

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

Kal Freight Inc., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-90614 (CML)

(Joint Administration Requested)

DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL AUTHORIZING DEBTORS TO (I) MAINTAIN AND CONTINUE TO OPERATE UNDER FACTORING AND SECURITY AGREEMENT IN ORDER TO SELL ACCOUNTS POST-PETITION TO TRIUMPH PURSUANT TO 11 U.S.C. SECTION 363(B), (C), (F), AND (M); (II) OBTAIN CREDIT FROM TRIUMPH PURSUANT TO 11 U.S.C. SECTIONS 364(C)(1), (C)(2), AND (D)(1); (III) GRANT ADEQUATE PROTECTION IN THE FORM OF FIRST PRIORITY LIENS AND SECURITY INTERESTS ON PROPERTY OF DEBTORS' ESTATES PURSUANT TO 11 U.S.C. SECTIONS 361 AND 363(E); (IV) AMEND THE FACTORING AND SECURITY AGREEMENT AND GRANT TRIUMPH BUSINESS CAPITAL ADDITIONAL LIENS; (V) AUTHORIZE THE DEBTORS TO USE CASH COLLATERAL AND GRANT TRIUMPH ADEQUATE PROTECTION; (VI) ANNUL AND MODIFY THE AUTOMATIC STAY; AND (VII) GRANT RELATED RELIEF ALL RETROACTIVELY TO THE PETITION DATE

Emergency relief has been requested. Relief is requested not later than December 6, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on December 6, 2024 at 2:00 p.m. (prevailing Central Time). Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez's conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez's homepage. The meeting code is "JudgeLopez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification numbers, are: Kal Freight Inc. (0249); Kal Aviation LLC (2600); Kal Partz Inc. (0139); Kal Trailers & Leasing Inc. (0840); and KVL Tires Inc. (0320). The location of the Debtors' service address in these chapter 11 cases is 10156 Live Oak Ave., Fontana, CA 92335.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Lopez’s homepage. Select the case name, complete the required fields and click “Submit” to complete your appearance.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), including Debtor Kal Freight Inc. (“Kal Freight”), state the following in support of this motion (this “Motion”).

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of Title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 2002 and 4001, and rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Local Rules”).

RELIEF REQUESTED

4. The Debtors seek the entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”),² and a final order (the “Final Order”)³ that, among other things:

² Capitalized terms used in this summary chart but not otherwise defined have the meanings ascribed to them in the First Day Declaration (defined below), Post-Petition Agreements (defined below), or the Interim Order, as applicable.

³ The Debtors will file the form of Final Order prior to the Final Hearing (as defined herein).

- a. authorize Kal Freight and Triumph to (i) enter into the Post-Petition Chapter 11 Bankruptcy Rider to the Factoring Agreement (“Bankruptcy Rider”); (ii) enter into the Conversion Addendum (the “Conversion Addendum”) to Factoring and Security Agreement; (iii) operate and continue operating without interruption under the Factoring and Security Agreement dated April 25, 2017 as amended, restated, and supplemented, including the Non-Purchase Advance-Addendum thereto dated August 18, 2023 (the “Factoring Agreement”), the Bankruptcy Rider, and the Conversion Addendum (the Factoring Agreement, together with the Bankruptcy Rider and the Conversion Addendum, the “Post-Petition Agreements”). Copies of the Post-Petition Agreements are attached as Exhibit 1 to the Interim Order;
- b. authorize the Debtors to use proceeds of the Post-Petition Agreements and Cash Collateral, in accordance with the terms of the Interim Order and the Final Order, the Post-Petition Agreements, and the Budget solely for (1) working capital and other general corporate purposes, (2) permitted payment of costs of administration of the chapter 11 cases (the “Cases”), (3) payment of fees and expenses as approved by the Court;
- c. grant to Triumph, among other things, a perfected first and senior ownership interest in all Purchased Accounts (as defined herein);
- d. grant to Triumph adequate protection liens and superpriority administrative expense claims against each of the Debtors’ estates, with respect to the Post-Petition Obligations (as defined below) with priority over any and all administrative expenses, subject to the terms hereof;
- e. grant to Triumph, among other things, valid, enforceable, non-avoidable, and duly perfected first-priority liens and security interests in the DIP Collateral (as defined herein) and all proceeds, replacements, accessions, and substitutions thereof;
- f. authorize the Debtors’ ongoing grants of liens and security interests in all assets to continue to secure all of the Debtors’ existing, ongoing, and future debts and obligations to Triumph;
- g. authorize the Debtors’ ongoing guarantees of the Debtors’ existing, ongoing, and future debts and obligations to Triumph;
- h. subject to entry of the Final Order (as defined herein), waive with respect to Triumph, the Collateral (as defined herein), and the Cash Collateral (as defined herein) (a) the rights of the Debtors and the estates to surcharge pursuant to Bankruptcy Code section 506(c); (b) the applicability of the “equities of the case” exception under Bankruptcy Code section 552(b); (c) any claims or causes of action that may be brought; (d) rights to assert marshalling; and (e) other rights and claims as set forth herein;
- i. subject to entry of the Final Order (as defined herein) and the rights of parties in interest under section 39 of the Interim Order, grants releases to Triumph

- j. waive any applicable stay (including under Bankruptcy Rule 6004) and provide for immediate effectiveness of the Interim Order and operation under the Post-Petition Agreements; and
- k. schedule a final hearing (the “Final Hearing”) to consider the relief requested herein and entry of the Final Order in a form, and with a budget, acceptable to Triumph in its discretion, and approving the form of notice with respect to the Final Hearing.

BACKGROUND

I. General Background

5. On the date hereof (the “Petition Date”), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these Cases.

6. The Debtors were founded in 2014 with just six trucks and have grown into an integrated transportation and logistics business. The Debtors provide exceptional and cost-effective hauling and other logistics solutions to their customers and serve as a “one-stop shop” for independent owner-operators in the trucking industry. As of the Petition Date, the Debtors are engaged in four business lines focused on the United States trucking and logistics industries, generally organized into (i) KAL Freight; (ii) KAL Partz; (iii) KAL Trailers & Leasing; and (iv) KVL Tires.

7. The factual support for this Motion and additional information regarding the Debtors’ business and capital structure and the circumstances leading to the commencement of these Chapter 11 cases is set forth in the *Declaration of Bradley D. Sharp in Support of Debtors’ Chapter 11 Petitions and First Day Relief*, which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

II. The Factoring Agreement, the Bankruptcy Rider, and the Conversion Addendum (i.e. the Post-Petition Agreements)

8. On or about April 25, 2017, Triumph and Kal Freight entered the Factoring Agreement, which entitled Triumph to, among other things, purchase Kal Freight's accounts arising from the sale of goods and/or transportation services provided to Kal Freight customers. Under an addendum, Triumph also agreed to loan up to \$3.5 million to Kal Freight on account of certain Non-Purchased Accounts. A copy of the Factoring Agreement, Bankruptcy Rider, and Conversion Addendum, inclusive of the amendments thereto, is attached to the proposed Interim Order as Exhibit 1.

9. The Factoring Agreement is governed by the laws of the state of Texas. The Factoring Agreement is intended to serve as the basis for both a sale of Kal Freight's (and certain affiliates') accounts, in respect to those accounts for which payments are made by Triumph at an advance rate of up to 99%, and in addition, a security agreement encumbering Kal Freight's assets to secure its obligations under the Factoring Agreement (the "Collateral"). As of the Petition Date, many of Kal Freight's (and certain affiliates') accounts were sold to Triumph under the Factoring Agreement. The term "Purchased Accounts" is defined in section 1.37 of the Factoring Agreement as "Accounts purchased hereunder which have not been Closed." The maximum aggregate advance amount under the Factoring Agreement is \$20 million. Any and all obligations and indebtedness of whatever kind or nature arising under and owing to Triumph under the Post-Petition Agreements, including the Pre-Petition Obligations and any other obligations of any Debtor to Triumph arising before and after the Petition Date, are hereafter the "Post-Petition Obligations."

10. In order to provide Kal Freight with additional liquidity, Kal Freight has requested: (a) that Triumph purchase under the Conversion Addendum, Eligible Accounts that comprise some

or all of the Non-Purchased Accounts that had been financed under the Non-Purchase Advance Addendum; (b) suspension of Triumph's obligations under the Non-Purchase Advance Addendum; (c) authorization to enter into the Conversion Addendum; and (d) authorization to grant Triumph a first lien and security interest in the Additional Cash Account (as defined in the Conversion Addendum) and the other Collateral. A copy of the Bankruptcy Rider and Conversion Addendum for the Factoring Agreement is attached to the proposed Interim Order as part of Exhibit 1.

11. The debts and obligations to Triumph that arose before the commencement of the Cases relating solely to Triumph's Purchase of Accounts and Triumph's advances on Non-Purchased Accounts is no less than \$8,544,198.57 as of December 5, 2024. The total outstanding to Triumph due from Kal Freight, Kal Way Inc., SPG Transportation Inc., Pro Tec Inc is no less than \$17,278,907.23 as of December 5, 2024. In addition, under the Factoring Agreement and certain other agreements (as summarized in the proposed Interim Order), Kal Freight is also liable to Triumph and to Triumph's related entity, TBK Bank SSB ("TBK") for debts of entities related to or affiliated with Kal Freight (some, but not all of which are Debtors in these Cases) as to which any Debtor is a guarantor, co-obligor, and/or provided collateral to secure their obligations (all of the foregoing are hereby defined as the "Pre-Petition Obligations"). Such debts and obligations are hereafter the "TBK Debts." The TBK Debts total not less than not less than \$72,305,639.15 as of December 2, 2024.

12. The Debtors are in default in the Pre-Petition Obligations to Triumph. The Debtors' Pre-Petition Obligations to TBK are addressed in the *Debtors' Emergency Motion for Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C)*

Modifying the Automatic Stay, and (D) Scheduling a Final Hearing (the “Cash Collateral Motion”).

13. The Debtors are proposing to stipulate, subject to standard challenge rights of parties in interest, that Triumph holds an unavoidable, duly perfected first priority ownership interest in the pre-petition Purchased Accounts and the proceeds thereof, and an unavoidable, duly perfected first priority lien and security interest in all of the Collateral and the proceeds thereof including, but not limited to any Non-Purchased Accounts, other Accounts, and other assets that also serve to secure the Factoring Obligations (collectively, the “Pre-Petition Liens”). The Debtors’ Stipulations are set forth in Exhibit 1 to the Interim Order.

14. In addition to the Pre-Petition Liens in Kal Freight’s assets, Kal Freight’s Obligations to Triumph are also secured by pre-petition liens and security interests granted to Triumph by the other Debtors herein and by non-Debtors Kal Way Inc., SPG Transportation Inc., Pro Tec Inc., Kaltrans Inc, Kalway Inc, and certain individual guarantors (Kalvinder Singh, President of the Debtors, and Sukhvinder Singh). Kal Way Inc., SPG Transportation Inc., Pro Tec Inc., Kaltrans Inc, Kalway Inc, Randhawa & Randhawa Transport, Inc., Kalvinder Singh, and Sukhvinder Singh, collectively, the “Non-Debtor Third Parties.” The Debtors and Non-Debtor Third Parties granted liens and security interests in favor of Triumph pursuant to, among other things, Cross Collateralization/Default and Guaranty Agreements, Unconditional Guarantees, Guarantor’s Security Deed, Deeds of Trust and/or Mortgages, and pursuant to various other agreements with TBK under which the obligor agreed to guaranty, or be liable for, Kal Freight’s obligations to Triumph and/or grant Triumph liens and security interests to secure those obligations.

15. Although Kal Freight is the contracting party under the Factoring Agreement, all Debtors have pledged their assets pre-petition to secure any obligations thereunder. The Debtors now propose to continue this structure under the Post-Petition Agreements. The terms of the Post-Petition Agreements were negotiated in good faith and at arm's length between Kal Freight and Triumph.

**CONCISE STATEMENT OF THE MATERIAL TERMS OF THE MATERIAL
TERMS OF THE INTERIM ORDER PURSUANT TO BANKRUPTCY
RULE 4001 AND THE COMPLEX CASE PROCEDURES**

16. The following chart contains a concise summary of the material terms of the proposed Interim Order (and Final Order to follow), together with references to the applicable sections of the Interim Order and other relevant source documents, including the Post-Petition Agreements, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and the *Procedures for Complex Chapter 11 Cases in the Southern District of Texas*, effective September 18, 2024 (the “Complex Case Procedures”).⁴

Bankruptcy Code	Summary of Material Terms
DIP Borrowers / Guarantors Bankruptcy Rule 4001(c)(1)(B)	Kal Freight is the contracting party under the Post-Petition Agreements, but all Debtors are obligors and pledgors.
DIP Factoring Lenders Bankruptcy Rule 4001(c)(1)(B)	Triumph Financial Services LLC f/k/a Advance Business Capital LLC d/b/a Triumph Business Capital (“ <u>Triumph</u> ”).
DIP Agent Bankruptcy Rule 4001(c)(1)(B)	N/A

⁴ The summaries contained in this Motion are qualified in their entirety by the provisions of the documents referenced. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable documents control.

Bankruptcy Code	Summary of Material Terms
Term Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B)	The Term of the Post-Petition Agreements is set forth in sections 1.46 and 12.1 of the Factoring Agreement, as amended from time to time and as modified by section 10 of the Bankruptcy Rider and the Conversion Addendum. The Term of the Post-Petition Agreements is one year, subject to automatic annual renewals, which shall continue until the earlier of: (i) termination by Kal Freight upon 30 days' written notice to Triumph, and (ii) termination by Triumph by filing a notice with the Bankruptcy Court on the earlier of (a) 30 days after entry of the Interim Order if the Final Order has not been entered by such time, (b) on the occurrence of any Event of Default, or (c) immediately upon Kal Freight receiving notice from the IRS, the state of Texas, or the state of California of the Debtor having committed one or more defaults on its post-petition obligations that may become owing to any of the foregoing.
Post-Petition Agreements	Kal Freight and Triumph shall be immediately authorized to enter into, and continue to operate under and in accordance with, the Post-Petition Agreements and the Interim Order seamlessly and without interruption as if Kal Freight had not filed chapter 11. Kal Freight shall be authorized to enter into the Conversion Addendum and to grant Triumph a first lien and security interest in the Additional Cash Reserve and the Collateral to secure the Debtors' Post-Petition Obligations (except the TBK Debts) to Triumph. The Debtors shall be authorized to execute, deliver, and perform their obligations under the Post-Petition Agreements and under all other documents, instruments, and agreements necessary to effectuate and carry out the terms of the Post-Petition Agreements and the Interim Order. The Post-Petition Agreements, including, without limitation, the Bankruptcy Rider and the Conversion Addendum, shall be approved in all respects, <i>retroactively</i>, as of the Petition Date, pursuant to, without limitation, Bankruptcy Code sections 363(b)(1), (d), (e) and (f). All of the following transactions also shall be approved: (i) Kal Freight's sale of Accounts to Triumph and Triumph's Payments therefor; (ii) Triumph's advances to Kal Freight; (iii) the granting of liens and security interests to Triumph, to secure the Post-Petition Obligations (except the TBK Debts); (iv) the Debtors' continued liability for all of the Post-Petition Obligations (except the TBK Debts); (v) the granting of adequate protection to Triumph for the Post-Petition Obligations (except the TBK Debts); and (vi) all other transactions contemplated by the Post-Petition Agreements. Kal Freight shall be authorized to enter into the Conversion Addendum, to sell Eligible Accounts to Triumph in accordance therewith, and to grant Triumph a continuing lien and security interest in the Additional Cash Reserve (as defined in the Conversion Addendum) and the Collateral, arising or created both before and after the Petition Date, to secure the Post-Petition Obligations (except the TBK Debts). Triumph shall be authorized to purchase Eligible Accounts and otherwise operate in accordance with the Conversion Addendum. See Interim Order, ¶ 2.

Bankruptcy Code	Summary of Material Terms
DIP Factoring Commitments Bankruptcy Rule 4001(c)(1)(B)	The “Maximum Advance” on account of Purchased Accounts under the Post-Petition Agreements is \$20,000,000. <i>See</i> Fifth Amendment to Factoring Agreement, ¶ 1. The Maximum Advance is aggregated between Kal Freight and certain affiliated entities.⁵ Additionally, the Post-Petition Agreements provide for a Non-Purchase Advance Facility of up to \$3,500,000. <i>See</i> Non-Purchase Advance Addendum. Triumph and Kal Freight shall be expressly authorized to continue to operate under the Factoring Agreement without interruption, and Triumph shall be authorized to continue to purchase accounts and make advances, subject to the Post-Petition Agreements, in the same manner as Triumph did prior to the Petition Date, including requiring and obtaining the same collateral security, lien rights, and priority in the Debtors’ assets that it maintained pre-petition, to obtain liens in the Debtors’ post-petition assets, and, notwithstanding any provision to the contrary in Bankruptcy Code section 553 or otherwise, to adjust, offset, setoff, and recoup Kal Freight’s Pre-Petition Obligations against post-petition accounts and collateral and to adjust, offset, setoff, and recoup Post-Petition Obligations (except the TBK Debts) against pre-petition accounts and collateral during the pendency of the Cases and any subsequent Chapter 7 case without interruption as if the Debtors had not filed Chapter 11. Triumph shall be further authorized to apply collections on Accounts purchased pre-petition, and advanced upon pre-petition, to either or both obligations of the Debtors arising pre-petition and post-petition and to apply collections on accounts purchased post-petition, and advanced against post-petition, to either or both obligations of the Debtors arising pre-petition and post-petition (except the TBK Debts). Triumph is authorized to demand, and the Debtors required to immediately pay, the amount of any Reserve Shortfall pursuant to the terms of the Post-Petition Agreements, including any applicable charges therein. <i>See</i> Interim Order, ¶ 7.
Sale of Accounts Bankruptcy Rule 4001(c)(1)(B)	Kal Freight shall be authorized to sell Accounts to Triumph and Triumph shall be authorized, in its sole Discretion (as defined in the Factoring Agreement), to purchase Accounts and make Payments, advances, and overadvances, and to provide any other financial accommodations to Kal Freight, after deduction by Triumph of amounts as permitted by the Post-Petition Agreements. Kal Freight is authorized and required to comply with all obligations under the Post-Petition Agreements, including, without limitation, Kal Freight’s obligation to repurchase Purchased Accounts. Triumph shall be the absolute owner the Purchased Accounts (and proceeds thereof) purchased in accordance with the Interim Order and the Post-Petition Agreements, free of any claims, liens, and interests. <i>See</i> Interim Order, ¶ 3.
Conditions of Advances Bankruptcy Rule 4001(c)(1)(B)	Triumph may exercise its Discretion in choosing to buy the Purchased Accounts. <i>See</i> Factoring Agreement, § 2.1.

⁵ The Factoring Agreement aggregates the Maximum Advance with SPG Transportation Inc., Pro Tec Inc., Kal Way Inc., and Kal Trans Inc., in addition to Kal Freight. Kal Trans Inc. was dissolved prepetition.

Bankruptcy Code	Summary of Material Terms
Interest Rate Bankruptcy Rule 4001(c)(1)(B)	The Finance Rate under the Post-Petition Agreements with respect to each purchased account is the Prime Rate plus 1%, with a 4% floor on the Prime Rate. <i>See</i> Third Amendment to Factoring Agreement. Additionally, the Non-Purchase Advance Facility provides for a Finance Rate equal to the Prime Rate plus 1%, with a Prime Rate Minimum of 6%. <i>See</i> Non-Purchase Advance Addendum, ¶ 1. The Prime Rate is as set forth in the Money Rates section of The Wallstreet Journal or, if unavailable, a rate from a comparable index substituted by Triumph. <i>See</i> Factoring Agreement, § 1.34.
Use of Post-Petition Agreement and Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(ii)	The proceeds of the Post-Petition Agreements shall be used solely for (1) working capital and other general corporate purposes, (2) permitted payment of costs of administration of the Case, (3) payment of fees and expenses as approved by the Court. Additionally, the parties intend to continue to perform under the Factoring Agreement, as modified by the Bankruptcy Rider, consistent with historical practice, and the Conversion Addendum as described above. <i>See</i> Interim Order, ¶ 7.
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	Triumph and certain other prepetition secured parties, as addressed by the Debtors' separate cash collateral motion.
Fees Bankruptcy Rule 4001(c)(1)(B)	The Post-Petition Agreements provide for Factoring Fees of 0.1%, Early Termination Fees of 5% of the Maximum Advance, Default Fees, and other expense reimbursement provisions. <i>See</i> Factoring Agreement, § 1.12, 1.34, 3, 17, Third Amendment to Factoring Agreement. Additionally, the Debtors are required to pay any Reserve Shortfall to the extent that the unpaid balance of purchased accounts falls below the Required Reserve Amount, which includes the amount of accounts purchased prepetition. To the extent that a Reserve Shortfall remains unsatisfied, Kal Freight is obligated to pay an amount equal to 9% over the Prime Rate. <i>See</i> Factoring Agreement § 4.
Budget Bankruptcy Rule 4001(c)(1)(B)	The initial Budget is attached to the proposed Interim Order as Exhibit 2.
Reporting Information Bankruptcy Rule 4001(c)(1)(B)	Paragraph 11 of the Interim Order provides reporting and budgeting information, including variance reports to be delivered by the Debtors to Triumph.
Chapter 11 Milestones Bankruptcy Rule 4001(c)(1)(B)	None.

Bankruptcy Code	Summary of Material Terms
Liens and Priorities Bankruptcy Rule 4001(c)(1)(B)(i)	Paragraphs 13, 16, and 19 of the Interim Order specify the DIP Liens and the DIP Superpriority Claims granted for the benefit of Triumph. Pursuant to the Post-Petition Agreements, and as authorized by section 364(c)(1) and (d)(1) of the Bankruptcy Code, as security for all Post-Petition Obligations (except the TBK Debts), Triumph will be indefeasibly granted, a valid, binding, enforceable, and perfected, sole ownership interest in all Purchased Accounts, and a first and senior priority security interest and lien (the “<u>DIP Lien</u>”) in all property and assets of the Debtors and all products, proceeds, substitutions, and additions thereto, including without limitation, all of Debtors’ assets including, but not limited to, all of the Debtors’ rights, title and interest in and to each of the following, wherever located and whether now or hereafter existing or now owed or hereafter acquired or arising: Accounts (including Non-Purchased Accounts and lease receivables), Chattel Paper, Deposit Accounts, Goods, Inventory, Equipment, Instruments, Investment Property, Documents, Letter of Credit Rights, Letters of Credit, Commercial Tort Claims, General Intangibles, all policies of insurance, including unearned premiums,, the Additional Cash Reserve under the Conversion Addendum, all books, records, reports, memoranda, and/or data compilations, in any form (including, without limitation, corporate and other business records, customer lists, credit files, computer programs, printouts and any other computer materials and records) pertaining to any of the foregoing, and all products, proceeds, replacements, additions, and substitutions of any and all of the foregoing (collectively, the “<u>DIP Collateral</u>”), <i>provided that</i> (a) the DIP Lien shall exclude claims or causes of actions arising pursuant to Bankruptcy Code sections 506(c), 544, 545, 547, 548, 549, 550, 553, and 724 (“<u>Avoidance Actions</u>”), but shall include the proceeds of Avoidance Actions subject to entry of the Final Order, and (b) the DIP Lien in any DIP Collateral (other than the Purchased Accounts in which Triumph is the sole owner free and clear of any liens, encumbrances, and free and clear of the Carve-Out (as defined in section 46 herein)) will only be subject to any senior, valid, properly perfected, unavoidable liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the “<u>Permitted Liens</u>”). The security interest and liens granted to Triumph in the DIP Collateral shall be in a first priority lien position, subject only to the Permitted Liens and the Carve-Out. Additionally, pursuant to section 364(c)(1), (c)(2), (c)(3), and (d) of the Bankruptcy Code, the Post-Petition Obligations (except the TBK Debts), shall have priority in payment over any administrative expenses or charges that are or may be incurred after the filing of the Petition (the “<u>Triumph Superpriority Claim</u>”), including, without limitation, expenses, charges or claims of the kind specified in sections 503(b), 506(c), and 507(a) and (b) of the Bankruptcy Code, or other claims arising under sections 105, 326, 328, 330, 331, 365, 726, 1113, or 1114 of the Bankruptcy Code; <i>provided that</i> the Triumph Superpriority Claim shall be junior to the Carve-Out and, pending entry of the Final Order, shall not be payable from proceeds of Avoidance Actions. The Triumph Superpriority Claim shall be subject only to the Permitted Liens and the Carve-Out, and shall not be made subject to or be made <i>pari passu</i> with or to any claim heretofore or hereinafter granted in these Cases or Successor Case. For purposes of the Interim Order (and not the Cash Collateral Order), the TBK Debts shall not constitute an administrative expense under section 503(b) of the Bankruptcy Code.

Bankruptcy Code	Summary of Material Terms
Carve Out Bankruptcy Rule 4001(c)(1)(B)	Paragraph 46 of the Interim Order defines the Carve-Out. Except with respect to the Excluded Assets described in the Cash Collateral Order, each of the DIP Lien, DIP Superpriority Claim, and Adequate Protection Liens shall each be subject to and subordinate to payment of the Carve-Out. As used herein, the “<u>Carve-Out</u>” means the sum of (i) all fees required to be paid to the Clerk of the Court and all statutory fees payable to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate, which amounts shall not be limited by any budget (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the Carve-Out Trigger Notice (as defined herein)); (iii) up to the amounts set forth for each Professional in the Budget, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (and any monthly, restructuring, or sale fees to the extent earned prior to the date of the Carve-Out Trigger Notice (as defined herein)) (the “<u>Allowed Professional Fees</u>”) incurred by (or payable to) persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the “<u>Debtor Professionals</u>”) (which, as of the date of the Interim Order means, Pachulski, Stang, Ziehl & Jones, LLP, Development Specialists, Inc., and Stretto, Inc.) and any official committee of unsecured creditors (the “<u>Committee Professionals</u>” and together with Debtor Professionals, the “<u>Professionals</u>”) at any time before the date of delivery of the Carve-Out Trigger Notice by Triumph, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of the Professionals in an aggregate amount not to exceed \$250,000 incurred on or after the date of delivery of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amount set forth in this clause (iv) being the “<u>Post Carve-Out Trigger Notice Cap</u>”). For purposes of the foregoing, “<u>Carve-Out Trigger Notice</u>” shall mean a written notice delivered by email (or other electronic means) by Triumph to the Debtors, their restructuring counsel (Pachulski Stang Ziehl & Jones LLP), the U.S. Trustee, and counsel for any official committee of unsecured creditors, which notice may be delivered following the occurrence of a Post-Petition Event of Default, stating that the Post Carve-Out Trigger Notice Cap has been invoked. The Debtors shall, on a weekly basis commencing on the second week of the Budget (or as otherwise contemplated in the Budget if fees are accrued but not paid during certain weeks), transfer into a segregated account (which may be the trust account of Debtors’ counsel), not subject to the control of Triumph (the “<u>Professional Fees Account</u>”), an amount equal to the amount budgeted for the Professionals for the preceding week in the Budget. Upon the delivery of the Carve-Out Trigger Notice, the Debtors shall deposit all available cash on hand into the Professional Fees Account until such amounts therein equal the Carve-Out. The Professional Fees Account, and all funds held therein, shall remain property of the Debtors’ estates unless and until they are paid to the Professionals following Court approval of a fee application seeking approval of the same (if required), and shall be available only to satisfy obligations benefitting from the Carve-Out, and Triumph (i) shall not sweep or foreclose on any such available cash of the Debtors until the Professional Fees Account is fully funded, and (ii) shall have a first priority lien and security interest on any residual interest in the Professional Fees Account available following satisfaction in cash of the Carve-Out.

Bankruptcy Code	Summary of Material Terms
Challenge Period Bankruptcy Rule 4001(c)(1)(B)	Recital C of the Interim Order provides certain stipulations, acknowledgments, and waivers by Kal Freight in favor of Triumph, subject to standard challenge rights of parties in interest. Paragraph 39 of the Interim Order sets forth a customary challenge period for any objection. Paragraph 47 of the Interim Order provides that no more than \$25,000 of the DIP Collateral may be utilized by the Committee Professionals to investigate the Debtors' Stipulations and the prepetition liens and claims of Triumph. The Debtors' Stipulations are approved and confirmed; <i>provided that</i> other parties-in-interest shall have up to and not more than seventy-five (75) days after entry of the Interim Order (and, with respect to an official committee of unsecured creditors, sixty (60) days after formation thereof) to complete an investigation of the Debtors' Stipulations and: (a) Triumph's sole ownership interest in pre-petition Purchased Accounts and the proceeds thereof; (b) the validity, enforceability, priority of the liens and security interest granted to Triumph in the Debtors' pre-petition Collateral (as defined in the pre-petition Factoring Agreement); and (c) the validity or enforceability of the Releases; or (d) the amount of Triumph's claims against the Debtors that arose before the commencement of the Cases (collectively, the "<u>Challenge Period</u>"); <i>provided, however</i>, on motion filed before the end of the Challenge Period, the end of the Challenge Period is subject to extension by written agreement of Triumph or by order of the Court for good cause shown. If, by no later than the end of the Challenge Period, none of the categories of parties listed in the preceding sentence file a motion for standing attaching a proposed complaint or, to the extent such party already has the requisite standing, commence a proceeding with the Bankruptcy Court contesting, or otherwise seeking a declaration of Triumph's ownership interest in any pre-petition Purchased Accounts, the validity, enforceability, priority of the liens and security interest granted to Triumph in the pre-petition Collateral, including Non-Purchased Accounts, or the amount of Triumph's claims against the Debtors that arose before the commencement of the Cases, or the Releases <i>then</i>, as of the expiration of the Challenge Period, all parties and other persons and entities shall be deemed to be forever barred, waived and/or estopped from: (a) seeking to prevent or impair Triumph's rights to retain payment of any Purchased Accounts and Non-Purchased Accounts, (b) contesting the Debtors' Stipulations or Triumph's ownership interest in any Purchased Accounts, (c) contesting the validity, enforceability, priority of Triumph's rights, claims, liens, and security interest as of the Petition Date; or (d) contesting the validity or enforceability of the Releases; or (e) contesting the amount of Triumph's claims against the Debtors that arose before the commencement of the Cases.

Bankruptcy Code	Summary of Material Terms
Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	Paragraphs 16 of the Interim Order sets forth the Adequate Protection Liens granted as adequate protection to Triumph. As adequate protection: (i) to secure the Post-Petition Obligations (except the TBK Debts); (ii) to the extent, that due to the use of any pre-petition assets by the Debtors, Triumph suffers a decrease in the value of Triumph's interest in the Debtors' pre-petition assets; (iii) in connection with the Debtors' use of Cash Collateral; (iv) with respect to the impairment, if any, of Triumph's interest in the Cash Collateral; and (v) to secure all of the Debtors' obligations to Triumph under the Post-Petition Agreements and the Interim Order (except the TBK Debts), Triumph is hereby indefeasibly granted, a valid, binding, enforceable, and perfected first and senior ownership interest in all Purchased Accounts and valid, binding, enforceable, and perfected security interests and liens in the DIP Collateral to the same extent, validity and priority as existed pre-petition (the "<u>Adequate Protection Lien</u>"), subject to the Permitted Liens and the Carve-Out and junior and subordinate to the DIP Lien. The Adequate Protection Lien shall be in a first-priority lien position, subject only to the Permitted Liens and the Carve-Out, and shall not be made subject to or be made <i>pari passu</i> with or to any lien or security interest heretofore or hereinafter granted in these Cases or the Successor Case. In no event shall any person or entity at any time interfere with, impair, or otherwise seek to enforce any right or privilege that may in any way interfere with or adversely affect any of the rights interests and claims provided to Triumph by the Debtors under the Interim Order and under the Post-Petition Agreements, including but not limited to, Triumph's exclusive rights to receive and retain Proceeds of all Purchased Accounts and all Non-Purchased Accounts.

Events of Default Bankruptcy Rule 4001(c)(1)(B)	Paragraph 22 of the Interim Order provides that each of the following shall be an Event of Default under the Post-Petition Agreements and the Interim Order: (i) any of the Debtors violate any material provision of the Interim Order or the Post-Petition Agreements; (ii) an “<u>Event of Default</u>” (as defined in the Post-Petition Agreements) occurs; (iii) the appointment of a trustee or an examiner with substantial powers over any the Debtors or their estates; (iv) the dismissal or conversion of these Cases to chapter 7; (v) the granting of relief from the automatic stay to permit any party to recover possession of any property necessary and material to the operation of the Debtors’ business; (vi) any successful challenge to the amount, validity, or enforceability of Triumph’s ownership of Accounts, the validity or enforceability of its liens, or the assertion of any other claim against Triumph in or related to these Cases; (vii) any of the Debtors fail to file when due any tax reports or forms or other mandatory filings with any state, local, or federal agency; (viii) any of the Debtors seek any amendment, modification, or extension of the Interim Order without the prior written consent of Triumph, and no such consent shall be implied by any other action, inaction or acquiescence of Triumph; (ix) any of the Debtors fail to pay the amounts set forth in the Budget for payment of Professional Fees or U.S. Trustee fees, at the time identified in the Budget into the Professional Fees Account (defined herein); (x) any of the Debtors fail to pay, within five (5) business days of Court approval, any post-petition fees or costs due to any Professional; (xi) failure to deliver to Triumph, within three business days after the Petition Date, fully executed Reaffirmation Agreements from Pro Tec Inc., SPG Transportation Inc., Kalway Inc., and Kaltrans Inc., Kalvinder Singh, and Sukhvinder Singh; (xii) a material violation of an order of this Court; (xiii) failure to pay adequate protection payments to TBK at the times and in the amounts required in the Cash Collateral Order, or other material breach of the Cash Collateral Order; (xiv) the Chief Restructuring Officer of the Debtors is not formally in place on the Petition Date and, subject to the oversight of the new independent Board of Directors, is not in full and exclusive management control of the Debtors and their assets; (xv) the Chief Restructuring Officer either voluntarily or involuntarily ceases to be in full and exclusive management control of the Debtors and their assets (subject to the oversight of the new independent Board of Directors,) or otherwise becomes disassociated from the Debtors and no replacement has been selected acceptable to Triumph in its Discretion; (xvi) Kal Freight shall cease to operate its business; (xvii) all Post-Petition Obligations (except TBK Debts) due Triumph are not repaid in full, without setoff, recoupment or deduction, by no later than the earlier of conversion or dismissal of the chapter 11 case, or, the effective date of any confirmed Plan, unless Triumph agrees to and consents, in writing, to other treatment under a Plan; (xviii) Debtors’ fail to maintain a minimum cash balance at the end of each week of \$400,000, after all expenses in the Budget for that week have been paid in full; (xix) the failure to pay at the times set forth in the Budget the full amount of the “Proceeds from Owner’s and Company’s Real Estate; (xx) the actual “Net Cash Flow” each for each rolling four-week period in the Budget is more than 15% less favorable than the amounts projected in Budget for such period; (xxi) at any time, failing to pay, deposit, or withhold when required by law any of the fees, taxes, or other obligations of the types described in the Debtors’ Emergency Motion for Entry of an Order (I) Authorizing the Payment of Certain Taxes and Fees and (II) Granting Related Relief; (xxii) the <u>actual</u> Total Revenue Receipts amounts received for each rolling four-week period in the Budget is more than 15% less than the <u>projected</u> Total Revenue Receipts amounts in the Budget for such period; or (xxiii) a Final Order with a budget, each in a form and substance satisfactory to Triumph in its Discretion, is not entered before the expiration of the period covered by the Budget. Triumph is under no obligation to agree to purchase any Accounts or continue to provide any post-petition financing under the terms of a Final Order. Any Post-Petition Event of Default shall conclusively be deemed a material default under the Post-Petition Agreements and the
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Bankruptcy Code	Summary of Material Terms
	Interim Order. The Debtors shall immediately notify Triumph in writing upon the occurrence of a Post-Petition Event of Default.
Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	Paragraphs 23 and 24 of the Interim Order contemplate that the automatic stay imposed by Bankruptcy Code § 362(a) will be modified, to the extent necessary, to implement and effectuate the terms and conditions of the Interim Order. Paragraph 24 provides that to the extent Triumph seeks to exercise any rights and remedies under the Interim Order following the occurrence of an Event of Default, such rights and remedies may only be exercised following notice and a hearing, which may be conducted on an emergency basis of at least 5 business days' notice.
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	Section 14 of the Factoring Agreement and Section 3 of the Non-Purchase Advance-Addendum provide for indemnification of Triumph.

STATEMENT REGARDING SIGNIFICANT PROVISIONS

17. In accordance with paragraph 8 of the Complex Case Procedures, the Debtors disclose as follows:

- a. ***Plan Confirmation Milestone.*** The Post-Petition Agreements do not contain Plan Confirmation Milestones.
- b. ***Cross Collateralization or “Roll Up”.*** The Post-Petition Agreements effectively cross-collateralize and roll-up the Pre-Petition Obligations (except the TBK Debts) and make them post-petition obligations of the Debtors, which will be secured by substantially all assets of the Debtors. This Motion also seeks authority for Kal Freight and Triumph to continue to perform under the Factoring Agreement in the same manner as such parties performed thereunder pre-petition.
- c. ***Requirement that Postpetition Loans Be Used to Repay Prepetition Debt.*** This Motion requests authority for Kal Freight and Triumph to continue to perform under the Factoring Agreement in the same manner as such parties performed thereunder pre-petition, as modified by the Bankruptcy Rider and the Conversion Addendum, including, *inter alia*, authority to apply collections on accounts purchased pre-petition to pre- and Post-Petition Obligations (except the TBK Debts) and authority to adjust, offset, setoff, and recoup the Post-Petition Obligations (except the TBK Debts) against Pre-Petition Accounts and Collateral. Additionally, the Debtors are required to pay any Reserve Shortfall to the extent that the unpaid balance of purchased accounts falls below the Required Reserve Amount, which includes the amount of accounts purchased prepetition. To the extent that a Reserve Shortfall remains unsatisfied, Kal Freight is obligated to pay an amount equal to 9% over the Prime Rate. Kal Freight is also subject to certain Repurchase Obligations arising, *inter alia*, when a Payor has indicated an unwillingness or inability to pay a purchased Account or the

Purchased Account remains unpaid for over 90 days. See Interim Order, ¶¶ 5-8.

- d. ***Liens on Proceeds of Avoidance Actions.*** The DIP Collateral expressly excludes Avoidance Actions, but does include the proceeds thereof subject to entry of the Final Order.
- e. ***Default Provisions and Remedies.*** Upon the occurrence of any Event of Default and the filing of a notice of occurrence of such Event of Default with the Bankruptcy Court, Triumph shall have the right to cease performing under the Post-Petition Agreements and the Debtors' right to use Cash Collateral shall automatically terminate; however, to the extent that Triumph desires to exercise any further rights and remedies under the Post-Petition Agreements, including directing the Debtors (or any superseding trustee) to immediately surrender and deliver peaceful possession of all the DIP Collateral to Triumph, Triumph may only exercise such rights and remedies upon notice and a hearing, which may be heard on an emergency basis with no less than five (5) business days' notice.
- f. ***Limitations on the Use of Cash Collateral Other than General "Carve-Outs" to Pay Approved Fees and Expenses of Advisors to Official Committees or Future Trustees.*** The Debtors are limited to use of Cash Collateral in accordance with the Budget for the purposes described herein and the Interim Order.
- g. ***Priming Liens.*** The Post-Petition Agreements do not provide for any non-consensual priming liens.
- h. ***No Limitation on the Ability of Estate Fiduciaries to Fulfill their Duties.*** Except insofar as the Interim Order contains restrictions on the use of the Carve-Out, proceeds under the Post-Petition Agreements, and Cash Collateral as described above, there is no further limitation on the ability of estate fiduciaries to fulfill their duties, other than certain restrictions on the non-ordinary course sale of Triumph's Collateral or the incurrence of indebtedness without Triumph's prior written consent, as contained in paragraph 30 of the Interim Order.

THE POST-PETITION AGREEMENTS

I. Kal Freight Has an Immediate Need to Continue to Perform under the Post-Petition Agreements and Allow the Debtors to Access Cash Collateral

18. Kal Freight has an immediate need to perform under the Post-Petition Agreements and thereby allow the Debtors to obtain the proceeds thereof and use Cash Collateral, to fund operations, capital expenditures, and the administrative costs of these Cases. As of the Petition

Date, the Debtors have insufficient cash on hand to operate their enterprise and continue paying their obligations as they come due. Moreover, the Debtors' business is cash-intensive, with significant daily costs required to satisfy obligations to their customers, landlords, vendors, and employees.

19. Without access to sufficient liquidity under the Post-Petition Agreements, consistent with past practices, Kal Freight's ability to continue operations is severely jeopardized because substantially all of Kal Freight's (and certain affiliates') receivables were sold pursuant to or encumbered under the Factoring Agreement prepetition. As such, Kal Freight would have to rely on the generation of receivables on a post-petition basis to fund its post-petition operations, which receivables are unlikely to be paid on an immediate basis but rather upon longer trade terms. Kal Freight, along with the other Debtors, does not have enough cash on hand as of the Petition Date to ensure their ongoing ability to operate post-petition until they begin to receive payments on receivables generated post-petition. Accordingly, the Debtors require immediate access to additional liquidity as made available under the Post-Petition Agreements, consistent with historical practices.

20. Moreover, without use of Cash Collateral, the Debtors will be unable to meaningfully continue their operations to the severe detriment of all stakeholders. Because the Debtors operate in a competitive industry, a seamless transition into chapter 11 and the ability to continue uninterrupted operations is imperative to preserve relationships with the Debtors' suppliers and the loyalty and goodwill of their customers, vendors, and employees. The Debtors and their advisors have carefully reviewed and analyzed the Debtors' projected cash receipts and disbursements and prepared a initial Budget outlining the Debtors' postpetition cash needs over the initial weeks of the Cases, a copy of which is attached to the proposed Interim Order as

Exhibit 2.⁶ Without continued performance under the Post-Petition Agreements and access to Cash Collateral, the Debtors will not be able to meet or satisfy their post-petition obligations.

21. Kal Freight believes that its continued performance under the Factoring Agreement, as modified by the Bankruptcy Rider and the Conversion Addendum, provides the Debtors with sufficient liquidity to maintain their operations and provide sufficient runway to successfully reorganize, consistent with historical practice. Continued performance pursuant to the Post-Petition Agreements will allow the Debtors to: (a) continue satisfying obligations to the Debtors' contract counterparties; (b) provide the liquidity necessary to honor amounts owed to critical vendors, as well as to continue favorable trade terms with such parties; (c) reassure other stakeholders, including the Debtors' customers and employees, that the Debtors have sufficient funds to continue operating in the ordinary course; (d) fund the Debtors' payroll obligations; and (e) fund the administrative costs of these Cases.

22. Accordingly, Kal Freight's performance under the Post-Petition Agreements will provide much needed stabilization to the Debtors' business operations and ensure the Debtors' ability to operate as a going-concern, preserving value of the Debtors' estates for the benefit of all stakeholders.

II. Alternative Sources of Financing Are Not Available on Better Terms

23. In evaluating possible financing sources for the Debtors' postpetition financing, the Debtors' advisors determined that no third-party lender would be willing to provide DIP financing or further factoring to the Debtors on terms or timing more favorable than those provided under the Post-Petition Agreements. More particularly, prepetition, many of Kal Freight's (and certain affiliates') accounts receivable were sold to or encumbered for the benefit of Triumph under the

⁶ An updated Budget will be attached to the Final Order.

Factoring Agreement, and the bulk of the Debtors' remaining personal property assets were otherwise encumbered. The Debtors believe that there is potential equity value in the Debtors' owned real estate, but it would take time to obtain any financing therefrom.

24. Moreover, given the extent of Triumph's factoring and the Prepetition Liens, the Debtors determined that obtaining third party-financing would likely require a priming fight which was not only likely to be costly to prosecute, but would cause material, value-destructive disruptions to their operations. Upon engaging with Triumph to continue their pre-petition relationship under the Factoring Agreement on a post-petition basis, Triumph indicated a willingness to do so and upon substantially similar post-petition terms, as set forth in the Bankruptcy Rider, the Conversion Addendum, and the Interim Order. Based on the Debtors' review of the Post-Petition Agreements, the Debtors determined that many typically onerous features common in post-petition financing, such as extensive fees, extensive superpriority liens and claims, aggressive milestones, and high interest rates, were not required by Triumph to enter into the Post-Petition Agreements and continue performing on a post-petition basis.

25. Accordingly, and given their evaluation of potential third-party alternatives and the costs and delay to pursue and potentially obtain such alternatives, the Debtors determined that Kal Freight's continued operation under the Factoring Agreement, as modified by the Bankruptcy Rider and the Conversion Addendum, was in the best interest of their estates and stakeholders.

III. Performance Pursuant to the Post-Petition Agreements is Necessary to Preserve the Value of Kal Freight's Estate

26. Absent continued performance under the Post-Petition Agreements, the Debtors would need to curtail their operations significantly, if not fully, and their very existence as a going concern would be very significantly in doubt. Even with the ability to access Cash Collateral, cash-on-hand and expected inflows would not be sufficient to fund their operations as a going

concern in the near term nor meet the administrative expenses incurred in the Cases, as discussed above. Without the continued liquidity provided by the Post-Petition Agreements, the Debtors would be immediately and irreparably harmed. Consequently, the Post-Petition Agreements are necessary to preserve the value of the Debtors' estates.

BASIS FOR RELIEF

I. Kal Freight Should Be Authorized to Obtain Postpetition Financing and Continue to Perform Under the Post-Petition Agreements

A. Entry into and Continued Performance Under the Post-Petition Agreements Is an Exercise of Kal Freight's Sound Business Judgment

27. The Court should authorize Kal Freight, as an exercise of its sound business judgment, to enter into and continue performing under the Post-Petition Agreements, and for the Debtors to continue using the Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below.

28. Courts grant a debtor-in-possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re N Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving postpetition financing on an interim basis as exercise of debtors' business judgment); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility "reflected] sound and prudent business judgment"); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that

permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party in interest”).

29. To determine whether the business judgment standard is met, a court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of the debtor’s authority under the [Bankruptcy] Code”).

30. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (while many of the terms favored the DIP lenders, “taken in context, and considering the relative circumstances of the parties,” the court found them to be reasonable); *see also Unsecured Creditors’ Comm. Mobil Oil Corp. v. First Nat’l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into “hard bargains” to acquire funds for its reorganization).

31. Kal Freight’s determination to move forward under the Post-Petition Agreements, including the continued sale of accounts receivable and related reserve and repurchase procedures related thereto, is a sound exercise of its business judgment following an arm’s-length process and careful evaluation of available alternatives. The Debtors require Kal Freight’s continued performance under the Factoring Agreement, as modified by the Bankruptcy Rider and the

Conversion Addendum, to support their working capital needs and to operate smoothly in chapter 11. As discussed herein, the Debtors and their advisors determined that the Post-Petition Agreements are the best way to stabilize the business and are on fair and reasonable terms, generally consistent with historical, pre-petition practice. The Debtors and their advisors also determined that the Post-Petition Agreements provide certainty with respect to the capital necessary for the administration of these Cases, consistent with historical practices. The fees, interest rate, and other borrowing availability provided for in the Post-Petition Agreements, taken as a whole, are in the Debtors' best interests and Kal Freight's continued performance thereunder, consistent with historical practices, is the best option to ensure sufficient liquidity that is currently available under the circumstances.

32. Kal Freight negotiated the Post-Petition Agreements in good faith, at arm's length, and with the assistance of their advisors, and they have obtained the best financing available under the circumstances. After extensive negotiations with Triumph and careful consideration of the alternatives, the Debtors determined that the Post-Petition Agreements were preferable to engaging in a costly and uncertain priming fight or searching for or obtaining alternative third-party financing on likely less favorable terms. Accordingly, the Court should authorize Kal Freight's entry into the Post-Petition Agreements as a reasonable exercise of its business judgment.

**B. The Debtors Should Be Authorized to Grant Liens and
Superpriority Claims to Triumph**

33. Although Kal Freight is the contracting party under the Factoring Agreement, all Debtors have pledged their assets pre-petition to secure any obligations thereunder. The Debtors now propose to continue this structure under the Post-Petition Agreements. The Debtors seek to obtain financing and continued factoring under the Post-Petition Agreements by, *inter alia*, providing security interests and liens as set forth in the Post-Petition Agreements and the Interim

Order pursuant to section 364(c) of the Bankruptcy Code. Specifically, the Debtors propose to provide to Triumph postpetition security interest in and liens on the DIP Collateral and Prepetition Collateral, subject only to the Carve-Out and the Permitted Liens.

34. The statutory requirement for obtaining postpetition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that a debtor is “unable to obtain unsecured credit allowable under Section 503(b)(1) of [the Bankruptcy Code].” 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;
- b. the credit transaction is necessary to preserve the assets of the estate; and
- c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

See In re Ames Dep’t Stores, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990); *see also In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse Group*, 71 B.R. at 549.

35. The Debtors meet each part of this test. As described above, given their limited readily available unencumbered assets, the Debtors determined that no lenders were willing to provide sufficient postpetition financing on a junior lien or an unsecured or administrative priority basis. Triumph will not continue to perform under the Post-Petition Agreements on any other terms, and no other existing stakeholder or third party has presented a higher or otherwise better

debtor-in-possession financing proposal. Absent the Post-Petition Agreements, which will provide certainty that the Debtors will have sufficient liquidity to administer these Cases consistent with historical practices, and comfort to their employees, customers, and vendor constituencies that business will continue in the ordinary course, the value of the Debtors' estates would be impaired to the detriment of all stakeholders. Given these circumstances, the Debtors believe that the terms of the Post-Petition Agreements, as set forth in the therein, are fair, reasonable, and meet the standard for obtaining postpetition financing.

36. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) of the Bankruptcy Code provides that a court "may authorize the obtaining of credit or the incurring of debt (a) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b); (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien." As described above, the Debtors are unable to obtain unsecured credit. Therefore, approving a superpriority claim in favor of Triumph and liens in favor of the Triumph on substantially all property of the Debtors' estates, subject only to the Carve-Out and the Permitted Liens, is reasonable and appropriate.

37. Section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is "unable to obtain such credit otherwise" and "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1). Further, section 364(d) provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien where the debtor is "unable to obtain such credit otherwise" and "there is adequate

protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1).

38. Here, the Debtors do not propose to non-consensually “prime” any prepetition secured party with respect to the Post-Petition Agreements or the adequate protection provided to Triumph under the Interim Order. Indeed, Triumph has consented to the treatment set forth in the Interim Order, providing for DIP Liens which are subject to and subordinate and junior to the Carve-Out and the Permitted Liens. As set forth more fully in the Cash Collateral Motion, the Debtors also propose to provide a variety of adequate protection measures to protect the interests of other prepetition secured parties. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

C. No Comparable Alternative to the Post-Petition Agreements Is Reasonably Available On More Favorable Overall Terms

39. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). In circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section

364 requirement was met); *In re Ames Dep't Stores*, 115 B.R. at 37-39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

40. As noted above, while the Debtors could have conceivably proceeded with a contested and highly risky priming fight, the cost, uncertainty and delays associated therewith would have been enormous and likely would have threatened the Debtors' restructuring efforts. Simply put, the Post-Petition Agreements provide Kal Freight with the liquidity it needs while simultaneously placing the Debtors on an optimal path for a successful chapter 11 process. Therefore, the Debtors have satisfied the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable.

II. The Debtors Should Be Authorized to Use Cash Collateral

41. Section 363 of the Bankruptcy Code generally governs the use of estate property.

42. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor in possession to use cash collateral with the consent of the secured party. Here, Triumph consents to the Debtors' use of its Cash Collateral, subject to the terms and limitations set forth in the Interim Order, and the Debtors are separately moving under the Cash Collateral Motion as to the remaining prepetition secured parties (and more fully addresses such issues therein). As described above, access to Cash Collateral on an interim basis is essential to the continued operation of the Debtors' businesses and smooth entry into the Cases. Use of Cash Collateral is in the best interests of the Debtors' estates and all of their stakeholders, including Triumph, and should be approved.

III. Adequate Protection Provided to Triumph Is Appropriate

43. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of

the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that the “determination of whether there is adequate protection is made on a case by case basis”); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012) (same); *In re N.J. Affordable Homes Corp.*, No. 05-60442 (DHS), 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006) (“the circumstances of the case will dictate the necessary relief to be given”); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992) (“what interest is entitled to adequate protection and what constitutes adequate protection must be decided on a case-by-case basis”); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy 361.01[1] at 361-66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”)).

44. As described more fully in this motion, and as set forth in the Interim Order, the Debtors propose to provide Triumph with an adequate protection lien in the DIP Collateral to protect against the potential post-petition diminution in value of the pre-petition Collateral resulting from the use, sale, or lease of the Cash Collateral by the Debtors and the imposition of the automatic stay. In light of the foregoing, the proposed adequate protection to be provided for the benefit of Triumph is appropriate. The Debtors’ provision of the adequate protection lien is not only necessary to protect against any diminution in value but is fair and appropriate under the circumstances of these Cases to ensure the Debtors are able to continue using the Cash Collateral,

subject to the terms and limitations set forth in the Interim Order, for the benefit of all parties in interest and their estates.

IV. The Scope of the Carve-Out Is Appropriate

45. The proposed adequate protection is subject to the Carve-Out contained in the Interim Order and the Final Order. Without the Carve-Out, the Debtors and other parties in interest may be deprived of certain rights and powers because the services for which professionals may be paid in these Cases would be restricted. *See In re Ames Dep't Stores*, 115 B.R. at 40 (observing that courts insist on carve outs for professionals representing parties in interest because “[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced.”). The Carve-Out does not directly or indirectly deprive the Debtors’ estates or other parties in interest of possible rights and powers. Additionally, the Carve-Out protects against administrative insolvency during the course of the Cases by ensuring that assets remain for the payment of the Clerk of the Court, U.S. Trustee fees, and professional fees of the Debtors and any statutory committee appointed under section 1102 of the Bankruptcy Code in these Cases.

V. The Debtors Should Be Authorized to Pay the Fees Required under the Post-Petition Agreements

46. By seeking to continue to perform under the Factoring Agreement, as modified by the Bankruptcy Rider and the Conversion Addendum, the Debtors are seeking to continue to pay fees to Triumph consistent with historical practice. Unlike most other forms of post-petition financing, the Post-Petition Agreements do not obligate Kal Freight or the other Debtors to pay any new fees to Triumph; rather, the Post-Petition Agreements only obligate Kal Freight to continue to pay existing fees—Factoring Fees of 0.1%, Early Termination Fees (if any) of 5% of the Maximum Advance, Default Fees, and other expense reimbursement provisions. The Post-Petition Agreements also provide for certain “Finance Fees” pursuant to the Finance Rate, which,

while styled as a fee, is more akin to an interest rate on amounts advanced by Triumph. Additionally, the Debtors are required to pay any Reserve Shortfall to the extent that the unpaid balance of purchased accounts falls below the Required Reserve Amount, which includes the amount of accounts purchased prepetition. To the extent that a Reserve Shortfall remains unsatisfied, the Debtors are obligated to pay an amount equal to 9% over the Prime Rate. The Debtors are also subject to certain Repurchase Obligations arising, *inter alia*, when a Payor has indicated an unwillingness or inability to pay a purchased Account or the Purchased Account remains unpaid for over 90 days.

47. The interest, fees, and related obligations to be paid under Post-Petition Agreements are appropriate, particularly in light of the circumstances of these Cases and the Post-Petition Agreements represent the only viable option presently available to the Debtors. Moreover, and in terms of considering other potential post-petition financing alternatives, the fees are modest and the subject of good faith and arms' length negotiations. The fees and rates to be paid under the Post-Petition Agreements are an integral component of the overall terms of the Post-Petition Agreements. The Debtors considered the fees and obligations described above when determining in their sound business judgment that the Post-Petition Agreements are reasonable and constitute the best terms on which the Debtors can obtain the postpetition financing necessary to continue their operations, prosecute their cases, and benefit the Debtors' estates. Accordingly, the Court should authorize the Debtors to pay the interest and fees provided under the Post-Petition Agreements.

VI. Triumph Should Be Afforded Good-Faith Protection under Section 364(e)

48. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the

authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

49. As explained in this Motion, the Post-Petition Agreements are the result of: (a) the Debtors' reasonable and informed determination that Triumph provided the best postpetition financing alternative available under the circumstances, and (b) extended arm's-length, good-faith negotiations between the Debtors and Triumph. The terms and conditions of the Post-Petition Agreements are reasonable under the circumstances, and the proceeds from further continued performance under the Post-Petition Agreements will be used only for purposes that are permissible under the Bankruptcy Code. Accordingly, the Court should find that Triumph is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and entitled to all of the protections afforded by that section.

VII. The Automatic Stay Should Be Modified on a Limited Basis

50. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow Triumph to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the Interim Order. Additionally, the Post-Petition Agreements and Interim Order would, essentially, allow the Debtors and Triumph to continue to perform under the Post-Petition Agreements, consistent with historical practice.

51. The Debtors' and Triumph's continued performance under the Post-Petition Agreements, involves *inter alia*, continued advances and purchases of receivables by Triumph, authority to apply collections on accounts purchased pre-petition to pre-and post-petition obligations. Additionally, the Debtors are required to pay any Reserve Shortfall to the extent that the unpaid balance of purchased accounts falls below the Required Reserve Amount, which includes the amount of accounts purchased prepetition. See Interim Order, ¶ 7.

52. The proposed Interim Order further provides that the automatic stay is modified as necessary to permit the Debtors to grant liens to Triumph and to incur all liabilities and obligations set forth in the Interim Order. The automatic stay should be modified to allow the Debtors and Triumph to effectuate the terms of the Interim Order.

VIII. Failure to Obtain Immediate Interim Authorization to Perform Under the Post-Petition Agreements and Access Cash Collateral Would Cause Immediate and Irreparable Harm

53. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use Cash Collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. See Bankruptcy Rule 4001(b)(2). Section 363(c)(3) of the Bankruptcy Code authorizes the court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the [debtor] will prevail at the final hearing under [section 363(e) of the Bankruptcy Code]." 11 U.S.C. § 363(c)(3). Furthermore, the Complex Case Procedures provide that "on motion by the debtors . . . a hearing will routinely be conducted as a first day hearing to consider either cash collateral and/or interim debtor-in-possession financing." Complex Case Procedures, ¶ 5.

54. The Debtors have an immediate postpetition need to use Cash Collateral and access the liquidity provided by the Post-Petition Agreements. The Debtors cannot maintain the value of their estates during the pendency of these Cases without access to cash. Without the Post-Petition Agreements, the Debtors project that they will be unable to pay essential costs required to continue operating as a going concern, resulting in immediate and irreparable harm to the Debtors' business. Absent funds available from the Post-Petition Agreements and access to cash collateral, the Debtors could face a value-destructive interruption to their business and lose support from important stakeholders, including the Debtors' employees, vendors, and customers, on which the Debtors' business depends.

55. The Debtors will therefore be unable to operate their business or otherwise fund these Cases without access to Cash Collateral and the liquidity provided by the Post-Petition Agreements, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, the Debtors' ability to administer these Cases through the use of Cash Collateral and the liquidity provided to the Debtors by the Post-Petition Agreements is vital to preserve and maximize the value of the Debtors' estates.

56. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing, from and after entry of the Interim Order until the Final Hearing, Kal Freight to receive initial funding under the Post-Petition Agreements and the Debtors to utilize Cash Collateral. The Debtors require the initial funding under the Post-Petition Agreements prior to the Final Hearing and entry of the Final Order to continue operating, pay their administrative expenses, and to implement the relief requested in the Debtors' other "first day" motions. This relief will enable the Debtors to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

REQUEST FOR FINAL HEARING

57. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is within 30 days of the Petition Date in accordance with the terms of the Bankruptcy Rider, and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

EMERGENCY CONSIDERATION

58. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” An immediate and orderly transition into chapter 11 is critical to the viability of the Debtors’ operations and that any delay in granting the relief requested could hinder such operations and cause irreparable harm. The failure to receive the requested relief during the first 21 days of these Cases could disrupt the Debtors’ operations at this critical juncture and add needless costs to the administration of these cases. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested herein on an emergency basis.

WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)

59. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

NOTICE

60. Notice of the hearing on the relief requested in this Motion will be provided by the Debtors in accordance and compliance with Bankruptcy Rules and Local Rules. The Debtors will

provide notice of this Motion to the following: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) Triumph and its counsel; (d) any prepetition secured parties and their counsel (if known); (e) the United States Attorney's Office for the Southern District of Texas; and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Local Rule 9013-1(d). No other or further notice is needed in light of the nature of the relief requested.

CONCLUSION

WHEREFORE, the Debtors request that the Court enter the Interim Order and Final Order granting the relief requested herein and such other and further relief as may be just and proper under the circumstances.

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Dated: December 5, 2024

PACHULSKI STANG ZIEHL & JONES LLP

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Proposed Counsel to the Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

I certify that on December 5, 2024, a true and correct copy of the foregoing document was caused to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Teddy M. Kapur

Teddy M. Kapur

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

KAL FREIGHT INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 2490614 (CML)

(Jointly Administered)

INTERIM ORDER AUTHORIZING DEBTORS TO (I) MAINTAIN, AND CONTINUE TO OPERATE UNDER FACTORING AND SECURITY AGREEMENT IN ORDER TO SELL ACCOUNTS POST-PETITION TO TRIUMPH BUSINESS CAPITAL PURSUANT TO 11 U.S.C. SECTION 363(B), (C), (F), AND (M); (II) OBTAIN CREDIT FROM TRIUMPH BUSINESS CAPITAL PURSUANT TO 11 U.S.C. SECTIONS 364(C)(1), (C)(2), AND (D)(1); (III) GRANT ADEQUATE PROTECTION IN THE FORM OF FIRST PRIORITY LIENS AND SECURITY INTERESTS ON PROPERTY OF DEBTORS' ESTATES PURSUANT TO 11 U.S.C. SECTIONS 361 AND 363(E); (IV) AMEND THE FACTORING AND SECURITY AGREEMENT AND GRANT TRIUMPH BUSINESS CAPITAL ADDITIONAL LIENS; (V) USE CASH COLLATERAL AND GRANT TRIUMPH ADEQUATE PROTECTION; (VI) ANNUL AND MODIFY THE AUTOMATIC STAY; AND (VII) GRANT RELATED RELIEF, ALL RETROACTIVELY TO THE PETITION DATE

Upon the motion of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), including Debtor Kal Freight Inc. (“Kal Freight”),² with the consent of Triumph Financial Services LLC f/k/a Advance Business Capital LLC d/b/a Triumph Business Capital (“Triumph”), its pre-petition factor and secured creditor³ and proposed post-petition factor and

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification numbers, are: Kal Freight Inc. (0249); Kal Aviation LLC (2600); Kal Partz Inc. (0139); Kal Trailers & Leasing Inc. (0840); and KVL Tires Inc. (0320). The location of the Debtors’ service address in these chapter 11 cases is 10156 Live Oak Ave., Fontana, CA 92335.

² *Emergency Motion for an Interim Order Authorizing Debtor to (I) Maintain and Continue to Operate Under Factoring and Security Agreement in Order to Sell Accounts Post-Petition to Triumph Pursuant to 11 U.S.C. Section 363(b), (c), (f), and (m); (II) Obtain Credit from Triumph Pursuant to 11 U.S.C. Sections 364(c)(1), (c)(2), and (d)(1); (III) Grant Triumph Adequate Protection in the Form of First Priority Liens and Security Interests on Property of Debtor’s Estate Pursuant to 11 U.S.C. Sections 361 and 363(e); (IV) Authorize the Debtor to Use Cash Collateral and Grant Triumph Adequate Protection; (V) Annul and Modify the Automatic Stay; and (VI) Grant Related Relief All Retroactively to the Petition Date* [Dkt. No.] (the “Motion”). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion or as used or defined by the Uniform Commercial Code).

³ Triumph is affiliated with TBK Bank, SSB, a Texas state savings bank, that is also a secured lender to the Debtors.

secured creditor, pursuant to sections 105, 361, 362, 363 and 364 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Local Rules”), and the *Procedures for Complex Cases in the Southern District of Texas* (the “Complex Case Procedures”), seeking entry of this interim order (the “Interim Order”) that, among other things:

- a. authorizes Kal Freight and Triumph to (i) enter into the *Post-Petition Chapter 11 Bankruptcy Rider to the Factoring Agreement* (“Bankruptcy Rider”); (ii) enter into the Conversion Addendum Dated December 4, 2024 (the “Conversion Addendum”) to Factoring and Security Agreement; (iii) operate and continue operating without interruption under the *Factoring and Security Agreement* dated April 25, 2017 as amended, restated, and supplemented, including the Non-Purchase Advance-Addendum thereto dated August 18, 2023 (the “Factoring Agreement”), the Bankruptcy Rider, and the Conversion Addendum (the Factoring Agreement, together with the Bankruptcy Rider and the Conversion Addendum, the “Post-Petition Agreements”). Copies of the Post-Petition Agreements are attached as **Exhibit 1**.
- b. authorizes the Debtors to use proceeds of the Post-Petition Agreements and Cash Collateral (as defined herein), in accordance with the terms of this Interim Order, the Post-Petition Agreements, and the Budget (as defined herein) solely for (1) the Debtors’ working capital and the Debtors’ other general corporate purposes, (2) permitted payment of costs of administration of the chapter 11 cases (the “Cases”), (3) payment of professional fees and expenses as approved by the Court;
- c. grants to Triumph, among other things, a perfected first and senior ownership interest in all Purchased Accounts (as defined herein).
- d. grants to Triumph, among other things, adequate protection liens and superpriority administrative expense claims against each of the Debtors’ estates with priority over any and all administrative expenses;
- e. grants to Triumph, among other things, valid, enforceable, non-avoidable, and duly perfected first-priority liens and security interests in the DIP Collateral (as defined herein) and all proceeds, replacements, accessions, and substitutions thereof;
- f. authorizes the Debtors’ ongoing grants of liens and security interests in all assets to continue to secure all of the Debtors’ existing, ongoing, and future debts and obligations to Triumph;
- g. authorizes the Debtors’ ongoing guarantees of the Debtors’ existing, ongoing, and future debts and obligations to Triumph;

- h. subject to entry of the Final Order (as defined herein), waives with respect to Triumph, the Collateral (as defined herein), and the Cash Collateral (as defined herein) (a) the rights of the Debtors and the estates to surcharge pursuant to Bankruptcy Code section 506(c); (b) the applicability of the “equities of the case” exception under Bankruptcy Code section 552(b); (c) any claims or causes of action that may be brought; (d) rights to assert marshalling; and (e) other rights and claims as set forth herein;
- i. subject to entry of the Final Order (as defined herein) and the rights of parties in interest under section 39 of this Interim Order, grants releases to Triumph;
- j. waives any applicable stay (including under Bankruptcy Rule 6004) and provides for immediate effectiveness of this Interim Order and operation under the Post-Petition Agreements; and
- k. schedules a final hearing (the “Final Hearing”) to consider the relief requested in the Motion and entry of a final order authorizing and approving the relief requested in the Motion on a final basis in a form, and with a budget, acceptable to Triumph in its Discretion (as defined herein) (the “Final Order”), and approving the form of notice with respect to the Final Hearing.

Having considered the Motion, the Post-Petition Agreements, the declaration submitted in support of the Motion (the “Declaration”), and the evidence submitted or proffered at the hearing on this Interim Order (the “Interim Hearing”); and in accordance with Bankruptcy Rules 2002, 4001(b), 4001(c), 4001(d), and 9014, all applicable Bankruptcy Local Rules, and the Complex Case Procedures, notice of this Motion, this Interim Order and the Interim Hearing having been provided in accordance therewith; and an Interim Hearing having been held and concluded on December [•], 2024; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and all parties in interest, and is essential for the continued operation of the Debtors’ business and the preservation of the value of the Debtors’ assets; and it appearing that Kal Freight’s entry into the Post-Petition Agreements and its grants of collateral and guarantees are a sound and prudent exercise of the Kal Freight’s business judgment; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THIS COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:⁴

A. Jurisdiction and Venue. This Court has subject matter jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The Debtors have confirmed their consent to the entry of this Order and any final order by this Court.

B. Notice. The Interim Hearing was held pursuant to the authorization of Bankruptcy Rule 4001 and Section C of the Complex Case Procedures. Notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors in accordance with the Motion, and under the circumstances, such notice of the Motion, the interim relief requested therein and the Interim Hearing complies with Bankruptcy Rule 4001(b), (c), and (d), the Bankruptcy Local Rules, and the Complex Case Procedures, that the notice was adequate and sufficient under the circumstances, and no other notice need be provided for entry of this Interim Order. The Debtors have moved timely to seek to have this Interim Order approved after filing their petitions seeking the relief sought in the Motion. The Court finds that the Debtors set the Motion for an emergency hearing promptly, and that good causes exists to grant the protections to Triumph contained in this Interim Order retroactively to the Petition Date.

C. Stipulations. Subject to the rights of other parties-in-interest set forth in Section 39 of this Interim Order, the Debtors, on behalf of themselves and their respective estates, admit, stipulate, acknowledge, and agree (the “Debtors’ Stipulations”) as follows:

⁴ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

- i. On or about April 25, 2017, Triumph and Kal Freight entered into the Factoring Agreement, which entitled Triumph to, among other things, purchase Kal Freight's Accounts arising from Kal Freight's (and certain affiliates') sales of goods and/or transportation services provided to its customers,⁵ and, pursuant to the Non-Purchase Advance Addendum, make advances to Kal Freight on Accounts that Triumph does not purchase under the Factoring Agreement;
- ii. The Factoring Agreement is governed by the laws of the state of Texas. Among other things, the Factoring Agreement (a) constitutes a sale absolute to Triumph of the Accounts that Triumph purchases; (b) authorizes Triumph to make advances against non-factored Accounts under the Non-Purchase Advance-Addendum to the Factoring Agreement (the "Non-Purchased Accounts"); (c) makes Kal Freight liable for Obligations (as defined herein) to Triumph, including obligations of the Debtors and certain non-Debtors, whether or not arising under the Factoring Agreement, and includes obligations of the Debtors and non-Debtors arising from their debts to TBK Bank, SSB (a bank related to Triumph) ("TBK");⁵ and (d) constitutes a security agreement to provide collateral, as defined in section 1.10 of the Factoring Agreement (the "Collateral"), securing all of Kal Freight's direct, indirect, and guaranteed monetary and non-monetary Obligations (as defined herein) and duties of performance. The term "Obligations" is defined in section 1.31 of the Factoring Agreement as "all

⁵ The term "Accounts" as defined in Section 2 of the Factoring Agreement shall have the meaning ascribed by the Uniform Commercial Code ("UCC"), as enacted in Tex. Bus. Comm. Code § 9.102.

⁵ Kal Freight's loan documents with TBK also grant a security interest in collateral to Triumph. Kal Freight's debts and obligations to TBK are included in the definition of Obligations under the Factoring Agreement. Affiliates of Triumph, such as TBK, are included in the definition of "Triumph" in the preamble of the Factoring Agreement. Certain other Debtor and non-Debtor entities have also granted Triumph collateral to secure Kal Freight's Obligations pursuant to Cross Collateralization/Default and Guaranty Agreements, discussed *infra* at Recital C.x.

present and future monetary indebtedness, liabilities and obligations owing by [Kal Freight] to Triumph, whether or not arising hereunder and whether arising before, during or after the commencement of any Bankruptcy Case in which [Kal Freight] is a Debtor or Debtor in Possession.” The term “Purchased Accounts” is defined in section 1.37 of the Factoring Agreement as “Accounts purchased hereunder which have not been Closed.” Any and all obligations and indebtedness of whatever kind or nature arising under and owing to Triumph under the Post-Petition Agreements, including the Pre-Petition Obligations and any other obligations of any Debtor to Triumph arising before and after the Petition Date, are hereafter collectively, the “Post-Petition Obligations.” Due to the nature of the relationship under the Factoring Agreement, both Bankruptcy Code section 363 involving the sale of Accounts and Bankruptcy Code sections 363(c) and 364 involving post-petition financing and use of cash collateral and adequate protection are applicable.

- iii. The Debtors stipulate, agree, and acknowledge: (a) the amount, validity, priority, and enforceability of the Factoring Agreement and the Obligations to Triumph; (b) that Triumph is the sole owner, free and clear of claims, liens, and encumbrances, in the Purchased Accounts and the proceeds thereof; (c) that, to secure all of the Obligations to Triumph, Triumph has a valid, enforceable and duly perfected first priority lien and security interest in the pre-Petition Collateral, including Cash Collateral (as defined herein) and all proceeds thereof, subject only to the unavoidable liens of record as of the Petition Date; (d) Kal Freight is also liable to Triumph for fees, attorney fees, costs, and expenses of whatever kind or nature, including attorneys’ fees that Triumph is and will be entitled to recover in accordance with the Post-Petition Agreements; (e) the

- debts and obligations to Triumph that arose before the commencement of the Cases relating solely to Triumph's Purchase of Accounts and Triumph's advances on Non-Purchased Accounts is no less than \$8,544,198.57 as of December 5, 2024; and (f) the Debtors do not have any defenses to, or claims, counterclaims, offsets, setoffs, or recoupments, against Triumph, the Collateral, the Obligations, or with respect to the Factoring Agreement. The total outstanding to Triumph due from Kal Freight, Kal Way Inc., SPG Transportation Inc., Pro Tec Inc is no less than \$17,278,907.23 as of December 5, 2024.
- iv. Prior to the Petition Date, Triumph purchased Eligible Accounts (as defined in section 1.15 of the Factoring Agreement) in exchange for making Purchase Price payments (as defined in section 1.36 of the Factoring Agreement), less fees, expenses, and the Reserve Shortfall (hereinafter, "Payments") to Kal Freight pursuant to and in accordance with the Factoring Agreement. Triumph also made advances to Kal Freight under the Non-Purchase Advance-Addendum to the Factoring Agreement.
 - v. In connection with the Debtors' Chapter 11 filing on December 2, 2024 (the "Petition Date"), Kal Freight and Triumph entered into the Bankruptcy Rider to the Factoring Agreement, and the Conversion Addendum, which are both subject to this Court's approval.
 - vi. In order to provide Kal Freight with additional liquidity, Kal Freight has requested: (a) that Triumph purchase under the Conversion Addendum, Eligible Accounts that comprise some or all of the Non-Purchased Accounts that had been financed under the Non-Purchase Advance Addendum; (b) suspension of Triumph's obligations under the Non-Purchase Advance Addendum; (c) authorization to enter into the Conversion

Addendum; and (d) authorization to grant Triumph a first lien and security interest in the Additional Cash Account (as defined in the Conversion Addendum) and the other Collateral.

- vii. Kal Freight is liable to Triumph for money Kal Freight owes to TBK Bank SSB (“TBK”) under documents in which Kal Freight is an obligor or co-obligor to TBK. Such debts and obligations are hereafter the “TBK Debts.” The TBK Debts total not less than \$72,305,639.15 as of December 2, 2024. The TBK Debts are more fully addressed in this Court’s *Interim Order (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Modifying the Automatic Stay, and (D) Scheduling a Final Hearing* (the “Cash Collateral Order”).
- viii. Under the Factoring Agreement and the agreements referenced in the last sentence of subsection (x) below, Kal Freight is also liable to Triumph for all debts and obligations of Kal Freight and of entities related to or affiliated with Kal Freight (some, but not all, of which are Debtors in these Cases) under documents in which Debtors are guarantors, obligors, co-obligors, and/or provided collateral to secure their obligations in the total amount of not less than \$88,880,758.92 as of December 2, 2024 (all of the foregoing, including debts and Obligations, are hereby defined as the “Pre-Petition Obligations”). The Debtors are in default of the Pre-Petition Obligations to Triumph.
- ix. To secure all of the Debtors’ and Non-Debtors Third Parties’ (as defined herein) obligations to Triumph (including the TBK Debts), Triumph holds an unavoidable, duly perfected first priority ownership interest in the pre-petition Purchased Accounts and the proceeds thereof, and an unavoidable, duly perfected first-priority lien and security interest in all of the Collateral and the proceeds thereof including, but not

limited to, any Non-Purchased Accounts, other accounts, and other assets (collectively, the “Pre-Petition Liens”).

- x. In addition to the Pre-Petition Liens in Kal Freight’s assets, Kal Freight’s Obligations to Triumph are also secured by pre-petition liens and security interests granted to Triumph by the other Debtors herein and by non-Debtors Kal Way Inc., SPG Transportation Inc., Pro Tec Inc., Kaltrans Inc, Kalway Inc, and certain individual guarantors (Kalvinder Singh, President of the Debtors, and Sukhvinder Singh). Kal Way Inc., SPG Transportation Inc., Pro Tec Inc., Kaltrans Inc, Kalway Inc, Randhawa & Randhawa Transport Inc., Kalvinder Singh, and Sukhvinder Singh, collectively, the “Non-Debtor Third Parties.” The Debtors and Non-Debtor Third Parties granted liens and security interests in favor of Triumph pursuant to, among other things, Cross Collateralization/Default and Guaranty Agreements, Unconditional Guarantees, Guarantor’s Security Deed, Deeds of Trust and/or Mortgages, and pursuant to various other agreements with TBK under which the obligor agreed to guaranty, or be liable for, Kal Freight’s obligations to Triumph and/or grant Triumph liens and security interests to secure those obligations.
- xi. [Reserved].
- xii. The terms of the Post-Petition Agreements were negotiated in good faith and at arm’s length between Kal Freight and Triumph, and any Payments Triumph may make to Kal Freight or other financial accommodations which Triumph may provide to Kal Freight pursuant to the Post-Petition Agreements are deemed to have been extended in good faith, as such term is used in sections 363(m) and 364(e) of the Bankruptcy Code, and Triumph is entitled to the full protection of sections 363(m) and 364(e) of the

Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

D. Court Findings Regarding the Motion.

- i. The Need to Enter into the Post-Petition Agreements. Kal Freight's immediate need to obtain credit pursuant to the Post-Petition Agreements (including entering into the Bankruptcy Rider and the Conversion Addendum) and to use Cash Collateral is critical in order to enable the Debtors to continue operations, to minimize the disruption of the Debtors as a "going concern," and to administer and preserve the value of their estates. The ability of Kal Freight to convert its Accounts into working capital, maintain business relationships with its vendors, suppliers, and customers, to pay its employees, and to otherwise finance its operations requires the availability of the factoring facilities offered by Triumph; Kal Freight does not have sufficient available sources of working capital and financing to operate its business or maintain its properties in the ordinary course of business without the availability of funds provided by Triumph under the Post-Petition Agreements. Any material interruption in Kal Freight's cash flow will have a serious adverse effect on its business and continued operations. The Debtors will suffer immediate and irreparable harm if the Interim Order is not granted. The Post-Petition Agreements are reasonable and necessary for the preservation of the estates.
- ii. No Credit Available on More Favorable Terms. The Debtors have made extensive efforts to locate alternative financing, but have not been able to locate a lender or factor willing to finance the Debtors on terms at least as favorable as those offered by Triumph. Although Triumph has no obligation to purchase Accounts or finance the

Debtors in these Cases, Triumph is willing to purchase Kal Freight's Accounts post-petition and make Payments to Kal Freight and operate under the Post-Petition Agreements only upon the conditions contained in the Post-Petition Agreements and this Interim Order.

E. Budget. Triumph's agreement to enter into and operate under the Post-Petition Agreements, purchase Eligible Accounts, provide factoring facilities, and to make advances to fund the Debtors' required operations is conditioned upon, among other things, the Debtors agreeing, and the Court ordering, that the Payments Triumph makes to Kal Freight shall be used, in each case, solely in a manner consistent with the terms and conditions of the Post-Petition Agreements, this Interim Order, and the Budget (defined below and as may be modified from time to time with Triumph's consent) solely for: (1) the Debtors' working capital and the Debtors' other general corporate purposes; (2) permitted payment of costs of administration of the Cases; and (3) payment of professional fees and expenses as approved by the Court.

F. Best Interest and Good Faith. It is in the best interests of the Debtors and the Debtors' estates that Triumph be allowed to continue to maintain its pre-petition relationship with Kal Freight seamlessly and without interruption, as if Kal Freight had not filed chapter 11, by entering into, and performing under, the Post-Petition Agreements in order for Triumph to be able to purchase Kal Freight's Accounts, for Triumph to be permitted to make Payments and provide other financial accommodations to Kal Freight under the terms and conditions set forth herein, and to prevent a deleterious impact on the Debtors' business, assets, or opportunity to reorganize. Triumph's purchase of Accounts and the credit and financial accommodations Triumph is willing to extend under the Post-Petition Agreements, and Triumph's rights and remedies under the Post-Petition Agreements, are in good faith, fair, and reasonable, and Triumph is entitled to the

protections afforded pursuant to section 364(e) of the Bankruptcy Code. The purchase and sale of the Accounts and extension of credit under the Post-Petition Agreements are in good faith, and Triumph is entitled to the protections afforded pursuant to Bankruptcy Code section 363(m).

In order for Triumph to agree to provide Kal Freight with post-petition financing, it is necessary for the Debtors to grant liens and security interests to Triumph to secure all of the Post-Petition Obligations (except the TBK Debts), and for the Debtors (except for the TBK Debts) and Non-Debtor Third Parties to continue to guarantee all of the Post-Petition Obligations.

G. Automatic Stay. It is essential that the automatic stay be annulled, or modified retroactive to the Petition Date, to allow Triumph to continue to operate under the Factoring Agreement, to operate under the Post-Petition Agreements seamlessly and without interruption as if this Chapter 11 had not been filed, and to facilitate and approve any and all the post-petition financing Triumph may have provided to Kal Freight immediately after the Petition Date. Doing so will avoid an interruption in the Debtors' cash flow and protect Triumph.

H. Direct Payments to Triumph on Purchased Accounts. Under the Factoring Agreement, Account Debtors (as defined in Section 1.1 of the Factoring Agreement) are notified to make payments on Purchased Accounts directly to Triumph at an address Triumph controls. Any interruption or change in the process of notifying Account Debtors that Triumph purchased Kal Freight's Accounts or changing the instructions to pay Triumph directly, or any suggestion that Account Debtors should change the payee of their accounts, will create confusion and disruption, and will delay repayments to Triumph, which will accelerate and increase Kal Freight's Repurchase obligations to Triumph (pursuant to section 6 of the Factoring Agreement), reduce the Payments and other financial accommodations to Kal Freight, and otherwise reduce the Debtors' access to working capital for their operations and adversely impact the Debtors. It is also necessary

that Triumph notify and require Account Debtors of any Non-Purchased Accounts to make payments directly to Triumph.

NOW, THEREFORE, based on the Motion, the Declaration, and the record before this Court with respect to the Motion, the Debtors' Stipulations, the above findings of fact, and with the consent of the Debtors and Triumph, in each case, to the form and entry of this Interim Order, the Court being otherwise duly advised, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. **Motion Granted.** The Motion is granted on an interim basis subject to the provisions hereof. This Interim Order shall become effective immediately upon its entry and is retroactive to the Petition Date. All objections to the entry of this Interim Order are, to the extent not withdrawn, hereby overruled.

2. **Post-Petition Agreements.** Kal Freight and Triumph are hereby immediately authorized to enter into, and continue to operate under and in accordance with, the Post-Petition Agreements and this Interim Order seamlessly and without interruption as if Kal Freight had not filed chapter 11. Kal Freight is authorized to enter into the Conversion Addendum and to grant Triumph a first lien and security interest in the Additional Cash Reserve and the Collateral to secure the Debtors' Post-Petition Obligations (except the TBK Debts) to Triumph. The Debtors are authorized to execute, deliver, and perform their obligations under the Post-Petition Agreements and under all other documents, instruments, and agreements necessary to effectuate and carry out the terms of the Post-Petition Agreements and this Interim Order. The Post-Petition Agreements, including, without limitation, the Bankruptcy Rider and the Conversion Addendum, are hereby approved in all respects, *retroactively*, as of the Petition Date, pursuant to, without limitation, Bankruptcy Code sections 363(b)(1), (d), (e) and (f). All of the following transactions

are also hereby approved: (i) Kal Freight's sale of Accounts to Triumph and Triumph's Payments therefor; (ii) Triumph's advances to Kal Freight; (iii) the granting of liens and security interests to Triumph, to secure the Post-Petition Obligations (except the TBK Debts); (iv) the Debtors' continued liability for all of the Post-Petition Obligations (except the TBK Debts); (v) the granting of adequate protection to Triumph for the Post-Petition Obligations (except the TBK Debts); and (vi) all other transactions contemplated by the Post-Petition Agreements. Kal Freight is authorized to enter into the Conversion Addendum, to sell Eligible Accounts to Triumph in accordance therewith, and to grant Triumph a continuing lien and security interest in the Additional Cash Reserve and the Collateral, arising or created both before and after the Petition Date, to secure the Post-Petition Obligations (except the TBK Debts). Triumph is authorized to purchase Eligible Accounts and otherwise operate in accordance with the Conversion Addendum.

3. **Sale of Accounts.** Kal Freight is hereby authorized to sell Accounts to Triumph and Triumph is authorized, in its "Discretion" (as defined in section 1.13 of the Factoring Agreement), to purchase Accounts and make Payments, advances, and overadvances, and to provide any other financial accommodations to Kal Freight, after deduction by Triumph of amounts as permitted by the Post-Petition Agreements. Kal Freight is authorized and required to comply with all obligations under the Post-Petition Agreements, including, without limitation, Kal Freight's obligation to Repurchase Purchased Accounts. Triumph shall be the absolute owner the Purchased Accounts (and proceeds thereof) purchased in accordance with the Post-Petition Agreements and this Interim Order, free of any claims, liens, and interests.

4. **Debtors' Continuing Liability for the Post-Petition Obligations (except the TBK Debts) Including Guarantees and Collateralization Therefor.** The Debtors' continue to be liable to Triumph for indemnification and other obligations, arising both before and after the

Petition Date, under the Factoring Agreement, and the Debtors' continuing cross-guarantees of Debtor-related entities, including entities that have not filed bankruptcy. The Debtors' continuing guaranties of the other Debtors' obligations to Triumph, the Debtors' continuing guaranties of the obligations to Triumph of entities that have not filed bankruptcy, and the Debtors' granting of collateral under this Interim Order to secure all of the Debtors' obligations to Triumph arising both before and after the Petition Date (other than the TBK Debts), are approved.

5. **Automatic Stay.** Effective immediately upon the entry of this Interim Order, for all purposes, including, among other things, the Debtors' Post-Petition Obligations (except the TBK Debts), and to the extent, if any, that any of the pre-petition Accounts qualify as property of the estates under Bankruptcy Code section 541, and for all purposes under the Post-Petition Agreements and this Interim Order, and Triumph shall be free from any restrictions and shall be entitled to collect all Purchased Accounts and Non-Purchased Accounts, directly from any Account Debtor and/or other obligors, whether arising before or after the Petition Date, and require that payments shall be made at an address and an account controlled by Triumph, and otherwise continue to operate for all purposes under the Factoring Agreement, the other Post-Petition Agreements, and this Interim Order without interruption, regardless of whether such Accounts arise from the sale of goods and/or performance of services Kal Freight has previously or hereafter provides to its customers either or both before or after the Petition Date.

6. **Application of Payments and Proceeds.** Triumph is irrevocably and unconditionally authorized and is hereby permitted to apply any and all payments and Proceeds of any Purchased Accounts and any Non-Purchased Accounts, to the repayment of either or both Kal Freights' Pre-Petition Obligations (except TBK Debts) and Kal Freight's Post-Petition Obligations, including, but not limited to, all Post-Petition Obligations (except TBK Debts) of Kal

Freight arising from the Payments Triumph may make to or for the benefit of Kal Freight of any kind or nature. Nothing shall prevent Triumph from seeking any additional relief prior to and at the final hearing on the Motion.

7. **Performance Under Factoring Agreement.** Triumph and Kal Freight are expressly authorized to continue (retroactive to the Petition Date) to operate under the Factoring Agreement and other Post-Petition Agreements seamlessly and without interruption, and Triumph is authorized to continue to purchase Accounts and make advances in the same manner as Triumph did prior to the Petition Date, and require and obtain post-petition the same collateral security, lien rights, and priority in the Debtors' assets that it maintained pre-petition, to obtain liens in the Debtors' post-petition assets now owned or hereafter acquired as set forth herein, and, notwithstanding any provision to the contrary in Bankruptcy Code section 553 or otherwise, to adjust, offset, setoff, and recoup Kal Freight's Pre-Petition Obligations against post-petition Accounts and Collateral and to adjust, offset, setoff, and recoup Post-Petition Obligations (except the TBK Debts) against pre-petition Accounts and Collateral during the pendency of these Cases and any subsequent Chapter 7 case seamlessly and without interruption as if the Debtors had not filed Chapter 11. Triumph is further authorized to apply collections on Accounts purchased pre-petition, and advanced upon pre-petition, to either or both Obligations of the Debtors arising pre-petition and post-petition (except the TBK Debts), and to apply collections on Accounts purchased post-petition, and advanced post-petition, to either or both Obligations of the Debtors arising pre-petition and post-petition (except the TBK Debts). Triumph is authorized to demand, and the Debtors are required to immediately pay, the amount of any Reserve Shortfall pursuant to the terms of the Post-Petition Agreements, including any applicable charges therein.

8. **Direct Payment Notice to Account Debtors of Purchased Accounts.** Pursuant to and as authorized by the Post-Petition Agreements and Section 9-406 of the Texas Business & Commerce Code, Triumph is expressly authorized to send, or cause to be sent, and delivered to any customer of Kal Freight (*i.e.*, Account Debtor) one or more written notifications of assignment in order to notify each such present and future Account Debtor that Kal Freight has sold, assigned and/or transferred to Triumph the right to receive payment due in connection with any present and future Accounts, and all Accounts shall be payable and paid solely to Triumph as provided in such written notification of assignment. Kal Freight is specifically directed, as required by the Factoring Agreement, before sending any Invoice to an Account Debtor which may or will constitute a Purchased Account, to clearly state in a manner satisfactory to Triumph that payment of the Purchased Accounts are assigned and are factored by and payable exclusively to Triumph at an address controlled by Triumph.

9. **Direct Payment Notice to Account Debtors of Non-Purchased Accounts.** In addition, with respect to Non-Purchased Accounts, Triumph is expressly authorized to send, or cause to be sent, and delivered to any such present and future customer of Kal Freight (*i.e.*, Account Debtor) one or more written notifications of assignment in order to notify each such Account Debtor that Triumph has the right to receive payment due in connection with any present and future Accounts, and all Accounts shall be payable and paid solely to Triumph as provided in such written notification of assignment, regardless of whether Triumph gave such notice prior to the Petition Date. Kal Freight is specifically directed, before sending any Invoice to an Account Debtor, to clearly state in a manner satisfactory to Triumph that payment of the Non-Purchased Accounts are payable exclusively to Triumph at an address controlled by Triumph.

10. **Cash Collateral Restrictions.** Except as set forth in this Interim Order and any cash collateral order entered in these Cases to which Triumph consents, the Debtors shall at no time during these Cases or any case under Chapter 7 of the Bankruptcy Code upon the conversion of the Cases, seek to use or be permitted to use any Cash Collateral (as defined herein). Cash Collateral, as defined by Bankruptcy Code section 363(a), includes, without limitation, all Account proceeds from Accounts Triumph purchased both before and after the Petition Date and all pre-petition and post-petition proceeds of Triumph's Collateral and DIP Collateral (as defined herein), including Non-Purchased Accounts, and other proceeds of Triumph's Collateral (collectively, the "Cash Collateral"). The Debtors shall be authorized to use Cash Collateral only in accordance with the terms of this Interim Order and the Budget (as defined in section 11 herein), below. In no event shall the Debtors attempt to grant a lien or security interest, or attempt to grant adequate protection in Cash Collateral in which Triumph has an interest with priority over, priority equal to, or *pari passu* with Triumph, subject to the Carve-Out (as defined in section 46 herein) and any Permitted Liens (as defined in section 13 herein). Any such grant, or the Debtors' attempt to request to grant, is a Post-Petition Event of Default (as defined in section 22 herein).

11. **Budget.** Attached hereto as **Exhibit 2** is the Debtors' initial cash flow budget (the "Budget"). The Debtors are only authorized to use Cash Collateral in a manner consistent with the Budget; *provided* that, except with respect to Professional Fees (as defined herein), which shall be paid on time as required by the Budget, disbursements described in the category of the Budget described as "Operating Disbursements" may be carried over and occur later than the weeks forecasted in the Budget so long as such disbursements occur prior to a Post-Petition Event of Default (as defined herein). Cash Collateral shall be only used for the purposes permitted under the Budget to provide working capital needs of the Debtors and general corporate purposes of the

Debtors and to make the payments or fund amounts otherwise permitted in this Interim Order and the Budget. The Debtors shall timely deliver to Triumph, by not later than 5:00 p.m. (Central Time) on the Friday of the following week, a variance report in a form approved by Triumph, showing and comparing, on a line-item basis, the actual cash disbursements and receipts for the preceding budgeted week and the amount and percentage variance of such actual disbursements and receipts from those reflected in the Budget for that period (“Variance Report”). Notwithstanding the foregoing, the Debtors may only exceed any budgeted line item in the category of “Operating Disbursements” in the Budget by no more than ten percent (10%) in excess of the total budgeted line item for the first four weeks from and after the Petition Date and each rolling four-week period thereafter, *provided, however*, the aggregate payments for all line items included in “Total Operating Disbursements” for any four-week period shall not exceed the total budgeted amount for that four-week period by more than five percent (5%) (the “Permitted Variance”). Any disbursement by the Debtors other than for budgeted amounts or for the purposes set forth in the Budget, or disbursements in excess of the Permitted Variance set forth above, shall constitute a Post-Petition Event of Default unless Triumph consents, in its Discretion, to those changes in writing.

12. **Possession of Proceeds.** Pursuant to the Post-Petition Agreements, notwithstanding that each Account Debtor shall be notified otherwise, if the Debtors come into possession of any Proceeds of Purchased Accounts or Non-Purchased Accounts, the Debtors (including any Chief Restructuring Officer, insider, or manager of the Debtors, who on behalf of the Debtors, is responsible for managing and/or administering such duties of the Debtors) shall exercise commercially reasonable efforts to immediately notify Triumph in writing of receipt of the payment (but in no event more than three business days after receipt), hold said payment in

express trust for Triumph, keep separate and apart from Debtors' own property and funds, and no later than two (2) business days following the date of receipt, deliver said payment to Triumph in the identical form in which received.

13. **First-Priority Liens and Security Interests on DIP Collateral.** Pursuant to the Post-Petition Agreements, and as authorized by section 364(c)(1) and (d)(1) of the Bankruptcy Code, as security for all Post-Petition Obligations (except the TBK Debts), Triumph is hereby indefeasibly granted, a valid, binding, enforceable, and perfected, sole ownership interest in all Purchased Accounts, and a first and senior priority security interest and lien (the "DIP Lien") in all property and assets of the Debtors and all products, proceeds, substitutions, and additions thereto, , including without limitation, all of Debtors' assets including, but not limited to, all of the Debtors' rights, title and interest in and to each of the following, wherever located and whether now or hereafter existing or now owed or hereafter acquired or arising: Accounts (including Non-Purchased Accounts and lease receivables), Chattel Paper, Deposit Accounts, Goods, Inventory, Equipment, Instruments, Investment Property, Documents, Letter of Credit Rights, Letters of Credit, Commercial Tort Claims, General Intangibles, all policies of insurance, including unearned premiums,, the Additional Cash Reserve under the Conversion Addendum, all books, records, reports, memoranda, and/or data compilations, in any form (including, without limitation, corporate and other business records, customer lists, credit files, computer programs, printouts and any other computer materials and records) pertaining to any of the foregoing, and all products, proceeds, replacements, additions, and substitutions of any and all of the foregoing (collectively, the "DIP Collateral"), *provided that* (a) the DIP Lien shall exclude claims or causes of actions arising pursuant to Bankruptcy Code sections 506(c), 544, 545, 547, 548, 549, 550, 553, and 724 ("Avoidance Actions"), but shall include the proceeds of Avoidance Actions subject to entry of

the Final Order, and (b) the DIP Lien in any DIP Collateral (other than the Purchased Accounts in which Triumph is the sole owner free and clear of any liens, encumbrances, and free and clear of the Carve-Out (as defined in section 46 herein)) will only be subject to any senior, valid, properly perfected, unavoidable liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the “Permitted Liens”). The DIP Lien in the DIP Collateral shall be in a first-priority lien position, subject only to the Permitted Liens and the Carve-Out, and shall not be made subject to or be made *pari passu* with or to any lien or security interest heretofore or hereinafter granted in these Cases or any case under Chapter 7 of the Bankruptcy Code upon the conversion of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, “Successor Case”). The DIP Lien shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Case, and shall be valid and enforceable upon, and shall survive, the dismissal of the Case or Successor Case. No lien or interest avoided and preserved for the benefit of any estate pursuant to section 551 of the Bankruptcy Code shall be made senior to, or *pari passu* with the DIP Lien. No person shall be permitted to seek to interfere with, impair, or otherwise seek to enforce any right or privilege that may in any way interfere with or adversely affect any of the liens, rights, interests, and claims provided to Triumph by the Debtors in respect to the DIP Lien or any DIP Collateral. Nothing contained in this Interim Order shall limit, or otherwise impair, any of Triumph’s liens or security interest in existence on the Petition Date.

14. **[Reserved]**.

15. **Cross-Collateral and Guarantees Preserved**. Nothing contained herein shall modify, limit, impair, or otherwise adversely affect any of Triumph’s liens, claims, rights, or interests in any collateral granted to Triumph by any Non-Debtor Third Parties, or any guarantees

provided by such Non-Debtor Third Parties. All of Triumph's liens, claims, rights, or interests in any and all such collateral, and against all such Non-Debtor Third Parties are expressly preserved.

16. **Adequate Protection.** As adequate protection: (i) to secure the Post-Petition Obligations (except the TBK Debts); (ii) to the extent, that due to the use of any pre-petition assets by the Debtors, Triumph suffers a decrease in the value of Triumph's interest in the Debtors' pre-petition assets; (iii) in connection with the Debtors' use of Cash Collateral; (iv) with respect to the impairment, if any, of Triumph's interest in the Cash Collateral; and (v) to secure all of the Debtors' obligations to Triumph under the Post-Petition Agreements and this Interim Order (except the TBK Debts), Triumph is hereby indefeasibly granted, a valid, binding, enforceable, and perfected first and senior ownership interest in all Purchased Accounts and valid, binding, enforceable, and perfected security interests and liens in the DIP Collateral to the same extent, validity and priority as existed pre-petition (the "**Adequate Protection Lien**"), subject to the Permitted Liens and the Carve-Out and junior and subordinate to the DIP Lien. The Adequate Protection Lien shall be in a first-priority lien position, subject only to the Permitted Liens and the Carve-Out, and shall not be made subject to or be made *pari passu* with or to any lien or security interest heretofore or hereinafter granted in these Cases or the Successor Case. In no event shall any person or entity at any time interfere with, impair, or otherwise seek to enforce any right or privilege that may in any way interfere with or adversely affect any of the rights interests and claims provided to Triumph by the Debtors under this Interim Order and under the Post-Petition Agreements, including but not limited to, Triumph's exclusive rights to receive and retain Proceeds of all Purchased Accounts and all Non-Purchased Accounts.

17. **[Reserved].**

18. **Subordination.** Nothing contained in this Interim Order shall modify the terms of any subordination agreements or other agreements between Triumph and TBK, all of which remain in full force and effect.

19. **Super-Priority Administrative Expense.** Pursuant to section 364(c)(1), (c)(2), (c)(3), and (d) of the Bankruptcy Code, the Post-Petition Obligations (except the TBK Debts), shall have priority in payment over any administrative expenses or charges that are or may be incurred after the filing of the Petition (the “Triumph Superpriority Claim”), including, without limitation, expenses, charges or claims of the kind specified in sections 503(b), 506(c), and 507(a) and (b) of the Bankruptcy Code, or other claims arising under sections 105, 326, 328, 330, 331, 365, 726, 1113, or 1114 of the Bankruptcy Code; *provided that* the Triumph Superpriority Claim shall be junior to the Carve-Out and, pending entry of the Final Order, shall not be payable from proceeds of Avoidance Actions. The Triumph Superpriority Claim shall be subject only to the Permitted Liens and the Carve-Out, and shall not be made subject to or be made *pari passu* with or to any claim heretofore or hereinafter granted in these Cases or Successor Case. For purposes of this Interim Order (and not the Cash Collateral Order), the TBK Debts shall not constitute an administrative expense under section 503(b) of the Bankruptcy Code.

20. **Surcharge and Equities of the Case Waiver.** Except for the Carve-Out and subject to entry of the Final Order, no costs or expenses of administration that have been or may be incurred in these Cases and no priority claims shall be prior to or on parity with any of the relief granted to Triumph under this Interim Order. Subject to entry of the Final Order, no other costs or expense of administration of any kind whatsoever, including, without limitation, expenses of Chapter 7 administration shall be imposed upon Triumph, the Collateral, or Cash Collateral, DIP

Collateral, whether by way of surcharge, application of Bankruptcy Code sections 506(c) or 552(b), or otherwise.

21. **Financing Statements.** The DIP Lien and Triumph's security interests in the DIP Collateral, Cash Collateral, and Adequate Protection Lien are automatically perfected upon entry of this Interim Order. Triumph shall not be required to file, but may in its Discretion file, any UCC financing statement(s) or other document(s) with any filing authority to further perfect and/or maintain perfection of such ownership in the Purchased Accounts, or any security interest or lien granted pursuant to the Post-Petition Agreements and this Interim Order, or take any other action in connection therewith; *provided, however*, that if Triumph, in its Discretion, shall elect to file any UCC financing statement or other document with respect to such ownership interest in the Purchased Accounts or security interests and liens in the DIP Collateral, the automatic stay is hereby lifted, and the Debtors shall be deemed to have authorized the filing thereof and same shall be deemed to have been perfected at the time and on the date of commencement of these Cases, or as of the date of the filing of any previously filed financing statement, whichever is earlier.

22. **Events of Default.** Each of the following shall be a "Post-Petition Event of Default" under the Post-Petition Agreements and this Interim Order: (i) any of the Debtors violate any material provision of this Interim Order or the Post-Petition Agreements; (ii) an "Event of Default" (as defined in the Post-Petition Agreements) occurs; (iii) the appointment of a trustee or an examiner with substantial powers over any the Debtors or their estates; (iv) the dismissal or conversion of these Cases to chapter 7; (v) the granting of relief from the automatic stay to permit any party to recover possession of any property necessary and material to the operation of the Debtors' business; (vi) any successful challenge to the amount, validity, or enforceability of Triumph's ownership of Accounts, the validity or enforceability of its liens, or the assertion of any

other claim against Triumph in or related to these Cases; (vii) any of the Debtors fail to file when due any tax reports or forms or other mandatory filings with any state, local, or federal agency; (viii) any of the Debtors seek any amendment, modification, or extension of this Interim Order without the prior written consent of Triumph, and no such consent shall be implied by any other action, inaction or acquiescence of Triumph; (ix) any of the Debtors fail to pay the amounts set forth in the Budget for payment of Professional Fees or U.S. Trustee fees, at the time identified in the Budget into the Professional Fees Account (defined herein); (x) any of the Debtors fail to pay, within five (5) business days of Court approval, any post-petition fees or costs due to any Professional; (xi) failure to deliver to Triumph, within three business days after the Petition Date, fully executed Reaffirmation Agreements from Pro Tec Inc., SPG Transportation Inc., Kalway Inc., and Kaltrans Inc., Kalvinder Singh, and Sukhvinder Singh; (xii) a material violation of an order of this Court; (xiii) failure to pay adequate protection payments to TBK at the times and in the amounts required in the Cash Collateral Order, or other material breach of the Cash Collateral Order; (xiv) the Chief Restructuring Officer of the Debtors is not formally in place on the Petition Date and, subject to the oversight of the new independent Board of Directors, is not in full and exclusive management control of the Debtors and their assets; (xv) the Chief Restructuring Officer either voluntarily or involuntarily ceases to be in full and exclusive management control of the Debtors and their assets (subject to the oversight of the new independent Board of Directors,) or otherwise becomes disassociated from the Debtors and no replacement has been selected acceptable to Triumph in its Discretion; (xvi) Kal Freight shall cease to operate its business; (xvii) all Post-Petition Obligations (except TBK Debts) due Triumph are not repaid in full, without setoff, recoupment or deduction, by no later than the earlier of conversion or dismissal of the chapter 11 case, or, the effective date of any confirmed Plan, unless Triumph agrees to and

consents, in writing, to other treatment under a Plan; (xviii) Debtors' fail to maintain a minimum cash balance at the end of each week of \$400,000, after all expenses in the Budget for that week have been paid in full; (xix) the failure to pay at the times set forth in the Budget the full amount of the "Proceeds from Owner's and Company's Real Estate; (xx) the actual "Net Cash Flow" each for each rolling four-week period in the Budget is more than 15% less favorable than the amounts projected in Budget for such period; (xxi) at any time, failing to pay, deposit, or withhold when required by law any of the fees, taxes, or other obligations of the types described in the Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Payment of Certain Taxes and Fees and (II) Granting Related Relief; (xxii) the actual Total Revenue Receipts amounts received for each rolling four-week period in the Budget is more than 15% less than the projected Total Revenue Receipts amounts in the Budget for such period; or (xxiii) a Final Order with a budget, each in a form and substance satisfactory to Triumph in its Discretion, is not entered before the expiration of the period covered by the Budget. Triumph is under no obligation to agree to purchase any Accounts or continue to provide any post-petition financing under the terms of a Final Order. Any Post-Petition Event of Default shall conclusively be deemed a material default under the Post-Petition Agreements and this Interim Order. The Debtors shall immediately notify Triumph in writing upon the occurrence of a Post-Petition Event of Default. The Debtors' failure to provide such notification is a material violation of and an Event of Default under this Interim Order. Without waiving any rights and expressly reserving the right to later enforce an Event of Default, Triumph may, in its Discretion upon written notice to the Debtors, elect to not immediately enforce an Event of Default.

23. **Effect of Post-Petition Event of Default—Cash Collateral.** Upon the occurrence of a Post Petition Event of Default, the Debtors' right to use any Cash Collateral or DIP Collateral

shall automatically, and immediately terminate without the need for notice from Triumph, and the Debtors' right to obtain further Payments or advances from Triumph shall automatically and immediately terminate without entry of an order from the Court.

24. **Effect of Post-Petition Event of Default—Post-Petition Agreements.** In addition to all other of Triumph's rights under the Post-Petition Agreements and this Interim Order, upon the occurrence of a Post-Petition Event of Default, and immediately upon the filing with the Bankruptcy Court a notice of the occurrence of such Post-Petition Event of Default, Triumph shall have the right to (a) stop performance under the Post-Petition Agreements without regard to the automatic stay or the need for further order of the Court; (b) continue to collect the Accounts and apply payments as provided in this Interim Order; and (c) exercise any and all rights and remedies under the Post-Petition Agreements and the Interim Order, including requiring the Debtors (and any superseding Trustee) to immediately surrender and deliver peaceful possession of all of the DIP Collateral to Triumph; *provided, however*, that relief under subsection (c) relating to the Debtors may only be sought after notice, hearing, and further order of this Court. The Debtors consent to such hearing under subsection (c) being on emergency notice, subject to at least five (5) business days' notice. Nothing contained in this Section 24 shall impair or limit any of Triumph's claims, rights, or remedies, and no relief from this Court is required before Triumph can exercise any such rights against any non-Debtor persons or entities.

25. **[Reserved].**

26. **Professional Fees Reporting Requirement.** The Debtors shall, no later than Friday at 5 p.m. Central Time of each week, send Triumph a statement of the accrued and unpaid fees and costs of each Professional through the Friday of the prior week. In addition to all of Triumph's other rights, and without waiving a Post-Petition Event of Default, Triumph is

authorized to reduce and withhold Payments and advances to Kal Freight by the amount of such professional fees and costs the Debtors do not pay into the Professional Fees Account (as defined herein) at the time stated in the Budget.

27. **Survival of Provisions.** The rights and remedies afforded to Triumph under the Post-Petition Agreements and this Interim Order, and any actions taken pursuant thereto, shall survive unaffected by the entry of any orders which may be subsequently entered in these Cases or any case to which some or all of these Cases may be converted. In addition, Triumph's ownership of the Purchased Accounts and the security interests, liens, and interests recognized or granted to Triumph under the Post-Petition Agreements and this Interim Order shall continue unimpaired and in full force and effect in these Cases and any superseding Chapter 7 case under the Bankruptcy Code, or, in the event these Cases are dismissed, such ownership of the Purchased Accounts and security interests, liens, and interests shall be and remain indefeasible and shall maintain their priority as provided by this Interim Order until all of the Post-Petition Obligations have been paid and indefeasibly satisfied in full. The terms and conditions of the Post-Petition Agreements and this Interim Order (and any Final Order), and Triumph's protections, rights, liens and security interests, and claims thereunder shall control over the terms of any plan of reorganization ("Plan") that the Debtors or any other party-in-interest may file with the Bankruptcy Court, and Triumph's protections, rights, liens and security interests, and claims in the Post-Petition Agreements and this Interim Order (and any Final Order), shall survive an order confirming a Plan in these Cases, and may not be varied, altered, or modified by any Plan proposed by the Debtors or a related entity without Triumph's express written consent, and such Plan may not vary, alter or modify any rights, claims, and collateral that Triumph has against any guarantor, secondarily liable person or entity, or any entity that granted Triumph collateral. The filing of any

Plan in contradiction to these provisions shall be deemed to be a material Post-Petition Event of Default and to have been filed in violation of section 1129(a)(1) and (3) of the Bankruptcy Code to the extent the content of such Plan violates the proscriptions contained in this section. No Post-Petition Obligation (except TBK Debts) to Triumph shall be discharged by the entry of any order confirming a plan of reorganization and, pursuant to sections 1141(d)(4) and 1192 of the Bankruptcy Code, unless prior to or concurrently with the entry of such order, Triumph is paid in full and all monetary and non-monetary obligations under the Post-Petition Agreements are fully paid and indefeasibly satisfied.

28. **Indemnification.** The Debtors are required to each fully and timely perform all of their respective obligations under the Post-Petition Agreements, including, without limitation, their obligations to indemnify Triumph pursuant to the Post-Petition Agreements. This obligation includes indemnification for events and occurrences that arose pre-petition and events and occurrences that may arise post-petition. In addition, the Debtors will indemnify and hold harmless Triumph and each of its agents, directors, attorneys, consultants, advisors, and controlling persons (solely in their capacities as such), and each of their successors and assigns, from and against any and all damages, losses, obligations, liabilities, claims, actions, or causes of action, and reasonable and actual costs and expenses (including, without limitation, attorney's fees, costs, and expenses) incurred or required to be paid by an indemnified party of every nature and character arising out of or related to or in connection with the Post-Petition Obligations (except TBK Debts), Post-Petition Agreements or the transactions contemplated therein, or this Interim Order. The Debtors' obligations to Triumph shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the Post-Petition Obligations (except TBK Debts), this Interim Order, and the Post-Petition Agreements. Nothing contained in this Section 28 shall limit any non-Debtor

persons' or entities' indemnity obligations to Triumph, regardless of whether those obligations arose prior to or after the Petition Date.

29. **Releases.** Effective upon the entry of a Final Order and subject to the rights of other parties-in-interest set forth in Section 39 of this Interim Order, the Debtors and the Debtors' estates, on their own behalf and on behalf of each of their predecessors, their successors, and assigns shall unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, waive, and discharge each of Triumph and its former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, predecessors, and predecessors in interest (solely in their capacities as such), of and from any and all claims, counterclaims, setoffs, offsets, recoupments, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description arising out of, relating to, or in connection with any of this Interim Order, any Final Order, the Post-Petition Agreements, the transactions contemplated therein, or the negotiation thereof (the "**Releases**").

30. **Certain Prohibitions.** Unless Triumph shall have given its prior written consent, or unless and until the Debtors indefeasibly pay all Post-Petition Obligations (except TBK Debts) and fully satisfy all monetary and non-monetary obligations arising under the Factoring Agreement, the Debtors shall not seek, and there shall not, at any time, be entered in these Cases

any further order that authorizes: (i) the Debtors' use of Cash Collateral in violation of the provisions of this Interim Order or the Budget; (ii) the use, sale or lease, other than in the ordinary course of business, of any asset of the Debtors in which Triumph has any interest, (iii) the Debtors to obtain credit or incur any indebtedness that is (A) secured by a security interest or lien in property that constitutes an equal or senior part of the DIP Collateral; or (B) entitled to priority administrative status which is equal or senior to that granted to Triumph herein; or (iv) the enforcement by any creditor of a claim, the effect of which will authorize the impairment, seizure, or application of any or all of the Purchased Accounts, any material portion of the DIP Collateral, or proceeds of any of the foregoing. In no event will the Debtors take any action that will impair or adversely affect Triumph's rights in the Purchased Accounts.

31. **Direct Contracting Party Invoices Only.** Kal Freight (including any Chief-Restructuring Officer) shall only submit invoices to Triumph for purchase under the Factoring Agreement for which Kal Freight is the legal entity that is the direct contracting party on the applicable invoice being submitted for purchase. Kal Freight shall not submit invoices to Triumph for purchase under the Factoring Agreement that arise from any subcontracted or other indirect transportation services. Kal Freight will fully comply with all statutes, rules, and regulations governing the transportation of goods and the documentation regarding such transportation services.

32. **Site Visit.** Triumph may, on reasonable notice to the Debtors, at any time during Debtors' normal business hours, to perform a site visit/field examination conducted by Triumph's representatives at the Debtors' locations, at such times and in such frequencies that Triumph may elect, to review Debtors' physical premises, interview their staff, or inspect the Debtors' non-privileged books and records and the DIP Collateral. The Debtors shall accommodate and

cooperate with Triumph in connection with such a site visit/field examination.

33. **Inspection of Books.** Triumph may inspect the Debtors' non-privileged books, records, and business operations. The foregoing includes, but is not limited to, responding within one (1) business day to any telephone or email inquiries, making knowledgeable individuals available to Triumph representatives for in-person meetings or calls, and otherwise providing timely and full and complete disclosures of information and documentation as may be requested by Triumph. The Debtors shall accommodate and cooperate with Triumph in connection with such inspection.

34. **No Waiver.** The failure of Triumph to seek relief or otherwise exercise its rights and remedies under this Interim Order, the Post-Petition Agreements, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise.

35. **No Third-Party Rights.** Except as explicitly provided herein, this Interim Order does not create any rights for the benefit of any third party, including, but not limited to, any Non-Debtor Third Party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

36. **No Modification of Triumph Rights and Liens Against Third Parties.** Nothing contained in this Interim Order or any Final Order shall impair, or otherwise constitute a modification, waiver, reduction, or limitation of any of Triumph's liens or security interests in, or rights or claims against any Non-Debtor Third Party, whether arising pre-petition or post-petition, or granted any lien or security interest to secure any of the Debtors' obligations to Triumph, whether arising pre-petition or post-petition, all of which rights, claim, liens and security interests survive and continue to apply. Triumph reserves all such rights, claims, liens, and security interests.

37. **Subsequent Events.** If this Interim Order or any of the provisions of this Interim Order are hereafter modified, vacated or stayed, such modification, vacatur or stay shall not affect (a) the validity of the Post-Petition Obligations (except TBK Debts) incurred by the Debtors to Triumph prior to the effective date of such modification, vacatur, or stay; (b) the granting of liens and security interests in the DIP Collateral; (c) the granting to Triumph of adequate protection, Super-Priority Administrative Claims, and of any other rights as provided in this Interim Order; or (d) the validity or enforceability Triumph's sole ownership in any Purchased Accounts, and any security interest, lien or priority authorized or created hereby or pursuant to the Post-Petition Agreements and this Interim Order. Notwithstanding any such modification, vacatur, or stay, any Post-Petition Obligations (except TBK Debts) incurred by the Debtors to Triumph prior to the effective date of such modification, vacatur or stay shall be governed in all respects by the provisions of this Interim Order, and Triumph shall be entitled to all the rights, remedies, liens, privileges and benefits granted in this Interim Order and pursuant to the Post-Petition Agreements.

38. **Immediately Enforceable.** Pursuant to Bankruptcy Rule 6004(h), all of the terms of this Interim Order, including in respect to authorizing a sale of Debtors' Accounts, shall be deemed immediately effective and enforceable and not stayed absent entry of an order granting a stay after a hearing upon notice to the Debtors and Triumph.

39. **Challenge Period.** The Debtors' Stipulations and Releases are approved and confirmed; *provided that* other parties-in-interest shall have up to and not more than seventy-five (75) days after entry of this Interim Order (and, with respect to an official committee of unsecured creditors, sixty (60) days after formation thereof) to complete an investigation of the Debtors' Stipulations and: (a) Triumph's sole ownership interest in pre-petition Purchased Accounts and the proceeds thereof; (b) the validity, enforceability, priority of the liens and security interest

granted to Triumph in the Debtors' pre-petition Collateral (as defined in the pre-petition Factoring Agreement); (c) the validity or enforceability of the Releases; or (d) the amount of Triumph's claims against the Debtors that arose before the commencement of the Cases (collectively, the "Challenge Period"); *provided, however*, on motion filed before the end of the Challenge Period, the end of the Challenge Period is subject to extension by written agreement of Triumph or by order of the Court for good cause shown. If, by no later than the end of the Challenge Period, none of the categories of parties listed in the preceding sentence file a motion for standing attaching a proposed complaint or, to the extent such party already has the requisite standing, commence a proceeding with the Bankruptcy Court contesting, or otherwise seeking a declaration of Triumph's ownership interest in any pre-petition Purchased Accounts, the validity, enforceability, priority of the liens and security interest granted to Triumph in the pre-petition Collateral, including Non-Purchased Accounts, or the amount of Triumph's claims against the Debtors that arose before the commencement of the Cases, or the Releases *then*, as of the expiration of the Challenge Period, all parties and other persons and entities shall be deemed to be forever barred, waived and/or estopped from: (a) seeking to prevent or impair Triumph's rights to retain payment of any Purchased Accounts and Non-Purchased Accounts, (b) contesting the Debtors' Stipulations or Triumph's ownership interest in any Purchased Accounts, (c) contesting the validity, enforceability, priority of Triumph's rights, claims, liens, and security interest as of the Petition Date; (d) contesting the validity or enforceability of the Releases; or (e) contesting the amount of Triumph's claims against the Debtors that arose before the commencement of the Cases.

40. **Reimbursements of Fees, Costs, and Expenses.** Triumph shall be entitled to be reimbursed all of its reasonable attorneys' fees, costs and expenses incurred after the Petition Date. Triumph is expressly authorized to reduce Payments and advances and to withhold funds from the

Debtors to cover the approximate amount of attorney fees, costs and expenses as such attorney fees, costs, and expenses are incurred after the Petition Date. With respect to such attorney fees, costs, and expenses, Triumph shall follow the following procedure to recover its post-Petition attorney fees, costs, and expenses: Triumph, by and through its counsel, shall transmit a copy of counsel's monthly statements for fees and costs (redacted as necessary to protect privileged and confidential information, including information protected by the attorney-client and/or work-product privileges) to: the United States Trustee, Committee counsel, and Debtors' counsel for their review each month. Unless a written objection (specifying the line item of the bill objected to, the reason for the objection and a proposed resolution of the objection) is received by Triumph's counsel within 15 days of submission of each monthly statement to each of the above-stated applicable parties, the amount of such attorney fees, costs and expenses shall be deemed approved. To the extent Triumph did not withhold sufficient amounts to reimburse it for all such attorney fees, costs and expenses, Triumph is authorized to charge the Additional Cash Reserve, reduce Payments and advances and withhold funds from Kal Freight, demand payment from Kal Freight for any amounts due from Kal Freight, or otherwise exercise its rights under the Post-Petition Agreements to the balance of such attorney fees, costs, and expenses. To the extent any such party-in-interest fails to timely deliver a written objection, no further objection may thereafter be made in connection therewith and any objections shall be deemed to have been waived. If an objection is timely asserted, the amounts at issue will be considered by the Court if not resolved by the parties and any remaining amounts not subject to objection shall be promptly retained by Triumph. Notwithstanding the foregoing, Triumph is authorized to reduce Payments to and withhold funds from Kal Freight and to be reimbursed post-Petition for all of its reasonable attorneys' fees, costs,

and expenses that were incurred prior to the Petition Date without the need to follow the foregoing procedures.

41. **No Marshaling.** Subject to entry of the Final Order and except as set forth herein, Triumph may exercise all remedies available under this Interim Order, the Factoring Agreement, and the Post-Petition Agreements, as applicable, without any requirement that Triumph first looked to exercise any of its rights or remedies against any particular collateral or third-party, or to exhaust any remedies available to it against any particular collateral or third-party, or to resort to any other source or means of obtaining payment of any of such obligations or to elect any other remedy, or to proceed in any particular order or sequence. Subject to entry of the Final Order, in no event shall Triumph be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to the any of the collateral securing the Post-Petition Obligations; *provided, however,* that proceeds of Avoidance Actions may only be applied in the satisfaction of the Triumph Superpriority Claim or any Post-Petition Obligation (except TBK Debts) only after Triumph has taken commercially reasonable steps to try to exhaust all other sources of recovery for payment of such claims. The rights and remedies granted to Triumph in the Post-Petition Agreements, this Interim Order, and any Final Order are cumulative, are not exclusive, and can be exercised in any order or sequence.

42. **Proof of Claim.** Notwithstanding any order entered by this Court establishing a claims bar date in these Cases or any Successor Case to the contrary, Triumph shall not be required to file proofs of claim for claims arising under the Factoring Agreement or the Post-Petition Agreements. The Debtors’ stipulations, admissions, and acknowledgements and the provisions of this Interim Order shall be deemed to constitute a timely filed proof of claim for all claims arising under the Factoring Agreement and the Post-Petition Agreements. Triumph shall not be required

to file, but is not restricted from filing, a proof of claim in these Cases to preserve its right to receive a distribution applicable to any Pre-Petition Obligations and Post-Petition Obligations owing to Triumph. Any proof of claim filed by Triumph shall be deemed to be in addition to, and not in lieu of, any other proof of claim that may be filed or the provisions of this Interim Order.

43. **Miscellaneous.** Nothing contained in this Interim Order shall serve to permit or authorize any Account Debtor to unilaterally modify or extend the terms of payment on Accounts, or otherwise delay remitting timely payment of any Account to Triumph.

44. **No Admission.** Neither this Interim Order, nor Triumph's consent to the entry of this Interim Order, shall constitute an admission by Triumph that the protection provided to Triumph is adequate. At any time, Triumph may apply to this Court for an order modifying the protection granted Triumph hereunder. Further, neither entry of this Interim Order, nor Triumph's consent to entry of this Interim Order, constitutes an agreement by Triumph to the treatment of Triumph's claim under any plan of reorganization.

45. **Triumph's Rights Reserved.** Nothing in this Interim Order shall: (a) constitute a waiver or modification of any of Triumph's rights against any Debtor in these Cases, or against any guarantor or entity that provided Triumph with collateral to secure any obligation due to Triumph; or (b) compromise, waive, limit, or modify any of Triumph's rights to any Collateral the Debtors granted to Triumph or any collateral any other non-Debtor person or entity granted to Triumph; or (c) create or give to any such entity or individual any defenses at law or in equity, including laches, estoppel, or waiver. Triumph reserves all such rights, claims, defenses, counterclaims, setoffs, offsets, recoupments, and collateral against all such entities and individuals. Nothing in this Interim Order is intended to be, nor can be relied upon as, evidence of release, waiver, or modification of any of Triumph's rights or remedies under the Post-Petition

Agreements, any and all related guarantees, any other document executed in connection with the Post-Petition Agreements, any of Triumph's rights against any guarantor or entity that provided Triumph with collateral to secure any obligation due to Triumph, applicable law, the Bankruptcy Code, or otherwise. Triumph reserves all rights.

46. **Carve-Out.** Except with respect to the Excluded Assets described in the Cash Collateral Order, each of the DIP Lien, DIP Superpriority Claim, and Adequate Protection Liens shall each be subject to and subordinate to payment of the Carve-Out. As used herein, the "Carve-Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and all statutory fees payable to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate, which amounts shall not be limited by any budget (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the Carve-Out Trigger Notice (as defined herein)); (iii) up to the amounts set forth for each Professional in the Budget, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (and any monthly, restructuring, or sale fees to the extent earned prior to the date of the Carve-Out Trigger Notice (as defined herein)) (the "Allowed Professional Fees") incurred by (or payable to) persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") (which, as of the date of this Interim Order means, Pachulski, Stang, Ziehl & Jones, LLP, Development Specialists, Inc., and Stretto, Inc.) and any official committee of unsecured creditors (the "Committee Professionals" and together with Debtor Professionals, the "Professionals") at any time before the date of delivery of the Carve-Out Trigger Notice by Triumph, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional

Fees of the Professionals in an aggregate amount not to exceed \$250,000 incurred on or after the date of delivery of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amount set forth in this clause (iv) being the “Post Carve-Out Trigger Notice Cap”). For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by Triumph to the Debtors, their restructuring counsel (Pachulski Stang Ziehl & Jones LLP), the U.S. Trustee, and counsel for any official committee of unsecured creditors, which notice may be delivered following the occurrence of a Post-Petition Event of Default, stating that the Post Carve-Out Trigger Notice Cap has been invoked. The Debtors shall, on a weekly basis commencing on the second week of the Budget (or as otherwise contemplated in the Budget if fees are accrued but not paid during certain weeks), transfer into a segregated account (which may be the trust account of Debtors’ counsel), not subject to the control of Triumph (the “Professional Fees Account”), an amount equal to the amount budgeted for the Professionals for the preceding week in the Budget. Upon the delivery of the Carve-Out Trigger Notice, the Debtors shall deposit all available cash on hand into the Professional Fees Account until such amounts therein equal the Carve-Out. The Professional Fees Account, and all funds held therein, shall remain property of the Debtors’ estates unless and until they are paid to the Professionals following Court approval of a fee application seeking approval of the same (if required), and shall be available only to satisfy obligations benefitting from the Carve-Out, and Triumph (i) shall not sweep or foreclose on any such available cash of the Debtors until the Professional Fees Account is fully funded, and (ii) shall have a first priority lien and security interest on any residual interest in the Professional Fees Account available following satisfaction in cash of the Carve-Out. Nothing contained in this section 46 shall give the Professionals or any other person or entity and rights to, claims, liens, or security interests

in, any of the Non-Purchased Accounts, any of the Purchased Accounts, or proceeds of either of the foregoing. In no event will the Carve-Out exceed the amounts set forth for each Professional in the Budget that remain unpaid plus the Post Carve-Out Trigger Notice Cap, if applicable. In no event will any professional, trustee, other person or entity have any right to seek recovery from Triumph on account of the Carve-Out, or assert a lien or claim in or to any funds Triumph holds in reserve or in any account, or assert a lien or claim in any assets or proceeds of Accounts that Triumph has collected or may collect in the future.

47. **Limitation of Use of Proceeds of Post-Petition Agreements and DIP Collateral.**

Notwithstanding anything herein or in any other order of this Court to the contrary, none of the Proceeds of the Post-Petition Agreements, Payments on any Purchased Accounts, the DIP Collateral (including Cash Collateral), or the Carve Out may be used to (i) investigate, analyze, commence, prosecute, threaten, litigate, object to, contest, or challenge in any manner, or raise any defenses to, the validity, perfection, priority, extent, or enforceability of any amount due under the Post-Petition Agreements or the liens or claims granted under this Interim Order, the Post-Petition Agreements, or any other rights or interests of Triumph; (ii) assert any claims or defenses, including any action pursuant to sections 506(c), 544, 545, 547, 548, 549, 550, 553, and 724 of the Bankruptcy Code, or any other causes of action against Triumph and its agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors; (iii) prevent, hinder, or otherwise delay Triumph's assertion, enforcement, or realization on the DIP Collateral or pre-petition Collateral in accordance with the Post-Petition Agreements or this Interim Order, the exercise of rights by Triumph once a Post-Petition Event of Default has occurred, or any other rights or interest of Triumph; (iv) seek to subordinate (other than the Carve-Out) or recharacterize the Post-Petition Obligations or to disallow or avoid any claim, mortgage, security interest, lien,

or replacement lien or payment thereunder; (v) seek to modify any of the rights granted to Triumph under this Interim Order or the Post-Petition Agreements; (vi) file any motion seeking approval of a sale of any DIP Collateral without the consent of Triumph; or (vii) pay Allowed Professional Fees, disbursements, costs, or expenses incurred by any person, including, without limitation, any official committee of unsecured creditors in connection with any of the foregoing; *provided that* no more than \$25,000 of the DIP Collateral may be utilized by the Committee Professionals to investigate the Debtors' Stipulations and the prepetition liens and claims of Triumph during the Challenge Period.

48. **Discovery Responses.** Nothing contained in Section 47 shall prohibit the Debtors or Triumph from responding, objecting to, or complying with discovery requests of any official committee of unsecured creditors, in whatever form, made in connection with such investigation.

49. **Conflict.** If there is any conflict between this Interim Order and the Post-Petition Agreements, the terms and provisions of this Interim Order shall control. Triumph's rights under this Interim Order and Triumph's rights under the Cash Collateral Order are cumulative.

50. **Service of Interim Order.** The Debtors, within forty-eight (48) hours following the entry of this Interim Order, shall cause copies of this Interim Order and the Motion, with all attachments, to be served on each of the Debtors' 30 largest unsecured creditors, Triumph, the Debtors' other secured creditors, the United States Trustee's Office, and all other parties who are required to be served under Fed. R. Bankr. P. 4001(d), any other Bankruptcy Rules, Bankruptcy Local Rules, and the Complex Case Procedures.

51. **Retroactive Applications.** This Interim Order is and shall be fully effective upon its entry, retroactive to the Petition Date.

52. **Final Hearing.** The Debtors' authorization granted under this Interim Order shall expire on the earlier of a Post-Petition Event of Default, entry of an order terminating the Debtors' rights under this Interim Order, or entry of a Final Order. A final hearing shall be held on December [], 2024, at [] a.m./p.m. Any objection to the motion for entry of a Final Order shall be filed with the Court and served on counsel no later than 5:00 p.m. Central Time on []; *provided, however*, all of the rights, remedies, security interests, and adequate protection granted to Triumph shall survive expiration of this Interim Order.

Dated: _____, 2024
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Post-Petition Agreements

**Triumph****FACTORING AND SECURITY AGREEMENT****AMENDMENT 6**

This Sixth Amendment ("Amendment") amends the Factoring and Security Agreement made as of April 25, 2017, by and between KAL FREIGHT INC. ("Client") and Triumph Financial Services LLC, Advance Business Capital LLC dba Triumph Business Capital ("Triumph") as follows, effective as of date accepted below or the date received by Company, whichever is later.

Schedule A-1 is hereby deleted and replaced by the attached Schedule A-2.

THIS AMENDMENT AND THE FACTORING AND SECURITY AGREEMENT EMBODY THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ALL PRIOR AGREEMENTS AND UNDERSTANDINGS, IF ANY, RELATING TO THE SUBJECT MATTER HEREOF. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the Parties have executed this agreement on the day and year as specified below.

TRIUMPH FINANCIAL SERVICES LLC

CLIENT: KAL FREIGHT INC.

George A. Thorson
Chief Credit Officer

DocuSigned by:

By **Kalvinder Singh** _____Name: 22E0F647E2564EB... Kalvinder SinghTitle: PresidentAcceptance Date: 2/27/2024

**Triumph****FACTORING AND SECURITY AGREEMENT****SCHEDULE A-2: PRICING AND TERMS**

This amended Schedule A, as referenced in that Factoring and Security Agreement dated April 25, 2017, by and between Triumph Financial Services LLC ("Triumph") and KAL FREIGHT INC. ("Client"), shall govern in respect to the following Terms:

Maximum Advance	\$20,000,000 and is aggregated between KAL FREIGHT INC., KALWAY INC and KALTRANS INC		
Term	Effective date August 18, 2023, One (1) year with Auto Renewals as of effective date.		
Advance Rate	99% of Eligible Accounts		
Repurchase Period	90 days		
Finance Rate	Prime Rate plus 0% (Prime Rate Floor 4%)		
Factoring Fee		Percentage	Period
	Initial Period	0.05%	90 days
	Subsequent Periods	N/A	N/A
Setup Fee	\$0.00		
Triumph Fuel Card	No Charge (for loading)		
Wire Transfer Fee	\$0.00		
Electronic Fund Transfer (ACH)	\$0.00		
Special Considerations	N/A		

Initials: ^{DS}
KS

Date Signed: 2/27/2024



FACTORING AND SECURITY AGREEMENT NON-PURCHASE ADVANCE – ADDENDUM

This Addendum (“Addendum”), made as of August 18, 2023, is attached to and made a part of the Factoring and Security Agreement (“Factoring Agreement”) by and between **KAL FREIGHT, INC.** (“Client”) and Triumph Financial Services LLC fka Advance Business Capital LLC dba Triumph Business Capital (“Triumph”), collectively, (“Parties”) as follows, effective as of date accepted below or the date received by Triumph, whichever is later.

WHEREAS, Client desires to utilize their Non-Purchase Advance facility (the “NPA Facility”) as conditioned in the Factoring Agreement, Schedule A – Pricing Terms, Special Considerations, and

WHEREAS, this Addendum shall serve to amend and supplement the Factoring Agreement, as authorized by Section 19.1 of the Factoring Agreement; and as such *all* representations and warranties, covenants, and terms, conditions and thereof as executed therein are applicable and enforceable with this Addendum,

NOW, therefore, in consideration of Client’s request for utilization of their NPA Facility, fulfillment of criteria stipulated thereof and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Terms and Conditions of Non-Purchase Advance Facility

Terms and Conditions	
Non-Purchase Advance Facility	A Non-Purchase Advance Facility will be made available to Client in an amount equal to a maximum of \$3,500,000 or an amount as supported by eligible collateral which shall not exceed 70% of prior month’s Non-factored Accounts (“NFAs”); the calculation of NFAs shall be based on the combined sum of non-factored accounts of Client, SPG Transportation Inc., and Pro Tec Inc. Kal Freight, Inc. is the sole borrower under the NPA Facility, and SPG Transportation Inc. and Pro TecInc. will remain guarantors.
Non-Purchase Advance Obligation	\$3,500,000 (Maximum availability of Non-Purchase Advance)
Finance Rate/Interest	Prime <i>plus</i> 1% (Prime Rate Minimum of 6%) Client shall pay to Triumph a Finance Rate of Prime Rate plus 1% which will accrue on the average daily balance of Non-Purchase Advance Facility. Where available, Client will pay Triumph the Finance Rate charged from Cash Reserves on first business day of the following calendar month. Where Cash Reserves are insufficient to pay the Finance Rate, Client shall immediately pay the balance to Triumph upon notice of a balance due.
Repayment	10% of principal balance <i>plus</i> accrued interest from finance rate Each calendar month, Client shall pay to Triumph no less than 10% of the principal balance of the prior month’s advance plus the Finance Rate due. Repayment will be funded by Client’s Purchased Accounts and/or subsequent Reserve Account through the Factoring Facility.
Monthly Requirements	Each calendar month, Client shall provide Triumph their internal accounts receivable and accounts payable report.
Default	Client must remain in good standing with Triumph and suffer no event of default.



2. **Default.**

2.1. **Events of Default.** In addition to the Events of Default in the Factoring Agreement, the following will constitute an Event of Default under this Addendum: (a) Client fails to pay any amount due for a given Billing Cycle; (b) Client fails to adhere to any of this Addendum's terms and conditions as set forth for repayment of this Non-Purchase Advance Obligation or (c) Client fails to perform any provision under this Addendum or any other agreement now or hereafter entered into with Triumph and Triumph in good faith believes that the prospect for payment or performance is impaired.

2.2. **Effect of Default.** Upon the occurrence of any Event of Default, in addition to any rights Triumph has under the Factoring Agreement or applicable law, Triumph may, in its sole business judgment and without notice to Client: (a) suspend or terminate all of Client's rights under this Addendum and the Factoring Agreement and/or declare all Obligations, including Non-Purchase Advance, immediately due and payable and all fees shall accrue and be payable at the Default Fees rate under the Factoring Agreement; and (b) charge Client's Factoring Agreement Reserve Account with any outstanding Non-Purchase Advance.

3. **Indemnification.** Client shall indemnify, defend and hold Triumph harmless against any claims, losses, costs, fines, penalties or damages, including court costs and reasonable attorneys' fees arising out of or related to Client's (and any Authorized Users'): (a) negligent or willful misconduct; or (b) breach of this Addendum and the Factoring Agreement.

4. **Final Expression and Fully Integrated Agreement.** This Addendum constitutes a complete agreement of the parties as to its content related to the NPA Facility. There are no provisions of any nature whatsoever relating to the subject matter of this Addendum which are not contained herein. No representations or agreements of any kind, other than as contained herein, related to the NPA Facility have been made by the parties hereto or any of their agents or representatives. This Addendum supersedes all prior negotiations, offers and discussions with respect to the NPA facility and this Addendum and shall be construed in conjunction with the Factoring Agreement as a single agreement between the parties.

5. **California Disclosures Waiver.** Triumph and Client agree and acknowledge that total amounts under the Factoring Agreement and the Non-Purchase Advance Facility are and will exceed \$500,000.00 at some point during the term of the commercial financing transactions and that Client shall not receive any disclosures as may have otherwise been required by law.

IN WITNESS WHEREOF, Client agrees to the terms and conditions of this Addendum as stipulated herein, including the repayment of the Non-Purchase Advance Obligation, and the Parties have executed this agreement on the day and year as specified below.

TRIUMPH: **Triumph Business Capital**

CLIENT: **KAL FREIGHT INC.**


Name: George A. Thorson
Title: EVP, Chief Credit Officer

DocuSigned by:
By: **Kalvinder Singh**
Name: **Kalvinder Singh**
Title: **President**
Acceptance Date: **8/18/2023**

**FACTORING AND SECURITY AGREEMENT****AMENDMENT 5**

This Fifth Amendment ("Amendment") amends the Factoring and Security Agreement made as of April 25, 2017, by and between KAL FREIGHT INC. ("Client") and Advance Business Capital LLC d/b/a Triumph Business Capital ("Company") as follows, effective as of date accepted below or the date received by Company, whichever is later.

1. The Maximum Advance, shall be \$20,000,000 aggregated between KAL FREIGHT INC., KALWAY INC and KALTRANS INC.

THIS AMENDMENT AND THE FACTORING AND SECURITY AGREEMENT EMBODY THE FINAL AND ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS, IF ANY, RELATING TO THE SUBJECT MATTER HEREOF, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the Parties have executed this agreement on the day and year as specified below.

CLIENT:

KAL FREIGHT INC.

By: Kalvinder SinghName: Kalvinder SinghTitle: PresidentAcceptance Date: April 6, 2022

COMPANY:

Triumph Business Capital

A handwritten signature in black ink, appearing to read "George A. Thorson", is written over a horizontal line.

By: _____

Name: George A. ThorsonTitle: President

**FACTORING AND SECURITY AGREEMENT****AMENDMENT 4**

This Fourth Amendment ("Amendment") amends the Factoring and Security Agreement made as of April 25, 2017 by and between Kal Freight Inc. ("Client") and Advance Business Capital LLC d/b/a Triumph Business Capital ("Company") as follows, effective as of date accepted below or the date received by Company, whichever is later.

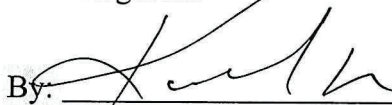
1. The Maximum Advance, per Schedule A-1, shall be \$20,000,000 aggregated between Client, SPG Transportation Inc., and Pro Tec Inc.
2. The Term of the Factoring and Security Agreement shall renew as of the date of this amendment with annual renewals thereafter.
3. Client acknowledges that the California corporation, Kal Freight Inc., has merged with Kal Freight Inc, a Texas corporation, and that the Texas corporation is the surviving entity.

THIS AMENDMENT AND THE FACTORING AND SECURITY AGREEMENT EMBODY THE FINAL AND ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS, IF ANY, RELATING TO THE SUBJECT MATTER HEREOF, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the Parties have executed this agreement on the day and year as specified below.

CLIENT:

Kal Freight Inc

By: 

Name: Kalvinder Singh

Title: President

Acceptance Date: 3/15/21

COMPANY:

Triumph Business Capital



By: _____
Name: George A. Thorson
Title: President



FACTORING AND SECURITY AGREEMENT

AMENDMENT 3

This Third Amendment ("Amendment") amends the Factoring and Security Agreement made as of April 25, 2017 by and between Kal Freight Inc. ("Client") and Advance Business Capital LLC d/b/a Triumph Business Capital ("Company") as follows, effective as of date accepted below or the date received by Company, whichever is later.

Schedule A is hereby deleted and replaced by the attached Schedule A-1.

THIS AMENDMENT AND THE FACTORING AND SECURITY AGREEMENT EMBODY THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ALL PRIOR AGREEMENTS AND UNDERSTANDINGS, IF ANY, RELATING TO THE SUBJECT MATTER HEREOF. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the Parties have executed this agreement on the day and year as specified below.

TRIUMPH BUSINESS CAPITAL

A handwritten signature in black ink, appearing to read "George A. Thorson", written over a horizontal line.

George A. Thorson
President

CLIENT: **Kal Freight Inc.**

By: A handwritten signature in black ink, appearing to read "Kalvinder Singh", written over a horizontal line.

Name: **Kalvinder Singh**

Title: **President**

Acceptance Date: 1/22/20

FACTORING AND SECURITY AGREEMENT

SCHEDULE A-1: PRICING AND TERMS

This amended Schedule A, as referenced in that Factoring and Security Agreement dated April 25, 2017 by and between Advance Business Capital LLC d/b/a Triumph Business Capital ("Company") and Kal Freight Inc. ("Client"), shall govern in respect to the following Terms:

Maximum Advance	\$7,500,000
Term	One (1) Year with automatic renewals thereafter
Advance Rate	95% of Eligible Accounts
Repurchase Period	90 days
Factoring Fees	0.1%
Finance Rate	Prime + 1.0% with a floor of 4.0% on Prime
Setup Fee	N/A – current client
Wire Transfer Fee	\$0
Electronic Fund Transfer (ACH)	\$0
Express Checks	\$3 for EFS Money Codes \$10 for other express checks
Cash4Truckers Fuel Card	No Charge (for loading)
Special Considerations	N/A

Initial: KS

Date: 1-22-2020



**FACTORING AND SECURITY AGREEMENT
AMENDMENT 2**

This Second Amendment ("Amendment") amends the Factoring and Security Agreement made as of April 25, 2017 by and between Kal Freight Inc. ("Client") and Advance Business Capital LLC d/b/a Triumph Business Capital ("Company") as follows, effective as of September 20, 2017.

1. The Maximum Advance, per Schedule A, will be \$4,000,000 aggregated between Kal Freight Inc., SPG Transportation Inc., and Pro Tec Inc.

THIS AMENDMENT AND THE FACTORING AND SECURITY AGREEMENT EMBODY THE FINAL AND ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS, IF ANY, RELATING TO THE SUBJECT MATTER HEREOF, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the Parties have executed this agreement on the day and year as specified below.

CLIENT:

KAL FREIGHT INC.

By: Kalvinder Singh

Name: Kalvinder Singh

Title: President

Date: 9-20-17

COMPANY:

Triumph Business Capital

By: George A. Thorson

Name: George A. Thorson

Title: Executive Vice President



FACTORING AND SECURITY AGREEMENT

AMENDMENT 1

This First Amendment ("Amendment") amends the Factoring and Security Agreement made as of April 25, 2017 by and between Kal Freight Inc. ("Client") and Advance Business Capital LLC d/b/a Triumph Business Capital ("Company") as follows, effective as of June 23, 2017.

1. The Maximum Advance, per Schedule A, will be increased to \$3,000,000.00.

THIS AMENDMENT AND THE FACTORING AND SECURITY AGREEMENT EMBODY THE FINAL AND ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS, IF ANY, RELATING TO THE SUBJECT MATTER HEREOF, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the Parties have executed this agreement on the day and year as specified below.

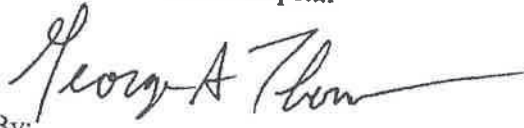
CLIENT:

KAL FREIGHT INC.

By: 
Name: Kalvinder Singh
Title: President
Date: 7-12-17

COMPANY:

Triumph Business Capital

By: 
Name: George A. Thorson
Title: Executive Vice President



FACTORING AND SECURITY AGREEMENT

THIS FACTORING AND SECURITY AGREEMENT ("Agreement") is made as of April 25, 2017 by and between KAL FREIGHT INC. ("Client") and Advance Business Capital LLC d/b/a Triumph Business Capital (together with its Affiliates, successors and assigns, "Triumph"), (individually, "Party" and collectively, "Parties").

1. Definitions and Index to Definitions. The following terms used herein shall have the following meanings. All capitalized terms, whether or not herein defined, shall have the meaning set forth in the Uniform Commercial Code except to the extent otherwise provided in this Agreement.

- 1.1. "Account Debtor" - the obligor on an Account.
- 1.2. "Active Account Debtor" - an Account Debtor of Client which owes all or any portion of a Purchased Account to Triumph.
- 1.3. "Advance Rate" - the percentage, per Schedule A, of the Face Amount of Purchased Accounts immediately available to the Client on the Purchase Date.
- 1.4. "Affiliate" or "Affiliated" - means any Person that, whether directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common ownership or control. Each of the following shall be deemed Affiliated with Client: Client's executive officers and directors; if Client is a Corporation, each shareholder, that, directly or indirectly, owns or directs 10% or more of any class of voting securities; if Client is a partnership, all general, limited or special partners and if Client is a limited liability company, all elected managers or members that have contributed or that have the right to receive, upon dissolution, 10% or more of the company's capital.
- 1.5. "Balance Subject to Finance Fees" - the difference between the unpaid Face Amount of Purchased Accounts and the Reserve Account - but only to the extent that a Finance Rate is designated as applicable, pursuant to Schedule A.
- 1.6. "Carrier" or "Motor Carrier" - a Person providing motor vehicle transportation for compensation and includes a Person, other than a motor carrier, transporting property by motor vehicle when the transportation is as provided in 49 USCS § 13501; the person is the owner, lessee, rent, or bailee of the property being transported; and the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.
- 1.7. "Carrier Payment Period" - time period, subsequent to Purchase Date, during which Triumph will issue payment to Carriers engaged by Freight Brokers.
- 1.8. "Carrier Settlement" - per load documentation, between Freight Broker and Carrier, summarizing the terms and conditions, delivery confirmation, advances and/or other adjustments, if any, and final calculation of Carrier payment amounts for each load.
- 1.9. "Closed" - in connection with a Purchased Account, occurs upon Triumph's receipt of full payment of a Purchased Account from a Payor or the Client (including payment by a charge to the Reserve Account).
- 1.10. "Collateral" - all of Client's assets now owned and hereafter acquired including Accounts, Chattel Paper, Deposit Accounts, Inventory, Equipment, Instruments, Investment Property, Documents, Letter of Credit Rights, Commercial Tort Claims, and General Intangibles.
- 1.11. "Complete Termination" - in connection with the Term of this Agreement, occurs upon satisfaction of the following conditions: (a) payment in full of all Obligations of Client to Triumph; (b) if Triumph has issued or caused to be issued guarantees, promises, or letters of credit on behalf of Client, acknowledgement from any beneficiaries thereof that Triumph or any other issuer has no outstanding direct or contingent liability therein and (c) Client has executed and delivered to Triumph a general release in a form prepared by and acceptable to Triumph.
- 1.12. "Default Fees" - 1.5 times the fees listed in Schedule A, applicable only upon an Event of Default.
- 1.13. "Discretion" - in the sole and exclusive business judgment or determination of Triumph.
- 1.14. "Early Termination Fee" - 5% of the Maximum Advance, applicable only if this Agreement is terminated subsequent to the No-Risk Trial Period and prior to end of the Term.
- 1.15. "Eligible Account" - an Account that in Triumph's Discretion is acceptable for purchase.
- 1.16. "Events of Default" - see Section 10.1
- 1.17. "Expedited Settlement Fee" - \$25.00 or 1% of the Advance Rate portion of the Purchase Price, whichever is greater, upon Client's request for payment of the Purchase Price sooner than as provided in Section 2.2.
- 1.18. "Exposed Payments" - payments received by Triumph that may subject Triumph to an Avoidance Claim under the United States Bankruptcy Code.
- 1.19. "Face Amount" - the amount due on an Account at the time of purchase as evidenced by the Invoice and Invoice Documentation.
- 1.20. "Factoring Fee" - the Factoring Fee Percentage multiplied by the Face Amount of a Purchased Account, for each Factoring Fee period or portion thereof, that any portion thereof remains unpaid as provided in Schedule A.

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Client's Initials

- 1.21. "Factoring Fee Percentage" - as provided in Schedule A.
- 1.22. "Finance Fees" - the product of the Finance Rate (if applicable, as provided in Schedule A) multiplied by Balance Subject to Finance Fees.
- 1.23. "Finance Rate" - a rate per annum, expressed as a function of Prime Rate, if applicable, as provided in Schedule A.
- 1.24. "Freight Broker" - a Person, other than a motor carrier or an employee or agent of a Motor Carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by a Motor Carrier for compensation as provided by 49 USCS § 13102. In the event Client qualifies as a Freight Broker, a Schedule B may apply.
- 1.25. "Insolvent" - in connection with an Account Debtor occurs when, on or before the Repurchase Date, the Account Debtor becomes subject to: (i) a petition under any state or federal debtor relief or liquidation statute filed within the Insolvency Period, or (ii) a proceeding under Chapters 11 or 13 of the Bankruptcy Code filed or the conversion of said case to one under Chapter 7. The burden of proof as to the Insolvency of an Account Debtor shall rest solely on the Client, with it being presumed that at all relevant times an Account Debtor is not Insolvent.
- 1.26. "Invoice" - the document that evidences or is intended to evidence the terms of sale giving rise to an Account. Where the context so requires, reference to an Invoice shall be deemed to refer to the Account to which it relates.
- 1.27. "Invoice Documentation" - all records, whether in electronic or paper form, relating to or supporting an Invoice in respect to a claim for payment from an Account Debtor including purchase orders, bills of lading, receiving documents, shipping receipts, packing lists and the like.
- 1.28. "Maximum Advance" - an amount, per Schedule A, equal to and not to exceed the total amount payable by Triumph to Client based on the Advance Rate portion of all Purchased Accounts offered during the Term of this Agreement and not Closed. Triumph may elect not to purchase any Account which will cause the unpaid balance of Purchased Accounts to exceed the Maximum Advance. However, if Triumph purchases Accounts in excess of the Maximum Facility, same shall have no adverse consequences to Triumph's rights under this Agreement.
- 1.29. "Minimum Monthly Fee" - the minimum value of monthly Factoring Fees, but applicable only after the first 90 days of the initial Term; that amount being \$500 per month.
- 1.30. "No-Risk Trial Period" - the period of time in which the Early Termination Fee is waived; that being 30 days from the date of this Agreement.
- 1.31. "Obligations" - all present and future monetary indebtedness, liabilities and obligations owing by Client to Triumph, whether or not arising hereunder and whether arising before, during or after the commencement of any Bankruptcy Case in which Client is a Debtor or Debtor-In-Possession.
- 1.32. "Payor" - An Account Debtor or another entity making payment for the benefit of such party.
- 1.33. "Person" - includes but is not limited to individuals, firms, associations, joint adventures, general and limited partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, limited liability companies, all forms of Registered Organizations, and all other groups or combinations.
- 1.34. "Prime Rate" - the "prime rate" as set forth in the Money Rates section of The Wall Street Journal or, if unavailable, Triumph will substitute a comparable index. For purposes of this Agreement, Prime Rate is subject to a minimum of 5% per annum. Triumph shall have Discretion to adjust the Factoring Fee Percentage, either up or down, to reflect changes in the Prime Rate.
- 1.35. "Purchase Date" - each date on which Client has been advised, either through writing or posting on daily settlement reports available to Client, that Triumph has elected to issue the Purchase Price to purchase an Account.
- 1.36. "Purchase Price" - the Face Amount of a Purchased Account less the Factoring Fee.
- 1.37. "Purchased Accounts" - Accounts purchased hereunder which have not been Closed.
- 1.38. "Quick Payment Fees" - discount fees, if applicable (Freight Brokers only), charged to Carriers, for immediate payment processing.
- 1.39. "Repurchase Period" - as provided in Schedule A.
- 1.40. "Repurchase" - an Account for which Client has paid to Triumph the then unpaid Face Amount.
- 1.41. "Required Reserve Amount" - the product of the total unpaid balance of all Purchased Accounts multiplied by a percentage equal to the difference between 100% and the Advance Rate percentage, as provided in Schedule A.
- 1.42. "Reserve Account" - a non-Deposit Account maintained by Triumph for bookkeeping purposes, intended to represent the aggregate, yet-to-be paid, portion of all Purchased Accounts.
- 1.43. "Reserve Shortfall" - the amount by which the Reserve Account is less than the Required Reserve Amount.
- 1.44. "Schedule of Accounts" - a form supplied by Triumph from time to time to be used by Client to identify Accounts offered for sale to Triumph under this Agreement.
- 1.45. "Setup Fee" - a fee identified per Schedule A.
- 1.46. "Term" - term of this Agreement, as identified in Schedule A.
- 1.47. "Uniform Commercial Code" - the Uniform Commercial Code as adopted in the state of Texas.

Triumph Business Capital
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Client's Initials

2. Sale; Purchase Price; Billing.

- 2.1. Client shall offer for sale to Triumph, as absolute owner and with full recourse, such of Client's Accounts as are listed from time to time on each Schedule of Accounts. Each Schedule of Accounts shall be accompanied by Invoice Documentation supporting the Account. Triumph may, in its Discretion, elect to purchase from Client such Accounts that Triumph determines to be Eligible Accounts.
- 2.2. Triumph shall pay or otherwise make available to Client the Purchase Price of any Purchased Account, on one (1) business day of the Purchase Date, less any amounts due to Triumph from Client, including, without limitation, any fees, expenses and Reserve Shortfall.
- 2.3. At the time each Schedule of Accounts is delivered by Client to Triumph, Client will have offered for sale to Triumph the Accounts so listed and shall also offer for sale each and every other then existing or later arising Account related to an Active Account Debtor. Triumph may transmit a monthly statement to each Payor by, among other things, itemizing their account activity during the preceding billing period.
- 2.4. Client shall not, without the prior written consent of Triumph in each instance, change or modify the terms of any original Invoice or any Invoice Documentation in respect to any Active Account Debtor or Purchased Account.
- 2.5. Subject to the terms and conditions of this Agreement, Triumph is authorized to purchase Accounts upon telephonic, facsimile or other instructions received from any officer, employee or representative of Client.

3. Fees and Expenses. Client shall pay to Triumph the following items:

- 3.1. **Factoring Fees.** The Factoring Fee on the date on which a Purchased Account is purchased, as well as for subsequent periods as applicable – as provided in Schedule A.
- 3.2. **Finance Fees.** Computed on the Balance Subject to Finance Fees on the first day of the month following the month in which it accrues, as applicable – as provided in Schedule A.
- 3.3. **Early Termination Fee.** Applicable only in the event that Client terminates this Agreement after the end of the No-Risk Trial Period and other than at the end of the Term.
- 3.4. **Out-of-pocket Expenses.** The out-of-pocket expenses directly incurred by Triumph in the administration of this Agreement such as wire transfer fees, electronic funds transfer fees, postage and audit fees – as provided in Schedule A.
- 3.5. **Field Audit Expenses.** \$750 per day plus travel expenses in respect to each audit, applicable only if the total Purchased Accounts exceeds \$1,000,000, upon an Event of Default or as may otherwise be provided in Schedule A. Subject to the preceding sentence, Triumph may have performed but Client shall not be required to pay for more than two audits per twelve-month period.
- 3.6. **Other Charges.** Other fees and expenses as specified in this Agreement or as may otherwise be provided in Schedule A, including, upon each occurrence, Expedited Settlement Fees.

4. Reserve Account.

- 4.1. Triumph shall pay to Client weekly, or at such other times and frequencies mutually agreeable to the Parties, any amount by which the Reserve Account exceeds the Required Reserve Amount, subject to Triumph's right to charge the Reserve Account with any Obligations. Triumph may pay any amounts due Client hereunder by making a credit to the Reserve Account. Additionally, Triumph may increase the Required Reserve Amount by the value of Purchased Accounts which, in its Discretion, are unlikely to be paid prior to the Repurchase Period.
- 4.2. Client shall pay to Triumph, on demand, the amount of any Reserve Shortfall. If a Reserve Shortfall continues to exist for ten (10) days after notice is issued by Triumph, Client shall also pay either as a debit to any Purchase Price paid or payable by Triumph, or immediately upon demand, an amount equal to nine percentage points (9%) in excess of Prime Rate (but not to exceed the maximum rate of interest permitted by applicable law) and such charges will continue on the outstanding Reserve Shortfall until the Reserve Shortfall is eliminated. The imposition of such interest charges shall not be deemed to excuse a late payment or be deemed a waiver of any other rights of Triumph under this Agreement.
- 4.3. Triumph may retain the Reserve Account for ninety days following termination of this Agreement or until a Complete Termination, whichever is greatest, to be applied to, inter alia, payment of any Obligations whether known or unknown to Triumph at the time of termination.

5. **Account Disputes.** Client shall notify Triumph promptly of and, if, but only if, requested by Triumph in writing, at Client's sole cost and expense, will seek to settle all disputes concerning any Purchased Account, however, no final resolution shall be

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made without Client having first obtained Triumph's express written authorization. Triumph, at Client's sole expense, shall at all times be irrevocably authorized, but not required, to settle, compromise, or pursue collection of (collectively, "Resolve") any dispute pertaining to a Purchased Account upon such terms, per Triumph's Discretion, without otherwise seeking Client's consent. Upon the occurrence of an Event of Default, Triumph may Resolve such issues with respect to any Account of Client.

6. Repurchase of Accounts. Triumph may demand that Client Repurchase a Purchased Account by requiring payment or at Triumph's option, by debiting the Reserve Account of the then unpaid Face Amount of such Purchased Account together with any unpaid fees including those described in Section 3 above, in connection with each of the following:

- 6.1. Any Purchased Account in respect to which (a) a Payor has indicated an inability or unwillingness to pay the Purchased Account when due or (b) remains unpaid beyond the Repurchase Period or (c) in Triumph's Discretion a Payor qualifies as Insolvent;
- 6.2. Any Purchased Account, the right to receive payment of which has been disputed by a Payor, Triumph being under no obligation to determine the bona fides of such dispute;
- 6.3. Any Purchased Account in respect to which Client has breached any representation, warranty or covenant as set forth in the Sections 8 and 9; and
- 6.4. All Purchased Accounts upon occurrence of an Event of Default or upon the termination date of this Agreement.

7. Security and Ownership Interest; Notification of Assignment.

- 7.1. To secure all of Client's Obligations, Client grants to Triumph a continuing first priority Security Interest in the Collateral. Notwithstanding the creation of this Security Interest, the relationship of the Parties constitutes an Account Purchase Transaction as more specifically described in Section 21.
- 7.2. To enable Triumph's perfection of its unconditional and unfettered ownership interest in the Purchased Accounts, Client authorizes Triumph to file a UCC Financing Statement so noting such ownership interest.

8. Representation and Warranties. Client and each principal who has executed this Agreement on Client's behalf, represents and warrants each of the following:

- 8.1. This Agreement constitutes its legal, valid and binding obligation, it is fully authorized to enter into this Agreement and to perform its Obligations hereunder and all required signatures are properly evidenced and genuine;
- 8.2. Client is solvent, in good standing in the jurisdiction of its organization and able to pay its debts as they mature;
- 8.3. Client has filed all tax returns and required reports and is current on payment of all taxes, assessments, fees and other governmental charges;
- 8.4. All financial statements and all other information which have been furnished by Client to Triumph are true, correct and complete in all material respects, and there have been no material adverse changes in the condition (financial or otherwise) of Client since submission.
- 8.5. Client shall not be maintained by or be Affiliated with any entity that is or may be in violation of 49 C.F.R. 386.73 (reincarnated and Affiliate motor carrier regulation).

9. Covenants by Client. Client and each principal who has executed this Agreement on Client's behalf, covenants, upon the execution of this Agreement and in each instance that a Schedule of Accounts is delivered to Triumph, each of the following:

- 9.1. Each Purchased Account is and will: (a) remain a bona fide existing obligation created by the full and complete rendition of services or sale and delivery of goods in the ordinary course of Client's business; (b) remain unconditionally owed and will be paid to Triumph in full without any assertion of a defense, dispute, offset, counterclaim, or right of return or cancellation, other than Accounts owed by an Account Debtor which becomes subject to any bankruptcy or state debtor relief proceeding; and (c) not constitute a sale to any entity that is Affiliated with Client or in any way not an "arm's length" transaction.
- 9.2. Client shall not create, incur, assume or permit to exist any Security Interest, lien or any form of adverse ownership interest or claim upon or with respect to any of the Purchased Accounts or Collateral in which Triumph now or hereafter holds an ownership interest or a Security Interest.
- 9.3. Before sending any Invoice to an Account Debtor, Client shall notate on same the form of notice of assignment as may be required by Triumph and/or otherwise notify any Payor of such assignment of Triumph's right to receive payment.
- 9.4. Client shall not solicit from any Account Debtor any form of payment in respect to a Purchased Account or any Account offered for sale to Triumph. Should Client receive payment of all or any portion of any Purchased Account,

Client shall immediately notify Triumph of receipt of the payment, hold said payment in express trust for Triumph separate and apart from Client's own property and funds, and by no later than the next banking day following the date of receipt, deliver said payment to Triumph in the identical form in which received. Any claim or cause of action that Client may have against Triumph, whether predicated on this Agreement or otherwise, shall not constitute a defense or any form of excuse of non-performance to the enforcement by Triumph in law or in equity of the provisions contained in this section applicable to Client's duty to hold in trust and turn over all proceeds of Purchased Accounts to Triumph.

- 9.5. Client shall provide Triumph, within two (2) business days, with written Notice of: (a) any billing dispute including, but not limited to, any challenge by a Payor as to invoiced amount, damage to shipped cargo, returns or allowances or claim for loss or (b) actual or imminent bankruptcy, insolvency, or material impairment of the financial condition of any Active Account Debtor.
- 9.6. Client shall not, without the prior written consent of Triumph, in each instance: (a) grant any extension of time for payment or otherwise modify the terms of any of its Accounts, (b) compromise or settle any of its Accounts for less than the full amount thereof, (c) release in whole or in part any Payor, or (d) grant any credits, discounts, allowances, deductions, return authorizations or the like with respect to any of the Accounts.
- 9.7. Client shall timely pay all payroll and other taxes, and shall provide proof thereof to Triumph in such form as Triumph shall reasonably require.
- 9.8. Client shall maintain insurance at all times on all insurable property owned or leased by Client in such manner, to the extent and against at least such risks (in any event, including but not limited to fire and business interruption insurance) as usually maintained by owners of similar businesses and properties in similar geographic areas. All such insurance shall be in such form and written by such companies acceptable to Triumph.
- 9.9. Client shall not, outside Client's ordinary course of business, sell, transfer or assign any of Client's assets without the prior written consent of Triumph and Client will notify Triumph, in writing, of any existing or newly created business, if owned in whole or part by Client or Client's principals and such company is in any way related to or associated with the type of business conducted by Client.
- 9.10. From time to time as requested by Triumph, Triumph or its designee shall have access, during reasonable business hours if prior to an Event of Default and at any time if on or after an Event of Default, to all premises where Collateral is located for the purposes of inspecting (and removing, if after the occurrence of an Event of Default) any of the Collateral, including Client's books and records and Client shall permit Triumph or its designees to make copies or extracts therefrom. Client hereby irrevocably authorizes and shall direct each of its accountants and third parties to disclose and deliver to Triumph, at Triumph's request and at Client's expense, all financial information, books and records, work papers, management reports and other information in their possession relating to Client.
- 9.11. Client acknowledges that the duty to accurately complete each Schedule of Accounts is fundamental to this Agreement and as such the duty to accurately complete each Schedule of Account shall at all times remain non-delegable such that each of Client's principal(s) acknowledge that he/she shall remain fully responsible for the accuracy of each Schedule of Accounts delivered to Triumph regardless of who may otherwise be delegated the responsibility to prepare, complete or submit each such Schedule of Accounts.
- 9.12. Client shall hold all required valid operating permits to transact business and be duly registered with the Federal Motor Carrier Safety Administration ("FMCSA") as a Motor Carrier and/or Freight Broker and, at all times, duly maintain its operating authority.
- 9.13. Client will provide, upon request, agings of accounts receivable and payables, as well as financial statements prepared in accordance with generally accepted accounting principles, including income statement and balance sheet, applicable only if the total Purchased Accounts exceeds \$1,000,000, upon an Event of Default or as may be requested by Triumph.
- 9.14. Client, its employees and agents shall not take any action which may lead to penal liability due to fraud, embezzlement, crimes in violation of competition, bribery, acceptance of bribes or other corruption crimes and, in addition, Client shall comply with all applicable laws and regulations.

10. Default.

- 10.1. **Events of Default.** The following will constitute an Event of Default hereunder: (a) Client's failure to pay any Obligation or perform any provision under this Agreement or any other agreement now or hereafter entered into with Triumph; (b) any covenant, warranty or representation contained under this Agreement proves to be false in any way, howsoever minor, (c) Client or any guarantor of the Obligations becomes subject to any bankruptcy, state debtor-relief proceeding such as an assignment for the benefit of creditors or becomes subject to the appointment of any

receivership, (d) any guarantor fails to perform or observe any of such guarantor's duties or obligations to Triumph or shall notify Triumph of its intention to rescind, modify, terminate or revoke any guaranty of the Obligations, or any such guaranty shall cease to be in full force and effect for any reason whatever, (e) Client fails to offer for sale to Triumph an Eligible Account for a period of thirty (30) days from the date the last Eligible Account was offered for sale by Client; and (f) Triumph, in good faith, deems itself insecure with respect to the prospect of repayment or performance of the Obligations or any other required performance under this Agreement.

10.2. **Effect of Default.** Upon the occurrence of any Event of Default, in addition to any rights Triumph has under this Agreement or applicable law, Triumph may, without notice, immediately terminate this Agreement and/or declare all Obligations immediately due and payable and all fees shall accrue and be payable at the Default Fees rate.

11. **Authorization to Triumph.** Client authorizes Triumph and irrevocably grants power of attorney to Triumph to exercise each and any of the following powers until all of Obligations have been paid in full and a Complete Termination has been performed:

11.1. **At All Times:** (a) Receive, take, endorse, assign, deliver, accept and deposit, in the name of Triumph or Client, any and all Proceeds of any Collateral securing the Obligations or the Proceeds thereof; (b) Take or bring, in the name of Triumph or Client, all steps, actions, suits or proceedings deemed by Triumph necessary or desirable to effect collection of or other realization upon Triumph's Accounts; (c) File any claim in connection with any bond or any trust fund; (d) Pay any sums Triumph, in its sole and exclusive discretion, deems necessary including the discharge of any Security Interest, lien or encumbrance which may be senior to Triumph's Security Interest in any assets of Client, which sums shall thereafter be included as Obligations hereunder; (e) File and enforce in the name of Client or Triumph, or both, a mechanics or any other form of lien or related notices, or claims under any payment bond, in connection with goods or services sold by Client; (f) Notify any Payor obligated with respect to any Account, that, *inter alia*, the Account has been assigned to Triumph by Client and that payment thereof is to be made to the order of Triumph, or both, directly and solely to Triumph; (g) Communicate directly with Client's Payors, regardless of whether such action is due at the time of such communication, to verify the amount and validity of any Account created by Client; (h) Accept, endorse and deposit any checks tendered by an Account Debtor "in full payment" of its obligation to Client and Client shall not assert against Triumph any claim arising therefrom, irrespective of whether such action by Triumph effects an accord and satisfaction of Client's claims, under §3-311 of the Uniform Commercial Code, or otherwise; (i) File, amend and correct any addresses with the proper federal, state and local authorities and (j) Affix an electronic version of the signature of Client to any notification of assignment or other communication sent by Triumph to an Account Debtor, the Internal Revenue Service or other governmental or regulatory agency.

11.2. **Upon an Event of Default:** (a) Change the address for delivery of mail to Client and to receive and open mail addressed to Client; (b) Extend the time of payment, compromise or settle for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Accounts and discharge or release any Payor (including filing of any public record releasing any lien granted to Client by such Account Debtor), without affecting any of the Obligations; (c) Initiate electronic debit or credit entries through the ACH system to any deposit account maintained by Client; (d) Without expense to Triumph, use any of Client's personnel, equipment, including computer equipment, programs, printed output and computer media, supplies and premises for the collection of Accounts and realization on other Collateral as Triumph, in its sole discretion, deems appropriate and (e) Implement Default Fees. In the event, due to an Event of Default, Triumph deems it necessary to seek equitable relief, including, but not limited to, injunctive or receivership remedies, Client waives any requirement that Triumph post or otherwise obtain or procure any bond. Alternatively, in the event Triumph, in its sole and exclusive discretion, desires to procure and post a bond, such bond may be limited to the sum of \$10,000.00 notwithstanding any common or statutory law requirement to the contrary, and Triumph shall nonetheless be entitled to all legal benefits as if such bond was posted in an amount as may otherwise be required by law.

11.3. **Financing Statements:** File any initial Financing Statement and amendments thereto that: (a) Indicates the Collateral as "all assets" or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code, or as being of an equal or lesser scope or with greater detail; (b) Contain any other information required by part 5 of Article 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any Financing Statement or amendment, including whether the Client is an organization, the type of organization, and any organization identification number issued to the Client; (c) Contain a notification that Client has granted a negative pledge to Triumph, and that any subsequent lienor may be tortiously interfering with Triumph's rights; (d) Advise third parties that any notification of Client's Account Debtors will interfere with Triumph's collection rights and (e) File any Information Statement under Section 9-518 of the Uniform Commercial Code that Triumph reasonably deems necessary to cure any inaccuracy or otherwise preserve its rights hereunder.

12. Termination: Effective Date.

12.1. **Term.** This Agreement will be effective on the date it is executed and accepted by Triumph ("Effective Date") and unless duly terminated shall continue for successive Terms from the later of the Effective Date or the date of any executed modification, unless Client shall provide at least thirty (30) days, prior written notice to Triumph of its intention not to automatically renew. Upon receipt of such notice, this Agreement will terminate on the last date of the current Term or, if prior to that date, on the specified "Early Termination Date." Triumph may terminate this Agreement at any time by giving Client thirty (30) days prior written notice of termination, or at any time without notice upon the occurrence of any Event of Default.

12.2. **No Lien Termination without Release.** In recognition of Triumph's right to have a Complete Termination, notwithstanding payment in full of all Obligations by Client, Triumph shall not be required to record any terminations of any Financing Statement or satisfactions of any of Triumph's ownership rights or Security Interest in the Collateral unless and until Complete Termination has occurred. Client understands that this provision constitutes a waiver of its rights under §9-513 of the Uniform Commercial Code.

13. **Account Stated.** Triumph may provide Client, electronically through a website or otherwise, with information on the Purchased Accounts and a monthly reconciliation of the factoring relationship relating to billing, collection and Account maintenance such as aging, posting, error resolution and mailing of statements or make such information available. All of the foregoing shall be in a format and in such detail, as Triumph, in its sole discretion, deems appropriate. Triumph's books and records or electronically stored information shall be admissible in evidence without objection as to authenticity, hearsay or otherwise and shall be admissible as prima facie evidence of the status of the Purchased Accounts and non-Purchased Accounts and Reserve Account between Triumph and Client. Each statement, report, or accounting rendered or issued by Triumph to Client and all electronically stored information shall be deemed conclusively accurate and binding on Client unless within fifteen (15) days after the date of issuance or, in the case of electronically stored information, the first of each month, Client notifies Triumph to the contrary by registered or certified mail, setting forth with specificity the reasons why Client believes such statement, report, or accounting or electronically stored information is inaccurate, as well as what Client believes to be correct. Client's failure to receive any monthly statement or access the electronically stored information shall not relieve it of the responsibility to request such information and Client's failure to do so shall nonetheless bind Client to whatever Triumph's records or electronically stored information report.

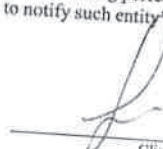
14. **Indemnification.** Client agrees to indemnify Triumph against and save Triumph harmless from any and all manner of suits, claims, liabilities, demands and expenses, whether directly or indirectly, resulting from or arising out of this Agreement including the transactions or relationships contemplated hereby and the enforcement of this Agreement, and any failure by Client to perform or observe its duties under this Agreement. In no event will Triumph be liable to Client for any lost profits or any form of consequential, incidental or special damages resulting from or arising out of or in connection with this Agreement, the transactions or relationships contemplated hereby or Triumph's performance or failure to perform hereunder, even if Triumph has been advised of the possibility of such damages.

15. **Exposed Payments.** Upon termination of this Agreement and in addition to any other Obligations owing, Client shall pay to Triumph (or Triumph may retain in a non-segregated non-interest bearing account) an amount equal to the total of all Exposed Payments (the "Preference Reserve"). Triumph may charge the Preference Reserve with the amount of each Exposed Payment that Triumph pays to any bankruptcy estate of a Payor that made the Exposed Payment on account of a claim asserted under the Bankruptcy Code. Triumph shall, from time to time, refund to Client that portion of the Preference Reserve for which a claim under the Bankruptcy Code can no longer be asserted due to the passage of the statute of limitations, settlement with the bankruptcy estate of the Payor or otherwise.

16. **Successor Entity.** In the event, during the Term of this Agreement or while Client remains liable to Triumph for any Obligations under this Agreement, Client's principal(s), officer(s) or director(s) directly or in conjunction with any other person, causes to be formed a new entity or otherwise become associated with any newly formed or existing entity that provides Goods or services similar to those of Client, whether corporate, partnership, limited liability company or otherwise, such entity shall be deemed to have expressly assumed the Obligations Client owes Triumph under this Agreement. With respect to each such entity, Triumph shall be deemed to have been granted an irrevocable power of attorney with authority to file a new UCC-1 Financing Statement naming such newly formed or existing entity as Debtor, and to have it filed with any and all appropriate secretaries of state or other UCC filing offices. Triumph shall be held harmless by Client and its principals, officers or directors and be relieved of any liability as a result of Triumph's filing of any such Financing Statement or the resulting perfection of its ownership or Security Interests in such entity's assets. In addition, Triumph shall have the right to notify such entity's Account

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Debtors of Triumph's rights, including without limitation, Triumph's right to collect all Accounts, and to notify any creditor of such entity that Triumph has rights in such entity's assets.

17. Attorneys' Fees; Expenses. Client agrees to reimburse Triumph, on demand, for the actual amount of all costs and expenses, including attorneys' fees, which Triumph may incur in: (a) enforcing this Agreement and any documents prepared in connection herewith, (b) protecting, preserving or enforcing any lien, Security Interest or other right granted by Client to Triumph or arising under applicable law, whether or not suit is brought, or defending Triumph's ownership rights in the Purchased Accounts or its Security Interest rights and/or priority in the Collateral; (c) the defense of any Avoidance Claims; or (d) connection with any federal or state insolvency proceeding commenced by or against Client, including, but not limited to, any subpoena or other legal process in any way relating to Client, including those arising out of the automatic stay, seeking dismissal or conversion of a bankruptcy proceeding, opposing confirmation of Client's plan there under. This provision shall survive termination of this Agreement. Notwithstanding the existence of any law, statute (including, but not limited to Tx. Civ. Prac. & Remedies Code Chapter 38) rule or otherwise, in any jurisdiction which may provide Client with a right to attorney's fees or costs, Client hereby waives any and all rights to seek such attorney's fees or costs and Client agrees that Triumph exclusively shall be entitled to indemnification and recovery of any and all attorney's fees or costs in respect to any litigation based hereon, arising out of, or related hereto, whether under, or in connection with, this and/or any agreement executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either Party so long as Triumph prevails in any respect and without having to segregate or identify the specific claims for which such fees were incurred.

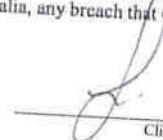
18. Entire Agreement. Client acknowledges each of the following: (a) that no promise of any kind has been made by Triumph or any third party on behalf of Triumph to induce Client to execute this Agreement except to the extent expressly contained herein; (b) that this Agreement, and any other agreement executed in connection herewith, is the product of joint negotiations such that no portion of this Agreement shall be construed against or in favor of either Party; (c) no course of dealing, course of performance or trade usage, and no parole evidence of any nature, may be used to supplement, alter or modify any terms of this Agreement, and unless otherwise expressly stated in any other agreement between the Parties, if a conflict exists between the provisions of this Agreement and such other agreement, the provisions of this Agreement shall control. Parties acknowledge that there is no provision or subject matter in respect to this Agreement that either believes was negotiated, intended to be included herein but has been omitted and each agree that by executing this Agreement, the Parties each waive any right subsequent to the execution of this Agreement to seek reformation in any form.

19. Amendment and Waiver.

- 19.1. Only a writing signed by all Parties hereto may amend this Agreement except that if Triumph implements any procedural change in respect to which it delivers services or requires any changes to any form required by Triumph in connection with the performance of this Agreement, Triumph shall be entitled to electronically notify Client of the proposed change to be implemented and may effectuate the implementation without further consent by Client after Client is first given thirty (30) days' notice of such proposed change. No failure or delay in exercising any right hereunder shall impair any such right that Triumph may have, nor shall any waiver by Triumph hereunder be deemed a waiver of any default or breach subsequently occurring. Triumph's rights and remedies herein are cumulative and not exclusive of each other or of any rights or remedies that Triumph would otherwise have.
- 19.2. Client acknowledges that neither Triumph's determination that an Account qualifies as an Eligible Account nor any issuance or determination of the credit worthiness of an Account Debtor shall not excuse or otherwise limit in any way Client's obligations or otherwise entitle Client to assert against Triumph any form of recoupment, set-off, or any other form of claim, whether based on tort, statute, common law, or otherwise, in the event that an Account Debtor fails to pay. Client and Triumph acknowledge that any credit-worthiness determination made by Triumph shall at all times be solely for the purpose of and designed to establish the amount of Purchase Price payments that Triumph may elect to make available to Client and any underwriting in connection therewith shall at no time be necessarily based upon any industry standard or subject to any standard of care. Client and Triumph acknowledge that they do not intend this section to be subject to modification or otherwise affected in any way by any form of an implied covenant or warranty, usage of trade, course of performance and/or course of dealing.
- 19.3. Any claim or cause of action that Client may have or seek to assert against Triumph, whether predicated on this Agreement or otherwise, shall neither constitute a defense nor serve as any basis to excuse non-performance of Client's duty to hold in trust and turn over all Proceeds of Purchased Accounts to Triumph. The Client's duties and obligations contained herein shall at all times be deemed independent covenants such that Client's duty to honor the provisions of this section may at no time be excused or otherwise adversely affected due to, inter alia, any breach that Client may assert against Triumph.

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19.4. Client acknowledges that neither the relationship created by this Agreement nor any subsequent services that Triumph may offer to Client shall entitle Client to assert any form of tort claim, whether in the form of negligence or otherwise, against Triumph and whether supported by statute, common law, or otherwise. Client and Triumph acknowledge that unless the terms of this Agreement create an express duty, the Parties do not intend for any duty to be implied or deemed included within this Agreement except that to the extent that an implied covenant of good faith may exist and in respect thereto, both Triumph and Client agree that in respect thereto, such duty, for the purpose of this Agreement, shall be limited so that neither Party shall take any action to prevent the other Party from performing under this Agreement.

20. **Severability.** In the event any one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable in any respect, then such provision shall be ineffective only to the extent of such prohibition or invalidity, and the remaining provisions contained herein shall not in any way be affected or impaired.

21. **Choice of Law; Account Purchase Transaction.** This Agreement and all transactions contemplated hereunder and/or evidenced hereby shall be governed by, construed under, and enforced in accordance with the internal substantive laws of the State of Texas without application of any choice of law doctrine. Client confirms and acknowledges that it does business as a commercial enterprise and that this Agreement is intended to be an "account purchase transaction," as defined by Texas Finance Code §306.001(1) and pursuant to Texas Finance Code 306.103, it is conclusively established that no amount charged under this Agreement shall constitute interest. Client further acknowledges that in accordance with 9-318 of the UCC, Client will not retain any legal or equitable interest in any Purchased Account sold under this Agreement.

22. **Venue; Jurisdiction; Service.** Any suit, action or proceeding arising hereunder, or the interpretation, performance or breach hereof, shall, if Triumph so elects, be instituted in any court sitting in Dallas County, Texas or, if none, any court located in the State of Texas nearest the location of Triumph (the "Acceptable Forums"). Client agrees that the Acceptable Forums are convenient to it, and submits to the jurisdiction of the Acceptable Forums and waives any and all objections to jurisdiction or venue. Should such proceeding be initiated by Client in any forum other than the Acceptable Forums, Client waives any right to oppose any motion or application made by Triumph to transfer such proceeding to an Acceptable Forum. Client agrees that Triumph may effect service of process upon Client by regular mail at the address set forth herein or at such other address as may be reflected in the records of Triumph, or by service upon Client's agent for the service of process. For the purposes of computing Client's deadline within which to serve a response to any petition or complaint under any applicable statute or rules of court, the period of time shall, if served by regular mail, commence three (3) days after the delivery of the complaint or petition as to any post office or mail drop; one (1) day after Client's signed receipt or first refusal to accept any certified mail and two (2) days after Triumph's delivery of the petition or complaint to any overnight carrier.

23. **Jury Trial Waiver.** THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER OR IN ANY WAY RELATED OR INCIDENTAL TO THIS AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

24. **Assignment.** Triumph may, without notice, assign its rights and delegate its duties hereunder. Upon such assignment or delegation, Client shall be deemed to have attorned to such assignee and shall owe the same duties and obligations to such assignee and shall accept performance hereunder by such assignee as if such assignee were Triumph. Client may not, without Triumph's express written consent, delegate any of its duties under this Agreement to any other Person.

25. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all signatures were upon the same instrument. Delivery of an executed counterpart of this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement, and any Party delivering such an executed counterpart shall thereafter also promptly deliver a manually executed counterpart, provided that the failure to deliver such manually executed counterpart shall not affect the validity, enforceability, or binding effect of this Agreement.

Triumph Business Capital
Factoring Agreement.doc (111116)

Page 9 of 11


Client's Initials

26. **Notice.** All notices required to be given to any Party shall be deemed given upon the first to occur of (a) deposit thereof in a receptacle under the control of the U.S. Postal Service, (b) transmittal by electronic means to a receiver under the control of such Party, or (c) actual receipt by such Party or its employee or agent (in the case of Triumph, actual receipt by a responsible officer of Triumph). For the purposes hereof, notices hereunder shall be sent to the following addresses, or to such other addresses as each such Party may in writing hereafter indicate.

Client

Address: 16295 Summerset St
Fontana, CA 92336
Officer: Kalvinder Singh
Fax Number: (909) 543-4288
Email: kalfreight@gmail.com

Triumph Business Capital

701 Canyon Drive, Suite 100
Coppell, Texas 75019
George Thorson
(214) 513-9611
gthorson@triumphbcap.com

IN WITNESS WHEREOF, the parties have executed this agreement on the date first written above.

Client: **KAL FREIGHT INC.**

Please
sign name
clearly
within box

By:



Name: Kalvinder Singh

Print or type full legal name

Title: President

← SIGNATURE

Witness:



Sworn and subscribed before me this _____ day
of _____, 20____.

Notary Public Signature

(seal)

Triumph Business Capital

By:

Name:

Title:

George A Thorson
GEORGE A THORSON
EV

ACCEPTANCE

Date:

Location: Coppell, Texas

5/1/17

**FACTORING AND SECURITY AGREEMENT****SCHEDULE A - PRICING AND TERMS**

This Schedule A, as referenced in that Factoring and Security Agreement dated April 25, 2017 by and between Advance Business Capital LLC d/b/a Triumph Business Capital ("Triumph") and KAL FREIGHT INC. ("Client"), shall govern in respect to the following Terms:

Maximum Advance	\$2,000,000		
Term	One (1) Year with Annual Renewals		
Advance Rate	95% of Eligible Accounts		
Repurchase Period	90 days		
Finance Rate	Prime Rate plus 2.5% (Prime Rate Floor 4.0%) – Finance fees are calculated on Net Funds Employed less Cash Reserves.		
Factoring Fee		Percentage	Period
	Initial Period	0.10%	90 days
	Subsequent Periods	N/A	N/A
Setup Fee	\$0		
Triumph Fuel Card	No Charge (for loading)		
EFS Money Codes	\$3		
Electronic Fund Transfer (ACH)	\$0		
Wire Transfer Fee	\$0		
Special Considerations	.50% Buyout Fee		

A handwritten signature in black ink, appearing to be a stylized 'K' or 'L' followed by a flourish.

Client's Initials

**POST-PETITION CHAPTER 11 BANKRUPTCY RIDER TO
FACTORING AND SECURITY AGREEMENT**

This Post-Petition Chapter 11 Bankruptcy Rider to Factoring and Security Agreement (hereinafter referred to as “Bankruptcy Rider”) is made and entered into effective the 4th day of December, 2024, by and between the Chapter 11 Debtor and Debtor-In-Possession Kal Freight Inc. (hereinafter referred to as the “Debtor” or “Client”), a Texas corporation, and Triumph Financial Services LLC f/k/a Advance Business Capital LLC d/b/a Triumph Business Capital (“Triumph”), a Delaware limited liability company.

RECITALS:

1. The Debtor is a Debtor-In-Possession in a Chapter 11 bankruptcy case currently pending in the United States Bankruptcy Court for the Southern District of Texas, Case No. 24-90614 (hereinafter “Bankruptcy Case”)¹. The Bankruptcy Case was filed on December 5, 2024 (“Petition Date”).

2. Client and Triumph have entered into and desire to continue to operate post-petition, and subject to approval by the Bankruptcy Court, under a Factoring and Security Agreement dated April 25, 2017 and Non-Purchase Advance Addendum dated August 18, 2023 (as amended, supplemented, or restated from time to time, the “Factoring Agreement”), in order to enable Triumph to, *inter alia*, purchase accounts from the Debtor, make advances to the Debtor, and for Triumph to obtain rights and benefits under orders of the Bankruptcy Court. The Factoring Agreement, this Bankruptcy Rider, a Conversion Addendum, and any other related documents entered or to be entered into between Triumph and Debtor in connection with the Bankruptcy Case, shall be collectively referred to as “Post-Petition Agreements” and this Bankruptcy Rider may be referenced separately.²

3. The Debtor is and remains authorized to operate the Debtor’s business under and in accordance with 11 U.S.C. §§ 1107(a) and 1108 and Debtor and Triumph intend to operate, post-petition, under the Factoring Agreement subject to this Post-Petition Chapter 11 Bankruptcy Rider to the Factoring Agreement and the entry of a Bankruptcy Court Order to be entitled, *“Interim Order Authorizing Debtors to (i) Maintain, and Continue to Operate Under Factoring and Security Agreement in Order to Sell Accounts Post-Petition to Triumph Business Capital Pursuant to 11 U.S.C. Section 363(b), (c), (f), and (m); (ii) Obtain Credit from Triumph Business Capital Pursuant to 11 U.S.C. Sections 364(c)(1), (c)(2), and (d)(1); (iii) Grant Adequate Protection in the Form of First Priority Liens and Security Interests on Property of Debtors’ Estates Pursuant to 11 U.S.C. Sections 361 and 363(E); (iv) Amend the Factoring and Security Agreement, and Grant Triumph Business Capital Additional Liens; (v) Use Cash Collateral and Grant Triumph Adequate Protection; (vi) Annul and Modify the Automatic Stay; and (vii) Grant*

¹ The term “Debtors” means each of the debtors in the Bankruptcy Case

² The Post-Petition Bankruptcy Rider to the Factoring Agreement may or may not have been signed prior to approval of this Rider by the Bankruptcy Court.

Related Relief, all Retroactively to the Petition Date”(the “Interim Order”), and a final order to be entered thereafter.³

AGREEMENT

Now, therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals shall be deemed a part of this Bankruptcy Rider for all purposes and are acknowledged by the Debtor as being true and correct.

2. The parties’ operation under the Post-Petition Agreements, including this Bankruptcy Rider, shall be conditioned upon and is subject to the entry of the Bankruptcy Court’s Interim Order and a final order, each in a form and substance satisfactory to Triumph. Debtor acknowledges that if the Interim Order is approved by the Bankruptcy Court, it shall be Debtor’s obligation to have a copy of the Interim Order duly served on all parties-in-interest pursuant to the Federal Rules of Bankruptcy Procedure, including Rule 4001(d), and all applicable local rules and requirements in respect thereto. The Debtor acknowledges and agrees the Interim Order is binding and enforceable and that the Debtor is required to comply with the Interim Order and any final order.

3. Debtor acknowledges that this Bankruptcy Rider is the product of joint negotiations between the parties hereto and represents the jointly conceived, bargained-for and agreed upon language mutually determined by the parties to express their intention in entering into this Bankruptcy Rider. Any ambiguity or uncertainty in this Bankruptcy Rider shall be deemed to be caused by, or attributable to, all parties hereto collectively. In any action or proceeding to enforce or interpret this Bankruptcy Rider, the Bankruptcy Rider shall be construed in a neutral manner, and no term or condition of this Bankruptcy Rider, or the Bankruptcy Rider as a whole, shall be construed more or less favorably to any one party, or group of parties, to this Bankruptcy Rider.

4. Debtors each acknowledge that there is no basis to assert and Debtors shall be deemed to have waived: (a) any right to contest Triumph’s ownership rights in either or both the pre-Petition or post-Petition Purchased Accounts (as defined in the Factoring Agreement) that have been and will be sold to Triumph; (b) any right to contest the Debtor’s Obligations to Triumph that arose before the commencement of the Bankruptcy Case; (c) any right to contest the validity, enforceability, or priority of the liens and security interests granted to Triumph in the Debtors’ Collateral or the DIP Collateral, including non-Purchased Accounts, (d) any right to contest the Debtors’ guarantees of obligations of any other entities; (e) any right to contest the Debtors’ granting of Collateral to secure all of its Obligations; (f) Debtors’ ability to otherwise assert against Triumph any of the avoiding powers under the Bankruptcy Code, including those powers that may arise under Bankruptcy Code §§ 544 through 552; or (g) Debtors’ ability to otherwise seek to prevent or impair Triumph’s rights to retain payment on all such pre-Petition and post-

³ Capitalized terms not defined herein shall have the meanings ascribed to them in the Interim Order or the Factoring Agreement.

Petition Purchased Accounts. The Debtor reaffirms all of its Obligations under the Factoring Agreement.

5. The terms and conditions of the Post-Petition Agreements, this Rider, and the Interim Order and the Final Order shall control the terms of any plan of reorganization (“Plan”) that may be filed with the Bankruptcy Court in respect to Triumph and submitted for confirmation by the Bankruptcy Court, and the terms and protections afforded Triumph in the Post-Petition Agreements, this Rider and the Interim Order and the Final Order may not be varied, altered or modified by any proposed Plan without Triumph’s express written consent, and may not vary, alter or modify any rights that Triumph has against any guarantor or secondarily liable party, and the filing of any Plan in contradiction to these provisions shall be deemed to be an Event of Default under the post-Petition Agreements and to have been filed in violation of 11 U.S.C. § 1129(a)(1) and (3) to the extent the content of such Plan violates the proscriptions contained in this section. The Debtor affirms and ratifies the validity and accuracy of the proposed findings of fact, the stipulations, and the other provisions contained in the proposed Interim Order, attached hereto as **Exhibit 1**.

6. Whenever the Post-Petition Agreements require Debtor or Triumph to deliver a writing to, or serve a writing upon the other, such writing shall be delivered or served upon each as follows:

In the case of Triumph:

Tim Valdez
Triumph Financial Services
701 Canyon Drive, Suite 105
Coppell, Texas 75019
Phone: (469) 312-7254
Fax: (214) 513-9611
Email: tvaldez@tfin.com

In the case of Debtor:

Kal Freight, Inc.
Attn: Bradley Sharp
Email: bsharp@dsiconsulting.com

and

Howard M. Levine
Josh Flood
Sussman Shank LLP
1000 SW Broadway
Suite 1400
Portland, Oregon 97205
Phone: 503-243-1637
Email: hlevine@sussmanshank.com
jflood@sussmanshank.com

Richard M. Pachulski
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Fl.
Los Angeles, CA 90067
Telephone: (310) 277-6910
Email: rpachulski@pszjlaw.com

7. Contemporaneous with the execution of this Bankruptcy Rider, the Debtor shall electronically deliver to Triumph, each of the following documents:

- (i) All real and personal property leases upon which the Debtor either operates or in which the Debtor has possession.
- (ii) All security agreements, promissory notes, UCC financing statements, and guaranty agreements between Debtor and any party-in-interest that holds a security interest or lien on property of the estate.
- (iii) All Notices of Tax Lien (whether federal, state or local) issued by and/or delivered to Debtor.

8. The Debtors, on their own behalf and on behalf of each of their predecessors, successors, and assigns hereby unconditionally, irrevocably, and fully forever releases, remises, acquits, relinquishes, waives, and discharges each of Triumph and its former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, predecessors, and predecessors in interest, of and from any and all claims, counterclaims, setoffs, offsets, recoupments, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description arising out of, relating to, or in connection with any of: the Interim Order, any final order related to the subject matter hereof, the Post-Petition Agreements, the transactions contemplated therein, or the negotiation thereof.

9. The Debtor will fully and timely perform all of its Obligations under the Post-Petition Agreements, including, without limitation, its obligations to guaranty and collateralize obligations to Triumph of any other entities, and to indemnify Triumph pursuant to the Post-Petition Agreements. These obligations include indemnification for events and occurrences that arose pre-Petition and events and occurrences that may arise post-Petition. In addition, the Debtor hereby indemnifies and holds harmless Triumph and each of its agents, directors, attorneys, consultants, advisors, and controlling persons, and each of their successors and assigns, from and against any and all damages, losses, obligations, liabilities, claims, actions, or causes of action, and reasonable and actual costs and expenses (including, without limitation, attorney's fees, costs, and expenses) incurred or required to be paid by an indemnified party of every nature and character arising out of or related to or in connection with the Post-Petition Obligations, Post-Petition Agreements and the transactions contemplated therein, or the Interim Order (and any final order). The Debtor's Obligations to Triumph shall be secured by, among other things, the DIP Collateral, the Adequate Protection Collateral, and shall be afforded all of the priorities and protections afforded to the Post-Petition Obligations under the Interim Order, any final order, and under the Post-Petition

Agreements. Nothing contained in this Section 9 shall limit any of the Debtor's, or any other person's or entity's, indemnity obligations to Triumph, regardless of whether those obligations arose prior to or after the Petition Date.

10. The Factoring Agreement is amended as follows:

There is hereby added to section 10.1 the following subsections: (g) the Debtor violates any provision of the Interim Order, any final order related to the subject matter thereof, or the Post-Petition Agreements; (h) the appointment of a trustee, or an examiner with substantial powers over the estate; (i) the dismissal or conversion of the chapter 11 Bankruptcy Case to chapter 7; (j) the granting of relief from the automatic stay to permit any party to recover possession of any property necessary and material to the operation of the Debtor's business; (k) any successful challenge to the amount, validity, or enforceability of Triumph's ownership of Accounts, the validity or enforceability of its liens, or the assertion of any other claim against Triumph in or related to this Bankruptcy Case; (l) any failure by any of the Debtors to timely comply with their post-Petition obligations to the Department of the Treasury Internal Revenue Service or any other federal, state, or local taxing authority; (m) any of the Debtors seeks any amendment, modification or extension of this Interim Order or final order without the prior written consent of Triumph, (and no such consent shall be implied by any other action, inaction or acquiescence of Triumph); (n) [reserved] (o) any principal of the Debtor (or the Chief Restructuring Officer) either voluntarily or involuntarily ceases to manage the Debtor or otherwise becomes disassociated from the Debtor; (p) all post-Petition Obligations due Triumph are not repaid in full, without setoff, recoupment or deduction, by no later than the earlier of conversion or dismissal of the chapter 11 case, or, the effective date of any confirmed Plan, unless Triumph agrees to and consents, in writing, to other treatment under a Plan.

11. There is hereby added the following new Section 27 entitled, "Chapter 11 Bankruptcy Covenants" with the following subsections:

11.1. Debtor shall at all times timely and promptly comply with all Court orders, including without limitation any Interim Order or final order relating to the Factoring Agreement, all substantive and procedural requirements of the United States Bankruptcy Court, United States Bankruptcy Code, United States Bankruptcy Rules and all applicable local rules of court including any administrative orders, including promptly paying all post-petition taxes and other obligations including those required under 28 U.S.C. § 1930(a)(6);

11.2. The Debtor shall notify Triumph within 1 business day of receiving any documents or correspondence from the IRS, or any state or municipal agency or unit, that Debtor has failed to pay when due, or make any required deposit or withholdings of any of Debtor's post-petition obligations, including, but not limited to, any failure by the Debtor to pay its obligations to the IRS;

11.3. The Debtor shall notify Triumph within 1 business day of receiving any documents or correspondence from any landlord or owner or manager of the

Debtor's leased premises that Debtor has defaulted on Debtor's post-petition rental or lease obligations;

11.4. The Debtor shall immediately notify Triumph, in writing, of the occurrence of any Event of Default, as that term is defined in Section 10 of the Factoring Agreement (as supplemented by this Rider) or in the Interim Order or any final order: and

12. Sections 21 and 22 of the Factoring and Security Agreement entitled "Choice of Law, Account Purchase Transaction" and "Venue; Jurisdiction; Service" respectively, or any other provision in the Post-Petition Agreements of a similar nature are modified to provide that during the pendency of the Bankruptcy Case, the Bankruptcy Court shall have jurisdiction to determine any and all disputes arising under or relating to the Post-Petition Agreements, this Rider and any entered Proposed Interim Order and thereafter final order, and that during the Bankruptcy Case, federal bankruptcy law shall be controlling solely to the extent it may expressly override the laws of the State of Texas.

13. During the pendency of this Bankruptcy Case, Section 12.1 of the Factoring and Security Agreement entitled "Termination; Effective Date" is modified so that the following shall replace the last sentence contained therein: Triumph may terminate this Agreement at any time by filing a notice with the Bankruptcy Court on the earlier of:

- i. Earlier of thirty (30) days after the Petition Date, or the entry of a Final Order that is not satisfactory in form or substance to Triumph;
- ii. Immediately upon the occurrence of any Event of Default under the Interim Order, the Factoring Agreement, or this Bankruptcy Rider; or
- iii. Immediately upon the Debtor receiving notice from the IRS, the state of Texas, the state of California, or any other taxing authority of the Debtor failing to pay when due, or failing to deposit or withhold as required by law, one or more of its post-Petition obligations that may become due to any of the foregoing.

14. This Bankruptcy Rider may be executed in counterparts, all of which taken together shall constitute a single document and either Debtor or Triumph's signature of this Bankruptcy Rider may either be an original or a facsimile in order to constitute an original signature.

15. This Bankruptcy Rider shall be binding on and inure to the benefit of the Debtor and Triumph, as well as their respective successors and assigns, all retroactive to the Petition Date. Moreover, this Bankruptcy Rider shall be binding on any examiner or trustee that may subsequently be appointed.

16. The rights and remedies granted to Triumph in the Post-Petition Agreements, including the Bankruptcy Rider, the Interim Order, and any final order are cumulative, are not exclusive, and can be exercised in any order or sequence.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, the day first written above.

KAL FREIGHT INC.

TRIUMPH FINANCIAL SERVICES

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

APPROVED AS TO FORM:

Counsel for Debtor

By: _____

28241-001 (04608752)

CONVERSION ADDENDUM DATED DECEMBER 4, 2024 TO FACTORING AND SECURITY AGREEMENT

RECITALS

A. Kal Freight and Triumph are parties to a Factoring and Security Agreement dated April 25, 2017, as amended, restated, and supplemented (collectively, the “Factoring Agreement”). The Factoring Agreement was supplemented by the Factoring and Security Agreement Non-Purchase Advance Addendum dated as of August 18, 2023 (the “NPA Addendum”), under which Kal Freight requested that Triumph use its Non-Purchase Advance facility (the “NPA Facility”) to advance funds to Kal Freight in connection with certain Accounts that Kal Freight does not sell to Triumph under the Factoring Agreement.

B. On December 5, 2024 (the “Petition Date”), Kal Freight and certain of its related entities filed Chapter 11 (United States Bankruptcy Court for the Southern District of Texas, Case No. 24-90614). Kal Freight notified Triumph that it wants to stop financing Accounts using the NPA Facility. To help create additional liquidity for Kal Freight, and to provide Triumph with additional collateral in connection with financing Kal Freight in Chapter 11 pursuant to Bankruptcy Court approved financing, Kal Freight requested that Triumph purchase the existing Accounts that had been financed under the NPA Facility and instead purchase them under Factoring Agreement (excluding the NPA Addendum) as modified by this Addendum.

C. Kal Freight and Triumph have reached an agreement to suspend Triumph’s obligations under the NPA Addendum. Instead, Triumph will purchase, in accordance with the terms and conditions of the Factoring Agreement (excluding the NPA Addendum), the Eligible Accounts listed on Exhibit A attached hereto that were previously financed under the NPA Facility (the “Additional Accounts”).

Accordingly, for good and valuable consideration, the receipt and sufficiency of which Kal Freight acknowledges, Kal Freight and Triumph agree as follows:

AGREEMENT

1. Pursuant to the Factoring Agreement (excluding the NPA Addendum), Kal Freight will offer to sell to Triumph, and Triumph may, in its Discretion, purchase the Additional Accounts.
2. The Additional Accounts Triumph may purchase will be subject to the terms and conditions of the Factoring Agreement (excluding NPA Addendum). Upon such purchase, Triumph will pay the Purchase Price of any Purchased Account to Kal Freight in accordance with the Factoring Agreement (excluding the NPA Addendum), provided however, Triumph will retain as additional cash security from the Purchase Price, the sum of \$500,000 (the “Additional Cash Reserve”).
3. Kal Freight hereby grants Triumph a continuing lien and security interest in the Additional Cash Reserve to secure all of Kal Freight’s Obligations, arising both before and after the Petition Date, to Triumph.
4. Triumph will cease financing any Accounts under the NPA Addendum. During the remaining term of the Factoring Agreement, Kal Freight will offer all Accounts to Triumph for purchase under the Factoring Agreement (excluding the NPA Addendum). Triumph will notify Account Debtors of all Accounts previously financed under the NPA Facility and instruct them to make all payments to Triumph. Subject to the terms and conditions of the Factoring Agreement (excluding the NPA Addendum), Triumph may also purchase Kal Freight’s Eligible Accounts that arise after the date of this Agreement.

5. Kal Freight will remain obligated under, and will satisfy all Obligations under, the NPA Addendum.

6. Except as expressly modified herein, all other terms and conditions of the Factoring Agreement remain in full force and effect. Triumph reserves all of its rights, liens, and remedies.

THIS ADDENDUM AND THE FACTORING AND SECURITY AGREEMENT EMBODY THE FINAL AND ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS, IF ANY, RELATING TO THE SUBJECT MATTER HEREOF, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES

Dated: December 5, 2024

Kal Freight Inc.

By: _____

Its: _____

EXHIBIT 2

Budget

Kal Group of Companies - Management Forecast of Consolidated Entities including Kal Freight, Kal Trailers & Leasing, Kal Partz, KVL Tires and Kal Aviation

Forecast Week Ending	Forecast 1 11/29	Forecast 2 12/6	Forecast 3 12/13	Forecast 4 12/20	Forecast 5 12/27	Forecast 6 1/3	Forecast 7 1/10	Forecast 8 1/17	Forecast 9 1/24	Forecast 10 1/31	Forecast 11 2/7	Forecast 12 2/14	Forecast 13 2/21	13-Week Total
Revenue Receipts	\$ 4,298,457	\$ 8,501,335	\$ 5,066,435	\$ 5,082,610	\$ 4,464,367	\$ 4,775,391	\$ 4,789,118	\$ 4,520,842	\$ 4,386,018	\$ 4,419,737	\$ 5,067,933	\$ 4,648,584	\$ 4,531,751	\$ 64,552,579
Reimbursement Receipts	69,500	49,800	60,550	262,350	69,500	49,400	15,550	187,800	99,050	49,400	15,550	187,800	99,050	1,215,300
Total Receipts	4,367,957	8,551,135	5,126,985	5,344,960	4,533,867	4,824,791	4,804,668	4,708,642	4,485,068	4,469,137	5,083,483	4,836,384	4,630,801	65,767,879
Cost of Sales	2,576,618	2,816,956	2,969,986	2,895,320	2,555,258	2,751,058	2,871,655	2,671,301	2,511,266	2,701,504	2,886,449	2,706,826	2,662,870	35,577,067
Operating Disbursements	794,300	560,280	846,420	826,050	851,400	442,990	978,450	2,169,745	372,500	391,790	475,350	1,986,245	310,000	11,005,520
Total Operating Disbursements	3,370,918	3,377,236	3,816,406	3,721,370	3,406,658	3,194,048	3,850,105	4,841,046	2,883,766	3,093,294	3,361,799	4,693,071	2,972,870	46,582,586
Operating Cash Flow	997,039	5,173,899	1,310,579	1,623,591	1,127,209	1,630,743	954,564	(132,404)	1,601,302	1,375,843	1,721,683	143,314	1,657,931	19,185,293
Non Operating (Receipts) / Disbursements														
Personal Funding and/or Real Estate Sales	-	-	-	(700,000)	(800,000)	(1,000,000)	(1,000,000)	(1,000,000)	-	(1,000,000)	-	(1,000,000)	-	(6,500,000)
Insurance Collateral Payment	-	-	-	-	1,000,000	-	-	-	-	1,000,000	-	-	1,000,000	3,000,000
Adequate Protection Payments - Lease Collections	247,400	194,200	329,300	186,900	249,100	194,900	329,300	186,900	249,100	77,500	393,600	223,000	193,700	3,054,900
Adequate Protection Payments - Other	42,000	792,000	957,000	962,000	917,000	912,000	912,000	912,000	917,000	912,000	932,000	932,000	937,000	11,036,000
Principal Payments - Triumph	-	3,500,000	-	-	-	-	-	-	-	-	-	-	-	3,500,000
Other Non Operating Disbursements	9,515	9,991	16,024	16,917	18,018	18,647	18,885	17,647	17,382	16,843	16,740	17,094	17,294	210,997
Non Operating (Receipts) / Disbursements	298,915	4,496,191	1,302,324	465,817	1,384,118	125,547	260,185	116,547	1,183,482	1,006,343	1,342,340	172,094	2,147,994	14,301,897
Bankruptcy Costs														
Filing Fees	-	15,000	-	-	-	-	-	-	-	-	-	-	-	15,000
UST Fees	-	-	-	-	-	-	-	-	-	-	-	-	262,818	262,818
Pachulski Stang Ziehl & Jones LLP	150,000	225,000	225,000	225,000	225,000	225,000	225,000	225,000	225,000	225,000	225,000	225,000	225,000	2,850,000
Development Specialists, Inc. (DSI)	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	450,000
Creditor Reporting / Additional FA - DSI	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	34,615	450,000
Independent Directors	-	30,000	-	-	-	60,000	-	-	-	-	60,000	-	-	150,000
Stretto	10,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	250,000
E-Discovery	-	75,000	-	-	-	-	-	-	-	-	-	-	-	75,000
Logistics Regulatory Counsel	-	25,000	-	-	-	25,000	-	-	-	-	25,000	-	-	75,000
Lender Professionals	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	130,000
Creditors Committee	-	-	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	50,000	50,000	50,000	375,000
Other Costs	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	65,000
Total Bankruptcy Costs	244,231	474,231	354,231	354,231	354,231	439,231	354,231	354,231	354,231	379,231	464,231	379,231	642,049	5,147,818
Net Cash Flow	\$ 453,894	\$ 203,477	\$ (345,975)	\$ 803,543	\$ (611,140)	\$ 1,065,965	\$ 340,147	\$ (603,181)	\$ 63,589	\$ (9,730)	\$ (84,888)	\$ (408,011)	\$ (1,132,112)	\$ (264,421)
Starting Cash	\$ 1,295,170	\$ 1,749,064	\$ 1,952,541	\$ 1,606,566	\$ 2,410,109	\$ 1,798,969	\$ 2,864,934	\$ 3,205,082	\$ 2,601,900	\$ 2,665,489	\$ 2,655,759	\$ 2,570,871	\$ 2,162,860	\$ 1,295,170
Net Cash Flow	453,894	203,477	(345,975)	803,543	(611,140)	1,065,965	340,147	(603,181)	63,589	(9,730)	(84,888)	(408,011)	(1,132,112)	(264,421)
Ending Cash - Kal Group	\$ 1,749,064	\$ 1,952,541	\$ 1,606,566	\$ 2,410,109	\$ 1,798,969	\$ 2,864,934	\$ 3,205,082	\$ 2,601,900	\$ 2,665,489	\$ 2,655,759	\$ 2,570,871	\$ 2,162,860	\$ 1,030,749	\$ 1,030,749