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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of	)	
BALL CORPORATION, **a corporation,**	)	
and	)	**Docket No. C-4581**
REXAM PLC, **a public limited company.**	)	

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Ball Corporation ("Ball") of the voting securities of Respondent Rexam PLC ("Rexam"), collectively "Respondents," and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Ball Corporation, is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Indiana with its executive offices and principal place of business at 10 Longs Peak Drive, Bloomfield, CO 80021.

2. Respondent Rexam PLC, is a public limited company organized, existing, and doing business under, and by virtue of, the laws of England and Wales with its principal executive offices located at 4 Millbank, London SW1P 3XR, United Kingdom, and its United States address for service of process and the Complaint, the Decision and Order, and the Order to Maintain Assets, as follows: Corporate Secretary, Rexam Beverage Can Company, 4201 Congress Street, Suite 340, Charlotte, NC 28209.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions, and all other definitions used in the Order to Maintain Assets, shall apply:

A. "Ball" means Ball Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Ball Corporation, including, but not limited to, Ball UK Acquisition Ltd., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Ball includes Rexam, after the Acquisition Date.

B. "Rexam" means Rexam PLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Rexam PLC, including, but not limited to, Rexam Beverage Can Company ("RBCC"), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Commission" means the Federal Trade Commission.

D. "Acquirer" means:

1. Ardagh; or

2. a Person approved by the Commission to acquire the Aluminum Beverage Cans Business pursuant to this Decision and Order.

E. "Acquisition" means the proposed acquisition by Respondent Ball of all the voting securities of Respondent Rexam as described in the Recommended Cash and Share Offer for Rexam PLC by Ball UK Acquisition Limited, A Wholly-Owned Subsidiary of Ball Corporation, dated February 19, 2015, between Ball Corporation, Ball UK Acquisition Ltd., and Rexam PLC, and any amendments, exhibits, or schedules attached thereto.

F. "Acquisition Date" means the date the Acquisition is consummated.

G. "Aluminum Beverage Cans Business" means all of RBCC's assets, including Tangible Personal Property and intangible assets, businesses and goodwill, related to the research, development, manufacture, distribution, marketing or sale of Aluminum Beverage Cans Products including, but not limited to:

1. The Aluminum Beverage Cans Manufacturing Facilities;

2. The Aluminum Beverage Cans Corporate Facility;

3. The Aluminum Beverage Cans Technical and Engineering Facility;

4. The Aluminum Beverage Cans Contracts;

5. An upfront, paid up, perpetual and royalty-free, license to all Intellectual Property relating to the research, development, manufacture, distribution, marketing or sale of Aluminum Beverage Cans Products; *PROVIDED, HOWEVER,* this license shall include rights to all of Respondent Rexam's Intellectual Property related to the Aluminum Beverage Cans Products worldwide.

6. All inventories relating to Aluminum Beverage Cans Products, affiliated with an Aluminum Beverage Cans Manufacturing Facility, wherever located;

7. All consents, licenses, certificates, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement relating to the research, development, manufacture, distribution, marketing or sale of Aluminum Beverage Cans Products, and all pending applications therefor or renewals thereof;

8. All Business Records relating to the research, development, manufacture, distribution, marketing or sale of Aluminum Beverage Cans Products; *PROVIDED, HOWEVER,* that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the Aluminum Beverage Cans Business to be divested and to the Retained Business or other products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Aluminum Beverage Cans Business to be divested; or (b) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information, then Respondents may keep such records and provide copies with appropriate redactions to the Acquirer. In instances where such copies are provided to the Acquirer, the relevant party shall provide the Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes.

PROVIDED, HOWEVER, assets contained in Schedules 1.2(c), 1.2(m), 1.2(n)(i), 1.2(n)(ii), and 1.2(v) of the Divestiture Agreement shall be excluded.

H. "Aluminum Beverage Cans Contracts" means all agreements and contracts with customers (including, but not limited to, contracts, purchasing agreements, and rebate agreements with customers who will be served from both the Aluminum Beverage Cans Manufacturing Facilities and facilities retained by Respondent Ball, and agreements, contracts, and understandings for transportation, storage, and other services), suppliers, vendors, representatives, agents, licensees and licensors; and all leases, mortgages, notes, bonds, and other binding commitments, whether written or oral, and all rights thereunder and related thereto related to the Aluminum Beverage Cans Business from the Aluminum Beverage Cans Manufacturing Facilities;

I. "Aluminum Beverage Cans Corporate Facility" means the facility located at 8770 W. Bryn Mawr Avenue, Chicago, IL 60631, including, but not limited to, information technology systems, all physical assets and equipment related to the research, development, manufacture, sale, and distribution of products from the Aluminum Beverage Cans Manufacturing Facilities; *PROVIDED, HOWEVER*, that parts, inventory, designs, or other assets held for use exclusively by or for the Retained Business may be excluded.

J. "Aluminum Beverage Cans Designated Employee" means any person employed by RBCC (1) at the Aluminum Beverage Cans Manufacturing Facilities; (2) working at or out of the Aluminum Beverage Cans Corporate Facility; (3) at the Aluminum Beverage Cans Technical and Engineering Facility; (4) who has spent over twenty-five percent (25%) of his or her time, from January 2015 to December 2015, working for or on behalf of the Aluminum Beverage Cans Business, wherever located; or (5) identified by

agreement between Respondent Rexam and an Acquirer and made a part of a Divestiture Agreement including, but not limited to, the Aluminum Beverage Cans Divestiture Employees.

K. "Aluminum Beverage Cans Divestiture Employees" are certain employees working at or out of the Aluminum Beverage Cans Corporate Facility and the Aluminum Beverage Cans Technical and Engineering Facility, and are identified in Non-Public Confidential Appendix C attached to this Order.

L. "Aluminum Beverage Cans Manufacturing Facilities" means all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held by RBCC, and all Tangible Personal Property, therein, at the Bishopville Facility, Chicago Facility, Fairfield Facility, Fremont Facility, Olive Branch Facility, Valparaiso Facility, Whitehouse Facility, and Winston-Salem Facility. *PROVIDED, HOWEVER*, that parts, inventory, designs, or other assets held for use exclusively by or for the Retained Business may be excluded.

M. "Aluminum Beverage Cans Products" means the Standard Aluminum Beverage Cans and Specialty Aluminum Beverage Cans:

1. manufactured by RBCC at the Aluminum Beverage Cans Manufacturing Facilities; or

2. designed, researched and developed, but not yet commercialized, by RBCC, anywhere in the world, and that are intended to be manufactured at the Aluminum Beverage Cans Manufacturing Facilities.

N. "Aluminum Beverage Cans Technical and Engineering Facility" means the technical and engineering facility located at 2520 Lively Boulevard, Elk Grove, IL 60007, including, but not limited to, all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held by RBCC, and all Tangible Personal Property therein, and parts, inventory, and all other assets relating to the Aluminum Beverage Cans Business. *PROVIDED, HOWEVER*, that parts, inventory, designs, or other assets held for use exclusively by or for the Retained Business may be excluded.

O. "Ardagh" means Ardagh Group S.A., a limited liability corporation organized, existing, and doing business under, and by virtue of, the laws of Luxembourg with its office and principal executive offices located at 56, rue Charles Martel, Luxembourg, and its United States address for business operations is 401 E. Jackson Street, Suite 2800, Tampa, FL 33062.

P. "Arizona" means Arizona Beverages USA LLC, a limited liability corporation, organized, existing, and doing business under, and by virtue of, the laws of the State of New York with its executive offices and principal place of business at 60 Crossways Park Drive W, Woodbury, NY 11797.

Q. "Arizona Contract Manufacturing Agreement" means:

1. The Arizona Contract Manufacturing Agreement entered into between Ardagh Metal Beverage USA Inc. and Rexam Beverage Can Company, dated on the Divestiture Date , and any attachments, amendments, exhibits, and schedules related thereto that have been approved by the Commission. This Arizona Contract Manufacturing Supply Agreement is attached to this Order and contained in Non-Public Appendix D; or

2. Any agreement between Respondents (or between a Divestiture Trustee appointed pursuant to Paragraph IV. of this Order) and an Acquirer for the purchase of Specialty Aluminum Beverage Cans Products as provided for in Paragraph II.B. of this Order, that receives the prior approval of the Commission, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.

R. "Arizona-Rexam Supply Agreement" means that Amended and Restated Can Supply Agreement, dated May 26, 2015, by and between Rexam Beverage Can Company and Arizona Beverages USA LLC.

S. "Bishopville Facility" means the aluminum beverage cans manufacturing plant located at 609 Cousar Street, Bishopville, SC 29010.

T. "Business Records" means all originals and all copies of any operating, financial or other information, documents, data, computer files (including files stored on a computer's hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored, or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without limitation: distributor files and records; customer files and records, customer lists, customer product specifications, customer purchasing histories, customer service and support materials, customer approvals, and other information; credit records and

information; correspondence; referral sources; supplier and vendor files and lists; advertising, promotional, and marketing materials, including website content; sales materials; research and development data, files, and reports; technical information; data bases; studies; designs, drawings, specifications and creative materials; production records and reports; service and warranty records; equipment logs; operating guides and manuals; employee and personnel records; education materials; financial and accounting records; and other documents, information, and files of any kind.

U. "Cap Can®" means RBCC's Aluminum Beverage Cans Products with a re-sealable cap opening.

V. "Chicago Facility" means the aluminum beverage cans manufacturing plant located at 1101 West 43rd Street, Chicago, IL 60609.

W. "Confidential Business Information" means information owned by, or in the possession or control of, RBCC that is not in the public domain and that is directly related to the conduct of the Aluminum Beverage Cans Business. The term "Confidential Business Information" *excludes* the following:

1. information specifically excluded from the Aluminum Beverage Cans Business conveyed to the Acquirer;

2. information that is contained in documents, records, or books of RBCC that is provided to an Acquirer that is unrelated to the Aluminum Beverage Cans Business acquired by that Acquirer or that is exclusively related to businesses or products retained by Respondent Rexam;

3. information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition law; and

4. information that Respondent Rexam demonstrates to the satisfaction of the Commission, in the Commission's sole discretion:

    a. Was or becomes generally available to the public other than as a result of disclosure by Respondent Rexam;

    b. Is necessary to be included in Respondent Rexam's mandatory regulatory filings; *PROVIDED, HOWEVER,* that Respondent Rexam shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;

c. Was available, or becomes available, to Respondent Ball on a non-confidential basis, but only if, to the knowledge of Respondent Ball, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;

d. Is information the disclosure of which is consented to by the Acquirer;

e. Is necessary to be exchanged in the course of consummating the Acquisition or the transaction under the Divestiture Agreement or any Remedial Agreement;

f. Is disclosed in complying with the Order;

g. Is information the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Government Entities; or

h. Is disclosed in obtaining legal advice.

X. "Direct Cost" means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service.

Y. "Divestiture Agreement" means:

1. the Equity and Asset Purchase Agreement by and among Ardagh Group S.A., Ball Corporation, and Rexam PLC, dated April 22, 2016, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Order as Non-public Confidential Appendix A; or

2. any agreement that receives the prior approval of the Commission between Respondents (or between a Divestiture Trustee appointed pursuant to Paragraph IV. of this Order) and an Acquirer to purchase the Aluminum Beverage Cans Business, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.

Z. "Divestiture Date" means the date on which Respondent Rexam (or a Divestiture Trustee) closes on the divestiture of the Aluminum Beverage Cans Business as required by Paragraph II (or Paragraph IV) of this Order.

AA. "Employee Access Period" means one (1) year from the Divestiture Date.

BB. "Fairfield Facility" means the aluminum beverage cans manufacturing plant located at 2433 Crocker Circle, Fairfield, CA 94533.

CC. "Fremont Facility" means the aluminum beverage cans manufacturing plant located at 2145 Cedar Street, Fremont, OH 43420; *PROVIDED, HOWEVER*, assets (including Intellectual Property) exclusively related to the manufacture and production of Cap Can® ends are excluded.

DD. "Geographic Territory" means the United States.

EE. "Government Entities" means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.

FF. "Intellectual Property" means:

1. Patents, and the rights to obtain and file for Patents, trademarks, and copyrights and registrations thereof and to bring suit against a third party for the past, present or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing;

2. product manufacturing technology, including process technology, technology for equipment, inspection technology, and research and development of product or process technology;

3. Product and manufacturing copyrights;

4. all plans (including proposed and tentative plans, whether or not adopted or commercialized), research and development, specifications, drawings, and other assets (including the non-exclusive right to use Patents, know-how, and other intellectual property relating to such plans);

5. product trademarks, trade dress, trade secrets, technology, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, development, and other information, formulas, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of the products, including, but not limited to, all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with any Government Entity approvals and compliance,

and labeling and all other information related to the manufacturing process, and supplier lists;

6. licenses including, but not limited to, third party software, if transferrable, and sublicenses to software modified by RBCC;

7. formulations and a description of all ingredients, materials, or components used in the manufacture of products; and

8. any other intellectual property used in the past by RBCC in the design, manufacture, and sale of products from the Aluminum Beverage Cans Business.

GG. "Monitor" means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the Order to Maintain Assets.

HH. "Monitor Agreement" means the Monitor Agreement dated February 25, 2016, between ING Financial Markets LLC, and Ball Corporation. The Monitor Agreement is attached as Appendix E to this Order.

II. "Olive Branch Facility" means the aluminum beverage cans manufacturing plant located at 10800 Marina Drive, Olive Branch, MS 38654.

JJ. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.

KK. "Patents" means pending patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

LL. "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other business entity other than Respondents or Ardagh.

MM. "Remedial Agreement(s)" means:

1. Any agreement between Respondents and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, and divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to

accomplish the requirements of the Order in connection with the Commission's determination to make this Order final; and/or

2. Any agreement between Respondents and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order.

NN. "Retained Business" means the assets and businesses of Respondents other than the Aluminum Beverage Cans Business.

OO. "Retained Business Firewalled Employees" means Respondents' employees of the Retained Business who have responsibilities over or are involved in establishing the pricing of Aluminum Beverage Cans Products.

PP. "Specialty Aluminum Beverage Cans" means specialty aluminum beverage cans of various sizes including, but not limited to: (1) 7.5-ounce slim cans; (2) 8-ounce slim cans; (3) 12-ounce sleek cans; (4) 16-ounce cans; and (5) 24-ounce cans.

QQ. "Standard Aluminum Beverage Cans" means 12-ounce aluminum beverage cans.

RR. "Tangible Personal Property" means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased by RBCC, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

SS. "Transition Services" means any transitional services required by the Acquirer for the operation of the divested business including, but not limited to administrative assistance (including, but not limited to, order processing, shipping, accounting, and information transitioning services), technical assistance, and supply agreements.

TT. "Transitional Services Agreement(s)" means:

1. The agreements between Respondents and Ardagh for the provision of Transition Services and attached to this Order as Non-Public Confidential Appendix B; or

2. Any agreement entered into between Respondents and an Acquirer (or the Divestiture Trustee and an Acquirer) for the provision of Transition Services.

UU. "Valparaiso Facility" means the aluminum beverage cans manufacturing plant located at 4001 Montdale Park Drive, Valparaiso, IN 46383.

VV. "Whitehouse Facility" means the aluminum beverage cans manufacturing plant located at 10444 Waterville Street, Whitehouse, OH 43571.

WW. "Winston-Salem Facility" means the aluminum beverage cans manufacturing plant located at 4000 Old Milwaukee Lane, Winston-Salem, NC 27197.

II.

IT IS FURTHER ORDERED that:

A. Within ten (10) days of the Acquisition Date, Respondents shall divest the Aluminum Beverage Cans Business to Ardagh, pursuant to and in accordance with the Divestiture Agreement (which shall not limit or contradict, or be construed to vary from or contradict, the terms of this Order), and such agreement, if it becomes a Remedial Agreement related to the Aluminum Beverage Cans Business is incorporated by reference into this Order and made a part hereof;

PROVIDED, HOWEVER, if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Ardagh is not an acceptable Acquirer of the Aluminum Beverage Cans Business then Respondents shall immediately rescind the transaction with Ardagh, in whole or in part, as directed by the Commission, and shall divest, license, and/or transfer the Aluminum Beverage Cans Business within six (6) months from the date this Order is issued, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission;

PROVIDED FURTHER, HOWEVER, that if Respondents have complied with the terms of this Paragraph before the date on which this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents or appoint the Divestiture Trustee, to effect such modifications to the manner of the divestiture to Ardagh (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

B. At the Acquirer's option and upon reasonable notice, for a period not to exceed the length of the Arizona-Rexam Supply Agreement, Respondents shall enter an Arizona Contract Manufacturing Agreement and shall purchase a supply of Specialty Aluminum Beverage Cans Products from the Acquirer in order to ensure that Arizona is able to obtain

Specialty Aluminum Beverage Cans Products on substantially the same terms as the Arizona-Rexam Supply Agreement.

C. If Respondents (or a Divestiture Trustee) enter into an Arizona Contract Manufacturing Agreement with the Acquirer, Respondents shall:

1. Purchase a supply of Specialty Aluminum Beverage Cans Products from the Acquirer: (i) at the same price set forth in the Arizona-Rexam Supply Agreement: (ii) at substantially the same quality as such Specialty Aluminum Beverage Cans Products are currently manufactured; and (iii) as supplied from the manufacturing locations that are geographically close to Arizona's facilities as specified in the Arizona-Rexam Supply Agreement;

2. Terminate, on reasonable notice and without cost or penalty to the Acquirer, the Arizona Contract Manufacturing Agreement if: (i) Arizona terminates the Arizona-Rexam Supply Agreement; or (ii) the Acquirer enters into a new agreement with Arizona for the supply of Specialty Aluminum Beverage Cans Products; and

3. Implement procedures to ensure that Confidential Business Information pertaining to any volumes Respondents purchase from the Acquirer pursuant to the Arizona Contract Manufacturing Agreement shall not be used, disclosed, or shared with any of Respondents' Retained Business Firewalled Employees; *PROVIDED, HOWEVER,* Respondents may use or disclose this Confidential Business Information as necessary to comply with Paragraph II.F.

D. At the request of the Acquirer, for a period not to exceed eighteen (18) months from the Divestiture Date, Respondents shall provide, at no greater than Direct Cost, Transition Services from knowledgeable employees of Respondents to assist the Acquirer in the transfer of the Aluminum Beverage Cans Business from Respondents to the Acquirer in a timely and orderly manner pursuant to the Transitional Services Agreements.

E. Within ten (10) days of the Divestiture Date, Respondents shall submit to the Acquirer, at Respondents' expense, all Business Records of the Aluminum Beverage Cans Business, in good faith, and in a manner that ensures their completeness and accuracy and that fully preserves their usefulness; *PROVIDED, HOWEVER,* pending complete delivery of all such Business Records of the Aluminum Beverage Cans Business to the Acquirer, Respondents shall provide the Acquirer, and the Interim Monitor with access to all such Business Records of the Aluminum Beverage Cans Business and employees who possess or able to locate such information for the purposes of identifying the books, records, and files directly related to the Aluminum Beverage Cans Business and facilitating the delivery in a manner consistent with this Order.

F. Respondents shall ensure that employees of the Respondents' Retained Business shall not receive, have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the Aluminum Beverage Cans Business except in the course of:

1. Performing their obligations as permitted under this Order or the Order to Maintain Assets;

2. Performing their obligations under any Remedial Agreement; or

3. Complying with financial reporting requirements or environmental, health, and safety policies and standards, ensuring the integrity of the financial and operational controls on the Aluminum Beverage Cans Business, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Aluminum Beverage Cans Business, or as required by law;

PROVIDED, HOWEVER, for purposes of this Paragraph, Respondents' employees who provide or are involved in the receipt of support services under the Order to Maintain Assets shall be deemed to be performing obligations under this Order.

G. If the receipt, access to, use, or disclosure of Confidential Business Information pertaining to the Aluminum Beverage Cans Business is permitted to Respondents' employees under Paragraph II.F. of this Order, Respondents shall limit such information (1) only to those Persons who require such information for the purposes permitted under Paragraph II.F., (2) only to the extent such Confidential Business Information is required, and (3) only after such Persons have signed an appropriate agreement in writing to maintain the confidentiality of such information.

H. Respondents shall enforce the confidentiality terms of this Order as to any Person other than the Acquirer of the Aluminum Beverage Cans Business and take such action as is necessary to cause each such Person to comply with these terms, including training of Respondents' employees and all other actions that Respondents would take to protect its own trade secrets and proprietary information.

I. From the date Respondents execute the Divestiture Agreement until the Employee Access Period terminates, Respondents shall provide a proposed Acquirer with the opportunity to recruit and employ any Aluminum Beverage Cans Designated Employee in conformance with the following:

1. No later than ten (10) days after a request from a proposed Acquirer, or staff of the Commission, Respondents shall provide a proposed Acquirer with the following information for each Aluminum Beverage Cans Designated Employee, as and to the extent permitted by law:

a. name, job title or position, date of hire and effective service date;

b. a specific description of the employee's responsibilities;

c. the base salary or current wages;

d. the most recent bonus paid, aggregate annual compensation for RBCC's last fiscal year and current target or guaranteed bonus, if any;

e. employment status (*i.e.*, active or on leave or disability; full-time or part-time);

f. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and

g. at a proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant Aluminum Beverage Cans Designated Employee(s);

2. No later than ten (10) days after a request from a proposed Acquirer, Respondents shall provide the proposed Acquirer with:

a. an opportunity to meet, personally and outside the presence or hearing of any employee or agent of Respondents, with any Aluminum Beverage Cans Designated Employee;

b. an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws; and

c. to make offers of employment to any Aluminum Beverage Cans Designated Employee;

3. Respondents shall (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any Aluminum Beverage Cans Designated Employee, (ii) not offer any incentive to any Aluminum Beverage Cans Designated Employee to decline employment with a proposed Acquirer, (iii) not make any counteroffer to any Aluminum Beverage Cans Designated Employee who receives a written offer of employment from a proposed Acquirer, and (iv) remove any impediments within the control of Respondents that may deter any Aluminum Beverage Cans Designated Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or

confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by a proposed Acquirer;

PROVIDED, HOWEVER, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.

J. Respondents shall provide reasonable financial incentives to the Aluminum Beverage Cans Divestiture Employees as needed to facilitate the employment of such employees by the Acquirer; *PROVIDED, HOWEVER,* (i) if the proposed Acquirer has made a written offer of employment to an Aluminum Beverage Can Divestiture Employee, and (ii) such employee has declined employment with the proposed Acquirer, then Respondents, in consultation with the Monitor (if one is appointed), shall make available a substitute employee with substantially the same skills and job function to the Acquirer for employment.

K. For a period of two (2) years after the Divestiture Date, Respondents shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Person employed by an Acquirer of the Aluminum Beverage Cans Business, to terminate his or her employment relationship with an Acquirer;

PROVIDED, HOWEVER, Respondents may: (1) advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Aluminum Beverage Cans Designated Employees; and (2) hire employees of the Aluminum Beverage Cans Business who apply for employment with Respondents, so long as such individuals were not solicited by Respondents in violation of this paragraph;

PROVIDED, FURTHER, HOWEVER, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any employee of the Aluminum Beverage Cans Business if an Acquirer has notified Respondents in writing that an Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by an Acquirer.

L. Until Respondents (or the Divestiture Trustee) complete the divestiture and other obligations to transfer the Aluminum Beverage Cans Business as required by this Order, Respondents shall take actions as are necessary to:

1. Maintain the full economic viability and marketability of the Aluminum Beverage Cans Business;

2. Minimize any risk of loss of competitive potential for the Aluminum Beverage Cans Business;

3. Prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Aluminum Beverage Cans Business; and

4. Not sell, transfer, encumber, or otherwise impair the Aluminum Beverage Cans Business (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Aluminum Beverage Cans Business.

M. The purpose of this Paragraph II is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents, minimize the loss of competitive potential for the Aluminum Beverage Cans Business, minimize the risk of disclosure or unauthorized use of Confidential Business Information related to the Aluminum Beverage Cans Business; to prevent the destruction, removal, wasting, deterioration, or impairment of the Aluminum Beverage Cans Business, except for ordinary wear and tear; and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets and the Remedial Agreements. The Commission hereby appoints ING Financial Markets LLC ("ING") as the Monitor and approves the Monitor Agreement between ING and Respondents which agreement, *inter alia*, names Philip Comerford, Jr., as ING designated Project Manager.

B. Not later than one (1) day after the appointment of the Monitor, Respondents shall, pursuant to the Monitor Agreement and to this Order, confer on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

C. The Monitor shall serve until the later of (1) eighteen (18) months after the Divestiture Date or (2) the termination of all Respondents' obligations under all Remedial Agreements; *PROVIDED, HOWEVER,* the Commission may extend or modify this period as may be necessary to accomplish the purposes of this Order and the Order the Maintain Assets.

D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission, including, but not limited to:

    a. Assuring that Respondents expeditiously comply with all of their obligations and performs all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreements;

    b. Monitoring any Transition Services Agreements; and

    c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirer, except as allowing in this Order and in the Order to Maintain Assets;

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;

3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order, the Order to Maintain Assets, and the Remedial Agreements;

4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order, the Order to Maintain Assets, and the Remedial Agreements. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order, the Order to Maintain Assets, and the Remedial Agreements;

5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission;

6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph III, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph III.D.5 of this Order.;

7. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under this Order, the Order to Maintain Assets, and the Remedial Agreements;

8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, and otherwise requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order, the Order to Maintain Assets, and the Remedial Agreements;

9. Respondents may require the Monitor and each of the Monitors consultants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER,* such agreement shall not restrict the Monitor from providing any information to the Commission.

E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor.

G. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Monitor all the rights and powers necessary to permit the substitute Monitor to monitor Respondent's compliance with the terms of this Order, the Order to Maintain Assets, and the Remedial Agreements in a manner consistent with the purposes of this Order.

H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order, the Order to Maintain Assets, and the Remedial Agreements.

IV.

IT IS FURTHER ORDERED that:

A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Aluminum Beverage Cans Business and otherwise fully complied with the obligations as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the Aluminum Beverage Cans Business in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor pursuant to the relevant provisions of this Order.

B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute an agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to enter into Transitional Services agreements;

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court; *PROVIDED, HOWEVER,* that the Commission may extend the divestiture period only two (2) times;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the

time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *PROVIDED, HOWEVER,* if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *PROVIDED FURTHER, HOWEVER,* that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee. For purposes of this Paragraph IV.E.6., the term "Divestiture Trustee" shall include all persons retained by the Divestiture Trustee pursuant to Paragraph IV.E.5. of this Order;

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order;

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture;

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission; and

10. The Commission may require, among other things, the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IV.

G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that:

A. The Remedial Agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of the Respondents under such agreement.

B. The Remedial Agreements shall be incorporated by reference into this Order and made a part hereof.

C. Respondents shall comply with all provisions of the Remedial Agreements, and any breach by Respondents of any term of such agreement shall constitute a violation of this Order. If any term of the Remedial Agreements varies from the terms of this Order ("Order Term"), then to the extent that Respondents cannot fully comply with both terms,

the Order Term shall determine Respondents' obligations under this Order. Any failure by the Respondents to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Order.

D. Respondents shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

VI.

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition Date, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

B. Respondents shall submit to the Commission and, if appointed, the Monitor, a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order:

a. Within thirty (30) days after the date this Order becomes final;

b. Every thirty (30) days thereafter until Respondents have fully divested, licensed, transferred and/or granted the Aluminum Beverage Cans Business to an Acquirer; and

c. Every three (3) months thereafter so long as Respondents have a continuing obligation under this Order and/or the Remedial Agreements to render services to the Acquirer or otherwise to comply with this Order.

C. At such other times as the Commission may request, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with this Order and any Remedial Agreement.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of Respondents;

B. Any proposed acquisition, merger, or consolidation of Respondents; or

C. Any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents related to compliance with the Consent Agreement and/or this Order, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and

B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on August 15, 2026.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: August 15, 2016

NON-PUBLIC APPENDIX A

DIVESTITURE AGREEMENT

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX B

TRANSITION SERVICES AGREEMENT

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX C

ALUMINUM BEVERAGE CANS DIVESTITURE EMPLOYEES

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX D

ARIZONA CONTRACT MANUFACTURING AGREEMENT

[Redacted From the Public Record Version, But Incorporated By Reference]

PUBLIC APPENDIX E

MONITOR AGREEMENT