- (5) plus or minus, as applicable, the correcting adjustment for foreign exchange translation related to Spinco's capital employed for both its continuing and discontinued operations,
- (6) plus the increase or minus the decrease in Spinco's liability for current and deferred income taxes and deferred tax assets,
- (7) plus or minus, as applicable, the correcting adjustment for the foreign exchange translation adjustment related to Spinco's liability for current and deferred income taxes and deferred tax assets,
- (8) plus restatement gains or minus restatement losses, net of tax,
- (9) plus impact of OCI, deferred derivative gains (losses) and other,
- (10) plus, provisions for defined benefit retirement plans, pre-tax,

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- (11) less, amortization expense in 2008 related to the 2006 restricted stock equity award, pre-tax,
  - (12) plus the increase or minus the decrease in Spinco's health care reserves, and
  - (13) plus the increase or minus the decrease in Spinco's insurance reserves.

Parent and Spinco agree to make such other adjustments as the parties determine necessary to fairly state the After Tax Operating Cash Flow and the Dividend Amount. Examples may include adjustments required for the impact on tax reserves of intercompany interest income or expense and prior year(s) taxes paid in 2008. Exhibit J includes an example of the calculation methodology for After Tax Operating Cash Flow.

*Ancillary Agreements:* the Tax Sharing Agreement, the agreements relating to the transfers and assumptions contemplated by Section 2.3, the Transition Services Agreement substantially in the form of Exhibit B, the Trademark License Agreement substantially in the form of Exhibit F, the Trademark Assignment and Coexistence Agreement substantially in the form of Exhibit G, the Distributor Agreements substantially in the forms attached as Exhibit I, the Sublease Agreements substantially in the forms attached as Exhibit H and the other agreements entered into or to be entered into in connection with the Separation as contemplated by Article II of this Agreement.

*Assets:* any and all assets, properties and rights (including goodwill), whether accrued, contingent or otherwise, whether now existing or hereafter acquired, wheresoever situated, and in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person, including the following:

- (1) all cash, cash equivalents, notes, accounts receivable, notes receivable and mortgages receivable (whether current or non-current);
- (2) all interests in any capital stock or other equity interests, all rights as a partner or joint venturer or participant, certificates of deposit, banker's acceptances, bonds, notes, debentures, evidences of indebtedness, certificates of interest or participation in profit-sharing agreements, all puts, calls and options and all other securities of any kind;
- (3) all Intellectual Property Rights;
- (4) all rights, title and interests in, to and under leases, subleases, contracts, licenses, permits, registrations, certifications, distribution arrangements, open purchase orders for raw materials, supplies, parts or services, unfilled orders for the manufacture and sale of products, other sales and purchase agreements, confidentiality agreements, and other agreements and business arrangements;
- (5) all rights, title and interests in, to and under real property of whatever nature, including all easements and rights of way, servitudes, leases, subleases, permits, licenses, options and other real property rights and interests, as an owner, mortgagee or

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holder of a security interest in real property, lessor, sublessor, lessee, sublessee or otherwise, and all rights, title and interests in and to all buildings, fixtures and improvements thereon;

(6) all leasehold improvements, fixtures, trade fixtures, machinery, equipment (including transportation and office equipment), tools, dies, furniture and furnishings;

(7) all fixtures, machinery, equipment, tools, other inventories of supplies and spare parts, vehicles and transportation equipment, miscellaneous supplies, models, prototypes, test devices and other tangible assets or properties of any kind;

(8) all computers and other electronic data processing and computer equipment and all computer applications, programs and other software, including design tools, systems documentation and instructions;

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

(10) all raw materials, parts, work-in-process, supplies, finished goods, consigned goods, products and other inventories;

(11) all deposits, letters of credit, performance and surety bonds, prepayments and prepaid or advanced payments and expenses, trade accounts and other accounts and notes receivable;

(12) all rights to causes of action, lawsuits, judgments, claims, causes in action, all rights under express or implied warranties, all claims or rights against any Person arising from the ownership of any Asset, all rights in connection with any bids or offers, all rights of recovery and all rights of setoff of any kind and demands of any nature, in each case whether mature, contingent or otherwise, whether in tort, contract or otherwise, whether arising by way of counterclaim or otherwise;

(13) all rights to receive mail, payments on accounts receivable and other communications;

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

(15) all accounting and other files, records and data, including schematics, books, manuals, technical information and engineering data, programming information, computerized data, books of account, ledgers, employment records, lists and files relating to customers, vendors, suppliers and agents, quality records and reports, research records, cost information, pricing data, market surveys and marketing know-how, mailing lists, purchase and sale records and correspondence, advertising and marketing records, of every kind;

(16) all goodwill as a going concern and other intangible properties;

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- (17) all rights under employee contracts;
  - (18) all tax assets (including carryforwards) described in the Tax Sharing Agreement; and
  - (19) all permits, approvals, orders, authorizations, consents, licenses, certificates, franchises, exemptions of, or filings or registrations with or issued by, any governmental or regulatory authority in any jurisdiction, and all pending applications therefor.

*Assumption Time:* 12:01 a.m. on the Distribution Date.

*Contribution:* as defined in the Recitals hereto.

*Distribution:* as defined in the Recitals hereto.

*Distribution Date:* the date as of which the Distribution shall be effected, to be determined by, or under the authority of, the Board of Directors of Parent consistent with this Agreement.

*Dividend Amount:* an amount equal to:

- (1) \$200,000,000, plus
- (2) the aggregate amount of cash and cash equivalents (as such term is defined in the footnotes to the financial statements included in Parent's most recent Form 10-K filed with the U.S. Securities and Exchange Commission) of Spingo as of 11:59 p.m. on the Distribution Date, minus
- (3) the amount of any Spingo indebtedness for borrowed money to the extent the creditor is not Parent, Spingo or any of their respective affiliates, minus
- (4) the value of the After Tax Operating Cash Flow of the Spingo Business for the period from and including January 1, 2008 to and including 11:59 p.m. on the Distribution Date, if that amount is positive, plus
- (5) the absolute value of the After Tax Operating Cash Flow of the Spingo Business for the period from and including January 1, 2008 to and including 11:59 p.m. on the Distribution Date, if such After Tax Operating Cash Flow amount is negative, minus
- (6) the after-tax offset for excess assets left in Parent's Brazilian pension plan, which is estimated at \$463,737 (66% of \$702,632).

Exhibit J includes an illustration of the calculation methodology for the Dividend Amount, including the identification of the accounts to be used to determine the After Tax Operating Cash Flow for the applicable period.

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*Group:* the Parent Group or the Spinco Group.

*Guarantees:* as defined in Section 5.3 hereof.

*Indemnifiable Losses:* all Liabilities suffered (and not actually reimbursed by insurance proceeds, provided that it is understood that any amount paid by a third party administrator that is within a self-insured retention shall not be considered to have been reimbursed by insurance proceeds) by an Indemnitee, including any reasonable out-of-pocket fees, costs or expenses of enforcing any indemnity hereunder; provided that “Indemnifiable Losses” shall not include:

- (1) any special, indirect, incidental, punitive or consequential damages whatsoever of any indemnitee, including damages for lost profits and lost business opportunities, arising in connection with any Action other than any Action by any Person (including any governmental or regulatory authority) who is not a party to this Agreement or an affiliate or subsidiary of such a party; or
- (2) any such Liability caused by, resulting from or arising out of the gross negligence, willful misconduct or fraud of such indemnitee.

*Information:* all records, books, contracts, instruments, computer data and other data and information.

*Information Statement:* as defined in Section 3.4 hereof.

*Intellectual Property Rights:*

- (1) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof;
- (2) all Marks, whether registered or unregistered Marks, and all applications, registrations, and renewals in connection with the Marks;
- (3) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, all computer software (including data and related documentation), all websites as well as supporting HTML coding and source code, all mask works and all applications, registrations, and renewals in connection therewith;
- (4) all trade secrets and confidential information, including ideas, research and development, know-how, proprietary processes and formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals;
- (5) any income, royalties and payments which accrue as of the Distribution Date or thereafter with respect to any of the foregoing items, including payments for past, present or future infringements or misappropriation thereof, the right to sue and recover for past infringements or misappropriation thereof;



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- (6) any goodwill associated with any of the foregoing;
  - (7) all other proprietary rights; and
  - (8) all copies and tangible embodiments thereof (in whatever form or medium).

*Liabilities:* losses, damages, Actions, judgments, payments, debts, commissions, duties, costs, fees, expenses, settlements, salaries, performance or delivery penalties, liabilities, warranty liabilities (whether implicit or explicit or whether granted orally or in writing) and obligations (whether pecuniary or not, including obligations to perform or forbear from performing acts or services), fines or penalties, of any kind or nature (including all reasonable out-of-pocket costs, fees and expenses, whether legal, accounting or otherwise), whether accrued or fixed, absolute or contingent, matured or un-matured, determined or determinable, known or unknown.

*Marks:* all trademarks, service marks, trade dress, logos, trade names, and corporate names, together with all translations, adaptations, derivation, and combinations thereof and including all goodwill associated therewith.

*Parent:* as defined in the Recitals hereto.

*Parent Assets:* all of the Assets owned by Parent or its subsidiaries, other than the Spinco Assets.

*Parent Business:* all businesses and operations (including related joint ventures and alliances) of Parent, other than the Spinco Business.

*Parent Common Stock:* as defined in the Recitals hereto.

*Parent Group:* Parent and its subsidiaries other than members of the Spinco Group.

*Parent Indemnitees:* Parent, each affiliate of Parent and each of their respective Representatives and each of the heirs, executors, successors and assigns of any of the foregoing.

*Parent Liabilities:* all of the Liabilities of Parent and its subsidiaries, other than the Spinco Liabilities.

*Person:* an individual, a partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization or a government or any department or agency thereof.

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*Record Date:* the close of business on the date to be determined by the Board of Directors of Parent as the record date for determining shareholders of Parent entitled to receive shares of Spinco Common Stock in the Distribution.

*Registration Statement:* Spinco's final registration statement on Form 10 filed with the U.S. Securities and Exchange Commission in connection with the Distribution.

*Representative:* with respect to any Person, any of such Person's directors, officers, employees, agents, consultants, advisors, accountants, attorneys and representatives.

*Separation:* as defined in the Recitals to this Agreement.

*Spinco:* as defined in the Recitals hereto.

*Spinco Assets:* except as expressly provided in this Agreement or in the Ancillary Agreements,

(1) all Assets reflected on the Spinco Balance Sheet as set forth in the Registration Statement or the accounting records supporting the Spinco Balance Sheet and all Assets of either the Parent Group or the Spinco Group acquired between December 31, 2007 and the Assumption Time that would have been included on the Spinco Balance Sheet had they been owned on December 31, 2007, excluding any Assets sold or otherwise disposed of on or prior to the Assumption Time;

(2) all Assets primarily related to or used by the Spinco Business that are owned, leased, licensed or held by any member of either Group at the Assumption Time;

(3) all equity interests in any of Spinco's subsidiaries and other equity interests and similar arrangements primarily related to the Spinco Business, including those shares of capital stock and other interests listed on Schedule 1.1(a);

(4) all hedge and option arrangements entered into by Parent in respect of the Spinco Business;

(5) all rights held of Spinco set forth in Section 9.14; and

(6) all of the Assets listed on Schedule 1.1(b); provided that:

(a) Intellectual Property Rights shall be Spinco Assets only in the form and to the extent provided in Section 2.1(b);

(b) cash shall be a Spinco Asset only to the extent set forth in Section 2.6 hereof;

(c) the leased real property at 200 E. Randolph Drive, Suite 6600, Chicago, Illinois shall not be a Spinco Asset or a Spinco Liability, but the Parties shall enter into a sublease agreement substantially in the form of Exhibit H with respect to such leased property;

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- (d) pension assets shall be transferred to Spinco only in the amounts, to the extent and in the manner set forth in Section 2.7; and  
(e) Spinco Assets shall not include the Assets set forth on Schedule 1.1(c).

*Spinco Balance Sheet*: the audited combined balance sheet of Spinco as of December 31, 2007, and the notes thereto, as set forth in the Registration Statement.

*Spinco Business*: all businesses, operations or products (including related joint ventures and alliances) of the FoodTech and Airport Systems businesses of Parent and its subsidiaries and affiliates (whether or not currently owned, used or occupied by the Parent and its subsidiaries or affiliates).

*Spinco Common Stock*: as defined in the Recitals to this Agreement.

*Spinco Group*: Spinco and its subsidiaries.

*Spinco Indemnitees*: Spinco, each affiliate of Spinco and each of their respective Representatives and each of the heirs, executors, successors and assigns of any of the foregoing.

*Spinco Liabilities*: all Liabilities related to or arising out of the Spinco Assets or the Spinco Business or otherwise specified as Spinco Liabilities in this Agreement or any Ancillary Agreement, including:

(1) except as expressly provided in the Ancillary Agreements, all Liabilities reflected on the Spinco Balance Sheet as set forth in the Registration Statement or the accounting records supporting such Spinco Balance Sheet and all Liabilities of either Group incurred or arising between December 31, 2007 and the Assumption Time which would have been included on the Spinco Balance Sheet had they been incurred or arisen on or prior to December 31, 2007, excluding those Liabilities (or portions thereof) that have been satisfied, paid or discharged prior to the Assumption Time;

(2) all Liabilities of any discontinued or closed business, operation or product that would have been part of the Spinco Business as of December 31, 2007 if such business, operation or product had not been discontinued or closed prior to such time; provided that, notwithstanding such general rule, any discontinued or closed business, operation or product listed on Schedule 1.1(d)-(2) shall be the obligation and liability of Spinco and/or Parent as specified on such Schedule 1.1(d)-(2);

(3) all environmental Liabilities primarily related to the Spinco Business or any environmental Liability to the extent arising out of or resulting from the use by Spinco Business of any property owned, operated, used or leased in the course of operating any Spinco Business at any time or any other property where the Spinco Business contracted or arranged for disposal at any time; provided that, notwithstanding such general rule, environmental Liabilities for the facilities set forth on Schedule 1.1(d)-(3) shall be the obligation and liability of Spinco and/or Parent as specified on such Schedule 1.1(d)-(3). With respect to environmental Liabilities arising from any facility

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that was jointly used by Spinco and Parent, except as otherwise specified on Schedule 1.1(d)-(3), if one party was the primary or predominant user of the property, that party shall be responsible to administer any Action related thereto, including providing any required defense, and the other party shall cooperate in the administration and defense. Liabilities associated with any such Action shall be shared equally by Parent and Spinco unless there is another allocation methodology that more accurately and reasonably reflects the appropriate allocation of responsibility as between Parent and Spinco (including, for the avoidance of doubt, a reasonable estimation of relative fault or cause of the Liabilities);

(4) all Liabilities related to or incurred in the manufacture of products of the Spinco Business sold to third parties by any member of either the Parent Group or the Spinco Group;

(5) Liabilities for Taxes specifically allocated to Spinco under the Tax Sharing Agreement; and

(6) all Liabilities with respect to the various claims and potential claims set forth on Schedule 1.1(d)-(6).

To the extent any third party has purchased products or services from business units of the Energy Processing or Energy Production divisions of Parent prior to the Distribution Date through (i) formal or informal distribution arrangements between the FoodTech or Airport Systems businesses, on the one hand, and any such Energy Processing or Energy Production business units, on the other hand, or (ii) contracts executed by legal entities operating as FoodTech or Airport Systems businesses whose ownership is transferred to Spinco in the Contribution, any Liabilities resulting from such arrangements are Parent Liabilities and will not be considered to be Spinco Liabilities; provided that, to the extent that any such Liability arises out of or relates to the actions or inactions of Spinco or any person acting on behalf of Spinco or the FoodTech or Airport Businesses in a manner inconsistent with the applicable arrangement with the Energy Processing or Energy Production divisions of Parent, such Liabilities shall be Spinco Liabilities.

*Tax*: as defined in the Tax Sharing Agreement.

*Tax Sharing Agreement*: the Tax Sharing Agreement between Parent and Spinco, substantially in the form of Exhibit A hereto.

*Trademark License Agreement*: the Trademark License Agreement between Parent and Spinco, substantially in the form of Exhibit E.

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## ARTICLE II

### THE CONTRIBUTION

#### SECTION 2.1 Contribution.

(a) On or prior to the Assumption Time, Parent shall assign and transfer to a member of the Spinco Group to be selected by Spinco, all of Parent's and its subsidiaries' respective rights, title and interests in all Spinco Assets except as otherwise specified in this Agreement. Except to the extent of any later transfers described in Section 2.3, the transfers described in this Section will become effective at the Assumption Time. In partial consideration for the transfers described above, Spinco shall deliver to Parent all of the shares of Spinco Common Stock.

(b) Effective as of the Assumption Time, Spinco shall assume and discharge in due course all of the Spinco Liabilities in accordance with their respective terms.

(i) *Separation of Assets*. The Spinco Assets (other than Intellectual Property Rights, which will be licensed or assigned only as set forth in Section 2.1(b)(ii)) shall, to the extent reasonably practicable (including taking into account the costs of any actions taken), be separated from the Parent Assets so that members of the Spinco Group will own and control the Spinco Assets at the Assumption Time and members of the Parent Group will own and control the Parent Assets at the Assumption Time. Such separation shall be effected in a manner that does not unreasonably disrupt either the Spinco Business or the Parent Business and minimizes, to the extent practicable, current and future costs (and losses of Tax or other economic benefits) of the respective businesses. With respect to any Asset that cannot reasonably be separated or otherwise allocated as provided above (A) all right, title and interest of the Parent Group shall be allocated to the party as to which such Asset is primarily used or held for use or primarily relates and (B) the other party shall have a right to use such Asset in its business in a manner consistent with past practice for a period which is coterminous with the life of the Asset described in (A) (and the obligation to pay its allocable share of any costs or expenses related to such Asset based on the methodology historically used by Parent); provided that if any Ancillary Agreement provides a more specific allocation or methodology with respect to any such Asset, the more specific treatment provided in the Ancillary Agreement shall prevail. To the extent the separation of Assets cannot be achieved in a reasonably practicable manner, the parties will enter into appropriate arrangements regarding such shared Asset.

(ii) *Intellectual Property*. In connection with the Contribution, any Intellectual Property Rights of Parent or any of its subsidiaries shall be licensed or assigned to Spinco, as the case may be, as follows:

- (1) With respect to Intellectual Property Rights (other than any Intellectual Property Rights described in the Trademark License Agreement, which shall remain assets of Parent other than as set forth in the Trademark License Agreement) used or held for use primarily in connection with the Spinco Business ("Spinco Group IP"), including the Intellectual Property Rights listed in Schedule 2.1(b), Spinco shall have full ownership (to the extent of Parent's rights therein) of such rights.
- (2) Except as otherwise provided in Schedule 2.1(b), with respect to Spinco Group IP used or held for use in both the Spinco Business and the Parent Business on or before the Assumption Time, the Parent

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Group shall have a non-exclusive, worldwide, fully-paid, perpetual, royalty-free license, with the right to grant sublicenses in the ordinary course of an on-going business, to all rights therein only to the extent it was used or held for use by the Parent Business at or before the Assumption Time. Parent and Spinco shall jointly determine the most cost-efficient means of obtaining and using software that is used by the Parent corporate staff prior to the Assumption Time and shall evenly divide the cost of obtaining new licenses for or copies of existing software that both Groups will require to operate their respective corporate staffs.

- (3) Except as otherwise provided in Schedule 2.1(b), with respect to Intellectual Property Rights other than Spinco Group IP that are used or held for use in both the Spinco Business and the Parent Business on or before the Assumption Time, title to such rights shall be owned by the Parent Group, and the Spinco Group shall have a non-exclusive, worldwide, fully-paid, perpetual, royalty-free license, with the right to grant sublicenses in the ordinary course of an ongoing business, to all rights in the Intellectual Property Rights only to the extent it was used or held for use by the Spinco Business on or before the Assumption Time; provided that to the extent any such Intellectual Property Rights are of the kind covered by the Trademark License Agreement or the Trademark Assignment and Coexistence Agreement in substantially the form set forth on Exhibit G, the terms of the Trademark License Agreement or Trademark Assignment and Coexistence Agreement, as applicable, shall prevail and the license rights described in this paragraph shall not apply.
- (4) The licenses specified in this Section shall not restrict the subsequent transfer or license by the licensee (within the applicable field of use) of the Intellectual Property Rights, other than as specified in the Trademark License Agreement.
- (5) Notwithstanding anything to the contrary in this Agreement, the Intellectual Property Rights described in the Trademark Assignment and Coexistence Agreement in substantially the form set forth on Exhibit G shall be transferred to Spinco only to the extent set forth in such agreement, and the terms of such agreement shall prevail with respect to any Intellectual Property Rights described in such agreement.

SECTION 2.2 Conditions Precedent to Completion of the Contribution.

The obligations of the parties to complete the Contribution shall be conditioned on the satisfaction, or waiver by Parent, of the following conditions:

- (a) Final approval of the Contribution shall have been given by the Board of Directors of Parent in its sole discretion; and

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(b) The conditions to the completion of the Distribution set forth in Section 3.6 hereof shall have been satisfied or waived pursuant to such Section 3.6.

SECTION 2.3 Transfers Not Effected Prior to the Separation; Transfers Deemed Effective at the Assumption Time.

To the extent that any transfers contemplated by this Article II shall not have been completed at the Assumption Time, the parties shall cooperate and use reasonable efforts to effect such transfers as promptly following the Assumption Time as shall be practicable. Nothing in this Agreement shall be deemed to require the transfer of any Assets or the assumption of any Liabilities which by their terms or operation of law cannot be transferred or assumed; provided, however, that Parent and Spinco shall cooperate and use reasonable efforts to obtain any necessary consents or approvals for the transfer of all Assets and Liabilities contemplated to be transferred pursuant to this Article II. In the event that any such transfer of Assets or Liabilities has not been completed effective as of and after the Assumption Time, the party retaining such Asset or Liability shall thereafter hold such Asset for the use and benefit of the party entitled thereto (at the expense of the party entitled thereto) and retain such Liability for the account of the party by whom such Liability is to be assumed pursuant hereto, and take such other action as may be reasonably requested by the party to which such Asset is to be transferred, or by whom such Liability is to be assumed, as the case may be, in order to place such party, insofar as reasonably possible, in the same position as would have existed had such Asset or Liability been transferred as contemplated by this Agreement. As and when any such Asset or Liability becomes transferable, such transfer shall be effected promptly. The parties agree that, at the Assumption Time, each Party shall be deemed to have acquired complete and sole beneficial ownership over all of the Assets, together with all rights, powers and privileges incident thereto, and shall be deemed to have assumed in accordance with the terms of this Agreement all of the Liabilities, and all duties, obligations and responsibilities incident thereto, which such party is entitled to acquire or required to assume pursuant to the terms of this Agreement.

SECTION 2.4 Ancillary Agreements.

Parent and Spinco shall, on or prior to the Assumption Time, enter into the Ancillary Agreements in connection with the Separation, including (i) (A) such bills of sale, stock powers, capital contribution agreements, certificates of title, assignments of contracts and other instruments of transfer and assignment as and to the extent necessary to evidence the transfer and assignment of all of Parent's and its respective subsidiaries' right, title and interest in and to the Spinco Assets to Spinco or any subsidiary thereof and (B) such bills of sale, stock powers, capital contribution agreements, certificates of title, assignments of contracts and other instruments of assumption as and to the extent necessary to evidence the valid and effective assumption of the Spinco Liabilities by Spinco or any subsidiary thereof, and (ii) agreements with respect to (A) transition services (including shared facilities) pursuant to the Transition Services Agreement between Parent and Spinco, substantially in the form of Exhibit B, (B) intellectual property licenses as contemplated by Section 2.1(b), (C) each other Ancillary

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Agreement and (D) other matters as may be advisable. The Ancillary Agreements (or, in the case of the forms of agreement attached hereto, any amendments thereto) shall be on terms reasonably acceptable to Parent and Spinco.

SECTION 2.5 Certificate of Incorporation; By-laws; Rights Plan.

Prior to the completion of the Distribution, Parent and Spinco shall take all action necessary so that (i) the Amended and Restated Certificate of Incorporation and the Amended and Restated By-laws, each as previously finalized as set forth on Exhibits C and D, respectively, shall remain in full force and effect on the Distribution Date, and (ii) the Preferred Share Purchase Rights Agreement of Spinco, in substantially the form of Exhibit E hereto, shall become effective upon the Distribution.

SECTION 2.6 Dividend and Cash.

(a) On or before the Distribution Date,

(i) Spinco shall cause to be received from the Credit Agreement and the Note Purchase Agreement, each dated on or before the Distribution Date, in substantially the forms reviewed by Parent prior to the Distribution Date, an amount not less than that necessary to enable Spinco to pay the Initial Dividend Amount to Parent on or before the Distribution Date

(ii) Spinco and Parent shall jointly determine the Initial Dividend Amount, which amount shall be based on the parties' best estimate of the expected pro forma accounts of the Spinco Business as of the Distribution Date; and

(iii) Spinco shall cause to be paid to Parent an amount equal to the estimate of the Dividend Amount (such amount actually paid to Parent on or before the Distribution Date, the "Initial Dividend Amount").

(b) Unless otherwise specified in this Agreement or any exhibit or schedule hereto, for purposes of calculating the Initial Dividend Amount, the Final Dividend Amount and the After Tax Operating Cash Flow of the Spinco Business, those certain one time expenses, restructuring expenses (including tax costs associated with foreign transfers) and deal related costs specified in Section 9.2 are to be paid by Parent, including reimbursement to Spinco for any such costs incurred.

(c) Settlement of inter-company loans will not create any third party indebtedness for borrowed money.

(d) Within 60 days after the Distribution Date, Spinco shall determine the final Dividend Amount (such amount, subject to adjustment for any dispute settled as set forth in this Section 2.6(d), the "Final Dividend Amount") and shall deliver to Parent the calculation of the Final Dividend Amount, along with all relevant documents used to determine the Final Dividend Amount. At Parent's reasonable request, Spinco shall promptly deliver or make available to Parent all books and records used or useful in Parent's review of the Final Dividend Amount. Parent shall have 30 days to review the Final Dividend Amount delivered by Spinco, and shall bring any dispute to Spinco's attention by written notice within such 30 day review period. If



Parent agrees to the Final Dividend Amount and such amount is less than the Initial Dividend Amount, Parent shall pay the difference to Spinco not later than 10 business days after Parent's written agreement to such amount (or 10 business days after the expiration of the 30-day review period, if earlier). If the Final Dividend Amount is greater than the Initial Dividend Amount, Spinco shall pay the excess to Parent not later than 10 business days after Spinco's delivery of the Final Dividend Amount (provided that Parent shall still have 30 days from the date of its receipt of such books and records to dispute that the Final Dividend Amount should have been greater). In the event of a dispute of the Final Dividend Amount by Parent, Parent shall give notice thereof no later than 30 days after delivery of the certificate of the Final Dividend Amount from Spinco; provided that, if the Final Dividend Amount is less than the Initial Dividend Amount and the Parent agrees with the calculation of that shortfall, then Parent shall pay such undisputed amount to Spinco not later than 10 business days after Parent's written agreement to such amount (or 10 business days after the expiration of the 30-day review period, if earlier). The parties shall cooperate in an effort to resolve any such dispute. If they are unable to resolve any such dispute within 30 days after the expiration of Parent's 30-day review period, either party may submit the matter for resolution to PricewaterhouseCoopers (or if PricewaterhouseCoopers is not willing or able to serve, to Ernst & Young, or if Ernst and Young is not willing or able to serve, to any other nationally recognized independent accounting firm). The decision of such firm shall be final and binding upon the parties and shall thereafter represent the Final Dividend Amount for purposes hereof. Within 5 business days after the earlier of Parent and Spinco mutually agreeing to the Final Dividend Amount or the final determination of the independent accountant, (i) Parent shall pay to Spinco any previously unpaid amount by which the Initial Dividend Amount exceeds the Final Dividend Amount or (ii) Spinco shall pay to Parent any previously unpaid amount by which the Final Dividend Amount exceeds the Initial Dividend Amount. The fees and expenses of the firm shall be borne equally by Parent and Spinco.

#### SECTION 2.7 Pension Asset Transfers.

(a) Prior to the date hereof, the FMC Technologies Employees' Retirement Program was applicable to both employees who have become, or will become on the Distribution Date, employees of Spinco or its subsidiaries. Subsequent to June 30, 2008, the JBT Defined Benefit Retirement Trust will bear the allocated assets and liabilities of the employees of Spinco, retirees from Spinco businesses or locations and terminated vested employees from Spinco businesses or locations. The parties hereto agree that the total amount that Parent shall cause to be transferred from the trust funding the FMC Technologies Employees' Retirement Program to the JBT Defined Benefit Retirement Trust will be an amount equal to the portion of the total assets of the FMC Technologies Employees' Retirement Plan that Mercer (who shall be engaged by Parent to make such determination) shall determine is allocable to the JBT Defined Benefit Retirement Trust in accordance with a Section 4044 of ERISA asset allocation of the current FMC Technologies Employees' Retirement Program as of June 30, 2008. This allocation will be completed prior to December, 31, 2008.

Prior to the date hereof, Parent has caused or will cause the FMC Technologies Employees' Retirement Program to transfer to the trustee of the JBT Defined Benefit Retirement Trust an amount in cash equal to \$10,000,000. Parent shall cause the trustee of the trust funding the FMC Technologies Employees' Retirement Program to make a subsequent asset transfer to the trustee of the JBT Defined Benefit Retirement Trust prior to December 31, 2008 in an

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aggregate amount equal to the sum of (a) (i) the Section 4044 asset allocation at June 30, 2008 attributable to the JBT Defined Benefit Retirement Trust as determined by Mercer, minus (ii) \$10,000,000, and (b) (i) the investment performance gain or loss percentage of the FMC Technologies Employees' Retirement Program from June 30, 2008 to the funding date times (ii) the Section 4044 asset allocation at June 30, 2008 attributable to the JBT Defined Benefit Retirement Trust as determined by Mercer at June 30, 2008 minus \$10,000,000. Investment performance will be calculated monthly and compounded, including all investment management fees and asset based trustee fees, excluding contributions and benefit payments. For administrative purposes, the investment performance will be estimated at the funding date and trued up to actual performance within 30 days, with the true-up payment bearing interest at one-month Treasury bill rates. Parent and Spinco shall cooperate with Mercer as is reasonably requested by it or the other party hereto in order to assist Mercer with its tasks hereunder. Additionally, Parent shall consult with Spinco for all major changes to the investments of the FMC Technologies Employees' Retirement Program during the period from June 30, 2008 to the funding date.

(b) Prior to the Distribution Date, Parent will cause the transfer from the FMC Technologies Employees' Savings and Investment Plan and FMC Technologies Employees' Non-qualified Savings and Investment Plan the liabilities and assets associated with current Spinco employees, retirees from Spinco businesses or locations, and terminated vested former employees from Spinco businesses or locations to the John Bean Technologies Corporation Savings and Investment Plan and the John Bean Technologies Corporation Non-qualified Savings and Investment Plan.

(c) In Brazil, Parent's subsidiary converted its defined benefit retirement plan to a defined contribution plan. All employees were converted to the defined contribution plan with the exception of approximately 22 current and term vested employees. The Brazilian retirement plan will be split between the Parent and Spinco as follows in (i)-(iii).

(i) The vested defined benefit retirement liabilities for all term vested employees will remain with the Parent along with the defined contribution liabilities for employees, terminated vested employees, and retirees associated with the Parent's remaining business. Except for the vested defined benefit retirement plan liabilities retained by the Parent, Spinco will assume the liabilities of employees, terminated vested employees, and retirees associated with Spinco's businesses. Towers Perrin, the plan actuary, will perform an actuarial valuation at June 30, 2008 of the defined benefit and the defined contribution plans. After that valuation, a sufficient amount of assets to provide for payment of the vested defined benefit retirement liability will be allocated to the Parent's plan. These assets will be invested in a manner to match the benefit payments and defined benefit liability. Defined contribution assets associated with the defined contribution plans will be allocated to Parent or Spinco's defined contribution plans based on whether the employee is or was at retirement a Parent or Spinco employee. After the allocation described above and other actuarial adjustments, the actuarial gain or loss from the valuation will be distributed to the Parent and Spinco plans in proportion to the defined contribution and defined benefit liabilities. For the avoidance of doubt, the actuarial valuation gain or loss referenced in this section comes from the calculation on page 18 in the Towers Perrin March 2008 presentation of the actuarial valuation as of June 2007.

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(ii) Parent will compensate Spinco in the Initial Dividend Amount and Final Dividend Amount by an amount equal to the estimated difference between 50% of the total actuarial gain or loss of the combined plans and the amount of actuarial gain or loss estimated to remain in the Parent's plan multiplied by 1 minus the applicable Brazilian tax rate. For purposes of the estimation, the difference between 50% of the total actuarial gain or loss and the amount of actuarial gain or loss estimated to remain in the Parent's plan will be \$702,632 (Brazilian Reais 1,147,750 @ 1.6335 Brazilian Reais/\$). This portion of the Initial Dividend Amount and Final Dividend Amount will be adjusted to actual after the completion of the June 30, 2008 actuarial valuation but not later than December 30, 2008 based on the actual difference between 50% of the total actuarial gain or loss and the amount of actuarial gain or loss remaining in the Parent's Plan times 1 minus the applicable Brazilian tax rate.

(iii) Spinco agrees to indemnify Parent for ten (10) years for 50% of any change in the difference between actuarial liability associated with the retained defined benefit retirement liability and the assets invested to match that liability. Every two years Parent's actuary will furnish Spinco an annual report in reasonable detail showing both the components and change in the retained defined benefit retirement liabilities and invested matched assets. Within 30 days of the report, Spinco will make indemnifying payments to Parent such that the indemnifying amount will equal 50% of the shortfall in matched asset market values from the actuarial liability. Parent will cause Parent's Brazilian subsidiary to contribute 100% of the identified shortfall to the Brazilian retirement plan within 30 days of the Spinco payment. No indemnification payment will be due if assets in the matched asset account are greater than the actuarial liability.

**SECTION 2.8 Foreign Exchange Forward Instruments.**

Parent and Spinco agree that certain foreign exchange forward instruments related to the Spinco Business may not be assigned to Spinco due to counterparty constraints. Within 60 days after the Distribution Date Parent shall terminate the instruments not assigned to Spinco in such a manner that Spinco may replace the instruments contemporaneously with their selected financial institutions. Parent shall transfer to Spinco all cash proceeds as a result of the termination of the instruments and pay to Spinco within 10 business days of cash receipt. If Parent is required to submit cash proceeds to the institutions those amounts will be communicated to Spinco and Spinco shall pay to Parent within 10 business days.

**ARTICLE III**

**THE DISTRIBUTION**

**SECTION 3.1 Record Date and Distribution Date.**

Subject to the satisfaction of the conditions set forth in Section 3.6, the Board of Directors of Parent shall establish the Record Date and the Distribution Date, as applicable, and any appropriate procedures to be followed in connection with a Distribution.

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SECTION 3.2 The Agent.

Prior to the Distribution Date, Parent shall enter into an agreement with a distribution agent providing for, among other things, the completion of the Distribution in accordance with this Article III.

SECTION 3.3 Delivery of Shares to the Agent.

Prior to the Distribution Date, Parent shall deliver to the distribution agent a share certificate representing (or authorize the related book-entry transfer of) all of the outstanding shares of Spinco Common Stock to be distributed in connection with the completion of the Distribution. After the Distribution Date, upon the request of the distribution agent, Spinco shall provide all certificates for shares (or book-entry transfer authorizations) of Spinco Common Stock that the distribution agent shall require in order to effectuate the Distribution.

SECTION 3.4 Actions Prior to the Distribution.

(a) Parent and Spinco shall prepare and mail to holders of Parent Common Stock such information concerning Spinco and its business, operations and management, the Distribution and such other matters as Parent shall reasonably determine and as may be required by law, including the Securities Act of 1933, as amended and the Securities Exchange Act of 1934, as amended, in each case together with the rules and regulations promulgated thereunder, if applicable (the "Information Statement"). Parent and Spinco will prepare, and, to the extent required under applicable law, file with the U.S. Securities and Exchange Commission such Information Statement and any requisite no-action request letters which Parent determines are necessary or desirable to effectuate the Distribution and Parent and Spinco shall use their reasonable best efforts to obtain any necessary approvals from the U.S. Securities and Exchange Commission with respect thereto as soon as practicable.

(b) Parent and Spinco shall take all such action as Parent may determine necessary or appropriate under state securities or blue sky laws of the United States (and any comparable laws under any foreign jurisdiction) in connection with the Distribution.

SECTION 3.5 The Distribution.

(a) Subject to the terms and conditions of this Agreement, each holder of Parent Common Stock on the Record Date (or such holder's designated transferee or transferees) will be entitled to receive 0.216 Spinco Shares for every share of Parent Common Stock held by such holder on the Record Date.

(b) No fractional shares of Spinco Common Stock shall be distributed in the Distribution. Parent shall direct the distribution agent to determine, as soon as practicable, the sum of fractional shares of Spinco Common Stock that would have been issued in the Distribution and sell the nearest number of whole shares equal to such sum in open market transactions or otherwise, in each case at then prevailing trading prices. The distribution agent shall then cause to be distributed to the holders of Parent Common Stock entitled to receive such proceeds in lieu of fractional shares an amount in cash equal to such holder's ratable share of the proceeds of such sale, without interest, after making appropriate deductions of the amount required to be withheld for federal income tax purposes and after deducting an amount equal to all brokerage charges, commissions and transfer taxes attributed to such sale.

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**SECTION 3.6 Conditions to Obligations.**

The following conditions must be satisfied (or waived by Parent) prior to the Parties becoming obligated to complete the Distribution:

(a) Final approval of the Distribution shall have been given by the Board of Directors of Parent in its sole discretion.

(b) The actions and filings necessary or appropriate under federal and state securities laws and state blue sky laws of the United States (and any comparable laws under any foreign jurisdictions) in connection with the Distribution (including, if applicable, any actions and filings relating to the Information Statement) shall have been taken and, where applicable, have become effective or been accepted.

(c) The Spinco Common Stock to be issued in the Distribution shall have been accepted for listing on the New York Stock Exchange, Inc., subject to official notice of issuance.

(d) No order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the completion of the Separation, the Contribution or the Distribution or any of the other transactions contemplated by this Agreement or any Ancillary Agreement shall be in effect.

(e) A private letter ruling from the Internal Revenue Service, in form and substance satisfactory to Parent, shall have been obtained, and shall continue in effect, to the effect that no gain or loss will be recognized by Parent, Spinco, or Parent's or Spinco's shareholders for federal income tax purposes as a result of the Distribution or the Contribution.

(f) All required consents and approvals in connection with the transactions contemplated hereby shall have been received or provided, except where the failure to obtain such consents or approvals would not have a material adverse effect on either (A) the ability of the parties to complete the transactions contemplated by this Agreement and the Ancillary Agreements or (B) the business, assets, liabilities, financial condition or results of operations of Spinco and its subsidiaries, taken as a whole.

(g) This Agreement shall not have been terminated.

**ARTICLE IV**

**SURVIVAL AND INDEMNIFICATION**

**SECTION 4.1 Survival of Agreements.**

All covenants and agreements of the parties contained in this Agreement shall survive each of the Contribution, the Separation and the Distribution.

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#### SECTION 4.2 Indemnification.

(a) Except as specifically otherwise provided in the Ancillary Agreements and without regard as to when any transfer is completed, from and after the Assumption Time the Parent Group shall indemnify, defend and hold harmless the Spinco Indemnitees from and against all Indemnifiable Losses relating to, arising out of or resulting from (i) the failure of any member of the Parent Group to pay or otherwise promptly discharge any Parent Liabilities, whether such Indemnifiable Losses relate to events, occurrences or circumstances occurring or existing, or whether such Indemnifiable Losses are asserted, before or after the Distribution Date, (ii) the failure of any member of the Parent Group to perform any of its obligations under this Agreement and (iii) the Parent Business or any Parent Liability (unless this Agreement specifically allocates such liability to Spinco).

(b) Except as specifically otherwise provided in the Ancillary Agreements and without regard as to when any transfer is completed, from and after the Assumption Time, the Spinco Group shall indemnify, defend and hold harmless the Parent Indemnitees from and against (i) all Indemnifiable Losses relating to, arising out of or resulting from the failure of any member of the Spinco Group (A) to pay or otherwise promptly discharge any Spinco Liabilities, whether such Indemnifiable Losses relate to events, occurrences or circumstances occurring or existing, or whether such Indemnifiable Losses are asserted, before or after the Distribution Date or (B) to perform any of its obligations under this Agreement; and (ii) all Indemnifiable Losses arising out of or based upon any untrue statement or alleged untrue statement of a material fact, or omission or alleged omission to state a material fact required to be stated, in any portion of the Registration Statement or the Information Statement (or any preliminary or final form thereof or any amendment thereto), or necessary to make the statements in the Registration Statement or the Information Statement not misleading.

(c) If any indemnity payment required to be made hereunder or under any Ancillary Agreement is denominated in a currency other than United States dollars, such payment shall be made in United States dollars and the amount thereof shall be computed using the closing exchange rate at which United States dollars may be exchanged for such currency (as quoted in the Wall Street Journal) on the payment date for such currency.

#### SECTION 4.3 Procedures for Indemnification for Third-Party Actions.

(a) Parent or Spinco, as applicable, shall notify the other in writing promptly after learning of any third-party Action for which any indemnitee intends to seek indemnification from the other under this Agreement. The failure of any indemnitee to give such notice shall not relieve any indemnifying party of its obligations under this Article IV except to the extent that such indemnifying party or its affiliate is actually prejudiced by such failure to give notice. Such notice shall describe such third-party Action in reasonable detail considering the information provided to the indemnitee.

(b) An indemnifying party may, by notice to the indemnitee and to Parent, if Spinco is the indemnifying party, or to the indemnitee and Spinco, if Parent is the indemnifying party, within 30 days after receipt by such indemnifying party of such indemnitee's notice of a third-party Action (or sooner, if the nature of such third-party Action so requires), undertake the defense or settlement of such third-party Action. The indemnifying party shall not have the right to assume the defense of a third-party Action (i) seeking material non-monetary remedies (such

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as criminal or material injunctive relief) or (ii) for which the indemnitee reasonably determines that the indemnifying party and the indemnitee have different legal defenses available which make it inappropriate for the indemnifying party to assume such defense, and in each case such third-party Actions may be defended by the indemnitee at the indemnifying party's expense; provided that the indemnitee shall use reasonable efforts to keep the indemnifying party apprised of the status of such matter(s) (provided that the failure to do so shall not affect the amount owed by the indemnifying party with respect to such third-party Action). If an indemnifying party undertakes the defense of any third-party Action, such indemnifying party shall thereby admit its obligation to indemnify the indemnitee against such third-party Action, and such indemnifying party shall control the investigation and defense or settlement thereof, and the indemnitee may not settle or compromise such third-party Action, except that such indemnifying party shall not (x) require any indemnitee, without its prior written consent, to take or refrain from taking any action in connection with such third-party Action, or make any public statement, which such indemnitee reasonably considers to be against its interests, or (y) without the prior written consent of the indemnitee and of Parent, if the indemnitee is a Parent Indemnitee, or the indemnitee and of Spinco, if the Indemnitee is a Spinco Indemnitee, consent to any settlement that does not include as a part thereof an unconditional release of the indemnitees from liability with respect to such third-party Action or that requires the indemnitee or any of its Representatives or affiliates to make any payment that is not fully indemnified under this Agreement or to be subject to any non-monetary remedy. Subject to the indemnifying party's control rights, the indemnitees may, at its expense, participate in the investigation and defense of any third-party Action assumed by the indemnifying party. Following the provision of notices to the indemnifying party, until such time as an indemnifying party has undertaken the defense of any third-party Action as provided in this Agreement, such indemnitee shall control the investigation and defense or settlement thereof at the cost and expense of the indemnifying party, without prejudice to its right to seek indemnification hereunder.

(c) In no event shall an indemnifying party be liable for the costs, fees and expenses of more than one law firm for all indemnitees (in addition to its own counsel, if any) in connection with any one action, or separate but similar or related actions, in the same jurisdiction arising out of the same general allegations or circumstances.

(d) Spinco and Parent shall make available to each other, their counsel and other Representatives, all information and documents reasonably available to them which relate to any third-party Action, and otherwise cooperate as may reasonably be required in connection with the investigation, defense and settlement thereof, subject to the terms and conditions of a mutually acceptable joint defense agreement. Any joint defense agreement entered into by Spinco or Parent with any third party relating to any third-party Action shall provide that Spinco or Parent may, if requested, provide information obtained through any such agreement to the Spinco Indemnitees and/or the Parent Indemnitees.

(e) The provisions of Section 4.3 (other than this Section 4.3(e)) and Section 4.4 shall not apply to Taxes (which are covered by the Tax Sharing Agreement).

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SECTION 4.4 Additional Matters.

(a) Any claim on account of a Liability which does not result from a third-party Action shall be asserted by written notice given by the indemnitee to the indemnifying party. Such indemnifying party may, within 30 days after receipt by such indemnifying party of such indemnitee's notice of such claim (or sooner, if the nature of such claim so requires), undertake the defense or settlement of such claim. If such indemnifying party does not respond within such 30-day period or rejects such claim in whole or in part, such indemnitee shall be free to pursue such remedies as may be available to such party as contemplated by this Agreement and the Ancillary Agreements.

(b) In the event of payment by or on behalf of any indemnifying party to or on behalf of any indemnitee in connection with any third-party Action, such indemnifying party shall be subrogated to and shall stand in the place of such indemnitee as to any events or circumstances in respect of which such indemnitee may have any right, defense or claim relating to such third-party Action against any claimant or plaintiff asserting such third-party Action or against any other person. Such indemnitee shall cooperate with such indemnifying party in a reasonable manner, and at the cost and expense (including allocated costs of in-house counsel and other personnel) of such indemnifying party, in prosecuting any subrogated right, defense or claim.

SECTION 4.5 Survival of Indemnities.

(a) The indemnity and contribution agreements contained in this Article IV shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Indemnitee; (ii) the knowledge by the indemnitee of Indemnifiable Losses for which it might be entitled to indemnification or contribution hereunder; or (iii) any termination of this Agreement.

(b) The rights and obligations of each Party and their respective indemnitees under this Article IV shall survive the sale or other transfer by any Party or its respective subsidiaries of any Assets or businesses or the assignment by it of any Liabilities.

SECTION 4.6 Remedies Cumulative.

The remedies provided in this Article IV shall be cumulative and shall not preclude assertion by any indemnitee of any other rights or the seeking of any other remedies against any indemnifying party. However, the procedures set forth in Section 4.3 and Section 4.4 shall be the exclusive procedures governing any indemnity action brought under this Agreement, except as otherwise specifically provided in any of the Ancillary Agreements.

**ARTICLE V**

**CERTAIN ADDITIONAL COVENANTS**

SECTION 5.1 Cooperation; Notices to Third Parties.

(a) In addition to the actions described in Section 5.2, the members of the Parent Group and the Spinco Group shall cooperate and use reasonable best efforts to make all other filings and give notice to and obtain any consents and waivers (including those from or to



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any governmental or regulatory authority) that may reasonably be required (both before and after the Assumption Time), and to take any other actions that may be required, to (i) complete and effectuate the transactions, provisions and purposes contemplated by this Agreement and the Ancillary Agreements (including completing any required employee or employee-related communications required by law or contract) and (ii) operate its business after the Assumption Time. On or prior to the Assumption Time, Parent and Spinco shall take all actions as may be necessary to approve the stock-based employee benefit plans of Spinco in order to satisfy any applicable requirement, including Rule 16b-3 under the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder, Section 162(m) of the Internal Revenue Code of 1986, as amended and the rules and regulations of the New York Stock Exchange, Inc. If either party identifies any commercial or other service that is needed to assure a smooth and orderly transition of the businesses in connection with the completion of the transactions contemplated hereby, and that is not otherwise governed by the provisions of this Agreement or any Ancillary Agreement, the parties will cooperate in determining whether there is a mutually acceptable arm's-length basis on which the other party will provide such service.

(b) After the Assumption Time, except in the case of an Action by one Party against the other Party (which shall be governed by such discovery rules as may be applicable thereto), each Party shall use its reasonable best efforts to make available to each other party, upon written request, the former, current and future directors, officers, employees, other personnel and agents of the members of its respective Group as witnesses and any books, records or other documents within its control or which it otherwise has the ability to make available, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with any Action in which the requesting party may from time to time be involved, regardless of whether such Action is a matter with respect to which indemnification may be sought hereunder. The requesting party shall bear all out-of-pocket costs, fees and expenses (including allocated costs of in-house counsel and other personnel) in connection therewith.

(c) Without limiting any provision of this Section 5.1, each of the parties agrees to cooperate with each other in the defense of any infringement or similar claim with respect any Intellectual Property Rights and shall not claim to acknowledge, or permit any member of its respective Group to claim to acknowledge, the validity or infringing use of any intellectual property of a third Person in a manner that would hamper or undermine the defense of such infringement or similar claim.

(d) In connection with any matter contemplated by this Section 5.1, the parties will enter into a mutually acceptable joint defense agreement so as to maintain to the extent practicable any applicable attorney-client privilege or work product immunity of any member of any Group.

#### SECTION 5.2 Intercompany Agreements and Accounts.

(a) All contracts, commitments or other arrangements between any member of the Parent Group and any member of the Spinco Group in existence at the Assumption Time, pursuant to which any member of either Group makes payments in respect of Taxes to any

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member of the other Group or provides to any member of the other Group goods or services (including management, administrative, legal, financial, accounting, data processing, insurance or technical support), or the use of any Assets of any member of the other Group, or the secondment of any employee, or pursuant to which rights, privileges or benefits are afforded to members of either Group as affiliates of the other Group, shall terminate effective at the Assumption Time, except as specifically provided in this Agreement or in the Ancillary Agreements. From and after the Assumption Time, no member of either Group shall have any rights under any such contract, commitment or arrangement with any member of the other Group, except as specifically provided in this Agreement or in the Ancillary Agreements.

(b) After the Assumption Time, the parties shall be obligated to pay only those intercompany accounts between members of the Spinco Group and members of the Parent Group that arose in connection with transfers of goods and services in the ordinary course of business, consistent with past practices (which the parties shall use reasonable best efforts to settle prior to the Assumption Time), and all other intercompany accounts shall be settled by the transfer of financial assets at the Assumption Time, except as otherwise contemplated by this Agreement.

#### SECTION 5.3 Guarantee Obligations.

(a) Prior to and from and after the Assumption Time, Parent and Spinco shall use their respective reasonable best efforts to cause Parent and each member of the Parent Group to be released, effective from and after the Assumption Time, from any obligations to guarantee or otherwise support any liabilities or obligations of any member of the Spinco Group, including guarantee of performance (the "Guarantees"), including through the substitution of such Guarantees by Parent or such members of the Parent Group with replacement guarantees by Spinco (or, if acceptable to the beneficiary of such a Guarantee, another member of the Spinco Group). Without limiting the foregoing, Spinco agrees that it shall cause Parent and each member of the Parent Group to be released from all such Guarantees not later than 24 months after the Assumption Time, including by way of termination of the applicable contract, but only if such release and termination is permitted without liability under such applicable contract.

(b) From and after the Assumption Time, (i) neither Parent nor any member of the Parent Group shall have any obligation to extend, renew or increase the principal amount of any Guarantee or create or enter into any new or additional Guarantee, and (ii) Spinco shall not increase the amount of any Guarantee by Spinco or any other member of the Spinco Group, extend any expiration date of any such Guarantee, extend the period of time for presentation of documents or demands under any such Guarantee, agree to any substitution of any such Guarantee, or agree to any creation, amendment, supplement, waiver or other modification of any such Guarantee provided that the limitations in clause (ii) shall not apply in the event that a member of the Spinco Group obtains a letter of credit from a financial institution reasonably acceptable to Parent and for the benefit of Parent with respect to such obligation of the Parent Group.

(c) Spinco shall reimburse and otherwise indemnify and hold harmless Parent for the full amount of all payments made or products or services delivered to third parties under any Guarantee not terminated prior to the Assumption Time, which reimbursement shall be made

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by wire transfer of immediately available funds in the full amount of any such payment or delivery. Any such reimbursement shall be made within ten (10) days after written demand by Parent.

SECTION 5.4 Qualification as Tax-Free Distribution.

After the Assumption Time, neither Parent nor Spinco shall take, or permit any member of its respective Group to take, any action which could reasonably be expected to prevent the Distribution from qualifying as a tax-free distribution within the meaning of Section 355 of the Internal Revenue Code of 1986, as amended or any other transaction contemplated by this Agreement or any Ancillary Agreement which is intended by the parties to be tax-free from failing so to qualify.

SECTION 5.5 Non-Solicitation and Non-Hire.

(a) Neither Parent nor Spinco shall, or shall permit any member of its respective group to, for a period of 18 months following the Assumption Time, directly or indirectly, solicit for employment any employee of the other party's Group; provided, however, that the foregoing shall not apply (i) to solicitations made by job opportunity advertisements and headhunter searches directed to the general public rather than targeting any employees of the other party's Group or (ii) with respect to any employee who has been terminated by such other party prior to (or has voluntarily left his or her employment more than six months prior to) such solicitation.

(b) Neither Parent nor Spinco shall, or shall permit any member of its respective group to, for a period of 18 months following the Assumption Time, directly or indirectly, hire any employee of the other (or any person who has been employed by the other at any time during the three months prior to the date of hire); provided that such hiring restriction shall not apply to employees of the other entity who were terminated as part of a reduction in force or for any other reason other than for cause.

**ARTICLE VI**

**ACCESS TO INFORMATION**

SECTION 6.1 Agreement for Exchange of Information.

(a) Parent and Spinco agree to provide to the other Group, as soon as reasonably practicable after written request therefor, any Information in the possession or under the control of such respective Group which the requesting party reasonably needs (i) to comply with reporting, disclosure, filing or other requirements imposed on the requesting party (including under applicable securities or Tax laws) by a governmental or regulatory authority having jurisdiction over the requesting party including in connection with any Registration Statement, (ii) for use in any other judicial, regulatory, administrative, Tax or other proceeding or in order to satisfy audit, accounting, claims, regulatory, litigation, Tax or other similar requirements, or (iii) to comply with its obligations under this Agreement or any Ancillary Agreement; provided, however, that in the event that any party determines that any such provision of Information could be commercially detrimental, violate any law or agreement, or

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waive any attorney-client privilege, the parties shall take all reasonable measures to permit the compliance with such obligations in a manner that avoids any such harm or consequence. Parent and Spinco intend that any transfer of Information that would otherwise be within the attorney-client privilege shall not operate as a waiver of any potentially applicable privilege. Each party shall make its employees and facilities available during normal business hours and on reasonable prior notice to provide explanation of any Information provided hereunder.

(b) After the Assumption Time, Spinco shall provide, or cause to be provided, to Parent in such form as Parent shall request, at no charge to Parent, all Information as Parent determines necessary or advisable in order to prepare Parent financial statements and reports or filings with any governmental or regulatory authority.

SECTION 6.2 Ownership of Information.

Any Information owned by one Group that is provided to a requesting party pursuant to Section 6.1 shall be deemed to remain the property of the providing party. Unless specifically set forth in this Agreement, nothing contained in this Agreement shall be construed as granting or conferring rights of license or otherwise in any such Information.

SECTION 6.3 Compensation for Providing Information.

The party requesting such Information agrees to reimburse the other party for the reasonable out-of-pocket costs, fees and expenses, if any, of creating, gathering and copying such information, to the extent that such costs, fees and expenses are incurred for the benefit of the requesting party, provided that reasonable detail of such costs, fees and expenses have been provided.

SECTION 6.4 Record Retention.

To facilitate the possible exchange of information pursuant to this Article VI and other provisions of this Agreement after the Assumption Time, the parties agree to use their reasonable best efforts to retain all Information in their respective possession or control at the Assumption Time in accordance with the policies of Parent as in effect at the Assumption Time.

SECTION 6.5 Limitation of Liability.

No party shall have any Liability to any other party in the event that any Information exchanged or provided pursuant to this Agreement that is an estimate or forecast, or which is based on an estimate or forecast, is found to be inaccurate, in the absence of willful misconduct or fraud by the party providing such information. No party shall have any Liability to any other party if any Information is destroyed after reasonable best efforts by such party to comply with the provisions of Section 6.4.

SECTION 6.6 Confidentiality.

(a) Subject to Section 6.7, each of Parent and Spinco, on behalf of itself and each member of its respective Group, agrees to hold, and to cause its respective Representatives to hold, in strict confidence, with at least the same degree of care that such party then uses with

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respect to its own confidential and proprietary information, all Information concerning each such other Group that is either in its possession (including information in its possession prior to any of the date hereof, the Assumption Time or the Distribution Date) or furnished by any such other Group or its respective Representatives at any time pursuant to this Agreement, any Ancillary Agreement or otherwise, and shall not use any such Information other than for such purposes as shall be expressly permitted hereunder or thereunder, except, in each case, to the extent that such information has been (i) in the public domain through no fault of such party or any member of such Group or any of their respective Representatives, (ii) later lawfully acquired from other sources by such party (or any member of such party's Group) which sources are not themselves bound by a confidentiality obligation, or (iii) independently generated without reference to any proprietary or confidential information of the other party.

(b) Each party agrees not to release or disclose, or permit to be released or disclosed, any such Information to any other Person, except its Representatives who need to know such information (who shall be advised of their obligations hereunder with respect to such information), except in compliance with Section 6.7. Without limiting the foregoing, when any Information is no longer needed for the purposes contemplated by this Agreement or any Ancillary Agreement, each party will promptly after request of the other party either return to the other party all Information in a tangible form (including all copies thereof and all notes, extracts or summaries based thereon) or certify to the other party that it has destroyed such Information (and such copies thereof and such notes, extracts or summaries based thereon).

**SECTION 6.7 Protective Arrangements.**

In the event that any party or any member of its Group either determines on the advice of its counsel that it is required to disclose any Information pursuant to applicable law or receives any demand under lawful process or from any governmental or regulatory authority to disclose or provide information of any other party (or any member of any other party's Group) that is subject to the confidentiality provisions hereof, such party shall notify the other party prior to disclosing or providing such information and shall cooperate at the expense of the requesting party in seeking any reasonable protective arrangements requested by such other party. Subject to the foregoing, the Person that received such request may thereafter disclose or provide Information to the extent required by such law (as so advised by counsel) or by lawful process or such governmental or regulatory authority.

**ARTICLE VII**

**NO REPRESENTATIONS OR WARRANTIES**

**SECTION 7.1 No Representations or Warranties.**

Except as expressly set forth in this Agreement or in any other Ancillary Agreement, Spinco understands and agrees that no member of the Parent Group is, in this Agreement or in any other agreement or document, representing or warranting to Spinco or any member of the Spinco Group in any way as to the Spinco Assets, the Spinco Business or the Spinco Liabilities, it being agreed and understood that Spinco and each member of the Spinco Group shall take all of the Spinco Assets "as is, where is." Except as expressly set forth in this

Agreement or in any other Ancillary Agreement, Spinco and each member of the Spinco Group shall bear the economic and legal risk that the Spinco Assets shall prove to be insufficient or that the title of any member of the Spinco Group to any Spinco Assets shall be other than good and free from encumbrances. The foregoing shall be without prejudice to any rights to indemnification under Section 4.2 or to the covenants otherwise contained in this Agreement or any other Ancillary Agreement.

**ARTICLE VIII**  
**TERMINATION**

**SECTION 8.1 Termination by Mutual Consent.**

This Agreement may be terminated at any time prior to the Distribution Date at the sole determination of Parent.

**SECTION 8.2 Effect of Termination.**

(a) In the event of any termination of this Agreement prior to completion of the Distribution, no party to this Agreement (or any of its directors or officers) shall have any Liability or further obligation to any other party.

(b) In the event of any termination of this Agreement on or after the completion of the Distribution, only the provisions of Article III (the Distribution) and Section 5.4 (Qualification as Tax-Free Distribution) will terminate and the other provisions of this Agreement and each Ancillary Agreement shall remain in full force and effect.

**ARTICLE IX**  
**MISCELLANEOUS**

**SECTION 9.1 Complete Agreement; Corporate Power.**

(a) This Agreement, the Exhibits and Schedules hereto and the Ancillary Agreements shall constitute the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings with respect to such subject matter.

(b) Parent represents on behalf of itself and each other member of the Parent Group and Spinco represents on behalf of itself and each other member of the Spinco Group as follows:

(i) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform each of this Agreement and each other Ancillary Agreement to which it is a party and to complete the transactions contemplated hereby and thereby; and

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(ii) this Agreement and each Ancillary Agreement to which it is a party has been duly executed and delivered by it and constitutes a valid and binding agreement of it enforceable in accordance with the terms thereof.

SECTION 9.2 Expenses.

Except as expressly set forth in or limited by Schedule 9.2 or elsewhere in this Agreement or in any Ancillary Agreement, all third party fees, costs and expenses paid or incurred prior to the Distribution in connection with the transactions contemplated by this Agreement and the Ancillary Agreements will be paid by the Parent. If the Separation and Distribution do not occur, then the Parent shall bear all fees, costs and expenses paid or incurred in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

SECTION 9.3 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (other than the laws regarding choice of laws and conflicts of laws that would apply the substantive laws of any other jurisdiction) as to all matters, including matters of validity, construction, effect, performance and remedies.

SECTION 9.4 Notices.

All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by standard form of telecommunications, by courier, or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Parent or any member of the Parent Group:

FMC Technologies, Inc.  
1803 Gears Road  
Houston, Texas 77067  
Attention: General Counsel  
Fax: (281) 591-4102

If to Spinco or any member of the Spinco Group:

John Bean Technologies Corporation  
200 E. Randolph Dr.  
Chicago, IL 60601  
Attention: General Counsel

or to such other address as any Party may have furnished to the other Party by a notice in writing in accordance with this Section 9.4.

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SECTION 9.5 Amendment and Modification.

This Agreement may be amended, modified or supplemented only by a written agreement signed by all of the Parties.

SECTION 9.6 Successors and Assigns; No Third-Party Beneficiaries.

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns, but neither this Agreement nor any of the rights, interests and obligations hereunder shall be assigned by any Party without the prior written consent of the other Party or except in connection with a merger or similar business combination involving a Party if the successor under applicable law expressly assumes all rights and obligations of such party hereunder and under each Ancillary Agreement as if it were such Party. Except for the provisions of Sections 4.2 and 4.3 relating to indemnities, which are also for the benefit of the indemnitees, this Agreement is solely for the benefit of the Parties and their subsidiaries and affiliates and is not intended to confer upon any other Persons any rights or remedies hereunder.

SECTION 9.7 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 9.8 Interpretation.

The Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

SECTION 9.9 Severability.

If any provision of this Agreement or the application thereof to any person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party.

SECTION 9.10 References; Construction.

References to any "Article," "Exhibit," "Schedule" or "Section," without more, are to Articles, Exhibits, Schedules and Sections to or of this Agreement. Unless otherwise expressly stated, clauses beginning with the term "including" set forth examples only and in no way limit the generality of the matters thus exemplified. To the extent any provision of this Agreement requires action or cooperation by the Parent, such requirement shall be deemed to include a requirement to cause the other members of the Parent Group and/or the Parent Indemnitees to take such action or to so cooperate unless the context requires otherwise, and to the extent any provision of this Agreement requires action or cooperation by Spinco, such requirement shall be deemed to include a requirement to cause the other members of the Spinco Group and/or the Spinco Indemnitees to take such action or to so cooperate unless the context requires otherwise



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SECTION 9.11 Specific Performance.

In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement or any Ancillary Agreement, the party or parties who are or are to be thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief of its rights under this Agreement or such Ancillary Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The parties agree that the remedies at law for any breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived. Each Party hereby submits to the exclusive jurisdiction of Delaware for purposes of all legal proceedings for equitable relief arising out of or relating to this Agreement or the transactions contemplated hereby. Each Party irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED IN THIS AGREEMENT OR ANY ANCILLARY AGREEMENT, AND AGREES TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT SUCH WAIVER.

SECTION 9.12 Conflict with Ancillary Agreements.

Except to the extent Section 4.2, 4.3 or 10.1 conflict with the Tax Sharing Agreement, in which case the Tax Sharing Agreement shall govern, the provisions of this Agreement shall govern in the event of any conflict between the provisions of any Ancillary Agreement and this Agreement.

SECTION 9.13 Joint Defense Cost Sharing Agreement.

Spinco hereby acknowledges and agrees that it has received a copy of the joint defense agreement between Parent and FMC Corporation, dated April 1, 2003, pursuant to which Parent and FMC Corporation agreed to the joint defense of certain matters (including mass tort litigation where both such entities are named as defendants). Spinco and Parent hereby agree that, beginning on the Distribution Date, Spinco shall promptly (and in any event within 10 business days after notice of such costs) reimburse and pay to Parent twenty percent (20%) of Parent's portion of the legal fees and other costs incurred by Parent in connection with the joint defense agreement between Parent and FMC Corporation, dated April 1, 2003. Parent shall provide Spinco with access to all information related to the administration of the joint defense agreement between Parent and FMC Corporation, dated April 1, 2003, including access to the records maintained in the Parent's matter management system related to such joint defense agreement.

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SECTION 9.14 Insurance Sharing.

(a) For all policies incepted on or after the Distribution Date, Parent and Spinco shall be completely responsible for managing all aspects of its own claims, at its own expense, including formal notification to insurers, interacting with insurance brokers, making payments to third-party administrators and shall in general make its own decisions regarding settlement of claims based on its own business judgment. However, for all claims related to or covered by insurance policies bound prior to the Distribution Date, the FMC Risk Management Department shall have the responsibility of formal notification to insurers and Parent and Spinco shall be responsible to coordinate its legal position with the other party and seek to avoid legal positions that may be in conflict with the legal position of the other party. To the extent a conflict in position cannot be avoided after discussion between the Parties, the issue shall be resolved pursuant to the dispute resolution procedure required by Article X of this Agreement.

(b) Responsibility for claims management and/or indemnity obligations, and any related claim for insurance coverage, shall belong to the party associated with the loss, except where the other party has assumed responsibility for that specific liability or type of liability in this Agreement or any schedule or exhibit hereto, in which case such responsibility and obligations shall belong to such other party. Neither this provision nor any other aspect of this Section 9.14 is intended to increase: (a) the burden on or the financial exposure to the insurers under the subject policies or (b) the benefits to the parties under those policies. Instead, it is the intent of Parent and Spinco to reflect the reality of which each such party is financially responsible for the alleged liability resulting from the subject claim(s) and to provide that the insurance benefits applicable to the claim(s) are available to the financially responsible party.

(c) If Spinco submits a claim under a policy in effect prior to the Distribution Date which is rejected in whole or in part by an insurer because Spinco is not a named insured on the policy, and if it is determined by Spinco and Parent that the claim would otherwise be covered if that claim were assumed and submitted by Parent, and to the extent such claim is payable and paid by insurance, then to that extent, Parent shall re-assume responsibility (only to the extent insurance proceeds are actually recovered) for that claim and present it to the insurer in its own name. In such event, Spinco shall, on an on-going monthly basis, hold harmless and indemnify Parent for all loss, cost and expense not covered by insurance. In such event, the re-assumed claim and any payment received from an insurer, shall be treated as belonging to Spinco.

(d) Where a third party presents a claim against both Parent and Spinco in error ("Third Party Error") and it is jointly agreed by the Parent and Spinco that only one Parent or Spinco should be involved, the involved party shall be responsible for claim management and promptly take all necessary actions to have the uninvolved party dismissed from the claim. To the extent Parent and Spinco are unable to agree on whether a claim represents a Third Party Error, the issue shall be resolved pursuant to the dispute resolution procedure required by Article X of this Agreement. Third Party Errors shall be deemed to include any action or claim against a party who, as between Parent and Spinco, is not responsible for such action or claim by operation of this Agreement, even though the party may be potentially responsible to the third party by operation of law.

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(e) Regarding policies in effect at the Distribution Date, Parent and Spinco agree to waive subrogation against the other party following the settlement or other resolution of any action which involves such insurance policy. In addition, Parent agrees that Spinco should be deemed and treated as an insured entitled to benefits under such policies based upon its historical business and activities covered under those policies when part of Parent, but only to the extent such policy is an occurrence-based policy.

(f) Parent and Spinco shall bear the cost of the applicable per occurrence deductible or self-insured retention as their claims occur. The burden created by the insolvency of any insurer in any layer of insurance shall be borne by the party or parties (on a pro rata basis) that incurred the loss and which resulted in the inability to collect the insurance because of insolvency of the insurer. For example, if both Parent and Spinco had claims that should have been covered by a layer of insurance, the lack of recovery would be split based on the relative losses incurred by Parent and Spinco in that layer. If only one of Parent or Spinco incurs losses that are not recoverable, that party shall bear the loss. If one of Parent or Spinco collects on a claim for a layer of insurance, the carrier becomes insolvent and then the other party incurs a claim, the insurance recoveries of the party that had recovered insurance proceeds will be shared pro rata (based on relative losses suffered within such layer of insurance by Parent and Spinco) with the other party.

(g) If both Parent and Spinco losses exceed an aggregate deductible then the insurance recoveries shall be shared by Parent and Spinco on a pro rata basis based on loss claims from each such party.

## ARTICLE X DISPUTE RESOLUTION

### SECTION 10.1 Dispute Resolution.

(a) Except for any claims for equitable relief in connection with the failure of any party to perform its covenants hereunder and except with respect to disputes under Section 2.6(d), in the event of any dispute or disagreement between any member of the Parent Group and any member of the Spinco Group as to the interpretation of any provision of this Agreement (or the performance of obligations hereunder), the parties shall promptly meet in a good faith effort to resolve the dispute. Should such good faith effort fail to resolve the dispute within fifteen (15) days after first meeting to resolve the dispute and upon the written request of Parent or Spinco, the dispute shall be referred to either the Chief Financial Officers (for matters that are deemed financial in nature) or the Chief Executive Officers (for each other matter) of the parties for decision. If the officers do not agree upon a decision within thirty (30) days after reference of the matter to them, each of Parent and Spinco shall submit any controversy, dispute or claim arising out of or relating in any way to this Agreement or the transactions arising hereunder for arbitration in the City of Chicago, Illinois, and such arbitration shall be the sole remedy for such monetary claims. Such arbitration shall be administered by the Center for Public Resources Institute for Dispute Resolutions in accordance with its then prevailing Rules for Non-Administered Arbitration of Business Disputes (except as otherwise provided in this Agreement), by an arbitrator or arbitrators as selected and described in Section 10.1(b). The

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arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1 et seq. The award rendered by the arbitrator(s) shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction.

(b) For all disputes for which the aggregate disputed dollar amount is equal to or less than \$3,000,000, then Parent and Spinco shall agree upon a single arbitrator to oversee the dispute. If Parent and Spinco cannot agree on such arbitrator within 20 days after submitting the dispute for arbitration, then the dispute shall be managed by a single independent arbitrator to be chosen by the Center for Public Resources Institute for Dispute Resolutions. For all disputes for which the aggregate disputed dollar amount exceeds \$3,000,000, such dispute shall be managed and ruled upon by a panel of three arbitrators. Parent and Spinco shall each name one of the arbitrators, and the third arbitrator shall be chosen by Parent and Spinco or, if Parent and Spinco cannot agree on such arbitrator within 20 days after submitting the dispute for arbitration, then the third arbitrator shall be an independent arbitrator selected by the Center for Public Resources Institute for Dispute Resolutions.

(c) The fees and expenses of the Center for Public Resources Institute for Dispute Resolution and the arbitrator(s) shall be shared equally by Parent and Spinco.

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

FMC TECHNOLOGIES, INC.

By: /s/ William H. Schumann, III  
Name: William H. Schumann III  
Title: Executive Vice President and Chief Financial Officer

JOHN BEAN TECHNOLOGIES CORPORATION

By: /s/ Ronald D. Mambu  
Name: Ronald D. Mambu  
Title: Vice President, Chief Financial Officer, Treasurer and  
Controller

**TAX SHARING AGREEMENT**

by and among

**FMC TECHNOLOGIES, INC.**

**AND ITS AFFILIATES**

and

**JOHN BEAN TECHNOLOGIES CORPORATION**

**AND ITS AFFILIATES**

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## TAX SHARING AGREEMENT

This **TAX SHARING AGREEMENT**, dated as of July 31, 2008, by and among **FMC TECHNOLOGIES, INC.** ("Parent"), a Delaware corporation, by and on behalf of itself and each Affiliate of Parent, and **JOHN BEAN TECHNOLOGIES CORPORATION** ("Spinco"), a Delaware corporation and currently a direct, wholly owned subsidiary of Parent, by and on behalf of itself and each Affiliate of Spinco. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Article I hereof.

### RECITALS

WHEREAS, the Board of Directors of Parent has determined that it is in the best interests of Parent and its stockholders to separate Parent's existing businesses into two independent companies (the "Separation");

WHEREAS, to effect the Separation, Parent intends to cause the transfer to Spinco of certain assets of Parent and its subsidiaries, and the assumption by Spinco of certain liabilities of Parent and its subsidiaries associated with the assets being transferred, all of which are primarily related to the Spinco Business (the "Contribution") as contemplated by Separation and Distribution Agreement dated as of July 31, 2008 (the "Separation Agreement") and the Ancillary Agreements;

WHEREAS, in connection with the Separation, the Board of Directors of Parent has determined that it would be advisable and in the best interests of Parent and its stockholders for Parent to distribute to the holders of the issued and outstanding shares of common stock of Parent (the "Parent Common Stock") as of the Record Date 100% of the issued and outstanding shares of common stock of Spinco (the "Spinco Common Stock"), together with the associated preferred stock purchase rights (each share of such stock, together with the associated preferred stock purchase right, a "Spinco Share"), on the basis of 0.216 Spinco Shares for every share of Parent Common Stock (the "Distribution");

WHEREAS, the Contribution and Distribution are intended to qualify as a tax-free reorganization and distribution under Sections 368(a)(1)(D) and 355 of the Code; and

WHEREAS, in contemplation of the Distribution, Parent and Spinco desire to set forth their agreement on the rights and obligations of Parent and Spinco and their respective Affiliates with respect to the responsibility, handling and allocation of federal, state, local, and foreign Taxes, and various other Tax matters.

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions, covenants, and provisions of this Agreement, Parent, Spinco, and their respective Affiliates mutually covenant and agree as follows:

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## ARTICLE I

### DEFINITIONS

“Affiliate” means any corporation, partnership, limited liability company, or other entity directly or indirectly Controlled by the entity in question. For purposes of this Agreement, an Affiliate of Parent shall not include Spinco or any entity that is also an Affiliate of Spinco.

“After Tax Amount” means any additional amount necessary to reflect (through a gross-up mechanism) the hypothetical Tax consequences of the receipt or accrual of any payment required to be made under this Agreement (including payment of an additional amount or amounts hereunder and the effect of the deductions available for interest paid or accrued and for Taxes such as state and local Income Taxes), determined by using the applicable corporate Tax rate (or rates, in the case of an item that affects more than one Tax) for the relevant taxable jurisdiction and period (or portion thereof).

“Agreement” means this Tax Sharing Agreement, including any schedules, exhibits, and appendices attached hereto.

“Cash Acquisition Merger” means a merger of a newly-formed subsidiary of Spinco with a corporation, limited liability company, limited partnership, general partnership or joint venture (in each case, not previously owned, directly or indirectly, by Spinco) solely for cash pursuant to which Spinco acquires such corporation, limited liability company, limited partnership, general partnership or joint venture and no Equity Securities of Spinco or any Spinco Affiliate are issued, sold, redeemed, or acquired, directly or indirectly.

“Code” means the Internal Revenue Code of 1986 (or, if relevant, the Internal Revenue Code of 1954), as amended, or any successor thereto, as in effect for the taxable period in question.

“Combined Jurisdiction” means, for any taxable period, any jurisdiction with respect to which a Combined Return is filed for United States federal, state, local, or foreign Income Tax purposes.

“Combined Return” means any combined, unitary, or consolidated Tax Return or report, or any Tax Return or report for a single entity that operated a Spinco Business for any portion of the relevant Tax period (and which is not otherwise a Spinco Separate Tax Return), used in the determination of a United States federal, state, local, or foreign Income Tax liability.

“Contribution” has the meaning prescribed in the recitals to this Agreement.

“Control” means the ownership of stock or other securities possessing at least 50 percent of the total combined voting power of all classes of securities entitled to vote.

“Deferred Tax Assets” means, as of a given date, the amount of deferred tax benefits (including deferred tax consequences attributable to deductible temporary differences and carryforwards) that would be recognized as assets on a business enterprise’s balance sheet computed in accordance with GAAP, but without regard to valuation allowances.

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“Deferred Tax Liabilities” means, as of a given date, the amount of deferred tax liabilities (including deferred tax consequences attributable to deductible temporary differences) that would be recognized as liabilities on a business enterprise’s balance sheet computed in accordance with GAAP, but without regard to valuation allowances.

“Deferred Taxes” means, as of a given date, the amount of Deferred Tax Assets, less the amount of Deferred Tax Liabilities. Deferred Taxes may be a net negative or positive amount, and shall be computed without regard to any payments to be made pursuant to Section 2.10.

“Distribution” has the meaning prescribed in the preamble to this Agreement.

“Distribution Date” means the date on which the Spinco stock is distributed by Parent to its shareholders in a transaction intended to qualify as a tax-free distribution under Sections 355 and 368(a)(1)(D) of the Code.

“Employee Restricted Stock” means either Parent Restricted Stock or Spinco Restricted Stock.

“Employee Stock Option” means either a Parent Stock Option or a Spinco Stock Option.

“Equity Securities” means any stock or other equity securities treated as stock for Tax purposes, or options, warrants, rights, convertible debt, or any other instrument or security that affords any Person the right, whether conditional or otherwise, to acquire stock or to be paid an amount determined by reference to the value of stock.

“Estimated Spinco Separate Tax Liability” has the meaning prescribed in Section 2.2(e).

“Filing Party” has the meaning prescribed in Section 3.2(b).

“Final Determination” shall mean the final resolution of liability for any Tax for a taxable period, including any related interest, penalties or other additions to tax, (i) by Internal Revenue Service Form 870 or 870-AD (or any successor forms thereto), on the date of acceptance by or on behalf of the IRS, or by a comparable form under the laws of other jurisdictions; except that a Form 870 or 870-AD or comparable form that reserves (whether by its terms or by operation of law) the right of the taxpayer to file a claim for refund and/or the right of the Taxing Authority to assert a further deficiency with respect to a Tax Item shall not constitute a Final Determination with respect to such Tax Item; (ii) by a decision, judgment, decree, or other order by a court of competent jurisdiction, which has become final and unappealable; (iii) by a closing agreement or accepted offer in compromise under Section 7121 or Section 7122 of the Code, or comparable agreements under the laws of other jurisdictions; (iv) by any allowance of a refund or credit in respect of an overpayment of Tax, but only after the expiration of all periods during which such refund may be recovered (including by way of offset) by the jurisdiction imposing such Tax; or (v) by any other final disposition, including by reason of the expiration of the applicable statute of limitations.

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“GAAP” means United States generally accepted accounting principles as in effect on the Distribution Date.

“Income Taxes” means all federal, state, local, and foreign income Taxes or other Taxes based on income or net worth, and any other franchise or similar Taxes.

“IRS” means the United States Internal Revenue Service or any successor thereto, including, but not limited to its agents, representatives, and attorneys.

“Liability Issue” has the meaning prescribed in Section 5.1(c).

“Non-filing Party” has the meaning prescribed in Section 3.2(b).

“Non-preparing Party” has the meaning prescribed in Section 3.4(a).

“Option” means an option to acquire common stock, or other equity-based incentives the economic value of which is designed to mirror that of an option, including non-qualified stock options, discounted non-qualified stock options, cliff options to the extent stock is issued or issuable (as opposed to cash compensation), and tandem stock options to the extent stock is issued or issuable (as opposed to cash compensation).

“Other Taxes” means all taxes other than Income Taxes, including (but not limited to) transfer, sales, use, payroll, property, and unemployment Taxes.

“Owed Party” has the meaning prescribed in Section 7.5.

“Owing Party” has the meaning prescribed in Section 7.5.

“Parent” has the meaning prescribed in the preamble to this Agreement.

“Parent Common Stock” has the meaning prescribed in the recitals to this Agreement.

“Parent Consolidated Group” means the affiliated group of corporations (within the meaning of Section 1504 of the Code) of which Parent is the common parent prior to the Distribution Date.

“Parent Employee” means an employee of Parent or any Parent Affiliate immediately after the Distribution.

“Parent Group” means the group of corporations that, immediately after the Distribution Date, are members of the affiliated group of corporations of which Parent is the common parent (within the meaning of Section 1504 of the Code).

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“Parent Representation Letter” means an officer’s certificate in which certain representations, warranties and covenants are made on behalf of Parent and its Affiliates in connection with the issuance of a Tax Opinion or Tax Ruling.

“Parent Restricted Stock” means Parent common stock received by a Parent or Spinco Employee in connection with his or her employment, which stock has not yet been included in the income of such Employee as of the Distribution Date.

“Parent Separate Tax Return” means any Tax Return for any Tax period that includes one or more members of the Parent Group, but does not include any members of the Spinco Group.

“Parent Stock Option” means an Option to acquire Parent common stock received by a Parent or Spinco Employee in connection with his or her employment, which Option has not yet been exercised as of the Distribution Date.

“Person” means any natural person, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, proprietorship, trust, association, union, governmental authority or other entity, enterprise, authority or organization.

“Post-Distribution Tax Period” means, with respect to a given entity, any taxable period (or portion thereof) for which a Tax Return is filed, if such period begins after the Distribution Date.

“Pre-Distribution Tax Period” means, with respect to a given entity, any taxable period (or portion thereof) for which a Tax Return is filed, if such period ends on or before the Distribution Date.

“Preparing Party” has the meaning prescribed in Section 3.4(a).

“Reportable Transaction” means a reportable or listed transaction as defined in Section 6011 of the Code or Treasury Regulations thereunder.

“Representation Letter” means the Spinco Representation Letter and the Parent Representation Letter.

“Responsible Party” has the meaning prescribed in Section 5.2.

“Restriction Period” means the period beginning on the date hereof and ending on the second anniversary of the Distribution Date.

“Ruling Documents” means the Ruling Request, the appendices, attachments and exhibits thereto, and any additional or supplemental information submitted to the IRS in connection with the Ruling Request.

“Ruling Request” means the private letter ruling request filed by Parent with the IRS dated March 20, 2008 pertaining to certain Tax aspects of the Contribution and the Distribution.

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“Separation Agreement” has the meaning prescribed in the recitals to this Agreement.

“Spinco” has the meaning prescribed in the preamble to this Agreement.

“Spinco Available FTCs” has the meaning prescribed in Section 2.6(a).

“Spinco Allocated FTCs” has the meaning prescribed in Section 2.6(a).

“Spinco Available NOLs” has the meaning prescribed in Section 2.5(a).

“Spinco Allocated NOLs” has the meaning prescribed in Section 2.5(a).

“Spinco Assets” has the meaning prescribed in Section 1.1 of the Separation Agreement.

“Spinco Business” has the meaning prescribed in Section 1.1 of the Separation Agreement.

“Spinco Common Stock” has the meaning prescribed in the recitals to this Agreement.

“Spinco Employee” means an employee of Spinco or any Spinco Affiliate immediately after the Distribution.

“Spinco Group” means the group of corporations that, immediately after the Distribution Date, will be members of the affiliated group of corporations of which Spinco is the common parent (within the meaning of Section 1504 of the Code). For purposes of this definition, it is assumed that Spinco will elect to file consolidated federal income tax returns with Spinco as the common parent for the taxable year beginning immediately after the Distribution.

“Spinco Representation Letter” means an officer’s certificate in which certain representations, warranties and covenants are made on behalf of Spinco and its Affiliates in connection with the issuance of a Tax Opinion or Tax Ruling.

“Spinco Restricted Stock” means Spinco common stock received by a Spinco Employee or Parent Employee in connection with his or her employment, which stock has not yet been included in the income of such Employee as of the Distribution Date.

“Spinco Separate Tax Liability” means an amount equal to the Tax liability that Spinco and all Spinco Affiliates would have incurred on a consolidated, combined, unitary or separate basis (as applicable) as if at all times on or before the Distribution Date (a) each Spinco Asset transferred to Spinco or a Spinco Affiliate in connection with the Separation had at all relevant times been owned by such transferee entity, and the Spinco Business had been conducted solely and entirely by Spinco and the Spinco Affiliates, and (b) Spinco had been the common parent of an affiliate group (as defined in section 1504(a) of the Code without regard to Section 1504(b) of the Code) that was (i) separate from the members of the Parent Group and (ii) consisted solely of Spinco and the Spinco Affiliates.

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“Spinco Separate Tax Return” means any Tax Return for any Tax period that includes one or more members of the Spinco Group, but does not include any members of the Parent Group.

“Spinco Share” has the meaning prescribed in the recitals to this Agreement.

“Spinco Stock Option” means an Option to acquire Spinco common stock received by a Spinco Employee or Parent Employee in connection with his or her employment, which Option has not yet been exercised as of the Distribution Date.

“Straddle Period” means, with respect to a given entity, any state, local, or foreign taxable period beginning on or before the Distribution Date and ending after the Distribution Date;

“Supplemental Ruling” means any IRS private letter ruling issued in connection with the Contribution and/or the Distribution other than the Ruling Request.

“Supplemental Ruling Documents” means the Supplemental Ruling Request, the appendices, attachments and exhibits thereto, and any additional or supplemental information submitted to the IRS in connection with the Supplemental Ruling Request.

“Supplemental Ruling Request” means the Supplemental Ruling request filed by Parent with the IRS pertaining to certain Tax aspects of the Contribution and/or the Distribution.

“Tax” and “Taxes” mean any form of taxation, whenever created or imposed, and whenever imposed by a Taxing Authority, and without limiting the generality of the foregoing, shall include any net income, alternative or add-on minimum tax, gross income, sales, use, ad valorem, gross receipts, value added, franchise, profits, license, transfer, recording, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profit, custom duty, annual report, or other tax, government fee, or other like assessment or charge, of any kind whatsoever, together with any related interest, penalties, or other additions to tax, or additional amount imposed by any such Taxing Authority.

“Tax Asset” means any Tax Item that has accrued for Tax purposes (including a net operating loss, net capital loss, investment tax credit, foreign tax credit, charitable contribution deduction, credit related to alternative minimum tax and any other Tax credit), that could reduce a Tax in the taxable period in which it accrued, but which is available to reduce a Tax in a later taxable period.

“Taxing Authority” means any national, municipal, governmental, state, federal, foreign, or other body, or any quasi-governmental or private body, having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).

“Tax Benefit” means, without double counting, the sum of (i) the amount of the reduction in the Tax liability of an entity (or of the consolidated or combined group of which it is a member), whether temporary or permanent, for any taxable period that arises, or may arise in the future, as a result of any adjustment to, or addition or deletion of, a Tax Item in the computation of the Tax liability of the entity (or the consolidated or combined group of which it

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is a member), and (ii) the amount by which the entity's (or consolidated or combined group of which it is a member) Deferred Taxes are increased as a result of such adjustment, addition, or deletion.

“Tax Controversy” has the meaning prescribed in Section 5.2(a).

“Tax Detriment” means, without double counting, the sum of (i) the amount of the increase in the Tax liability of an entity (or of the consolidated or combined group of which it is a member), whether temporary or permanent, for any taxable period that arises, or may arise in the future, as a result of any adjustment to, or addition or deletion of, a Tax Item in the computation of the Tax liability of the entity (or the consolidated or combined group of which it is a member), and (ii) the amount by which the entity's (or consolidated or combined group of which it is a member) Deferred Taxes are decreased as a result of such adjustment, addition, or deletion.

“Tax-Free Status” means the qualification of the Contribution and the Distribution as a tax-free reorganization (i) described in Sections 355(a) and 368(a)(1)(D) of the Code, (ii) in which the stock distributed thereby is qualified property for purposes of Section 361(c) of the Code, (iii) in which each of Parent, the Parent Affiliates, Spinco, and the Spinco Affiliates recognize no income or gain other than intercompany items or excess loss accounts taken into account pursuant to the Treasury Regulations promulgated pursuant to Section 1502 of the Code, and (iv) in which no gain or loss is recognized by (and no amount is included in the income of) holders of Parent common stock upon the receipt of Spinco common stock pursuant to the Contribution and Distribution, other than cash in lieu of fractional shares.

“Tax Item” means any item of income, gain, loss, deduction, credit, recapture of credit, or any other item (including the basis or adjusted basis of property) which increases or decreases Income Taxes paid or payable in any taxable period.

“Tax Opinion” means an opinion issued to Parent by a law firm or an accounting firm with respect to the qualification of the Separation and the Distribution for treatment under Sections 355 and 368(a)(1)(D) of the Code.

“Tax Package” means the information and documents in the possession of the Non-preparing Party and its Affiliates that are reasonably necessary for the preparation of a Tax Return by the Preparing Party and its Affiliates with respect to a Combined Return, assembled in all material respects in accordance with the standards that Parent has heretofore applied to divisions and Affiliates of Parent.

“Tax Return” means any return, filing, questionnaire or other document required to be filed, including requests for extensions of time, filings made with estimated Tax payments, claims for refund or amended returns, that may be filed for any taxable period with any Taxing Authority in connection with any Tax or Taxes (whether or not a payment is required to be made with respect to such filing).

“Tax Ruling” means the IRS private letter ruling issued to Parent on July 8, 2008 in connection with the Ruling Request.



“Trademark Agreement” means the Trademark Assignment and Co-Existence Agreement, dated as of July 31, 2008, between Parent and Spinco.

“Treasury Regulations” means the final and temporary (but not proposed) income tax regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

**ARTICLE II**  
**RESPONSIBILITY FOR TAXES**

**2.1 Responsibility and Indemnification for Taxes.**

(a) From and after the Distribution Date, without duplication, each of Parent and Spinco shall be responsible for, and shall pay its respective share of, the liability for Taxes of Parent, Spinco, and their respective Affiliates as provided in this Agreement. Parent and its Affiliates shall indemnify and hold harmless Spinco and its Affiliates from any Taxes for which Parent is responsible pursuant to this Agreement. Spinco and its Affiliates shall indemnify and hold harmless Parent and its Affiliates from any Taxes for which Spinco is responsible pursuant to this Agreement.

(b) Payments to Taxing Authorities and between the parties, as the case may be, shall be made in accordance with the provisions of this Agreement.

**2.2 Income Taxes.**

(a) Subject to the limitations set forth in Section 2.7, Spinco shall be responsible for all Income Taxes (i) incurred on any Combined Return for any Tax period which includes the Distribution Date in any Combined Jurisdiction to the extent such Taxes constitute a Spinco Separate Tax Liability, excluding (A) any Income Taxes attributable to the Foreign Transfers (as defined in the Separation Agreement) and (B) any Income Taxes resulting from the application of Treasury Regulation Sections 1.1502-13 and 1.1502-19 to the Separation, (ii) incurred on any Spinco Separate Tax Return for any Tax period, (iii) incurred on any Combined Return for any Tax period ending before the Distribution Date in any Combined Jurisdiction to the extent such Income Taxes constitute a Spinco Separate Tax Liability and are paid after the Distribution Date, including but not limited to, any Income Taxes resulting from a Final Determination, and (iv) of Parent and its Affiliates attributable to acts or omissions of Spinco or its Affiliates taken after the Distribution (other than acts or omissions in the ordinary course of business or otherwise contemplated by the Separation Agreement).

(b) Parent shall be responsible for all Income Taxes (i) incurred on any Combined Return in any Combined Jurisdiction for any Tax period which are not the responsibility of Spinco pursuant to Section 2.2(a), (ii) incurred on any Parent Separate Tax Return, and (iii) imposed under Treasury Regulation Section 1.1502-6 or under any comparable or similar provision of state, local or foreign laws or regulations on Spinco or its Affiliates as a result of such company being a member of a consolidated, combined, or unitary group with Parent or any Parent Affiliate during any Tax period.

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(c) Notwithstanding anything in Section 2.2(a) or 2.2(b) to the contrary, any Income Taxes (including, but not limited to, any Income Taxes resulting from a Final Determination) incurred on any Combined Return in any Combined Jurisdiction that are directly attributable to the Trademark Agreement shall be borne 50% by Parent and 50% by Spinco.

(d) Not later than 90 days following the Distribution Date, any Spinco Separate Tax Liability related to Section 2.2(a)(i) shall be computed by Spinco (i) assuming Spinco and each Spinco Affiliate use the same accounting methods and elections as the Parent Group uses in filing its relevant consolidated or combined Tax Return, (ii) applying the applicable corporate Income Tax rate in effect for the relevant Tax period in the relevant jurisdiction, (iii) with respect to any U.S. federal income Tax, excluding any Spinco Available NOLs (as computed in accordance with Section 2.5(a)) or Spinco Available FTCs (as computed in accordance with Section 2.6(a)), (iv) with respect to any U.S. state and local Taxes using overall apportionment factors, and (v) in a manner consistent with past practice, if any. Any Spinco Separate Tax Liability related to Section 2.2(a)(iii) shall be computed by Parent, but otherwise consistent with this Section 2.2(d).

(e) Not later than 45 days following the Distribution Date, with respect to any Spinco Separate Tax Liability related to Section 2.2(a)(i), Spinco shall determine and pay to Parent an amount equal to the Estimated Spinco Separate Tax Liability. For each relevant jurisdiction, the Estimated Spinco Separate Tax Liability shall equal the product of (x) audited GAAP earnings before interest and Taxes generated by the Spinco Business (and reported on the relevant Combined Return), and (y) the applicable corporate Income Tax rate in effect for the relevant Tax period. Any amount of Estimated Spinco Separate Tax Liability paid under this Section 2.2(e) shall be a credit against any final payment required to be made by Spinco with respect to the relevant Combined Return.

### **2.3 Other Taxes.**

(a) Spinco shall be responsible for all Other Taxes attributable to Spinco and its Affiliates or to the Spinco Business for all Tax periods.

(b) Parent shall be responsible for all Other Taxes attributable to Parent and its Affiliates (other than Spinco and its Affiliates) and to its business activities other than the Spinco Business, or resulting from the Contribution and Distribution, for all Tax periods.

### **2.4 Allocation of Certain Income Taxes and Income Tax Items.**

(a) If Parent, Spinco or any of their respective Affiliates is permitted but not required under applicable U.S. federal, state, local or foreign Tax laws to treat the Distribution Date as the last day of a taxable period, then the parties shall treat such date as the last day of a taxable period under such applicable Tax law, and shall file any elections necessary or appropriate to such treatment; provided that this Section 2.4(a) shall not be construed to require Parent to change its taxable year.

(b) Transactions occurring, or actions taken, on the Distribution Date but after the Distribution outside the ordinary course of business by, or with respect to, Spinco or any of its Affiliates shall be deemed subject to the "next day rule" of Treasury Regulation Section

1.1502-76(b)(1)(ii)(B) (and under any comparable or similar provision under state, local or foreign laws or regulations, provided that if there is no comparable or similar provision under state, local or foreign laws or regulations, then the transaction will be deemed subject to the “next day rule” of Treasury Regulation Section 1.1502-76(b)(1)(ii)(B)) and as such shall for purposes of this Agreement be treated (and consistently reported by the parties) as occurring in a Post-Distribution Tax Period of Spinco or a Spinco Affiliate, as appropriate, and reported on a Spinco Separate Tax Return.

(c) Tax attributes determined on a consolidated or combined basis for taxable periods ending before or including the Distribution Date shall be allocated to Parent and its Affiliates, and Spinco and its Affiliates, in accordance with the Code and the Treasury Regulations (and any applicable state, local, or foreign law or regulation). Parent shall reasonably determine the amounts and proper allocation of such attributes, and the Tax basis of the assets and liabilities transferred to Spinco in connection with the Contribution and Distribution, as of the Distribution Date; provided that Spinco shall be entitled to participate in such determination. Parent and Spinco agree to compute their Tax liabilities for taxable periods after the Distribution Date consistent with that determination and allocation, and treat the Tax Assets and Tax Items as reflected on any federal (or applicable state, local or foreign) Income Tax Return filed by the parties as presumptively correct.

#### **2.5 Payment for Use of Net Operating Losses.**

(a) Not later than 30 days following the filing of the 2008 U.S. federal income Tax Return for the Parent Consolidated Group, Parent shall determine the following amounts: (i) the aggregate amount of U.S. federal net operating loss carryforwards available to the Parent Consolidated Group as of January 1, 2008 which are attributable to the Spinco Business (based on the same principles used to allocate net operating losses to Spinco pursuant to Section 2.4(c)), (ii) the aggregate amount of U.S. federal net operating losses generated by the Spinco Business from January 1, 2008 up to and including the Distribution Date that are available to the Parent Consolidated Group (the sum of (i) and (ii) shall be considered the “Spinco Available NOLs”), and (iii) the amount of the Spinco Available NOLs that are allocable to the Spinco Group as of the day after the Distribution Date in accordance with Section 2.4(c) hereof (the “Spinco Allocated NOLs”).

(b) If the amount of Spinco Available NOLs exceeds the amount of Spinco Allocated NOLs, then Parent shall pay an amount to Spinco equal to the product of (i) the applicable corporate Income Tax rate and (ii) such excess. Such amount shall be paid by Parent not later than 45 days following the filing of the 2008 U.S. federal income Tax Return for the Parent Consolidated Group.

#### **2.6 Payment for Use of Foreign Tax Credits.**

(a) Not later than 30 days following the filing of the 2008 U.S. federal income Tax Return for the Parent Consolidated Group, Parent shall determine the following amounts: (i) the aggregate amount of foreign tax credit carryforwards available to the Parent Consolidated Group as of January 1, 2008 which are attributable to the Spinco Business (based on the same principles used to allocate foreign tax credits to Spinco pursuant to Section 2.4(c)), (ii) the

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aggregate amount of foreign tax credits generated by the Spinco Business from January 1, 2008 up to and including the Distribution Date that are available to the Parent Consolidated Group (the sum of (i) and (ii) shall be considered the “Spinco Available FTCs”), and (iii) the amount of the Spinco Available FTCs that are allocable to the Spinco Group as of the day after the Distribution Date in accordance with Section 2.4(c) hereof (the “Spinco Allocated FTCs”).

(b) If the amount of Spinco Available FTCs exceeds the amount of Spinco Allocated FTCs, then Parent shall pay an amount to Spinco equal to such excess. Such amount shall be paid by Parent not later than 45 days following the filing of the 2008 U.S. federal income Tax Return for the Parent Consolidated Group.

## **2.7 Audit Adjustments.**

### **(a) Temporary Items.**

i) Not later than 30 days after any Final Determination is made with respect to any Combined Return for any Tax period for which Parent or any Parent Affiliate is the Preparing Party, Parent shall determine the amount of any Tax Detriment or Tax Benefit attributable to the adjustment of any temporary Tax Items reported (or required to be reported) on such Combined Return. If, and to the extent, the amount of any such Tax Detriment or Tax Benefit so determined i) relates to an adjustment of Income Taxes that constitute a Spinco Separate Tax Liability, and ii) results in (or can reasonably be expected to result in) a Tax Benefit or Tax Detriment to Spinco or any Spinco Affiliate in a Post-Distribution Period attributable to a corresponding increase or decrease in the tax basis of any Spinco or Spinco Affiliate asset or liability, then not later than 45 days after such Final Determination is made, Spinco shall pay to Parent the amount of any such Tax Detriment, or Parent shall pay to Spinco the amount of any such Tax Benefit, as appropriate.

ii) Not later than 30 days after any Final Determination is made with respect to any Combined Return for any Tax period for which Spinco or any Spinco Affiliate is the Preparing Party, Spinco shall determine the amount of any Tax Detriment or Tax Benefit attributable to the adjustment of any temporary Tax Items reported (or required to be reported) on such Combined Return. If, and to the extent, the amount of any such Tax Detriment or Tax Benefit so determined i) relates to an adjustment of Income Taxes that do not constitute a Spinco Separate Tax Liability, and ii) results in (or can reasonably be expected to result in) a Tax Benefit or Tax Detriment to Parent or any Parent Affiliate in a Post-Distribution Period attributable to a corresponding increase or decrease in the tax basis of any Parent or Parent Affiliate asset or liability, then not later than 45 days after such Final Determination is made, Parent shall pay to Spinco the amount of any such Tax Detriment, or Spinco shall pay to Parent the amount of any such Tax Benefit, as appropriate.

### **(b) Permanent Items.**

i) Not later than 30 days after any Final Determination is made with respect to any Combined Return for any Tax period for which Parent or any Parent

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Affiliate is the Preparing Party, Parent shall determine the amount of any Tax Detriment or Tax Benefit attributable to the adjustment of any permanent Tax Items reported (or required to be reported) on such Combined Return. If, and to the extent, the amount of any such Tax Detriment or Tax Benefit so determined relates to an adjustment of Income Taxes that constitute a Spinco Separate Tax Liability, then not later than 45 days after such Final Determination is made, Spinco shall pay to Parent the amount of any such Tax Detriment, or Parent shall pay to Spinco the amount of any such Tax Benefit, as appropriate.

ii) Not later than 30 days after any Final Determination is made with respect to any Combined Return for any Tax period for which Spinco or any Spinco Affiliate is the Preparing Party, Spinco shall determine the amount of any Tax Detriment or Tax Benefit attributable to the adjustment of any permanent Tax Items reported (or required to be reported) on such Combined Return. If, and to the extent, the amount of any such Tax Detriment or Tax Benefit so determined relates to an adjustment of Income Taxes that do not constitute a Spinco Separate Tax Liability, then not later than 45 days after such Final Determination is made, Parent shall pay to Spinco the amount of any such Tax Detriment, or Spinco shall pay to Parent the amount of any such Tax Benefit, as appropriate.

iii) A Party shall be required to make payment under this Section 2.7(b) only to the extent the cumulative amount of all payments otherwise required to be made by such Party under Sections 2.7(b)(i) and 2.7(b)(ii), net of the cumulative amount of all payments such Party is otherwise entitled to receive from the other Party under Sections 2.7(b)(i) and 2.7(b)(ii), exceeds the greater of a) \$2,000,000 or, b) the sum of \$2,000,000 and the net amount (after the application of Section 2.7(b)(iv) below) of all payments previously made by such Party under this Section 2.7(b).

iv) If subsequent to the time a Party makes a payment under this Section 2.7(b), a Final Determination is made with respect to any Combined Return which would have had the effect of reducing the required amount of such payment if such Final Determination were made prior to such payment, then the other Party which received such payment shall make a payment to such Party in an amount equal to such reduction.

(c) Calculation.

i) For purposes of Section 2.7, the Parties agree that the extent to which any Tax Detriment or Tax Benefit is treated as being attributable to either a permanent adjustment or a temporary adjustment shall be made in a manner consistent with past historical practice of the Parent Consolidated Group.

ii) For purposes of determining any amount due under this Section 2.7, any foreign Taxes shall be translated into U.S. dollars using the same exchange rate as is used for purposes of translating the income statement of the relevant entity for the month in which the Tax is assessed.

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iii) Any Tax Detriment or Tax Benefit determined under this Section 2.7 shall be calculated by applying the applicable corporate Income Tax rate in effect for the relevant Tax period in the relevant jurisdiction.

**2.8 Tax Refunds.** Except as provided in Section 2.9 and subject to the limitations set forth in Section 2.7:

(a) Parent shall be entitled to all refunds (including refunds paid by means of a credit against other or future Tax liabilities) and credits with respect to any Tax for which Parent is responsible under Section 2.1. Spinco shall be entitled to all refunds (including refunds paid by means of a credit against other or future Tax liabilities) and credits with respect to any Tax for which Spinco is responsible under Section 2.1.

(b) Spinco and Parent shall each forward to the other party, or reimburse such other party for, any refunds received by the first party and due to such other party pursuant to this Section 2.8. Where a refund is received in the form of a credit against other or future Tax liabilities, reimbursement with respect to such refund shall be due in each case on the due date for payment of the Tax against which such refund has been credited. All payments made pursuant to this Section 2.8 shall describe in reasonable detail the basis for the calculation of the amount being paid.

(c) If one party reasonably so requests, the other party (at the first party's expense) shall file for and pursue any refund to which the first party is entitled under this Section; provided that the other party need not pursue any refund on behalf of the first party unless the first party provides the other party a certification by an appropriate officer of the first party setting forth the first party's belief (together with supporting analysis) that the Tax treatment of the Tax Items on which the entitlement to such refund is based is more likely than not correct, and is not a Tax Item arising from a Reportable Transaction.

(d) If the other party pays any amount to the first party under this Section 2.8 and, as a result of a subsequent Final Determination, the first party is not entitled to some or all of such amount, the other party shall notify the first party of the amount to be repaid to the other party, and the first party shall then repay such amount to the other party, together with any interest, fines, additions to Tax, penalties or any additional amounts imposed by a Taxing Authority relating thereto.

**2.9 Carrybacks.**

(a) Notwithstanding anything in this Agreement, Spinco shall file (or cause to be filed) on a timely basis any available election to waive the carryback of net operating losses, Tax credits or other Tax Items by Spinco or any Affiliate from a Post-Distribution Tax Period to a Straddle Period or Pre-Distribution Tax Period. Such elections shall include, but not be limited to, the election described in Treasury Regulation Section 1.1502-21(b)(3)(i)(B), and any analogous election under state, local, or foreign Income Tax laws, to waive the carryback of net operating losses for federal Income Tax purposes.

(b) If, notwithstanding the provisions of Section 2.9(a), Spinco is required to carryback losses or credits, Spinco shall be entitled to any refund of any Tax obtained by Parent

or a Parent Affiliate as a result of the carryback of losses or credits of Spinco or its Affiliate from any Post-Distribution Tax Period to any Pre-Distribution Tax Period. Such refund is limited to the net amount received by Parent or a Parent Affiliate (by refund, offset against other Taxes, or otherwise), net of any Tax Detriment incurred by Parent or such Affiliate resulting from such refund. Upon request by Spinco, Parent shall advise Spinco of an estimate of any Tax Detriment Parent projects will be associated with any carryback of losses or credits of Spinco or its Affiliates as provided in this Section 2.9(b).

(c) If Spinco has a Tax Item that must be carried back to any Pre-Distribution Tax Period, Spinco shall notify in writing Parent that such Tax Item must be carried back. Such notification shall include a description in reasonable detail of the ground for the refund and the amount thereof, and a certification by an appropriate officer of Spinco setting forth Spinco's belief (together with supporting analysis) that the Tax treatment of such Tax Item is more likely than not correct, and is not a Tax Item arising from a Reportable Transaction.

(d) If Parent pays any amount to Spinco under Section 2.9(b) and, as a result of a subsequent Final Determination, Spinco is not entitled to some or all of such amount, Parent shall notify Spinco of the amount to be repaid to Parent, and Spinco shall then repay such amount to Parent, together with any interest, fines, additions to Tax, penalties or any additional amounts imposed by a Taxing Authority relating thereto.

#### **2.10 Timing of Certain Payments.**

(a) Any payment required to be made pursuant to Article II (other than payments specified in Section 2.5(b), Section 2.6(b), or Section 2.7(c)(ii)) shall be made by the party obligated to make such payment (i) in the case of a refund of Tax, within fourteen (14) days after receipt (whether by way of payment, credit, or offset against any payments due or otherwise) of such refund or (ii) in the case of a payment of Tax, the later of (x) fourteen (14) days prior to the due date for payment of such Tax and (y) the delivery of written demand for the payment hereunder to the party obligated to make such payment hereunder.

(b) All payments and demands for payment shall be accompanied by a calculation setting forth in reasonable detail the basis for the amount paid or demanded.

#### **2.11 Treatment of Restricted Stock, Stock Options, and Deferred Compensation.**

(a) To the extent permitted by law, Parent (or the appropriate Parent Affiliate) shall claim all Tax deductions arising by reason of the grant or vesting of Employee Restricted Stock, and by reason of exercises of Employee Stock Options, at the time such Tax deduction can be claimed, provided that such Employee Restricted Stock or Employee Stock Option is then held by a Parent Employee. To the extent permitted by law, Spinco (or the appropriate Spinco Affiliate) shall claim all Tax deductions arising by reason of the grant or vesting of Employee Restricted Stock, and by reason of exercises of Employee Stock Options, at the time such Tax deduction can be claimed, provided that such Employee Restricted Stock or Employee Stock Option is then held by a Spinco Employee. To the extent permitted by law, Spinco (or the appropriate Spinco Affiliate) shall claim all Tax deductions arising by reason of the payment (or inclusion in income) of compensation the receipt of which was deferred by a Spinco Employee

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prior to the Distribution Date, the payment of which will occur after the Distribution Date, and the obligation to make such payment is assumed by Spinco in connection with the Contribution and Distribution.

(b) The party (or Affiliate thereof) initially claiming the Tax deduction described in Section 2.11(a) shall withhold applicable Taxes and satisfy applicable Tax reporting obligations with respect to the taxation of the Employee Restricted Stock, Employee Stock Options, or deferred compensation with respect to which the Tax deduction is claimed. The parties to this Agreement shall cooperate so as to permit the party initially claiming such deduction to discharge any applicable Tax withholding and Tax reporting obligations.

**2.12 Successor Employer Status.** Parent and Spinco shall, to the extent permitted by law, (i) treat Spinco and its Affiliates (as applicable) as a “successor employer” and Parent and its Affiliates (as applicable) as a “predecessor,” within the meaning of sections 3121(a)(1) and 3306(b)(1) of the Code, with respect to employees of the Spinco Business that were employed by Spinco and its Affiliates starting on January 1, 2008 for purposes of Taxes imposed under the United States Federal Unemployment Tax Act or the United States Federal Insurance Contributions Act and (ii) cooperate with each other to avoid the filing of more than one IRS Form W-2 with respect to each such employee for the calendar year in which the Distribution occurs.

### ARTICLE III

#### TAX RETURNS AND INFORMATION EXCHANGE

##### **3.1 Tax Return Preparation Responsibility; Payment of Taxes Shown Thereon.**

(a) Parent shall prepare and file (i) all Combined Returns in any Combined Jurisdiction for which Parent (or an Affiliate of Parent) is the parent entity (including, but not limited to, all Tax Returns for the Parent Consolidated Group), (ii) all Parent Separate Tax Returns, and (iii) all Tax Returns pertaining to Other Taxes for which Parent is responsible pursuant to Section 2.1.

(b) Spinco shall prepare and file (i) all Combined Returns in any Combined Jurisdiction for which Spinco (or an Affiliate of Spinco) is the parent entity, (ii) all Spinco Separate Tax Returns, and (iii) all Tax Returns pertaining to Other Taxes for which Spinco is responsible pursuant to Section 2.1.

(c) Parent and its Affiliates shall be responsible for the remitting of payment of any Taxes shown on a Tax Return for which it is responsible for the preparation and filing thereof pursuant to Section 3.1(a). Spinco and its Affiliates shall be responsible for the payment of any Taxes shown on a Tax Return for which it is responsible for the preparation and filing thereof pursuant to Section 3.1(b).

(d) If Parent remits a Tax payment pursuant to Section 3.1(c), but Spinco is responsible pursuant to Article II for all or a portion of the Tax shown on the applicable Tax Return, then Spinco shall pay to Parent that portion of the Tax shown on such Tax Return for



which Spinco is responsible pursuant to Article II. If Spinco remits a Tax payment pursuant to Section 3.1(c), but Parent is responsible pursuant to Article II for all or a portion of the Tax shown on the applicable Tax Return, then Parent shall pay to Spinco that portion of the Tax shown on such Tax Return for which Parent is responsible pursuant to Article II. Nothing in this Section 3.1(d) shall affect the allocation of responsibility for Taxes as set forth in Article II.

**3.2 Review of Tax Returns.** Parent, with respect to those Income Tax Returns prepared by Parent described in Sections 3.1(a)(i), and Spinco, with respect to those Income Tax Returns prepared by Spinco described in Sections 3.1(b)(i) (in each case, the “Filing Party”, and such other party the “Non-filing Party”) shall prepare and file such Tax Returns in a manner consistent with past Tax reporting practices with respect to the Spinco Business. The Filing Party shall provide the Non-Filing Party with a draft of each such Income Tax Return at least 15 days prior to the due date for filing thereof. If such draft shows Tax for which the Non-Filing Party is responsible pursuant to this Agreement, the Non-Filing Party shall have the right to review and approve (which approval shall not be unreasonably withheld) each such Income Tax Return within 7 days following its receipt thereof. The Filing Party and Non-Filing Party shall attempt in good faith mutually to resolve any disagreements regarding such Income Tax Returns prior to the due date for filing thereof; provided, that the failure to resolve all disagreements prior to such date shall not relieve the Filing Party of its obligation to file (or cause to be filed) any such Income Tax Return.

**3.3 Certain Items Related to Tax Return Preparation.**

(a) Unless otherwise required by a Taxing Authority, the parties hereby agree to prepare and file all Tax Returns, and to take all other actions, in a manner consistent with this Agreement and the Separation Agreement and, to the extent not inconsistent with this Agreement, the Separation Agreement or applicable law, any Tax Ruling, Ruling Documents, Tax Opinion, or Representation Letter. All Tax Returns shall be filed on a timely basis (taking into account applicable extensions) by the party responsible for filing such Tax Returns under this Agreement; provided, that if a Tax Return is to be signed by an officer of a company different from the party responsible for filing such Tax Return, each party hereto shall have (or cause its Affiliate to have) the appropriate officer sign such Tax Return promptly after presentation thereof for signature.

(b) Except as otherwise specifically provided for in this Agreement, Parent shall have the exclusive right, in its reasonable discretion, with respect to any Tax Return for which it is responsible for the filing thereof pursuant to this Agreement, to determine (i) the manner in which such Tax Return shall be prepared and filed, including the accounting methods, positions, conventions and principles of taxation to be used and the manner in which any Tax Item shall be reported; (ii) whether any extensions may be requested; (iii) the election(s) that will be made by Parent, any Parent Affiliate, Spinco, or any Spinco Affiliate on such Tax Return; (iv) whether any amended Tax Return(s) shall be filed; (v) whether any claim(s) for refund shall be made; (vi) whether any refund shall be paid by way of refund or credited against any liability for the related Tax; and (vii) whether to retain outside firms to prepare or review such Tax Returns; provided, that Parent shall (i) prepare all Tax Returns for which it has filing responsibility, to the extent such Tax Returns reflect activities of the Spinco Business, in a manner consistent with past Tax reporting practices with respect to the Spinco Business, except as required by law or

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regulation, and (ii) indemnify and hold harmless Spinco against any Tax Detriment to the extent such Tax Detriment is directly caused by any determination by Parent under this Section 3.3(b) which is inconsistent with past practice (if any).

(c) Within 10 days after filing the U.S. federal Income Tax Return for the Parent Consolidated Group for the tax year that includes the Distribution Date, at the written request of Spinco, Parent shall notify Spinco of the net operating loss, net capital loss, charitable contribution, and credit carryforwards associated with Spinco and each of its Affiliates, and the Tax bases of the assets and liabilities, transferred to Spinco in connection with the Contribution and Distribution. Any changes in such Tax attributes or Tax bases arising thereafter shall be communicated by Parent to Spinco within 10 days after such change is made or there is a Final Determination of such change.

(d) Parent and Spinco agree to take (or refrain from taking) any action reasonably requested by the other that would reasonably be expected to result in a Tax Benefit or avoid a Tax Detriment to the other, provided that such action does not result in any additional cost not fully compensated for by the requesting party. The parties hereby acknowledge that the preceding sentence is not intended to limit, and therefore shall not apply to, the rights of the parties with respect to matters otherwise covered by this Agreement.

(e) Nothing in this Agreement shall be construed as a guarantee or representation of the existence or amount of any loss, credit, carryforward, basis or other Tax Item or Tax Asset, whether past, present or future, of Parent, Spinco, or their respective Affiliates.

#### **3.4 Tax Information Exchanges and Tax Services.**

(a) Parent, with respect to those Income Tax Returns prepared by Spinco described in Sections 3.1(b)(i), and Spinco, with respect to those Income Tax Returns prepared by Parent described in Sections 3.1(a)(i) (in each case, the “Non-preparing Party”, and such other party the “Preparing Party”) shall provide the Preparing Party, no later than 45 days after the Distribution Date, a Tax Package for the purpose of preparing such Tax Return. The Non-preparing Party shall timely furnish to the Preparing Party such additional information and documents as the Preparing Party may reasonably request. The parties acknowledge that such information may include materials regarding accounting, accounting records, income and expense, costs and cost production, background, research and development, comparables, marketing, suppliers and customers, and other information regarding the Non-preparing Party’s business related to the Tax treatment of such business. Upon request by the Preparing Party, an appropriate officer of the Non-preparing Party shall provide written certification that, to such officer’s best knowledge and belief, all information provided pursuant to this Section 3.4 is accurate and complete in all material respects. The Non-preparing Party and its Affiliates shall also make available its employees and officers as the Preparing Party may reasonably request in connection with such Tax Return preparation by the Preparing Party. The Non-preparing Party shall be responsible for the cost (without reimbursement from the Preparing Party) of furnishing to the Preparing Party the Tax Package, additional information, documents and employees and officers provided for in this Section 3.4(a).

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(b) If the Non-Preparing Party fails to provide any information required by Section 3.4(a) within the time period specified, the Preparing Party (i) shall be permitted, upon 48 hours' notice, to use its own employees or agents to view or obtain the materials contemplated in Section 3.4(a) from the Non-preparing Party's facilities, and (ii) may file the applicable Tax Return based on the information available to the Preparing Party at the time such Tax Return is due. The Non-preparing and its Affiliates shall (i) reimburse the Preparing Party for any internal or incremental costs incurred by the Preparing Party in having its employees or agents view or obtain such material, and (ii) be responsible for and shall indemnify and hold harmless the Preparing Party and its Affiliates from Taxes or other costs imposed on the Preparing Party or any of its Affiliates, to the extent resulting from the Non-preparing Party failure to provide such information in a timely manner.

#### ARTICLE IV

#### TAX TREATMENT OF THE DISTRIBUTION

##### **4.1 Representations.**

(a) Ruling Documents. Spinco hereby represents and warrants that (i) it has examined the Ruling Documents (including, without limitation, the representations to the extent that they relate to the plans, proposals, intentions, and policies of Spinco, the Spinco Affiliates, or the Spinco Business), and (ii) to the extent in reference to Spinco, the Spinco Affiliates, or the Spinco Business, the facts presented and the representations made therein are true, correct, and complete.

(b) Tax-Free Status. Spinco hereby represents and warrants that it has no plan or intention of taking any action, or failing or omitting to take any action, or knows of any circumstance, that could reasonably be expected to (i) cause the Contribution and/or the Distribution not to have Tax-Free Status or (ii) cause any representation or factual statement made in this Agreement, the Separation Agreement, the Tax Ruling, the Tax Opinion, or the Spinco Representation Letter to be untrue in a manner that would have an adverse effect on the Tax-Free Status of the Contribution and/or the Distribution.

(c) Plan or Series of Related Transactions. Spinco hereby represents and warrants that, to the knowledge of Spinco and the management of Spinco, neither the Contribution nor the Distribution are part of a plan (or series of related transactions) pursuant to which a Person will acquire stock representing a fifty-percent or greater interest (within the meaning of Sections 355(d) and (e) of the Code) in Spinco or any successor to Spinco.

##### **4.2 Covenants.**

(a) Actions Consistent with Representations and Covenants. Spinco shall not (and shall not permit any of its Affiliates or grant or permit any of its Affiliates to grant implicit or explicit permission to any other person to) take any action, and Spinco shall not (and shall not permit any of its Affiliates or grant or permit any of its Affiliates to grant implicit or explicit permission to any other person to) fail to take any action, where such action or failure to act would be inconsistent with or cause to be untrue any material, information, covenant, or

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representation in this Agreement, the Separation Agreement, the Tax Ruling, the Ruling Documents (including, without limitation, the representations to the extent that they relate to the plans, proposals, intentions, and policies of Spinco, the Spinco Affiliates, or the Spinco Business), the Tax Opinion, or the Spinco Representation Letter.

(b) Preservation of Tax-Free Status: Spinco Business. Spinco shall not take any action (including, but not limited to, any cessation, transfer or disposition of all or any portion of the Spinco Business; payment of extraordinary dividends to shareholders; and acquisitions or issuances of stock) or permit any Spinco Affiliate to take any such action, and Spinco shall not fail to take any such action or permit any Spinco Affiliate to fail to take any such action where such action or failure to act would have an adverse effect on the Tax-Free Status of the Contribution and/or the Distribution.

(c) Sales, Issuances and Redemptions of Equity Securities. Until the first day after the Restriction Period, neither Spinco nor any Spinco Affiliate shall, or shall agree to, sell or otherwise issue to any Person, or redeem or otherwise acquire from any Person, any Equity Securities of Spinco or any Spinco Affiliate; provided, however, that (i) Spinco may repurchase such Equity Securities to the extent that such repurchases meet the requirements of Section 4.05(1)(b) of Revenue Procedure 96-30 (as in effect prior to its modification by Revenue Procedure 2003-48), (ii) Spinco may issue such Equity Securities to the extent such issuances satisfy Safe Harbor VIII (relating to acquisitions in connection with a person's performance of services) or Safe Harbor IX (relating to acquisitions by a retirement plan of an employer) of Treasury Regulation Section 1.355-7(d), and (iii) Spinco may issue Equity Securities provided that such issuance does not, individually or when aggregated with other issuances and any transactions occurring in the four-year period beginning on the date which is two years before the Distribution Date, and with any other transaction which is part of a plan or series of related transactions (within the meaning of Section 355(e) of the Code) that includes the Distribution (excluding issuances of Equity Securities described in clause (ii) above, but including, for the avoidance of doubt, transactions described in Section 4.2(d) below), result in one or more Persons acquiring, directly or indirectly, (as determined under Section 355(e) of the Code, taking into account applicable constructive ownership rules) stock representing a 25% or greater interest, by vote or value, in Spinco (or any successor thereto).

(d) Tender Offers: Other Business Transactions. Until the first day after the Restriction Period, neither Spinco nor any Spinco Affiliate shall (i) solicit any Person to make a tender offer for, or otherwise acquire or sell, the Equity Securities of Spinco, (ii) participate in or support any unsolicited tender offer for, or other acquisition, issuance or disposition of, the Equity Securities of Spinco, or (iii) approve or otherwise permit any proposed business combination or merger or any transaction which, in the case of clauses (i), (ii) or (iii), individually or when aggregated with any other transactions occurring within the four-year period beginning on the date which is two years before the Distribution Date, and with any other transaction which is part of a plan or series of related transactions (within the meaning of Section 355(e) of the Code) that includes the Distribution (excluding issuances of Equity Securities described in Section 4.2(c)(ii) above, but including, for the avoidance of doubt, issuances of Equity Securities described in Section 4.2(c)(i) and Section 4.2(c)(iii) above), results in one or more Persons acquiring, directly or indirectly, (as determined under Section 355(e) of the Code, taking into account applicable constructive ownership rules) stock representing a 25% or greater

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interest, by vote or value, in Spinco (or any successor thereto). In addition, neither Spinco nor any Spinco Affiliate shall at any time, whether before or subsequent to the expiration of the Restriction Period, engage in any action described in clauses (i), (ii) or (iii) of the preceding sentence if it is pursuant to an arrangement negotiated (in whole or in part) prior to the first anniversary of the Distribution, even if at the time of the Distribution or thereafter such action is subject to various conditions.

(e) Dispositions of Assets. Until the first day after the Restriction Period, neither Spinco nor any Spinco Affiliate shall, or shall agree to, sell, transfer, or otherwise dispose of or agree to dispose of assets (including, for such purpose, any shares of capital stock of a subsidiary and any transaction treated for tax purposes as a sale, transfer or disposition) that, in the aggregate, constitute more than 50% of the consolidated gross assets of Spinco, nor shall Spinco or any Spinco Affiliate sell, transfer, or otherwise dispose of or agree to dispose of assets (including, for such purpose, any shares of capital stock of a subsidiary and any transaction treated for tax purposes as a sale, transfer or disposition) that, in the aggregate, constitute more than 50% of the consolidated gross assets of the Spinco Group. The foregoing sentence shall not apply to sales, transfers, or dispositions of assets in the ordinary course of business. The percentages of gross assets or consolidated gross assets of Spinco or the Spinco Group, as the case may be, sold, transferred, or otherwise disposed of, shall be based on the fair market value of the gross assets of Spinco and the members of the Spinco Group as of the Distribution Date. For purposes of this Section 4.2(e), a merger of Spinco or one of its subsidiaries with and into any Person (other than Spinco or one of its subsidiaries) shall constitute a disposition of all of the assets of Spinco or such subsidiary.

(f) Liquidations, Mergers, Reorganizations. Until the first day after the Restriction Period, neither Spinco nor its subsidiaries shall, or shall agree to, voluntarily dissolve or liquidate or engage in any merger (except for a Cash Acquisition Merger), consolidation or other reorganization; provided, however, mergers of direct or indirect wholly-owned subsidiaries of Spinco solely with and into Spinco or with other direct or indirect wholly-owned subsidiaries of Spinco, and liquidations of Spinco's subsidiaries, are not subject to this Section 4.2(f) to the extent not otherwise inconsistent with the Tax-Free Status of the Contribution and the Distribution; provided further that nothing in this Section 4.2(f) shall prohibit any merger involving Spinco or an Spinco Affiliate not otherwise prohibited by Section 4.2(d).

(g) Changes to Voting Rights. Until the first day after the Restriction Period, neither Spinco nor any Spinco Affiliate shall amend its certificate of incorporation (or other organizational documents), or take any other action, whether through a stockholder vote or otherwise, affecting the relative voting rights of its separate classes of stock (including, without limitation, through the conversion of one class of stock into another class of stock), but only to the extent such change, if treated as an issuance of Equity Securities, would be prohibited by Section 4.2(c).

(h) Permitted Transactions. Notwithstanding the restrictions otherwise imposed by Sections 4.2(c) through 4.2(g), during the Restriction Period, Spinco may (i) issue Equity Securities of Spinco or any Spinco Affiliate in a transaction that would otherwise breach the covenant set forth in Section 4.2(c), (ii) approve, participate in, support or otherwise permit a proposed business combination or transaction that would otherwise breach the covenant set forth

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in Section 4.2(d), (iii) sell or otherwise dispose of the assets of the Spinco Group in a transaction that would otherwise breach the covenant set forth in Section 4.2(e), (iv) merge Spinco or any Spinco Affiliate with another entity without regard to which party is the surviving entity in a transaction that would otherwise breach the covenant set forth in Section 4.2(f), or (v) take any action affecting the relative voting rights of the separate classes of stock of Spinco or any Spinco Affiliate that would otherwise breach the covenant set forth in Section 4.2(g), if and only if such transaction or action would not violate Section 4.2(a) or Section 4.2(b) and Section 4.2(i) is satisfied.

(i) Supplemental Ruling: Tax Opinion; Financial Guarantee. Prior to entering into any agreement contemplating a transaction or action described in clauses (i), (ii), (iii), (iv) or (v) of Section 4.2(h) and prior to consummating any such transaction or action: (A) Spinco shall request that Parent obtain a Supplemental Ruling in accordance with Section 4.3 of this Agreement to the effect that such transaction will not affect the Tax-Free Status of the Contribution and the Distribution and Parent shall have received such a Supplemental Ruling in form and substance satisfactory to Parent in its sole and absolute discretion or (B) Spinco shall provide Parent with an unqualified Tax Opinion from a nationally recognized independent tax advisor in form and substance satisfactory to Parent in its sole and absolute discretion (and in determining whether an opinion is satisfactory, Parent may consider, among other factors, the appropriateness of any underlying assumptions and management's representations if used as a basis for the opinion) providing that such transaction or action will not affect the Tax-Free Status of the Contribution and the Distribution. In addition, regardless of whether Spinco satisfies the requirement of this Section 4.2(i)(A) or Section 4.2(i)(B), Spinco shall also deliver to Parent an unconditional letter of credit or other financial guarantee, the form and terms of which (including, but not limited to, face amount, issuer, expiration date, terms of renewal, and drawdown rights) are acceptable to Parent, in its sole and exclusive judgment.

#### **4.3 Supplemental Rulings and Restrictions on Spinco.**

(a) Supplemental Rulings at Parent Request. Parent shall have the right to obtain a Supplemental Ruling in its sole and absolute discretion. If Parent determines to obtain a Supplemental Ruling, Spinco shall (and shall cause each Spinco Affiliate to) cooperate with Parent and take any and all actions reasonably requested by Parent in connection with obtaining the Supplemental Ruling (including, without limitation, by making any representation or covenant or providing any materials or information requested by any Tax Authority; provided that Spinco shall not be required to make (or cause any Spinco Affiliate to make) any representation or covenant that is inconsistent with historical facts or as to future matters or events over which it has no control). Parent shall reimburse Spinco for all reasonable costs and expenses incurred by Spinco or its Affiliates in obtaining a Supplemental Ruling requested by Parent within ten (10) Business Days after receiving an invoice from Spinco therefor. In connection with obtaining a Supplemental Ruling pursuant to this Section 4.3(a), (A) Parent shall keep Spinco informed in a timely manner of all material actions taken or proposed to be taken by Parent in connection therewith; (B) Parent shall (1) reasonably in advance of the submission of any Supplemental Ruling Request, provide Spinco with a draft copy thereof, (2) reasonably consider Spinco's comments on such draft copy, and (3) provide Spinco with a final copy of any Supplemental Ruling Request; and (C) Parent shall provide Spinco with notice reasonably in advance of, and Spinco shall have the right to attend, any formally scheduled meetings with any Tax Authority (subject to the approval of the Tax Authority) that relate to such Supplemental Ruling.

(b) **Supplemental Rulings at Spinco's Request.** Parent agrees that at the reasonable request of Spinco pursuant to Section 4.2(i), Parent shall (and shall cause each Parent Affiliate to) cooperate with Spinco and use its reasonable best efforts to seek to obtain, as expeditiously as possible, a Supplemental Ruling from the IRS for the purpose of confirming compliance on the part of Spinco or an Spinco Affiliate with its obligations under Section 4.2 of this Agreement. Further, in no event shall Parent be required to file any Supplemental Ruling Request under this Section 4.3(b) unless Spinco represents that (A) it has reviewed the Supplemental Ruling Documents and (B) all information and representations, if any, relating to Spinco or any Spinco Affiliate, contained in the Supplemental Ruling Documents are true, correct and complete in all material respects. Spinco shall reimburse Parent for all reasonable costs and expenses incurred by Parent or its Affiliates in obtaining a Supplemental Ruling requested by Spinco within ten (10) Business Days after receiving an invoice from Parent therefor. Spinco hereby agrees that Parent shall have sole and exclusive control over the process of obtaining a Supplemental Ruling, and that only Parent shall apply for a Supplemental Ruling. In connection with obtaining a Supplemental Ruling pursuant to this Section 4.3(b), (A) Parent shall keep Spinco informed in a timely manner of all material actions taken or proposed to be taken by Parent in connection therewith; (B) Parent shall (1) reasonably in advance of the submission of any Supplemental Ruling Request, provide Spinco with a draft copy thereof, (2) reasonably consider Spinco's comments on such draft copy, and (3) provide Spinco with a final copy of any Supplemental Ruling Request; and (C) Parent shall provide Spinco with notice reasonably in advance of, and Spinco shall have the right to attend, any formally scheduled meetings with any Tax Authority (subject to the approval of the Tax Authority) that relate to such Supplemental Ruling.

(c) **Prohibition on Spinco.** Spinco hereby agrees that neither it nor any Spinco Affiliate shall seek any guidance from the IRS or any other Tax Authority (whether written, verbal or otherwise) concerning the Contribution or the Distribution (or the impact of any transaction on the Contribution or the Distribution).

**4.4 Liability for Undertaking Certain Actions.** Notwithstanding anything in this Agreement to the contrary, Spinco shall be responsible for, and shall indemnify and hold harmless Parent and each of its Affiliates from and against any liability for Taxes that are attributable to or result from (i) any act or failure to act by Spinco or any Spinco Affiliate, which action or failure to act breaches any of the representations or covenants contained in Article IV hereof (without regard to the exceptions or provisos set forth in such provisions), expressly including, for this purpose, any Permitted Transactions and any act or failure to act that breaches Section 4.2(a) or 4.2(b), regardless of whether such act or failure to act is permitted by Section 4.2(c) through 4.2(g), and (ii) Tax counsel withdrawing all or any portion of the Tax Opinion or any Tax Authority withdrawing all or any portion of a private letter ruling issued to Parent in connection with the Contribution and/or the Distribution because of a breach by Spinco or any Spinco Affiliate of a representation made in this Agreement (or made in connection with the Tax Opinion or any Supplemental Ruling contemplated by Section 4.3(e)).

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#### **4.5 Cooperation.**

(a) Without limiting the prohibition set forth in Section 4.3(c), until the first day after the Restriction Period, Spinco shall furnish Parent with a copy of any ruling request that Spinco or any Spinco Affiliate may file with the IRS or any other Tax Authority and any opinion received that in any respect relates to, or otherwise reasonably could be expected to have any effect on, the Tax-Free Status of any of the Contribution and the Distribution.

(b) Parent shall reasonably cooperate with Spinco in connection with any request by Spinco for an unqualified Tax Opinion pursuant to Section 4.2(i) and shall use its reasonable best efforts to assist Spinco in obtaining an unqualified Tax Opinion pursuant to Section 4.2(i).

(c) Until the first day after the Restriction Period, Spinco shall provide adequate advance notice to Parent in accordance with the terms of Section 4.5(d) of any action described in Sections 4.2(a) through 4.2(g) within a period of time sufficient to enable Parent to seek injunctive relief pursuant to Section 4.6 in a court of competent jurisdiction.

(d) Each notice required by Section 4.5(c) shall set forth the terms and conditions of any such proposed transaction, including, without limitation, (i) the nature of any related action proposed to be taken by the board of directors of Spinco, (ii) the approximate number of Equity Securities (and their voting and economic rights) of Spinco or any Spinco Affiliate (if any) proposed to be sold or otherwise issued, (iii) the approximate value of Spinco's assets (or assets of any Spinco Affiliate) proposed to be transferred, and (iv) the proposed timetable for such transaction, all with sufficient particularity to enable Parent to seek such injunctive relief. Promptly, but in any event within 30 days, after Parent receives such written notice from Spinco, Parent shall notify Spinco in writing of Parent's decision to seek injunctive relief pursuant to Section 4.6.

(e) From and after the date Parent first requests a Supplemental Ruling pursuant to Section 4.3 until the first day after the two-year anniversary of such date that Parent receives such Supplemental Ruling (pursuant to Section 4.3(a) or 4.3(b)), neither Spinco nor any Spinco Affiliate shall take (or refrain from taking) any action to the extent that such action or inaction would have caused a representation given by Spinco in connection with any such request for a Supplemental Ruling to have been untrue as of the relevant representation date, had Spinco or any Spinco Affiliate intended to take (or refrain from taking) such action on the relevant representation date.

**4.6 Enforcement.** The parties hereto acknowledge that irreparable harm would occur in the event that any of the provisions of this Article IV were not performed in accordance with their specific terms or were otherwise breached. The parties hereto agree that, in order to preserve the Tax-Free Status of the Contribution and the Distribution, injunctive relief is appropriate to prevent any violation of the foregoing covenants; provided, however, that injunctive relief shall not be the exclusive legal or equitable remedy for any such violation.



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## ARTICLE V

### COOPERATION AND EXCHANGE OF INFORMATION

#### **5.1 Cooperation.**

(a) Notwithstanding anything to the contrary in the Separation Agreement, Parent and Spinco shall cooperate (and shall cause each of their respective Affiliates to cooperate) fully at such time and to the extent reasonably requested by the other party in connection with the preparation and filing of any Tax Return or the conduct of any audit, dispute, proceeding, suit, or Tax action concerning any issues or any other matter contemplated hereunder. Such cooperation shall include, without limitation:

- i) Compliance with the provisions of Section 3.4;
- ii) The retention and provision on demand of books, records, documentation, information, or other materials relating to any Tax Return, or any supplemental information necessary or reasonably helpful to support any position taken therein, until the later of (x) the expiration of the applicable statute of limitation (giving effect to any extension, waiver, or mitigation thereof) and (y) in the event any claim has been made under this Agreement for which such information is relevant, the occurrence of a Final Determination with respect to such claim;
- iii) Unless otherwise agreed to by the parties, the retention and provision on demand, of any books, records, documentation, information, or other materials necessary or reasonably helpful in sustaining any position (including, without limitation, any transfer pricing position) taken with any Taxing Authority including, without limitation, materials regarding accounting, income and expense, costs and cost production, background, research and development, comparables, marketing, suppliers and customers, and other information regarding the Spinco Business related to the Tax treatment of such business;
- iv) The retention and provision of additional information with respect to an explanation of the manner in which any Tax Return or Tax Package was prepared and filed, and any additional information reasonably helpful in explaining the materials provided under clauses (ii) and (iii) of this Section 5.1 until the other party provides written notice that such material may be destroyed;
- v) The execution of any document that may be necessary or reasonably helpful in connection with the filing of any Tax Return by Parent or its Affiliates or Spinco or its Affiliates, or in connection with any audit, proceeding, refund claim, suit, or action for any such Tax Return; and
- vi) The use of the parties' reasonable best efforts to obtain any documentation from a governmental authority or a third party that may be necessary or helpful in connection with the foregoing;

Each party shall make its employees and facilities available on a mutually convenient basis, without cost to the other party, to facilitate such cooperation. In addition, upon 48 hours' notice, each party shall have the option to use its own employees or agents to view or obtain the materials contemplated in this Section 5.1 from the other party's facilities on a mutually convenient basis.

(b) Any materials contemplated under Section 5.1(a) and Section 3.4 shall be provided whether or not such material is or may be confidential or proprietary. If, however, the providing party determines in good faith that any materials are confidential or proprietary, the providing party may require the requesting party to enter into a confidentiality agreement with respect to such materials, not inconsistent with the purposes for which the party made the request for information. Each party shall be deemed to have satisfied its obligation to hold confidential information concerning or supplied by the other party if it exercises the same care as it takes to preserve confidentially for its own similar information.

(c) Parent shall advise Spinco with respect to any Final Determination of Tax adjustments relating to the Parent Consolidated Group if such Final Determination of Tax adjustments may affect any Tax attribute of any member of the Spinco Group after the Distribution Date.

(d) Notwithstanding anything to the contrary in this Agreement, if a party materially fails to comply with any of its obligations set forth in this Section 5.1, upon reasonable request and notice by the other party, the non-performing party shall (i) reimburse the other party for any internal or incremental costs incurred by such other party in having its employees or agents view or obtain such material, and (ii) to the extent such failure results in the imposition of additional Taxes be liable in full for such additional Taxes.

## **5.2 Contest Provisions.**

(a) The party responsible for preparation and filing Tax Returns under Section 3.1 (the "Responsible Party"), shall have the exclusive right to control, contest, and represent the interests of Parent, Spinco and their respective Affiliates in any Tax controversy, including (without limitation) any audit, protest, or claim for refund to the Appeals Division of the IRS, competent authority proceeding and litigation in Tax Court or any other court of competent jurisdiction (a "Tax Controversy") related to such Tax Return. Subject to Section 5.2(c) hereof, such exclusive right shall include the right, in the Responsible Party's reasonable discretion, to resolve, settle or agree to any deficiency, claim or adjustment proposed, asserted or assessed in connection with or as a result of any such Tax Controversy. Such control rights shall extend to any matter pertaining to the management and control of a Tax Controversy, including execution of waivers, choice of forum, scheduling of conferences and the resolution of any Tax Item. Any costs incurred in the handling or contesting of a Tax Controversy shall be borne by the Responsible Party.

(b) Parent shall use reasonable efforts to keep Spinco advised as to the status of Tax audits and litigation involving any issue that relates to a Tax of Spinco or any Spinco Affiliate or that could give rise to a liability of Spinco or any Spinco Affiliate under this Agreement, and Spinco shall use reasonable efforts to keep Parent advised as to the status of Tax audits and litigation involving any issue that related to a Tax of Parent or any Parent Affiliate or could give rise to a liability of Parent or any Parent Affiliate under this Agreement (in each case, a "Liability Issue"). Parent and Spinco shall promptly furnish each other copies of any inquiries or requests for information from any Taxing Authority or any other administrative, judicial, or other governmental authority concerning any Liability Issue pertaining to the other party. Without limiting the foregoing, Parent and Spinco, as the case may be, shall each promptly

furnish to the other within 30 days of receipt a copy of the relevant section of the revenue agent's report or similar report, notice of proposed adjustment, or notice of deficiency received by Parent or its Affiliate or by Spinco or its Affiliate, as the case may be, relating to any Liability Issue or any adjustment referred to in this Section 5.2(b).

(c) Notwithstanding Section 5.2(a),

i) To the extent resolution of any Tax Controversy could give rise to a material Tax Detriment or loss of a material Tax Benefit to the party responsible for such Taxes under Section 2.1 totaling at least \$250,000, but such party is not the Responsible Party, then the Responsible Party shall provide such other party (at such other party's expense) reasonable participation rights with respect to so much of the Tax Controversy as relates to Taxes for which such other party may be responsible; and

ii) A Responsible Party shall not settle or otherwise voluntarily resolve or disclose any Tax Controversy which could give rise to a Tax Detriment or loss of a material Tax Benefit to the other party totaling at least \$250,000 without such other party's consent, not to be unreasonably withheld

**5.3 Information for Shareholders.** Parent shall provide each shareholder that receives stock of Spinco pursuant to the Distribution with the information necessary for such shareholder to comply with the requirements of Section 355 of the Code and the Treasury regulations thereunder with respect to statements that such shareholders must file with their federal income tax returns demonstrating the applicability of Section 355 to the Distribution.

## ARTICLE VI

### DISPUTE RESOLUTION

**6.1 Dispute Resolution.** The parties desire that friendly collaboration will develop between them. Accordingly, they will try to resolve in an amicable manner all disputes and disagreements connected with their respective rights and obligations under this Agreement in accordance with Article X of the Separation Agreement; provided, however, that this Section 6.1 shall not apply to any (a) suits seeking injunctive relief or specific performance, or (b) dispute, controversy, or claim arising under Article IV of this Agreement (including any dispute, controversy, or claim relating to the breach, termination, or validity thereof).

## ARTICLE VII

### MISCELLANEOUS

**7.1 Effectiveness.** This Agreement shall become effective on the Distribution Date.

**7.2 Indemnification for Inaccurate, Incomplete or Untimely Information.**

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(a) Spinco and each Spinco Affiliate shall indemnify and hold harmless Parent and each Parent Affiliate from and against any liability, cost or expenses, including, without limitation, any fine, penalty, interest, charge or accountant's fee, arising out of fraudulent or negligent information, workpapers, documents and other items prepared by Spinco or any Spinco Affiliate used in the preparation of any Tax Return or claim for refund filed by Parent or any Parent Affiliate for any period during which Spinco or any Spinco Affiliate was or has been a member of the Parent Consolidated Group, or arising out of the untimely provision of information required to be provided under this Agreement.

(b) Parent and each Parent Affiliate shall indemnify and hold harmless Spinco and each Spinco Affiliate from and against any liability, cost or expense, including, without limitation, any fine, penalty, interest, charge or accountant's fee, arising out of fraudulent or negligent preparation of any Tax Return or claim for refund filed by Parent or a Parent Affiliate for any period during which Spinco or any member of the Spinco Group was or has been a member of the Parent Consolidated Group, or arising out of the untimely provision of information required to be provided under this Agreement.

**7.3 Breach.** Parent shall indemnify and hold harmless Spinco and each Spinco Affiliate, and Spinco shall indemnify and hold harmless Parent and each Parent Affiliate, from and against any payment required to be made under this Agreement as a result of the breach by Parent (or Parent Affiliate) or Spinco (or Spinco Affiliate), as the case may be, of any obligation under this Agreement.

**7.4 Disclaimers.**

(a) Parent disclaims all knowledge of or responsibility for the content or accuracy of any separate returns or filings made by or on behalf of Spinco or any Spinco Affiliate for any taxable period during which such company was not a member of the Parent Consolidated Group.

(b) Spinco disclaims all knowledge of or responsibility for the content or accuracy of any Tax Returns or filings made by or on behalf of the Parent Consolidated Group or any member thereof for any period except to the extent such Tax Returns or filings reflect items of the Spinco Business.

**7.5 Payments.** In the event that one party (the "Owing Party") is required to make a payment to another party (the "Owed Party") pursuant to this Agreement, then to the extent not otherwise provided for in this Agreement, such payment shall be made according to this Section 7.5.

(a) All payments shall be made to the Owed Party or to the appropriate Taxing Authority as specified by the Owed Party within the time prescribed for the payment in this Agreement, or if no period is prescribed, within 20 days after delivery of written notice of payment owing together with a computation of the amounts due.

(b) Unless otherwise required by any Final Determination, the parties agree that any payment made by one party to another party (other than payments of interest and payment of After Tax Amounts pursuant to Section 7.5(d)) pursuant to this Agreement shall be

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treated for all Tax and financial accounting purposes as payments with respect to stock (dividend distributions or capital contributions, as the case may be) made immediately prior to the Distribution.

(c) All actions required to be taken by any party under this Agreement shall be performed within the time prescribed for performance in this Agreement, or if no period is prescribed, such actions shall be performed promptly.

(d) If, pursuant to a Final Determination, it is determined that the receipt or accrual of any payment made under this Agreement (other than payments of interest) is subject to any Tax, the party making such payment shall be liable for (i) the After Tax Amount with respect to such payment, and (ii) interest at the rate described in 7.5(e) on the amount of such tax from the date such Tax is due through the date of payment of such After Tax Amount. A party making a demand for payment pursuant to this Agreement and for a payment of an After Tax Amount with respect to such payment shall separately specify and compute such After Tax Amount. However, a party may choose not to specify an After Tax Amount in a demand for payment pursuant to this Agreement without thereby being deemed to have waived its right subsequently to demand an After Tax Amount with respect to such payment.

(e) Any payment that is required to be made pursuant to this Agreement (i) by Spinco (or a Spinco Affiliate) to Parent (or a Parent Affiliate) or (ii) by Parent (or a Parent Affiliate) to Spinco (or a Spinco Affiliate), that is not made on or prior to the date that such payment is required to be made pursuant to this Agreement shall thereafter bear interest at the rate established for underpayments pursuant to Section 6621(a)(2) of the Code.

(f) Any payment that is required to be made pursuant to this Agreement (i) by Spinco (or a Spinco Affiliate) to Parent (or a Parent Affiliate) or (ii) by Parent (or a Parent Affiliate) to Spinco (or a Spinco Affiliate), shall be made by wire transfer of immediately available funds, provided that if the amount of any payment is less than \$10,000, such payment may be made in a form other than a wire transfer.

**7.6 Changes in Law.** Any reference to a provision of the Code, Treasury Regulations, or a law of another jurisdiction shall include a reference to any applicable successor provision or law. If, due to any change in applicable law or regulations or their interpretation by any court of law or other governing body having jurisdiction subsequent to the date specified in the preamble to this Agreement, performance of any provision of this Agreement or any transaction contemplated hereby shall become impracticable or impossible, the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such provision.

**7.7 Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by standard form of telecommunications, by courier, or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Parent, at:

FMC Technologies, Inc.  
1803 Gears Road  
Houston, Texas 77067  
Attention: General Counsel  
Fax: (281) 591-4102

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If to Spinco, at:

John Bean Technologies Corporation  
200 E. Randolph Dr.  
Chicago, IL 60601  
Attention: General Counsel

or to such other address as any party hereto may have furnished to the other parties by a notice in writing in accordance with this Section 7.7.

**7.8 Complete Agreement; Corporate Power.**

(a) This Agreement, the Exhibits and Schedules hereto, the Separation Agreement, and the Ancillary Agreements shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings with respect to such subject matter.

(b) Parent represents on behalf of itself and each of its Affiliates and Spinco represents on behalf of itself and each of its Affiliates as follows:

i) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform each of this Agreement and each other Ancillary Agreement to which it is a party and to complete the transactions contemplated hereby and thereby; and

ii) this Agreement, the Separation Agreement, and each Ancillary Agreement to which it is a party has been duly executed and delivered by it and constitutes a valid and binding agreement of it enforceable in accordance with the terms thereof.

**7.9 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (other than the laws regarding choice of laws and conflicts of laws that would apply the substantive laws of any other jurisdiction) as to all matters, including matters of validity, construction, effect, performance and remedies.

**7.10 Successors and Assigns.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns, but neither this Agreement nor any of the rights, interests and obligations hereunder shall be assigned by any Party without the prior written consent of the other party or except in connection with a merger or similar business combination involving a party if the successor under applicable law expressly assumes all rights and obligations of such party hereunder and under each Ancillary Agreement as if it were such party. Except for the provisions of Sections 4.2 and 4.3

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relating to indemnities, which are also for the benefit of the indemnitees, this Agreement is solely for the benefit of the parties hereto and their subsidiaries and affiliates and is not intended to confer upon any other Persons any rights or remedies hereunder.

**7.11 Joint and Several Liability.** Spinco and each Spinco Affiliate shall have joint and several liability for any obligation of Spinco or a Spinco Affiliate arising pursuant to this Agreement. Parent and each Parent Affiliate shall have joint and several liability for any obligation of Parent or a Parent Affiliate arising pursuant to this Agreement.

**7.12 Parties in Interest.** Nothing in this Agreement, express or implied, is intended to confer on any Person other than the parties, their respective Affiliates, and their respective successors and permitted assigns, any rights or remedies of any nature whatsoever under or by virtue of this Agreement.

**7.13 Legal Enforceability; Waiver of Default.**

(a) Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions. Any prohibition or unenforceability of any provision of this Agreement in any jurisdiction shall not invalidate or render unenforceable the provision in any other jurisdiction.

(b) Waiver by either party of any default by the other party of any provision of this Agreement shall not be deemed a waiver by the waiving party of any subsequent or other default, nor shall it prejudice the rights of the other party.

**7.14 Action by Affiliates.** To the extent Spinco is obligated to take any action under this Agreement, and such action is more properly taken by a Spinco Affiliate, then Spinco shall cause such Affiliate to take such action. To the extent Spinco is obligated to refrain from taking any action under this Agreement, Spinco shall cause each of its Affiliates to refrain from taking such action. Parent shall be subject to similar rules regarding actions to be taken, or to be refrained from being taken, by it and its Affiliates.

**7.15 Expenses.** Unless otherwise expressly provided in this Agreement, each party shall bear any and all expenses that arise from their respective obligations under this Agreement.

**7.16 Confidentiality.**

(a) Each party shall hold and cause its consultants and advisors to hold in strict confidence, unless compelled to disclose by judicial or administrative process or, in the opinion of its counsel, by other requirements of law, all information written or oral concerning the other parties hereto furnished it by such other party or its representatives pursuant to this Agreement (except to the extent that such information can be shown to have been (a) previously known by the party to which it was furnished, (b) in the public domain through no fault of such party, or (c) later lawfully acquired from other sources by the party to which it was furnished), and each party shall not release or disclose such information to any other person, except its auditors, attorneys, financial advisors, bankers and other consultants and advisors who shall be advised of the provisions of this Section 7.16. Each party shall be deemed to have satisfied its obligation to hold confidential information concerning or supplied by the other party if its exercises the same care as it takes to preserve confidentiality for its own similar information.

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(b) Notwithstanding Section 7.16(a), the provisions regarding confidentiality set forth in Section 5.1 shall govern information required to be provided pursuant to Sections 3.4 and 5.1.

**7.17 Amendments and Modification.** This Agreement may be amended, modified or supplemented only by a written agreement signed by all of the parties hereto.

**7.18 No Implied Waivers; Cumulative Remedies; Writing Required.** No delay or failure in exercising any right, power or remedy hereunder shall affect or operate as a waiver thereof; nor shall any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such a right, power or remedy preclude any further exercise thereof or of any other right, power or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any party hereto would otherwise have. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement or any such waiver of any provision of this Agreement must satisfy the conditions set forth in Section 7.17 and shall be effective only to the extent in such writing specifically set forth.

**7.19 Limitation on Damages.** Each party irrevocably waives, and no party shall be entitled to seek or receive, consequential, special, indirect or incidental damages (including without limitation damages for loss of profits) or punitive damages, regardless of how such damages were caused and regardless of the theory of liability; provided that the foregoing shall not limit each party's indemnification obligations set forth in the Separation Agreement and the Ancillary Agreements

**7.20 Severability.** If any provision of this Agreement or the application thereof to any person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party.

**7.21 Specific Performance** In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement or any Ancillary Agreement, the party or parties who are or are to be thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief of its rights under this Agreement or such Ancillary Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The parties agree that the remedies at law for any breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived. Each Party hereby submits to the exclusive jurisdiction of Delaware for purposes of all legal proceedings for equitable relief arising out of or relating to



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this Agreement or the transactions contemplated hereby. Each Party irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED IN THIS AGREEMENT OR ANY ANCILLARY AGREEMENT, AND AGREES TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT SUCH WAIVER.

**7.22 Construction.** The descriptive headings herein are inserted for convenience of reference only and are not intended to be a substantive part of or to affect the meaning or interpretation of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns, pronouns, and verbs shall include the plural and vice versa. Reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof. The use of the words “include” or “including” in this Agreement shall be by way of example rather than by limitation. The use of the words “or,” “either” or “any” shall not be exclusive. The parties have participated jointly in the negotiation and drafting of this Agreement, the Separation Agreement, and the Ancillary Agreements. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The parties agree that prior drafts of this Agreement shall be deemed not to provide any evidence as to the meaning of any provision hereof or the intent of the parties hereto with respect hereto.

**7.23 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**7.24 Delivery by Facsimile and Other Electronic Means.** This Agreement, and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or other electronic transmission, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. At the request of any party, each other party shall re-execute original forms thereof and deliver them to all other parties. No party shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature was transmitted or communicated through the use of facsimile machine or other electronic means as a defense to the formation of a contract and each such party forever waives any such defense.

**7.25 Consent by Affiliates.** Each of Parent and Spinco shall cause each of its respective Affiliates (including any entity that becomes an Affiliate after the date hereof) to consent to, and be bound by, the terms, conditions, covenants, and provisions of this Agreement.

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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**FMC Technologies, Inc.**

By: /s/ William H. Schumann, III  
Title: Executive Vice President and Chief Financial Officer

**John Bean Technologies Corporation**

By: /s/ Ronald D. Mambu  
Title: Vice President, Chief Financial Officer, Treasurer and  
Controller

News Release

**FMC Technologies Inc**  
 1803 Gears Road  
 Houston, TX 77067



**For Release:** Immediate

<b>Investors</b>	Rob Cherry	(281) 591-4560
<b>Media</b>	Ellen Bates	(281) 445-6559
	Michael King	(281) 931-2540

**FMC Technologies Completes Spin-Off of**

**John Bean Technologies Corporation**

**HOUSTON, August 1, 2008**— FMC Technologies, Inc. (NYSE:FTI) announced that it has completed the spin-off of its FoodTech and Airport Systems businesses into a publicly-traded company named John Bean Technologies Corporation (“JBT”). The spin-off, which was completed on July 31, 2008, was implemented through a tax-free dividend to FTI shareholders.

FMC Technologies distributed 0.216 share of JBT common stock for every share of FTI common stock outstanding as of the close of business on July 22, 2008. Shareholders will receive a cash payment in lieu of fractional shares of JBT. FMC Technologies will not retain any shares of JBT and going forward will report past results of FoodTech and Airport Systems as discontinued operations.

Beginning Friday, August 1, 2008, JBT will operate as an independent public company with its common stock trading on the New York Stock Exchange under the symbol “JBT.” The new company will have approximately 27.6 million shares outstanding.

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*FMC Technologies, Inc. (NYSE:FTI) is a leading global provider of technology solutions for the energy industry and other industrial markets. The Company designs, manufactures and services technologically sophisticated systems and products such as subsea production and processing systems, surface wellhead systems, high pressure fluid control equipment, measurement solutions, and marine loading systems for the oil and gas industry. Named by FORTUNE Magazine as America’s Most Admired Oil and Gas Equipment, Service Company in 2005, 2006 and 2008, FMC Technologies employs approximately 13,000 people and operates 33 manufacturing facilities in 19 countries. For more information visit [www.fmctechnologies.com](http://www.fmctechnologies.com).*

*John Bean Technologies Corporation (NYSE: JBT) is a leading global technology solutions provider to high-value segments of the food processing and air transportation industries. The Company designs, manufactures, tests and services technologically sophisticated systems and products for customers through its JBT FoodTech and JBT AeroTech segments. For more information visit [www.jbtcorporation.com](http://www.jbtcorporation.com).*

This release contains forward-looking statements as defined in the Private Securities Litigation Reform Act of 1995. Forward-looking statements are information of a non-historical nature and are subject to risks and uncertainties that are beyond the Company’s ability to control. These risks and uncertainties are described under the caption “Risk Factors” in JBT’s Registration Statement on Form 10. These risks and uncertainties are also described under the caption “Risk Factors” in FMC Technologies’ Annual Report on Form 10-K for the year ended December 31, 2007 and may be modified in subsequent quarterly reports filed by the Company with the Securities and Exchange Commission that may be accessed on the Company’s website. The Company cautions shareholders and prospective investors that actual results may differ materially from those indicated by the forward-looking statements.

News Release

FMC Technologies Inc  
1803 Gears Road  
Houston, TX 77067



For Release: Immediate

<b>Investors</b>	Rob Cherry	(281) 591-4560
<b>Media</b>	Ellen Bates	(281) 445-6559
	Michael King	(281) 931-2540

**Jay A. Nutt Named Controller of FMC Technologies**

**HOUSTON, July 31, 2008** — FMC Technologies, Inc. (NYSE: FTI) announced today that Jay A. Nutt has been named Controller. Mr. Nutt, who currently serves as Assistant Corporate Controller of FMC Technologies, will assume his new position effective August 1.

Mr. Nutt began his career with FMC Corporation in 1987. During his 21-year career he has progressed through a number of positions of increasing responsibility. In 2001, following FMC Corporation's spin-off of FMC Technologies, he was named Division Controller of Energy Production Systems. He advanced to Controller of Energy Systems in 2007 and assumed his current responsibilities in January 2008.

Mr. Nutt is a 1985 graduate of Michigan State University, where he earned a Bachelor of Science degree in accounting, and a 1991 graduate of Loyola University where he was awarded a Master of Business Administration (MBA) degree.

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*FMC Technologies, Inc. (NYSE:FTI) is a leading global provider of technology solutions for the energy industry and other industrial markets. The Company designs, manufactures and services technologically sophisticated systems and products such as subsea production and processing systems, surface wellhead systems, high pressure fluid control equipment, measurement solutions, and marine loading systems for the oil and gas industry. Named by FORTUNE Magazine as America's Most Admired Oil and Gas Equipment, Service Company in 2005, 2006 and 2008, FMC Technologies employs approximately 13,000 people and operates 33 manufacturing facilities in 19 countries. For more information visit [www.fmctechnologies.com](http://www.fmctechnologies.com).*

**FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES  
UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL INFORMATION**

Included in the unaudited pro forma condensed consolidated financial information presented herein are (i) unaudited pro forma condensed consolidated statements of income for the six months ended June 30, 2008 and for the years ended December 31, 2007, 2006 and 2005 that give effect to the spin-off of FMC Technologies' FoodTech and Airport Systems segments, also known as John Bean Technologies Corporation, as if the spin-off had occurred on January 1, 2005 and (ii) an unaudited pro forma condensed consolidated balance sheet as of June 30, 2008 that gives effect to the spin-off of John Bean Technologies Corporation as if the spin-off had occurred on June 30, 2008.

The pro forma adjustments are derived from the best possible information and assumptions that management believes are reasonable. The pro forma adjustments may differ from those that will be calculated to report the FoodTech and Airport Systems segments as a discontinued operation in FMC Technologies' future filings.

These unaudited pro forma financial statements are presented for illustrative purposes only and are not necessarily indicative of the operating results or the financial position that would have been achieved had the spin-off of John Bean Technologies Corporation been completed as of the dates indicated or of the results that may be obtained in the future. These unaudited pro forma financial statements and the accompanying notes should be read together with (i) FMC Technologies' annual report on Form 10-K for the year ended December 31, 2007 and (ii) FMC Technologies' quarterly report on Form 10-Q for the quarter ended June 30, 2008.

**FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES**  
**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF INCOME**

(In millions, except per share amounts)

	For the six months ended June 30, 2008		
	Historical	Adjustments (a)	Pro Forma
Revenue	\$2,748.5	\$ 530.3	<b>\$2,218.2</b>
Costs and expenses:			
Cost of sales	2,176.8	410.6	<b>1,766.2</b>
Selling, general and administrative expense	256.7	72.9	<b>183.8</b>
Research and development expense	32.5	11.8	<b>20.7</b>
Total costs and expenses	2,466.0	495.3	<b>1,970.7</b>
Minority interest	(1.0)		<b>(1.0)</b>
Other income (expense), net	(3.4)	1.9	<b>(5.3)</b>
Income before interest expense, net and income taxes	278.1	36.9	<b>241.2</b>
Interest income, net	0.1		<b>0.1</b>
Income before income taxes	278.2	36.9	<b>241.3</b>
Provision for income taxes	91.2	17.9	<b>73.3</b>
Income from continuing operations	<u>\$ 187.0</u>	<u>\$ 19.0</u>	<b><u>\$ 168.0</u></b>
Basic earnings per share:			
Income from continuing operations	\$ 1.45		<b>\$ 1.30</b>
Diluted earnings per share:			
Income from continuing operations	\$ 1.43		<b>\$ 1.28</b>
Weighted average shares outstanding:			
Basic	129.3		<b>129.3</b>
Diluted	131.2		<b>131.2</b>

See accompanying notes to unaudited pro forma condensed consolidated financial statements.

**FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES**  
**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF INCOME**

(In millions, except per share amounts)

	For the year ended December 31, 2007		
	Historical	Adjustments (a)	Pro Forma
Revenue	\$4,615.4	\$ 973.9	\$3,641.5
Costs and expenses:			
Cost of sales	3,653.0	739.7	2,913.3
Selling, general and administrative expense	452.2	140.5	311.7
Research and development expense	59.5	18.7	40.8
Total costs and expenses	4,164.7	898.9	3,265.8
Minority interest	(1.1)		(1.1)
Other income (expense), net	23.7	(6.1)	29.8
Income before interest expense, net and income taxes	473.3	68.9	404.4
Interest expense, net	(9.3)		(9.3)
Income before income taxes	464.0	68.9	395.1
Provision for income taxes	156.5	22.0	134.5
Income from continuing operations	\$ 307.5	\$ 46.9	\$ 260.6
Basic earnings per share:			
Income from continuing operations	\$ 2.34		\$ 1.98
Diluted earnings per share:			
Income from continuing operations	\$ 2.30		\$ 1.95
Weighted average shares outstanding:			
Basic	131.3		131.3
Diluted	133.8		133.8

See accompanying notes to unaudited pro forma condensed consolidated financial statements.

**FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES**  
**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF INCOME**

(In millions, except per share amounts)

	For the year ended December 31, 2006		
	Historical	Adjustments (a)	Pro Forma
Revenue	\$3,755.6	\$ 840.2	<b>\$2,915.4</b>
Costs and expenses:			
Cost of sales	2,998.4	630.1	<b>2,368.3</b>
Selling, general and administrative expense	403.4	132.4	<b>271.0</b>
Research and development expense	49.2	16.2	<b>33.0</b>
Total costs and expenses	3,451.0	778.7	<b>2,672.3</b>
Minority interest	(2.5)		<b>(2.5)</b>
Other income (expense), net	(0.4)	5.5	<b>(5.9)</b>
Income before interest expense, net and income taxes	301.7	67.0	<b>234.7</b>
Interest expense, net	(6.7)		<b>(6.7)</b>
Income before income taxes	295.0	67.0	<b>228.0</b>
Provision for income taxes	84.1	21.4	<b>62.7</b>
Income from continuing operations	<u>\$ 210.9</u>	<u>\$ 45.6</u>	<u><b>\$ 165.3</b></u>
Basic earnings per share:			
Income from continuing operations	\$ 1.54		<b>\$ 1.21</b>
Diluted earnings per share:			
Income from continuing operations	\$ 1.50		<b>\$ 1.18</b>
Weighted average shares outstanding:			
Basic	137.0		<b>137.0</b>
Diluted	140.3		<b>140.3</b>

See accompanying notes to unaudited pro forma condensed consolidated financial statements.



**FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES**  
**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF INCOME**

(In millions, except per share amounts)

	For the year ended December 31, 2005		
	Historical	Adjustments (a)	Pro Forma
Revenue	\$3,107.0	\$ 824.6	<b>\$2,282.4</b>
Costs and expenses:			
Cost of sales	2,512.0	626.4	<b>1,885.6</b>
Selling, general and administrative expense	354.3	125.6	<b>228.7</b>
Research and development expense	47.2	18.0	<b>29.2</b>
Total costs and expenses	2,913.5	770.0	<b>2,143.5</b>
Minority interest	(3.5)		<b>(3.5)</b>
Other income, net	24.5	1.6	<b>22.9</b>
Income before interest expense, net and income taxes	214.5	56.2	<b>158.3</b>
Interest expense, net	(5.4)		<b>(5.4)</b>
Income before income taxes	209.1	56.2	<b>152.9</b>
Provision for income taxes	76.9	20.0	<b>56.9</b>
Income from continuing operations	<u>\$ 132.2</u>	<u>\$ 36.2</u>	<u><b>\$ 96.0</b></u>
Basic earnings per share:			
Income from continuing operations	\$ 0.96		<b>\$ 0.70</b>
Diluted earnings per share:			
Income from continuing operations	\$ 0.93		<b>\$ 0.68</b>
Weighted average shares outstanding:			
Basic	138.0		<b>138.0</b>
Diluted	141.6		<b>141.6</b>

See accompanying notes to unaudited pro forma condensed consolidated financial statements.

**FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES**  
**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET**  
**AS OF JUNE 30, 2008**

(In millions)

	Historical	Adjustments (b)	Receipt of cash from John Bean Technologies Corporation (c)	Pro Forma
<b>Assets</b>				
Current assets:				
Cash and cash equivalents	\$ 278.2		\$ 150.5	\$ 428.7
Trade receivables, net	985.5	\$ 163.1		822.4
Inventories	782.2	163.4		618.8
Assets of discontinued operations	2.5			2.5
Other current assets	622.7	32.7		590.0
Total current assets	2,671.1	359.2	150.5	2,462.4
Investments	36.7	9.2		27.5
Property, plant and equipment, net	647.8	133.0		514.8
Goodwill and intangible assets	279.9	35.9		244.0
Other assets	263.8	23.0		240.8
Total assets	<u>\$3,899.3</u>	<u>\$ 560.3</u>	<u>\$ 150.5</u>	<u>\$3,489.5</u>
<b>Liabilities and stockholders' equity</b>				
Current liabilities:				
Short-term debt and current portion of long-term debt	\$ 12.8			\$ 12.8
Accounts payable, trade and other	567.0	\$ 90.4		476.6
Advance payments and progress billings	839.4	102.2		737.2
Liabilities of discontinued operations	2.5			2.5
Other current liabilities	677.5	86.6		590.9
Total current liabilities	2,099.2	279.2		1,820.0
Long-term debt, less current portion	303.0			303.0
Other liabilities	355.5	86.9		268.6
Stockholders' equity:				
Common stock	1.4			1.4
Common stock held in treasury	(556.8)	(0.6)		(556.2)
Capital in excess of par value of common stock	711.2	197.2	\$ 150.5	664.5
Retained earnings	958.9			958.9
Accumulated other comprehensive income (loss)	26.9	(2.4)		29.3
Total stockholders' equity	1,141.6	194.2	150.5	1,097.9
Total liabilities and stockholders' equity	<u>\$3,899.3</u>	<u>\$ 560.3</u>	<u>\$ 150.5</u>	<u>\$3,489.5</u>

See accompanying notes to unaudited pro forma condensed consolidated financial statements.

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**FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES**  
**NOTES TO THE PRO FORMA CONDENSED CONSOLIDATED FINANCIAL INFORMATION**

**(Unaudited)**

- (a) Represents the elimination of the financial results of the FoodTech and Airport Systems segments and directly incremental corporate divisions, which are included in the historical financial results of FMC Technologies, Inc., net of general corporate expenses that will remain with the continuing entity.
- (b) Represents the elimination of the net assets of the FoodTech and Airport Systems segments and directly incremental corporate divisions, which are included in the historical financial results of FMC Technologies, Inc., net of certain assets and liabilities that will remain with the continuing entity.
- (c) Reflects the receipt of a cash dividend paid from John Bean Technologies Corporation to FMC Technologies, Inc. in connection with the spin-off as stipulated in the Separation and Distribution Agreement.