



ASSIGNMENT AND ACCEPTANCE AGREEMENT

EX-10.1 2 dex101.htm ASSIGNMENT AND ACCEPTANCE AGREEMENT, DATED SEPTEMBER 16, 2009. Assignment and Acceptance Agreement, dated September 16, 2009.

Exhibit 10.1

ASSIGNMENT AND ACCEPTANCE AGREEMENT

This **ASSIGNMENT AND ACCEPTANCE AGREEMENT** (this “Assignment and Acceptance”) dated as of September 16, 2009 is made between **THE CIT GROUP/BUSINESS CREDIT, INC.** (the “Assignor”) and **WACHOVIA BANK, NATIONAL ASSOCIATION** (the “Assignee”).

RECITALS

WHEREAS, the Assignor is party to that certain Second Amended and Restated Credit Agreement dated as of October 2, 2006 (as amended, amended and restated, modified, supplemented or renewed, the “Credit Agreement”) among Kforce Inc., a Florida corporation, and certain of its Subsidiaries, as borrowers (the “Borrowers”), certain of Borrowers’ Affiliates, the several financial institutions from time to time party thereto (including the Assignor, the “Lenders”), and Bank of America, N.A., as Administrative Agent for the Lenders (the “Administrative Agent”). Any terms defined in the Credit Agreement and not defined in this Assignment and Acceptance are used herein as defined in the Credit Agreement;

WHEREAS, as provided under the Credit Agreement, the Assignor has committed to making Loans (the “Committed Loans”) to the Borrowers in an aggregate amount not to exceed \$35,000,000 (the “Commitment”);

WHEREAS, the Assignor has made Committed Loans in the aggregate principal amount of \$4,015,000 to the Borrowers;

WHEREAS, the Assignor has acquired a participation in its pro rata share of the Lenders’ liabilities under Letters of Credit in an aggregate principal amount of

\$1,227,524.32 (the “L/C Obligations”); and

WHEREAS, the Assignor wishes to assign to the Assignee part of the rights and obligations of the Assignor under the Credit Agreement in respect of its Commitment, together with a corresponding portion of each of its outstanding Committed Loans and L/C Obligations, in an amount equal to \$20,000,000 (the “Assigned Amount”) on the terms and subject to the conditions set forth herein and the Assignee wishes to accept assignment of such rights and to assume such obligations from the Assignor on such terms and subject to such conditions;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

1. Assignment and Acceptance.

(a) Subject to the terms and conditions of this Assignment and Acceptance, (i) the Assignor hereby sells, transfers and assigns to the Assignee, and (ii) the Assignee hereby purchases, assumes and undertakes from the Assignor, without recourse and without representation or warranty (except as provided in this Assignment and Acceptance) 57.1428571% (the “Assignee’s Assigned Percentage Share”) of (A) the Commitment, the Committed Loans and the L/C Obligations of the Assignor and (B) all related rights, benefits, obligations, liabilities and indemnities of the Assignor under and in connection with the Credit Agreement and the Loan Documents.

(b) With effect on and after the Effective Date (as defined in Section 5 hereof), the Assignee shall be a party to the Credit Agreement and succeed to all of the rights and be obligated to perform all of the obligations of a Lender under the Credit Agreement, including the requirements concerning confidentiality and the payment of indemnification, with a Commitment in an amount set forth in Section 1(c). The Assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender. It is the intent of the parties hereto that the Commitment of the Assignor shall, as of the Effective Date, be reduced by an amount equal to the Assigned Amount and the Assignor shall relinquish its rights and be released from its obligations under the Credit Agreement to the extent such obligations have been assumed by the Assignee; provided, however, the Assignor shall not relinquish its rights under Sections 4.4 and 14.11 of the Credit Agreement to the extent such rights relate to the time prior to the Effective Date.

(c) After giving effect to the assignment and assumption set forth herein, on the Effective Date the Assignee’s Commitment will be \$50,000,000.

(d) After giving effect to the assignment and assumption set forth herein, on the Effective Date the Assignor's Commitment will be \$15,000,000.

2. Payments.

(a) As consideration for the sale, assignment and transfer contemplated in Section 1 hereof, the Assignee shall pay to the Assignor on the Effective Date in immediately available funds an amount equal to \$2,294,285.71, representing the Assignee's Assigned Percentage Share of the principal amount of all Committed Loans.

(b) The Assignee further agrees to pay to the Administrative Agent a processing fee in the amount specified in Section 11.2(a) of the Credit Agreement.

3. Reallocation of Payments.

Any interest, fees and other payments accrued to the Effective Date with respect to the Commitment, and Committed Loans and L/C Obligations shall be for the account of the Assignor. Any interest, fees and other payments accrued on and after the Effective Date with respect to the Assigned Amount shall be for the account of the Assignee. Each of the Assignor and the Assignee agrees that it will hold in trust for the other party any interest, fees and other amounts which it may receive to which the other party is entitled pursuant to the preceding sentence and pay to the other party any such amounts which it may receive promptly upon receipt. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

4. Independent Credit Decision.

The Assignee (a) acknowledges that it has received a copy of the Credit Agreement and the Schedules and Exhibits thereto, together with copies of the most recent financial statements of the Borrowers, and such other documents and information as it has deemed appropriate to make its own credit and legal analysis and decision to enter into this Assignment and Acceptance; and (b) agrees that it will, independently and without reliance upon the Assignor, the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit and legal decisions in taking or not taking action under the Credit Agreement.

5. Effective Date; Notices.

(a) As between the Assignor and the Assignee, the effective date for this Assignment and Acceptance shall be September 16, 2009 (the “Effective Date”); provided that the following conditions precedent have been satisfied on or before the Effective Date:

(i) this Assignment and Acceptance shall be executed and delivered by the Assignor and the Assignee;

(ii) the consent of the Administrative Agent required for an effective assignment of the Assigned Amount by the Assignor to the Assignee shall have been duly obtained and shall be in full force and effect as of the Effective Date;

(iii) payment by the parties hereto of all amounts due in connection with this Assignment and Acceptance and transfer of the Assigned Amount; and

(iv) the processing fee referred to in Section 2(b) hereof and in Section 11.2(a) of the Credit Agreement shall have been paid to the Administrative Agent.

(b) Promptly following the execution of this Assignment and Acceptance, the Assignor shall deliver to the Borrowers and the Administrative Agent for acknowledgment by the Administrative Agent, a Notice of Assignment in the form attached hereto as Schedule 1.

6. [Intentionally omitted.]

7. Withholding Tax.

The Assignee (a) represents and warrants to the Lender, the Administrative Agent and the Borrowers that under applicable law and treaties no tax will be required to be withheld by the Lender with respect to any payments to be made to the Assignee hereunder, (b) agrees to furnish (if it is organized under the laws of any jurisdiction other than the United States or any State thereof) to the Administrative Agent and the Borrowers prior to the time that the Administrative Agent or Borrowers are required to make any payment of principal, interest or fees hereunder, duplicate executed originals of either U.S. Internal Revenue Service Form W-8ECI or U.S. Internal Revenue Service Form W-8BEN (wherein the Assignee claims entitlement to the benefits of a tax treaty that provides for a complete exemption from U.S. federal income withholding tax on all payments hereunder) and agrees to provide new Forms W-8ECI or W8BEN upon the expiration of any previously delivered form or comparable statements in accordance with applicable U.S. law and regulations and amendments thereto, duly executed and completed by the Assignee, and (c) agrees to comply with all applicable U.S. laws and regulations with regard to such withholding tax exemption.

8. Representations and Warranties.

(a) The Assignor represents and warrants that (i) it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any Lien or other adverse claim; (ii) it is duly organized and existing and it has the full power and authority to take, and has taken, all action necessary to execute and deliver this Assignment and Acceptance and any other documents required or permitted to be executed or delivered by it in connection with this Assignment and Acceptance and to fulfill its obligations hereunder; (iii) no notices to, or consents, authorizations or approvals of, any Person are required (other than any already given or obtained) for its due execution, delivery and performance of this Assignment and Acceptance, and apart from any agreements or undertakings or filings required by the Credit Agreement, no further action by, or notice to, or filing with, any Person is required of it for such execution, delivery or performance; and (iv) this Assignment and Acceptance has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Assignor, enforceable against the Assignor in accordance with the terms hereof, subject, as to enforcement, to bankruptcy, insolvency, moratorium, reorganization and other laws of general application relating to or affecting creditors' rights and to general equitable principles.

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(b) The Assignor makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement or any other instrument or document furnished pursuant thereto. The Assignor makes no representation or warranty in connection with, and assumes no responsibility with respect to, the solvency, financial condition or statements of any Borrower, or the performance or observance by any Borrower, of any of its obligations under the Credit Agreement or any other instrument or document furnished in connection therewith.

(c) The Assignee represents and warrants that (i) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Assignment and Acceptance and any other documents required or permitted to be executed or delivered by it in connection with this Assignment and Acceptance, and to fulfill its obligations hereunder; (ii) no notices to, or consents, authorizations or approvals of, any Person are required (other than any already given or obtained) for its due execution, delivery and performance of this Assignment and Acceptance; and apart from any agreements or undertakings or filings required by the

Credit Agreement, no further action by, or notice to, or filing with, any Person is required of it for such execution, delivery or performance; (iii) this Assignment and Acceptance has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Assignee, enforceable against the Assignee in accordance with the terms hereof, subject, as to enforcement, to bankruptcy, insolvency, moratorium, reorganization and other laws of general application relating to or affecting creditors' rights and to general equitable principles; and (iv) it is an Eligible Assignee.

9. Further Assurances.

The Assignor and the Assignee each hereby agree to execute and deliver such other instruments, and take such other action, as either party may reasonably request in connection with the transactions contemplated by this Assignment and Acceptance, including the delivery of any notices or other documents or instruments to the Borrowers or the Administrative Agent, which may be required in connection with the assignment and assumption contemplated hereby.

10. Miscellaneous.

(a) Any amendment or waiver of any provision of this Assignment and Acceptance shall be in writing and signed by the parties hereto. No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof and any waiver of any breach of the provisions of this Assignment and Acceptance shall be without prejudice to any rights with respect to any other or further breach thereof.

(b) All payments made hereunder shall be made without any set-off or counterclaim.

(c) Except as otherwise agreed in writing between the Assignor and Assignee, the Assignor and the Assignee shall each pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Assignment and Acceptance.

(d) This Assignment and Acceptance may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

(e) THIS ASSIGNMENT AND ACCEPTANCE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF GEORGIA. The Assignor and the Assignee each irrevocably submits to the non-exclusive jurisdiction of any State or Federal court sitting in The State of Georgia over any suit, action or proceeding

arising out of or relating to this Assignment and Acceptance and irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such State or Federal court. Each party to this Assignment and Acceptance hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding.

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(f) THE ASSIGNOR AND THE ASSIGNEE EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS ASSIGNMENT AND ACCEPTANCE, THE CREDIT AGREEMENT, ANY RELATED DOCUMENTS AND AGREEMENTS OR ANY COURSE OF CONDUCT, COURSE OF DEALING, OR STATEMENTS (WHETHER ORAL OR WRITTEN).

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment and Acceptance to be executed and delivered by their duly authorized officers as of the date first above written.

**THE CIT GROUP/BUSINESS
CREDIT, INC.**

By: /s/ Carmen Caporrino

Name: Carmen Caporrino

Title: Vice President

Address for Notices:

The CIT Group/Business Credit,
Inc.

11 West 42nd Street

New York, NY 10036

Attn: Evelyn Kusold

**WACHOVIA BANK,
NATIONAL ASSOCIATION**

By: /s/ Lynn E. Culbreath

Name: Lynn E. Culbreath

Title: Senior Vice President

Address for Notices:

Wachovia Bank, National
Association

100 South Ashley Dr., Suite 1000

Tampa, Florida 33602

Attn: Jack Nieman and Lynn E.
Culbreath

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SCHEDULE 1
to
ASSIGNMENT AND ACCEPTANCE
NOTICE OF ASSIGNMENT AND ACCEPTANCE

September 16, 2009

Bank of America, N.A.
300 Galleria Parkway, N.W.
Suite 800
Atlanta, Georgia 30339
Attn: Business Credit-Account Executive

Kforce Inc.
and the other Borrowers (as hereinafter defined)
1001 E. Palm Avenue, 4th floor
Tampa, Florida 33605
Attention: Ms. Judy Genshino-Kelly,
Assistant Treasurer

Re: Kforce Inc.

Ladies and Gentlemen:

We refer to the Second Amended and Restated Credit Agreement dated as of October 2, 2006 (as amended, amended and restated, modified, supplemented or renewed from time to time the “Credit Agreement”) among Kforce Inc. and certain of its Subsidiaries, as borrowers (the “Borrowers”), the affiliates of the Borrowers party thereto, the Lenders referred to therein and Bank of America, N.A., as Administrative Agent for the Lenders (the “Administrative Agent”). Terms defined in the Credit Agreement are used herein as therein defined.

1. We hereby give you notice of, and request the Administrative Agent’s consent to, the assignment by The CIT Group/Business Credit, Inc. (the “Assignor”) to Wachovia Bank, National Association (the “Assignee”) of 57.1428571% of the right, title and interest of the Assignor in and to the Credit Agreement (including the right, title and interest of the Assignor in and to the Commitments of the Assignor, all outstanding Loans made by the Assignor and the Assignor’s participation in the Letters of Credit pursuant to the Assignment and Acceptance Agreement attached hereto (the “Assignment and Acceptance”). We understand and agree that the Assignor’s Commitment, as of September 16, 2009 (prior to giving effect to the Assignment and Acceptance), is \$35,000,000, the aggregate amount of its outstanding Loans is \$4,015,000.00, and its participation in L/C Obligations is \$1,227,524.32.

2. The Assignee agrees that, upon receiving the consent of the Administrative Agent, the Assignee will be bound by the terms of the Credit Agreement as fully and to the same extent as if the Assignee were the Lender originally holding such interest in the Credit Agreement.

3. The following administrative details apply to the Assignee:

(A) Notice Address: Assignee Name:
Wachovia Bank, National Association
Assignee Address:
Wachovia Bank, National Association
100 South Ashley Dr., Suite 1000
Tampa, Florida 33602
Attn: Jack Nieman and Lynn E. Culbreath
Facsimile No.: (813) 225-4330

(B) Payment As on file with the Administrative Agent
Instructions:

4. You are entitled to rely upon the representations, warranties and covenants of each of the Assignor and Assignee contained in the Assignment and Acceptance.

5. Pursuant to Section 11.2 of the Credit Agreement, Assignee hereby requests, and instructs the Administrative Agent to request from the Borrowers, a replacement promissory note evidencing the Assignee's Commitment (after giving effect to the Assignment and Acceptance) in the amount set forth in Section 1(c) of the Assignment and Acceptance.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Notice of Assignment and Acceptance to be executed by their respective duly authorized officials, officers or agents as of the date first above mentioned.

Very truly yours,

**THE CIT GROUP/BUSINESS
CREDIT, INC.**

By: /s/ Carmen Caporrino

Title: Vice President

**WACHOVIA BANK,
NATIONAL ASSOCIATION**

By: /s/ Lynn E. Culbreath

Title: Senior Vice President

ACKNOWLEDGMENT AND
ASSIGNMENT CONSENTED TO:

Bank of America, N.A.,
as Administrative Agent

By: /s/ Andrew A. Doherty

Title: Senior Vice President

