

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM554679

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Court Order -Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
HPS Investment Partners, LLC		12/18/2019	Limited Liability Company: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	HPS Investment Partners, LLC		
<b>Street Address:</b>	40 West 57th Street		
<b>Internal Address:</b>	33rd Floor		
<b>City:</b>	New York		
<b>State/Country:</b>	NEW YORK		
<b>Postal Code:</b>	10019		
<b>Entity Type:</b>	Limited Liability Company: DELAWARE		
<b>PROPERTY NUMBERS Total: 6</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4765037	EMERGE ENERGY SERVICES	
<b>Registration Number:</b>	4765038		
<b>Registration Number:</b>	4616006	SSS	
<b>Registration Number:</b>	5287066	SANDMAXX BOTTOM LINE TECHNOLOGY SSS A SU	
<b>Registration Number:</b>	5317617	SANDGUARD	
<b>Registration Number:</b>	5201056	SANDMAXX	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2123108007		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	2123108000		
<b>Email:</b>	juan.arias@weil.com		
<b>Correspondent Name:</b>	Anna McEwen		
<b>Address Line 1:</b>	Weil, Gotshal & Manges LLP		
<b>Address Line 2:</b>	767 Fifth Avenue		
<b>Address Line 4:</b>	New York, NEW YORK 10153		
<b>ATTORNEY DOCKET NUMBER:</b>	Anna McEwen - 52644.0010		

CH \$165.00 4765037

<b>NAME OF SUBMITTER:</b>	Anna McEwen
<b>SIGNATURE:</b>	/Anna McEwen/
<b>DATE SIGNED:</b>	12/23/2019

**Total Attachments: 205**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
EMERGE ENERGY SERVICES LP, *et al.*,<sup>1</sup> : Case No. 19-11563 (KBO)  
: :  
Debtors. : Jointly Administered  
: :  
----- X Re: Docket No. 682

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
CONFIRMING THE SECOND AMENDED JOINT PLAN OF  
REORGANIZATION FOR EMERGE ENERGY SERVICES LP AND ITS  
AFFILIATE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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*The First Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code*, dated September 11, 2019 [Docket No. 362] (as amended, modified or supplemented, including by the Subsequent Plan Modifications (as defined below), the “**Plan**”)<sup>2</sup>, having been filed with the Bankruptcy Court (the “**Court**”) by the above-captioned debtors and debtors-in-possession (each a “**Debtor**” and, collectively, the “**Debtors**”); and the *Disclosure Statement for the First Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors under Chapter 11 of the Bankruptcy Code*, dated September 11, 2019 [Docket No. 363] (the “**Disclosure Statement**”) having been filed with this Court; and the Disclosure Statement and the Ballots having been approved, and transmitted to

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.



Holders of Claims, pursuant to that certain *Order (I) Approving the Disclosure Statement, (II) Establishing the Voting Record Date, Voting Deadline and Other Dates, (III) Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing Objections To The Plan, (IV) Approving the Manner and Forms of Notice and Other Related Documents, (V) Approving Procedures for Assumption of Contracts and Leases and Form and Manner of Assumption Notice, and (VI) Granting Related Relief*, entered by this Court on September 11, 2019 [Docket No. 361] (the “**Disclosure Statement Order**”); and the Plan Supplement having been filed on October 4, 2019 [Docket No. 436] (the “**Plan Supplement**”); and the second Plan Supplement having been filed on November 12, 2019 [Docket No. 632]; and the *Declaration of Michael Paque of Kurtzman Carson Consultants LLC Regarding the Solicitation and Tabulation of Ballots Cast on First Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors* having been filed with this Court on October 23, 2019 [Docket No. 542] (the “**Voting Report**”); and the Debtors having filed their *Memorandum of Law in Support of Confirmation of the First Amended Joint Plan Of Reorganization For Emerge Energy Services LP And Its Affiliate Debtors Under Chapter 11 Of The Bankruptcy Code*, on October 24, 2019 [Docket No. 546] (the “**Confirmation Memorandum**”); and the *Declaration of Bryan Gaston in Support of Confirmation of the First Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code*, having been filed with this Court prior to the Confirmation Hearing [Docket No. 559] (the “**Gaston Declaration**”); and the *Declaration of William Transier in Support of Confirmation of the First Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code*, having been filed with this Court prior to the Confirmation Hearing [Docket

No. 561] (the “Transier Declaration”); the *Declaration of Adam Dunayer in Support of Confirmation of the First Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code*, having been filed with this Court prior to the Confirmation Hearing [Docket No. 563] (the “Dunayer Declaration”); the *Supplemental Declaration of Bryan Gaston in Support of Confirmation of the Second Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* having been filed with this Court on November 5, 2019 [Docket No. 612] (the “Supplemental Gaston Declaration”); and the hearing to consider the Confirmation of the Plan having been held before this Court on October 30, 2019, November 4, 2019, November 6, 2019, November 7, 2019, and November 13, 2019 (the “Confirmation Hearing”) after due and sufficient notice was given to Holders of Claims against, and Equity Interests in, the Debtors and other parties-in-interest in accordance with the Disclosure Statement Order, title 11 of the United States Code (the “Bankruptcy Code”), the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the local bankruptcy rules of this Court (the “Local Rules”), in each case as established by the affidavits of service, mailing and/or publication filed with this Court prior to the Confirmation Hearing (collectively, the “Notice Affidavits”);<sup>3</sup> and this Court having issued that certain ruling and order on December 5, 2019 [Docket Nos. 671 and 672] (collectively, the “Confirmation Opinion”), which sustained the objections of certain parties to the third party release provisions of the Plan and denied confirmation of the Plan on that basis, and the Plan being subsequently modified by the *Modified Second Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the*

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<sup>3</sup> The Notice Affidavits are located at Docket Nos. 364, 380, 530, 572, 591, 619, and 641.

*Bankruptcy Code*, filed at Docket No. 682, on December 10, 2019, and attached hereto as Exhibit 1 (without Exhibits or Plan Schedules), and a redline showing the modifications to the Plan filed at Docket No. 683, on December 10, 2019, such redline being attached hereto as Exhibit 2 (such plan modifications, the “**Subsequent Plan Modifications**”), which resolved all objections that were sustained by this Court in the Confirmation Opinion; and upon all of the proceedings held before this Court and after full consideration of: (i) each of the objections to the Confirmation of the Plan filed with this Court and not subsequently resolved, withdrawn, settled or deemed moot (the “**Objections**”); (ii) the Plan Supplement; (iii) the Confirmation Memorandum; (iv) the Voting Report; (v) testimony proffered or presented at the Confirmation Hearing, (vi) the declarations and/or affidavits filed with this Court; and (vii) all other evidence proffered or adduced at, memoranda and objections filed in connection with and arguments of counsel made at, the Confirmation Hearing; and after due deliberation thereon; and good cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. Findings and Conclusions. The determinations, findings, judgments, decrees, orders and conclusions set forth in this order (the “**Confirmation Order**”), in the Confirmation Opinion and in the record of the Confirmation Hearing constitute this 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 any of the following findings of fact constitute a conclusion of law, it is adopted as such. To the extent any of the following conclusions of law constitutes a finding of fact, it is adopted as such.

B. Chapter 11 Petition. On July 15, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court

(the “Chapter 11 Cases”). By order of this Court, the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015 [Docket No. 54]. Since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases. On July 31, 2019, the United States Trustee (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”).

C. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2) and 1334(a)). This Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and continues to be proper during these Chapter 11 Cases. The Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2) upon which this Court may issue a final order, and confirmation of a plan by this Court is a constitutional exercise of the jurisdiction conferred by Congress on this Court. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

D. Solicitation of Votes. Votes for acceptance or rejection of the Plan were solicited in good faith and in compliance with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018 and all other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws and regulations. All procedures used to distribute Ballots to the applicable Holders of Claims and to tabulate the Ballots were fair and reasonable and conducted in accordance with the Disclosure Statement Order and the applicable

provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations.

E. Notice of Confirmation Hearing. The Debtors have given proper and sufficient notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d). Due, adequate and sufficient notice of the Confirmation Hearing, along with the deadlines for voting on or filing objections to the Plan, has been given to all known Holders of Claims and Equity Interests substantially in accordance with the procedures set forth in the Disclosure Statement Order. The Disclosure Statement, Plan, Ballots, and Disclosure Statement Order were transmitted and served in compliance with the Disclosure Statement Order and the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations. Such transmittal and service were adequate and sufficient under the circumstances, and no further notice is or shall be required.

F. Subsequent Plan Modifications. Adequate and sufficient notice of the Subsequent Plan Modifications has been given and no other or further notice is or shall be required and such Subsequent Plan Modifications are approved in full.

G. Burden of Proof. The Debtors, as the proponents of the Plan, have met their burden of proving the satisfaction of the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence. Further, each witness who testified on behalf of the Debtors at or in connection with the Confirmation Hearing was credible, reliable and qualified to testify as to the topics addressed in his or her testimony.

H. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section



1129(a)(1) of the Bankruptcy Code, including, without limitation, sections 1122 and 1123 of the Bankruptcy Code.

(1) Proper Classification (11 U.S.C. §§ 1122 & 1123(a)(1)). In addition to Administrative Claims, DIP Credit Agreement Claims, and Priority Tax Claims, which need not be classified, the Plan designates ten Classes of Claims and Equity Interests, based on the differences in the legal nature or priority of such Claims and Equity Interests. The Claims and Equity Interests placed in each Class are substantially similar to the other Claims or Equity Interests, as the case may be, in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes are proper and the creation of such Classes does not unfairly discriminate between or among holders of Claims or Equity Interests. Thus, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(2) Specify Unimpaired Classes (11 U.S.C. § 1123(a)(2)). The Plan specifies that Other Priority Claims (Class 1), Other Secured Claims (Class 2), Secured Tax Claims (Class 3), Prepetition Credit Agreement Claims (Class 4), Intercompany Claims (Class 7) and Old Affiliate Equity Interests (Class 10) are Unimpaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code (collectively, the “Unimpaired Classes”).

(3) Specify Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan designates Prepetition Notes Claims (Class 5), General Unsecured Claims (Class 6), Old Emerge GP Equity Interests (Class 8), and Old Emerge LP Equity Interests (Class 9) as Impaired and specifies the treatment of the Claims and the Equity Interests in those Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

(4) No Discrimination Within Classes (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

(5) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan and the various documents and agreements set forth in the Plan Supplement provide adequate and proper means for implementation of the Plan, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.

(6) Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)). The Plan provides that the certificate of incorporation of each of the Reorganized Debtors shall prohibit the issuance of non-voting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code, thereby satisfying section 1123(a)(6) of the Bankruptcy Code.

(7) Selection of Directors and Officers (11 U.S.C. §§ 1123(a)(7) and 1129(a)(5)). The members of the boards of directors of the New General Partner and/or Reorganized Debtors were identified by the Debtors at or prior to the Confirmation Hearing. Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtors disclosed, at or prior to the Confirmation Hearing, the identity and affiliations of those Persons proposed to serve on the initial boards of directors or as officers of each of the New General Partner and/or Reorganized Debtors, and, to the extent such Person is an insider other than by virtue of being a director or an officer, the nature of any compensation for such Person. The directors and officers of the New General Partner and/or Reorganized Debtors were selected in a manner consistent with the interests of creditors and with public policy, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.

(8) Additional Plan Provisions (11 U.S.C. § 1123(b)). The Plan contains certain provisions that may be construed as permissive, but are not required for Confirmation under the Bankruptcy Code. These discretionary provisions comply with section 1123(b) of the Bankruptcy Code, are appropriate, in the best interests of the Debtors and their Estates and are not inconsistent with the applicable provisions of the Bankruptcy Code, including, without limitation, provisions for (i) the assumption or rejection of executory contracts and unexpired leases; (ii) the Reorganized Debtors' retention of certain Litigation Claims that the Debtors had or had power to assert immediately prior to the Effective Date, whether directly or derivatively; and (iii) releases and exculpation of various Persons and entities.

(9) Identification of Plan (Bankruptcy Rule 3016(a)). The Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Clerk of this Court satisfied Bankruptcy Rule 3016(a).

I. The Debtors' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically:

(1) The Debtors are proper debtors under section 109 of the Bankruptcy Code and proper proponents of the Plan under section 1121(a) of the Bankruptcy Code.

(2) The Debtors have complied with the applicable provisions of the Bankruptcy Code, including, without limitation, sections 1125 and 1126, except as otherwise provided or permitted by orders of this Court.

(3) The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order in transmitting the Plan, the Disclosure Statement, the Ballots and related documents and notices and in soliciting and tabulating votes on the Plan.

J. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, this Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself (and the Plan Supplement) and the formulation and Confirmation of the Plan. The good faith of each of the Debtors, the Prepetition Credit Agreement Agent, the Prepetition Credit Agreement Lenders, the Prepetition Noteholders, and the Prepetition Notes Agent (and each of their respective Related Persons) is evident from the facts and records of the Chapter 11 Cases, the Disclosure Statement and the hearing thereon, the record of the Confirmation Hearing and other proceedings held in the Chapter 11 Cases. The Debtors, the Prepetition Credit Agreement Agent, the Prepetition Credit Agreement Lenders, the Prepetition Noteholders, and the Prepetition Notes Agent (and each of their respective Related Persons) have negotiated the Plan (and the Plan Supplement) and participated in the Plan (and Plan Supplement) formulation process at arm's length and in good faith. The Plan itself and the process leading to its formulation provide independent evidence of good faith of the Debtors, the Prepetition Credit Agreement Agent, the Prepetition Credit Agreement Lenders, the Prepetition Noteholders, and the Prepetition Notes Agent (and each of their respective Related Persons) that negotiated the Plan, served the public interest, and assured fair treatment of holders of Claims and Equity Interests. Consistent with the overriding purpose of the Bankruptcy Code, the Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate and honest purpose of reorganizing the Debtors and maximizing the value of the Debtors' assets.

K. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payment made or to be made by the Debtors or Reorganized Debtors, as applicable, for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases requiring approval, has been approved by, or is subject to the approval of, this Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

L. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the Persons proposed to serve as the initial directors and officers of the New General Partner and/or Reorganized Debtors after Confirmation of the Plan have been fully disclosed to the extent such information is available. The appointment to, or continuance in, such offices of such persons is consistent with the interests of Holders of Claims against and Equity Interests in the Debtors and with public policy. To the extent available, the identity of any insider that will be employed or retained by the New General Partner and/or Reorganized Debtors and the nature of such insider's compensation have also been fully disclosed.

M. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Debtors are not subject to any governmental regulatory commission with jurisdiction, after Confirmation of the Plan, over the rates of the Debtors. Thus, section 1129(a)(6) of the Bankruptcy Code is not applicable in the Chapter 11 Cases.

N. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis set forth in Exhibit D to the Disclosure Statement, the modified liquidation analysis set forth in Exhibit B to the Supplemental

Gaston Declaration, and other evidence proffered or adduced at the Confirmation Hearing (a) are reasonable, persuasive, and credible; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that each Holder of a Claim or Equity Interest in an Impaired Class either (i) has accepted the Plan or (ii) will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that it would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date.

O. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired under a plan. The Holders of Other Priority Claims (Class 1), Other Secured Claims (Class 2), Secured Tax Claims (Class 3), Prepetition Credit Agreement Claims (Class 4), Intercompany Claims (Class 7) and Old Affiliate Equity Interests (Class 10) are Unimpaired and, thus, under section 1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted the Plan. The Holders of Prepetition Notes Claims (Class 5) have voted to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code. The Holders of General Unsecured Claims (Class 6) have voted to reject the Plan in accordance with section 1126 of the Bankruptcy Code. The Holders of Old Emerge GP Equity Interests (Class 8) and Old Emerge LP Equity Interests (Class 9) are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Although section 1129(a)(8) of the Bankruptcy Code is not satisfied with respect to rejecting Classes 6, 8, and 9, the Plan may nevertheless be confirmed because the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to such rejecting Classes. Article IV.E of the Plan contemplates the non-consensual Confirmation of the Plan.

P. Treatment of Administrative Claims, DIP Credit Agreement Claims, and Priority Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Allowed Administrative Claims under Article II.A of the Plan and the treatment of DIP Credit Agreement Claims under Article II.B of the Plan satisfies the requirements of section 1129(a)(9)(A) and (B) of the Bankruptcy Code, and the treatment of Allowed Priority Tax Claims under Article II.C of the Plan satisfies the requirements of section 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, thereby satisfying section 1129(a)(9) of the Bankruptcy Code.

Q. Acceptance by At Least One Impaired Class of Claims (11 U.S.C. § 1129(a)(10)). The Prepetition Notes Claims (Class 5) is an Impaired Class of Claims that has voted to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code, determined without including any acceptance of the Plan by “insiders,” thereby satisfying section 1129(a)(10) of the Bankruptcy Code.

R. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence proffered or adduced at or prior to the Confirmation Hearing, including the financial projections set forth in Exhibit C to the Disclosure Statement, the Confirmation Memorandum, the Dunayer Declaration, and the Voting Report, (i) is reasonable, persuasive, and credible, (ii) utilizes reasonable and appropriate methodologies and assumptions, (iii) has not been controverted by other evidence, and (iv) establishes that the Plan is feasible and that there is a reasonable prospect of the Reorganized Debtors being able to meet their financial obligations under the Plan with respect to operating their businesses in the ordinary course, and that Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtors or any successor to the Reorganized Debtors, thereby satisfying the requirements of section 1129(a)(11)

of the Bankruptcy Code.

S. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under 28 U.S.C. § 1930 have been paid or will be paid pursuant to Article XII.B of the Plan, thereby satisfying section 1129(a)(12) of the Bankruptcy Code.

T. No Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtors do not have obligations to pay retiree benefits and, therefore, section 1129(a)(13) of the Bankruptcy Code, to the extent such section is applicable to the Debtors, is satisfied.

U. Non-Applicability of Certain Sections (11 U.S.C. §§ 1129(a)(14), (15), and (16)). The Debtors do not owe any domestic support obligations, are not individuals, and are not nonprofit corporations, and thus sections 1129(a)(14), 1129(a)(15) and 1129(a)(16) of the Bankruptcy Code do not apply to the Chapter 11 Cases.

V. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). The Holders of General Unsecured Claims (Class 6) have voted to reject the Plan and the Holders of Old Emerge GP Equity Interests (Class 8) and Old Emerge LP Equity Interests (Class 9) are deemed to have rejected the Plan (collectively, the “Rejecting Classes”). The evidence proffered or adduced at the Confirmation Hearing (i) is reasonable, persuasive, and credible, (ii) utilizes reasonable and appropriate methodologies and assumptions, (iii) has not been controverted by other evidence, and (iv) establishes that the Plan does not discriminate unfairly, and is fair and equitable, with respect to the Rejecting Classes, as required by sections 1129(b)(1) and (b)(2) of the Bankruptcy Code, because no Holder of any interest that is junior to the Claims and Equity Interests represented by the respective Rejecting Class will receive or retain any property under the Plan on account of such junior interest, and no Holder of a Claim in a Class senior to the

Rejecting Classes is receiving more than 100% recovery on account of its Claim. Thus, the Plan may be confirmed notwithstanding the rejection of the Plan by the Rejecting Classes.

W. Only One Plan (11 U.S.C. § 1129(c)). Other than the Plan (including previous versions thereof), no other plan has been filed for the Debtors in the Chapter 11 Cases, and the Plan thereby satisfies the requirements of section 1129(c) of the Bankruptcy Code.

X. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933 (15 U.S.C. § 77e).

Y. Small Business Case (11 U.S.C. § 1129(e)). None of these Chapter 11 Cases is a “small business case,” as that term is defined in the Bankruptcy Code, and, accordingly, section 1129(e) of the Bankruptcy Code is inapplicable.

Z. Good Faith Solicitation (11 U.S.C. § 1125(e)). The evidence proffered or adduced at the Confirmation Hearing (i) is reasonable, persuasive and credible, (ii) utilizes reasonable and appropriate methodologies and assumptions, (iii) has not been controverted by other evidence, (iv) establishes that the Debtors, the Reorganized Debtors and each of their respective Related Persons have, as applicable, (a) solicited acceptances or rejections of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including without limitation, sections 1125 and 1126 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable non-bankruptcy law, rule or regulation governing the adequacy of disclosure in connection with such solicitation and (b) participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code and any applicable non-bankruptcy law, rule or regulation in the offer and issuance of any securities under the Plan, and (v) establishes that the



Debtors, the Reorganized Debtors and each of their respective Related Persons will, as applicable, continue to act in good faith if they consummate the Plan and the agreements, settlements, transactions and transfers contemplated thereby, and take all other actions authorized by this Confirmation Order. Accordingly, each of the foregoing Persons is entitled to and, pursuant to paragraph 39 of this Confirmation Order, granted the full protections afforded by section 1125(e) of the Bankruptcy Code.

AA. Satisfaction of Confirmation Requirements. Based on the foregoing, all other pleadings, documents, exhibits, statements, declarations, and affidavits filed in connection with Confirmation of the Plan and all evidence and arguments made, proffered or adduced at the Confirmation Hearing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

BB. Implementation of Other Necessary Documents and Agreements. All documents and agreements necessary or advisable to implement or carry out the Plan, the Restructuring Transactions and the other transactions contemplated by the Restructuring Documents (including the Plan Supplement) are essential elements of the Plan and entry into and consummation of the transactions contemplated by each such document and agreement is in the best interests of the Debtors, their Estates and holders of Claims and Equity Interests, and shall be valid, binding and enforceable in accordance with their respective terms and conditions. The Debtors have exercised reasonable business judgment in determining which documents and agreements to enter into and have provided sufficient and adequate notice of such documents and agreements. The terms and conditions of such documents and agreements have been negotiated in good faith, at arm's length, are fair and reasonable and are reaffirmed and approved. The Debtors and the Reorganized

Debtors, as applicable, are authorized, without any further notice to or action, order or approval of this Court, to finalize, execute and deliver all agreements, documents, instruments and certificates relating thereto and perform their obligations thereunder in accordance with the Plan.

CC. Retention of Jurisdiction. Upon the Effective Date, this Court shall retain jurisdiction over the matters arising in, and under, and related to, the Chapter 11 Cases, as set forth in Article XI of the Plan and as contemplated herein.

DD. Classification Takes Into Account Subordination Rights. The classification and manner of satisfying all Claims and Equity Interests under the Plan takes into consideration all contractual, legal and equitable rights, including subordination and turnover rights, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise, that a Holder of a Claim or Equity Interest may have against other Holders of a Claim or Equity Interest with respect to any distribution made pursuant to the Plan.

EE. Additional Findings Regarding Releases. The releases provided by the Debtors pursuant to Article X.B.1 of the Plan (i) represent a sound exercise of the Debtors' business judgment; (ii) were negotiated in good faith and at arms' length; and (iii) formed an essential part of the agreement among the Persons participating in the negotiation and formulation of the Plan. The third-party releases provided pursuant to Article X.B.2 of the Plan, as modified by the Subsequent Plan Modifications, are being given only by those parties who have consented to provide such releases.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Confirmation of the Plan. All requirements for Confirmation of the Plan have been

satisfied. The Plan is approved and confirmed in its entirety under section 1129 of the Bankruptcy Code. Each of the terms and conditions of the Plan and the exhibits and schedules thereto, including, without limitation, the Plan Supplement, are an integral part of the Plan. The Plan complies with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The Plan, as modified by the Subsequent Plan Modifications, is deemed accepted by all creditors who have previously accepted the Plan and such acceptances cannot be withdrawn, and the Debtors are not required to prepare or distribute a new disclosure statement with respect to the Subsequent Plan Modifications.

2. Objections. All Objections to Confirmation of the Plan that have not been resolved, withdrawn, waived, or settled and all reservations of rights included therein, are overruled on the merits and for the reasons set forth on the record at the Confirmation Hearing, except as expressly provided in the Confirmation Opinion, and all withdrawn objections are deemed withdrawn with prejudice. Notwithstanding the foregoing, the rights and objections of any party that properly Filed and served an objection to its applicable Cure Claim Amount (or that is otherwise identified on Exhibit C to the Debtors' confirmation brief) are reserved with respect to such Cure Claim Amount, and such Cure Claim Amount dispute shall be treated in accordance with paragraph 22(b) of this Confirmation Order.

3. Provisions of Plan Nonseverable and Mutually Dependent. The provisions of the Plan are (i) non-severable and mutually dependent; (ii) valid and enforceable pursuant to their terms; and (iii) integral to the Plan, and may not be deleted or modified except in accordance with Article XII.D of the Plan.

4. Plan Classification Controlling. The classification of Claims and Equity Interests

for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by the Debtors' creditors in connection with voting on the Plan (i) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (ii) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims or Equity Interests under the Plan for distribution purposes, (iii) may not be relied upon by any creditor or interest holder as representing the actual classification of such Claims or Equity Interests under the Plan for distribution or any other purpose (other than for evidencing the vote of such party on the Plan), and (iv) shall not be binding on the Debtors, the Reorganized Debtors or holders of Claims or Equity Interests for purposes other than voting on the Plan.

5. Distributions are Fair. The distribution of Cash and applicable Plan Securities and Documents to the Holders of Allowed Claims are fair and for reasonably equivalent value.

6. Binding Effect. Pursuant to section 1141 of the Bankruptcy Code and the other applicable provisions of the Bankruptcy Code, effective as of the Effective Date and without limiting or altering Article X.H of the Plan, the provisions of the Plan (including the exhibits and schedules to, and all documents and agreements executed pursuant to or in connection with, the Plan) and this Confirmation Order shall be binding on (i) the Debtors and the Reorganized Debtors, (ii) all Holders of Claims against and Equity Interests in the Debtors, whether or not Impaired under the Plan and whether or not such Holders have accepted or rejected the Plan or affirmatively voted to reject the Plan, (iii) each Person or Entity receiving, retaining or otherwise acquiring property under the Plan, and (iv) any non-Debtor party to an Executory Contract or Unexpired Lease with the Debtors.

7. Corporate Existence.

(a) Subject to the Restructuring Transactions permitted by paragraph 15 of this Confirmation Order, after the Effective Date, the Reorganized Debtors (other than Emerge GP) shall continue to exist as separate legal entities in accordance with the applicable law in the respective jurisdiction in which they are incorporated or formed and pursuant to their respective certificates or articles of incorporation and by-laws, or other applicable organizational documents, in effect immediately prior to the Effective Date, except to the extent such certificates or articles of incorporation and by-laws, or other applicable organizational documents, are amended, restated or otherwise modified under the Plan, and to the extent that such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial or federal law). Notwithstanding anything to the contrary herein, the Claims against a particular Debtor or Reorganized Debtor shall remain the obligations solely of such Debtor or Reorganized Debtor and shall not become obligations of any other Debtor or Reorganized Debtor solely by virtue of the Plan or the Chapter 11 Cases.

(b) As soon as reasonably practicable after the Effective Date, Emerge GP shall wind-down and dissolve in accordance with applicable law; provided that, the Debtors shall establish a wind-down reserve to effectuate, and pay the fees, costs, and expenses incurred in connection with, such wind-down and dissolution in an aggregate amount not to exceed \$125,000 (the "Wind-Down Reserve") without the consent of the Majority Noteholders in their sole discretion.

(c) On the Effective Date, Emerge GP shall voluntarily withdraw (and, for the

avoidance of doubt, shall be deemed to have withdrawn) as the general partner of Reorganized EmERGE LP and shall in its place elect (and, for the avoidance of doubt, shall be deemed to have elected) the New General Partner as the general partner of Reorganized EmERGE LP.

8. Vesting of Assets in the Reorganized Debtors Free and Clear of Liens and Claims.

Except as otherwise expressly provided in the Plan, this Confirmation Order, or any Restructuring Document, pursuant to sections 1123(a)(5), 1123(b)(3), 1141(b) and (c) and other applicable provisions of the Bankruptcy Code, on and after the Effective Date, all property and assets of the Estates of the Debtors, including all claims, rights, and Litigation Claims of the Debtors, and any other assets or property acquired by the Debtors or the Reorganized Debtors during the Chapter 11 Cases or under or in connection with the Plan (other than the Carve Out Reserve and Rejected Contracts), shall vest in the Reorganized Debtors free and clear of all Claims, Liens, charges, and other encumbrances, subject to the Restructuring Transactions and Liens which survive the occurrence of the Effective Date as described in Article III of the Plan (including, without limitation, each Prepetition Credit Agreement Lien and other Liens that secure the Exit Facility Loans. On and after the Effective Date, the Reorganized Debtors may (i) operate their respective businesses, (ii) use, acquire, and dispose of their respective property and (iii) compromise or settle any Claims, in each case without notice to, supervision of or approval by this Court and free and clear of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules, other than restrictions expressly imposed by the Plan or this Confirmation Order.

9. Exit Facility Loan Documents.

(a) On the Effective Date, the Debtors and the Reorganized Debtors, as applicable, shall be authorized to execute and deliver, and to consummate the transactions

contemplated by, the Exit Facility Loan Documents, in each case in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity (other than as expressly required by the Exit Facility Loan Documents). On the Effective Date, the Exit Facility Loan Documents shall constitute legal, valid, binding and authorized indebtedness and obligations of the Reorganized Debtors (other than Emerge GP), enforceable in accordance with their respective terms and such indebtedness and obligations shall not be, and shall not be deemed to be, enjoined or subject to discharge, impairment, release or avoidance under the Plan, this Confirmation Order or on account of the Confirmation or Consummation of the Plan.

(b) On the Effective Date, the Prepetition Credit Agreement Liens shall secure the Exit Facility Loans pursuant to the terms of this Confirmation Order and the Plan and any and all additional liens and security interests to be granted in accordance with the Exit Facility Loan Documents (a) shall be legal, binding, and enforceable liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Loan Documents, (b) shall be deemed automatically attached and perfected on the Effective Date, subject only to such liens and security interests as may be permitted under the Exit Facility Loan Documents, (c) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law, and (d) shall, for the avoidance of doubt, secure the Exit Facility Loans in an

amount up to the Maximum Commitment Amount (as defined in Exhibit 2 to the Plan Supplement).

(c) The Reorganized Debtors and the entities granted such liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish, attach, and perfect such liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and this Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of this Confirmation Order and the occurrence of the Effective Date, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such liens and security interests to third parties. To the extent that any Holder of a Secured Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such Holder, has filed or recorded publicly any liens and/or security interests to secure such Holder's Secured Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps reasonably requested by the Debtors, the Reorganized Debtors, or the Exit Facility Agent that are necessary to release and/or extinguish such liens and security interests (or, in the case of the Prepetition Credit Agreement Liens, to assign or transfer such liens and security interests to the Exit Facility Agent on behalf of the Exit Facility Lenders).

10. No Discharge or Release of Prepetition Credit Agreement Claims or Liens. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, (i) pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors and Reorganized Debtors are deemed to



have waived discharge or release of the Prepetition Credit Agreement Claims which shall instead secure the Exit Facility Loans and (ii) all property and assets of the Estates of the Debtors, including, without limitation, all claims, rights and Litigation Claims of the Debtors and any property and assets acquired by the Debtors or the Reorganized Debtors during the Chapter 11 Cases or under or in connection with the Plan, shall (x) remain encumbered by and subject to the Prepetition Credit Agreement Liens (including as to priority), and (y) shall become encumbered by other Liens granted under the Exit Facility Loan Documents, which shall, in each case and as of the Effective Date, secure the Exit Facility Loans and all other indebtedness and obligations of the Reorganized Debtors under and to the extent set forth in the Exit Facility Loan Documents, and such Liens (i) shall be and hereby are ratified, reaffirmed as valid, enforceable, and not avoidable, and deemed granted by the Reorganized Debtors, and (ii) shall not be, and shall not be deemed to be, impaired, discharged or released by the Plan, this Confirmation Order or on account of the Confirmation or Consummation of the Plan.

11. New GP/LP Equity Interests. On the Effective Date, subject to the terms and conditions of the Restructuring Transactions, the New General Partner and Reorganized Emerge LP shall issue the New GP/LP Equity Interests, as applicable, pursuant to the Plan and/or the Amended/New Organizational Documents, as applicable. Except as otherwise expressly provided in the Restructuring Documents, the New General Partner and Reorganized Emerge LP shall not be obligated to register the New GP/LP Equity Interests under the Securities Act or to list such Equity Interests for public trading on any securities exchange. Distributions of the New GP/LP Equity Interests may be made by delivery or book-entry transfer thereof by the applicable Distribution Agent in accordance with the Plan and the Amended/New Organizational Documents.

Upon the Effective Date, after giving effect to the transactions contemplated by the Plan and this Confirmation Order, the authorized capital stock or other equity securities of the New General Partner and Reorganized Emerge LP shall be that number of interests or units of New GP/LP Equity Interests as may be designated in the Amended/New Organizational Documents. On and as of the Effective Date, all of the Holders of New GP/LP Equity Interests shall be bound by the terms and conditions of the Amended/New Organizational Documents, without the need for execution by such Holder. The Amended/New Organizational Documents shall be binding on all Persons receiving, and all Holders of, the New GP/LP Equity Interests (and their respective successors and assigns), whether such interest is received or to be received on or after the Effective Date.

12. New Management Incentive Plan. The New General Partner may adopt and implement the New Management Incentive Plan, whose terms and conditions, including recipients, individual awards and vesting periods, shall be determined by the New Board. For the avoidance of doubt, nothing in this Order or the Plan approves the New Management Incentive Plan.

13. Dissolution of Committee. On and as of the Effective Date and notwithstanding any term or provision to the contrary in this Confirmation Order, the Committee shall dissolve automatically and its members shall be discharged from all rights, duties and responsibilities arising from, or related to, the Chapter 11 Cases. The Reorganized Debtors shall not be responsible for paying any fees, costs, or expenses incurred by the members, professionals, or advisors to any Committee after the Effective Date, provided that the Committee's professionals may be reimbursed for allowed fees incurred after the Effective Date in connection with the preparation of final fee applications; provided, however, for the avoidance of doubt, the Reorganized Debtors

shall not be responsible for paying any fees, costs, or expenses incurred after the Effective Date in connection with the prosecution of such Committee professionals' fee applications.

14. Release of Liens and Claims. To the fullest extent provided under section 1141(c) and other applicable provisions of the Bankruptcy Code, except as otherwise provided in this Confirmation Order, the Plan (including, without limitation, Articles III, V.F and V.G thereof) or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article VII of the Plan, all Liens, Claims, mortgages, deeds of trust, or other security interests against the assets or property of the Debtors or the Estates shall be fully released, canceled, terminated, extinguished and discharged, in each case without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. This release, termination, extinguishment and discharge is necessary to implement the Plan and is appropriate, fair, equitable and reasonable and in the best interest of the Debtors and their Estates. The filing of this Confirmation Order with any federal, state, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens, Claims and other interests to the extent provided in the immediately preceding sentence. Any Person or Entity holding such Liens, Claims or interests shall, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Reorganized Debtors such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtors.

15. Restructuring Transactions. On the Effective Date, the applicable Debtors or Reorganized Debtors are authorized to consummate the Restructuring Transactions described in

Article V.B of the Plan, subject to the terms and conditions set forth therein, in this Confirmation Order and in the Restructuring Documents.

16. Distributions Exempt from Securities Laws.

(a) On and after the Effective Date, the Debtors and the Reorganized Debtors, as applicable, are authorized to and shall provide or issue, as applicable, the Plan Securities and Documents, in each case in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, and without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.

(b) The offer, distribution and issuance, as applicable, of the Plan Securities and Documents under the Plan shall be exempt from registration and prospectus delivery requirements under applicable securities laws (including Section 5 of the Securities Act or any similar state or local law requiring the registration and/or the delivery of a prospectus for offer or sale of a security or registration or licensing of an issuer of a security) pursuant to section 1145(a) of the Bankruptcy Code and/or other applicable exemptions. An offering of Plan Securities provided in reliance on the exemption from registration under the Securities Act pursuant to section 1145(a) of the Bankruptcy Code may be sold without registration to the extent permitted under section 1145 of the Bankruptcy Code and is deemed to be a public offering, and such Plan Securities may be resold without registration to the extent permitted under section 1145 of the Bankruptcy Code. All New GP/LP Equity Interests issued to Holders of Allowed Claims on account of their respective Claims may be issued without registration under the Securities Act or any similar federal, state, or local law in reliance on section 1145(a) of the Bankruptcy Code.

17. Discharge of the Debtors.

(a) To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan (including, without limitation, Article V.E and V.F of the Plan) or this Confirmation Order, effective as of the Effective Date, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, discharge, and release of, all Claims, Equity Interests and Causes of Action of any kind or nature whatsoever against the Debtors or any of their respective assets or properties, including any interest accrued on such Claims or Equity Interests from and after the Petition Date, and regardless of whether any property shall have been abandoned by order of the Bankruptcy Court, distributed or retained pursuant to the Plan on account of such Claims, Equity Interests or Causes of Action.

(b) Except as otherwise expressly provided by the Plan (including, without limitation, Article V.E and V.F of the Plan) or this Confirmation Order, upon the Effective Date, the Debtors and their Estates shall be deemed discharged and released under and to the fullest extent provided under sections 524 and 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. Such discharge shall void any judgment obtained against the Debtors or the Reorganized Debtors at any time, to the extent that such judgment relates to a discharged Claim.

(c) Except as otherwise expressly provided by the Plan (including, without limitation, Article V.E and V.F of the Plan) or this Confirmation Order, upon the Effective Date:

(i) the rights afforded by the Plan and the treatment of all Claims and Equity Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their respective assets, property, or Estates; (ii) all Claims and Equity Interests shall be satisfied, discharged, and released in full, and each of the Debtor's liability with respect thereto shall be extinguished completely without further notice or action; and (iii) all Entities shall be precluded from asserting against the Debtors, the Estates, the Reorganized Debtors, each of their respective successors and assigns, and each of their respective assets and properties, any such Claims or Equity Interests, whether based upon any documents, instruments or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date or otherwise.

18. Releases and Exculpation. The releases and exculpation provisions contained in the Plan, including, but not limited to, those provided in Article X of the Plan, are hereby authorized, approved and binding on all Persons and Entities described therein.

19. Injunctions. The injunctions contained in the Plan, including, but not limited to, those provided in Article X.G of the Plan, are hereby authorized, approved and binding on all Persons and Entities described therein. Except as otherwise expressly provided in the Plan or this Confirmation Order, from and after the Effective Date, all Persons and Entities are, to the fullest extent provided under section 524 and other applicable provisions of the Bankruptcy Code, permanently enjoined from (i) commencing or continuing, in any manner or in any place, any suit, action or other proceeding, (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order, (iii) creating, perfecting, or enforcing any Lien or encumbrance,

(iv) asserting a setoff (except to the extent such setoff was exercised prior to the Petition Date) (or right of subrogation of any kind, or (v) commencing or continuing in any manner any action or other proceeding of any kind, in each case on account of or with respect to any Claim, demand, liability, obligation, debt, right, Cause of Action, Equity Interest, or remedy released or to be released, exculpated or to be exculpated, settled or to be settled or discharged or to be discharged pursuant to the Plan or this Confirmation Order against any Person or Entity so released, discharged, or exculpated (or the property or estate of any Person or Entity so released, discharged, or exculpated). All injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

20. D&O Insurance & Indemnity. The terms and provisions of the Plan set forth in Article VI.E (D&O Liability Insurance Policies) and Article VI.F (Indemnification Provisions) are hereby approved in full. The Debtors are further authorized to take such actions, and to execute and deliver such documents, as may be reasonably necessary or appropriate to implement, maintain, cause the inception or binding of, satisfy any terms or conditions of, or otherwise secure for the insureds the benefits of any “tail”, “runoff” or extended reporting period coverage in relation to any such D&O Liability Insurance Policies, without further notice to or order of this Court or approval or consent of any Person or Entity.

21. Contracts and Leases Generally.

(a) The Debtors have exercised reasonable business judgment in determining whether to assume or reject each of the Executory Contracts and Unexpired Leases as set forth within the Plan, the Plan Supplement, this Confirmation Order or otherwise. All Executory

Contracts and Unexpired Leases of the Debtors are hereby rejected by the Debtors in accordance with, and subject to, the provisions and requirements of, sections 365(a) and 1123(b)(2) of the Bankruptcy Code, with such rejection effective as of, and subject to the occurrence of, the Effective Date, except for those Executory Contracts and Unexpired Leases that (i) have been assumed or rejected by the Debtors by prior order of the Bankruptcy Court; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) are the subject of a motion to assume filed by the Debtors pending on the Effective Date; (iv) are identified by the Debtors (with the consent of the Majority Noteholders) for assumption in the Plan Supplement, which may be amended by the Debtors (with the consent of the Majority Noteholders) to add or remove Executory Contracts and Unexpired Leases prior to the Effective Date; or (v) are assumed by the Debtors pursuant to the terms of the Plan (subject to such exclusions, collectively, the “Rejected Contracts”).

(b) The Debtors have provided sufficient notice to each non-Debtor counter-party to the Executory Contracts and Unexpired Leases of the assumptions or rejections described in the Plan or the Plan Supplement. The Debtors have also provided adequate assurances of future performance, as that term is used in section 365 of the Bankruptcy Code, with respect to the assumption of any Executory Contract or Unexpired Lease that is to be assumed pursuant to the Plan.

(c) To the extent any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned (as applicable) pursuant to the Plan (including, without limitation, any “change of control” provision) prohibits, restricts or conditions, or purports to prohibit, restrict or condition, or is modified, breached or terminated, or deemed modified,



breached or terminated by, (i) the commencement of these Chapter 11 Cases or the insolvency or financial condition of any Debtor at any time before the closing of its respective Chapter 11 Case, (ii) any Debtor's or any Reorganized Debtor's assumption or assumption and assignment (as applicable) of such Executory Contract or Unexpired Lease, or (iii) the Confirmation or Consummation of the Plan, then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-debtor party thereto to modify or terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights or remedies with respect thereto, and any required consent under any such contract or lease shall be deemed satisfied by the Confirmation of the Plan. The inclusion or exclusion of a contract or lease on any schedule or exhibit shall not constitute an admission by any Debtor that such contract or lease is an Executory Contract or Unexpired Lease or that any Debtor has any liability thereunder.

(d) Each Executory Contract and Unexpired Lease assumed and/or assigned pursuant to the Plan shall revert in and be fully enforceable by the applicable Reorganized Debtor or the applicable assignee in accordance with its terms and conditions, except as modified by the provisions of the Plan, any order of this Court approving its assumption and/or assignment, or applicable law.

22. Approval of Assumption of Assumed Contracts.

(a) Court Approval. The Debtors' assumption of the Executory Contracts and Unexpired Leases that (i) are identified by the Debtors (with the consent of the Majority Noteholders) for assumption in the Plan Supplement, which may be amended by the Debtors (with the consent of the Majority Noteholders) to add or remove Executory Contracts and Unexpired

Leases prior to the Effective Date, provided that notice of the same is provided to the counterparties, or (ii) are assumed by the Debtors pursuant to the terms of the Plan (collectively, the “Assumed Contracts”) is hereby approved pursuant to sections 365(a) and 1123 of the Bankruptcy Code. The Assumed Contracts shall remain in full force and effect in accordance with their respective terms and conditions for the benefit of the Reorganized Debtors, notwithstanding any provision in such Assumed Contract (including, without limitation, those described in sections 365(b), (c), (e) and (f) of the Bankruptcy Code) or under applicable non-bankruptcy law that purports to (i) terminate, modify, or restrict, or permit the applicable non-Debtor party to terminate, modify or restrict, such contract or lease or the Debtors’ rights, benefits and privileges thereunder; or (ii) create or impose, or permit the applicable non-Debtor party to create or impose, any additional duties, obligations, penalties, default rates of interest or payments (monetary and non-monetary) upon any Debtor or Reorganized Debtor, in each case as a result of or in connection with (a) the filing of a petition for relief under Chapter 11 of the Bankruptcy Code by the Debtors; (b) the Debtors’ insolvency or financial condition at any time before the Chapter 11 Cases are closed; or (c) the Confirmation or Consummation of the Plan.

(b) Cure Disputes. Any counterparty to an Assumed Contract that failed to object timely to the proposed assumption, proposed assumption and assignment, or cure amount is hereby deemed to have consented to such matters and is deemed to have forever released and waived any objection to the proposed assumption, proposed assumption and assignment, and cure amount. The amounts, if any, due by the Debtors pursuant to each Assumed Contract that are required to be paid as cure under section 365 of the Bankruptcy Code shall be satisfied by payment of such amount in Cash on the Effective Date, or as soon thereafter as is practicable, or on such

other terms as the parties to such Assumed Contract may otherwise agree in writing. In the event of a dispute regarding the amount and timing of any cure payments, the Debtors and applicable non-Debtor parties shall promptly confer after the Effective Date to attempt to resolve any such dispute consensually without further order of this Court. In the event such dispute cannot be resolved consensually by the applicable parties, then the Reorganized Debtors shall, within thirty (30) days after the Effective Date, file a notice of dispute with this Court (and promptly serve such notice on the applicable counter-party) and such dispute shall be set for a status conference at the next scheduled omnibus hearing in these Chapter 11 Cases, with subsequent evidentiary hearings to be established by this Court as and if necessary. The payments, if any, or other actions, if any, that this Court determines the Debtors are required to pay or otherwise perform to assume the applicable Assumed Contract pursuant to section 365(b)(1) of the Bankruptcy Code shall be promptly paid or undertaken as required by Final Order resolving the applicable dispute. If an objection to the proposed cure amount is sustained by Final Order of this Court, the Debtors or Reorganized Debtors, as applicable, in their sole option, may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming or assigning it by filing written notice thereof with this Court, and serving such notice on the applicable counter-party, within ten (10) days of the entry of such Final Order.

(c) Full Release and Satisfaction of Claims. Subject to any cure claims Filed with respect thereto, assumption or assumption and assignment of any Assumed Contract pursuant to the Plan shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any Assumed

Contract at any time prior to the effective date of assumption or assumption and assignment, in each case as provided in section 365 of the Bankruptcy Code.

23. Approval of Rejection of Rejected Contracts. All of the Rejected Contracts are rejected by the applicable Debtors and such rejection is hereby approved by this Court pursuant to sections 365(a) and 1123 of the Bankruptcy Code, with such rejection effective as of, and subject to the occurrence of, the Effective Date (the "Rejection Date"). Rejection of any Rejected Contract pursuant to the Plan or otherwise shall not constitute a termination of any preexisting obligations owed to the Debtors or the Reorganized Debtors, as applicable, under such Rejected Contract. All Proofs of Claim with respect to Claims arising from or in connection with the rejection of the Rejected Contracts, if any, must be filed with this Court within thirty (30) days after service of the Notice of Effective Date in the form annexed as Exhibit 3 hereto or of a separate order of this Court approving such rejection, whichever occurs earlier (such Claims, the "Rejection Claims"). Any and all Rejection Claims not filed within such time will, without any further notice to or action of any Person, be forever barred from assertion against the Debtors or Reorganized Debtors, their Estates, or property, unless otherwise ordered by this Court or provided for in the Plan. All Rejection Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in the Plan and this Confirmation Order.

24. Corporate Action

(a) Each of the Debtors and the Reorganized Debtors may take any and all actions to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan, including, without limitation, the issuance and the

distribution of the securities to be issued pursuant thereto, in each case in form and substance acceptable to the Special Restructuring Committee and Majority Noteholders in the manner set forth in the Restructuring Support Agreement and without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the unit holders, interest holders, security holders, officers or directors of the Debtors or the Reorganized Debtors or by any other Person (except for those expressly required pursuant to the Plan, this Confirmation Order, or the Restructuring Documents).

(b) Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to the Plan that would otherwise require approval of the stockholders, directors, officers, managers, members or partners of the Debtors (as of prior to the Effective Date) shall be deemed to have been so approved and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, directors, officers, managers, members or partners of the Debtors or the Reorganized Debtors, or the need for any approvals, authorizations, actions or consents of any Person or Entity.

(c) As of the Effective Date, all matters provided for in the Plan involving the legal or corporate structure of the Debtors or the Reorganized Debtors (including, without limitation, the adoption of the Amended/New Organization Documents and similar constituent and organizational documents, and the selection of managers, directors, managing members and/or officers for, each of the Reorganized Debtors), and any legal or corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan, shall be deemed to have occurred and shall be in full force and effect in all respects, in each case without further notice to or order

of this Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the stockholders, directors, officers, managers, members or partners of the Debtors or the Reorganized Debtors or by any other Person or Entity.

(d) On and after the Effective Date, the appropriate officers of the Debtors and the Reorganized Debtors are authorized to issue, execute, and deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in the Plan in the name of and on behalf of the Debtors and the Reorganized Debtors, in each case in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, and without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity. The secretary and any assistant secretary of the Debtors and the Reorganized Debtors shall be authorized to certify or attest to any of the foregoing actions.

25. Authority to Act. Each Debtor and Reorganized Debtor and their respective officers and directors, are authorized and empowered pursuant to Section 303 of the Delaware General Corporation Law and other applicable corporation, limited liability company and limited partnership laws, to take any and all actions necessary or desirable to implement the transactions contemplated by the Plan and this Confirmation Order, in each case without any requirement of further vote, consent, approval, authorization or other action by the stockholders, security holders, officers, directors, partners, managers, members or other applicable owners or notice to, order of,

or hearing before this Court. Each federal, state, and local (domestic or foreign) governmental agency or department is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the Plan and the transactions contemplated thereby.

26. Exemption From Transfer Taxes. Pursuant to and to the extent set forth in section 1146(a) of the Bankruptcy Code, any issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under the Plan, this Confirmation Order or the Restructuring Documents shall not be taxed under any law imposing a Stamp or Similar Tax, and this Court hereby directs the appropriate federal, state or local (domestic or foreign) governmental officials or agents to forgo the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents evidencing such action or event without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of, transactions contemplated by and the distributions to be made under the Plan, this Confirmation Order or the Restructuring Documents, (ii) the issuance and distribution of the New GP/LP Equity Interests or Plan Securities and Documents, and (iii) the attachment, perfection, maintenance, or creation of security interests or any Lien as contemplated by the Plan or the Restructuring Documents.

27. Bar Date for Administrative Claims. Except as otherwise provided herein, in the Plan, or under section 503(b)(1)(D) of the Bankruptcy Code, unless previously Filed or paid, requests for payment of Administrative Claims must be Filed with this Court and served on the Reorganized Debtors pursuant to the procedures specified in the notice of the occurrence of the

Effective Date of the Plan, substantially in the form attached hereto as Exhibit 3 (the “Notice of Effective Date”), by no later than the Business Day which is thirty (30) days after service of notice of the Effective Date, or such other date as approved by Final Order of this Court (the “Administrative Claims Bar Date”); provided that the foregoing shall not apply to either the Holders of Claims arising under section 503(b)(1)(D) of the Bankruptcy Code or Claims arising under 28 U.S.C. 1930 to either this Court or the United States Trustee Program. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors or the Reorganized Debtors or their Estates and property and such Administrative Claims shall be deemed discharged as of the Effective Date without further notice to or action, order, or approval of this Court. All Administrative Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in the Plan and this Confirmation Order. Nothing in this section or Article IIA of the Plan shall limit, alter, or impair the terms and conditions of the Claims Bar Date Order with respect to the Claims Bar Date for filing administrative expense claims arising under section 503(b)(9) of the Bankruptcy Code. Any objections to such requests for payment of Administrative Claims must be Filed with this Court and served on the Reorganized Debtors and the requesting party by the later of (i) one hundred twenty (120) days after the Effective Date and (ii) sixty (60) days after the Filing of the applicable request for payment of Administrative Claims, if applicable, as the same may be modified or extended from time to time by Final Order of this Court.



28. Professional Fee Claims.

(a) Professional Fees Bar Date. The Professionals or other Entities asserting a Professional Fee Claim for services rendered before the Effective Date must File with this Court and serve on the Reorganized Debtors and such other Entities designed by this Confirmation Order an application for final allowance of such Professional Fee Claim (each a “Final Fee Application”) by no later than the Business Day that is forty-five (45) days after the Effective Date, or such other date as approved by order of this Court (the “Professional Fees Bar Date”); provided, however, that, subject to Article XII.R of the Plan, the Reorganized Debtors shall pay Professionals in the ordinary course of business for any work performed on and after the Effective Date, including those fees and expenses incurred by Professionals in connection with the implementation and consummation of the Plan, in each case without further application or notice to, hearing before or order of this Court; provided, further, that any professional who may receive compensation or reimbursement of expenses pursuant to that certain *Order Authorizing Employment and Payment of Professionals Utilized in the Ordinary Course of Business, entered by the Bankruptcy Court in the Chapter 11 Cases* [Docket No. 196] (the “Ordinary Course Professionals Order”) may continue to receive such compensation and reimbursement of expenses from the Debtors and Reorganized Debtors for services rendered before the Effective Date, without further Court order, pursuant to the Ordinary Course Professionals Order. Each Holder of an Allowed Professional Fee Claim shall be paid in full in Cash by the Reorganized Debtors, including from the Carve Out Reserve, within five (5) Business Days after entry of the order approving such Allowed Professional Fee Claim. The Reorganized Debtors shall not commingle any funds contained in the Carve Out Reserve and shall use such funds to pay only the

Professional Fee Claims, as and when allowed by order of this Court. Notwithstanding anything to the contrary contained in the Plan, the failure of the Carve Out Reserve to satisfy in full the Professional Fee Claims shall not, in any way, operate or be construed as a cap or limitation on the amount of Professional Fee Claims due and payable by the Reorganized Debtors.

(b) Service of Final Fee Applications. All Final Fee Applications of Professionals shall be filed with this Court and actually served on or prior to the Professional Fees Bar Date upon the following parties (collectively, the "Notice Parties"): (i) Emerge Energy Services LP, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Roy Messing (email: roy.messing@ankura.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq., and Madeleine C. Parish, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com, and madeleine.parish@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware, 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153- 0119 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)); (v) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); (vi) Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Todd C. Meyers, Esq., David M. Posner, Esq., and Kelly Moynihan, Esq. (emails: tmeyers@kilpatricktownsend.com, dposner@kilpatricktownsend.com, and kmoynihan@kilpatricktownsend.com)), Kilpatrick Townsend & Stockton LLP, 700 Louisiana Street, Suite 4300, Houston, Texas 77002 (Attn:

Lenard M. Parkins, Esq. (email: lparkins@kilpatricktownsend.com)), (vii) Potter Anderson & Corroon LLP, 1313 North Market Street, Sixth Floor, P.O. Box 951, Wilmington, Delaware 19899 (Attn: Jeremy W. Ryan, Esq., Christopher M. Samis, Esq., and D. Ryan Slaugh, Esq. (emails: jryan@potteranderson.com, csamis@potteranderson.com, and rslaugh@potteranderson.com)) and (viii) the Office of the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. (email: Juliet.M.Sarkessian@usdoj.gov)).

(c) Objections to and Hearing to Approve Final Fee Applications. Any objection to any Final Fee Application must be Filed with this Court, and served upon the applicable Professional and the other Notice Parties, so as to be actually received no later than 4:00 p.m. (prevailing Eastern Time) on the date that is thirty (30) days after the Filing of the applicable Final Fee Application (the “Professional Fees Objection Deadline”), with proof of service thereof filed as and when required by the Local Rules of this Court. Only those objections made in writing and timely filed and received by the Professional Fees Objection Deadline will be considered by this Court. If no objection to a Final Fee Application is timely filed and served in accordance with the procedures set forth herein, then this Court may enter a Final Order approving such uncontested Final Fee Application without further notice and the Debtors or the Reorganized Debtors, as applicable, may pay the amounts described in such uncontested Final Fee Application upon the entry of such Final Order (or if any Final Fee Application is the subject of an objection, the Debtors or the Reorganized Debtors, as applicable, may pay the undisputed amounts described in such Final Fee Application on an interim basis). The hearing to consider approval of the Final Fee Applications, if necessary, will be held as soon as reasonably practicable after the expiration of the Professional Fees Objection Deadline and the date of such hearing will be promptly provided

to the applicable Professional and Notice Parties and posted on the Debtors' restructuring website.

29. Funding and Use of Carve Out Reserve.

(a) On or before the Effective Date, the Debtors shall fund the Carve Out Reserve in Cash in accordance with the terms of the Plan and DIP Order.

(b) The Cash contained in the Carve Out Reserve shall be used solely to pay the obligations and liabilities for which such reserve was established, with the Unused Cash Reserve Amount (if any) being returned to the Reorganized Debtors within three (3) Business Days after determining the Unused Cash Reserve Amount. The Debtors and the Reorganized Debtors, as applicable, shall maintain detailed records of all payments made from the Carve Out Reserve, such that all payments and transactions shall be adequately and promptly documented in, and readily ascertainable from, their respective books and records. After the Effective Date, neither the Debtors nor the Reorganized Debtors shall deposit any other funds or property into the Carve Out Reserve without further order of this Court or otherwise commingle funds in the Carve Out Reserve. To the extent the Carve Out Reserve is insufficient to pay in full in Cash the obligations and liabilities for which such reserve was established, then the Reorganized Debtors shall, within five (5) Business Days after entry of an order approving such applicable obligations or liabilities, pay such obligations and liabilities from either Cash on hand or by drawing under the Exit Facility Credit Agreement to the extent of any availability thereunder.

30. Distributions Under the Plan. All distributions under the Plan shall be made in accordance with Article VII of the Plan.

31. Resolution of Contingent, Unliquidated and Disputed Claims. Except as otherwise ordered by this Court, any Claim that is not an Allowed Claim as of the Confirmation Date shall

be determined, resolved, or adjudicated in accordance with the terms of this Confirmation Order and the Plan, including, without limitation, Article VIII of the Plan.

32. No Distributions Pending Allowance. Notwithstanding any other provision of the Plan or this Confirmation Order to the contrary, no payments or distributions of any kind or nature shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, or have been determined by Final Order, and the Disputed Claim has become an Allowed Claim pursuant to a Final Order.

33. No Postpetition Interest on Claims. Unless otherwise specifically provided for in the Plan, this Confirmation Order, or Final Order of this Court, or required by applicable bankruptcy law (including, without limitation, as required pursuant to section 506(b) or section 511 of the Bankruptcy Code), postpetition interest shall not accrue or be paid on any Claims and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Notwithstanding the foregoing, postpetition interest on Prepetition Credit Agreement Claims shall accrue and be paid in accordance with the terms set forth in the agreement governing such Claims, including, without limitation, the Final DIP Order and the Prepetition Credit Agreement.

34. Reserve for Disputed Claims. The Debtors, the Reorganized Debtors and the Distribution Agent may, in their respective sole discretion, establish such appropriate reserves for Disputed Claims in the applicable Class(es) as it determines necessary and appropriate, in each case with the consent of the Majority Noteholders or as approved by order of this Court.

35. Payment of Statutory Fees. All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code ("Quarterly Fees") prior to the Effective Date shall be paid by the

Debtors on the Effective Date. The Debtors shall file all quarterly reports that become due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. On and after the Effective Date, the Reorganized Debtors shall pay any and all Quarterly Fees when due and payable, and shall file with the Bankruptcy Court quarterly reports when they become due in a form reasonably acceptable to the United States Trustee. Each Debtor and Reorganized Debtor shall remain obligated to pay Quarterly Fees to the Office of the United States Trustee until the earliest of that particular Debtor's case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code.

36. Payment of Fees and Expenses of Certain Creditors. The Debtors shall, on and after the Effective Date and to the extent invoiced, pay (i) the Prepetition Credit Agreement Agent & Lenders Fees and Expenses, and (ii) the Prepetition Noteholders Fees and Expenses (in each case whether accrued prepetition or postpetition and to the extent not otherwise paid during the Chapter 11 Cases), without application by any such parties to this Court, and without notice and a hearing pursuant to section 1129(a)(4) of the Bankruptcy Code or otherwise, provided, however, that the procedures set forth in paragraph 18(c) of the final DIP Financing Order (Dkt. No. 209) shall be complied with prior to any such payment. Notwithstanding anything to the contrary in this Confirmation Order or the Plan, the fees and expenses described in this paragraph and Article V.T of the Plan shall not be subject to the Administrative Claims Bar Date or Claims Bar Date.

37. Old GP/LP Equity Interests; Old Affiliate Equity Interests. On the Effective Date, the Old GP/LP Equity Interests will be terminated and cancelled without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity. On the Effective Date, the Old Affiliate Equity Interests shall remain effective and outstanding, and shall be owned and held by the same applicable Person(s) that held and/or owned such Old Affiliate Equity Interests immediately prior to the Effective Date. Each Emerge LP Subsidiary shall continue to be governed by the terms and conditions of its applicable organizational documents as in effect immediately prior to the Effective Date, except as amended or modified by the Plan or this Confirmation Order.

38. Notice of Confirmed Plan. In accordance with Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c), as soon as reasonably practicable after the Confirmation Date, the Debtors shall serve a notice of entry of this Confirmation Order, substantially in the form attached hereto as Exhibit 4 (the "Notice of Confirmed Plan") by first-class mail, postage prepaid on all known creditors, equity security holders, the U.S. Trustee and other parties-in-interest in these Chapter 11 Cases; provided, however, that such notice need not be given or served under or pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or this Confirmation Order to any Person or Entity to whom the Debtors mailed a notice of the Confirmation Hearing, but received such notice returned marked "undeliverable as addressed," "moved-left no forwarding address" or "forwarding order expired," or similar reason, unless the Debtors have been informed in writing by such Person or Entity of that Person's or Entity's new mailing address. The notice described herein is adequate and appropriate under the particular circumstances and no other or further notice

is necessary or required. The Notice of Confirmed Plan shall constitute sufficient notice of the entry of this Confirmation Order to filing and recording officers and shall be a recordable instrument notwithstanding any contrary provision of applicable non-bankruptcy law.

39. No Liability for Solicitation. Based on the factual findings described in this Confirmation Order, the Debtors, the Reorganized Debtors and each of their respective Related Persons are not, and on account of or with respect to the offer, issuance, sale, or purchase of any security under the Plan, and/or solicitation of votes on the Plan, shall not be, liable at any time for any violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or the distribution, offer, issuance, sale, or purchase of any securities, including, without limitation, the applicable Plan Securities and Documents under the Plan. The Debtors, the Reorganized Debtors and each of their respective Related Persons have solicited votes on the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and all other applicable rules, laws, and regulations and are, therefore, entitled to, and are hereby granted, the protections afforded by section 1125(e) of the Bankruptcy Code.

40. Estimation Proceedings and Other Rights. Any and all rights of the Debtors and Reorganized Debtors under section 502(c) and section 502(e) of the Bankruptcy Code are reserved.

41. Failure to Consummate Plan. If the Confirmation or the Consummation of the Plan does not occur with respect to one or more of the Debtors, then the Plan shall, with respect to such applicable Debtor or Debtors, be null and void in all respects upon the filing of a notice to such effect by the applicable Debtor, and nothing contained in the Plan, the Disclosure Statement or this Confirmation Order shall: (i) constitute a waiver or release of any claims by or Claims against or



Equity Interests in the Debtors; (ii) prejudice in any manner the rights of the Debtors, any Holders or any other Entity; (iii) constitute an Allowance of any Claim or Equity Interest; or (iv) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any Holders or any other Entity in any respect.

42. Successors and Assigns. The rights, benefits and obligations of any Person or Entity named or referred to in the Plan or this Confirmation Order shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of each such Person or Entity.

43. No Successors In Interest. Except as to obligations expressly assumed pursuant to the Plan, the Reorganized Debtors shall not be deemed to be successors to the Debtors and shall not assume, nor be deemed to assume, or in any way be responsible for, any successor liability or similar liability with respect to the Debtors or the Debtors' operations that are not expressly assumed or reinstated in connection with, or expressly provided by, the Plan or this Confirmation Order.

44. Return of Deposits. Notwithstanding anything to the contrary in the Plan or in an order previously entered by this Court, all adequate assurance deposits provided by the Debtors to utility providers pursuant to the *Final Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment* [Docket No. 195] shall be returned to the Reorganized Debtors within ten (10) Business Days of the applicable utility receiving written notice of the occurrence of the Effective Date.

45. Retention of Jurisdiction. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code and notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, this Court shall retain exclusive jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters arising under or in, or related to, the Chapter 11 Cases, the Debtors, and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction over the matters set forth in Article XI of the Plan. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Confirmation Order. Notwithstanding the foregoing or any provision of this Confirmation Order to the contrary, any dispute arising under or in connection with the Exit Loan Facility shall be dealt with in accordance with the provisions of the applicable Exit Loan Facility Document.

46. Headings. The headings contained within this Confirmation Order are used for the convenience of the parties and shall not alter or affect the meaning of the text of this Confirmation Order.

47. Existing Board of Directors. The existing boards of directors and other governing bodies of the Debtors shall be deemed to have resigned on and as of the Effective Date, in each case without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity.

48. References to Plan Provisions. The failure specifically to include or reference any particular article, section or provision of the Plan (and the Plan Supplement) or any related document in this Confirmation Order shall not diminish or impair the effectiveness of such article, section or provision, it being the intent of this Court that the Plan (and the exhibits and schedules thereto) be confirmed in its entirety and any related documents be approved in their entirety and

incorporated herein by reference.

49. No Admission or Waiver. None of the filing of the Plan, any statement or provision contained within the Plan or the taking of any action by any Debtor with respect to the Plan (and Plan Supplement), the Disclosure Statement or Confirmation Order shall be or shall be deemed to be an admission or waiver of any rights of any Debtor.

50. Confirmation Order Controlling. The provisions of the Plan, any Plan Documents and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that if there is any conflict or inconsistency between the Plan and/or any Plan Documents on the one hand and this Confirmation Order on the other that cannot be so reconciled, then, solely to the extent of such inconsistency, the terms of this Confirmation Order shall control and govern.

51. Immediate Effectiveness of this Confirmation Order. Pursuant to Bankruptcy Rule 3020(e), the fourteen (14) day stay of this Confirmation Order imposed thereby is waived and the Debtors are hereby authorized to consummate the Plan and the transactions contemplated thereby immediately upon the entry of this Confirmation Order upon the Court's docket, subject to the satisfaction or waiver of the conditions set forth in Article IX of the Plan.

52. Final Order. This Confirmation Order is a final order and the period in which an appeal thereof must be filed shall commence upon its entry.

53. Miscellaneous/Reservations of Rights.

(a) Governmental Units. Nothing in this Confirmation Order, the Plan or any implementing plan documents (collectively, the "Plan Documents") discharges, releases, precludes, or enjoins: (1) any liability to any Governmental Unit that is not a "claim" as defined

in 11 U.S.C. § 101(5) (“**Claim**”); (2) any Claim of a Governmental Unit arising on or after the Effective Date; (3) any police or regulatory liability to a Governmental Unit that any Entity would be subject to as the owner or operator of property after the Effective Date; or (4) any liability to a Governmental Unit (including a Claim) on the part of any Person other than the Debtors or the Reorganized Debtors. Nor shall anything in the Plan Documents: (1) enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence; (2) enjoin or affect any Governmental Unit’s setoff rights under federal law as recognized in section 553 of the Bankruptcy Code, and recoupment rights, and such rights shall be preserved and are unaffected; (3) divest any tribunal of any jurisdiction it may have under police or regulatory law to interpret the Plan Documents or to adjudicate any defense asserted under the Plan Documents; (4) excuse the payment of interest, to the extent not paid in full on the Effective Date, on administrative expense claims of any Governmental Unit allowed pursuant to the Plan or the Bankruptcy Code and interest shall accrue at the applicable statutory rate on such claims from the Effective Date; (5) expand the scope of the estimation procedures set forth in Section 502(c) of the Bankruptcy Code; or (6) be construed as a compromise or settlement of any Claim, liability, cause of action or interest of any Governmental Unit. Without limiting the foregoing but for the avoidance of doubt, nothing in the Plan Documents relieves any Debtor or Reorganized Debtor from its obligation to comply with the Federal Mine Safety and Health Act of 1977 et seq., and the rules, regulations, and orders promulgated thereunder by the Mine Safety and Health Administration. Distributions on account of monetary penalties arising pre-petition and post-petition, respectively, and issued by the Mine Safety and Health Administration against the Debtors shall be made in accordance with the Plan. The Mine Safety and Health Administration’s

rights and powers to take any action pursuant to its police and regulatory authority, including, but not limited to, imposing any regulatory conditions on any of the above-described assignments or transfers are fully preserved, and nothing in the Plan or this Order shall proscribe or constrain the Mine Safety and Health Administration's exercise of such police and regulatory power or authority; provided, however, that the Debtors' rights under non-bankruptcy law with respect to this paragraph 53(a) are reserved.

(b) FCC Licenses. No provision in the Plan Documents relieves any Debtor or Reorganized Debtor from its obligation to comply with the Communications Act of 1934, as amended, and the rules, regulations, and orders promulgated thereunder by The Federal Communications Commission ("FCC"). No assignment or transfer of any federal license or authorization issued by the FCC or transfer of control of any entity that holds an FCC license or authorization shall take place prior to the issuance of any FCC regulatory approval for such assignment or transfer pursuant to applicable statute or FCC regulations. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on any of the above-described assignments or transfers are fully preserved, and nothing in the Plan Documents shall proscribe or constrain the FCC's exercise of such power or authority; provided, however, that the Debtors' rights under non-bankruptcy law with respect to any licenses or authorizations issued by the FCC are reserved.

(c) Texas Taxing Authorities. The Texas Taxing Authorities shall retain the Liens that secure all amounts ultimately owed on their Claims as well as the state law priority of those Liens until the Claims are paid in full or Disallowed by order of the Court. In the event that collateral that secures the Claim of one or more of the Texas Tax Authorities is returned to a

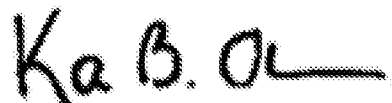
creditor that is junior to the Texas Taxing Authorities, the Debtors or the Reorganized Debtors (as applicable) shall first pay all Allowed ad valorem property taxes that are secured by such collateral.

(d) Sunoco. Emerge Energy Services Operating LLC (“Emerge Operating”), Emerge LP, Sunoco, LLC (as assignee, the “Buyer”) and Sunoco LP (the “Buyer Parent Guarantor”) are parties to that certain Purchase and Sale Agreement, dated June 23, 2015, as amended and restated by that certain Amended and Restated Purchase and Sale Agreement, dated August 31, 2016 (the “Purchase Agreement”), whereby Buyer agreed to purchase 100% of Emerge Operating’s issued and outstanding interests in certain of its subsidiaries. Pursuant to the Purchase Agreement, the Indemnification General Escrow Account, the Hydrotreater Escrow Account, and the Pipeline Release Escrow Account were created (each as defined in the Purchase Agreement and collectively, the “Escrow Accounts”) to indemnify the Buyer for specified Losses (as defined and to the extent specified in the Purchase Agreement). Notwithstanding anything in the Plan or this Confirmation Order to the contrary, (a) the rights of the Debtors and Buyer with respect to amounts on deposit in the Escrow Accounts shall continue to be governed by the terms of the Purchase Agreement, and that certain Escrow Agreement entered into by the Buyer, Emerge Operating and CitiBank, N.A., as escrow agent (the “Escrow Agent”), as amended by that certain First Amendment to and Direction Under Escrow Agreement, between Emerge Operating, the Buyer and the Escrow Agent, dated April 17, 2017 (collectively, the “Escrow Agreement”); and (b) neither the Plan nor this Confirmation Order shall (i) alter or affect the rights of the Debtors or Buyer to amounts on deposit in the Escrow Accounts, (ii) impose any stay or injunction with respect to the rights of the Debtors or Buyer to amounts on deposit in the Escrow Accounts; or (iii) constitute a determination of the rights of the Debtors or the Buyer with respect to amounts on

deposit in the Escrow Accounts, including, without limitation, the forum provisions. Any indemnification, and reimbursement obligations of Emerge Operating and Emerge LP owing to the Buyer under the Purchase Agreement shall be limited to the rights of the Buyer to assert claims against the amounts on deposit in the Escrow Accounts as governed by the terms of the Purchase Agreement and the Escrow Agreement. On the Effective Date, proof of claim number 303 filed by the Buyer shall be deemed withdrawn (without prejudice to the rights to proceed against amounts on deposit in the Escrow Accounts) without further action required by the Buyer, and the Buyer shall not otherwise seek a distribution in the Chapter 11 Cases on account of such withdrawn claims except to the extent of rights to assert claims against, and receive distributions of, amounts on deposit in the Escrow Accounts as governed by the Purchase Agreement and the Escrow Agreement. Specifically, for the avoidance of any doubt, notwithstanding the confirmation of the Plan, Sunoco's and the Debtors' setoff and recoupment rights, to the extent applicable, are fully preserved.

**Dated: December 18th, 2019**  
**Wilmington, Delaware**

53



**KAREN B. OWENS**  
**UNITED STATES BANKRUPTCY JUDGE**

Exhibit 1

**Plan of Reorganization**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----	X
In re:	: Chapter 11
	: :
EMERGE ENERGY SERVICES LP, <i>et al.</i> ,	: Case No. 19-11563 (KBO)
	: :
Debtors. <sup>1</sup>	: Jointly Administered
	: :
-----	X

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MODIFIED SECOND AMENDED JOINT PLAN OF REORGANIZATION FOR  
EMERGE ENERGY SERVICES LP AND ITS AFFILIATE DEBTORS  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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Dated: December 18, 2019

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors' address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

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**MODIFIED SECOND AMENDED JOINT PLAN OF REORGANIZATION FOR  
EMERGE ENERGY SERVICES LP AND ITS AFFILIATE DEBTORS  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Emerge Energy Services LP and the other above-captioned debtors and debtors-in-possession (each a “**Debtor**” and, collectively, the “**Debtors**”) jointly propose the following plan of reorganization for the resolution of the outstanding Claims (as defined below) against, and Equity Interests (as defined below) in, each of the Debtors. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against and Equity Interests in each Debtor pursuant to the Bankruptcy Code (as defined below). The Debtors are the proponents of this Plan within the meaning of section 1129 of the Bankruptcy Code. Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtors’ history, business, results of operations, historical financial information, and projections, and for a summary and analysis of this Plan, the treatment provided for herein and certain related matters. There also are other agreements and documents, which will be filed with the Bankruptcy Court (as defined below), that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Schedules. All such Exhibits and Plan Schedules are incorporated into and are a part of this Plan as if set forth in full herein. Subject to certain restrictions and requirements set forth in 11 U.S.C. § 1127, Fed. R. Bankr. P. 3019 and the terms and conditions set forth in this Plan, the Debtors reserve the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

**ARTICLE I.**

**RULES OF INTERPRETATION, COMPUTATION OF TIME,  
CONSENT RIGHTS, AND DEFINED TERMS**

*A. Rules of Interpretation; Computation of Time*

For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced item shall be substantially in that form or substantially on those terms and conditions; (c) except as otherwise provided herein, any reference herein to an existing or to be Filed contract, lease, instrument, release, indenture, or other agreement or document shall mean as it may be amended, modified or supplemented from time to time; (d) any reference to an Entity as a Holder of a Claim or an Equity Interest includes that Entity’s successors and assigns; (e) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Schedules” are references to Articles, Sections, Exhibits and Plan Schedules hereof or hereto; (f) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (g) subject to the provisions of any contract, certificate of incorporation, by-law, instrument, release, indenture, or other agreement or document entered into in connection with this Plan and except as expressly provided in Article XII.C of this Plan, the rights and obligations arising pursuant to this Plan shall be governed by, and construed and enforced in accordance with the applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (h) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply to this Plan; (j) references to a specific article, section, or subsection of any statute, rule, or regulation expressly referenced herein shall, unless otherwise specified, include any amendments to or successor provisions of such article, section, or subsection; (k) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning

assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (l) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (m) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; and (n) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated. Except as otherwise specifically provided in this Plan to the contrary, references in this Plan to "the Debtors" or to "the Reorganized Debtors" shall mean "the Debtors and the Reorganized Debtors," as applicable, to the extent the context requires.

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to this Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

*B. Certain Consent Rights*

Notwithstanding anything in the Plan to the contrary, any and all consent rights of the Consenting Creditors set forth in the Restructuring Support Agreement with respect to the form and substance of this Plan, the Plan Supplement, the Plan Documents, and any other Definitive Document (as defined in the Restructuring Support Agreement), including any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions set forth herein) and fully enforceable as if stated in full herein until such time as the Restructuring Support Agreement is terminated in accordance with its terms.

*C. Defined Terms*

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

"*510(b) Equity Claim*" means any Claim subordinated pursuant to section 510(b) of the Bankruptcy Code.

"*Accrued Professional Compensation*" means, with respect to a particular Professional, an Administrative Claim of such Professional for compensation for services rendered or reimbursement of costs, expenses or other charges incurred on or after the Petition Date and prior to and including the Effective Date (including, without limitation, reasonable out-of-pocket expenses of the Committee Members incurred in discharge of their duties as such).

"*Administrative Claim*" means a Claim for costs and expenses of administration of the Chapter 11 Cases that are Allowed under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) any actual and necessary costs and expenses incurred on or after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) Professional Fee Claims and any other compensation for legal, financial, advisory, accounting, and other services and reimbursement of expenses Allowed by the Bankruptcy Court under sections 328, 330, 331 or 503(b) of the Bankruptcy Code to the extent incurred on or after the Petition Date and through the Effective Date; (c) DIP Credit Agreement Claims, (d) Cure Claim Amounts, and (e) all fees and charges assessed against the Estates under section 1930, chapter 123, of title 28, United States Code.

“*Administrative Claims Bar Date*” means the Business Day which is thirty (30) days after the Effective Date, or such other date as approved by Final Order of the Bankruptcy Court.

“*Affiliate*” means an “affiliate,” as defined in section 101(2) of the Bankruptcy Code.

“*Affiliate Debtor(s)*” means, individually or collectively, any Debtor or Debtors other than Emerge GP or Emerge LP.

“*Allowed*” means, with respect to a Claim or Equity Interest, an Allowed Claim or Allowed Equity Interest in a particular Class or category specified. Any reference herein to the allowance of a particular Allowed Claim includes both the secured and unsecured portions of such Claim.

“*Allowed Claim*” means any Claim that is not a Disputed Claim or a Disallowed Claim and (a) for which a Proof of Claim has been timely Filed by the applicable Claims Bar Date or deemed timely Filed under applicable law or by order of the Bankruptcy Court and as to which no objection to allowance thereof has been timely interposed within the applicable period of time fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or order of the Bankruptcy Court; (b) that has been listed by the Debtors in their Schedules as liquidated in a specified amount and is not disputed or contingent and for which no contrary Proof of Claim has been timely Filed; or (c) that is expressly Allowed pursuant to the terms of this Plan or a Final Order of the Bankruptcy Court. The term “Allowed Claim” shall not, for purposes of computing distributions under this Plan, include interest on such Claim from and after the Petition Date, except as provided in sections 506(b) or 511 of the Bankruptcy Code or as otherwise expressly set forth in this Plan or a Final Order of the Bankruptcy Court.

“*Allowed \_\_\_\_\_ Claim*” means an Allowed Claim of the type described.

“*Allowed Equity Interest*” means any Old GP/LP Equity Interest that is not a Disputed Equity Interest and (a) as to which no objection to allowance has been timely interposed in accordance with section 502 of the Bankruptcy Code or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder; or (b) that is expressly allowed by this Plan.

“*Allowed \_\_\_\_\_ Equity Interest*” means an Allowed Equity Interest of the type described.

“*Amended/New Organizational Documents*” means, as applicable, the amended and restated or new applicable organizational documents of the New General Partner and Reorganized Emerge LP Filed with the Plan Supplement.

“*Avoidance Actions*” means any and all avoidance, recovery, subordination or similar actions or remedies that may be brought by and on behalf of the Debtors or their Estates under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions or remedies arising under chapter 5 of the Bankruptcy Code; provided that Avoidance Action does not include Released and Settled Claims.

“*Ballots/Opt-Out Forms*” means the ballots and opt-out forms accompanying the Disclosure Statement, which were approved by the Disclosure Statement Order (modified, as necessary, based upon the applicable recipient in accordance with the Disclosure Statement Order).

“*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Cases.



“*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware, or any other court having jurisdiction over the Chapter 11 Cases.

“*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, in each case as amended from time to time and as applicable to the Chapter 11 Cases.

“*Beneficial Holder*” means, as of the applicable date of determination, a beneficial owner of the Prepetition Notes or Old Emerge LP Equity Interests as reflected in the records maintained by the Registered Record Owner or Intermediary Record Owner, as applicable.

“*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

“*Cash*” means the legal tender of the United States of America or the equivalent thereof.

“*Carve Out Reserve*” means the reserve established and maintained by the Reorganized Debtors to pay in full in Cash the Professional Fee Claims incurred on or prior to the Effective Date.

“*Causes of Action*” means any claims, causes of action (including Avoidance Actions), demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date.

“*Chapter 11 Case(s)*” means (a) when used with reference to a particular Debtor, the case under chapter 11 of the Bankruptcy Code commenced by such Debtor in the Bankruptcy Court, and (b) when used with reference to all Debtors, the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors in the Bankruptcy Court being jointly administered under Case No. 19-11563 (KBO).

“*Claim*” means any “claim” (as defined in section 101(5) of the Bankruptcy Code) against any Debtor.

“*Claims Bar Date*” means the last date for filing a Proof of Claim in these Chapter 11 Cases, as provided in the Claims Bar Date Order.

“*Claims Bar Date Order*” means that certain *Order Pursuant to Bankruptcy Rule 3003(c)(3) and Local Rule 2002-1(e) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim (Including for Administrative Expense Claims Arising Under Section 503(b)(9) of the Bankruptcy Code) and Approving the Form and Manner of Notice Thereof*, entered by the Bankruptcy Court in the Chapter 11 Cases (Docket No. 157), as amended, supplemented or modified from time to time.

“*Claims Objection Deadline*” means, with respect to any Claim, the latest of (a) one hundred eighty (180) days after the Effective Date; (b) ninety (90) days after the Filing of an applicable Proof of Claim, or (c) such other date as may be specifically fixed by Final Order of the Bankruptcy Court for objecting to such Claim.

“*Claims Register*” means the official register of Claims maintained by the Voting and Claims Agent.

“*Class*” means a category of Holders of Claims or Equity Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

“*CM/ECF*” means the Bankruptcy Court’s Case Management and Electronic Case Filing system.

“*Collateral*” means any property or interest in property of the Debtors’ Estates that is subject to a valid and enforceable Lien to secure a Claim.

“*Commission*” means the U.S. Securities and Exchange Commission.

“*Committee*” means any official committee of the Debtors appointed by the United States Trustee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, if appointed and as reconstituted from time to time.

“*Committee Members*” means the members of the Committee and their respective successors and assigns.

“*Confirmation*” means the occurrence of the Confirmation Date, subject to all conditions specified in Article IX of this Plan having been satisfied or waived pursuant to Article IX of this Plan.

“*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court in the Chapter 11 Cases.

“*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

“*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

“*Consenting Creditors*” means, collectively, the Consenting Prepetition Credit Agreement Lenders and the Consenting Prepetition Noteholders.

“*Consenting Creditors Professionals*” means, collectively, (i) Weil, Gotshal & Manges LLP, as counsel to the Consenting Creditors, (ii) Pachulski, Stang, Ziehl & Jones LLP as Delaware counsel to the Consenting Creditors, and (iii) any other professional retained by the Consenting Creditors during the Chapter 11 Cases.

“*Consenting Equity Holders*” means the direct and indirect owners of Emerge GP that are party to the Restructuring Support Agreement as “Consenting Equity Holders” thereunder.

“*Consenting Prepetition Credit Agreement Lenders*” means those Holders of the Prepetition Credit Agreement Claims that are party to the Restructuring Support Agreement as “Consenting Revolving Loan Lenders” thereunder.

“*Consenting Prepetition Noteholders*” means those Holders of the Prepetition Notes that are party to the Restructuring Support Agreement as “Consenting Noteholders” thereunder.

“*Consummation*” means the occurrence of the Effective Date.

“*Cure Claim Amount*” has the meaning set forth in Article VI.B of this Plan.

“*D&O Liability Insurance Policies*” means all insurance policies (including, without limitation, any management liability policies, general liability policies, any errors and omissions policies, and, in each case, any agreements, documents, or instruments related thereto) issued at any time on or prior to the Effective Date and providing coverage for liability of any Debtor’s directors, managers, and officers, and including any “tail”, “runoff” or extended reporting period coverage to the extent obtained by the Debtors in relation to any such insurance policies.

“*Debtor(s)*” means, individually, any of the above-captioned debtors and debtors-in-possession and, collectively, all of the above-captioned debtors and debtors-in-possession.

“*Debtor Release*” has the meaning set forth in Article X.B hereof.

“*Debtor Releasing Parties*” has the meaning set forth in Article X.B hereof.

“*DIP Credit Agreement*” means that certain Senior Secured Priming and Superpriority Debtor-In-Possession Credit and Security Agreement, dated as of July 19, 2019, by and among Emerge LP, the Emerge LP Subsidiaries party thereto, the DIP Credit Agreement Agent, and the DIP Credit Agreement Lenders, as amended, supplemented, or modified from time to time prior to the Effective Date.

“*DIP Credit Agreement Agent*” means HPS Investment Partners, LLC, in its capacity as administrative agent under the DIP Credit Agreement.

“*DIP Credit Agreement Claims*” means any and all Claims arising from, under or in connection with the DIP Credit Agreement (including, without limitation, any and all “Obligations” as defined therein) or any other DIP Loan Document.

“*DIP Credit Agreement Lenders*” means the lenders party to the DIP Credit Agreement from time to time.

“*DIP Credit Agreement Liens*” means the Liens securing the payment of the DIP Credit Agreement Claims.

“*DIP Loan Documents*” means, collectively, the DIP Credit Agreement and the DIP Security Document.

“*DIP Order*” means that certain *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Certain Protections to Prepetition Secured Parties, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief*, entered by the Bankruptcy Court in the Chapter 11 Cases (Docket No. 209), as such order may be amended, supplemented, or modified from time to time.

“*DIP Security Document*” means the “Security Document” as defined in the DIP Credit Agreement, in each case as amended, supplemented, or modified from time to time prior to the Effective Date.

“*Disallowed*” means, with respect to a Claim or Equity Interest, a Disallowed Claim or Disallowed Equity Interest in a particular Class or category specified.

“*Disallowed Claim*” means a Claim, or any portion thereof, that (a) has been disallowed by a Final Order, or (b) (i) is Scheduled at zero, in an unknown amount or as contingent, disputed or unliquidated and

(ii) as to which the Claims Bar Date has been established but no Proof of Claim has been timely Filed or deemed timely Filed under applicable law or by order of the Bankruptcy Court.

“*Disallowed Equity Interest*” means any Old GP/LP Equity Interest that has been disallowed by Final Order.

“*Disclosure Statement*” means that certain *Disclosure Statement for First Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code*, dated as of September 11, 2019 (as amended, supplemented, or modified from time to time) that was approved by the Disclosure Statement Order.

“*Disclosure Statement Order*” means that certain *Order (I) Approving the Disclosure Statement, (II) Establishing the Voting Record Date, Voting Deadline and Other Dates, (III) Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing Objections to the Plan, (IV) Approving the Manner and Form of Notice and Other Related Documents, (V) Approving Procedures for Assumption of Contracts and Leases and Form and Manner of Assumption Notice, and (VI) Granting Related Relief*, entered by the Bankruptcy Court in the Chapter 11 Cases, as such order may be amended, supplemented, or modified from time to time.

“*Disputed Claim*” means any Claim, or any portion thereof, that is not a Disallowed Claim, that has not been Allowed pursuant to this Plan or a Final Order of the Bankruptcy Court, and

(a) if a Proof of Claim has been timely Filed by the applicable Claims Bar Date or deemed timely Filed under applicable law or by order of the Bankruptcy Court, such Claim is designated on such Proof of Claim as unliquidated, contingent or disputed, or in zero or unknown amount, and has not been resolved by written agreement of the parties or a Final Order of the Bankruptcy Court; or

(b) if either (1) a Proof of Claim has been timely Filed by the applicable Claims Bar Date or (2) a Claim has been listed on the Schedules as other than unliquidated, contingent or disputed, or in zero or unknown amount, a Claim as to which any Debtor or other party in interest permitted under section 502(a) of the Code to assert an objection has timely filed an objection or request for estimation in accordance with this Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court or for which such time period to object or file a request for estimation has not yet expired as of the applicable date of determination, in each case which objection, request for estimation or dispute has not been withdrawn, overruled or determined by a Final Order; or

(c) that is the subject of an objection or request for estimation Filed in the Bankruptcy Court and which such objection or request for estimation has not been withdrawn, resolved or overruled by Final Order of the Bankruptcy Court.

“*Disputed Equity Interest*” means an Equity Interest, or any portion thereof, that (a) is the subject of an objection or request for estimation Filed in the Bankruptcy Court and which objection or request for estimation has not been withdrawn or overruled by a Final Order of the Bankruptcy Court, and/or (b) is otherwise disputed by the Debtors or the Reorganized Debtors in accordance with applicable law, which dispute has not been withdrawn, resolved or overruled by Final Order.

“*Distribution Agent*” means the Reorganized Debtors (other than Emerge GP), or any party designated by the Reorganized Debtors (other than Emerge GP) to serve as distribution agent under this Plan. For purposes of distributions under this Plan to the Holders of Allowed DIP Credit Agreement

Claims, Allowed Prepetition Credit Agreement Claims and Allowed Prepetition Notes Claims, the DIP Credit Agreement Agent, the Prepetition Credit Agreement Agent and the Prepetition Notes Agent, respectively, will be and shall act as the Distribution Agent.

“*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions under this Plan, which date shall be the Effective Date.

“*DTC*” means the Depository Trust Company.

“*Effective Date*” means the first Business Day on which the conditions specified in Article IX of this Plan, have been satisfied or waived in accordance with the terms of Article IX.

“*Emerge GP*” means EmERGE Energy Services GP LLC, as debtor and debtor-in-possession in these Chapter 11 Cases.

“*Emerge Holdings*” means EmERGE Energy Services Holdings LLC, a non-debtor in these Chapter 11 Cases and the sole member of EmERGE GP.

“*Emerge LP*” means EmERGE Energy Services LP, as debtor and debtor-in-possession in these Chapter 11 Cases.

“*Emerge LP Subsidiary*” means each direct and indirect subsidiary of EmERGE LP, as debtor and debtor-in-possession in these Chapter 11 Cases.

“*Entity*” means an “entity” as defined in section 101(15) of the Bankruptcy Code.

“*Equity Interest*” means (a) any Equity Security or other ownership interest in any Debtor, including, without limitation, all issued, unissued, authorized or outstanding units, shares of stock and other ownership interests (whether general partnership interests, limited partnership interests, or otherwise), together with (i) any options, warrants or contractual rights to purchase or acquire any such Equity Securities at any time with respect to any Debtor, and all rights arising with respect thereto and (ii) the rights of any Person or Entity to purchase or demand the issuance of any of the foregoing and shall include: (1) conversion, exchange, voting, participation, and dividend rights; (2) liquidation preferences; (3) options, warrants, and call and put rights; (4) share-appreciation rights; and (5) all Unexercised Equity Interests, and (b) any 510(b) Equity Claim, in each case, as in existence immediately prior to the Effective Date.

“*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

“*Estate(s)*” means, individually, the estate of each of the Debtors and, collectively, the estates of all of the Debtors created under section 541 of the Bankruptcy Code.

“*Exchange Act*” means the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, as now in effect or hereafter amended, and any similar federal, state or local law.

“*Exculpated Parties*” means, collectively: (a) the Debtors; (b) the Reorganized Debtors; (c) the Committee and the members thereof in their capacity as such; and (d) with respect to each of the foregoing in clauses (a) through (c), to the extent they are estate fiduciaries, each such Entity’s current and former Affiliates, and each such Entity’s and its current and former Affiliates’ current and former subsidiaries, officers, directors (including any sub-committee of directors), managers, principals, members (including *ex officio* members and managing members), employees, agents, advisory board members, financial advisors,

partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such on or after the Petition Date.

“*Exculpation*” means the exculpation provision set forth in Article X.E hereof.

“*Executory Contract*” means a contract to which any Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“*Exhibit*” means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time).

“*Exit Facility Agent*” means the administrative agent and collateral agent under the Exit Facility Credit Agreement, solely in its capacity as such.

“*Exit Facility Credit Agreement*” means the credit agreement, Filed with the Plan Supplement, which credit agreement shall contain terms and conditions consistent in all respects with those set forth on the Exit Facility Term Sheet and, to the extent any terms and conditions are not set forth on or contemplated therein, such other terms and conditions as are acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement.

“*Exit Facility Intercreditor Agreement*” means that certain intercreditor agreement to be entered into on the Effective Date by and among the Exit Facility Agent and the New Second Lien Notes Agent, which document shall contain such terms and conditions as shall be set forth in the form intercreditor agreement or summary term sheet (summarizing the material terms) to be Filed with the Plan Supplement, and which terms and conditions shall be acceptable to the parties thereto.

“*Exit Facility Lenders*” means each of the lenders under the Exit Facility Credit Agreement, solely in their respective capacities as such.

“*Exit Facility Loan Documents*” means the Exit Facility Credit Agreement, the Exit Facility Intercreditor Agreement, and any other guarantee, security agreement, deed of trust, mortgage, and other documents (including UCC financing statements), contracts, and agreements entered into with respect to, or in connection with, the Exit Facility Credit Agreement.

“*Exit Facility Loans*” means the loans contemplated under the Exit Facility Credit Agreement.

“*Exit Facility Term Sheet*” means the term sheet Filed with the Plan Supplement.

“*Face Amount*” means (a) when used in reference to a Disputed Claim, the full stated amount of the Claim asserted by the applicable Holder in any Proof of Claim timely Filed with the Bankruptcy Court, (b) when used in reference to an Allowed Claim, the Allowed amount of such Claim, and (c) with respect to Old GP/LP Equity Interests, the number of shares or units held by such Holder.

“*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

“*Final Order*” means an order or judgment of the Bankruptcy Court, or court of competent jurisdiction with respect to the subject matter, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been

taken or any petition for certiorari that has been or may be timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no stay pending appeal of such order, or has otherwise been dismissed with prejudice; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not preclude such order from being a Final Order.

“*General Unsecured Claim*” means any Claim that is not a/an: Administrative Claim; DIP Credit Agreement Claim; Professional Fee Claim; Priority Tax Claim; Secured Tax Claim; Other Priority Claim; Other Secured Claim; Intercompany Claim; Prepetition Debt Claim; or 510(b) Equity Claim.

“*Global Settlement*” means that certain settlement incorporated into and described in Article V.A of this Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and consistent in all respects with the Restructuring Support Agreement.

“*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

“*Holder*” means an Entity holding a Claim or Equity Interest.

“*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is “impaired” within the meaning of section 1124 of the Bankruptcy Code.

“*Indemnification Provisions*” means, collectively, each of the provisions currently in place (whether in bylaws, certificates of formation or incorporation, board resolutions, employment contracts or otherwise) whereby any Debtor agrees to indemnify, reimburse, provide contribution or advance fees and expenses to or for the benefit of, defend, exculpate, or limit the liability of, any Indemnified Party.

“*Indemnified Parties*” means each of the Debtor’s respective directors, officers, and managers in their respective capacities as such, and solely to the extent that such party was serving in such capacity on or any time after the date of the Restructuring Support Agreement.

“*Initial Distribution Date*” means the date that is as soon as practicable after the Effective Date, but no later than thirty (30) days after the Effective Date, when, subject to the “Treatment” sections in Article III hereof, distributions under this Plan shall commence to Holders of Allowed Claims and Allowed Equity Interests; *provided* that any applicable distributions under this Plan on account of the DIP Credit Agreement Claims and the Prepetition Debt Claims shall be made to the applicable Distribution Agent on the Effective Date, and each such Distribution Agent shall make its respective distributions as soon as practicable thereafter.

“*Intercompany Claim*” means any Claim against any of the Debtors held by another Debtor, other than an Administrative Claim.

“*Intermediary Record Owners*” means, as of the applicable date of determination, the banks, brokerage firms, or the agents thereof as the Entity through which the Beneficial Holders hold the Prepetition Notes or Old Emerge LP Equity Interests, as applicable.

“*IRC*” means the Internal Revenue Code of 1986, as amended.

“*IRS*” means the Internal Revenue Service of the United States of America.

“*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code, and, with respect to any property or asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such property or asset.

“*Litigation Claims*” means the claims, rights of action, suits or proceedings, whether in law or in equity, whether known or unknown, that any Debtor or any Estate may hold against any Person or Entity, including, without limitation, the Causes of Action of the Debtors or their Estates, in each case solely to the extent of the Debtors’ or their Estates’ interest therein. A non-exclusive list of the Litigation Claims held by the Debtors as of the Effective Date is to be Filed with the Plan Supplement, which shall be deemed to include any derivative actions filed against any Debtor as of the Effective Date.

“*Local Rules*” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

“*Majority Noteholders*” means Prepetition Noteholders holding more than 50% of the outstanding aggregate principal amount of the Prepetition Notes Claims.

“*Majority Lenders*” means Prepetition Credit Agreement Lenders holding more than 50% of the outstanding aggregate principal amount of the Prepetition Credit Agreement Claims.

“*MSHA Action*” means that certain mud retaining pond wall breach, which occurred on June 21, 2019 at the San Antonio, Texas facility of the Debtors, the related 103(k) order issued by the Mine Safety and Health Administration affecting the entire mine area at the San Antonio Texas facility, and all related matters affecting the condition of the mine at the San Antonio Texas Facility.

“*New Board*” means the initial board of directors of the New General Partner to be put in place on and as of the Effective Date, which board shall be selected by the Majority Noteholders as described in the Restructuring Term Sheet. The members of the New Board shall be Filed with the Plan Supplement.

“*New Emerge GP Equity Interests*” means the ownership interests in the New General Partner authorized to be issued pursuant to this Plan (and subject to the Restructuring Transactions) and the Amended/New Organizational Documents.

“*New Emerge LP Equity Interests*” means the ownership interests in Reorganized Emerge LP (whether general or limited) authorized to be issued pursuant to this Plan (and subject to the Restructuring Transactions) and the Amended/New Organizational Documents, including the New General Partnership Interests and the New Limited Partnership Interests.

“*New General Partner*” means, in accordance with the Restructuring Transactions, the new general partner of Reorganized Emerge LP appointed by the Majority Noteholders and newly formed pursuant to this Plan on or after the Effective Date, and its successors.

“*New GP/LP Equity Interests*” means, collectively, the New Emerge GP Equity Interests and the New Emerge LP Equity Interests.

“*New General Partnership Interests*” means the new general partnership interests in Reorganized Emerge LP to be issued on and as of the Effective Date to the New General Partner.



“*New Limited Partnership Interests*” means the new limited partnership interests in Reorganized Emerge LP to be issued on and as of the Effective Date to the Prepetition Noteholders and, subject to the terms and conditions of this Plan, certain other Holders.

“*New Management Incentive Plan*” means a post-Effective Date equity incentive plan providing for the issuance from time to time, as approved by the New Board, of New Limited Partnership Interests to those individuals involved in day-to-day management of the Reorganized Debtors. The New Board shall determine allocation and other terms of the New Management Incentive Plan.

“*New Management Incentive Plan Equity*” means the New Limited Partnership Interests issued pursuant to the New Management Incentive Plan.

“*New Railcar Lease Agreements*” means those certain railcar lease agreements entered into between the Debtors and the Specified Rail Car Lessors pursuant to the New Railcar Lease Agreements Order.

“*New Railcar Lease Agreements Order*” means the *Order Authorizing the Debtors to (I) Reject Certain Railcar Lease Agreements Nunc Pro Tunc to the Petition Date and (II) Enter Into Proposed New Railcar Lease Agreements Effective as of the Petition Date* entered by the Bankruptcy Court in the Chapter 11 Cases (Docket No. 208), as such order may be amended, supplemented, or modified from time to time.

“*New Second Lien Notes*” means the secured notes contemplated under the New Second Lien Notes Agreement.

“*New Second Lien Notes Agent*” means HPS Investment Partners, LLC, in its capacity as administrative agent and notes agent under the New Second Lien Notes Agreement, or such other party selected by HPS Investment Partners, LLC.

“*New Second Lien Notes Agreement*” means the notes agreement, Filed with the Plan Supplement, which agreement shall contain terms and conditions consistent in all respects with those set forth on the New Second Lien Notes Term Sheet and, to the extent any terms and conditions are not set forth on or contemplated therein, such other terms and conditions as are acceptable to the Special Restructuring Committee and the Majority Noteholders.

“*New Second Lien Notes Documents*” means the New Second Lien Notes, the New Second Lien Notes Agreement and any other guarantee, security agreement, deed of trust, mortgage, and other documents (including UCC financing statements), contracts, and agreements entered into with respect to, or in connection with, the New Second Lien Notes Agreement.

“*New Second Lien Notes Term Sheet*” means the term sheet Filed with the Plan Supplement.

“*New Warrants*” means the warrants contemplated under the New Warrants Agreement.

“*New Warrants Agreement*” means the warrant agreement Filed with the Plan Supplement, which warrant agreement shall contain terms and conditions consistent in all respects with those set forth on the New Warrants Term Sheet and, to the extent any terms and conditions are not set forth on or contemplated therein, such other terms and conditions as are acceptable to the Special Restructuring Committee, the Majority Noteholders, and the other applicable parties to the Restructuring Support Agreement in the manner set forth therein.

“*New Warrants Term Sheet*” means the term sheet attached to this Plan as Exhibit B.

“*Non-Debtor Releasing Parties*” means, collectively: (a) the Committee and the members thereof in their capacity as such; (b) the Prepetition Credit Agreement Agent and the Releasing Prepetition Credit Agreement Lenders; (c) the DIP Credit Agreement Agent and the DIP Credit Agreement Lenders (d) the Prepetition Notes Agent and the Releasing Prepetition Noteholders; (e) the Consenting Equity Holders; (f) those Holders of General Unsecured Claims that submitted a Ballot to the Voting and Claims Agent, but did not affirmatively opt out of the Third Party Release as provided on their respective Ballots; and (g) each Specified Railcar Lessor (to the extent it is a Released Party).

“*Non-Voting Classes*” means, collectively, Classes 1-4 and 7-10.

“*Notice*” has the meaning set forth in Article XIII of this Plan.

“*Old Affiliate Equity Interests*” means, collectively, the Equity Interests in each Emerge LP Subsidiary, in each case as in existence immediately prior to the Effective Date.

“*Old Emerge GP Equity Interest*” means the Equity Interests in Emerge GP, as in existence immediately prior to the Effective Date.

“*Old Emerge LP Equity Interest*” means the Equity Interests in Emerge LP, as in existence immediately prior to the Effective Date.

“*Old GP/LP Equity Interests*” means, collectively, the Old Emerge GP Equity Interests and the Old Emerge LP Equity Interests.

“*Old GP/LP Objection Deadline*” means, with respect to any Old GP/LP Equity Interest, the later of (a) one hundred eighty (180) days after the Effective Date or (b) such other date as may be fixed by Final Order of the Bankruptcy Court for objecting to such Old GP/LP Equity Interest.

“*Ordinary Course Professionals Order*” means that certain *Order Authorizing Employment and Payment of Professionals Utilized in the Ordinary Course of Business*, entered by the Bankruptcy Court in the Chapter 11 Cases (Docket No. 196), as amended, supplemented, or modified from time to time.

“*Other Priority Claim*” means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

“*Other Secured Claim*” means any Secured Claim other than an Administrative Claim, DIP Credit Agreement Claim, Secured Tax Claim, or Prepetition Debt Claim.

“*Preferred Interests*” means the Preferred Interests issued to the holders of the New Notes pursuant to the terms described in Exhibit A to this Plan.

“*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other Entity, whether acting in an individual, fiduciary or other capacity.

“*Petition Date*” means July 15, 2019, the date on which the Debtors commenced the Chapter 11 Cases.

“*Plan*” means this *Modified Second Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code*, dated December 18, 2019, including the Exhibits and Plan Schedules and all supplements, appendices, and schedules thereto, either in its present form or as the same may be amended, supplemented, or modified from time to time.

“*Plan Objection Deadline*” means the date and time by which objections to Confirmation and Consummation of the Plan must be Filed with the Bankruptcy Court and served in accordance with the Disclosure Statement Order, which date is October 11, 2019 as set forth in the Disclosure Statement Order.

“*Plan Schedule*” means a schedule annexed to this Plan or an appendix to the Disclosure Statement (as amended, modified or otherwise supplemented from time to time).

“*Plan Securities*” has the meaning set forth in Article V.J of this Plan.

“*Plan Securities and Documents*” has the meaning set forth in Article V.J of this Plan.

“*Plan Supplement*” means, collectively, the compilation of documents and forms of documents, and all exhibits, attachments, schedules, agreements, documents and instruments referred to therein, ancillary or otherwise, including, without limitation, the Exhibits and Plan Schedules, all of which are incorporated by reference into, and are an integral part of, this Plan, as all of the same may be amended, supplemented, or modified from time to time, in a manner in form and substance consistent in all respects with the Restructuring Support Agreement. The Exhibits and Plan Schedules (or substantially final forms thereof) shall be Filed with the Bankruptcy Court at least seven (7) days prior to the Plan Objection Deadline.

“*Prepetition Agents*” means, collectively, the Prepetition Credit Agreement Agent and the Prepetition Notes Agent.

“*Prepetition Credit Agreement*” means that certain Second Amended and Restated Revolving Credit and Security Agreement, dated as of January 5, 2018, by and among Emerge LP, the Emerge LP Subsidiaries party thereto, the Prepetition Credit Agreement Agent, and the Prepetition Credit Agreement Lenders, as amended, supplemented, or modified from time to time prior to the Petition Date.

“*Prepetition Credit Agreement Agent*” means HPS Investment Partners, LLC, in its capacity as administrative agent and collateral agent under the Prepetition Credit Agreement.

“*Prepetition Credit Agreement Agent & Lenders Fees and Expenses*” means all unpaid reasonable and documented costs, fees, disbursements, charges and out-of-pocket expenses of the Prepetition Credit Agreement Agent and the Prepetition Credit Agreement Lenders incurred in connection with the Chapter 11 Cases, including, but not limited to, the reasonable and documented costs, fees, disbursements, charges and out-of-pocket expenses of the Consenting Creditor Professionals.

“*Prepetition Credit Agreement Claims*” means any and all Claims arising from, under or in connection with the Prepetition Credit Agreement (including, without limitation, any and all “Obligations” as defined therein) or any other Prepetition Loan Document.

“*Prepetition Credit Agreement Lenders*” means the lenders party to the Prepetition Credit Agreement from time to time.

“*Prepetition Credit Agreement Liens*” means the Liens securing the payment of the Prepetition Credit Agreement Claims.

“*Prepetition Debt Claims*” means, collectively, the Prepetition Credit Agreement Claims and the Prepetition Notes Claims.

“*Prepetition Debt Documents*” means, collectively, the Prepetition Loan Documents and the Prepetition Notes Documents.

“*Prepetition Debt Liens*” means, collectively, the Prepetition Credit Agreement Liens and the Prepetition Notes Liens.

“*Prepetition Loan Documents*” means, collectively, the Prepetition Credit Agreement and the Prepetition Security Documents.

“*Prepetition Noteholder*” means a Holder of the Prepetition Notes.

“*Prepetition Noteholders Fees and Expenses*” means all unpaid reasonable and documented costs, fees, disbursements, charges and out-of-pocket expenses of the Prepetition Noteholders incurred in connection with the Chapter 11 Cases, including, but not limited to, the reasonable and documented costs, fees, disbursements, charges and out-of-pocket expenses of the Consenting Creditors Professionals.

“*Prepetition Notes*” means those certain senior secured notes due 2023 issued by certain Debtors pursuant to the Prepetition Notes Agreement, in an original aggregate principal amount of \$215,000,000.

“*Prepetition Notes Agent*” means HPS Investment Partners, LLC, in its capacity as administrative notes agent and collateral agent under the Prepetition Notes Agreement.

“*Prepetition Notes Agreement*” means that certain Second Lien Note Purchase Agreement, dated as of January 5, 2018, by and among Emerge LP, the Emerge LP Subsidiaries party thereto, the Prepetition Notes Agent, and the Prepetition Noteholders, as amended, supplemented, or modified from time to time prior to the Petition Date.

“*Prepetition Notes Claims*” means any and all Claims arising from, under or in connection with the Prepetition Notes Agreement (including, without limitation, any and all “Obligations” as defined therein) or any other Prepetition Notes Document.

“*Prepetition Notes Documents*” means, collectively, the Prepetition Notes, the Prepetition Notes Agreement, and the Prepetition Notes Security Documents.

“*Prepetition Notes Liens*” means the Liens securing the payment of the Prepetition Notes Claims.

“*Prepetition Notes Security Documents*” means the “Security Documents” as defined in the Prepetition Notes Agreement, in each case as amended, supplemented, or modified from time to time prior to the Petition Date.

“*Prepetition Security Documents*” means the “Security Documents” as defined in the Prepetition Credit Agreement, in each case as amended, supplemented, or modified from time to time prior to the Petition Date.

“*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

“*Pro Rata*” means the proportion that (a) the Face Amount of a Claim or Equity Interest in a particular Class or Classes (or portions thereof, as applicable) bears to (b) the aggregate Face Amount of all Claims (including Disputed Claims, but excluding Disallowed Claims) or Equity Interests (including Disputed Equity Interests, but excluding Disallowed Equity Interests) in such Class or Classes (or portions thereof, as applicable), unless this Plan provides otherwise.

“*Professional*” means any Person or Entity retained by the Debtors or any Committee in the Chapter 11 Cases pursuant to section 327, 328, 363, or 1103 of the Bankruptcy Code (other than an ordinary course professional pursuant to the Ordinary Course Professionals Order).

“*Professional Fee Claim*” means a Claim for Accrued Professional Compensation under sections 328, 330, 331, or 503 of the Bankruptcy Code.

“*Professional Fees Bar Date*” means the Business Day that is forty-five (45) days after the Effective Date or such other date as approved by Final Order of the Bankruptcy Court.

“*Proof of Claim*” means a proof of Claim Filed against any Debtor in the Chapter 11 Cases.

“*Registered Record Owners*” means, as of the applicable date of determination, the respective owners of the Prepetition Notes or Old Emerge LP Equity Interests, as applicable, whose holdings thereof are in their own name.

“*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including *ex officio* members and managing members), managers, managed accounts or funds, management companies, fund advisors, advisory or subcommittee board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, representatives, and other professionals, in each case acting in such capacity at any time on or after the date of the Restructuring Support Agreement, and any Person claiming by or through any of them, including such Related Persons’ respective heirs, executors, estates, servants, and nominees; provided, however, that no insurer of any Debtor shall constitute a Related Person.

“*Release*” means the release given by the Releasing Parties to the Released Parties as set forth in Article X.B hereof.

“*Released and Settled Claims*” means all Claims and Causes of Action made, or which could have been made, on or on behalf of any of the Debtors against the Prepetition Revolver Agent, the Prepetition Revolving Lenders, the Prepetition Note Agent, or the Prepetition Noteholders, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees, in their respective capacities as such, in each case arising at any time prior to or on the Effective Date.

“*Released Party*” means, collectively: (a) the Debtors; (b) the Reorganized Debtors; (c) the Committee and the members thereof in their capacity as such; (d) the Prepetition Credit Agreement Agent and the Releasing Prepetition Credit Agreement Lenders; (e) the DIP Credit Agreement Agent and the DIP Credit Agreement Lenders; (f) the Prepetition Notes Agent and the Releasing Prepetition Noteholders; (g) the Consenting Equity Holders, and (h) each Specified Railcar Lessor, so long as the applicable New Railcar Lease Agreement(s) between the Debtors and the applicable Specified Railcar Lessor is in full force and effect as of the Effective Date; and in each case the respective Related Persons of each of the foregoing Entities.

“*Releasing Prepetition Credit Agreement Lenders*” means, collectively, (i) each Consenting Prepetition Credit Agreement Lender and (ii) any other Prepetition Credit Agreement Lender that does not affirmatively opt out of the Third Party Release as provided on its respective Ballot/Opt-Out Form.

“*Releasing Prepetition Noteholders*” means, collectively, (i) each Consenting Prepetition Noteholder and (ii) any other Prepetition Noteholder that does not affirmatively opt out of the Third Party Release as provided on its respective Ballot/Opt-Out Form.

“*Releasing Party*” has the meaning set forth in Article X.B hereof.

“*Reorganized Debtors*” means, subject to the Restructuring Transactions, the Debtors as reorganized or dissolved pursuant to this Plan on or after the Effective Date, and, solely with respect to the reorganized entities, their respective successors.

“*Reorganized Emerge LP*” means, subject to the Restructuring Transactions, Emerge Energy Services LP, as reorganized pursuant to this Plan on or after the Effective Date, and its successors.

“*Restricted Holders*” has the meaning set forth in Article V.J of this Plan.

“*Restructuring Documents*” means, collectively, the documents and agreements (and the exhibits, schedules, annexes and supplements thereto) necessary to implement, or entered into in connection with, this Plan, including, without limitation, the Plan Supplement, the Exhibits, the Plan Schedules, the Amended/New Organizational Documents, the Exit Facility Loan Documents, the New Second Lien Notes Documents, the New Warrants Agreement, and the Plan Securities and Documents.

“*Restructuring Support Agreement*” means that certain Restructuring Support Agreement, dated as of April 18, 2019, by and among the Debtors, the Consenting Equity Holders, the Consenting Prepetition Credit Agreement Lenders, and the Consenting Prepetition Noteholders (as amended, supplemented or modified from time to time).

“*Restructuring Term Sheet*” means the term sheet attached as Exhibit A to the Restructuring Support Agreement.

“*Restructuring Transaction*” has the meaning ascribed thereto in Article V.A of this Plan.

“*Scheduled*” means with respect to any Claim, the status and amount, if any, of such Claim as set forth in the Schedules.

“*Schedules*” means the schedules of assets and liabilities, schedules of Executory Contracts, and statement of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and the applicable Bankruptcy Rules, as such Schedules may be amended, modified, or supplemented from time to time.

“*Secured Claim*” means a Claim that is secured by a Lien on property in which any of the Debtors’ Estates have an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

“*Secured Tax Claim*” means any Secured Claim which, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code.

“*Securities Act*” means the Securities Act of 1933, 15 U.S.C. §§ 77c-77aa, as now in effect or hereafter amended, and any similar federal, state or local law.

“*Special Restructuring Committee*” means the special restructuring committee of the board of directors of Emerge GP appointed pursuant to that certain *Amended and Restated Charter for the Special Restructuring Committee*, dated as of April 18, 2019.

“*Specified Railcar Lessors*” means, collectively, (a) Trinity Industries Leasing Company, (b) MUL Railcars Leasing, LLC, and (c) CIT Bank, N.A. and The CIT Group/Equipment Financing, Inc., as an assignee of CIT Rail, LLC.

“*Stamp or Similar Tax*” means any stamp tax, recording tax, conveyance fee, intangible or similar tax, mortgage tax, personal or real property tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes or fees imposed or assessed by any Governmental Unit.

“*Subsequent Distribution*” means any distribution of property under this Plan to Holders of Allowed Claims or Allowed Equity Interests other than the initial distribution given to such Holders on the Initial Distribution Date.

“*Subsequent Distribution Date*” means the last Business Day of the month following the end of each calendar quarter after the Effective Date; *provided, however*, that if the Effective Date is within thirty (30) days of the end of a calendar quarter, then the first Subsequent Distribution Date will be the last Business Day of the month following the end of the first (1<sup>st</sup>) calendar quarter after the calendar quarter in which the Effective Date falls.

“*Third Party Release*” has the meaning set forth in Article X.B hereof.

“*Unexercised Equity Interests*” means any and all unexercised options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character, kind, or nature to acquire an Old GP/LP Equity Interest, as in existence immediately prior to the Effective Date.

“*Unexpired Lease*” means a lease to which any Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“*Unimpaired*” means, with respect to a Class of Claims or Equity Interests, a Claim or an Equity Interest that is “unimpaired” within the meaning of section 1124 of the Bankruptcy Code.

“*Unused Cash Reserve Amount*” means the remaining Cash, if any, in the Carve Out Reserve after all obligations and liabilities for which such reserve was established are paid, satisfied, and discharged in full in Cash or are Disallowed by Final Order in accordance with this Plan.

“*Voting and Claims Agent*” means Kurtzman Carson Consultants LLC, in its capacity as solicitation, notice, claims and balloting agent for the Debtors.

“*Voting Classes*” means Classes 5 and 6 only.

“*Voting Deadline*” means the date and time by which all Ballots/Opt-Out Forms must be received by the Voting and Claims Agent in accordance with the Disclosure Statement Order, which date is October 17, 2019 at 5:00 p.m. (prevailing Eastern Time) as set forth in the Disclosure Statement Order.

“*Voting Record Date*” means the date for determining which Holders of Claims in the Voting Classes are entitled, as applicable, to receive the Disclosure Statement and to vote to accept or reject this Plan.

## ARTICLE II.

### ADMINISTRATIVE, DIP FACILITY, AND PRIORITY TAX CLAIMS

#### A. *Administrative Claims*

Subject to sub-paragraph 1 below, on the later of the Effective Date or the date on which an Administrative Claim becomes an Allowed Administrative Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Claim (other than an Allowed Professional Fee Claim) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim either (i) Cash equal to the amount of such Allowed Administrative Claim; or (ii) such other less favorable treatment as to which the Debtors (with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement) or Reorganized Debtors, as applicable, and the Holder of such Allowed Administrative Claim shall have agreed upon in writing; *provided, however*, that Administrative Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court.

#### 1. Bar Date for Administrative Claims

Except as otherwise provided in this Plan and section 503(b)(1)(D) of the Bankruptcy Code, unless previously Filed or paid, requests for payment of Administrative Claims must be Filed and served on the Reorganized Debtors pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order or the occurrence of the Effective Date (as applicable) no later than the Administrative Claims Bar Date; *provided* that the foregoing shall not apply to either the Holders of Claims arising under section 503(b)(1)(D) of the Bankruptcy Code or the Bankruptcy Court or United States Trustee as the Holders of Administrative Claims. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors, the Reorganized Debtors and their respective Estates and property and such Administrative Claims shall be deemed discharged as of the Effective Date. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.G hereof. Nothing in this Article II.A shall limit, alter, or impair the terms and conditions of the Claims Bar Date Order with respect to the Claims Bar Date for filing administrative expense claims arising under Section 503(b)(9) of the Bankruptcy Code.

Objections to such requests must be Filed and served on the Reorganized Debtors and the requesting party by the later of (a) 120 days after the Effective Date and (b) 60 days after the Filing of the applicable request for payment of Administrative Claims, if applicable, as the same may be modified or extended from time to time by Final Order of the Bankruptcy Court.



## 2. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered before the Effective Date must File and serve on the Reorganized Debtors and such other Entities who are designated in the Confirmation Order an application for final allowance of such Professional Fee Claim no later than the Professional Fees Bar Date; provided that, on or about the Effective Date, holders of Professional Fee Claims shall provide a reasonable estimate of their unpaid Professional Fee Claims incurred in rendering services to the Debtors or their Estates as of the Effective Date (the “Professional Fee Claims Estimate”); provided further that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of the Professional’s request for payment of Professional Fee Claims.

Objections to any Professional Fee Claim must be Filed and served on the Reorganized Debtors and the requesting party by no later than thirty (30) days after the Filing of the applicable final request for payment of the Professional Fee Claim. Each Holder of an Allowed Professional Fee Claim shall be paid in full in Cash by the Reorganized Debtors, including from the Carve Out Reserve, within five (5) Business Days after entry of the order approving such Allowed Professional Fee Claim. The Reorganized Debtors shall not commingle any funds contained in the Carve Out Reserve and shall use such funds to pay only the Professional Fee Claims, as and when allowed by order of the Bankruptcy Court. Notwithstanding anything to the contrary contained in this Plan, the failure of the Carve Out Reserve to satisfy in full the Professional Fee Claims shall not, in any way, operate or be construed as a cap or limitation on the amount of Professional Fee Claims due and payable by the Reorganized Debtors. The Carve Out Reserve shall be maintained in trust for the Professionals and shall not be considered property of the Debtors’ Estates; provided that the Reorganized Debtors shall have a reversionary interest in the Unused Cash Reserve Amount. To the extent that funds held in the Carve Out Reserve do not or are unable to satisfy the full amount of the Allowed Professional Fee Claims, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in full in Cash accordance with Article IIA of this Plan.

The Reorganized Debtors shall pay Professionals in the ordinary course of business for any work performed after the Effective Date, including those reasonable and documented fees and expenses incurred by Professionals in connection with the implementation and consummation of this Plan, in each case without further application or notice to or order of the Bankruptcy Court; provided, further, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses from the Debtors and Reorganized Debtors for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order, in each case without further application or notice to or order of the Bankruptcy Court.

### *B. DIP Credit Agreement Claims*

On the Effective Date, the Allowed DIP Credit Agreement Claims shall, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claims (a) be indefeasibly paid in full in Cash from the proceeds of the Exit Facility Loans, or (b) receive such other treatment as the Holders of DIP Credit Agreement Claims and the Debtors shall have agreed to in writing, and, in either case, the DIP Credit Agreement Liens shall be deemed discharged, released, and terminated for all purposes without further action of or by any Person or Entity.

The Debtors’ contingent or unliquidated obligations under the DIP Loan Documents, to the extent not indefeasibly paid in full in Cash on the Effective Date or otherwise satisfied by the Debtors in a manner acceptable to the DIP Facility Agent, any affected DIP Credit Agreement Lender, or any other holder of a DIP Credit Agreement Claim, as applicable, shall survive the Effective Date and shall not be released or

discharged pursuant to this Plan or Confirmation Order, notwithstanding any provision hereof or thereof to the contrary.

*C. Priority Tax Claims*

Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtors or Reorganized Debtors, as applicable: (A) Cash equal to the amount of such Allowed Priority Tax Claim; (B) such other less favorable treatment as to which the Debtors (with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement) or Reorganized Debtors, as applicable, and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing; (C) such other treatment such that it will not be Impaired pursuant to section 1124 of the Bankruptcy Code or (D) pursuant to and in accordance with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in regular installment payments over a period ending not more than five (5) years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtors or Reorganized Debtors, as applicable, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; provided, however, that Priority Tax Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (C) or (D) above shall be made in equal quarterly Cash payments beginning on the first applicable Subsequent Distribution Date, and continuing on each Subsequent Distribution Date thereafter until payment in full of the applicable Allowed Priority Tax Claim.

**ARTICLE III.**

**CLASSIFICATION AND TREATMENT  
OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

*A. Summary*

This Plan constitutes a separate plan of reorganization for each Debtor. All Claims and Equity Interests, except Administrative Claims, DIP Credit Agreement Claims, and Priority Tax Claims, are placed in the Classes set forth below. For all purposes under this Plan, each Class will contain sub-Classes for each of the Debtors (*i.e.*, there will be ten Classes for each Debtor); provided, that any Class that is vacant as to a particular Debtor will be treated in accordance with Article III.D below.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including, without limitation, for voting, confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. This Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remaining portion of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released, Disallowed or otherwise settled prior to the Effective Date.

Summary of Classification and Treatment of Classified Claims and Equity Interests

<u>Class</u>	<u>Claim/Equity Interest</u>	<u>Status</u>	<u>Voting Rights</u>
1.	Other Priority Claims	Unimpaired	Deemed to Accept
2.	Other Secured Claims	Unimpaired	Deemed to Accept
3.	Secured Tax Claims	Unimpaired	Deemed to Accept
4.	Prepetition Credit Agreement Claims	Unimpaired	Deemed to Accept
5.	Prepetition Notes Claims	Impaired	<i>Entitled to Vote</i>
6.	General Unsecured Claims	Impaired	<i>Entitled to Vote</i>
7.	Intercompany Claims	Unimpaired	Deemed to Accept
8.	Old Emerge GP Equity Interests	Impaired	Deemed to Reject
9.	Old Emerge LP Equity Interests	Impaired	Deemed to Reject
10.	Old Affiliate Equity Interests	Unimpaired	Deemed to Accept

*B. Classification and Treatment of Claims and Equity Interests**1. Class 1 - Other Priority Claims*

- (a) *Classification:* Class 1 consists of the Other Priority Claims.
- (b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 1 Claim is an Allowed Class 1 Claim as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Class 1 Claim becomes an Allowed Class 1 Claim, each Holder of an Allowed Class 1 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtors or Reorganized Debtors, as applicable (with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement): (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 1 Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; *provided, however,* that Class 1 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court.

- (c) *Voting:* Class 1 is an Unimpaired Class, and the Holders of Claims in Class 1 are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 1 are not entitled to vote to accept or reject this Plan.

2. Class 2 - Other Secured Claims

- (a) *Classification:* Class 2 consists of the Other Secured Claims. Class 2 consists of separate subclasses for each Other Secured Claim.
- (b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 2 Claim is an Allowed Class 2 Claim as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Class 2 Claim becomes an Allowed Class 2 Claim, each Holder of an Allowed Class 2 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim, at the election of the Debtors or Reorganized Debtors, as applicable (with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement): (A) Cash equal to the amount of such Allowed Class 2 Claim; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 2 Claim shall have agreed upon in writing; (C) the Collateral securing such Allowed Class 2 Claim pursuant to further order of the Bankruptcy Court upon notice and hearing; or (D) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; *provided, however,* that Class 2 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court. For the avoidance of doubt, any Lien that secures a Class 2 Claim shall be retained against the applicable Collateral until such Class 2 Claim is paid or reserved in full in Cash or Disallowed by order of the Bankruptcy Court.
- (c) *Voting:* Class 2 is an Unimpaired Class, and the Holders of Claims in Class 2 are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 2 are not entitled to vote to accept or reject this Plan.

3. Class 3 - Secured Tax Claims

- (a) *Classification:* Class 3 consists of the Secured Tax Claims.
- (b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 3 Claim is an Allowed Class 3 Claim as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 3 Claim, at the election of the Debtors or Reorganized Debtors, as applicable (with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement): (A) Cash equal to the amount of such

Allowed Class 3 Claim; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 3 Claim shall have agreed upon in writing; (C) the Collateral securing such Allowed Class 3 Claim pursuant to further order of the Bankruptcy Court upon notice and hearing; (D) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code or (E) pursuant to and in accordance with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Class 3 Claim payable in regular installment payments over a period ending not more than five (5) years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtors or Reorganized Debtors, as applicable, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; *provided, however*, that Class 3 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (D) or (E) above shall be made in equal quarterly Cash payments beginning on the first applicable Subsequent Distribution Date, and continuing on each Subsequent Distribution Date thereafter until payment in full of the applicable Allowed Class 3 Claim. For the avoidance of doubt, any Lien that secures a Class 3 Claim shall be retained against the applicable Collateral until such Class 3 Claim is paid or reserved in full in Cash or Disallowed by order of the Bankruptcy Court.

- (c) *Voting:* Class 3 is an Unimpaired Class, and the Holders of Claims in Class 3 shall be conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 3 are not entitled to vote to accept or reject this Plan.

#### 4. Class 4 - Prepetition Credit Agreement Claims

- (a) *Classification:* Class 4 consists of the Prepetition Credit Agreement Claims.
- (b) *Allowance:* The Prepetition Credit Agreement Claims are deemed Allowed Secured Claims in the aggregate principal amount of \$27,260,000, plus any accrued and unpaid interest payable on such amounts through the Effective Date.<sup>2</sup>
- (c) *Treatment:* On the Effective Date, the Allowed Prepetition Credit Agreement Claims shall, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claims, be indefeasibly paid in full in Cash from the proceeds of the Exit Facility Loans. Without affecting any additional Liens required by the Exit Facility Loan Documents, each Prepetition Credit Agreement Lien is stipulated to as valid, perfected, and not avoidable, and shall secure the Exit Facility Loans and all other indebtedness and obligations of the Reorganized Debtors under or secured by the Exit Facility Loan Documents and each such Prepetition Credit Agreement Lien shall, as of the Effective Date, (i) be ratified,

<sup>2</sup> The Allowed amount excludes any accrued fees, costs, and expenses (including all Prepetition Credit Agreement Agent and Lenders Fees and Expenses) that will be paid in cash on the Effective Date pursuant to this Plan or otherwise after the Effective Date in accordance with Article V.T of this Plan.

reaffirmed and deemed granted by the Reorganized Debtors, (ii) remain attached to the Reorganized Debtors' assets and property, and (iii) not be, and shall not be deemed to be, impaired, discharged or released by this Plan, the Confirmation Order or on account of the Confirmation or Consummation of this Plan.

- (d) *Voting:* Class 4 is an Unimpaired Class, and the Holders of Claims in Class 4 shall be conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 4 are not entitled to vote to accept or reject this Plan.

5. Class 5 - Prepetition Notes Claims

- (a) *Classification:* Class 5 consists of the Prepetition Notes Claims.
- (b) *Allowance:* The Prepetition Notes Claims are deemed Allowed in the aggregate principal amount of \$208,512,308, plus accrued and unpaid interest thereon as of the Petition Date.<sup>3</sup>
- (c) *Treatment:*

(i) **IF AND ONLY IF CLASS 6 VOTES TO ACCEPT THIS PLAN, THE FOLLOWING TREATMENT:**

On the Effective Date and in addition to the reimbursement described in Article V.T of this Plan, each Holder of an Allowed Prepetition Notes Claim shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim, its Pro Rata share of (1) the New Second Lien Notes, if any; (2) the New Emerge GP Equity Interests; (3) the Preferred Interests *less* any Preferred Interests issued to satisfy DIP Credit Agreement Claims; and (4) ninety-five percent (95%) of the New Limited Partnership Interests issued and outstanding on the Effective Date prior to dilution by the New Management Incentive Plan Equity and any issuances pursuant to the New Warrants.

Without affecting any additional Liens required by the Exit Facility Loan Documents, each Prepetition Note Lien is stipulated to as valid, perfected, and not avoidable, and shall secure the Exit Facility Loans and all other indebtedness and obligations of the Reorganized Debtors under or secured by the Exit Facility Loan Documents and each such Prepetition Note Lien shall, as of the Effective Date, (i) be ratified, reaffirmed and deemed granted by the Reorganized Debtors, (ii) remain attached to the Reorganized Debtors' assets and property, and (iii) not be, and shall not be deemed to be, impaired, discharged or released by this Plan, the Confirmation Order or on account of the Confirmation or Consummation of this Plan.

(ii) **IF AND ONLY IF CLASS 6 VOTES TO REJECT THIS PLAN, THE FOLLOWING TREATMENT:**

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<sup>3</sup> The Allowed amount excludes any unpaid Prepetition Noteholders Fees and Expenses that will be paid in Cash on the Effective Date pursuant to this Plan or otherwise after the Effective Date in accordance with Article V.T of this Plan.

On the Effective Date and in addition to the reimbursement described in Article V.T of this Plan, each Holder of an Allowed Prepetition Notes Claim shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim, its Pro Rata share of (1) the New Second Lien Notes, if any; (2) the New Emerge GP Equity Interests; (3) the Preferred Interests *less* any Preferred Interests issued to satisfy DIP Credit Agreement Claims; and (4) one hundred percent (100%) of the New Limited Partnership Interests issued and outstanding on the Effective Date prior to dilution by the New Management Incentive Plan Equity.

- (d) *Voting:* Class 5 is Impaired, and Holders of Claims in Class 5 are entitled to vote to accept or reject this Plan.

6. Class 6 – General Unsecured Claims

- (a) *Classification:* Class 6 consists of the General Unsecured Claims.

- (b) *Treatment:*

- (i) **IF AND ONLY IF CLASS 6 VOTES TO ACCEPT THIS PLAN, THE FOLLOWING TREATMENT:**

Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 6 Claim is an Allowed Class 6 Claim as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 6 Claim, its Pro Rata share of (1) 5.0% of the New Limited Partnership Interests issued and outstanding on the Effective Date prior to dilution by the New Management Incentive Plan Equity and any issuances pursuant to the New Warrants and (2) New Warrants representing 10.0% of the New Limited Partnership Interests issued and outstanding on the Effective Date prior to dilution by the New Management Incentive Plan Equity.

**The foregoing is offered solely for settlement purposes as set forth in Article V hereof, and such settlement is conditioned on (i) Class 6 voting to accept this Plan, (ii) the Bankruptcy Court confirming this Plan, and (iii) the occurrence of the Effective Date.**

- (ii) **IF AND ONLY IF CLASS 6 VOTES TO REJECT THIS PLAN, THE FOLLOWING TREATMENT:**

On the Effective Date, the Class 6 Claims will be discharged without further notice to, approval of or action by any Person or Entity, and each Holder of a Class 6 Claim shall not receive any distribution or retain any property on account of such Class 6 Claim.

- (c) *Voting:* Class 6 is Impaired, and Holders of Claims in Class 6 are entitled to vote to accept or reject this Plan.

7. Class 7 – Intercompany Claims

- (a) *Classification:* Class 7 consists of the Intercompany Claims.
- (b) *Treatment:* Subject to the Restructuring Transactions, the Intercompany Claims shall be reinstated, compromised, or cancelled, at the option of the relevant Holder of such Intercompany Claims with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement.
- (c) *Voting:* Class 7 is an Unimpaired Class, and the Holders of Claims in Class 7 shall be conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 7 are not entitled to vote to accept or reject this Plan.<sup>4</sup>

8. Class 8 - Old Emerge GP Equity Interests

- (a) *Classification:* Class 8 consists of the Old Emerge GP Equity Interests.
- (b) *Treatment:* On the Effective Date, the Old Emerge GP Equity Interests will be cancelled without further notice to, approval of or action by any Person or Entity, and each Holder of an Old Emerge GP Equity Interest shall not receive any distribution or retain any property on account of such Old Emerge GP Equity Interests.
- (c) *Voting:* Class 8 is an Impaired Class, and the Holders of Equity Interests in Class 8 will be conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Equity Interests in Class 8 will not be entitled to vote to accept or reject this Plan.

9. Class 9 - Old Emerge LP Equity Interests

- (a) *Classification:* Class 9 consists of the Old Emerge LP Equity Interests.
- (b) *Treatment:*

- (i) **IF AND ONLY IF CLASS 6 VOTES TO ACCEPT THIS PLAN, THE FOLLOWING TREATMENT:**

Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 9 Equity Interest is an Allowed Class 9 Equity Interest as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Class 9 Equity Interest becomes an Allowed Class 9 Equity Interest, each Holder of an Allowed Class 9 Equity Interest shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 9 Equity Interest, its Pro Rata share of New Warrants representing 5.0% of the New Limited Partnership Interests issued and outstanding on the Effective Date prior to dilution by the New Management Incentive Plan Equity.

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<sup>4</sup> Even if Class 7 was an Impaired Class, because the Holders of such Claims are Affiliate Debtors, the Holders of such Claims would be conclusively deemed to have accepted this Plan since they are each plan proponents.



The foregoing is offered solely for settlement purposes as set forth in Article V hereof, and such settlement is conditioned on (i) Class 6 voting to accept this Plan, (ii) the Bankruptcy Court confirming this Plan, and (iii) the occurrence of the Effective Date.

(ii) **IF AND ONLY IF CLASS 6 VOTES TO REJECT THIS PLAN, THE FOLLOWING TREATMENT:**

On the Effective Date, the Old Emerge LP Equity Interests will be cancelled without further notice to, approval of or action by any Person or Entity, and each Holder of an Old Emerge LP Equity Interest shall not receive any distribution or retain any property on account of such Old Emerge LP Equity Interests.

- (c) *Voting:* Class 9 is an Impaired Class and, if the Class of General Unsecured Claims in Class 6 votes to reject this Plan, the Holders of Equity Interests in this Class 9 shall receive no distribution under this Plan on account of such Equity Interests. Therefore, the Holders of Equity Interests in this Class 9 are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan.

10. Class 10 - Old Affiliate Equity Interests in any Emerge LP Subsidiary

- (a) *Classification:* Class 10 consists of the Old Affiliate Equity Interests in any Emerge LP Subsidiary.
- (b) *Treatment:* Subject to the Restructuring Transactions, the Old Affiliate Equity Interests shall remain effective and outstanding on the Effective Date and shall be owned and held by the same applicable Person(s) that held and/or owned such Old Affiliate Equity Interests immediately prior to the Effective Date.
- (c) *Voting:* Class 10 is an Unimpaired Class, and the Holders of the Old Affiliate Equity Interests in Class 10 are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of the Old Affiliate Equity Interests in Class 11 are not entitled to vote to accept or reject this Plan.

C. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided herein, nothing under this Plan shall affect or limit the Debtors' or the Reorganized Debtors' rights and defenses (whether legal or equitable) in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

D. *Elimination of Vacant Classes*

Any Class of Claims that is not occupied as of the commencement of the Confirmation Hearing by an Allowed Claim or a claim temporarily allowed under Bankruptcy Rule 3018, or as to which no vote is cast, shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

## ARTICLE IV.

### ACCEPTANCE OR REJECTION OF THE PLAN

#### A. *Presumed Acceptance of Plan*

Classes 1, 2, 3, 4, 7, and 10 are Unimpaired under this Plan. Therefore, the Holders of Claims or Equity Interests in such Classes are deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan.

#### B. *Presumed Rejection of Plan*

Class 8 Equity Interests is Impaired and shall receive no distribution under this Plan on account of such Equity Interests. Therefore, the Holders of Equity Interests in such Class are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan.

Class 9 Equity Interests is Impaired and, if the Class of General Unsecured Claims votes to reject this Plan, the Holders of Equity Interests in such Class shall receive no distribution under this Plan on account of such Equity Interests. Therefore, the Holders of Equity Interests in such Class are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan.

#### C. *Voting Classes*

Classes 5 and 6 are Impaired under this Plan. The Holders of Claims in such Classes as of the Voting Record Date are entitled to vote to accept or reject this Plan.

#### D. *Acceptance by Impaired Class of Claims*

Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted this Plan if the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class actually voting have voted to accept this Plan.

#### E. *Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of this Plan by either Class 5 or 6. The Debtors request confirmation of this Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept this Plan pursuant to section 1126 of the Bankruptcy Code. The Debtors reserve the right to modify this Plan or any Exhibit or Plan Schedule in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

#### F. *Votes Solicited in Good Faith*

The Debtors have, and upon the Confirmation Date shall be deemed to have, solicited votes on this Plan from the Voting Classes in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including, without limitation, sections 1125 and 1126 of the Bankruptcy Code, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with the solicitation. Accordingly, the Debtors, the Reorganized Debtors, and each of their respective Related

Parties shall be entitled to, and upon the Confirmation Date are hereby granted, the protections of section 1125(e) of the Bankruptcy Code.

## ARTICLE V.

### MEANS FOR IMPLEMENTATION OF THE PLAN

#### A. *Global Settlement*

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates a compromise and settlement of various potential Claims and Causes of Action of the parties to the Restructuring Support Agreement, in the form of the Global Settlement. The Global Settlement is a cornerstone of the Plan and necessary to achieve a beneficial and efficient resolution of the Chapter 11 Cases for all parties in interest. The Plan shall be deemed to constitute a motion pursuant to Bankruptcy Rule 9019, seeking approval of the Global Settlement, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such motion and each of the compromises or settlements that comprise the Global Settlement, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are within the range of reasonableness, in the best interests of the Debtors, their Estates, their Creditors, and other parties-in-interest, and fair and equitable. Pursuant to the Global Settlement, solely if Class 6 votes to accept the Plan, the Majority Noteholders have agreed to carve-out from their collateral a settlement fund consisting of:

- (1) 5% of the New Limited Partnership Interests, subject to dilution by the New Management Incentive Plan Equity and the New Warrants; and
- (2) New Warrants for 15% of the equity of the Reorganized Debtors, subject to dilution by the New Management Incentive Plan Equity.

#### B. *Restructuring Transactions*

Without limiting any rights and remedies of the Debtors or Reorganized Debtors under this Plan or applicable law, but in all cases subject to the terms and conditions of the Restructuring Documents and any consents or approvals required thereunder, the entry of the Confirmation Order shall constitute authorization for the Reorganized Debtors to take, or to cause to be taken, all actions necessary or appropriate to consummate and implement the provisions of this Plan prior to, on and after the Effective Date, including such actions as may be necessary or appropriate to effectuate a corporate restructuring of their respective businesses, to otherwise simplify the overall corporate structure of the Reorganized Debtors, or to reincorporate certain of the Debtors under the laws of jurisdictions other than the laws of which the applicable Debtors are presently formed or incorporated. Such restructuring may include one or more mergers, consolidations, restructures, dispositions, liquidations, dissolutions, or creations of one or more new Entities, as may be determined by the Debtors or the Reorganized Debtors to be necessary or appropriate (with the consent of the Majority Noteholders), but in all cases subject to the terms and conditions of this Plan and the Restructuring Documents and any consents or approvals required hereunder or thereunder (collectively, the "**Restructuring Transactions**").

All such Restructuring Transactions taken, or caused to be taken, shall be deemed to have been authorized and approved by the Bankruptcy Court. The actions to effectuate the Restructuring Transactions may include: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation, or dissolution containing terms that are consistent with the terms of this Plan and that satisfy the applicable requirements of applicable state law and such other terms to which the applicable entities may agree; (ii) the execution and delivery of appropriate instruments

of transfer, assignment, assumption, or delegation of any asset, property, right, liability, duty, or obligation on terms consistent with the terms of this Plan and having such other terms to which the applicable entities may agree; (iii) the filing of appropriate certificates or articles of merger, consolidation, or dissolution pursuant to applicable state law; (iv) the creation of one or more new Entities; and (v) all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions, but in all cases subject to the terms and conditions of this Plan and the Restructuring Documents and any consents or approvals required thereunder.

*C. Continued Corporate Existence*

Subject to the Restructuring Transactions permitted by Article V.B of this Plan, after the Effective Date, the Reorganized Debtors (other than Emerge GP) shall continue to exist as separate legal entities in accordance with the applicable law in the respective jurisdiction in which they are incorporated or formed and pursuant to their respective certificates or articles of incorporation and by-laws, or other applicable organizational documents, in effect immediately prior to the Effective Date, except to the extent such certificates or articles of incorporation and by-laws, or other applicable organizational documents, are amended, restated or otherwise modified under this Plan. Notwithstanding anything to the contrary herein, the Claims against a particular Debtor or Reorganized Debtor shall remain the obligations solely of such Debtor or Reorganized Debtor and shall not become obligations of any other Debtor or Reorganized Debtor solely by virtue of this Plan or the Chapter 11 Cases.

As soon as reasonably practicable after the Effective Date, Emerge GP shall wind-down and dissolve in accordance with applicable law; provided that, the Debtors shall establish a wind-down reserve to effectuate, and pay the fees, costs, and expenses incurred in connection with, such wind-down and dissolution in an aggregate amount not to exceed \$125,000 (the "Wind-Down Reserve") without the consent of the Majority Noteholders in their sole discretion.

On the Effective Date, Emerge GP shall voluntarily withdraw (and, for the avoidance of doubt, shall be deemed to have withdrawn) as the general partner of Reorganized Emerge LP and shall in its place elect (and, for the avoidance of doubt, shall be deemed to have elected) the New General Partner as the general partner of Reorganized Emerge LP.

*D. Vesting of Assets in the Reorganized Debtors Free and Clear of Liens and Claims*

Except as otherwise expressly provided in this Plan, the Confirmation Order, or any Restructuring Document, pursuant to sections 1123(a)(5), 1123(b)(3), 1141(b) and (c) and other applicable provisions of the Bankruptcy Code, on and after the Effective Date, all property and assets of the Estates of the Debtors, including all claims, rights, and Litigation Claims of the Debtors, and any other assets or property acquired by the Debtors or the Reorganized Debtors during the Chapter 11 Cases or under or in connection with this Plan (other than the Carve Out Reserve and any rejected Executory Contracts and/or Unexpired Leases), shall vest in the Reorganized Debtors free and clear of all Claims, Liens, charges, and other encumbrances, subject to the Restructuring Transactions and Liens which survive the occurrence of the Effective Date as described in Article III of this Plan (including, without limitation, each Prepetition Debt Lien and Liens that secure the Exit Facility Loans). On and after the Effective Date, the Reorganized Debtors may (i) operate their respective businesses, (ii) use, acquire, and dispose of their respective property and (iii) compromise or settle any Claims, in each case without notice to, supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly imposed by this Plan or the Confirmation Order.

*E. Exit Facility Loan Documents*

On the Effective Date, the Debtors and the Reorganized Debtors, as applicable, shall be authorized to execute and deliver, and to consummate the transactions contemplated by, the Exit Facility Loan Documents, in each case in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity (other than as expressly required by the Exit Facility Loan Documents). On the Effective Date, the Exit Facility Loan Documents shall constitute legal, valid, binding and authorized indebtedness and obligations of the Reorganized Debtors (other than Emerge GP), enforceable in accordance with their respective terms and such indebtedness and obligations shall not be, and shall not be deemed to be, enjoined or subject to discharge, impairment, release or avoidance under this Plan, the Confirmation Order or on account of the Confirmation or Consummation of this Plan. For the avoidance of doubt, any letter of credit issued and outstanding under the Prepetition Credit Agreement on the Effective Date shall be deemed issued under the Exit Facility Credit Agreement.

On the Effective Date, the Prepetition Debt Liens in relation to the Exit Facility Loans and any and all additional liens and security interests to be granted in accordance with the Exit Facility Loan Documents (a) shall be legal, binding, and enforceable liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Loan Documents, (b) shall be deemed automatically attached and perfected on the Effective Date, subject only to such liens and security interests as may be permitted under the Exit Facility Loan Documents, and (c) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the entities granted such liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish, attach, and perfect such liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of this Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and the occurrence of the Effective Date, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such liens and security interests to third parties. To the extent that any Holder of a Secured Claim that has been satisfied or discharged in full pursuant to this Plan, or any agent for such Holder, has filed or recorded publicly any liens and/or security interests to secure such Holder's Secured Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps reasonably requested by the Debtors, the Reorganized Debtors, or the Exit Facility Agent that are necessary to release and/or extinguish such liens and security interests.

*F. No Termination or Release of Prepetition Debt Liens*

Notwithstanding anything in this Plan to the contrary, all property and assets of the Estates of the Debtors, including, without limitation, all claims, rights and Litigation Claims of the Debtors and any property and assets acquired by the Debtors or the Reorganized Debtors during the Chapter 11 Cases or under or in connection with this Plan, shall remain encumbered by and subject to the Prepetition Debt Liens, which, as of the Effective Date, shall secure the Exit Facility Loans and the New Second Lien Notes, as applicable, and such Liens (i) shall be and hereby are ratified, reaffirmed as valid, enforceable, and not avoidable, and deemed granted by the Reorganized Debtors and (ii) shall not be, and shall not be deemed to be, impaired, terminated, discharged or released by this Plan or the Confirmation Order or on account of the Confirmation or Consummation of this Plan.

*G. New GP/LP Equity Interests; Book Entry*

On the Effective Date, subject to the terms and conditions of the Restructuring Transactions, the New General Partner and Reorganized Emerge LP shall issue the New GP/LP Equity Interests, as applicable, pursuant to this Plan and/or the Amended/New Organizational Documents, as applicable. Except as otherwise expressly provided in the Restructuring Documents, the New General Partner and Reorganized Emerge LP shall not be obligated to register the New GP/LP Equity Interests under the Securities Act or to list such Equity Interests for public trading on any securities exchange.

Distributions of the New GP/LP Equity Interests and New Warrants may be made by delivery or book-entry transfer thereof by the applicable Distribution Agent in accordance with this Plan and the Amended/New Organizational Documents. Upon the Effective Date, after giving effect to the transactions contemplated hereby, the authorized capital stock or other equity securities of the New General Partner and Reorganized Emerge LP shall be that number of interests or units of New GP/LP Equity Interests as may be designated in the Amended/New Organizational Documents.

On and as of the Effective Date, all of the Holders of New GP/LP Equity Interests shall be bound by the terms and conditions of the Amended/New Organizational Documents, without the need for execution by such Holder. The Amended/New Organizational Documents shall be binding on all Persons receiving, and all Holders of, the New GP/LP Equity Interests (and their respective successors and assigns), whether such interest is received or to be received on or after the Effective Date.

#### *H. New Management Incentive Plan*

As soon as reasonably practicable after the Effective Date, the New General Partner will adopt and implement the New Management Incentive Plan, which terms and conditions, including recipients, individual awards and vesting periods, shall be determined by the New Board. The New Management Incentive Plan Equity will dilute all of the New Limited Partnership Interests equally.

#### *I. New Warrants*

If the Class of General Unsecured Claims votes to accept this Plan, then on the Effective Date, consistent with the Global Settlement, Reorganized Emerge LP shall enter into and consummate the transactions contemplated by the New Warrants Agreement (including issuing the New Warrants), which shall become effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity (other than as expressly required by the New Warrants Agreement and the New Warrants, as applicable).

#### *J. Plan Securities and Related Documentation; Exemption from Securities Laws*

On and after the Effective Date, the Debtors and the Reorganized Debtors, as applicable, are authorized to and shall provide or issue, as applicable, the New Second Lien Notes, the Preferred Interests, the New GP/LP Equity Interests, the New Warrants, and any and all other securities to be distributed or issued under this Plan (collectively, the "**Plan Securities**") and any and all other notes, units, stock, instruments, certificates, and other documents or agreements required to be distributed, issued, executed or delivered pursuant to or in connection with this Plan (collectively, the "**Plan Securities and Documents**"), in each case in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity.

The offer, distribution and issuance, as applicable, of the Plan Securities and Documents under this Plan shall be exempt from registration and prospectus delivery requirements under applicable securities laws (including Section 5 of the Securities Act or any similar state or local law requiring the registration and/or the delivery of a prospectus for offer or sale of a security or registration or licensing of an issuer of a security) pursuant to section 1145(a) of the Bankruptcy Code and/or other applicable exemptions. An offering of Plan Securities provided in reliance on the exemption from registration under the Securities Act pursuant to section 1145(a) of the Bankruptcy Code may be sold without registration to the extent permitted under section 1145 of the Bankruptcy Code and is deemed to be a public offering, and such Plan Securities may be resold without registration to the extent permitted under section 1145 of the Bankruptcy Code.

All New GP/LP Equity Interests issued to Holders of Allowed Claims on account of their respective Claims may be issued without registration under the Securities Act or any similar federal, state, or local law in reliance on section 1145(a) of the Bankruptcy Code.

Resales of any Plan Securities by Persons who receive any Plan Securities that are offered pursuant to an exemption under section 1145(a) of the Bankruptcy Code, who are deemed to be “underwriters” (as such term is defined in section 1145(b)(1) of the Bankruptcy Code) (collectively, the “Restricted Holders”) would not be exempted by section 1145 of the Bankruptcy Code from registration of Plan Securities under the Securities Act. Restricted Holders would, however, be permitted to resell the Plan Securities that are offered pursuant to an exemption under section 1145(a) of the Bankruptcy Code without registration if they are able to comply with the provisions of Rule 144 under the Securities Act, or if such securities are registered with the Commission pursuant to a registration statement or otherwise.

The terms of the Restructuring Documents governing the Preferred Interests and the New Limited Partnership Interests will provide registration rights to holders of the New Second Lien Notes (among other rights).

*K. Release of Liens and Claims*

To the fullest extent provided under section 1141(c) and other applicable provisions of the Bankruptcy Code, except as otherwise provided herein (including, without limitation, Article V.F and V.G of this Plan) or in any contract, instrument, release or other agreement or document entered into or delivered in connection with this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article VII hereof, all Liens, Claims, mortgages, deeds of trust, or other security interests against the assets or property of the Debtors or the Estates shall be fully released, canceled, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity. The filing of the Confirmation Order with any federal, state, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens, Claims and other interests to the extent provided in the immediately preceding sentence. Any Person or Entity holding such Liens, Claims or interests shall, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Reorganized Debtors such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtors.

*L. Organizational Documents of the Reorganized Debtors*

The respective organizational documents of each of the Debtors shall be amended and restated or replaced (as applicable) in form and substance satisfactory to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement and as necessary to satisfy the provisions of this Plan and the Bankruptcy Code. Such organizational documents shall: (i) to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting equity securities; (ii) authorize the issuance of New GP/LP Equity Interests in an amount not less than the amount necessary to permit the distributions thereof required or contemplated by this Plan; (iii) to the extent necessary or appropriate, include restrictions on the transfer of New GP/LP Equity Interests; and (iv) to the extent necessary or appropriate, include such provisions as may be needed to effectuate and consummate this Plan and the transactions contemplated herein. After the Effective Date, the Reorganized Debtors may, subject to the terms and conditions of the Restructuring Documents, amend and restate their respective organizational documents as permitted by applicable law.

*M. Directors and Officers of the Reorganized Debtors*

The New Board shall be identified in the Plan Supplement and shall be subject to approval of the Bankruptcy Court pursuant to section 1129(a)(5) of the Bankruptcy Code. Pursuant to and to the extent required by section 1129(a)(5) of the Bankruptcy Code, the Debtors will disclose, at or prior to the Confirmation Hearing, the identity and affiliations of any Person proposed to serve on the New Board or as an officer of each of the Reorganized Debtors (other than Emerge GP), and, to the extent such Person is an insider other than by virtue of being a director, managing member or an officer, the nature of any compensation for such Person. Each such director, manager, managing member and/or officer shall serve from and after the Effective Date pursuant to applicable law and the terms of the Amended/New Organizational Documents and the other constituent and organizational documents of the applicable Reorganized Debtors. The existing boards of directors and other governing bodies of the Debtors will be deemed to have resigned on and as of the Effective Date, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity.

*N. Corporate Action*

Each of the Debtors and the Reorganized Debtors may take any and all actions to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, including, without limitation, the issuance and the distribution of the securities to be issued pursuant hereto, in each case in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, members, managers, officers or directors of the Debtors or the Reorganized Debtors or by any other Person (except for those expressly required pursuant hereto or by the Restructuring Documents).

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the unit holders, interest holders, stockholders, directors, officers, managers, members or partners of the Debtors (as of prior to the Effective Date) shall be deemed to have been so approved and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by such Person or Entity or the need for any approvals, authorizations, actions or consents of or from any such Person or Entity.



As of the Effective Date, all matters provided for in this Plan involving the legal or corporate structure of the Debtors or the Reorganized Debtors (including, without limitation, the adoption of the Amended/New Organization Documents and similar constituent and organizational documents, and the selection of managers, directors, managing members and/or officers for, each of the Reorganized Debtors), and any legal or corporate action required by the Debtors or the Reorganized Debtors in connection with this Plan, shall be deemed to have occurred and shall be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity.

On and after the Effective Date, the appropriate officers of the Debtors and the Reorganized Debtors are authorized to issue, execute, and deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtors and the Reorganized Debtors, in each case in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity. The secretary and any assistant secretary of the Debtors and the Reorganized Debtors shall be authorized to certify or attest to any of the foregoing actions.

*O. Cancellation of Notes, Certificates and Instruments*

On the Effective Date, except to the extent otherwise provided herein (including, without limitation, Article V.E and V.F of this Plan), all notes, indentures, instruments, certificates, agreements and other documents evidencing or relating to any Impaired Claim shall be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity; provided that the Prepetition Credit Agreement and the Prepetition Notes Agreement shall each continue in effect for the limited purpose of allowing Holders of Claims thereunder to receive, and allowing and preserving the rights of the administrative agents thereunder to make, distributions under this Plan; provided further that, upon completion of all such distributions, the Prepetition Credit Agreement and the Prepetition Notes Agreement and any and all notes, securities and instruments issued in connection therewith shall terminate completely without further notice or action and be deemed surrendered.

*P. Old GP/LP Equity Interests; Old Affiliate Equity Interests*

On the Effective Date, the Old GP/LP Equity Interests will be terminated and cancelled without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity.

On the Effective Date, the Old Affiliate Equity Interests shall remain effective and outstanding, and shall be owned and held by the same applicable Person(s) that held and/or owned such Old Affiliate Equity Interests immediately prior to the Effective Date. Each Emerge LP Subsidiary shall continue to be governed by the terms and conditions of its applicable organizational documents as in effect immediately prior to the Effective Date, except as amended or modified by this Plan.

*Q. Sources of Cash for Plan Distributions*

All Cash necessary for the Debtors or the Reorganized Debtors, as applicable, to make payments required pursuant to this Plan will be obtained from their respective Cash balances, including Cash from operations, the Wind-Down Reserve established pursuant to this Plan and solely in connection with Emerge GP's dissolution, and the Exit Facility Credit Agreement. The Debtors and the Reorganized Debtors, as applicable, may also make such payments using Cash received from their subsidiaries through their respective consolidated cash management systems and the incurrence of intercompany transactions, but in all cases subject to the terms and conditions of the Restructuring Documents.

*R. Continuing Effectiveness of Final Orders*

Payment authorization granted to the Debtors under any prior Final Order entered by the Bankruptcy Court shall continue in effect after the Effective Date. Accordingly, the Debtors or the Reorganized Debtors may pay or otherwise satisfy any Claim to the extent permitted by, and subject to, the applicable Final Order without regard to the treatment that would otherwise be applicable to such Claim under this Plan.

*S. Funding and Use of Carve Out Reserve*

On or before the Effective Date, the Debtors shall fund the Carve Out Reserve in Cash in the aggregate amount of the Professional Fee Claims Estimates unless such other amount is determined by agreement among the Debtors, the Majority Noteholders and the Professional, or by order of the Bankruptcy Court.

The Cash contained in the Carve Out Reserve shall be used solely to pay the obligations and liabilities for which such reserve was established, with the Unused Cash Reserve Amount (if any) being returned to the Reorganized Debtors within three (3) Business Days after determining the Unused Cash Reserve Amount. The Debtors and the Reorganized Debtors, as applicable, shall maintain detailed records of all payments made from the Carve Out Reserve, such that all payments and transactions shall be adequately and promptly documented in, and readily ascertainable from, their respective books and records.

After the Effective Date, neither the Debtors nor the Reorganized Debtors shall deposit any other funds or property into the Carve Out Reserve without further order of the Bankruptcy Court or otherwise commingle funds in the Carve Out Reserve. To the extent the Carve Out Reserve is insufficient to pay in full in Cash the obligations and liabilities for which such reserve was established, then the Reorganized Debtors shall, within five (5) Business Days, pay such obligations and liabilities from either Cash on hand or by drawing under the Exit Facility Credit Agreement to the extent of any availability thereunder.

*T. Payment of Fees and Expenses of Certain Creditors*

The Debtors shall, on and after the Effective Date and to the extent invoiced, pay the Prepetition Credit Agreement Agent & Lenders Fees and Expenses and the Prepetition Noteholders Fees and Expenses (in each case whether accrued prepetition or postpetition and to the extent not otherwise paid during the Chapter 11 Cases), without application by any such parties to the Bankruptcy Court, and without notice and a hearing pursuant to section 1129(a)(4) of the Bankruptcy Code or otherwise; provided, however, if the Debtors or Reorganized Debtors and any such Entity cannot agree with respect to the reasonableness of the fees and expenses incurred prior to the Effective Date to be paid to such party, the reasonableness of any such fees and expenses shall be determined by the Bankruptcy Court (with any undisputed amounts to be paid by the Debtors on or after the Effective Date (as applicable) and any disputed amounts to be escrowed

by the Reorganized Debtors). Notwithstanding anything to the contrary in this Plan, the fees and expenses described in this paragraph shall not be subject to the Administrative Claims Bar Date or Claims Bar Date.

## ARTICLE VI.

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### A. *Treatment of Executory Contracts and Unexpired Leases*

On the Effective Date, all Executory Contracts and Unexpired Leases of the Debtors shall be deemed rejected by the Debtors in accordance with sections 365(a) and 1123(b)(2) of the Bankruptcy Code, except for those Executory Contracts and Unexpired Leases that:

- (i) have been assumed or rejected by the Debtors by prior order of the Bankruptcy Court;
- (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto;
- (iii) are the subject of a motion to assume filed by the Debtors pending on the Effective Date;
- (iv) are identified by the Debtors (with the consent of the Majority Noteholders) for assumption in the Plan Supplement, which may be amended by the Debtors (with the consent of the Majority Noteholders) to add or remove Executory Contracts and Unexpired Leases prior to the Effective Date; or
- (v) are assumed by the Debtors pursuant to the terms of this Plan.

Without amending or altering any prior order of the Bankruptcy Court approving the assumption or rejection of any Executory Contract or Unexpired Lease, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections and assumptions (as applicable) pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code.

To the extent any provision in any Executory Contract or Unexpired Lease assumed or assigned (as applicable) pursuant to this Plan or any prior order of the Bankruptcy Court (including, without limitation, any "change of control" provision) (a) prohibits, restricts or conditions (or purports to prohibit, restrict or condition), (b) is modified, breached or terminated (or deemed modified, breached or terminated), (c) increases, accelerates or otherwise alters any obligations or liabilities of the Debtors or Reorganized Debtors (or purports to increase, accelerate or otherwise alter any obligations or liabilities of the Debtors or Reorganized Debtors), or (d) results in the creation or imposition of any Lien upon any property or asset of any of the Debtors or Reorganized Debtors (or purports to result in the creation or imposition of any Lien upon any property or asset of any of the Debtors or Reorganized Debtors), in each case as a result of (i) the commencement of these Chapter 11 Cases or the insolvency or financial condition of any Debtor at any time before the closing of its respective Chapter 11 Case, (ii) any Debtor's or any Reorganized Debtor's assumption or assumption and assignment (as applicable) of such Executory Contract or Unexpired Lease or (iii) the Confirmation or Consummation of this Plan, then such provision shall be deemed modified such that the transactions contemplated by this Plan shall not entitle the non-debtor party thereto to modify, declare a breach, terminate, increase, accelerate or alter any of the obligations or liabilities of the Debtors or the Reorganized Debtors under, or create or impose any Lien upon any property or asset of any of the Debtors or Reorganized Debtors under any such Executory Contract or Unexpired Lease or to exercise any other default-related rights or remedies with respect thereto, and any required consent under any such contract or lease shall be deemed satisfied by the Confirmation of the Plan.

Each Executory Contract and Unexpired Lease assumed and/or assigned pursuant to this Plan shall revest in and be fully enforceable by the applicable Reorganized Debtor or the applicable assignee in accordance with its terms and conditions, except as modified by the provisions of this Plan, any order of the Bankruptcy Court approving its assumption and/or assignment, or applicable law.

The inclusion or exclusion of a contract or lease on any schedule or exhibit shall not constitute an admission by any Debtor that such contract or lease is an Executory Contract or Unexpired Lease or that any Debtor has any liability thereunder.

*B. Cure of Defaults; Assignment of Executory Contracts and Unexpired Leases*

Any defaults under each Executory Contract and Unexpired Lease to be assumed, or assumed and assigned, pursuant to this Plan shall be satisfied, pursuant to and to the extent required by section 365(b)(1) of the Bankruptcy Code, by payment of the applicable default amount in Cash on the Effective Date or on such other terms as the Bankruptcy Court may order or the parties to such Executory Contracts or Unexpired Leases may otherwise agree in writing (with the consent of the Majority Noteholders) (the “Cure Claim Amount”).

In the event of an assumption, or an assumption and assignment, of an Executory Contract or Unexpired Lease under this Plan, the Debtors shall File and serve upon counterparties to such Executory Contracts and Unexpired Leases, a notice of the proposed assumption, or proposed assumption and assignment (the “Assumption Notice”), which will: (a) list the applicable Cure Claim Amount, if any; (b) if applicable, identify the party to which the Executory Contract or Unexpired Lease will be assigned; (c) describe the procedures for filing objections thereto; and (d) explain the process by which related disputes will be resolved by the Bankruptcy Court, including the date by which any objection to the Assumption Notice must be filed and received by the Debtors.

Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption, or proposed assumption and assignment under this Plan, or any related cure amount, must be Filed, served and actually received by the Debtors on the date specified in the Assumption Notice (notwithstanding anything in the Schedules or a Proof of Claim to the contrary). Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption, or proposed assumption and assignment, or cure amount will be deemed to have consented to such matters and will be deemed to have forever released and waived any objection to such proposed assumption, proposed assumption and assignment, and cure amount. The Confirmation Order shall constitute an order of the Bankruptcy Court approving each proposed assumption, or proposed assumption and assignment, of Executory Contracts and Unexpired Leases pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

In the event of a dispute regarding (a) the amount of any cure payment, (b) the ability of any Debtor or assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or assumed and assigned or (c) any other matter pertaining to assumption or assignment, the applicable cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving such assumption or assumption and assignment; provided, however, that following the resolution of any such dispute, the Debtors or the Reorganized Debtors, as applicable, may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming or assigning it. The Debtors or the Reorganized Debtors, as applicable, shall be authorized to effect such rejection by filing a written notice of rejection with the Bankruptcy Court and serving such notice on the applicable counterparty within ten (10) days of the entry of such Final Order.

Subject to any cure claims Filed with respect thereto, assumption or assumption and assignment of any Executory Contract or Unexpired Lease pursuant to this Plan shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assumption and assignment, in each case as provided in section 365 of the Bankruptcy Code. Any Proofs of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed or assumed and assigned by Final Order shall be deemed disallowed and expunged (subject to any cure claims Filed with respect thereto), without further notice to or action, order, or approval of the Bankruptcy Court.

With respect to any Executory Contract or Unexpired Lease assumed and assigned pursuant to this Plan, upon and as of the Effective Date, the applicable assignee shall be deemed to be substituted as a party thereto for the applicable Debtor party to such assigned Executory Contract or Unexpired Lease and, accordingly, the Debtors and the Reorganized Debtors shall be relieved, pursuant to and to the extent set forth in section 365(k) of the Bankruptcy Code, from any further liability under such assigned Executory Contract or Unexpired Lease.

*C. Rejection of Executory Contracts and Unexpired Leases*

The Debtors reserve the right (with the consent of the Majority Noteholders), at any time prior to the Effective Date, except as otherwise specifically provided herein, to seek to reject any Executory Contract or Unexpired Lease, including any Executory Contract or Unexpired Lease previously assumed by the Debtors pursuant to an order of the Bankruptcy Court or identified in the Plan Supplement, and to file a motion requesting authorization for the rejection of any such contract or lease. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the rejections described in this Article VI pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Rejection of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise shall not constitute a termination of any preexisting obligations owed to the Debtors or the Reorganized Debtors, as applicable, under such Executory Contracts or Unexpired Leases.

*D. Claims on Account of the Rejection of Executory Contracts or Unexpired Leases*

All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to this Plan or the Confirmation Order, if any, must be filed with the Bankruptcy Court within thirty (30) days after service of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection.

Any Person or Entity that is required to file a Proof of Claim arising from the rejection of an Executory Contract or an Unexpired Lease that fails to timely do so shall be forever barred, estopped and enjoined from asserting such Claim, and such Claim shall not be enforceable, against the Debtors, the Reorganized Debtors or the Estates, and the Debtors, the Reorganized Debtors and their Estates and their respective assets and property shall be forever discharged from any and all indebtedness and liability with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.G hereof.

*E. D&O Liability Insurance Policies*

On the Effective Date, each D&O Liability Insurance Policy shall be assumed by the Debtors pursuant to section 365(a) and section 1123 of the Bankruptcy Code as to which no Proof of Claim, request for

administrative expense, or cure claim need be Filed. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtors' assumption of each of the D&O Liability Insurance Policies. In furtherance of the foregoing and subject to the terms and conditions of the D&O Liability Insurance Policies (including any "tail", "runoff" or extended reporting period coverage provision to the extent obtained by the Debtors in relation to any such insurance policies), the Reorganized Debtors shall maintain and continue in full force and effect such D&O Liability Insurance Policies for the benefit of the insured Persons at levels (including with respect to coverage and amount) no less favorable than those existing as of the date of entry of the Confirmation Order for a period of no less than six (6) years following the Effective Date; provided, however, that, after assumption of the D&O Liability Insurance Policies, nothing in this Plan otherwise alters the terms and conditions of the D&O Liability Insurance Policies. Subject to the terms and conditions of the D&O Liability Insurance Policies (including any "tail", "runoff" or extended reporting period coverage provision to the extent obtained by the Debtors in relation to any such insurance policies), Confirmation and Consummation of this Plan shall not impair or otherwise modify any available defenses of the Reorganized Debtors under the D&O Liability Insurance Policies. For the avoidance of doubt, the D&O Liability Insurance Policies shall continue to apply with respect to actions, or failures to act, that occurred on or prior to the Effective Date, subject to the terms and conditions of the D&O Liability Insurance Policies. The Debtors are further authorized to take such actions, and to execute and deliver such documents, as may be reasonably necessary or appropriate to implement, maintain, cause the inception or binding of, satisfy any terms or conditions of, or otherwise secure for the insureds the benefits of any "tail", "runoff" or extended reporting period coverage in relation to any such insurance policies, without further notice to or order of the Bankruptcy Court or approval or consent of any Person or Entity.

Notwithstanding anything to the contrary in any D&O Liability Insurance Policies issued prior to the Effective Date, the Reorganized Debtors shall not have any obligation or responsibility for the payment of any self-insured retention thereunder or in connection therewith, and no person or entity shall be entitled to seek reimbursement from or to subrogate against any Reorganized Debtors with respect to any payments made under such policies.

*F. Indemnification Provisions*

On the Effective Date, each Indemnification Provision shall be deemed and treated as an Executory Contract that is and shall be assumed by each applicable Debtor pursuant to section 365(a) and section 1123 of the Bankruptcy Code, subject to and solely to the extent modified herein (as modified, the "**Assumed Indemnification Provisions**"); provided that as it relates to the indemnification of any Debtor's directors, managers and officers as of the Petition Date that were not members of the Special Restructuring Committee as of the Petition Date (the "**Previous D&Os**"), the aggregate liability of the Reorganized Debtors in connection therewith shall not exceed One Million Dollars (\$1,000,000) beyond the extent of the coverage provided by the D&O Liability Insurance Policies; provided further, that the Assumed Indemnification Provisions shall not apply to the Previous D&Os with respect to any liabilities arising from or related to the failure of the Debtors to file its current, quarterly or annual reports as required under the rules promulgated by the Securities and Exchange Commission unless such failure is cured and the Debtors are brought back into compliance with the rules promulgated by the Securities and Exchange Commission in accordance with the milestones set forth in Section 6.16 of the DIP Credit Agreement. In connection with the Assumed Indemnification Provisions, no Proof of Claim, request for administrative expense, or cure claim need be Filed. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtors' assumption of each of the Assumed Indemnification Provisions. Confirmation and Consummation of this Plan shall not impair or otherwise modify any available defenses of the Reorganized Debtors or other applicable parties under the Assumed Indemnification Provisions. For the avoidance of doubt, (i) the Assumed Indemnification Provisions shall continue to apply with respect to actions, or failures to act, that occurred on or prior to the

Effective Date, subject to the terms and conditions of the Assumed Indemnification Provisions, and (ii) the New General Partner shall not assume nor be deemed to assume any liabilities with respect to any Indemnification Provision of a Previous D&O.

*G. Extension of Time to Assume or Reject*

Notwithstanding anything to the contrary set forth in Article VI of this Plan, in the event of a dispute as to whether a contract is executory or a lease is unexpired, the right of the Reorganized Debtors to move to assume or reject such contract or lease shall be extended until the date that is ten (10) days after entry of a Final Order by the Bankruptcy Court determining that the contract is executory or the lease is unexpired. The deemed rejection provided for in Article VI.A of this Plan shall not apply to any such contract or lease, and any such contract or lease shall be assumed or rejected only upon motion of the Reorganized Debtors following the Bankruptcy Court's determination that the contract is executory or the lease is unexpired.

*H. Modifications, Amendments, Supplements, Restatements, or Other Agreements*

Unless otherwise provided in this Plan, each Executory Contract or Unexpired Lease that is assumed by the Debtors or the Reorganized Debtors shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing has been previously rejected or repudiated or is rejected or repudiated hereunder. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

**ARTICLE VII.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

*A. Distributions for Claims Allowed as of the Effective Date*

Except as otherwise provided in the "Treatment" sections in Article III hereof or as ordered by the Bankruptcy Court, initial distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as is practicable. Any payment or distribution required to be made under this Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Disputed Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Article VIII hereof.

*B. No Postpetition Interest on Claims*

Unless otherwise specifically provided for in this Plan, the Confirmation Order or Final Order of the Bankruptcy Court, or required by applicable bankruptcy law (including, without limitation, as required pursuant to section 506(b) or section 511 of the Bankruptcy Code), postpetition interest shall not accrue or be paid on any Claims and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

C. *Distributions by the Reorganized Debtors or Other Applicable Distribution Agent*

Other than as specifically set forth below, the Reorganized Debtors or other applicable Distribution Agent shall make all distributions required to be distributed under this Plan. Distributions on account of the Allowed Prepetition Debt Claims and Allowed DIP Facility Claims shall be made to the Prepetition Agents and the DIP Credit Agreement Agent, respectively, and such agent will be, and shall act as, the Distribution Agent with respect to its respective Class of Claims in accordance with the terms and conditions of this Plan and the applicable loan documents. All distributions to Holders of Prepetition Debt Claims and DIP Facility Claims shall be deemed completed when made by the Reorganized Debtors to the Prepetition Agents and the DIP Credit Agreement Agent, as applicable. The Reorganized Debtors may employ or contract with other entities to assist in or make the distributions required by this Plan and may pay the reasonable fees and expenses of such entities and the Distribution Agents in the ordinary course of business. No Distribution Agent shall be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

D. *Delivery and Distributions; Undeliverable or Unclaimed Distributions*

1. Record Date for Distributions

On the Distribution Record Date, the Claims Register (and the Debtors' books and records with respect to the Holders of Old GP/LP Equity Interests) shall be closed. Accordingly, the Debtors, the Reorganized Debtors or other applicable Distribution Agent will have no obligation to recognize the assignment, transfer or other disposition of, or the sale of any participation in, any Allowed Claim (other than DIP Credit Agreement Claims and Prepetition Debt Claims) or Allowed Equity Interest that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute securities, property, notices and other documents only to those Holders of Allowed Claims (other than DIP Credit Agreement Claims and Prepetition Debt Claims) or Allowed Equity Interest who are Holders of such Claims or Equity Interests, or participants therein, as of the close of business on the Distribution Record Date. The Reorganized Debtors or other applicable Distribution Agent shall be entitled to recognize and deal for all purposes under this Plan with only those record holders stated on the Claims Register, or their books and records, as of the close of business on the Distribution Record Date; provided, however, that the Distribution Record Date shall not apply to the DIP Credit Agreement Claims or Prepetition Debt Claims.

2. Delivery of Distributions in General

Except as otherwise provided herein, the Debtors, the Reorganized Debtors or other applicable Distribution Agent, as applicable, shall make distributions to Holders of Allowed Claims and Allowed Equity Interests, or in care of their authorized agents, as appropriate, at the address for each such Holder or agent as indicated on the Debtors' or other applicable Distribution Agent's books and records as of the date of any such distribution; provided, however, that the manner of such distributions shall be determined in the discretion of the applicable Distribution Agent (subject to the terms and conditions of the DIP Credit Agreement and the relevant Prepetition Debt Documents, if applicable); provided further, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in the latest Proof of Claim Filed by such Holder pursuant to Bankruptcy Rule 3001 as of the Distribution Record Date and the address for each Holder of an Allowed Equity Interest shall be deemed to be the address set forth in the Debtors' books and records, or as may be held by the applicable transfer agent or similar such agency.



### 3. Minimum Distributions

Notwithstanding anything herein to the contrary, no Distribution Agent shall be required to make distributions or payments of less than \$25.00 (whether in Cash or otherwise) or to make partial distributions or payments of fractions of dollars or New GP/LP Equity Interests, in each case with respect to Impaired Claims or Impaired Equity Interests. With respect to Impaired Claims and Impaired Equity Interests, whenever any payment or distribution of a fraction of a dollar or share/unit of New GP/LP Equity Interest under this Plan would otherwise be called for, the actual payment or distribution will reflect a rounding of such fraction to the nearest whole dollar or share/unit of New GP/LP Equity Interest (up or down), with half dollars and half shares/units of New GP/LP Equity Interest or more being rounded up to the next higher whole number and with less than half dollars and half shares/units of New GP/LP Equity Interest being rounded down to the next lower whole number (and no Cash shall be distributed in lieu of such fractional New GP/LP Equity Interest).

No Distribution Agent shall have any obligation to make a distribution on account of an Allowed Claim that is Impaired under this Plan if: (a) the aggregate amount of all distributions authorized to be made on the Subsequent Distribution Date in question is or has an economic value less than \$25,000, unless such distribution is a final distribution; or (b) the amount to be distributed to the specific Holder of an Allowed Claim on such Subsequent Distribution Date does not constitute a final distribution to such Holder and is or has an economic value less than \$25.00, which shall be treated as an undeliverable distribution under Article VII.D.4 below.

### 4. Undeliverable Distributions

#### (a) Holding of Certain Undeliverable Distributions

If the distribution to any Holder of an Allowed Claim or an Allowed Equity Interest is returned to the Distribution Agent as undeliverable or is otherwise unclaimed, no further distributions shall be made to such Holder unless and until the Distribution Agent is notified in writing of such Holder's then current address in accordance with the time frames described in Article VII.D.4(b) hereof, at which time all currently due but missed distributions shall be made to such Holder on the next Subsequent Distribution Date (or such earlier date as determined by the applicable Distribution Agent). Undeliverable distributions shall remain in the possession of the Reorganized Debtors or in the applicable reserve, subject to Article VII.D.4(b) hereof, until such time as any such distributions become deliverable. Undeliverable distributions shall not be entitled to any additional interest, dividends or other accruals of any kind on account of their distribution being undeliverable.

#### (b) Failure to Claim Undeliverable Distributions

Any Holder of an Allowed Claim or an Allowed Equity Interest (or any successor or assignee or other Person or Entity claiming by, through, or on behalf of, such Holder) that does not assert a right pursuant to this Plan for an undeliverable or unclaimed distribution within ninety (90) days after the later of the Effective Date or the date such distribution is due shall be deemed to have forfeited its rights for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such rights for an undeliverable or unclaimed distribution against the Debtors or their Estates, the Reorganized Debtors or their respective assets or property, or any Distribution Agent. In such case, any Cash, Plan Securities, or other property reserved for distribution on account of such Claim or Equity Interest shall become the property of the Reorganized Debtors, free and clear of any Claims or other rights of such Holder with respect thereto and notwithstanding any federal or state escheat laws to the contrary. Any such Cash, Plan Securities, or other property shall thereafter be distributed or allocated in accordance with the applicable terms and conditions of this Plan. Nothing contained in this Plan shall require the Debtors, the

Reorganized Debtors, or any Distribution Agent to attempt to locate any Holder of an Allowed Claim or an Allowed Equity Interest.

(c) *Failure to Present Checks*

Checks issued by the Distribution Agent on account of Allowed Claims or Allowed Equity Interests shall be null and void if not negotiated within ninety (90) days after the issuance of such check. Requests for reissuance of any check shall be made directly to the Distribution Agent by the Holder of the relevant Allowed Claim or Allowed Equity Interest with respect to which such check originally was issued. Any Holder of an Allowed Claim or Allowed Equity Interest holding an un-negotiated check that does not request reissuance of such un-negotiated check within ninety (90) days after the date of mailing or other delivery of such check shall have its rights for such un-negotiated check discharged and be forever barred, estopped and enjoined from asserting any such right against the Debtors, their Estates, the Reorganized Debtors, or their respective assets or property. In such case, any Cash held for payment on account of such Claims or Equity Interests shall become the property of the Reorganized Debtors, free and clear of any Claims or other rights of such Holder with respect thereto and notwithstanding any federal or state escheat laws to the contrary. Any such Cash shall thereafter be distributed or allocated in accordance with the applicable terms and conditions of this Plan.

*E. Compliance with Tax Requirements*

In connection with this Plan and all distributions hereunder, the Reorganized Debtors or other applicable Distribution Agent shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtors or other applicable Distribution Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. All Persons holding Claims or Equity Interests shall be required to provide any information necessary to effect information reporting and the withholding of such taxes, and each Holder of an Allowed Claim or an Allowed Equity Interest shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution.

*F. Allocation of Plan Distributions Between Principal and Interest*

To the extent that any Allowed Claim entitled to a distribution under this Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for income tax purposes to the principal amount of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

*G. Means of Cash Payment*

Payments of Cash made pursuant to this Plan shall be in U.S. dollars and shall be made, at the option of the applicable Distribution Agent, by checks drawn on, or wire transfer from, a domestic bank selected by such Distribution Agent. Cash payments to foreign creditors may be made, at the option of the applicable Distribution Agent, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

*H. Timing and Calculation of Amounts to Be Distributed*

Except as otherwise provided in the “Treatment” sections in Article III hereof or as ordered by the Bankruptcy Court, on the Initial Distribution Date (or if a Claim is not an Allowed Claim on the Effective Date, on the Subsequent Distribution Date occurring after such Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim shall receive the full amount of the distributions that this Plan provides for Allowed Claims in the applicable Class. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in the applicable class treatment or in Article VIII hereof. Except as otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends or accruals on the distributions provided for herein, regardless of whether such distributions are delivered on or at any time after the Effective Date.

*I. Setoffs*

Without altering or limiting any of the rights and remedies of the Debtors and the Reorganized Debtors under section 502(d) of the Bankruptcy Code, all of which rights and remedies are hereby reserved, the Debtors and the Reorganized Debtors, in consultation with the Majority Noteholders, may, but shall not be required to, withhold (but not setoff except as set forth below) from the distributions called for hereunder on account of any Allowed Claim (other than any Allowed Prepetition Credit Agreement Claims, Allowed DIP Credit Agreement Claims, and Allowed Prepetition Notes Claims) an amount equal to any claims, Causes of Action and Litigation Claims of any nature that the Debtors or the Reorganized Debtors may hold against the Holder of any such Allowed Claim; provided that, at least ten (10) days prior to effectuating such withholding, the Debtors or the Reorganized Debtors, as applicable, shall provide written notice thereof to the applicable Holder of such Claim, and all objections and defenses of such Holder to such withholding are preserved. In the event that any such claims, Causes of Action or Litigation Claims are adjudicated by Final Order or otherwise resolved against the applicable Holder, the Debtors and the Reorganized Debtors may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim (other than any Allowed Prepetition Credit Agreement Claims, Allowed DIP Credit Agreement Claims, and Allowed Prepetition Notes Claims) and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), the amount of such adjudicated or resolved claims, Causes of Action or Litigation Claims. Neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Reorganized Debtors of any such claims, Causes of Action or Litigation Claims, all of which are reserved unless expressly released or compromised pursuant to this Plan or the Confirmation Order.

**ARTICLE VIII.**

**PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED,  
AND DISPUTED CLAIMS AND EQUITY INTERESTS**

*A. Resolution of Disputed Claims and Equity Interests*

*1. Allowance of Claims and Equity Interests*

After the Effective Date, and except as otherwise provided in this Plan, the Reorganized Debtors shall have and shall retain any and all available rights and defenses that the Debtors had with respect to any Claim or Equity Interest, including, without limitation, the right to assert any objection to Claims or Equity Interests based on the limitations imposed by section 502 or section 510 of the Bankruptcy Code.

## 2. Prosecution of Objections to Claims and Equity Interests

After the Confirmation Date but before the Effective Date, the Debtors, and after the Effective Date, the Reorganized Debtors shall have the authority to File objections to Claims and Equity Interests (other than those that are Allowed under this Plan) and settle, compromise, withdraw or litigate to judgment objections to any and all such Claims and Equity Interests, regardless of whether such Claims and Equity Interests are in an Unimpaired Class or otherwise; provided, however, this provision shall not apply to Professional Fee Claims, which may be objected to by any party-in-interest in these Chapter 11 Cases. From and after the Effective Date, the Reorganized Debtors may settle or compromise any Disputed Claim and Disputed Equity Interest without any further notice to or action, order or approval of the Bankruptcy Court. The Reorganized Debtors shall have the sole authority to administer and adjust the Claims Register and their respective books and records to reflect any such settlements or compromises without any further notice to or action, order or approval of the Bankruptcy Court.

## 3. Claims Estimation

After the Confirmation Date but before the Effective Date, the Debtors, and after the Effective Date, the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any Disputed Claim or contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claim, whether for allowance or to determine the maximum amount of such Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation.

## 4. Deadline to File Objections to Claims and Equity Interests

Any objections to Claims shall be Filed by no later than the Claims Objection Deadline; provided that nothing contained herein shall limit the Reorganized Debtors' right to object to Claims, if any, Filed or amended after the Claims Objection Deadline. Moreover, notwithstanding the expiration of such objection deadline, the Debtors or the Reorganized Debtors shall continue to have the right to amend any claims objections and to file and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is Allowed. Moreover, notwithstanding the expiration of the Claims Objection Deadline, the Reorganized Debtors shall continue to have the right to amend any claims or other objections and to File and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is or becomes Allowed by Final Order.

Any objections to Equity Interests shall be Filed by no later than the Old GP/LP Objection Deadline. Moreover, notwithstanding the expiration of such objection deadline, the Reorganized Debtors shall continue to have the right to amend any objections and to file and prosecute supplemental objections and counterclaims to a Disputed Equity Interest until such Disputed Equity Interest is or becomes Allowed by Final Order.

### *B. No Distributions Pending Allowance*

Notwithstanding any other provision of this Plan to the contrary, no payments or distributions of any kind or nature shall be made with respect to all or any portion of a Disputed Claim or Disputed Equity Interest unless and until all objections to such Disputed Claim or Disputed Equity Interest have been settled

or withdrawn or have been determined by Final Order, and the Disputed Claim or Disputed Equity Interest is or becomes Allowed by Final Order.

*C. Distributions on Account of Disputed Claims and Disputed Equity Interests Once They Are Allowed and Additional Distributions on Account of Previously Allowed Claims and Allowed Equity Interests*

On each Subsequent Distribution Date (or such earlier date as determined by the Reorganized Debtors in their sole discretion), the Reorganized Debtors or other applicable Distribution Agent will make distributions (a) on account of any Disputed Claim and Disputed Equity Interest that has become Allowed during the preceding calendar quarter, and (b) on account of previously Allowed Claims and Allowed Equity Interests of property that would have been distributed to the Holders thereof on the dates distributions previously were made to Holders of Allowed Claims and Allowed Equity Interests in such Class had the Disputed Claims and Disputed Equity Interests that have become Allowed or Disallowed been Allowed or Disallowed, as applicable, on such dates. Such distributions will be made pursuant to the applicable provisions of Article VII of this Plan. For the avoidance of doubt, but without limiting the terms or conditions of Article VII.B or Paragraph B of this Article VIII, any dividends or other distributions arising from property distributed to holders of Allowed Claims and Allowed Equity Interests in a Class and paid to such Holders under this Plan shall also be paid, in the applicable amounts, to any Holder of a Disputed Claim and Disputed Equity Interest in such Class that becomes Allowed after the date or dates that such dividends or other distributions were earlier paid to holders of Allowed Claims and Allowed Equity Interests in such Class.

*D. Reserve for Disputed Claims and Disputed Equity Interests*

The Debtors, the Reorganized Debtors, and the Distribution Agent may, in their respective sole discretion, establish such appropriate reserves for Disputed Claims and Disputed Equity Interests in the applicable Class(es) as it determines necessary and appropriate, in each case with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement or as approved by order of the Bankruptcy Court. Without limiting the foregoing, reserves (if any) for Disputed Claims and Disputed Equity Interests shall equal, as applicable, an amount of property equal to 100% of distributions to which Holders of Disputed Claims and Disputed Equity Interests in each applicable Class would otherwise be entitled under this Plan as of such date if such Disputed Claims and Disputed Equity Interests were Allowed in their respective Face Amount (or based on the Debtors' books and records if the applicable Holder has not yet Filed a Proof of Claim or Proof of Interest and the applicable bar date has not yet expired); provided, however, that the Debtors and the Reorganized Debtors, as applicable, shall have the right to file a motion seeking to estimate any Disputed Claims or Disputed Equity Interest.

## ARTICLE IX.

### CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

*A. Conditions Precedent to Confirmation*

It shall be a condition to Confirmation of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof:

1. This Plan and the Restructuring Documents shall be in form and substance consistent in all respects with the Restructuring Term Sheet and otherwise acceptable to the Special Restructuring

Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement; and

2. The Confirmation Order shall have been entered by the Bankruptcy Court, and such order shall be in form and substance consistent in all respects with the Restructuring Term Sheet and otherwise acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement.

*B. Conditions Precedent to Consummation*

It shall be a condition to Consummation of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof.

1. The Confirmation Order shall have become a Final Order and such order shall not have been amended, modified, vacated, stayed, or reversed;

2. The Confirmation Date shall have occurred;

3. The Bankruptcy Court shall have entered one or more Final Orders (which may include the Confirmation Order), in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, authorizing the assumption, assumption and assignment and rejection of the Executory Contracts and Unexpired Leases by the Debtors as contemplated in this Plan and the Plan Supplement;

4. This Plan and the Restructuring Documents shall not have been amended or modified other than in a manner in form and substance consistent in all respects with the Restructuring Term Sheet and otherwise acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement;

5. The Restructuring Documents shall have been filed, tendered for delivery, and been effectuated or executed by all Entities party thereto (as appropriate), and in each case in full force and effect. All conditions precedent to the effectiveness of such Restructuring Documents, including, without limitation, the Exit Facility Loan Agreement and the New Second Lien Notes Agreement, shall have been satisfied or waived pursuant to the terms of such applicable Restructuring Documents (or shall be satisfied concurrently with the occurrence of the Effective Date);

6. All DIP Credit Agreement Claims will have been paid off in full in Cash, or will be paid in full in Cash simultaneously with the effectiveness of the Plan, or will have received or will receive such other treatment as the Holders of DIP Credit Agreement Claims and the Debtors shall have agreed to in writing, in accordance with the terms of the DIP Credit Agreement;

7. All consents, actions, documents, certificates and agreements necessary to implement this Plan and the transactions contemplated by this Plan shall have been, as applicable, obtained and not otherwise subject to unfulfilled conditions, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws, and in each case in full force and effect;

8. All governmental approvals and consents, including Bankruptcy Court approval, that are applicable and legally required for the consummation of this Plan shall have been obtained, not be subject to unfulfilled conditions and be in full force and effect, and, to the extent applicable, all applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, shall have expired;

9. The New Board shall have been selected;

10. The conditions to the effectiveness of the Exit Facility Credit Agreement and the New Second Lien Notes Agreement shall have been satisfied or waived and such agreements shall have closed or will close simultaneously with the effectiveness of this Plan;

11. The Restructuring Support Agreement shall be in full force and effect and shall not have been terminated in accordance with its terms;

12. The Carve Out Reserve shall have been funded in full in Cash by the Debtors in accordance with the terms and conditions of this Plan;

13. The Wind-Down Reserve shall have been funded in the amount of \$125,000 by the Debtors in accordance with the terms and conditions of this Plan; and

14. To the extent invoiced, all (i) Prepetition Credit Agreement Agent & Lenders Fees and Expenses and (ii) Prepetition Notes Fees and Expenses shall have been paid in full in Cash or reserved in a manner acceptable to the Majority Noteholders (or approved by order of the Bankruptcy Court) to the extent of any disputes related thereto.

*C. Waiver of Conditions*

Subject to section 1127 of the Bankruptcy Code, the conditions to Confirmation and Consummation of this Plan set forth in this Article IX may be waived by the Debtors, with the prior written consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate this Plan. The failure of the Debtors or Reorganized Debtors to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

*D. Effect of Non-Occurrence of Conditions to Confirmation or Consummation*

If the Confirmation or the Consummation of this Plan does not occur with respect to one or more of the Debtors, then this Plan shall, with respect to such applicable Debtor or Debtors, be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Equity Interests in the Debtors; (2) prejudice in any manner the rights of the Debtors, any Holders or any other Entity; (3) constitute an Allowance of any Claim or Equity Interest; or (4) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any Holders or any other Entity in any respect.

**ARTICLE X.**

**RELEASE, DISCHARGE, INJUNCTION AND RELATED PROVISIONS**

*A. General*

With respect to Class 5 Claims only, pursuant to section 1123 of the Bankruptcy Code, and in consideration for the classification, distributions, releases and other benefits provided under this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of such Class 5 Claims.

Notwithstanding anything contained herein to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions (if any) and treatments hereunder, takes into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code or otherwise. As of the Effective Date, any and all contractual, legal and equitable subordination rights, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code or otherwise, relating to the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions (if any) and treatments hereunder, are settled, compromised, terminated and released pursuant hereto; *provided, however*, that nothing contained herein shall preclude any Person or Entity from exercising their rights pursuant to and consistent with the terms of this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan.

**B. Release of Claims and Causes of Action**

1. **Release by the Debtors and their Estates.** Pursuant to section 1123(b) and any other applicable provisions of the Bankruptcy Code, and except as otherwise expressly provided in this Plan, effective as of the Effective Date, for good and valuable consideration provided by each of the Released Parties, the adequacy and sufficiency of which is hereby confirmed, the Debtors and the Reorganized Debtors, in their respective individual capacities and as debtors-in-possession, and on behalf of themselves and their respective Estates, including, without limitation, any successor to the Debtors or any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code (collectively, the “Debtor Releasing Parties”) will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full waiver and release to each of the Released Parties (and each such Released Party so released shall be deemed forever released and waived by the Debtor Releasing Parties) and their respective assets and properties (the “Debtor Release”) from any and all claims, Causes of Action, Released and Settled Claims, Litigation Claims and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, whether directly or derivatively held, existing as of the Effective Date or thereafter arising, in law, at equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to any of the Debtors, including, without limitation, (i) the Chapter 11 Cases, the Disclosure Statement, this Plan, the Restructuring Support Agreement and the Restructuring Documents, (ii) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, (iii) the business or contractual arrangements between any Debtor and any Released Parties, (iv) the negotiation, formulation or preparation of the Restructuring Support Agreement, this Plan, the Disclosure Statement, the Plan Supplement, the Restructuring Documents, or related agreements, instruments or other documents, (v) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Cases, (vi) the purchase, sale, or rescission of the purchase or sale of any Equity Interest of the Debtors or the Reorganized Debtors, and/or (vii) the Confirmation or Consummation of this Plan or the solicitation of votes on this Plan that such Debtor Releasing Party would have been legally entitled to assert (whether individually or collectively) or that any Holder of a Claim or Equity Interest or other Entity would have been legally entitled to assert for, or on behalf or in the name of, any Debtor, its respective Estate or any Reorganized Debtor (whether directly or derivatively) against any of the Released Parties; *provided, however*, that the foregoing provisions of this Debtor Release shall not operate to waive or release: (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (ii) any Causes of Action relating



to the MSHA Action (other than against a member of the Special Restructuring Committee); and/or (iii) the rights of such Debtor Releasing Party to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan or assumed pursuant to this Plan or assumed pursuant to Final Order of the Bankruptcy Court. The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to this Debtor Release. Notwithstanding the foregoing, nothing in this Article X.B shall or shall be deemed to (i) prohibit the Debtors or the Reorganized Debtors from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, Causes of Action or liabilities they may have against any Person that is based upon an alleged breach of a confidentiality or non-compete obligation owed to the Debtors or the Reorganized Debtors and/or (ii) operate as a release or waiver of any Intercompany Claims, in each case unless otherwise expressly provided for in this Plan.

2. Release By Third Parties. Except as otherwise expressly provided in this Plan, effective as of the Effective Date, to the fullest extent permitted by applicable law, for good and valuable consideration provided by each of the Released Parties, the adequacy and sufficiency of which is hereby confirmed, and without limiting or otherwise modifying the scope of the Debtor Release provided by the Debtor Releasing Parties above, each Non-Debtor Releasing Party (together with the Debtor Releasing Parties, the "Releasing Parties") will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full waiver and release to each of the Released Parties (and each such Released Party so released shall be deemed forever released and waived by the Non-Debtor Releasing Parties) and their respective assets and properties (the "Third Party Release") from any and all claims, Causes of Action, Released and Settled Claims, Litigation Claims and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, whether directly or derivatively held, existing as of the Effective Date or thereafter arising, in law, at equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to any of the Debtors, including, without limitation, (i) the Chapter 11 Cases, the Disclosure Statement, this Plan, the Restructuring Support Agreement and the Restructuring Documents, (ii) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, (iii) the business or contractual arrangements between any Debtor and any Released Parties, (iv) the negotiation, formulation or preparation of the Restructuring Support Agreement, this Plan, the Disclosure Statement, the Plan Supplement, the Restructuring Documents, or related agreements, instruments or other documents, (v) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Cases, (vi) the purchase, sale or rescission of the purchase or sale of any Equity Interest of the Debtors or the Reorganized Debtors, and/or (vii) the Confirmation or Consummation of this Plan or the solicitation of votes on this Plan that such Non-Debtor Releasing Party would have been legally entitled to assert (whether individually or collectively) against any of the Released Parties; provided, however, that the foregoing provisions of this Third Party Release shall not operate to waive or release (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (ii) any Causes of Action relating to the MSHA Action (other than against a member of the Special Restructuring Committee); and/or (iii) the rights of such Non-Debtor Releasing Party to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with this Plan or assumed

pursuant to this Plan or Final Order of the Bankruptcy Court. The foregoing release shall be effective as of the Effective Date, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to this Third Party Release.

*C. Waiver of Statutory Limitations on Releases*

Each of the Releasing Parties in each of the releases contained above expressly acknowledges that although ordinarily a general release may not extend to claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, they have carefully considered and taken into account in determining to enter into the above releases the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Releasing Party expressly waives any and all rights conferred upon it by any statute or rule of law which provides that a release does not extend to claims which the claimant does not know or suspect to exist in its favor at the time of providing the release, which if known by it may have materially affected its settlement with the released party. The releases contained in this Plan are effective regardless of whether those released matters are presently known, unknown, suspected or unsuspected, foreseen or unforeseen.

*D. Discharge of Claims and Equity Interests*

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan (including, without limitation, Article V.E and V.F of this Plan) or the Confirmation Order, effective as of the Effective Date, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, discharge, and release of, all Claims, Equity Interests and Causes of Action of any kind or nature whatsoever against the Debtors or any of their respective assets or properties, including any interest accrued on such Claims or Equity Interests from and after the Petition Date, and regardless of whether any property shall have been abandoned by order of the Bankruptcy Court, distributed or retained pursuant to this Plan on account of such Claims, Equity Interests or Causes of Action.

Except as otherwise expressly provided by this Plan (including, without limitation, Article V.E and V.F of this Plan) or the Confirmation Order, upon the Effective Date, the Debtors and their Estates shall be deemed discharged and released under and to the fullest extent provided under sections 524 and 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. Such discharge shall void any judgment obtained against the Debtors or the Reorganized Debtors at any time, to the extent that such judgment relates to a discharged Claim.

Except as otherwise expressly provided by this Plan (including, without limitation, Article V.E and V.F of this Plan) or the Confirmation Order, upon the Effective Date: (i) the rights afforded herein and the treatment of all Claims and Equity Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their respective assets, property, or Estates; (ii) all Claims and Equity Interests shall be satisfied, discharged, and released in full, and each of the Debtor's liability with respect thereto shall be extinguished completely without further notice or action; and (iii) all Entities shall be precluded from asserting against the Debtors, the Estates, the Reorganized Debtors, each of their respective successors and assigns, and each of their respective assets

and properties, any such Claims or Equity Interests, whether based upon any documents, instruments or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date or otherwise.

*E. Exculpation*

Effective as of the Effective Date, the Exculpated Parties shall neither have nor incur any liability to any Person or Entity for any claims, Causes of Action or Released and Settled Claim for any act taken or omitted to be taken on or after the Petition Date and prior to or on the Effective Date in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the Confirmation or Consummation of this Plan, the Disclosure Statement, the Restructuring Documents or any contract, instrument, release or other agreement or document created or entered into in connection with this Plan, including the Restructuring Support Agreement, or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, the approval of the Disclosure Statement or Confirmation or Consummation of this Plan; provided, however, that the foregoing provisions of this exculpation shall not operate to waive or release: (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Exculpated Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; and/or (ii) the rights of any Person or Entity to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with this Plan or assumed pursuant to this Plan or Final Order of the Bankruptcy Court; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its respective duties pursuant to, or in connection with, the above referenced documents, actions or inactions. The foregoing exculpation shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person. Notwithstanding the foregoing, nothing in this Article X.E shall or shall be deemed to prohibit the Debtors or the Reorganized Debtors from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, Causes of Action or liabilities they may have against any Person that is based upon an alleged breach of a confidentiality or non-compete obligation owed to the Debtors or the Reorganized Debtors, in each case unless otherwise expressly provided for in this Plan.

*F. Preservation of Causes of Action*

1. Maintenance of Causes of Action

Except as otherwise provided in this Article X (including, without limitation, and for the avoidance of doubt, the Releases contained in Article X.B and Exculpation contained in Article X.E hereof) or elsewhere in this Plan or the Confirmation Order, after the Effective Date, the Reorganized Debtors shall retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Litigation Claims, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Cases. The Reorganized Debtors, as the successors-in-interest to the Debtors and the Estates, may, and shall have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of such Litigation Claims without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Except as otherwise expressly provided in this Plan, the Debtors expressly reserve all Causes of Action and Litigation Claims for later adjudication by the Debtors or the Reorganized Debtors (including,

without limitation, Causes of Action and Litigation Claims not specifically identified or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action or Litigation Claims as a result of the Confirmation or Consummation of this Plan or based on the Disclosure Statement, this Plan or the Confirmation Order, except in each case where such Causes of Action or Litigation Claims have been expressly waived, relinquished, released, compromised or settled in this Plan (including, without limitation, and for the avoidance of doubt, the Releases contained in Article X.B and Exculpation contained in Article X.E hereof) or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtors and the Reorganized Debtors expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which any of the Debtors are a plaintiff, defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

### *G. Injunction*

Except as otherwise expressly provided in this Plan or the Confirmation Order, from and after the Effective Date, all Persons and Entities are, to the fullest extent provided under section 524 and other applicable provisions of the Bankruptcy Code, permanently enjoined from (i) commencing or continuing, in any manner or in any place, any suit, action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; (iv) asserting a setoff (except to the extent such setoff was exercised prior to the Petition Date) or right of subrogation of any kind; or (v) commencing or continuing in any manner any action or other proceeding of any kind, in each case on account of or with respect to any Claim, demand, liability, obligation, debt, right, Cause of Action, equity interest, or remedy released or to be released, exculpated or to be exculpated, settled or to be settled or discharged or to be discharged pursuant to the Plan or the Confirmation Order against any Person or Entity so released, discharged, or exculpated (or the property or estate of any Person or Entity so released, discharged, or exculpated). All injunctions or stays provided for in the Chapter 11 Cases under section 105 or section 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

### *H. Binding Nature Of Plan*

On the Effective Date, and effective as of the Effective Date, this Plan shall bind, and shall be deemed binding upon, the Debtors, the Reorganized Debtors, any and all Holders of Claims against and Equity Interests in the Debtors, all Persons and Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in this Plan, each Person and Entity acquiring property under this Plan, any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors and the respective successors and assigns of each of the foregoing, to the maximum extent permitted by applicable law, and notwithstanding whether or not such Person or Entity (i) will receive or retain any property, or interest in property, under this Plan, (ii) has Filed a Proof of Claim or Interest in the Chapter 11 Cases, or (iii) failed to vote to accept or reject this Plan, affirmatively voted to reject this Plan, or is conclusively presumed to reject this Plan.

### *I. Released and Settled Claims.*

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, this Plan incorporates an integrated compromise, settlement and release of the Released and Settled Claims, to achieve a beneficial and efficient resolution of these Chapter 11 Cases for all parties in interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or

settlement of all such Released and Settled Claims and the Court's determination that such compromises and settlements are in the best interests of the Debtors, their estates, the Reorganized Debtors, creditors and all other parties in interest, and are fair, equitable and within the range of reasonableness. The compromises, settlements and releases described herein shall be deemed nonseverable from each other and from all other terms of this Plan.

*J. Protection Against Discriminatory Treatment*

To the extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the United States Constitution, all Persons and Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to, discriminate with respect to such a grant, against the Reorganized Debtors, or another Person or Entity with whom the Reorganized Debtors have been associated, solely because any Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge) or has not paid a debt that is dischargeable in the Chapter 11 Cases.

*K. Integral Part of Plan*

Each of the provisions set forth in this Plan with respect to the settlement, release, discharge, exculpation, injunction, indemnification and insurance of, for or with respect to Claims and/or Causes of Action are an integral part of this Plan and essential to its implementation. Accordingly, each Entity that is a beneficiary of such provision shall have the right to independently seek to enforce such provision and such provision may not be amended, modified, or waived after the Effective Date without the prior written consent of such beneficiary.

**ARTICLE XI.**

**RETENTION OF JURISDICTION**

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, on and after the Effective Date, retain exclusive jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Chapter 11 Cases, the Debtors and this Plan as legally permissible, including, without limitation, jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of any such Claim or Equity Interest;

2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; provided, however, that, from and after the Effective Date, the Reorganized Debtors shall pay Professionals in the ordinary course of business for any work performed after the Effective Date and such payment shall not be subject to the approval of the Bankruptcy Court;

3. resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, those matters related to any amendment to this Plan after the Effective Date

to add Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed or rejected (as applicable);

4. resolve any issues related to any matters adjudicated in the Chapter 11 Cases;
5. ensure that distributions to Holders of Allowed Claims or Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
6. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action that are pending as of the Effective Date or that may be commenced in the future, and grant or deny any applications involving the Debtors that may be pending on the Effective Date or instituted by the Reorganized Debtors after the Effective Date, *provided, however* that the Reorganized Debtors shall reserve the right to commence actions in all appropriate forums and jurisdictions;
7. enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with this Plan, the Plan Supplement or the Disclosure Statement;
8. resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation or enforcement of this Plan or any Person or Entity's obligations incurred in connection with this Plan;
9. hear and determine all Causes of Action that are pending as of the Effective Date or that may be commenced in the future;
10. issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with Consummation or enforcement of this Plan;
11. enforce the terms and conditions of this Plan, the Confirmation Order, and the Restructuring Documents;
12. resolve any cases, controversies, suits or disputes with respect to the Release, the Exculpation, and other provisions contained in Article X hereof and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such provisions;
13. hear and determine all Litigation Claims;
14. enter and implement such orders or take such other actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
15. resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order or any release or exculpation adopted in connection with this Plan; and
16. enter an order concluding or closing the Chapter 11 Cases.

Notwithstanding the foregoing, (i) any dispute arising under or in connection with the Exit Credit Agreement or New Second Lien Notes Agreement shall be dealt with in accordance with the provisions of the applicable document and (ii) if the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article of the Plan, the provisions of this Article

XI shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## ARTICLE XII.

### MISCELLANEOUS PROVISIONS

#### A. *Substantial Consummation*

“Substantial Consummation” of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

#### B. *Payment of Statutory Fees; Post-Effective Date Fees and Expenses*

All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code (“**Quarterly Fees**”) prior to the Effective Date shall be paid by the Debtors on the Effective Date. The Debtors shall file all quarterly reports that become due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. On and after the Effective Date, the Reorganized Debtors shall pay any and all Quarterly Fees when due and payable, and shall file with the Bankruptcy Court quarterly reports when they become due in a form reasonably acceptable to the United States Trustee. Each Debtor and Reorganized Debtor shall remain obligated to pay Quarterly Fees to the Office of the United States Trustee until the earliest of that particular Debtor’s case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code.

Subject to Article XII.R of this Plan, the Reorganized Debtors shall pay the liabilities and charges that they incur on or after the Effective Date for Professionals’ fees, disbursements, expenses, or related support services (including reasonable fees, costs and expenses incurred by Professionals relating to the preparation of interim and final fee applications and obtaining Bankruptcy Court approval thereof) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court, including, without limitation, the reasonable fees, expenses, and disbursements of the Distribution Agents and the fees, costs and expenses incurred by Professionals incurred on or after the Effective Date in connection with the implementation, enforcement and Consummation of this Plan and the Restructuring Documents.

#### C. *Conflicts*

In the event that a provision of the Restructuring Documents or the Disclosure Statement (including any and all exhibits and attachments thereto) conflicts with a provision of this Plan or the Confirmation Order, the provision of this Plan and the Confirmation Order (as applicable) shall govern and control to the extent of such conflict. In the event that a provision of this Plan conflicts with a provision of the Confirmation Order, the provision of the Confirmation Order shall govern and control to the extent of such conflict.

#### D. *Modification of Plan*

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order in a way that is in form and substance consistent in all respects with the Restructuring Term Sheet and otherwise acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, in accordance with section 1127(a) of the Bankruptcy Code; and (b) after the entry of the

Confirmation Order, the Debtors or the Reorganized Debtors, as applicable, may, upon order of the Bankruptcy Court, amend or modify this Plan in a way that is in form and substance consistent in all respects with the Restructuring Term Sheet and otherwise acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, in accordance with section 1127(b) of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan. A Holder of a Claim or Equity Interest that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim or Equity Interest of such Holder.

*E. Revocation or Withdrawal of Plan*

The Debtors reserve the right to revoke or withdraw this Plan prior to the Effective Date and/or to File subsequent chapter 11 plans, with respect to one or more of the Debtors. If the Debtors revoke or withdraw this Plan, or if Confirmation or Consummation of this Plan does not occur with respect to one or more of the Debtors, then with respect to the applicable Debtor or Debtors for which this Plan was revoked or withdrawn or for which Confirmation or Consummation of this Plan did not occur: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the applicable Debtors or any other Entity; (b) prejudice in any manner the rights of the applicable Debtors or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the applicable Debtors or any other Entity.

*F. Successors and Assigns*

This Plan shall be binding upon and inure to the benefit of the Debtors, the Reorganized Debtors, all present and former Holders of Claims and Equity Interests, other parties-in-interest, and their respective heirs, executors, administrators, successors, and assigns. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

*G. Reservation of Rights*

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and this Plan is Consummated. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtors or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtors with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

*H. Further Assurances*

The Debtors or the Reorganized Debtors, as applicable, all Holders of Claims receiving distributions hereunder and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order.



*I. Severability*

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

*J. Service of Documents*

Any notice, direction or other communication given regarding the matters contemplated by this Plan (each, a "**Notice**") must be in writing, sent by personal delivery, electronic mail, courier or facsimile and addressed as follows:

**If to the Debtors:**

Superior Silica Sands LLC  
5600 Clearfork Main Street, Suite 400  
Fort Worth, Texas 76109  
Attn: Roy Messing, Chief Restructuring Officer  
Direct Dial: (203) 241-6082  
Fax: (212) 818-1551  
Email: roy.messing@ankura.com

with a copy to:

Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022  
Attn: Keith A. Simon  
Direct Dial: (212) 906-1372  
Fax: (212) 751-4864  
Email: keith.simon@lw.com

**If to the Committee:**

Kilpatrick Townsend & Stockton LLP  
1114 Avenue of the Americas  
New York, NY 1006  
Attn: Todd C. Meyers  
David M. Posner  
Direct Dial: (212) 775-8700  
Fax: (212) 775-8800  
Email: tmeyers@kilpatricktownsend.com  
dposner@kilpatricktownsend.com

**If to the Prepetition Agents or Majority Noteholders:**

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Attn: Matt Barr  
David Griffiths  
Telephone: (212) 310-8000  
Fax: (212) 310-8007  
Email: matt.barr@weil.com  
david.griffiths@weil.com

A Notice is deemed to be given and received (a) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, or (b) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile, or (c) if sent by electronic mail, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic "read receipt" does not constitute acknowledgment of an email for purposes of this Section. Any party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a party.

*K. Exemption from Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code*

Pursuant to and to the extent set forth in section 1146(a) of the Bankruptcy Code, any issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer of property, pursuant to or in connection with this Plan or the Restructuring Documents shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States or by any other Governmental Unit, and the Confirmation Order shall direct the appropriate federal, state or local (domestic or foreign) governmental officials or agents to forgo the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents evidencing such action or event without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of, transactions contemplated by and the distributions to be made under this Plan or the Restructuring Documents, (ii) the issuance and distribution of the New GP/LP Equity Interests or Plan Securities and Documents, and (iii) the maintenance or creation of security interests or any Lien as contemplated by this Plan or the Restructuring Documents.

*L. Governing Law*

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that a Restructuring Document or an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

*M. Tax Reporting and Compliance*

The Reorganized Debtors are hereby authorized, on behalf of the Debtors, to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtors for all taxable periods ending after the Petition Date through and including the Effective Date.

*N. Schedules*

All exhibits and schedules to this Plan, including the Exhibits and Plan Schedules, are incorporated herein and are a part of this Plan as if set forth in full herein.

*O. No Strict Construction*

This Plan is the product of extensive discussions and negotiations between and among, *inter alia*, the Debtors, the Committee, the Prepetition Credit Agreement Agent, the Prepetition Notes Agent, the Prepetition Credit Agreement Lenders, the Prepetition Notes Lenders, and their respective professionals. Each of the foregoing was represented by counsel of its choice who either participated in the formulation and documentation of, or was afforded the opportunity to review and provide comments on, this Plan, the Disclosure Statement, the Exhibits and the Plan Schedules, and the agreements and documents ancillary or related thereto. Accordingly, unless explicitly indicated otherwise, the general rule of contract construction known as “*contra proferentem*” or other rule of strict construction shall not apply to the construction or interpretation of any provision of this Plan, the Disclosure Statement, the Exhibits or the Plan Schedules, or the documents ancillary and related thereto.

*P. Entire Agreement*

Except as otherwise provided herein or therein, this Plan and the Restructuring Documents supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan and the Restructuring Documents.

*Q. Closing of Chapter 11 Cases*

The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and Local Rule 3022-1, and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

*R. Dissolution of Committee*

On and as of the Effective Date and notwithstanding any term or provision to the contrary in Article XII.B of this Plan, any Committee shall dissolve automatically and its members shall be released and discharged from all rights, duties and responsibilities arising from, or related to, the Chapter 11 Cases. The Reorganized Debtors shall not be responsible for paying any fees, costs, or expenses incurred by the members, professionals, or advisors to any Committee after the Effective Date.

*S. 2002 Notice Parties*

After the Effective Date, the Debtors and the Reorganized Debtors, as applicable, are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed a renewed request after the Confirmation Hearing to receive documents pursuant to Bankruptcy Rule 2002.

Respectfully submitted,

EMERGE ENERGY SERVICES LP AND ITS  
AFFILIATE DEBTORS

By: /s/ Bryan M. Gaston

Name: Bryan M. Gaston

Title: Restructuring Officer

Exhibit A

Preferred Interests Term Sheet

**Exhibit B**

New Warrants Term Sheet

Exhibit 2

**Redline of Plan of Reorganization**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
EMERGE ENERGY SERVICES LP, *et al.*, : Case No. 19-11563 (KBO)  
: :  
Debtors.<sup>1</sup> : Jointly Administered  
: :  
----- X

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~~FIRST~~ MODIFIED SECOND AMENDED JOINT PLAN OF REORGANIZATION FOR  
EMERGE ENERGY SERVICES LP AND ITS AFFILIATE DEBTORS  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

---

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Counsel for the Debtors and Debtors-in-Possession

Dated: ~~September 11~~ December 18, 2019

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors' address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



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**~~FIRST MODIFIED SECOND AMENDED JOINT PLAN OF REORGANIZATION FOR  
EMERGE ENERGY SERVICES LP AND ITS AFFILIATE DEBTORS  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE~~**

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Emerge Energy Services LP and the other above-captioned debtors and debtors-in-possession (each a “**Debtor**” and, collectively, the “**Debtors**”) jointly propose the following plan of reorganization for the resolution of the outstanding Claims (as defined below) against, and Equity Interests (as defined below) in, each of the Debtors. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against and Equity Interests in each Debtor pursuant to the Bankruptcy Code (as defined below). The Debtors are the proponents of this Plan within the meaning of section 1129 of the Bankruptcy Code. Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtors’ history, business, results of operations, historical financial information, and projections, and for a summary and analysis of this Plan, the treatment provided for herein and certain related matters. There also are other agreements and documents, which will be filed with the Bankruptcy Court (as defined below), that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Schedules. All such Exhibits and Plan Schedules are incorporated into and are a part of this Plan as if set forth in full herein. Subject to certain restrictions and requirements set forth in 11 U.S.C. § 1127, Fed. R. Bankr. P. 3019 and the terms and conditions set forth in this Plan, the Debtors reserve the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

**ARTICLE I.**

**RULES OF INTERPRETATION, COMPUTATION OF TIME,  
CONSENT RIGHTS, AND DEFINED TERMS**

*A. Rules of Interpretation; Computation of Time*

For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced item shall be substantially in that form or substantially on those terms and conditions; (c) except as otherwise provided herein, any reference herein to an existing or to be Filed contract, lease, instrument, release, indenture, or other agreement or document shall mean as it may be amended, modified or supplemented from time to time; (d) any reference to an Entity as a Holder of a Claim or an Equity Interest includes that Entity’s successors and assigns; (e) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Schedules” are references to Articles, Sections, Exhibits and Plan Schedules hereof or hereto; (f) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (g) subject to the provisions of any contract, certificate of incorporation, by-law, instrument, release, indenture, or other agreement or document entered into in connection with this Plan and except as expressly provided in Article XII.C of this Plan, the rights and obligations arising pursuant to this Plan shall be governed by, and construed and enforced in accordance with the applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (h) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply to this Plan; (j) references to a specific article, section, or subsection of any statute, rule, or regulation expressly referenced herein shall, unless otherwise specified, include any amendments to or successor provisions of such article, section, or subsection; (k) any term used in capitalized form herein that is not

otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (l) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (m) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; and (n) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated. Except as otherwise specifically provided in this Plan to the contrary, references in this Plan to "the Debtors" or to "the Reorganized Debtors" shall mean "the Debtors and the Reorganized Debtors," as applicable, to the extent the context requires.

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to this Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

#### *B. Certain Consent Rights*

Notwithstanding anything in the Plan to the contrary, any and all consent rights of the Consenting Creditors set forth in the Restructuring Support Agreement with respect to the form and substance of this Plan, the Plan Supplement, the Plan Documents, and any other Definitive Document (as defined in the Restructuring Support Agreement), including any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions set forth herein) and fully enforceable as if stated in full herein until such time as the Restructuring Support Agreement is terminated in accordance with its terms.

#### *C. Defined Terms*

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

"*510(b) Equity Claim*" means any Claim subordinated pursuant to section 510(b) of the Bankruptcy Code.

"*Accrued Professional Compensation*" means, with respect to a particular Professional, an Administrative Claim of such Professional for compensation for services rendered or reimbursement of costs, expenses or other charges incurred on or after the Petition Date and prior to and including the Effective Date (including, without limitation, reasonable out-of-pocket expenses of the Committee Members incurred in discharge of their duties as such).

"*Administrative Claim*" means a Claim for costs and expenses of administration of the Chapter 11 Cases that are Allowed under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) any actual and necessary costs and expenses incurred on or after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) Professional Fee Claims and any other compensation for legal, financial, advisory, accounting, and other services and reimbursement of expenses Allowed by the Bankruptcy Court under sections 328, 330, 331 or 503(b) of the Bankruptcy Code to the extent incurred on or after the Petition Date and through the Effective Date; (c) DIP Credit Agreement Claims, (d) Cure Claim Amounts, and (e) all fees and charges assessed against the Estates under section 1930, chapter 123, of title 28, United States Code.

“*Administrative Claims Bar Date*” means the Business Day which is thirty (30) days after the Effective Date, or such other date as approved by Final Order of the Bankruptcy Court.

“*Affiliate*” means an “affiliate,” as defined in section 101(2) of the Bankruptcy Code.

“*Affiliate Debtor(s)*” means, individually or collectively, any Debtor or Debtors other than Emerge GP or Emerge LP.

“*Allowed*” means, with respect to a Claim or Equity Interest, an Allowed Claim or Allowed Equity Interest in a particular Class or category specified. Any reference herein to the allowance of a particular Allowed Claim includes both the secured and unsecured portions of such Claim.

“*Allowed Claim*” means any Claim that is not a Disputed Claim or a Disallowed Claim and (a) for which a Proof of Claim has been timely Filed by the applicable Claims Bar Date or deemed timely Filed under applicable law or by order of the Bankruptcy Court and as to which no objection to allowance thereof has been timely interposed within the applicable period of time fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or order of the Bankruptcy Court; (b) that has been listed by the Debtors in their Schedules as liquidated in a specified amount and is not disputed or contingent and for which no contrary Proof of Claim has been timely Filed; or (c) that is expressly Allowed pursuant to the terms of this Plan or a Final Order of the Bankruptcy Court. The term “Allowed Claim” shall not, for purposes of computing distributions under this Plan, include interest on such Claim from and after the Petition Date, except as provided in sections 506(b) or 511 of the Bankruptcy Code or as otherwise expressly set forth in this Plan or a Final Order of the Bankruptcy Court.

“*Allowed \_\_\_\_\_ Claim*” means an Allowed Claim of the type described.

“*Allowed Equity Interest*” means any Old GP/LP Equity Interest that is not a Disputed Equity Interest and (a) as to which no objection to allowance has been timely interposed in accordance with section 502 of the Bankruptcy Code or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder; or (b) that is expressly allowed by this Plan.

“*Allowed \_\_\_\_\_ Equity Interest*” means an Allowed Equity Interest of the type described.

“*Amended/New Organizational Documents*” means, as applicable, the amended and restated or new applicable organizational documents of the New General Partner and Reorganized Emerge LP Filed with the Plan Supplement.

“*Avoidance Actions*” means any and all avoidance, recovery, subordination or similar actions or remedies that may be brought by and on behalf of the Debtors or their Estates under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions or remedies arising under chapter 5 of the Bankruptcy Code; provided that Avoidance Action does not include Released and Settled Claims.

“*Ballots/Opt-Out Forms*” means the ballots and opt-out forms accompanying the Disclosure Statement, which were approved by the Disclosure Statement Order (modified, as necessary, based upon the applicable ~~voting party recipient~~ in accordance with the Disclosure Statement Order), ~~including any Master Ballots and Beneficial Owner Ballots.~~

“*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Cases.

“*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware, or any other court having jurisdiction over the Chapter 11 Cases.

“*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, in each case as amended from time to time and as applicable to the Chapter 11 Cases.

“*Beneficial Holder*” means, as of the applicable date of determination, a beneficial owner of the Prepetition Notes or Old Emerge LP Equity Interests as reflected in the records maintained by the Registered Record Owner or Intermediary Record Owner, as applicable.

~~“*Beneficial Holder Ballots*” means the Ballots accompanying the Disclosure Statement upon which Beneficial Holders of the Prepetition Notes or the Old Emerge LP Equity Interests entitled to vote should, among other things, indicate their acceptance or rejection of this Plan and whether to affirmatively opt out of the Third Party Release.~~

“*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

“*Cash*” means the legal tender of the United States of America or the equivalent thereof.

“*Carve Out Reserve*” means the reserve established and maintained by the Reorganized Debtors to pay in full in Cash the Professional Fee Claims incurred on or prior to the Effective Date.

“*Causes of Action*” means any claims, causes of action (including Avoidance Actions), demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date.

“*Chapter 11 Case(s)*” means (a) when used with reference to a particular Debtor, the case under chapter 11 of the Bankruptcy Code commenced by such Debtor in the Bankruptcy Court, and (b) when used with reference to all Debtors, the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors in the Bankruptcy Court being jointly administered under Case No. 19-11563 (KBO).

“*Claim*” means any “claim” (as defined in section 101(5) of the Bankruptcy Code) against any Debtor.

“*Claims Bar Date*” means the last date for filing a Proof of Claim in these Chapter 11 Cases, as provided in the Claims Bar Date Order.

“*Claims Bar Date Order*” means that certain *Order Pursuant to Bankruptcy Rule 3003(c)(3) and Local Rule 2002-1(e) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim (Including for Administrative Expense Claims Arising Under Section 503(b)(9) of the Bankruptcy Code) and Approving the Form and Manner of Notice Thereof*, entered by the Bankruptcy Court in the Chapter 11 Cases (Docket No. 157), as amended, supplemented or modified from time to time.



“*Claims Objection Deadline*” means, with respect to any Claim, the latest of (a) one hundred eighty (180) days after the Effective Date; (b) ninety (90) days after the Filing of an applicable Proof of Claim, or (c) such other date as may be specifically fixed by Final Order of the Bankruptcy Court for objecting to such Claim.

“*Claims Register*” means the official register of Claims maintained by the Voting and Claims Agent.

“*Class*” means a category of Holders of Claims or Equity Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

“*CM/ECF*” means the Bankruptcy Court’s Case Management and Electronic Case Filing system.

“*Collateral*” means any property or interest in property of the Debtors’ Estates that is subject to a valid and enforceable Lien to secure a Claim.

“*Commission*” means the U.S. Securities and Exchange Commission.

“*Committee*” means any official committee of the Debtors appointed by the United States Trustee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, if appointed and as reconstituted from time to time.

“*Committee Members*” means the members of the Committee and their respective successors and assigns.

“*Confirmation*” means the occurrence of the Confirmation Date, subject to all conditions specified in Article IX of this Plan having been satisfied or waived pursuant to Article IX of this Plan.

“*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court in the Chapter 11 Cases.

“*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

“*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

“*Consenting Creditors*” means, collectively, the Consenting Prepetition Credit Agreement Lenders and the Consenting Prepetition Noteholders.

“*Consenting Creditors Professionals*” means, collectively, (i) Weil, Gotshal & Manges LLP, as counsel to the Consenting Creditors, (ii) Pachulski, Stang, Ziehl & Jones LLP as Delaware counsel to the Consenting Creditors, and (iii) any other professional retained by the Consenting Creditors during the Chapter 11 Cases.

“*Consenting Equity Holders*” means the direct and indirect owners of Emerge GP that are party to the Restructuring Support Agreement as “Consenting Equity Holders” thereunder.

“*Consenting Prepetition Credit Agreement Lenders*” means those Holders of the Prepetition Credit Agreement Claims that are party to the Restructuring Support Agreement as “Consenting Revolving Loan Lenders” thereunder.

“*Consenting Prepetition Noteholders*” means those Holders of the Prepetition Notes that are party to the Restructuring Support Agreement as “Consenting Noteholders” thereunder.

“*Consummation*” means the occurrence of the Effective Date.

“*Cure Claim Amount*” has the meaning set forth in Article VI.B of this Plan.

“*D&O Liability Insurance Policies*” means all insurance policies (including, without limitation, any management liability policies, general liability policies, any errors and omissions policies, and, in each case, any agreements, documents, or instruments related thereto) issued at any time on or prior to the Effective Date and providing coverage for liability of any Debtor’s directors, managers, and officers, and including any “tail”, “runoff” or extended reporting period coverage to the extent obtained by the Debtors in relation to any such insurance policies.

“*Debtor(s)*” means, individually, any of the above-captioned debtors and debtors-in-possession and, collectively, all of the above-captioned debtors and debtors-in-possession.

“*Debtor Release*” has the meaning set forth in Article X.B hereof.

“*Debtor Releasing Parties*” has the meaning set forth in Article X.B hereof.

“*DIP Credit Agreement*” means that certain Senior Secured Priming and Superpriority Debtor-In-Possession Credit and Security Agreement, dated as of July 19, 2019, by and among Emerge LP, the Emerge LP Subsidiaries party thereto, the DIP Credit Agreement Agent, and the DIP Credit Agreement Lenders, as amended, supplemented, or modified from time to time prior to the Effective Date.

“*DIP Credit Agreement Agent*” means HPS Investment Partners, LLC, in its capacity as administrative agent under the DIP Credit Agreement.

“*DIP Credit Agreement Claims*” means any and all Claims arising from, under or in connection with the DIP Credit Agreement (including, without limitation, any and all “Obligations” as defined therein) or any other DIP Loan Document.

“*DIP Credit Agreement Lenders*” means the lenders party to the DIP Credit Agreement from time to time.

“*DIP Credit Agreement Liens*” means the Liens securing the payment of the DIP Credit Agreement Claims.

“*DIP Loan Documents*” means, collectively, the DIP Credit Agreement and the DIP Security Document.

“*DIP Order*” means that certain *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Certain Protections to Prepetition Secured Parties, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief*, entered by the Bankruptcy Court in the Chapter 11 Cases (Docket No. 209), as such order may be amended, supplemented, or modified from time to time.

“*DIP Security Document*” means the “Security Document” as defined in the DIP Credit Agreement, in each case as amended, supplemented, or modified from time to time prior to the Effective Date.

“*Disallowed*” means, with respect to a Claim or Equity Interest, a Disallowed Claim or Disallowed Equity Interest in a particular Class or category specified.

“*Disallowed Claim*” means a Claim, or any portion thereof, that (a) has been disallowed by a Final Order, or (b) (i) is Scheduled at zero, in an unknown amount or as contingent, disputed or unliquidated and (ii) as to which the Claims Bar Date has been established but no Proof of Claim has been timely Filed or deemed timely Filed under applicable law or by order of the Bankruptcy Court.

“*Disallowed Equity Interest*” means any Old GP/LP Equity Interest that has been disallowed by Final Order.

“*Disclosure Statement*” means that certain *Disclosure Statement for First Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code*, dated as of September 11, 2019 (as amended, supplemented, or modified from time to time) that was approved by the Disclosure Statement Order.

“*Disclosure Statement Order*” means that certain *Order (I) Approving the Disclosure Statement, (II) Establishing the Voting Record Date, Voting Deadline and Other Dates, (III) Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing Objections to the Plan, (IV) Approving the Manner and Form of Notice and Other Related Documents, (V) Approving Procedures for Assumption of Contracts and Leases and Form and Manner of Assumption Notice, and (VI) Granting Related Relief*, entered by the Bankruptcy Court in the Chapter 11 Cases, as such order may be amended, supplemented, or modified from time to time.

“*Disputed Claim*” means any Claim, or any portion thereof, that is not a Disallowed Claim, that has not been Allowed pursuant to this Plan or a Final Order of the Bankruptcy Court, and

(a) if a Proof of Claim has been timely Filed by the applicable Claims Bar Date or deemed timely Filed under applicable law or by order of the Bankruptcy Court, such Claim is designated on such Proof of Claim as unliquidated, contingent or disputed, or in zero or unknown amount, and has not been resolved by written agreement of the parties or a Final Order of the Bankruptcy Court; or

(b) if either (1) a Proof of Claim has been timely Filed by the applicable Claims Bar Date or (2) a Claim has been listed on the Schedules as other than unliquidated, contingent or disputed, or in zero or unknown amount, a Claim ~~as to which any Debtor or other party in interest permitted under section 502(a) of the Code to assert an objection~~ has timely filed an objection or request for estimation in accordance with this Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court or for which such time period to object or file a request for estimation has not yet expired as of the applicable date of determination ~~or (ii) which is otherwise disputed by any Debtor in accordance with applicable law~~, in each case which objection, request for estimation or dispute has not been withdrawn, overruled or determined by a Final Order; or

(c) that is the subject of an objection or request for estimation Filed in the Bankruptcy Court and which such objection or request for estimation has not been withdrawn, resolved or overruled by Final Order of the Bankruptcy Court; ~~or~~

~~(d) that is otherwise disputed by any Debtor in accordance with the provisions of this Plan or applicable law, which dispute has not been withdrawn, resolved or overruled by Final Order.~~

“*Disputed Equity Interest*” means an Equity Interest, or any portion thereof, that (a) is the subject of an objection or request for estimation Filed in the Bankruptcy Court and which objection or request for estimation has not been withdrawn or overruled by a Final Order of the Bankruptcy Court, and/or (b) is otherwise disputed by the Debtors or the Reorganized Debtors in accordance with applicable law, which dispute has not been withdrawn, resolved or overruled by Final Order.

“*Distribution Agent*” means the Reorganized Debtors (other than Emerge GP), or any party designated by the Reorganized Debtors (other than Emerge GP) to serve as distribution agent under this Plan. For purposes of distributions under this Plan to the Holders of Allowed DIP Credit Agreement Claims, Allowed Prepetition Credit Agreement Claims and Allowed Prepetition Notes Claims, the DIP Credit Agreement Agent, the Prepetition Credit Agreement Agent and the Prepetition Notes Agent, respectively, will be and shall act as the Distribution Agent.

“*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions under this Plan, which date shall be the Effective Date.

“*DTC*” means the Depository Trust Company.

“*Effective Date*” means the first Business Day on which the conditions specified in Article IX of this Plan, have been satisfied or waived in accordance with the terms of Article IX.

“*Emerge GP*” means Emerge Energy Services GP LLC, as debtor and debtor-in-possession in these Chapter 11 Cases.

“*Emerge Holdings*” means Emerge Energy Services Holdings LLC, a non-debtor in these Chapter 11 Cases and the sole member of Emerge GP.

“*Emerge LP*” means Emerge Energy Services LP, as debtor and debtor-in-possession in these Chapter 11 Cases.

“*Emerge LP Subsidiary*” means each direct and indirect subsidiary of Emerge LP, as debtor and debtor-in-possession in these Chapter 11 Cases.

“*Entity*” means an “entity” as defined in section 101(15) of the Bankruptcy Code.

“*Equity Interest*” means (a) any Equity Security or other ownership interest in any Debtor, including, without limitation, all issued, unissued, authorized or outstanding units, shares of stock and other ownership interests (whether general partnership interests, limited partnership interests, or otherwise), together with (i) any options, warrants or contractual rights to purchase or acquire any such Equity Securities at any time with respect to any Debtor, and all rights arising with respect thereto and (ii) the rights of any Person or Entity to purchase or demand the issuance of any of the foregoing and shall include: (1) conversion, exchange, voting, participation, and dividend rights; (2) liquidation preferences; (3) options, warrants, and call and put rights; (4) share-appreciation rights; and (5) all Unexercised Equity Interests, and (b) any 510(b) Equity Claim, in each case, as in existence immediately prior to the Effective Date.

“*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

“*Estate(s)*” means, individually, the estate of each of the Debtors and, collectively, the estates of all of the Debtors created under section 541 of the Bankruptcy Code.

“*Exchange Act*” means the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, as now in effect or hereafter amended, and any similar federal, state or local law.

~~“*Exculpated Parties*” means, collectively: (a) the Debtors; (b) the Reorganized Debtors; (c) any Committee and the members thereof in their capacity as such; (d) the DIP Credit Agreement Agent; (e) DIP Credit Agreement Lenders; (f) the Prepetition Credit Agreement Agent; (g) the Prepetition Credit Agreement Lenders; (h) the Prepetition Notes Agent; (i) the Prepetition Noteholders; and (j) in each case, the respective Related Persons of each of the foregoing Entities.~~

“*Exculpated Parties*” means, collectively: (a) the Debtors; (b) the Reorganized Debtors; (c) the Committee and the members thereof in their capacity as such; and (d) with respect to each of the foregoing in clauses (a) through (c), to the extent they are estate fiduciaries, each such Entity’s current and former Affiliates, and each such Entity’s and its current and former Affiliates’ current and former subsidiaries, officers, directors (including any sub-committee of directors), managers, principals, members (including *ex officio* members and managing members), employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such on or after the Petition Date.

“*Exculpation*” means the exculpation provision set forth in Article X.E hereof.

“*Executory Contract*” means a contract to which any Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“*Exhibit*” means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time).

“*Exit Facility Agent*” means the administrative agent and collateral agent under the Exit Facility Credit Agreement, solely in its capacity as such.

“*Exit Facility Credit Agreement*” means the credit agreement, Filed with the Plan Supplement, which credit agreement shall contain terms and conditions consistent in all respects with those set forth on the Exit Facility Term Sheet and, to the extent any terms and conditions are not set forth on or contemplated therein, such other terms and conditions as are acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement.

“*Exit Facility Intercreditor Agreement*” means that certain intercreditor agreement to be entered into on the Effective Date by and among the Exit Facility Agent and the New Second Lien Notes Agent, which document shall contain such terms and conditions as shall be set forth in the form intercreditor agreement or summary term sheet (summarizing the material terms) to be Filed with the Plan Supplement, and which terms and conditions shall be acceptable to the parties thereto.

“*Exit Facility Lenders*” means each of the lenders under the Exit Facility Credit Agreement, solely in their respective capacities as such.

“*Exit Facility Loan Documents*” means the Exit Facility Credit Agreement, the Exit Facility Intercreditor Agreement, and any other guarantee, security agreement, deed of trust, mortgage, and other documents (including UCC financing statements), contracts, and agreements entered into with respect to, or in connection with, the Exit Facility Credit Agreement.

“*Exit Facility Loans*” means the loans contemplated under the Exit Facility Credit Agreement.

“*Exit Facility Term Sheet*” means the term sheet Filed with the Plan Supplement.

“*Face Amount*” means (a) when used in reference to a Disputed Claim, the full stated amount of the Claim asserted by the applicable Holder in any Proof of Claim timely Filed with the Bankruptcy Court, (b) when used in reference to an Allowed Claim, the Allowed amount of such Claim, and (c) with respect to Old GP/LP Equity Interests, the number of shares or units held by such Holder.

“*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

“*Final Order*” means an order or judgment of the Bankruptcy Court, or court of competent jurisdiction with respect to the subject matter, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no stay pending appeal of such order, or has otherwise been dismissed with prejudice; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not preclude such order from being a Final Order.

“*General Unsecured Claim*” means any Claim that is not a/an: Administrative Claim; DIP Credit Agreement Claim; Professional Fee Claim; Priority Tax Claim; Secured Tax Claim; Other Priority Claim; Other Secured Claim; Intercompany Claim; Prepetition Debt Claim; or 510(b) Equity Claim.

“*Global Settlement*” means that certain settlement incorporated into and described in ~~Section 5.4 of the Article V.A of this Plan~~, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and consistent in all respects with the Restructuring Support Agreement.

“*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

“*Holder*” means an Entity holding a Claim or Equity Interest.

“*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is “impaired” within the meaning of section 1124 of the Bankruptcy Code.

“*Indemnification Provisions*” means, collectively, each of the provisions currently in place (whether in bylaws, certificates of formation or incorporation, board resolutions, employment contracts or otherwise) whereby any Debtor agrees to indemnify, reimburse, provide contribution or advance fees and expenses to or for the benefit of, defend, exculpate, or limit the liability of, any Indemnified Party.

“*Indemnified Parties*” means each of the Debtor’s respective directors, officers, and managers in their respective capacities as such, and solely to the extent that such party was serving in such capacity on or any time after the date of the Restructuring Support Agreement.

“*Initial Distribution Date*” means the date that is as soon as practicable after the Effective Date, but no later than thirty (30) days after the Effective Date, when, subject to the “Treatment” sections in

Article III hereof, distributions under this Plan shall commence to Holders of Allowed Claims and Allowed Equity Interests; provided that any applicable distributions under this Plan on account of the DIP Credit Agreement Claims and the Prepetition Debt Claims shall be made to the applicable Distribution Agent on the Effective Date, and each such Distribution Agent shall make its respective distributions as soon as practicable thereafter.

“*Intercompany Claim*” means any Claim against any of the Debtors held by another Debtor, other than an Administrative Claim.

“*Intermediary Record Owners*” means, as of the applicable date of determination, the banks, brokerage firms, or the agents thereof as the Entity through which the Beneficial Holders hold the Prepetition Notes or Old Emerge LP Equity Interests, as applicable.

“*IRC*” means the Internal Revenue Code of 1986, as amended.

“*IRS*” means the Internal Revenue Service of the United States of America.

“*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code, and, with respect to any property or asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such property or asset.

“*Litigation Claims*” means the claims, rights of action, suits or proceedings, whether in law or in equity, whether known or unknown, that any Debtor or any Estate may hold against any Person or Entity, including, without limitation, the Causes of Action of the Debtors or their Estates, in each case solely to the extent of the Debtors’ or their Estates’ interest therein. A non-exclusive list of the Litigation Claims held by the Debtors as of the Effective Date is to be Filed with the Plan Supplement, which shall be deemed to include any derivative actions filed against any Debtor as of the Effective Date.

“*Local Rules*” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

“*Majority Noteholders*” means Prepetition Noteholders holding more than 50% of the outstanding aggregate principal amount of the Prepetition Notes Claims.

“*Majority Lenders*” means Prepetition Credit Agreement Lenders holding more than 50% of the outstanding aggregate principal amount of the Prepetition Credit Agreement Claims.

~~“*Master Ballot*” means the ballot distributed to the Registered Record Owners or Intermediary Record Owners, as applicable, of the Prepetition Notes or Old Emerge LP Equity Interests to record the votes of the Beneficial Holders thereof as of the Voting Record Date.~~

“*MSHA Action*” means that certain mud retaining pond wall breach, which occurred on June 21, 2019 at the San Antonio, Texas facility of the Debtors, the related 103(k) order issued by the Mine Safety and Health Administration affecting the entire mine area at the San Antonio Texas facility, and all related matters affecting the condition of the mine at the San Antonio Texas Facility.

“*New Board*” means the initial board of directors of the New General Partner to be put in place on and as of the Effective Date, which board shall be selected by the Majority Noteholders as described in the Restructuring Term Sheet. The members of the New Board shall be Filed with the Plan Supplement.

“*New Emerge GP Equity Interests*” means the ownership interests in the New General Partner authorized to be issued pursuant to this Plan (and subject to the Restructuring Transactions) and the Amended/New Organizational Documents.

“*New Emerge LP Equity Interests*” means the ownership interests in Reorganized Emerge LP (whether general or limited) authorized to be issued pursuant to this Plan (and subject to the Restructuring Transactions) and the Amended/New Organizational Documents, including the New General Partnership Interests and the New Limited Partnership Interests.

“*New General Partner*” means, in accordance with the Restructuring Transactions, the new general partner of Reorganized Emerge LP appointed by the Majority Noteholders and newly formed pursuant to this Plan on or after the Effective Date, and its successors.

“*New GP/LP Equity Interests*” means, collectively, the New Emerge GP Equity Interests and the New Emerge LP Equity Interests.

“*New General Partnership Interests*” means the new general partnership interests in Reorganized Emerge LP to be issued on and as of the Effective Date to the New General Partner.

“*New Limited Partnership Interests*” means the new limited partnership interests in Reorganized Emerge LP to be issued on and as of the Effective Date to the Prepetition Noteholders and, subject to the terms and conditions of this Plan, certain other Holders.

“*New Management Incentive Plan*” means a post-Effective Date equity incentive plan providing for the issuance from time to time, as approved by the New Board, of New Limited Partnership Interests to those individuals involved in day-to-day management of the Reorganized Debtors. The New Board shall determine allocation and other terms of the New Management Incentive Plan.

“*New Management Incentive Plan Equity*” means the New Limited Partnership Interests issued pursuant to the New Management Incentive Plan.

“*New Railcar Lease Agreements*” means those certain railcar lease agreements entered into between the Debtors and the Specified Rail Car Lessors pursuant to the New Railcar Lease Agreements Order.

“*New Railcar Lease Agreements Order*” means the *Order Authorizing the Debtors to (I) Reject Certain Railcar Lease Agreements Nunc Pro Tunc to the Petition Date and (II) Enter Into Proposed New Railcar Lease Agreements Effective as of the Petition Date* entered by the Bankruptcy Court in the Chapter 11 Cases (Docket No. 208), as such order may be amended, supplemented, or modified from time to time.

“*New Second Lien Notes*” means the secured notes contemplated under the New Second Lien Notes Agreement.

“*New Second Lien Notes Agent*” means HPS Investment Partners, LLC, in its capacity as administrative agent and notes agent under the New Second Lien Notes Agreement, or such other party selected by HPS Investment Partners, LLC.

“*New Second Lien Notes Agreement*” means the notes agreement, Filed with the Plan Supplement, which agreement shall contain terms and conditions consistent in all respects with those set forth on the New Second Lien Notes Term Sheet and, to the extent any terms and conditions are not set forth on or



contemplated therein, such other terms and conditions as are acceptable to the Special Restructuring Committee and the Majority Noteholders.

“*New Second Lien Notes Documents*” means the New Second Lien Notes, the New Second Lien Notes Agreement and any other guarantee, security agreement, deed of trust, mortgage, and other documents (including UCC financing statements), contracts, and agreements entered into with respect to, or in connection with, the New Second Lien Notes Agreement.

“*New Second Lien Notes Term Sheet*” means the term sheet Filed with the Plan Supplement.

“*New Warrants*” means the warrants contemplated under the New Warrants Agreement.

“*New Warrants Agreement*” means the warrant agreement Filed with the Plan Supplement, which warrant agreement shall contain terms and conditions consistent in all respects with those set forth on the New Warrants Term Sheet and, to the extent any terms and conditions are not set forth on or contemplated therein, such other terms and conditions as are acceptable to the Special Restructuring Committee, the Majority Noteholders, and the other applicable parties to the Restructuring Support Agreement in the manner set forth therein.

“*New Warrants Term Sheet*” means the term sheet attached to this Plan as Exhibit B.

“*Non-Debtor Releasing Parties*” means, collectively: (a) the Committee and the members thereof in their capacity as such; (b) the Prepetition Credit Agreement Agent and the Releasing Prepetition Credit Agreement Lenders; (c) the DIP Credit Agreement Agent and the DIP Credit Agreement Lenders (d) the Prepetition Notes Agent and the Releasing Prepetition Noteholders; (e) the ~~Releasing Old EmERGE LP Consenting~~ Equity Holders; (f) those Holders of General Unsecured Claims ~~or Old EmERGE LP Equity Interests that do~~ that submitted a Ballot to the Voting and Claims Agent, but did not affirmatively opt out of the Third Party Release as provided on their respective Ballots; and (g) each Specified Railcar Lessor (to the extent it is a Released Party).

“*Non-Voting Classes*” means, collectively, Classes 1-4 and 7-10.

“*Notice*” has the meaning set forth in Article XII.J of this Plan.

“*Old Affiliate Equity Interests*” means, collectively, the Equity Interests in each EmERGE LP Subsidiary, in each case as in existence immediately prior to the Effective Date.

“*Old EmERGE GP Equity Interest*” means the Equity Interests in EmERGE GP, as in existence immediately prior to the Effective Date.

“*Old EmERGE LP Equity Interest*” means the Equity Interests in EmERGE LP, as in existence immediately prior to the Effective Date.

“*Old GP/LP Equity Interests*” means, collectively, the Old EmERGE GP Equity Interests and the Old EmERGE LP Equity Interests.

“*Old GP/LP Objection Deadline*” means, with respect to any Old GP/LP Equity Interest, the later of (a) one hundred eighty (180) days after the Effective Date or (b) such other date as may be fixed by Final Order of the Bankruptcy Court for objecting to such Old GP/LP Equity Interest.

“*Ordinary Course Professionals Order*” means that certain *Order Authorizing Employment and Payment of Professionals Utilized in the Ordinary Course of Business*, entered by the Bankruptcy Court in the Chapter 11 Cases (Docket No. 196), as amended, supplemented, or modified from time to time.

“*Other Priority Claim*” means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

“*Other Secured Claim*” means any Secured Claim other than an Administrative Claim, DIP Credit Agreement Claim, Secured Tax Claim, or Prepetition Debt Claim.

“*Preferred Interests*” means the Preferred Interests issued to the holders of the New Notes pursuant to the terms described in Exhibit A to this Plan.

“*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other Entity, whether acting in an individual, fiduciary or other capacity.

“*Petition Date*” means July 15, 2019, the date on which the Debtors commenced the Chapter 11 Cases.

“*Plan*” means this ~~First~~ Modified Second Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code, dated ~~September 11~~ December 18, 2019, including the Exhibits and Plan Schedules and all supplements, appendices, and schedules thereto, either in its present form or as the same may be amended, supplemented, or modified from time to time.

“*Plan Objection Deadline*” means the date and time by which objections to Confirmation and Consummation of the Plan must be Filed with the Bankruptcy Court and served in accordance with the Disclosure Statement Order, which date is October 11, 2019 as set forth in the Disclosure Statement Order.

“*Plan Schedule*” means a schedule annexed to this Plan or an appendix to the Disclosure Statement (as amended, modified or otherwise supplemented from time to time).

“*Plan Securities*” has the meaning set forth in Article V.J of this Plan.

“*Plan Securities and Documents*” has the meaning set forth in Article V.J of this Plan.

“*Plan Supplement*” means, collectively, the compilation of documents and forms of documents, and all exhibits, attachments, schedules, agreements, documents and instruments referred to therein, ancillary or otherwise, including, without limitation, the Exhibits and Plan Schedules, all of which are incorporated by reference into, and are an integral part of, this Plan, as all of the same may be amended, supplemented, or modified from time to time, in a manner in form and substance consistent in all respects with the Restructuring Support Agreement. The Exhibits and Plan Schedules (or substantially final forms thereof) shall be Filed with the Bankruptcy Court at least seven (7) days prior to the Plan Objection Deadline.

“*Prepetition Agents*” means, collectively, the Prepetition Credit Agreement Agent and the Prepetition Notes Agent.

*“Prepetition Credit Agreement”* means that certain Second Amended and Restated Revolving Credit and Security Agreement, dated as of January 5, 2018, by and among Emerge LP, the Emerge LP Subsidiaries party thereto, the Prepetition Credit Agreement Agent, and the Prepetition Credit Agreement Lenders, as amended, supplemented, or modified from time to time prior to the Petition Date.

*“Prepetition Credit Agreement Agent”* means HPS Investment Partners, LLC, in its capacity as administrative agent and collateral agent under the Prepetition Credit Agreement.

*“Prepetition Credit Agreement Agent & Lenders Fees and Expenses”* means all unpaid reasonable and documented costs, fees, disbursements, charges and out-of-pocket expenses of the Prepetition Credit Agreement Agent and the Prepetition Credit Agreement Lenders incurred in connection with the Chapter 11 Cases, including, but not limited to, the reasonable and documented costs, fees, disbursements, charges and out-of-pocket expenses of the Consenting Creditor Professionals.

*“Prepetition Credit Agreement Claims”* means any and all Claims arising from, under or in connection with the Prepetition Credit Agreement (including, without limitation, any and all “Obligations” as defined therein) or any other Prepetition Loan Document.

*“Prepetition Credit Agreement Lenders”* means the lenders party to the Prepetition Credit Agreement from time to time.

*“Prepetition Credit Agreement Liens”* means the Liens securing the payment of the Prepetition Credit Agreement Claims.

*“Prepetition Debt Claims”* means, collectively, the Prepetition Credit Agreement Claims and the Prepetition Notes Claims.

*“Prepetition Debt Documents”* means, collectively, the Prepetition Loan Documents and the Prepetition Notes Documents.

*“Prepetition Debt Liens”* means, collectively, the Prepetition Credit Agreement Liens and the Prepetition Notes Liens.

*“Prepetition Loan Documents”* means, collectively, the Prepetition Credit Agreement and the Prepetition Security Documents.

*“Prepetition Noteholder”* means a Holder of the Prepetition Notes.

*“Prepetition Noteholders Fees and Expenses”* means all unpaid reasonable and documented costs, fees, disbursements, charges and out-of-pocket expenses of the Prepetition Noteholders incurred in connection with the Chapter 11 Cases, including, but not limited to, the reasonable and documented costs, fees, disbursements, charges and out-of-pocket expenses of the Consenting Creditors Professionals.

*“Prepetition Notes”* means those certain senior secured notes due 2023 issued by certain Debtors pursuant to the Prepetition Notes Agreement, in an original aggregate principal amount of \$215,000,000.

*“Prepetition Notes Agent”* means HPS Investment Partners, LLC, in its capacity as administrative notes agent and collateral agent under the Prepetition Notes Agreement.

*“Prepetition Notes Agreement”* means that certain Second Lien Note Purchase Agreement, dated as of January 5, 2018, by and among Emerge LP, the Emerge LP Subsidiaries party thereto, the Prepetition

Notes Agent, and the Prepetition Noteholders, as amended, supplemented, or modified from time to time prior to the Petition Date.

“*Prepetition Notes Claims*” means any and all Claims arising from, under or in connection with the Prepetition Notes Agreement (including, without limitation, any and all “Obligations” as defined therein) or any other Prepetition Notes Document.

“*Prepetition Notes Documents*” means, collectively, the Prepetition Notes, the Prepetition Notes Agreement, and the Prepetition Notes Security Documents.

“*Prepetition Notes Liens*” means the Liens securing the payment of the Prepetition Notes Claims.

“*Prepetition Notes Security Documents*” means the “Security Documents” as defined in the Prepetition Notes Agreement, in each case as amended, supplemented, or modified from time to time prior to the Petition Date.

“*Prepetition Security Documents*” means the “Security Documents” as defined in the Prepetition Credit Agreement, in each case as amended, supplemented, or modified from time to time prior to the Petition Date.

“*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

“*Pro Rata*” means the proportion that (a) the Face Amount of a Claim or Equity Interest in a particular Class or Classes (or portions thereof, as applicable) bears to (b) the aggregate Face Amount of all Claims (including Disputed Claims, but excluding Disallowed Claims) or Equity Interests (including Disputed Equity Interests, but excluding Disallowed Equity Interests) in such Class or Classes (or portions thereof, as applicable), unless this Plan provides otherwise.

“*Professional*” means any Person or Entity retained by the Debtors or any Committee in the Chapter 11 Cases pursuant to section 327, 328, 363, or 1103 of the Bankruptcy Code (other than an ordinary course professional pursuant to the Ordinary Course Professionals Order).

“*Professional Fee Claim*” means a Claim for Accrued Professional Compensation under sections 328, 330, 331, or 503 of the Bankruptcy Code.

“*Professional Fees Bar Date*” means the Business Day that is forty-five (45) days after the Effective Date or such other date as approved by Final Order of the Bankruptcy Court.

“*Proof of Claim*” means a proof of Claim Filed against any Debtor in the Chapter 11 Cases.

“*Registered Record Owners*” means, as of the applicable date of determination, the respective owners of the Prepetition Notes or Old Emerge LP Equity Interests, as applicable, whose holdings thereof are in their own name.

“*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including *ex officio* members and managing members), managers, managed accounts or funds, management companies, fund advisors, advisory or subcommittee board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants,

representatives, and other professionals, in each case acting in such capacity at any time on or after the date of the Restructuring Support Agreement, and any Person claiming by or through any of them, including such Related Persons' respective heirs, executors, estates, servants, and nominees; *provided, however*, that no insurer of any Debtor shall constitute a Related Person.

"*Release*" means the release given by the Releasing Parties to the Released Parties as set forth in Article X.B hereof.

"*Released and Settled Claims*" means all Claims and Causes of Action made, or which could have been made, on or on behalf of any of the Debtors against the Prepetition Revolver Agent, the Prepetition Revolving Lenders, the Prepetition Note Agent, or the Prepetition Noteholders, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees, in their respective capacities as such, in each case arising at any time prior to or on the Effective Date.

"*Released Party*" means, collectively: (a) the Debtors; (b) the Reorganized Debtors; (c) the Committee and the members thereof in their capacity as such; (d) the Prepetition Credit Agreement Agent and the Releasing Prepetition Credit Agreement Lenders; (e) the DIP Credit Agreement Agent and the DIP Credit Agreement Lenders; (f) the Prepetition Notes Agent and the Releasing Prepetition Noteholders; (g) the ~~Releasing Old-Emerge-LP-Consenting~~ Equity Holders, and (h) each Specified Railcar Lessor, so long as the applicable New Railcar Lease Agreement(s) between the Debtors and the applicable Specified Railcar Lessor is in full force and effect as of the Effective Date; and in each case the respective Related Persons of each of the foregoing Entities.

~~"*Releasing Old-Emerge-LP-Equity Holders*" means, collectively, (i) each Consenting Equity Holder and (ii) any other Holder of an Old-Emerge-LP-Equity Interest that does not affirmatively opt out of the Third Party Release as provided on its respective Ballot.~~

"*Releasing Prepetition Credit Agreement Lenders*" means, collectively, (i) each Consenting Prepetition Credit Agreement Lender and (ii) any other Prepetition Credit Agreement Lender that does not affirmatively opt out of the Third Party Release as provided on its respective Ballot/Opt-Out Form.

"*Releasing Prepetition Noteholders*" means, collectively, (i) each Consenting Prepetition Noteholder and (ii) any other Prepetition Noteholder that does not affirmatively opt out of the Third Party Release as provided on its respective Ballot/Opt-Out Form.

"*Releasing Party*" has the meaning set forth in Article X.B hereof.

"*Reorganized Debtors*" means, subject to the Restructuring Transactions, the Debtors as reorganized or dissolved pursuant to this Plan on or after the Effective Date, and, solely with respect to the reorganized entities, their respective successors.

"*Reorganized Emerge LP*" means, subject to the Restructuring Transactions, Emerge Energy Services LP, as reorganized pursuant to this Plan on or after the Effective Date, and its successors.

"*Restricted Holders*" has the meaning set forth in Article V.J of this Plan.

"*Restructuring Documents*" means, collectively, the documents and agreements (and the exhibits, schedules, annexes and supplements thereto) necessary to implement, or entered into in connection with, this Plan, including, without limitation, the Plan Supplement, the Exhibits, the Plan Schedules, the Amended/New Organizational Documents, the Exit Facility Loan Documents, the New Second Lien Notes Documents, the New Warrants Agreement, and the Plan Securities and Documents.

“*Restructuring Support Agreement*” means that certain Restructuring Support Agreement, dated as of April 18, 2019, by and among the Debtors, the Consenting Equity Holders, the Consenting Prepetition Credit Agreement Lenders, and the Consenting Prepetition Noteholders (as amended, supplemented or modified from time to time).

“*Restructuring Term Sheet*” means the term sheet attached as Exhibit A to the Restructuring Support Agreement.

“*Restructuring Transaction*” has the meaning ascribed thereto in Article V.A of this Plan.

“*Scheduled*” means with respect to any Claim, the status and amount, if any, of such Claim as set forth in the Schedules.

“*Schedules*” means the schedules of assets and liabilities, schedules of Executory Contracts, and statement of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and the applicable Bankruptcy Rules, as such Schedules may be amended, modified, or supplemented from time to time.

“*Secured Claim*” means a Claim that is secured by a Lien on property in which any of the Debtors’ Estates have an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

“*Secured Tax Claim*” means any Secured Claim which, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code.

“*Securities Act*” means the Securities Act of 1933, 15 U.S.C. §§ 77c-77aa, as now in effect or hereafter amended, and any similar federal, state or local law.

“*Special Restructuring Committee*” means the special restructuring committee of the board of directors of Emerge GP appointed pursuant to that certain *Amended and Restated Charter for the Special Restructuring Committee*, dated as of April 18, 2019.

“*Specified Railcar Lessors*” means, collectively, (a) Trinity Industries Leasing Company, (b) MUL Railcars Leasing, LLC, and (c) CIT Bank, N.A. and The CIT Group/Equipment Financing, Inc., as an assignee of CIT Rail, LLC.

“*Stamp or Similar Tax*” means any stamp tax, recording tax, conveyance fee, intangible or similar tax, mortgage tax, personal or real property tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes or fees imposed or assessed by any Governmental Unit.

“*Subsequent Distribution*” means any distribution of property under this Plan to Holders of Allowed Claims or Allowed Equity Interests other than the initial distribution given to such Holders on the Initial Distribution Date.

“*Subsequent Distribution Date*” means the last Business Day of the month following the end of each calendar quarter after the Effective Date; provided, however, that if the Effective Date is within thirty

(30) days of the end of a calendar quarter, then the first Subsequent Distribution Date will be the last Business Day of the month following the end of the first (1<sup>st</sup>) calendar quarter after the calendar quarter in which the Effective Date falls.

“*Third Party Release*” has the meaning set forth in Article X.B hereof.

“*Unexercised Equity Interests*” means any and all unexercised options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character, kind, or nature to acquire an Old GP/LP Equity Interest, as in existence immediately prior to the Effective Date.

“*Unexpired Lease*” means a lease to which any Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“*Unimpaired*” means, with respect to a Class of Claims or Equity Interests, a Claim or an Equity Interest that is “unimpaired” within the meaning of section 1124 of the Bankruptcy Code.

“*Unused Cash Reserve Amount*” means the remaining Cash, if any, in the Carve Out Reserve after all obligations and liabilities for which such reserve was established are paid, satisfied, and discharged in full in Cash or are Disallowed by Final Order in accordance with this Plan.

“*Voting and Claims Agent*” means Kurtzman Carson Consultants LLC, in its capacity as solicitation, notice, claims and balloting agent for the Debtors.

“*Voting Classes*” means Classes 5 and 6 only.

“*Voting Deadline*” means the date and time by which all Ballots-/Opt-Out Forms must be received by the Voting and Claims Agent in accordance with the Disclosure Statement Order, which date is October 17, 2019 at 5:00 p.m. (prevailing Eastern Time) as set forth in the Disclosure Statement Order.

“*Voting Record Date*” means the date for determining which Holders of Claims in the Voting Classes are entitled, as applicable, to receive the Disclosure Statement and to vote to accept or reject this Plan.

## ARTICLE II.

### ADMINISTRATIVE, DIP FACILITY, AND PRIORITY TAX CLAIMS

#### A. *Administrative Claims*

Subject to sub-paragraph 1 below, on the later of the Effective Date or the date on which an Administrative Claim becomes an Allowed Administrative Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Claim (other than an Allowed Professional Fee Claim) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim either (i) Cash equal to the amount of such Allowed Administrative Claim; or (ii) such other less favorable treatment as to which the Debtors (with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement) or Reorganized Debtors, as applicable, and the Holder of such Allowed Administrative Claim shall have agreed upon in writing; provided, however, that Administrative Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court.

### 1. Bar Date for Administrative Claims

Except as otherwise provided in this Plan and section 503(b)(1)(D) of the Bankruptcy Code, unless previously Filed or paid, requests for payment of Administrative Claims must be Filed and served on the Reorganized Debtors pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order or the occurrence of the Effective Date (as applicable) no later than the Administrative Claims Bar Date; provided that the foregoing shall not apply to either the Holders of Claims arising under section 503(b)(1)(D) of the Bankruptcy Code or the Bankruptcy Court or United States Trustee as the Holders of Administrative Claims. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors, the Reorganized Debtors and their respective Estates and property and such Administrative Claims shall be deemed discharged as of the Effective Date. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.G hereof. Nothing in this Article II.A shall limit, alter, or impair the terms and conditions of the Claims Bar Date Order with respect to the Claims Bar Date for filing administrative expense claims arising under Section 503(b)(9) of the Bankruptcy Code.

Objections to such requests must be Filed and served on the Reorganized Debtors and the requesting party by the later of (a) 120 days after the Effective Date and (b) 60 days after the Filing of the applicable request for payment of Administrative Claims, if applicable, as the same may be modified or extended from time to time by Final Order of the Bankruptcy Court.

### 2. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered before the Effective Date must File and serve on the Reorganized Debtors and such other Entities who are designated in the Confirmation Order an application for final allowance of such Professional Fee Claim no later than the Professional Fees Bar Date; provided that, on or about the Effective Date, holders of Professional Fee Claims shall provide a reasonable estimate of their unpaid Professional Fee Claims incurred in rendering services to the Debtors or their Estates as of the Effective Date (the "Professional Fee Claims Estimate"); provided further that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of the Professional's request for payment of Professional Fee Claims.

Objections to any Professional Fee Claim must be Filed and served on the Reorganized Debtors and the requesting party by no later than thirty (30) days after the Filing of the applicable final request for payment of the Professional Fee Claim. Each Holder of an Allowed Professional Fee Claim shall be paid in full in Cash by the Reorganized Debtors, including from the Carve Out Reserve, within five (5) Business Days after entry of the order approving such Allowed Professional Fee Claim. The Reorganized Debtors shall not commingle any funds contained in the Carve Out Reserve and shall use such funds to pay only the Professional Fee Claims, as and when allowed by order of the Bankruptcy Court. Notwithstanding anything to the contrary contained in this Plan, the failure of the Carve Out Reserve to satisfy in full the Professional Fee Claims shall not, in any way, operate or be construed as a cap or limitation on the amount of Professional Fee Claims due and payable by the Reorganized Debtors. The Carve Out Reserve shall be maintained in trust for the Professionals and shall not be considered property of the Debtors' Estates; provided that the Reorganized Debtors shall have a reversionary interest in the Unused Cash Reserve Amount. To the extent that funds held in the Carve Out Reserve do not or are unable to satisfy the full amount of the Allowed Professional Fee Claims, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in full in Cash accordance with Article II.A of this Plan.



The Reorganized Debtors shall pay Professionals in the ordinary course of business for any work performed after the Effective Date, including those reasonable and documented fees and expenses incurred by Professionals in connection with the implementation and consummation of this Plan, in each case without further application or notice to or order of the Bankruptcy Court; provided, further, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses from the Debtors and Reorganized Debtors for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order, in each case without further application or notice to or order of the Bankruptcy Court.

*B. DIP Credit Agreement Claims*

On the Effective Date, the Allowed DIP Credit Agreement Claims shall, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claims (a) be indefeasibly paid in full in Cash from the proceeds of the Exit Facility Loans, or (b) receive such other treatment as the Holders of DIP Credit Agreement Claims and the Debtors shall have agreed to in writing, and, in either case, the DIP Credit Agreement Liens shall be deemed discharged, released, and terminated for all purposes without further action of or by any Person or Entity.

The Debtors' contingent or unliquidated obligations under the DIP Loan Documents, to the extent not indefeasibly paid in full in Cash on the Effective Date or otherwise satisfied by the Debtors in a manner acceptable to the DIP Facility Agent, any affected DIP Credit Agreement Lender, or any other holder of a DIP Credit Agreement Claim, as applicable, shall survive the Effective Date and shall not be released or discharged pursuant to this Plan or Confirmation Order, notwithstanding any provision hereof or thereof to the contrary.

C. *Priority Tax Claims*

Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtors or Reorganized Debtors, as applicable: (A) Cash equal to the amount of such Allowed Priority Tax Claim; (B) such other less favorable treatment as to which the Debtors (with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement) or Reorganized Debtors, as applicable, and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing; (C) such other treatment such that it will not be Impaired pursuant to section 1124 of the Bankruptcy Code or (D) pursuant to and in accordance with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in regular installment payments over a period ending not more than five (5) years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtors or Reorganized Debtors, as applicable, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; provided, however, that Priority Tax Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (C) or (D) above shall be made in equal quarterly Cash payments beginning on the first applicable Subsequent Distribution Date, and continuing on each Subsequent Distribution Date thereafter until payment in full of the applicable Allowed Priority Tax Claim.

**ARTICLE III.**

**CLASSIFICATION AND TREATMENT  
OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

A. *Summary*

This Plan constitutes a separate plan of reorganization for each Debtor. All Claims and Equity Interests, except Administrative Claims, DIP Credit Agreement Claims, and Priority Tax Claims, are placed in the Classes set forth below. For all purposes under this Plan, each Class will contain sub-Classes for each of the Debtors (*i.e.*, there will be ten Classes for each Debtor); provided, that any Class that is vacant as to a particular Debtor will be treated in accordance with Article III.D below.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including, without limitation, for voting, confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. This Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remaining portion of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released, Disallowed or otherwise settled prior to the Effective Date.

Summary of Classification and Treatment of Classified Claims and Equity Interests

<u>Class</u>	<u>Claim/Equity Interest</u>	<u>Status</u>	<u>Voting Rights</u>
1.	Other Priority Claims	Unimpaired	Deemed to Accept
2.	Other Secured Claims	Unimpaired	Deemed to Accept
3.	Secured Tax Claims	Unimpaired	Deemed to Accept
4.	Prepetition Credit Agreement Claims	Unimpaired	Deemed to Accept
5.	Prepetition Notes Claims	Impaired	<i>Entitled to Vote</i>
6.	General Unsecured Claims	Impaired	<i>Entitled to Vote</i>
7.	Intercompany Claims	Unimpaired	Deemed to Accept
8.	Old Emerge GP Equity Interests	Impaired	Deemed to Reject
9.	Old Emerge LP Equity Interests	Impaired	Deemed to Reject
10.	Old Affiliate Equity Interests	Unimpaired	Deemed to Accept

*B. Classification and Treatment of Claims and Equity Interests*1. Class 1 - Other Priority Claims

(a) *Classification:* Class 1 consists of the Other Priority Claims.

(b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 1 Claim is an Allowed Class 1 Claim as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Class 1 Claim becomes an Allowed Class 1 Claim, each Holder of an Allowed Class 1 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtors or Reorganized Debtors, as applicable (with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement): (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 1 Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; *provided, however,* that Class 1 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court.

- (c) *Voting:* Class 1 is an Unimpaired Class, and the Holders of Claims in Class 1 are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 1 are not entitled to vote to accept or reject this Plan.

2. Class 2 - Other Secured Claims

- (a) *Classification:* Class 2 consists of the Other Secured Claims. Class 2 consists of separate subclasses for each Other Secured Claim.
- (b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 2 Claim is an Allowed Class 2 Claim as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Class 2 Claim becomes an Allowed Class 2 Claim, each Holder of an Allowed Class 2 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim, at the election of the Debtors or Reorganized Debtors, as applicable (with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement): (A) Cash equal to the amount of such Allowed Class 2 Claim; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 2 Claim shall have agreed upon in writing; (C) the Collateral securing such Allowed Class 2 Claim pursuant to further order of the Bankruptcy Court upon notice and hearing; or (D) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; *provided, however,* that Class 2 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court. For the avoidance of doubt, any Lien that secures a Class 2 Claim shall be retained against the applicable Collateral until such Class 2 Claim is paid or reserved in full in Cash or Disallowed by order of the Bankruptcy Court.
- (c) *Voting:* Class 2 is an Unimpaired Class, and the Holders of Claims in Class 2 are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 2 are not entitled to vote to accept or reject this Plan.

3. Class 3 - Secured Tax Claims

- (a) *Classification:* Class 3 consists of the Secured Tax Claims.
- (b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 3 Claim is an Allowed Class 3 Claim as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 3 Claim, at the election of the Debtors or Reorganized Debtors, as applicable (with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement): (A) Cash equal to the amount of such

Allowed Class 3 Claim; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 3 Claim shall have agreed upon in writing; (C) the Collateral securing such Allowed Class 3 Claim pursuant to further order of the Bankruptcy Court upon notice and hearing; (D) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code or (E) pursuant to and in accordance with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Class 3 Claim payable in regular installment payments over a period ending not more than five (5) years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtors or Reorganized Debtors, as applicable, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; *provided, however*, that Class 3 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor or Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (D) or (E) above shall be made in equal quarterly Cash payments beginning on the first applicable Subsequent Distribution Date, and continuing on each Subsequent Distribution Date thereafter until payment in full of the applicable Allowed Class 3 Claim. For the avoidance of doubt, any Lien that secures a Class 3 Claim shall be retained against the applicable Collateral until such Class 3 Claim is paid or reserved in full in Cash or Disallowed by order of the Bankruptcy Court.

- (c) *Voting:* Class 3 is an Unimpaired Class, and the Holders of Claims in Class 3 shall be conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 3 are not entitled to vote to accept or reject this Plan.

#### 4. Class 4 - Prepetition Credit Agreement Claims

- (a) *Classification:* Class 4 consists of the Prepetition Credit Agreement Claims.
- (b) *Allowance:* The Prepetition Credit Agreement Claims are deemed Allowed Secured Claims in the aggregate principal amount of \$27,260,000, plus any accrued and unpaid interest payable on such amounts through the Effective Date.<sup>2</sup>
- (c) *Treatment:* On the Effective Date, the Allowed Prepetition Credit Agreement Claims shall, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claims, be indefeasibly paid in full in Cash from the proceeds of the Exit Facility Loans. Without affecting any additional Liens required by the Exit Facility Loan Documents, each Prepetition Credit Agreement Lien is stipulated to as valid, perfected, and not avoidable, and shall secure the Exit Facility Loans and all other indebtedness and obligations of the Reorganized Debtors under or secured by the Exit Facility Loan Documents and each such Prepetition Credit Agreement Lien shall, as of the Effective Date, (i) be ratified,

<sup>2</sup> The Allowed amount excludes any accrued fees, costs, and expenses (including all Prepetition Credit Agreement Agent and Lenders Fees and Expenses) that will be paid in cash on the Effective Date pursuant to this Plan or otherwise after the Effective Date in accordance with Article V.T of this Plan.

reaffirmed and deemed granted by the Reorganized Debtors, (ii) remain attached to the Reorganized Debtors' assets and property, and (iii) not be, and shall not be deemed to be, impaired, discharged or released by this Plan, the Confirmation Order or on account of the Confirmation or Consummation of this Plan.

- (d) *Voting:* Class 4 is an Unimpaired Class, and the Holders of Claims in Class 4 shall be conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 4 are not entitled to vote to accept or reject this Plan.

5. Class 5 - Prepetition Notes Claims

- (a) *Classification:* Class 5 consists of the Prepetition Notes Claims.
- (b) *Allowance:* The Prepetition Notes Claims are deemed Allowed in the aggregate principal amount of \$208,512,308, plus accrued and unpaid interest thereon as of the Petition Date.<sup>3</sup>
- (c) *Treatment:*

(i) **IF AND ONLY IF CLASS 6 VOTES TO ACCEPT THIS PLAN, THE FOLLOWING TREATMENT:**

On the Effective Date and in addition to the reimbursement described in Article V.T of this Plan, each Holder of an Allowed Prepetition Notes Claim shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim, its Pro Rata share of (1) the New Second Lien Notes, if any; (2) the New Emerge GP Equity Interests; (3) the Preferred Interests *less* any Preferred Interests issued to satisfy DIP Credit Agreement Claims; and (4) ninety-five percent (95%) of the New Limited Partnership Interests issued and outstanding on the Effective Date prior to dilution by the New Management Incentive Plan Equity and any issuances pursuant to the New Warrants.

Without affecting any additional Liens required by the Exit Facility Loan Documents, each Prepetition Note Lien is stipulated to as valid, perfected, and not avoidable, and shall secure the Exit Facility Loans and all other indebtedness and obligations of the Reorganized Debtors under or secured by the Exit Facility Loan Documents and each such Prepetition Note Lien shall, as of the Effective Date, (i) be ratified, reaffirmed and deemed granted by the Reorganized Debtors, (ii) remain attached to the Reorganized Debtors' assets and property, and (iii) not be, and shall not be deemed to be, impaired, discharged or released by this Plan, the Confirmation Order or on account of the Confirmation or Consummation of this Plan.

(ii) **IF AND ONLY IF CLASS 6 VOTES TO REJECT THIS PLAN, THE FOLLOWING TREATMENT:**

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<sup>3</sup> The Allowed amount excludes any unpaid Prepetition Noteholders Fees and Expenses that will be paid in Cash on the Effective Date pursuant to this Plan or otherwise after the Effective Date in accordance with Article V.T of this Plan.

On the Effective Date and in addition to the reimbursement described in Article V.T of this Plan, each Holder of an Allowed Prepetition Notes Claim shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim, its Pro Rata share of (1) the New Second Lien Notes, if any; (2) the New Emerge GP Equity Interests; (3) the Preferred Interests *less* any Preferred Interests issued to satisfy DIP Credit Agreement Claims; and (4) one hundred percent (100%) of the New Limited Partnership Interests issued and outstanding on the Effective Date prior to dilution by the New Management Incentive Plan Equity.

- (d) *Voting:* Class 5 is Impaired, and Holders of Claims in Class 5 are entitled to vote to accept or reject this Plan.

6. Class 6 – General Unsecured Claims

- (a) *Classification:* Class 6 consists of the General Unsecured Claims.

- (b) *Treatment:*

- (i) **IF AND ONLY IF CLASS 6 VOTES TO ACCEPT THIS PLAN, THE FOLLOWING TREATMENT:**

Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 6 Claim is an Allowed Class 6 Claim as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 6 Claim, its Pro Rata share of (1) 5.0% of the New Limited Partnership Interests issued and outstanding on the Effective Date prior to dilution by the New Management Incentive Plan Equity and any issuances pursuant to the New Warrants and (2) New Warrants representing 10.0% of the New Limited Partnership Interests issued and outstanding on the Effective Date prior to dilution by the New Management Incentive Plan Equity.

**The foregoing is offered solely for settlement purposes as set forth in Article V hereof, and such settlement is conditioned on (i) Class 6 voting to accept this Plan, (ii) the Bankruptcy Court confirming this Plan, and (iii) the occurrence of the Effective Date.**

- (ii) **IF AND ONLY IF CLASS 6 VOTES TO REJECT THIS PLAN, THE FOLLOWING TREATMENT:**

On the Effective Date, the Class 6 Claims will be discharged without further notice to, approval of or action by any Person or Entity, and each Holder of a Class 6 Claim shall not receive any distribution or retain any property on account of such Class 6 Claim.

- (c) *Voting:* Class 6 is Impaired, and Holders of Claims in Class 6 are entitled to vote to accept or reject this Plan.

7. Class 7 – Intercompany Claims

- (a) *Classification:* Class 7 consists of the Intercompany Claims.
- (b) *Treatment:* Subject to the Restructuring Transactions, the Intercompany Claims shall be reinstated, compromised, or cancelled, at the option of the relevant Holder of such Intercompany Claims with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement.
- (c) *Voting:* Class 7 is an Unimpaired Class, and the Holders of Claims in Class 7 shall be conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 7 are not entitled to vote to accept or reject this Plan.<sup>4</sup>

8. Class 8 - Old Emerge GP Equity Interests

- (a) *Classification:* Class 8 consists of the Old Emerge GP Equity Interests.
- (b) *Treatment:* On the Effective Date, the Old Emerge GP Equity Interests will be cancelled without further notice to, approval of or action by any Person or Entity, and each Holder of an Old Emerge GP Equity Interest shall not receive any distribution or retain any property on account of such Old Emerge GP Equity Interests.
- (c) *Voting:* Class 8 is an Impaired Class, and the Holders of Equity Interests in Class 8 will be conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Equity Interests in Class 8 will not be entitled to vote to accept or reject this Plan.

9. Class 9 - Old Emerge LP Equity Interests

- (a) *Classification:* Class 9 consists of the Old Emerge LP Equity Interests.
- (b) *Treatment:*

- (i) **IF AND ONLY IF CLASS 6 VOTES TO ACCEPT THIS PLAN, THE FOLLOWING TREATMENT:**

Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 9 Equity Interest is an Allowed Class 9 Equity Interest as of the Effective Date or (ii) the next Subsequent Distribution Date after the date on which such Class 9 Equity Interest becomes an Allowed Class 9 Equity Interest, each Holder of an Allowed Class 9 Equity Interest shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 9 Equity Interest, its Pro Rata share of New Warrants representing 5.0% of the New Limited Partnership Interests issued and outstanding on the Effective Date prior to dilution by the New Management Incentive Plan Equity.

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<sup>4</sup> Even if Class 7 was an Impaired Class, because the Holders of such Claims are Affiliate Debtors, the Holders of such Claims would be conclusively deemed to have accepted this Plan since they are each plan proponents.



The foregoing is offered solely for settlement purposes as set forth in Article V hereof, and such settlement is conditioned on (i) Class 6 voting to accept this Plan, (ii) the Bankruptcy Court confirming this Plan, and (iii) the occurrence of the Effective Date.

(ii) **IF AND ONLY IF CLASS 6 VOTES TO REJECT THIS PLAN, THE FOLLOWING TREATMENT:**

On the Effective Date, the Old Emerge LP Equity Interests will be cancelled without further notice to, approval of or action by any Person or Entity, and each Holder of an Old Emerge LP Equity Interest shall not receive any distribution or retain any property on account of such Old Emerge LP Equity Interests.

- (c) *Voting:* Class 9 is an Impaired Class and, if the Class of General Unsecured Claims in Class 6 votes to reject this Plan, the Holders of Equity Interests in this Class 9 shall receive no distribution under this Plan on account of such Equity Interests. Therefore, the Holders of Equity Interests in this Class 9 are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan. ~~Such Holders of Equity Interests will, however, receive a Ballot to allow such Holders to affirmatively opt out of the Third-Party Release if they so choose.~~

10. Class 10 - Old Affiliate Equity Interests in any Emerge LP Subsidiary

- (a) *Classification:* Class 10 consists of the Old Affiliate Equity Interests in any Emerge LP Subsidiary.
- (b) *Treatment:* Subject to the Restructuring Transactions, the Old Affiliate Equity Interests shall remain effective and outstanding on the Effective Date and shall be owned and held by the same applicable Person(s) that held and/or owned such Old Affiliate Equity Interests immediately prior to the Effective Date.
- (c) *Voting:* Class 10 is an Unimpaired Class, and the Holders of the Old Affiliate Equity Interests in Class 10 are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of the Old Affiliate Equity Interests in Class 11 are not entitled to vote to accept or reject this Plan.

C. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided herein, nothing under this Plan shall affect or limit the Debtors' or the Reorganized Debtors' rights and defenses (whether legal or equitable) in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

D. *Elimination of Vacant Classes*

Any Class of Claims that is not occupied as of the commencement of the Confirmation Hearing by an Allowed Claim or a claim temporarily allowed under Bankruptcy Rule 3018, or as to which no vote is cast, shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for

purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

#### ARTICLE IV.

#### ACCEPTANCE OR REJECTION OF THE PLAN

##### A. *Presumed Acceptance of Plan*

Classes 1, 2, 3, 4, 7, and 10 are Unimpaired under this Plan. Therefore, the Holders of Claims or Equity Interests in such Classes are deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan.

##### B. *Presumed Rejection of Plan*

Class 8 Equity Interests is Impaired and shall receive no distribution under this Plan on account of such Equity Interests. Therefore, the Holders of Equity Interests in such Class are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan.

Class 9 Equity Interests is Impaired and, if the Class of General Unsecured Claims votes to reject this Plan, the Holders of Equity Interests in such Class shall receive no distribution under this Plan on account of such Equity Interests. Therefore, the Holders of Equity Interests in such Class are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan. ~~Such Holders of Equity Interests will, however, receive a Ballot to allow such Holders to affirmatively opt-out of the Third-Party Release.~~

##### C. *Voting Classes*

Classes 5 and 6 are Impaired under this Plan. The Holders of Claims in such Classes as of the Voting Record Date are entitled to vote to accept or reject this Plan.

##### D. *Acceptance by Impaired Class of Claims*

Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted this Plan if the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class actually voting have voted to accept this Plan.

##### E. *Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of this Plan by either Class 5 or 6. The Debtors request confirmation of this Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept this Plan pursuant to section 1126 of the Bankruptcy Code. The Debtors reserve the right to modify this Plan or any Exhibit or Plan Schedule in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

*F. Votes Solicited in Good Faith*

The Debtors have, and upon the Confirmation Date shall be deemed to have, solicited votes on this Plan from the Voting Classes in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including, without limitation, sections 1125 and 1126 of the Bankruptcy Code, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with the solicitation. Accordingly, the Debtors, the Reorganized Debtors, and each of their respective Related Parties shall be entitled to, and upon the Confirmation Date are hereby granted, the protections of section 1125(e) of the Bankruptcy Code.

**ARTICLE V.**

**MEANS FOR IMPLEMENTATION OF THE PLAN**

*A. Global Settlement*

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates a compromise and settlement of various potential Claims and Causes of Action of the parties to the Restructuring Support Agreement, in the form of the Global Settlement. The Global Settlement is a cornerstone of the Plan and necessary to achieve a beneficial and efficient resolution of the Chapter 11 Cases for all parties in interest. The Plan shall be deemed to constitute a motion pursuant to Bankruptcy Rule 9019, seeking approval of the Global Settlement, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such motion and each of the compromises or settlements that comprise the Global Settlement, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are within the range of reasonableness, in the best interests of the Debtors, their Estates, their Creditors, and other parties-in-interest, and fair and equitable. Pursuant to the Global Settlement, solely if Class 6 votes to accept the Plan, the Majority Noteholders have agreed to carve-out from their collateral a settlement fund consisting of:

- (1) 5% of the New Limited Partnership Interests, subject to dilution by the New Management Incentive Plan Equity and the New Warrants; and
- (2) New Warrants for 15% of the equity of the Reorganized Debtors, subject to dilution by the New Management Incentive Plan Equity.

*B. Restructuring Transactions*

Without limiting any rights and remedies of the Debtors or Reorganized Debtors under this Plan or applicable law, but in all cases subject to the terms and conditions of the Restructuring Documents and any consents or approvals required thereunder, the entry of the Confirmation Order shall constitute authorization for the Reorganized Debtors to take, or to cause to be taken, all actions necessary or appropriate to consummate and implement the provisions of this Plan prior to, on and after the Effective Date, including such actions as may be necessary or appropriate to effectuate a corporate restructuring of their respective businesses, to otherwise simplify the overall corporate structure of the Reorganized Debtors, or to reincorporate certain of the Debtors under the laws of jurisdictions other than the laws of which the applicable Debtors are presently formed or incorporated. Such restructuring may include one or more mergers, consolidations, restructures, dispositions, liquidations, dissolutions, or creations of one or more new Entities, as may be determined by the Debtors or the Reorganized Debtors to be necessary or appropriate (with the consent of the Majority Noteholders), but in all cases subject to the terms and conditions of this Plan and the Restructuring Documents and any consents or approvals required hereunder or thereunder (collectively, the "**Restructuring Transactions**").

All such Restructuring Transactions taken, or caused to be taken, shall be deemed to have been authorized and approved by the Bankruptcy Court. The actions to effectuate the Restructuring Transactions may include: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation, or dissolution containing terms that are consistent with the terms of this Plan and that satisfy the applicable requirements of applicable state law and such other terms to which the applicable entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, duty, or obligation on terms consistent with the terms of this Plan and having such other terms to which the applicable entities may agree; (iii) the filing of appropriate certificates or articles of merger, consolidation, or dissolution pursuant to applicable state law; (iv) the creation of one or more new Entities; and (v) all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions, but in all cases subject to the terms and conditions of this Plan and the Restructuring Documents and any consents or approvals required thereunder.

*C. Continued Corporate Existence*

Subject to the Restructuring Transactions permitted by Article V.B of this Plan, after the Effective Date, the Reorganized Debtors (other than Emerge GP) shall continue to exist as separate legal entities in accordance with the applicable law in the respective jurisdiction in which they are incorporated or formed and pursuant to their respective certificates or articles of incorporation and by-laws, or other applicable organizational documents, in effect immediately prior to the Effective Date, except to the extent such certificates or articles of incorporation and by-laws, or other applicable organizational documents, are amended, restated or otherwise modified under this Plan. Notwithstanding anything to the contrary herein, the Claims against a particular Debtor or Reorganized Debtor shall remain the obligations solely of such Debtor or Reorganized Debtor and shall not become obligations of any other Debtor or Reorganized Debtor solely by virtue of this Plan or the Chapter 11 Cases.

As soon as reasonably practicable after the Effective Date, Emerge GP shall wind-down and dissolve in accordance with applicable law; provided that, the Debtors shall establish a wind-down reserve to effectuate, and pay the fees, costs, and expenses incurred in connection with, such wind-down and dissolution in an aggregate amount not to exceed \$125,000 (the "Wind-Down Reserve") without the consent of the Majority Noteholders in their sole discretion.

On the Effective Date, Emerge GP shall voluntarily withdraw (and, for the avoidance of doubt, shall be deemed to have withdrawn) as the general partner of Reorganized Emerge LP and shall in its place elect (and, for the avoidance of doubt, shall be deemed to have elected) the New General Partner as the general partner of Reorganized Emerge LP.

*D. Vesting of Assets in the Reorganized Debtors Free and Clear of Liens and Claims*

Except as otherwise expressly provided in this Plan, the Confirmation Order, or any Restructuring Document, pursuant to sections 1123(a)(5), 1123(b)(3), 1141(b) and (c) and other applicable provisions of the Bankruptcy Code, on and after the Effective Date, all property and assets of the Estates of the Debtors, including all claims, rights, and Litigation Claims of the Debtors, and any other assets or property acquired by the Debtors or the Reorganized Debtors during the Chapter 11 Cases or under or in connection with this Plan (other than the Carve Out Reserve and any rejected Executory Contracts and/or Unexpired Leases), shall vest in the Reorganized Debtors free and clear of all Claims, Liens, charges, and other encumbrances, subject to the Restructuring Transactions and Liens which survive the occurrence of the Effective Date as described in Article III of this Plan (including, without limitation, each Prepetition Debt Lien and Liens that secure the Exit Facility Loans). On and after the Effective Date, the Reorganized Debtors may (i)

operate their respective businesses, (ii) use, acquire, and dispose of their respective property and (iii) compromise or settle any Claims, in each case without notice to, supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly imposed by this Plan or the Confirmation Order.

*E. Exit Facility Loan Documents*

On the Effective Date, the Debtors and the Reorganized Debtors, as applicable, shall be authorized to execute and deliver, and to consummate the transactions contemplated by, the Exit Facility Loan Documents, in each case in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity (other than as expressly required by the Exit Facility Loan Documents). On the Effective Date, the Exit Facility Loan Documents shall constitute legal, valid, binding and authorized indebtedness and obligations of the Reorganized Debtors (other than Emerge GP), enforceable in accordance with their respective terms and such indebtedness and obligations shall not be, and shall not be deemed to be, enjoined or subject to discharge, impairment, release or avoidance under this Plan, the Confirmation Order or on account of the Confirmation or Consummation of this Plan. For the avoidance of doubt, any letter of credit issued and outstanding under the Prepetition Credit Agreement on the Effective Date shall be deemed issued under the Exit Facility Credit Agreement.

On the Effective Date, the Prepetition Debt Liens in relation to the Exit Facility Loans and any and all additional liens and security interests to be granted in accordance with the Exit Facility Loan Documents (a) shall be legal, binding, and enforceable liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Loan Documents, (b) shall be deemed automatically attached and perfected on the Effective Date, subject only to such liens and security interests as may be permitted under the Exit Facility Loan Documents, and (c) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the entities granted such liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish, attach, and perfect such liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of this Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and the occurrence of the Effective Date, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such liens and security interests to third parties. To the extent that any Holder of a Secured Claim that has been satisfied or discharged in full pursuant to this Plan, or any agent for such Holder, has filed or recorded publicly any liens and/or security interests to secure such Holder's Secured Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps reasonably requested by the Debtors, the Reorganized Debtors, or the Exit Facility Agent that are necessary to release and/or extinguish such liens and security interests.

*F. No Termination or Release of Prepetition Debt Liens*

Notwithstanding anything in this Plan to the contrary, all property and assets of the Estates of the Debtors, including, without limitation, all claims, rights and Litigation Claims of the Debtors and any property and assets acquired by the Debtors or the Reorganized Debtors during the Chapter 11 Cases or under or in connection with this Plan, shall remain encumbered by and subject to the Prepetition Debt Liens,

which, as of the Effective Date, shall secure the Exit Facility Loans and the New Second Lien Notes, as applicable, and such Liens (i) shall be and hereby are ratified, reaffirmed as valid, enforceable, and not avoidable, and deemed granted by the Reorganized Debtors and (ii) shall not be, and shall not be deemed to be, impaired, terminated, discharged or released by this Plan or the Confirmation Order or on account of the Confirmation or Consummation of this Plan.

*G. New GP/LP Equity Interests; Book Entry*

On the Effective Date, subject to the terms and conditions of the Restructuring Transactions, the New General Partner and Reorganized Emerge LP shall issue the New GP/LP Equity Interests, as applicable, pursuant to this Plan and/or the Amended/New Organizational Documents, as applicable. Except as otherwise expressly provided in the Restructuring Documents, the New General Partner and Reorganized Emerge LP shall not be obligated to register the New GP/LP Equity Interests under the Securities Act or to list such Equity Interests for public trading on any securities exchange.

Distributions of the New GP/LP Equity Interests and New Warrants may be made by delivery or book-entry transfer thereof by the applicable Distribution Agent in accordance with this Plan and the Amended/New Organizational Documents. Upon the Effective Date, after giving effect to the transactions contemplated hereby, the authorized capital stock or other equity securities of the New General Partner and Reorganized Emerge LP shall be that number of interests or units of New GP/LP Equity Interests as may be designated in the Amended/New Organizational Documents.

On and as of the Effective Date, all of the Holders of New GP/LP Equity Interests shall be bound by the terms and conditions of the Amended/New Organizational Documents, without the need for execution by such Holder. The Amended/New Organizational Documents shall be binding on all Persons receiving, and all Holders of, the New GP/LP Equity Interests (and their respective successors and assigns), whether such interest is received or to be received on or after the Effective Date.

*H. New Management Incentive Plan*

As soon as reasonably practicable after the Effective Date, the New General Partner will adopt and implement the New Management Incentive Plan, which terms and conditions, including recipients, individual awards and vesting periods, shall be determined by the New Board. The New Management Incentive Plan Equity will dilute all of the New Limited Partnership Interests equally.

*I. New Warrants*

If the Class of General Unsecured Claims votes to accept this Plan, then on the Effective Date, consistent with the Global Settlement, Reorganized Emerge LP shall enter into and consummate the transactions contemplated by the New Warrants Agreement (including issuing the New Warrants), which shall become effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity (other than as expressly required by the New Warrants Agreement and the New Warrants, as applicable).

*J. Plan Securities and Related Documentation; Exemption from Securities Laws*

On and after the Effective Date, the Debtors and the Reorganized Debtors, as applicable, are authorized to and shall provide or issue, as applicable, the New Second Lien Notes, the Preferred Interests, the New GP/LP Equity Interests, the New Warrants, and any and all other securities to be distributed or

issued under this Plan (collectively, the “**Plan Securities**”) and any and all other notes, units, stock, instruments, certificates, and other documents or agreements required to be distributed, issued, executed or delivered pursuant to or in connection with this Plan (collectively, the “**Plan Securities and Documents**”), in each case in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity.

The offer, distribution and issuance, as applicable, of the Plan Securities and Documents under this Plan shall be exempt from registration and prospectus delivery requirements under applicable securities laws (including Section 5 of the Securities Act or any similar state or local law requiring the registration and/or the delivery of a prospectus for offer or sale of a security or registration or licensing of an issuer of a security) pursuant to section 1145(a) of the Bankruptcy Code and/or other applicable exemptions. An offering of Plan Securities provided in reliance on the exemption from registration under the Securities Act pursuant to section 1145(a) of the Bankruptcy Code may be sold without registration to the extent permitted under section 1145 of the Bankruptcy Code and is deemed to be a public offering, and such Plan Securities may be resold without registration to the extent permitted under section 1145 of the Bankruptcy Code.

All New GP/LP Equity Interests issued to Holders of Allowed Claims on account of their respective Claims may be issued without registration under the Securities Act or any similar federal, state, or local law in reliance on section 1145(a) of the Bankruptcy Code.

Resales of any Plan Securities by Persons who receive any Plan Securities that are offered pursuant to an exemption under section 1145(a) of the Bankruptcy Code, who are deemed to be “underwriters” (as such term is defined in section 1145(b)(1) of the Bankruptcy Code) (collectively, the “**Restricted Holders**”) would not be exempted by section 1145 of the Bankruptcy Code from registration of Plan Securities under the Securities Act. Restricted Holders would, however, be permitted to resell the Plan Securities that are offered pursuant to an exemption under section 1145(a) of the Bankruptcy Code without registration if they are able to comply with the provisions of Rule 144 under the Securities Act, or if such securities are registered with the Commission pursuant to a registration statement or otherwise.

The terms of the Restructuring Documents governing the Preferred Interests and the New Limited Partnership Interests will provide registration rights to holders of the New Second Lien Notes (among other rights).

*K. Release of Liens and Claims*

To the fullest extent provided under section 1141(c) and other applicable provisions of the Bankruptcy Code, except as otherwise provided herein (including, without limitation, Article V.F and V.G of this Plan) or in any contract, instrument, release or other agreement or document entered into or delivered in connection with this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article VII hereof, all Liens, Claims, mortgages, deeds of trust, or other security interests against the assets or property of the Debtors or the Estates shall be fully released, canceled, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity. The filing of the Confirmation Order with any federal, state, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens, Claims and other interests to the extent provided in the immediately preceding sentence. Any Person or Entity holding such Liens, Claims or interests shall, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Reorganized Debtors such instruments of termination, release,

satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtors.

*L. Organizational Documents of the Reorganized Debtors*

The respective organizational documents of each of the Debtors shall be amended and restated or replaced (as applicable) in form and substance satisfactory to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement and as necessary to satisfy the provisions of this Plan and the Bankruptcy Code. Such organizational documents shall: (i) to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting equity securities; (ii) authorize the issuance of New GP/LP Equity Interests in an amount not less than the amount necessary to permit the distributions thereof required or contemplated by this Plan; (iii) to the extent necessary or appropriate, include restrictions on the transfer of New GP/LP Equity Interests; and (iv) to the extent necessary or appropriate, include such provisions as may be needed to effectuate and consummate this Plan and the transactions contemplated herein. After the Effective Date, the Reorganized Debtors may, subject to the terms and conditions of the Restructuring Documents, amend and restate their respective organizational documents as permitted by applicable law.

*M. Directors and Officers of the Reorganized Debtors*

The New Board shall be identified in the Plan Supplement and shall be subject to approval of the Bankruptcy Court pursuant to section 1129(a)(5) of the Bankruptcy Code. Pursuant to and to the extent required by section 1129(a)(5) of the Bankruptcy Code, the Debtors will disclose, at or prior to the Confirmation Hearing, the identity and affiliations of any Person proposed to serve on the New Board or as an officer of each of the Reorganized Debtors (other than Emerge GP), and, to the extent such Person is an insider other than by virtue of being a director, managing member or an officer, the nature of any compensation for such Person. Each such director, manager, managing member and/or officer shall serve from and after the Effective Date pursuant to applicable law and the terms of the Amended/New Organizational Documents and the other constituent and organizational documents of the applicable Reorganized Debtors. The existing boards of directors and other governing bodies of the Debtors will be deemed to have resigned on and as of the Effective Date, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity.

*N. Corporate Action*

Each of the Debtors and the Reorganized Debtors may take any and all actions to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, including, without limitation, the issuance and the distribution of the securities to be issued pursuant hereto, in each case in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, members, managers, officers or directors of the Debtors or the Reorganized Debtors or by any other Person (except for those expressly required pursuant hereto or by the Restructuring Documents).

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the unit holders, interest holders, stockholders, directors, officers, managers, members or partners of the Debtors (as of prior to the Effective Date) shall be deemed to have been so approved and shall be in effect prior to, on or after the Effective Date (as appropriate)



pursuant to applicable law and without any requirement of further action by such Person or Entity or the need for any approvals, authorizations, actions or consents of or from any such Person or Entity.

As of the Effective Date, all matters provided for in this Plan involving the legal or corporate structure of the Debtors or the Reorganized Debtors (including, without limitation, the adoption of the Amended/New Organization Documents and similar constituent and organizational documents, and the selection of managers, directors, managing members and/or officers for, each of the Reorganized Debtors), and any legal or corporate action required by the Debtors or the Reorganized Debtors in connection with this Plan, shall be deemed to have occurred and shall be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity.

On and after the Effective Date, the appropriate officers of the Debtors and the Reorganized Debtors are authorized to issue, execute, and deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtors and the Reorganized Debtors, in each case in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity. The secretary and any assistant secretary of the Debtors and the Reorganized Debtors shall be authorized to certify or attest to any of the foregoing actions.

*O. Cancellation of Notes, Certificates and Instruments*

On the Effective Date, except to the extent otherwise provided herein (including, without limitation, Article V.E and V.F of this Plan), all notes, indentures, instruments, certificates, agreements and other documents evidencing or relating to any Impaired Claim shall be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity; provided that the Prepetition Credit Agreement and the Prepetition Notes Agreement shall each continue in effect for the limited purpose of allowing Holders of Claims thereunder to receive, and allowing and preserving the rights of the administrative agents thereunder to make, distributions under this Plan; provided further that, upon completion of all such distributions, the Prepetition Credit Agreement and the Prepetition Notes Agreement and any and all notes, securities and instruments issued in connection therewith shall terminate completely without further notice or action and be deemed surrendered.

*P. Old GP/LP Equity Interests; Old Affiliate Equity Interests*

On the Effective Date, the Old GP/LP Equity Interests will be terminated and cancelled without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity.

On the Effective Date, the Old Affiliate Equity Interests shall remain effective and outstanding, and shall be owned and held by the same applicable Person(s) that held and/or owned such Old Affiliate Equity Interests immediately prior to the Effective Date. Each Emerge LP Subsidiary shall continue to be governed by the terms and conditions of its applicable organizational documents as in effect immediately prior to the Effective Date, except as amended or modified by this Plan.

*Q. Sources of Cash for Plan Distributions*

All Cash necessary for the Debtors or the Reorganized Debtors, as applicable, to make payments required pursuant to this Plan will be obtained from their respective Cash balances, including Cash from operations, the Wind-Down Reserve established pursuant to this Plan and solely in connection with Emerge GP's dissolution, and the Exit Facility Credit Agreement. The Debtors and the Reorganized Debtors, as applicable, may also make such payments using Cash received from their subsidiaries through their respective consolidated cash management systems and the incurrence of intercompany transactions, but in all cases subject to the terms and conditions of the Restructuring Documents.

*R. Continuing Effectiveness of Final Orders*

Payment authorization granted to the Debtors under any prior Final Order entered by the Bankruptcy Court shall continue in effect after the Effective Date. Accordingly, the Debtors or the Reorganized Debtors may pay or otherwise satisfy any Claim to the extent permitted by, and subject to, the applicable Final Order without regard to the treatment that would otherwise be applicable to such Claim under this Plan.

*S. Funding and Use of Carve Out Reserve*

On or before the Effective Date, the Debtors shall fund the Carve Out Reserve in Cash in the aggregate amount of the Professional Fee Claims Estimates unless such other amount is determined by agreement among the Debtors, the Majority Noteholders and the Professional, or by order of the Bankruptcy Court.

The Cash contained in the Carve Out Reserve shall be used solely to pay the obligations and liabilities for which such reserve was established, with the Unused Cash Reserve Amount (if any) being returned to the Reorganized Debtors within three (3) Business Days after determining the Unused Cash Reserve Amount. The Debtors and the Reorganized Debtors, as applicable, shall maintain detailed records of all payments made from the Carve Out Reserve, such that all payments and transactions shall be adequately and promptly documented in, and readily ascertainable from, their respective books and records.

After the Effective Date, neither the Debtors nor the Reorganized Debtors shall deposit any other funds or property into the Carve Out Reserve without further order of the Bankruptcy Court or otherwise commingle funds in the Carve Out Reserve. To the extent the Carve Out Reserve is insufficient to pay in full in Cash the obligations and liabilities for which such reserve was established, then the Reorganized Debtors shall, within five (5) Business Days, pay such obligations and liabilities from either Cash on hand or by drawing under the Exit Facility Credit Agreement to the extent of any availability thereunder.

*T. Payment of Fees and Expenses of Certain Creditors*

The Debtors shall, on and after the Effective Date and to the extent invoiced, pay the Prepetition Credit Agreement Agent & Lenders Fees and Expenses and the Prepetition Noteholders Fees and Expenses (in each case whether accrued prepetition or postpetition and to the extent not otherwise paid during the Chapter 11 Cases), without application by any such parties to the Bankruptcy Court, and without notice and a hearing pursuant to section 1129(a)(4) of the Bankruptcy Code or otherwise; provided, however, if the Debtors or Reorganized Debtors and any such Entity cannot agree with respect to the reasonableness of the fees and expenses incurred prior to the Effective Date to be paid to such party, the reasonableness of any such fees and expenses shall be determined by the Bankruptcy Court (with any undisputed amounts to be paid by the Debtors on or after the Effective Date (as applicable) and any disputed amounts to be escrowed

by the Reorganized Debtors). Notwithstanding anything to the contrary in this Plan, the fees and expenses described in this paragraph shall not be subject to the Administrative Claims Bar Date or Claims Bar Date.

## ARTICLE VI.

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### A. *Treatment of Executory Contracts and Unexpired Leases*

On the Effective Date, all Executory Contracts and Unexpired Leases of the Debtors shall be deemed rejected by the Debtors in accordance with sections 365(a) and 1123(b)(2) of the Bankruptcy Code, except for those Executory Contracts and Unexpired Leases that:

- (i) have been assumed or rejected by the Debtors by prior order of the Bankruptcy Court;
- (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto;
- (iii) are the subject of a motion to assume filed by the Debtors pending on the Effective Date;
- (iv) are identified by the Debtors (with the consent of the Majority Noteholders) for assumption in the Plan Supplement, which may be amended by the Debtors (with the consent of the Majority Noteholders) to add or remove Executory Contracts and Unexpired Leases prior to the Effective Date; or
- (v) are assumed by the Debtors pursuant to the terms of this Plan.

Without amending or altering any prior order of the Bankruptcy Court approving the assumption or rejection of any Executory Contract or Unexpired Lease, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections and assumptions (as applicable) pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code.

To the extent any provision in any Executory Contract or Unexpired Lease assumed or assigned (as applicable) pursuant to this Plan or any prior order of the Bankruptcy Court (including, without limitation, any "change of control" provision) (a) prohibits, restricts or conditions (or purports to prohibit, restrict or condition), (b) is modified, breached or terminated (or deemed modified, breached or terminated), (c) increases, accelerates or otherwise alters any obligations or liabilities of the Debtors or Reorganized Debtors (or purports to increase, accelerate or otherwise alter any obligations or liabilities of the Debtors or Reorganized Debtors), or (d) results in the creation or imposition of any Lien upon any property or asset of any of the Debtors or Reorganized Debtors (or purports to result in the creation or imposition of any Lien upon any property or asset of any of the Debtors or Reorganized Debtors), in each case as a result of (i) the commencement of these Chapter 11 Cases or the insolvency or financial condition of any Debtor at any time before the closing of its respective Chapter 11 Case, (ii) any Debtor's or any Reorganized Debtor's assumption or assumption and assignment (as applicable) of such Executory Contract or Unexpired Lease or (iii) the Confirmation or Consummation of this Plan, then such provision shall be deemed modified such that the transactions contemplated by this Plan shall not entitle the non-debtor party thereto to modify, declare a breach, terminate, increase, accelerate or alter any of the obligations or liabilities of the Debtors or the Reorganized Debtors under, or create or impose any Lien upon any property or asset of any of the Debtors or Reorganized Debtors under any such Executory Contract or Unexpired Lease or to exercise any other default-related rights or remedies with respect thereto, and any required consent under any such contract or lease shall be deemed satisfied by the Confirmation of the Plan.

Each Executory Contract and Unexpired Lease assumed and/or assigned pursuant to this Plan shall revest in and be fully enforceable by the applicable Reorganized Debtor or the applicable assignee in accordance with its terms and conditions, except as modified by the provisions of this Plan, any order of the Bankruptcy Court approving its assumption and/or assignment, or applicable law.

The inclusion or exclusion of a contract or lease on any schedule or exhibit shall not constitute an admission by any Debtor that such contract or lease is an Executory Contract or Unexpired Lease or that any Debtor has any liability thereunder.

*B. Cure of Defaults; Assignment of Executory Contracts and Unexpired Leases*

Any defaults under each Executory Contract and Unexpired Lease to be assumed, or assumed and assigned, pursuant to this Plan shall be satisfied, pursuant to and to the extent required by section 365(b)(1) of the Bankruptcy Code, by payment of the applicable default amount in Cash on the Effective Date or on such other terms as the Bankruptcy Court may order or the parties to such Executory Contracts or Unexpired Leases may otherwise agree in writing (with the consent of the Majority Noteholders) (the “Cure Claim Amount”).

In the event of an assumption, or an assumption and assignment, of an Executory Contract or Unexpired Lease under this Plan, the Debtors shall File and serve upon counterparties to such Executory Contracts and Unexpired Leases, a notice of the proposed assumption, or proposed assumption and assignment (the “Assumption Notice”), which will: (a) list the applicable Cure Claim Amount, if any; (b) if applicable, identify the party to which the Executory Contract or Unexpired Lease will be assigned; (c) describe the procedures for filing objections thereto; and (d) explain the process by which related disputes will be resolved by the Bankruptcy Court, including the date by which any objection to the Assumption Notice must be filed and received by the Debtors.

Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption, or proposed assumption and assignment under this Plan, or any related cure amount, must be Filed, served and actually received by the Debtors on the date specified in the Assumption Notice (notwithstanding anything in the Schedules or a Proof of Claim to the contrary). Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption, or proposed assumption and assignment, or cure amount will be deemed to have consented to such matters and will be deemed to have forever released and waived any objection to such proposed assumption, proposed assumption and assignment, and cure amount. The Confirmation Order shall constitute an order of the Bankruptcy Court approving each proposed assumption, or proposed assumption and assignment, of Executory Contracts and Unexpired Leases pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

In the event of a dispute regarding (a) the amount of any cure payment, (b) the ability of any Debtor or assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or assumed and assigned or (c) any other matter pertaining to assumption or assignment, the applicable cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving such assumption or assumption and assignment; provided, however, that following the resolution of any such dispute, the Debtors or the Reorganized Debtors, as applicable, may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming or assigning it. The Debtors or the Reorganized Debtors, as applicable, shall be authorized to effect such rejection by filing a written notice of rejection with the Bankruptcy Court and serving such notice on the applicable counterparty within ten (10) days of the entry of such Final Order.

Subject to any cure claims Filed with respect thereto, assumption or assumption and assignment of any Executory Contract or Unexpired Lease pursuant to this Plan shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assumption and assignment, in each case as provided in section 365 of the Bankruptcy Code. Any Proofs of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed or assumed and assigned by Final Order shall be deemed disallowed and expunged (subject to any cure claims Filed with respect thereto), without further notice to or action, order, or approval of the Bankruptcy Court.

With respect to any Executory Contract or Unexpired Lease assumed and assigned pursuant to this Plan, upon and as of the Effective Date, the applicable assignee shall be deemed to be substituted as a party thereto for the applicable Debtor party to such assigned Executory Contract or Unexpired Lease and, accordingly, the Debtors and the Reorganized Debtors shall be relieved, pursuant to and to the extent set forth in section 365(k) of the Bankruptcy Code, from any further liability under such assigned Executory Contract or Unexpired Lease.

*C. Rejection of Executory Contracts and Unexpired Leases*

The Debtors reserve the right (with the consent of the Majority Noteholders), at any time prior to the Effective Date, except as otherwise specifically provided herein, to seek to reject any Executory Contract or Unexpired Lease, including any Executory Contract or Unexpired Lease previously assumed by the Debtors pursuant to an order of the Bankruptcy Court or identified in the Plan Supplement, and to file a motion requesting authorization for the rejection of any such contract or lease. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the rejections described in this Article VI pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Rejection of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise shall not constitute a termination of any preexisting obligations owed to the Debtors or the Reorganized Debtors, as applicable, under such Executory Contracts or Unexpired Leases.

*D. Claims on Account of the Rejection of Executory Contracts or Unexpired Leases*

All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to this Plan or the Confirmation Order, if any, must be filed with the Bankruptcy Court within thirty (30) days after service of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection.

Any Person or Entity that is required to file a Proof of Claim arising from the rejection of an Executory Contract or an Unexpired Lease that fails to timely do so shall be forever barred, estopped and enjoined from asserting such Claim, and such Claim shall not be enforceable, against the Debtors, the Reorganized Debtors or the Estates, and the Debtors, the Reorganized Debtors and their Estates and their respective assets and property shall be forever discharged from any and all indebtedness and liability with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.G hereof.

*E. D&O Liability Insurance Policies*

On the Effective Date, each D&O Liability Insurance Policy shall be assumed by the Debtors pursuant to section 365(a) and section 1123 of the Bankruptcy Code as to which no Proof of Claim, request for

administrative expense, or cure claim need be Filed. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtors' assumption of each of the D&O Liability Insurance Policies. In furtherance of the foregoing and subject to the terms and conditions of the D&O Liability Insurance Policies (including any "tail", "runoff" or extended reporting period coverage provision to the extent obtained by the Debtors in relation to any such insurance policies), the Reorganized Debtors shall maintain and continue in full force and effect such D&O Liability Insurance Policies for the benefit of the insured Persons at levels (including with respect to coverage and amount) no less favorable than those existing as of the date of entry of the Confirmation Order for a period of no less than six (6) years following the Effective Date; provided, however, that, after assumption of the D&O Liability Insurance Policies, nothing in this Plan otherwise alters the terms and conditions of the D&O Liability Insurance Policies. Subject to the terms and conditions of the D&O Liability Insurance Policies (including any "tail", "runoff" or extended reporting period coverage provision to the extent obtained by the Debtors in relation to any such insurance policies), Confirmation and Consummation of this Plan shall not impair or otherwise modify any available defenses of the Reorganized Debtors under the D&O Liability Insurance Policies. For the avoidance of doubt, the D&O Liability Insurance Policies shall continue to apply with respect to actions, or failures to act, that occurred on or prior to the Effective Date, subject to the terms and conditions of the D&O Liability Insurance Policies. The Debtors are further authorized to take such actions, and to execute and deliver such documents, as may be reasonably necessary or appropriate to implement, maintain, cause the inception or binding of, satisfy any terms or conditions of, or otherwise secure for the insureds the benefits of any "tail", "runoff" or extended reporting period coverage in relation to any such insurance policies, without further notice to or order of the Bankruptcy Court or approval or consent of any Person or Entity.

Notwithstanding anything to the contrary in any D&O Liability Insurance Policies issued prior to the Effective Date, the Reorganized Debtors shall not have any obligation or responsibility for the payment of any self-insured retention thereunder or in connection therewith, and no person or entity shall be entitled to seek reimbursement from or to subrogate against any Reorganized Debtors with respect to any payments made under such policies.

#### *F. Indemnification Provisions*

On the Effective Date, each Indemnification Provision shall be deemed and treated as an Executory Contract that is and shall be assumed by each applicable Debtor pursuant to section 365(a) and section 1123 of the Bankruptcy Code, subject to and solely to the extent modified herein (as modified, the "**Assumed Indemnification Provisions**"); **provided** that as it relates to the indemnification of any Debtor's directors, managers and officers as of the Petition Date that were not members of the Special Restructuring Committee as of the Petition Date (the "**Previous D&Os**"), the aggregate liability of the Reorganized Debtors in connection therewith shall not exceed One Million Dollars (\$1,000,000) beyond the extent of the coverage provided by the D&O Liability Insurance Policies; **provided** further, that the Assumed Indemnification Provisions shall not apply to the Previous D&Os with respect to any liabilities arising from or related to the failure of the Debtors to file its current, quarterly or annual reports as required under the rules promulgated by the Securities and Exchange Commission unless such failure is cured and the Debtors are brought back into compliance with the rules promulgated by the Securities and Exchange Commission in accordance with the milestones set forth in Section 6.16 of the DIP Credit Agreement. In connection with the Assumed Indemnification Provisions, no Proof of Claim, request for administrative expense, or cure claim need be Filed. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtors' assumption of each of the Assumed Indemnification Provisions. Confirmation and Consummation of this Plan shall not impair or otherwise modify any available defenses of the Reorganized Debtors or other applicable parties under the Assumed Indemnification Provisions. For the avoidance of doubt, (i) the Assumed Indemnification Provisions shall continue to apply with respect to actions, or failures to act, that occurred on or prior to the

Effective Date, subject to the terms and conditions of the Assumed Indemnification Provisions, and (ii) the New General Partner shall not assume nor be deemed to assume any liabilities with respect to any Indemnification Provision of a Previous D&O.

*G. Extension of Time to Assume or Reject*

Notwithstanding anything to the contrary set forth in Article VI of this Plan, in the event of a dispute as to whether a contract is executory or a lease is unexpired, the right of the Reorganized Debtors to move to assume or reject such contract or lease shall be extended until the date that is ten (10) days after entry of a Final Order by the Bankruptcy Court determining that the contract is executory or the lease is unexpired. The deemed rejection provided for in Article VI.A of this Plan shall not apply to any such contract or lease, and any such contract or lease shall be assumed or rejected only upon motion of the Reorganized Debtors following the Bankruptcy Court's determination that the contract is executory or the lease is unexpired.

*H. Modifications, Amendments, Supplements, Restatements, or Other Agreements*

Unless otherwise provided in this Plan, each Executory Contract or Unexpired Lease that is assumed by the Debtors or the Reorganized Debtors shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing has been previously rejected or repudiated or is rejected or repudiated hereunder. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

**ARTICLE VII.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

*A. Distributions for Claims Allowed as of the Effective Date*

Except as otherwise provided in the "Treatment" sections in Article III hereof or as ordered by the Bankruptcy Court, initial distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as is practicable. Any payment or distribution required to be made under this Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Disputed Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Article VIII hereof.

*B. No Postpetition Interest on Claims*

Unless otherwise specifically provided for in this Plan, the Confirmation Order or Final Order of the Bankruptcy Court, or required by applicable bankruptcy law (including, without limitation, as required pursuant to section 506(b) or section 511 of the Bankruptcy Code), postpetition interest shall not accrue or be paid on any Claims and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

C. *Distributions by the Reorganized Debtors or Other Applicable Distribution Agent*

Other than as specifically set forth below, the Reorganized Debtors or other applicable Distribution Agent shall make all distributions required to be distributed under this Plan. Distributions on account of the Allowed Prepetition Debt Claims and Allowed DIP Facility Claims shall be made to the Prepetition Agents and the DIP Credit Agreement Agent, respectively, and such agent will be, and shall act as, the Distribution Agent with respect to its respective Class of Claims in accordance with the terms and conditions of this Plan and the applicable loan documents. All distributions to Holders of Prepetition Debt Claims and DIP Facility Claims shall be deemed completed when made by the Reorganized Debtors to the Prepetition Agents and the DIP Credit Agreement Agent, as applicable. The Reorganized Debtors may employ or contract with other entities to assist in or make the distributions required by this Plan and may pay the reasonable fees and expenses of such entities and the Distribution Agents in the ordinary course of business. No Distribution Agent shall be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

D. *Delivery and Distributions; Undeliverable or Unclaimed Distributions*

1. Record Date for Distributions

On the Distribution Record Date, the Claims Register (and the Debtors' books and records with respect to the Holders of Old GP/LP Equity Interests) shall be closed. Accordingly, the Debtors, the Reorganized Debtors or other applicable Distribution Agent will have no obligation to recognize the assignment, transfer or other disposition of, or the sale of any participation in, any Allowed Claim (other than DIP Credit Agreement Claims and Prepetition Debt Claims) or Allowed Equity Interest that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute securities, property, notices and other documents only to those Holders of Allowed Claims (other than DIP Credit Agreement Claims and Prepetition Debt Claims) or Allowed Equity Interest who are Holders of such Claims or Equity Interests, or participants therein, as of the close of business on the Distribution Record Date. The Reorganized Debtors or other applicable Distribution Agent shall be entitled to recognize and deal for all purposes under this Plan with only those record holders stated on the Claims Register, or their books and records, as of the close of business on the Distribution Record Date; provided, however, that the Distribution Record Date shall not apply to the DIP Credit Agreement Claims or Prepetition Debt Claims.

2. Delivery of Distributions in General

Except as otherwise provided herein, the Debtors, the Reorganized Debtors or other applicable Distribution Agent, as applicable, shall make distributions to Holders of Allowed Claims and Allowed Equity Interests, or in care of their authorized agents, as appropriate, at the address for each such Holder or agent as indicated on the Debtors' or other applicable Distribution Agent's books and records as of the date of any such distribution; provided, however, that the manner of such distributions shall be determined in the discretion of the applicable Distribution Agent (subject to the terms and conditions of the DIP Credit Agreement and the relevant Prepetition Debt Documents, if applicable); provided further, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in the latest Proof of Claim Filed by such Holder pursuant to Bankruptcy Rule 3001 as of the Distribution Record Date and the address for each Holder of an Allowed Equity Interest shall be deemed to be the address set forth in the Debtors' books and records, or as may be held by the applicable transfer agent or similar such agency.



### 3. Minimum Distributions

Notwithstanding anything herein to the contrary, no Distribution Agent shall be required to make distributions or payments of less than \$25.00 (whether in Cash or otherwise) or to make partial distributions or payments of fractions of dollars or New GP/LP Equity Interests, in each case with respect to Impaired Claims or Impaired Equity Interests. With respect to Impaired Claims and Impaired Equity Interests, whenever any payment or distribution of a fraction of a dollar or share/unit of New GP/LP Equity Interest under this Plan would otherwise be called for, the actual payment or distribution will reflect a rounding of such fraction to the nearest whole dollar or share/unit of New GP/LP Equity Interest (up or down), with half dollars and half shares/units of New GP/LP Equity Interest or more being rounded up to the next higher whole number and with less than half dollars and half shares/units of New GP/LP Equity Interest being rounded down to the next lower whole number (and no Cash shall be distributed in lieu of such fractional New GP/LP Equity Interest).

No Distribution Agent shall have any obligation to make a distribution on account of an Allowed Claim that is Impaired under this Plan if: (a) the aggregate amount of all distributions authorized to be made on the Subsequent Distribution Date in question is or has an economic value less than \$25,000, unless such distribution is a final distribution; or (b) the amount to be distributed to the specific Holder of an Allowed Claim on such Subsequent Distribution Date does not constitute a final distribution to such Holder and is or has an economic value less than \$25.00, which shall be treated as an undeliverable distribution under Article VII.D.4 below.

### 4. Undeliverable Distributions

#### (a) Holding of Certain Undeliverable Distributions

If the distribution to any Holder of an Allowed Claim or an Allowed Equity Interest is returned to the Distribution Agent as undeliverable or is otherwise unclaimed, no further distributions shall be made to such Holder unless and until the Distribution Agent is notified in writing of such Holder's then current address in accordance with the time frames described in Article VII.D.4(b) hereof, at which time all currently due but missed distributions shall be made to such Holder on the next Subsequent Distribution Date (or such earlier date as determined by the applicable Distribution Agent). Undeliverable distributions shall remain in the possession of the Reorganized Debtors or in the applicable reserve, subject to Article VII.D.4(b) hereof, until such time as any such distributions become deliverable. Undeliverable distributions shall not be entitled to any additional interest, dividends or other accruals of any kind on account of their distribution being undeliverable.

#### (b) Failure to Claim Undeliverable Distributions

Any Holder of an Allowed Claim or an Allowed Equity Interest (or any successor or assignee or other Person or Entity claiming by, through, or on behalf of, such Holder) that does not assert a right pursuant to this Plan for an undeliverable or unclaimed distribution within ninety (90) days after the later of the Effective Date or the date such distribution is due shall be deemed to have forfeited its rights for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such rights for an undeliverable or unclaimed distribution against the Debtors or their Estates, the Reorganized Debtors or their respective assets or property, or any Distribution Agent. In such case, any Cash, Plan Securities, or other property reserved for distribution on account of such Claim or Equity Interest shall become the property of the Reorganized Debtors, free and clear of any Claims or other rights of such Holder with respect thereto and notwithstanding any federal or state escheat laws to the contrary. Any such Cash, Plan Securities, or other property shall thereafter be distributed or allocated in accordance with the applicable terms and conditions of this Plan. Nothing contained in this Plan shall require the Debtors, the

Reorganized Debtors, or any Distribution Agent to attempt to locate any Holder of an Allowed Claim or an Allowed Equity Interest.

(c) *Failure to Present Checks*

Checks issued by the Distribution Agent on account of Allowed Claims or Allowed Equity Interests shall be null and void if not negotiated within ninety (90) days after the issuance of such check. Requests for reissuance of any check shall be made directly to the Distribution Agent by the Holder of the relevant Allowed Claim or Allowed Equity Interest with respect to which such check originally was issued. Any Holder of an Allowed Claim or Allowed Equity Interest holding an un-negotiated check that does not request reissuance of such un-negotiated check within ninety (90) days after the date of mailing or other delivery of such check shall have its rights for such un-negotiated check discharged and be forever barred, estopped and enjoined from asserting any such right against the Debtors, their Estates, the Reorganized Debtors, or their respective assets or property. In such case, any Cash held for payment on account of such Claims or Equity Interests shall become the property of the Reorganized Debtors, free and clear of any Claims or other rights of such Holder with respect thereto and notwithstanding any federal or state escheat laws to the contrary. Any such Cash shall thereafter be distributed or allocated in accordance with the applicable terms and conditions of this Plan.

*E. Compliance with Tax Requirements*

In connection with this Plan and all distributions hereunder, the Reorganized Debtors or other applicable Distribution Agent shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtors or other applicable Distribution Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. All Persons holding Claims or Equity Interests shall be required to provide any information necessary to effect information reporting and the withholding of such taxes, and each Holder of an Allowed Claim or an Allowed Equity Interest shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution.

*F. Allocation of Plan Distributions Between Principal and Interest*

To the extent that any Allowed Claim entitled to a distribution under this Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for income tax purposes to the principal amount of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

*G. Means of Cash Payment*

Payments of Cash made pursuant to this Plan shall be in U.S. dollars and shall be made, at the option of the applicable Distribution Agent, by checks drawn on, or wire transfer from, a domestic bank selected by such Distribution Agent. Cash payments to foreign creditors may be made, at the option of the applicable Distribution Agent, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

*H. Timing and Calculation of Amounts to Be Distributed*

Except as otherwise provided in the “Treatment” sections in Article III hereof or as ordered by the Bankruptcy Court, on the Initial Distribution Date (or if a Claim is not an Allowed Claim on the Effective Date, on the Subsequent Distribution Date occurring after such Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim shall receive the full amount of the distributions that this Plan provides for Allowed Claims in the applicable Class. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in the applicable class treatment or in Article VIII hereof. Except as otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends or accruals on the distributions provided for herein, regardless of whether such distributions are delivered on or at any time after the Effective Date.

*I. Setoffs*

Without altering or limiting any of the rights and remedies of the Debtors and the Reorganized Debtors under section 502(d) of the Bankruptcy Code, all of which rights and remedies are hereby reserved, the Debtors and the Reorganized Debtors, in consultation with the Majority Noteholders, may, but shall not be required to, withhold (but not setoff except as set forth below) from the distributions called for hereunder on account of any Allowed Claim (other than any Allowed Prepetition Credit Agreement Claims, Allowed DIP Credit Agreement Claims, and Allowed Prepetition Notes Claims) an amount equal to any claims, Causes of Action and Litigation Claims of any nature that the Debtors or the Reorganized Debtors may hold against the Holder of any such Allowed Claim; provided that, at least ten (10) days prior to effectuating such withholding, the Debtors or the Reorganized Debtors, as applicable, shall provide written notice thereof to the applicable Holder of such Claim, and all objections and defenses of such Holder to such withholding are preserved. In the event that any such claims, Causes of Action or Litigation Claims are adjudicated by Final Order or otherwise resolved against the applicable Holder, the Debtors and the Reorganized Debtors may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim (other than any Allowed Prepetition Credit Agreement Claims, Allowed DIP Credit Agreement Claims, and Allowed Prepetition Notes Claims) and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), the amount of such adjudicated or resolved claims, Causes of Action or Litigation Claims. Neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Reorganized Debtors of any such claims, Causes of Action or Litigation Claims, all of which are reserved unless expressly released or compromised pursuant to this Plan or the Confirmation Order.

**ARTICLE VIII.**

**PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED,  
AND DISPUTED CLAIMS AND EQUITY INTERESTS**

*A. Resolution of Disputed Claims and Equity Interests*

*1. Allowance of Claims and Equity Interests*

After the Effective Date, and except as otherwise provided in this Plan, the Reorganized Debtors shall have and shall retain any and all available rights and defenses that the Debtors had with respect to any Claim or Equity Interest, including, without limitation, the right to assert any objection to Claims or Equity Interests based on the limitations imposed by section 502 or section 510 of the Bankruptcy Code. ~~The Debtors and the Reorganized Debtors may contest the amount and validity of any Disputed Claim or~~

~~Disputed Equity Interest in the ordinary course of business in the manner and venue in which such Claim or Equity Interest would have been determined, resolved or adjudicated if the Chapter 11 Cases had not been commenced.~~

## 2. Prosecution of Objections to Claims and Equity Interests

After the Confirmation Date but before the Effective Date, the Debtors, and after the Effective Date, the Reorganized Debtors shall have the authority to File objections to Claims and Equity Interests (other than those that are Allowed under this Plan) and settle, compromise, withdraw or litigate to judgment objections to any and all such Claims and Equity Interests, regardless of whether such Claims and Equity Interests are in an Unimpaired Class or otherwise; *provided, however*, this provision shall not apply to Professional Fee Claims, which may be objected to by any party-in-interest in these Chapter 11 Cases. From and after the Effective Date, the Reorganized Debtors may settle or compromise any Disputed Claim and Disputed Equity Interest without any further notice to or action, order or approval of the Bankruptcy Court. The Reorganized Debtors shall have the sole authority to administer and adjust the Claims Register and their respective books and records to reflect any such settlements or compromises without any further notice to or action, order or approval of the Bankruptcy Court.

## 3. Claims Estimation

After the Confirmation Date but before the Effective Date, the Debtors, and after the Effective Date, the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any Disputed Claim or contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claim, whether for allowance or to determine the maximum amount of such Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation.

## 4. Deadline to File Objections to Claims and Equity Interests

Any objections to Claims shall be Filed by no later than the Claims Objection Deadline; *provided* that nothing contained herein shall limit the Reorganized Debtors' right to object to Claims, if any, Filed or amended after the Claims Objection Deadline. Moreover, notwithstanding the expiration of such objection deadline, the Debtors or the Reorganized Debtors shall continue to have the right to amend any claims objections and to file and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is Allowed. Moreover, notwithstanding the expiration of the Claims Objection Deadline, the Reorganized Debtors shall continue to have the right to amend any claims or other objections and to File and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is or becomes Allowed by Final Order.

Any objections to Equity Interests shall be Filed by no later than the Old GP/LP Objection Deadline. Moreover, notwithstanding the expiration of such objection deadline, the Reorganized Debtors shall continue to have the right to amend any objections and to file and prosecute supplemental objections and counterclaims to a Disputed Equity Interest until such Disputed Equity Interest is or becomes Allowed by Final Order.

*B. No Distributions Pending Allowance*

Notwithstanding any other provision of this Plan to the contrary, no payments or distributions of any kind or nature shall be made with respect to all or any portion of a Disputed Claim or Disputed Equity Interest unless and until all objections to such Disputed Claim or Disputed Equity Interest have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim or Disputed Equity Interest is or becomes Allowed by Final Order.

*C. Distributions on Account of Disputed Claims and Disputed Equity Interests Once They Are Allowed and Additional Distributions on Account of Previously Allowed Claims and Allowed Equity Interests*

On each Subsequent Distribution Date (or such earlier date as determined by the Reorganized Debtors in their sole discretion), the Reorganized Debtors or other applicable Distribution Agent will make distributions (a) on account of any Disputed Claim and Disputed Equity Interest that has become Allowed during the preceding calendar quarter, and (b) on account of previously Allowed Claims and Allowed Equity Interests of property that would have been distributed to the Holders thereof on the dates distributions previously were made to Holders of Allowed Claims and Allowed Equity Interests in such Class had the Disputed Claims and Disputed Equity Interests that have become Allowed or Disallowed been Allowed or Disallowed, as applicable, on such dates. Such distributions will be made pursuant to the applicable provisions of Article VII of this Plan. For the avoidance of doubt, but without limiting the terms or conditions of Article VII.B or Paragraph B of this Article VIII, any dividends or other distributions arising from property distributed to holders of Allowed Claims and Allowed Equity Interests in a Class and paid to such Holders under this Plan shall also be paid, in the applicable amounts, to any Holder of a Disputed Claim and Disputed Equity Interest in such Class that becomes Allowed after the date or dates that such dividends or other distributions were earlier paid to holders of Allowed Claims and Allowed Equity Interests in such Class.

*D. Reserve for Disputed Claims and Disputed Equity Interests*

The Debtors, the Reorganized Debtors, and the Distribution Agent may, in their respective sole discretion, establish such appropriate reserves for Disputed Claims and Disputed Equity Interests in the applicable Class(es) as it determines necessary and appropriate, in each case with the consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement or as approved by order of the Bankruptcy Court. Without limiting the foregoing, reserves (if any) for Disputed Claims and Disputed Equity Interests shall equal, as applicable, an amount of property equal to 100% of distributions to which Holders of Disputed Claims and Disputed Equity Interests in each applicable Class would otherwise be entitled under this Plan as of such date if such Disputed Claims and Disputed Equity Interests were Allowed in their respective Face Amount (or based on the Debtors' books and records if the applicable Holder has not yet Filed a Proof of Claim or Proof of Interest and the applicable bar date has not yet expired); provided, however, that the Debtors and the Reorganized Debtors, as applicable, shall have the right to file a motion seeking to estimate any Disputed Claims or Disputed Equity Interest.

**ARTICLE IX.**

**CONDITIONS PRECEDENT TO CONFIRMATION  
AND CONSUMMATION OF THE PLAN**

*A. Conditions Precedent to Confirmation*

It shall be a condition to Confirmation of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof:

1. This Plan and the Restructuring Documents shall be in form and substance consistent in all respects with the Restructuring Term Sheet and otherwise acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement; and

2. The Confirmation Order shall have been entered by the Bankruptcy Court, and such order shall be in form and substance consistent in all respects with the Restructuring Term Sheet and otherwise acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement.

*B. Conditions Precedent to Consummation*

It shall be a condition to Consummation of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof.

1. The Confirmation Order shall have become a Final Order and such order shall not have been amended, modified, vacated, stayed, or reversed;

2. The Confirmation Date shall have occurred;

3. The Bankruptcy Court shall have entered one or more Final Orders (which may include the Confirmation Order), in form and substance acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, authorizing the assumption, assumption and assignment and rejection of the Executory Contracts and Unexpired Leases by the Debtors as contemplated in this Plan and the Plan Supplement;

4. This Plan and the Restructuring Documents shall not have been amended or modified other than in a manner in form and substance consistent in all respects with the Restructuring Term Sheet and otherwise acceptable to the Special Restructuring Committee and the Majority Noteholders in the manner set forth in the Restructuring Support Agreement;

5. The Restructuring Documents shall have been filed, tendered for delivery, and been effectuated or executed by all Entities party thereto (as appropriate), and in each case in full force and effect. All conditions precedent to the effectiveness of such Restructuring Documents, including, without limitation, the Exit Facility Loan Agreement and the New Second Lien Notes Agreement, shall have been satisfied or waived pursuant to the terms of such applicable Restructuring Documents (or shall be satisfied concurrently with the occurrence of the Effective Date);

6. All DIP Credit Agreement Claims will have been paid off in full in Cash, or will be paid in full in Cash simultaneously with the effectiveness of the Plan, or will have received or will receive such other

treatment as the Holders of DIP Credit Agreement Claims and the Debtors shall have agreed to in writing, in accordance with the terms of the DIP Credit Agreement;

7. All consents, actions, documents, certificates and agreements necessary to implement this Plan and the transactions contemplated by this Plan shall have been, as applicable, obtained and not otherwise subject to unfulfilled conditions, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws, and in each case in full force and effect;

8. All governmental approvals and consents, including Bankruptcy Court approval, that are applicable and legally required for the consummation of this Plan shall have been obtained, not be subject to unfulfilled conditions and be in full force and effect, and, to the extent applicable, all applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, shall have expired;

9. The New Board shall have been selected;

10. The conditions to the effectiveness of the Exit Facility Credit Agreement and the New Second Lien Notes Agreement shall have been satisfied or waived and such agreements shall have closed or will close simultaneously with the effectiveness of this Plan;

11. The Restructuring Support Agreement shall be in full force and effect and shall not have been terminated in accordance with its terms;

12. The Carve Out Reserve shall have been funded in full in Cash by the Debtors in accordance with the terms and conditions of this Plan;

13. The Wind-Down Reserve shall have been funded in the amount of \$125,000 by the Debtors in accordance with the terms and conditions of this Plan; and

14. To the extent invoiced, all (i) Prepetition Credit Agreement Agent & Lenders Fees and Expenses and (ii) Prepetition Notes Fees and Expenses shall have been paid in full in Cash or reserved in a manner acceptable to the Majority Noteholders (or approved by order of the Bankruptcy Court) to the extent of any disputes related thereto.

*C. Waiver of Conditions*

Subject to section 1127 of the Bankruptcy Code, the conditions to Confirmation and Consummation of this Plan set forth in this Article IX may be waived by the Debtors, with the prior written consent of the Majority Noteholders in the manner set forth in the Restructuring Support Agreement, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate this Plan. The failure of the Debtors or Reorganized Debtors to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

*D. Effect of Non-Occurrence of Conditions to Confirmation or Consummation*

If the Confirmation or the Consummation of this Plan does not occur with respect to one or more of the Debtors, then this Plan shall, with respect to such applicable Debtor or Debtors, be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Equity Interests in the Debtors; (2) prejudice in any manner the rights of the Debtors, any Holders or any other Entity; (3) constitute an Allowance of any Claim or

Equity Interest; or (4) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any Holders or any other Entity in any respect.

## ARTICLE X.

### RELEASE, DISCHARGE, INJUNCTION AND RELATED PROVISIONS

#### A. *General*

~~Pursuant to~~ With respect to Class 5 Claims only, pursuant to section 1123 of the Bankruptcy Code, and in consideration for the classification, distributions, releases and other benefits provided under this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and controversies resolved pursuant to this Plan. ~~The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Equity Interests and controversies, as well as a finding by the Bankruptcy Court that any such compromise or settlement is in the best interests of the Debtors, their Estates, and any Holders of Claims and Equity Interests and is fair, equitable and reasonable~~ such Class 5 Claims.

Notwithstanding anything contained herein to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions (if any) and treatments hereunder, takes into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code or otherwise. As of the Effective Date, any and all contractual, legal and equitable subordination rights, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code or otherwise, relating to the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions (if any) and treatments hereunder, are settled, compromised, terminated and released pursuant hereto; *provided, however*, that nothing contained herein shall preclude any Person or Entity from exercising their rights pursuant to and consistent with the terms of this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan.

#### B. *Release of Claims and Causes of Action*

1. *Release by the Debtors and their Estates.* Pursuant to section 1123(b) and any other applicable provisions of the Bankruptcy Code, and except as otherwise expressly provided in this Plan, effective as of the Effective Date, for good and valuable consideration provided by each of the Released Parties, the adequacy and sufficiency of which is hereby confirmed, the Debtors and the Reorganized Debtors, in their respective individual capacities and as debtors-in-possession, and on behalf of themselves and their respective Estates, including, without limitation, any successor to the Debtors or any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code (collectively, the "Debtor Releasing Parties") will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full ~~discharge,~~ waiver and release to each of the Released Parties (and each such Released Party so released shall be deemed forever released, ~~and waived and discharged by~~ the Debtor Releasing Parties) and their respective assets and properties (the "Debtor Release") from any and all claims, Causes of Action, Released and Settled Claims, Litigation Claims and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, whether directly or derivatively held, existing as of the Effective Date or thereafter arising, in law, at equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances



existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to any of the Debtors, including, without limitation, (i) the Chapter 11 Cases, the Disclosure Statement, this Plan, the Restructuring Support Agreement and the Restructuring Documents, (ii) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, (iii) the business or contractual arrangements between any Debtor and any Released Parties, (iv) the negotiation, formulation or preparation of the Restructuring Support Agreement, this Plan, the Disclosure Statement, the Plan Supplement, the Restructuring Documents, or related agreements, instruments or other documents, (v) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Cases, (vi) the purchase, sale, or rescission of the purchase or sale of any Equity Interest of the Debtors or the Reorganized Debtors, and/or (vii) the Confirmation or Consummation of this Plan or the solicitation of votes on this Plan that such Debtor Releasing Party would have been legally entitled to assert (whether individually or collectively) or that any Holder of a Claim or Equity Interest or other Entity would have been legally entitled to assert for, or on behalf or in the name of, any Debtor, its respective Estate or any Reorganized Debtor (whether directly or derivatively) against any of the Released Parties; provided, however, that the foregoing provisions of this Debtor Release shall not operate to waive or release: (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (ii) any Causes of Action relating to the MSHA Action (other than against a member of the Special Restructuring Committee); and/or (iii) the rights of such Debtor Releasing Party to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan or assumed pursuant to this Plan or assumed pursuant to Final Order of the Bankruptcy Court. The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to this Debtor Release. Notwithstanding the foregoing, nothing in this Article X.B shall or shall be deemed to (i) prohibit the Debtors or the Reorganized Debtors from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, Causes of Action or liabilities they may have against any Person that is based upon an alleged breach of a confidentiality or non-compete obligation owed to the Debtors or the Reorganized Debtors and/or (ii) operate as a release or waiver of any Intercompany Claims, in each case unless otherwise expressly provided for in this Plan.

~~Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of the claims released by the Debtor Release; (iii) in the best interest of the Debtors and their Estates; (iv) fair, equitable and reasonable; and (v) given and made after due notice and opportunity for hearing.~~

2. Release By Third Parties. Except as otherwise expressly provided in this Plan, effective as of the Effective Date, to the fullest extent permitted by applicable law, for good and valuable consideration provided by each of the Released Parties, the adequacy and sufficiency of which is hereby confirmed, and without limiting or otherwise modifying the scope of the Debtor Release provided by the Debtor Releasing Parties above, each Non-Debtor Releasing Party (together with the Debtor Releasing Parties, the "Releasing Parties") will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full ~~discharge~~, waiver and release to each of the Released Parties (and each such Released Party so released shall be deemed forever

released, and waived and discharged by the Non-Debtor Releasing Parties) and their respective assets and properties (the “Third Party Release”) from any and all claims, Causes of Action, Released and Settled Claims, Litigation Claims and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, whether directly or derivatively held, existing as of the Effective Date or thereafter arising, in law, at equity or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to any of the Debtors, including, without limitation, (i) the Chapter 11 Cases, the Disclosure Statement, this Plan, the Restructuring Support Agreement and the Restructuring Documents, (ii) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, (iii) the business or contractual arrangements between any Debtor and any Released Parties, (iv) the negotiation, formulation or preparation of the Restructuring Support Agreement, this Plan, the Disclosure Statement, the Plan Supplement, the Restructuring Documents, or related agreements, instruments or other documents, (v) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Cases, (vi) the purchase, sale or rescission of the purchase or sale of any Equity Interest of the Debtors or the Reorganized Debtors, and/or (vii) the Confirmation or Consummation of this Plan or the solicitation of votes on this Plan that such Non-Debtor Releasing Party would have been legally entitled to assert (whether individually or collectively) against any of the Released Parties; provided, however, that the foregoing provisions of this Third Party Release shall not operate to waive or release (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (ii) any Causes of Action relating to the MSHA Action (other than against a member of the Special Restructuring Committee); and/or (iii) the rights of such Non-Debtor Releasing Party to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with this Plan or assumed pursuant to this Plan or Final Order of the Bankruptcy Court. The foregoing release shall be effective as of the Effective Date, without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to this Third Party Release.

~~Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Third Party Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Third Party Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of the claims released by the Third Party Release; (iii) in the best interest of the Debtors and all holders of Claims and Equity Interests; (iv) fair, equitable and reasonable; and (v) given and made after due notice and opportunity for hearing.~~

### C. *Waiver of Statutory Limitations on Releases*

Each of the Releasing Parties in each of the releases contained above expressly acknowledges that although ordinarily a general release may not extend to claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, they have carefully considered and taken into account in determining to enter into the above releases the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Releasing Party expressly waives any and all rights conferred upon it by any statute or rule of law which provides that a release does not extend to claims which the claimant does not know or suspect

to exist in its favor at the time of providing the release, which if known by it may have materially affected its settlement with the released party. The releases contained in this Plan are effective regardless of whether those released matters are presently known, unknown, suspected or unsuspected, foreseen or unforeseen.

*D. Discharge of Claims and Equity Interests*

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan (including, without limitation, Article V.E and V.F of this Plan) or the Confirmation Order, effective as of the Effective Date, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, ~~settlement,~~ discharge, and release of, all Claims, Equity Interests and Causes of Action of any kind or nature whatsoever against the Debtors or any of their respective assets or properties, including any interest accrued on such Claims or Equity Interests from and after the Petition Date, and regardless of whether any property shall have been abandoned by order of the Bankruptcy Court, distributed or retained pursuant to this Plan on account of such Claims, Equity Interests or Causes of Action.

Except as otherwise expressly provided by this Plan (including, without limitation, Article V.E and V.F of this Plan) or the Confirmation Order, upon the Effective Date, the Debtors and their Estates shall be deemed discharged and released under and to the fullest extent provided under sections 524 and 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. Such discharge shall void any judgment obtained against the Debtors or the Reorganized Debtors at any time, to the extent that such judgment relates to a discharged Claim.

Except as otherwise expressly provided by this Plan (including, without limitation, Article V.E and V.F of this Plan) or the Confirmation Order, upon the Effective Date: (i) the rights afforded herein and the treatment of all Claims and Equity Interests shall be in exchange for and in complete satisfaction, ~~settlement,~~ discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their respective assets, property, or Estates; (ii) all Claims and Equity Interests shall be satisfied, discharged, and released in full, and each of the Debtor's liability with respect thereto shall be extinguished completely without further notice or action; and (iii) all Entities shall be precluded from asserting against the Debtors, the Estates, the Reorganized Debtors, each of their respective successors and assigns, and each of their respective assets and properties, any such Claims or Equity Interests, whether based upon any documents, instruments or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date or otherwise.

*E. Exculpation*

**Effective as of the Effective Date, the Exculpated Parties shall neither have nor incur any liability to any Person or Entity for any claims, Causes of Action or Released and Settled Claim ~~arising prior to or on the Effective Date for any act taken or omitted to be taken on or after the~~ Petition Date and prior to or on the Effective Date in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the Confirmation or Consummation of this Plan, the Disclosure Statement, the Restructuring Documents or any contract, instrument, release or other agreement or document created or entered into in connection with this Plan, including the Restructuring Support Agreement, or any other ~~proposition~~ ~~or~~ ~~postpetition~~ act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, the approval of the Disclosure Statement or Confirmation or Consummation of this Plan; provided, however, that the foregoing provisions of this exculpation shall**

not operate to waive or release: (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Exculpated Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; and/or (ii) the rights of any Person or Entity to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with this Plan or assumed pursuant to this Plan or Final Order of the Bankruptcy Court; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its respective duties pursuant to, or in connection with, the above referenced documents, actions or inactions. The foregoing exculpation shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person. Notwithstanding the foregoing, nothing in this Article X.E shall or shall be deemed to prohibit the Debtors or the Reorganized Debtors from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, Causes of Action or liabilities they may have against any Person that is based upon an alleged breach of a confidentiality or non-compete obligation owed to the Debtors or the Reorganized Debtors, in each case unless otherwise expressly provided for in this Plan.

*F. Preservation of Causes of Action*

1. Maintenance of Causes of Action

Except as otherwise provided in this Article X (including, without limitation, and for the avoidance of doubt, the Releases contained in Article X.B and Exculpation contained in Article X.E hereof) or elsewhere in this Plan or the Confirmation Order, after the Effective Date, the Reorganized Debtors shall retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Litigation Claims, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Cases. The Reorganized Debtors, as the successors-in-interest to the Debtors and the Estates, may, and shall have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of such Litigation Claims without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Except as otherwise expressly provided in this Plan, the Debtors expressly reserve all Causes of Action and Litigation Claims for later adjudication by the Debtors or the Reorganized Debtors (including, without limitation, Causes of Action and Litigation Claims not specifically identified or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action or Litigation Claims ~~upon or after as~~ a result of the Confirmation or Consummation of this Plan or based on the Disclosure Statement, this Plan or the Confirmation Order, except in each case where such Causes of Action or Litigation Claims have been expressly waived, relinquished, released, compromised or settled in this Plan (including, without limitation, and for the avoidance of doubt, the Releases contained in Article X.B and Exculpation contained in Article X.E hereof) or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtors and the Reorganized Debtors expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which any of the Debtors are a plaintiff, defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

*G. Injunction*

Except as otherwise expressly provided in this Plan or the Confirmation Order, from and after the Effective Date, all Persons and Entities are, to the fullest extent provided under section 524 and other applicable provisions of the Bankruptcy Code, permanently enjoined from (i) commencing or continuing, in any manner or in any place, any suit, action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; (iv) asserting a setoff ~~(except to the extent such setoff was exercised prior to the Petition Date)~~ or right of subrogation of any kind; or (v) commencing or continuing in any manner any action or other proceeding of any kind, in each case on account of or with respect to any Claim, demand, liability, obligation, debt, right, Cause of Action, equity interest, or remedy released or to be released, exculpated or to be exculpated, settled or to be settled or discharged or to be discharged pursuant to the Plan or the Confirmation Order against any Person or Entity so released, discharged, or exculpated (or the property or estate of any Person or Entity so released, discharged, or exculpated). All injunctions or stays provided for in the Chapter 11 Cases under section 105 or section 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

*H. Binding Nature Of Plan*

~~On the effective date~~ Effective Date, and effective as of the ~~effective date~~ Effective Date, this Plan shall bind, and shall be deemed binding upon, the Debtors, the Reorganized Debtors, any and all ~~holders of claims AGAINST~~ Holders of Claims against and Equity Interests in the Debtors, all Persons and Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in this ~~plan~~ Plan, ~~each PERSON AND~~ entity ~~Person and Entity~~ acquiring property under this plan, ~~any and all non-debtor parties to executory contracts and unexpired leases with the debtors~~ Plan, any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors and the respective successors and assigns of each of the foregoing, to the maximum extent permitted by applicable law, and notwithstanding whether or not such Person or Entity (i) will receive or retain any property, or interest in property, under this Plan, (ii) has Filed a Proof of Claim or Interest in the Chapter 11 Cases, or (iii) failed to vote to accept or reject this Plan, affirmatively voted to reject this Plan, or is conclusively presumed to reject this Plan.

*I. Released and Settled Claims.*

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, this Plan incorporates an integrated compromise, settlement and release of the Released and Settled Claims, to achieve a beneficial and efficient resolution of these Chapter 11 Cases for all parties in interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such Released and Settled Claims and the Court's determination that such compromises and settlements are in the best interests of the Debtors, their estates, the Reorganized Debtors, creditors and all other parties in interest, and are fair, equitable and within the range of reasonableness. The compromises, settlements and releases described herein shall be deemed nonseverable from each other and from all other terms of this Plan.

*J. Protection Against Discriminatory Treatment*

To the extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the United States Constitution, all Persons and Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to, discriminate with respect to such a grant, against the Reorganized Debtors, or another Person or Entity with whom the Reorganized Debtors have been associated, solely because any Debtor has been a debtor under chapter 11 of the Bankruptcy Code,

has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge) or has not paid a debt that is dischargeable in the Chapter 11 Cases.

*K. Integral Part of Plan*

Each of the provisions set forth in this Plan with respect to the settlement, release, discharge, exculpation, injunction, indemnification and insurance of, for or with respect to Claims and/or Causes of Action are an integral part of this Plan and essential to its implementation. Accordingly, each Entity that is a beneficiary of such provision shall have the right to independently seek to enforce such provision and such provision may not be amended, modified, or waived after the Effective Date without the prior written consent of such beneficiary.

**ARTICLE XI.**

**RETENTION OF JURISDICTION**

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, on and after the Effective Date, retain exclusive jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Chapter 11 Cases, the Debtors and this Plan as legally permissible, including, without limitation, jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of any such Claim or Equity Interest;
2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtors shall pay Professionals in the ordinary course of business for any work performed after the Effective Date and such payment shall not be subject to the approval of the Bankruptcy Court;
3. resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, those matters related to any amendment to this Plan after the Effective Date to add Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed or rejected (as applicable);
4. resolve any issues related to any matters adjudicated in the Chapter 11 Cases;
5. ensure that distributions to Holders of Allowed Claims or Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
6. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action that are pending as of the Effective Date or that may be commenced in the future, and grant or deny any applications involving the Debtors that may be pending on the Effective Date or instituted by the Reorganized Debtors after the Effective Date, *provided, however* that the Reorganized Debtors shall reserve the right to commence actions in all appropriate forums and jurisdictions;

7. enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with this Plan, the Plan Supplement or the Disclosure Statement;

8. resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation or enforcement of this Plan or any Person or Entity's obligations incurred in connection with this Plan;

9. hear and determine all Causes of Action that are pending as of the Effective Date or that may be commenced in the future;

10. issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with Consummation or enforcement of this Plan;

11. enforce the terms and conditions of this Plan, the Confirmation Order, and the Restructuring Documents;

12. resolve any cases, controversies, suits or disputes with respect to the Release, the Exculpation, and other provisions contained in Article X hereof and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such provisions;

13. hear and determine all Litigation Claims;

14. enter and implement such orders or take such other actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

15. resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order or any release or exculpation adopted in connection with this Plan; and

16. enter an order concluding or closing the Chapter 11 Cases.

Notwithstanding the foregoing, (i) any dispute arising under or in connection with the Exit Credit Agreement or New Second Lien Notes Agreement shall be dealt with in accordance with the provisions of the applicable document and (ii) if the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Article of the Plan, the provisions of this Article XI shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## ARTICLE XII.

### MISCELLANEOUS PROVISIONS

#### A. *Substantial Consummation*

"Substantial Consummation" of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

*B. Payment of Statutory Fees; Post-Effective Date Fees and Expenses*

All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code ("Quarterly Fees") prior to the Effective Date shall be paid by the Debtors on the Effective Date. The Debtors shall file all quarterly reports that become due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. On and after the Effective Date, the Reorganized Debtors shall pay any and all ~~such fees~~ Quarterly Fees when due and payable, and shall file with the Bankruptcy Court quarterly reports when they become due in a form reasonably acceptable to the United States Trustee. Each Debtor and Reorganized Debtor shall remain obligated to pay ~~quarterly fees~~ Quarterly Fees to the Office of the United States Trustee until the earliest of that particular Debtor's case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code.

~~The Subject to Article XII.R of this Plan, the~~ Reorganized Debtors shall pay the liabilities and charges that they incur on or after the Effective Date for Professionals' fees, disbursements, expenses, or related support services (including reasonable fees, costs and expenses incurred by Professionals relating to the preparation of interim and final fee applications and obtaining Bankruptcy Court approval thereof) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court, including, without limitation, the reasonable fees, expenses, and disbursements of the Distribution Agents and the fees, costs and expenses incurred by Professionals incurred on or after the Effective Date in connection with the implementation, enforcement and Consummation of this Plan and the Restructuring Documents.

*C. Conflicts*

In the event that a provision of the Restructuring Documents or the Disclosure Statement (including any and all exhibits and attachments thereto) conflicts with a provision of this Plan or the Confirmation Order, the provision of this Plan and the Confirmation Order (as applicable) shall govern and control to the extent of such conflict. In the event that a provision of this Plan conflicts with a provision of the Confirmation Order, the provision of the Confirmation Order shall govern and control to the extent of such conflict.

*D. Modification of Plan*

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order in a way that is in form and substance consistent in all respects with the Restructuring Term Sheet and otherwise acceptable to the Special Restructuring Committee and the Majority Notcholders in the manner set forth in the Restructuring Support Agreement, in accordance with section 1127(a) of the Bankruptcy Code; and (b) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as applicable, may, upon order of the Bankruptcy Court, amend or modify this Plan in a way that is in form and substance consistent in all respects with the Restructuring Term Sheet and otherwise acceptable to the Special Restructuring Committee and the Majority Notcholders in the manner set forth in the Restructuring Support Agreement, in accordance with section 1127(b) of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan. A Holder of a Claim or Equity Interest that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim or Equity Interest of such Holder.



*E. Revocation or Withdrawal of Plan*

The Debtors reserve the right to revoke or withdraw this Plan prior to the Effective Date and/or to File subsequent chapter 11 plans, with respect to one or more of the Debtors. If the Debtors revoke or withdraw this Plan, or if Confirmation or Consummation of this Plan does not occur with respect to one or more of the Debtors, then with respect to the applicable Debtor or Debtors for which this Plan was revoked or withdrawn or for which Confirmation or Consummation of this Plan did not occur: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the applicable Debtors or any other Entity; (b) prejudice in any manner the rights of the applicable Debtors or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the applicable Debtors or any other Entity.

*F. Successors and Assigns*

This Plan shall be binding upon and inure to the benefit of the Debtors, the Reorganized Debtors, all present and former Holders of Claims and Equity Interests, other parties-in-interest, and their respective heirs, executors, administrators, successors, and assigns. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

*G. Reservation of Rights*

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and this Plan is Consummated. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtors or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtors with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

*H. Further Assurances*

The Debtors or the Reorganized Debtors, as applicable, all Holders of Claims receiving distributions hereunder and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order.

*I. Severability*

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

*J. Service of Documents*

Any notice, direction or other communication given regarding the matters contemplated by this Plan (each, a "**Notice**") must be in writing, sent by personal delivery, electronic mail, courier or facsimile and addressed as follows:

**If to the Debtors:**

Superior Silica Sands LLC  
5600 Clearfork Main Street, Suite 400  
Fort Worth, Texas 76109  
Attn: Roy Messing, Chief Restructuring Officer  
Direct Dial: (203) 241-6082  
Fax: (212) 818-1551  
Email: roy.messing@ankura.com

with a copy to:

Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022  
Attn: Keith A. Simon  
Direct Dial: (212) 906-1372  
Fax: (212) 751-4864  
Email: keith.simon@lw.com

**If to the Committee:**

Kilpatrick Townsend & Stockton LLP  
1114 Avenue of the Americas  
New York, NY 1006  
Attn: Todd C. Meyers  
David M. Posner  
Direct Dial: (212) 775-8700  
Fax: (212) 775-8800  
Email: tmeyers@kilpatricktownsend.com  
dposner@kilpatricktownsend.com

**If to the Prepetition Agents or Majority Noteholders:**

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Attn: Matt Barr  
David Griffiths  
Telephone: (212) 310-8000  
Fax: (212) 310-8007  
Email: matt.barr@weil.com  
david.griffiths@weil.com

A Notice is deemed to be given and received (a) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, or (b) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile, or (c) if sent by electronic mail, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic "read receipt" does not constitute acknowledgment of an email for purposes of this Section. Any party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a party.

*K. Exemption from Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code*

Pursuant to and to the extent set forth in section 1146(a) of the Bankruptcy Code, any issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer of property, pursuant to or in connection with this Plan or the Restructuring Documents shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States or by any other Governmental Unit, and the Confirmation Order shall direct the appropriate federal, state or local (domestic or foreign) governmental officials or agents to forgo the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents evidencing such action or event without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of, transactions contemplated by and the distributions to be made under this Plan or the Restructuring Documents, (ii) the issuance and distribution of the New GP/LP Equity Interests or Plan Securities and Documents, and (iii) the maintenance or creation of security interests or any Lien as contemplated by this Plan or the Restructuring Documents.

*L. Governing Law*

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that a Restructuring Document or an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

*M. Tax Reporting and Compliance*

The Reorganized Debtors are hereby authorized, on behalf of the Debtors, to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtors for all taxable periods ending after the Petition Date through and including the Effective Date.

*N. Schedules*

All exhibits and schedules to this Plan, including the Exhibits and Plan Schedules, are incorporated herein and are a part of this Plan as if set forth in full herein.

*O. No Strict Construction*

This Plan is the product of extensive discussions and negotiations between and among, *inter alia*, the Debtors, the Committee, the Prepetition Credit Agreement Agent, the Prepetition Notes Agent, the

Prepetition Credit Agreement Lenders, the Prepetition Notes Lenders, and their respective professionals. Each of the foregoing was represented by counsel of its choice who either participated in the formulation and documentation of, or was afforded the opportunity to review and provide comments on, this Plan, the Disclosure Statement, the Exhibits and the Plan Schedules, and the agreements and documents ancillary or related thereto. Accordingly, unless explicitly indicated otherwise, the general rule of contract construction known as “contra proferentem” or other rule of strict construction shall not apply to the construction or interpretation of any provision of this Plan, the Disclosure Statement, the Exhibits or the Plan Schedules, or the documents ancillary and related thereto.

*P. Entire Agreement*

Except as otherwise provided herein or therein, this Plan and the Restructuring Documents supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan and the Restructuring Documents.

*Q. Closing of Chapter 11 Cases*

The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and Local Rule 3022-1, and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

*R. Dissolution of Committee*

On and as of the Effective Date and notwithstanding any term or provision to the contrary in Article XII.B of this Plan, any Committee shall dissolve automatically and its members shall be released and discharged from all rights, duties and responsibilities arising from, or related to, the Chapter 11 Cases. The Reorganized Debtors shall not be responsible for paying any fees, costs, or expenses incurred by the members, professionals, or advisors to any Committee after the Effective Date.

*S. 2002 Notice Parties*

After the Effective Date, the Debtors and the Reorganized Debtors, as applicable, are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed a renewed request after the Confirmation Hearing to receive documents pursuant to Bankruptcy Rule 2002.

Respectfully submitted,

EMERGE ENERGY SERVICES LP AND ITS  
AFFILIATE DEBTORS

By: /s/ Bryan M. Gaston

Name: Bryan M. Gaston

Title: Restructuring Officer

Exhibit A

Preferred Interests Term Sheet

US-DQCSM107543784-102119-01997161-1

US-DQCSM107543784-16

**TRADEMARK**  
**REEL: 006825 FRAME: 0202**

Exhibit B

New Warrants Term Sheet

US-DQCSM107543784-1021174-01997161-1

US-DQCSM107543784-16

**TRADEMARK**  
**REEL: 006825 FRAME: 0203**

Exhibit 3  
Notice of Effective Date



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
EMERGE ENERGY SERVICES LP, *et al.*,<sup>1</sup> : Case No. 19-11563 (KBO)  
: :  
Debtors. : Jointly Administered  
: :  
----- X Re: Docket No. [●]

**NOTICE OF (I) EFFECTIVE DATE OF THE SECOND AMENDED JOINT PLAN OF REORGANIZATION FOR EMERGE ENERGY SERVICES LP AND ITS AFFILIATE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AND (II) ESTABLISHING DEADLINE FOR THE FILING OF ADMINISTRATIVE CLAIMS AGAINST THE DEBTORS**

**TO ALL CREDITORS, EQUITY INTEREST HOLDERS, AND OTHER PARTIES-IN-INTEREST:**

**PLEASE TAKE NOTICE** that an order (the “**Confirmation Order**”) confirming the *Modified Second Amended Joint Plan Of Reorganization For Emerge Energy Services LP And Its Affiliate Debtors Under Chapter 11 Of The Bankruptcy Code*, dated December [\_\_\_], 2019 (as amended, modified or supplemented, the “**Plan**”) was entered by this Court on December [\_\_\_], 2019, at Docket Number \_\_\_\_\_. Unless otherwise defined in this notice, capitalized terms used herein shall have the meanings ascribed to them in the Plan and the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE** that the Plan was substantially consummated, and the Effective Date (as defined in the Plan) occurred, on December [\_\_\_], 2019.

**PLEASE TAKE FURTHER NOTICE** that any party in interest who wishes to continue to receive service of court filings must file a request for such notice with the Bankruptcy Court under Bankruptcy Rule 2002. Parties who previously filed such notices must file new notices if they wish to continue to receive service of court filings.

**Deadline For Filing Administrative Claims and Contract Rejection Claims**

**PLEASE TAKE FURTHER NOTICE** that [\_\_\_\_\_] , 2020, at 5:00 p.m. (Prevailing Eastern Time) (the “**Administrative Claims Bar Date**”) was established by this Court as the deadline by which holders of Administrative Claims must file proofs of administrative claim

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

against the Debtors. For your convenience, enclosed with this notice is a proof of administrative claim form (the "**Proof of Administrative Claim Form**"). The Proof of Administrative Claim Form is also available free of charge on the Debtors' restructuring website: <http://www.kccllc.net/emergeenergy>. You may also contact the Debtors' Voting and Claims Agent, KCC, at 877-634-7165 (toll-free in US and Canada) or 424-236-7221 (for international callers).

**PLEASE TAKE FURTHER NOTICE** that holders of the following Administrative Claims are **not** required to file a Proof of Administrative Claim on or before the Administrative Claims Bar Date solely with respect to such Administrative Claim: (i) an Administrative Claim against the Debtors for which a signed proof of administrative claim has already been properly filed with the Clerk of this Court for the District of Delaware or KCC in a form substantially similar to the Proof of Administrative Claim Form; (ii) an Administrative Claim that has been previously allowed, and/or paid in full by the Debtors, in accordance with the Bankruptcy Code or an order of this Court, (iii) an Administrative Claim that constitutes a Professional Fee Claim, (iv) an Administrative Claim on account of (a) Prepetition Credit Agreement Agent & Lenders Fees and Expenses, and (b) the Prepetition Noteholders Fees and Expenses, and (v) any claim of any "governmental unit," as that term is defined under the Bankruptcy Code, under section 503(b)(1)(D) of the Bankruptcy Code (collectively, the "**Excluded Administrative Claims**").

**PLEASE TAKE FURTHER NOTICE** that [\_\_\_\_], 2020, at 5:00 p.m. (Prevailing Eastern Time) (the "**Contract Rejection Claims Bar Date**" and together with the Administrative Claims Bar Date, the "**Applicable Bar Date**") was established by this Court as the deadline by which holders of claims arising from rejection of executory contracts or unexpired leases must file proofs of claim against the Debtors (the "**Contract Rejection Claims**"). The proof of claim form is available free of charge on the Debtors' restructuring website: <http://www.kccllc.net/emergeenergy>. You may also contact the Debtors' Voting and Claims Agent, KCC, at 877-634-7165 (toll-free in US and Canada) or 424-236-7221 (for international callers). A separate rejection notice will be sent to all known non-Debtor contract counterparties to such rejected contracts and leases with a proof of claim form (the "**Proof of Contract Rejection Claim Form**" and together with the Proof of Administrative Claim Form, the "**Applicable Forms**").

**PLEASE TAKE FURTHER NOTICE** that Contract Rejection Claims will be treated as Class 6 General Unsecured Claims and will not receive any distribution under the Plan.

**PLEASE TAKE FURTHER NOTICE** that all holders of Administrative Claims (other than Excluded Administrative Claims) and Contract Rejection Claims must submit (by overnight mail, courier service, hand delivery, regular mail or in person) an original, written Proof of Administrative Claim Form or Proof of Contract Rejection Claim Form, as applicable, so as to be **actually received** by KCC, by no later than 5:00 p.m. (Prevailing Eastern Time) on or before [\_\_\_\_], 2020, at the following address:

Emerge Energy Claims Processing Center  
c/o KCC

222 N. Pacific Coast Highway  
El Segundo, CA 90245

Alternatively, such holders may submit these documents electronically by completing them through KCC's website: <http://www.kccllc.net/emergeenergy>.

**PLEASE TAKE FURTHER NOTICE** that the Applicable Forms will be deemed timely filed only if **actually received** by KCC on or before the Applicable Bar Date. The Applicable Forms may **not** be delivered by facsimile, telecopy, or e-mail transmission. Any facsimile, telecopy, or electronic mail submissions will **not** be accepted and will **not** be deemed filed until the Applicable Form is submitted to KCC by overnight mail, courier service, hand delivery, regular mail, in person or electronically through KCC's website.

**PLEASE TAKE FURTHER NOTICE** that parties wishing to receive acknowledgment that their Applicable Form were received by KCC must submit (i) a copy of the Applicable Form and (ii) a self-addressed, stamped envelope (in addition to the original Applicable Form sent to KCC).

**PLEASE TAKE FURTHER NOTICE** that to be valid, your Applicable Form **MUST** (i) be signed by the applicable holder of the Administrative Claim or Contract Rejection Claim, as applicable; (ii) be written in the English language; (iii) be denominated in lawful currency of the United States; and (iv) be submitted with copies of any supporting documentation or an explanation of why any such documentation is not available.

**PLEASE TAKE FURTHER NOTICE** that any holder of an Administrative Claim or Contract Rejection Claim, as applicable, who is required, but fails, to file the Applicable Form with KCC on or before the Applicable Bar Date shall be forever barred, estopped and enjoined from asserting such claim against the Debtors or the Reorganized Debtors, and the Debtors' and the Reorganized Debtors' property shall be forever discharged from any and all indebtedness or liability with respect to such claim.

**ALL PLEADINGS FILED WITH, AND ORDERS GRANTED BY, THE  
BANKRUPTCY COURT ARE AVAILABLE FOR INSPECTION ON THE  
BANKRUPTCY COURT'S INTERNET SITE AT WWW.DEB.USCOURTS.GOV  
AND AT NO COST FROM THE REORGANIZED DEBTORS'  
RESTRUCTURING WEBSITE:  
HTTP://WWW.KCCLLC.NET/EMERGEENERGY.**

Dated: December [\_\_\_], 2019  
Wilmington, Delaware

**RICHARDS, LAYTON & FINGER, P.A.**

John H. Knight (No. 3848)  
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*Counsel for the Debtors and Debtors-in-Possession*

Exhibit 4

**Notice of Confirmed Plan**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re: : Chapter 11  
: :  
EMERGE ENERGY SERVICES LP, *et al.*,<sup>1</sup> : Case No. 19-11563 (KBO)  
: :  
Debtors. : Jointly Administered  
: :  
----- X Re: Docket No. [●]

**NOTICE OF ENTRY OF ORDER CONFIRMING THE SECOND AMENDED JOINT PLAN OF REORGANIZATION FOR EMERGE ENERGY SERVICES LP. AND ITS AFFILIATE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

**TO ALL CREDITORS, EQUITY INTEREST HOLDERS, AND OTHER PARTIES-IN-INTEREST:**

**Confirmation of Plan of Reorganization**

**PLEASE TAKE NOTICE** that on July 15, 2019 (the "**Petition Date**"), the above captioned debtors and debtors-in-possession (the "**Debtors**") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**") with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

**PLEASE TAKE FURTHER NOTICE** that an order (the "**Confirmation Order**") confirming the *Modified Second Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code*, dated December [\_\_\_], 2019 (as amended, modified or supplemented, the "**Plan**") was entered by the Bankruptcy Court on December [\_\_\_], 2019, at Docket Number \_\_\_\_\_. Unless otherwise defined in this notice, capitalized terms used herein shall have the meanings ascribed to them in the Plan and the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE** that a copy of the Plan and the Confirmation Order may be obtained by contacting the Debtors' Voting and Claims Agent, in writing, at Kurtzman Carson Consultants LLC ("**KCC**"), 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245. The Plan and Confirmation Order are also available free of charge on the Debtors' restructuring website located at <http://www.kccllc.net/emergeenergy>. The Plan and the Confirmation Order can also be viewed on the Bankruptcy Court's website at

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors' address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

www.deb.uscourts.gov. You may also contact the Debtors' Voting and Claims Agent, KCC, at 877-634-7165 (toll-free in US and Canada) or 424-236-7221 (for international callers).

**PLEASE TAKE FURTHER NOTICE** that the Plan and the Confirmation Order, and their respective terms and provisions, are binding on the Debtors, the Reorganized Debtors, any entity acquiring or receiving property or a distribution under the Plan, and any present or former holder of a Claim against or Equity Interest in the Debtors and their respective successors, assigns, and parties-in-interest, including all Governmental Units, whether or not the applicable Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder or entity voted to accept or reject the Plan (or abstained from voting on the Plan).

**ALL PLEADINGS FILED WITH, AND ORDERS GRANTED BY, THE  
BANKRUPTCY COURT ARE AVAILABLE FOR INSPECTION ON THE  
BANKRUPTCY COURT'S INTERNET SITE AT WWW.DEB.USCOURTS.GOV  
AND AT NO COST FROM THE REORGANIZED DEBTORS'  
RESTRUCTURING WEBSITE:  
HTTP://WWW.KCCLLC.NET/EMERGEENERGY.**

Dated: December [\_\_\_], 2019  
Wilmington, Delaware

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