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**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**In re:** §  
§  
**Team Express Distributing, LLC** § **Chapter 11**  
§  
**Debtor.** § **Case No. 15-53044**  
§  
§

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**FIRST AMENDED DISCLOSURE STATEMENT PURSUANT TO  
SECTION 1125 OF THE BANKRUPTCY CODE WITH  
RESPECT TO THE JOINT CHAPTER 11 PLAN OF  
LIQUIDATION FOR TEAM EXPRESS DISTRIBUTING, LLC**

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**ATTORNEYS FOR THE DEBTOR AND DEBTOR-IN-POSSESSION**

Dated: March 6, 2017

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**Exhibit A:** Order Conditionally Approving Disclosure Statement

**Exhibit B:** Joint Chapter 11 Plan of Liquidation for Team Express Distributing, LLC

**Exhibit C:** Liquidation Analysis

**Exhibit D:** Confirmation Hearing Notice

**DISCLAIMER**

THIS DISCLOSURE STATEMENT IS FILED IN SUPPORT OF THE JOINT CHAPTER 11 PLAN OF LIQUIDATION (THE “**PLAN**”) FOR TEAM EXPRESS DISTRIBUTING, LLC (THE “**DEBTOR**”), WHICH IS JOINTLY PROPOSED BY THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (THE “**COMMITTEE**”) (COLLECTIVELY, THE “**PROPONENTS**”).

THIS DISCLOSURE STATEMENT CONTAINS A SUMMARY OF MATERIAL PROVISIONS OF THE PLAN, INCLUDING PROVISIONS RELATING TO THE PLAN’S TREATMENT OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR AND THE CREATION OF A LIQUIDATION TRUST TO PROVIDE FOR THE FURTHER LIQUIDATION AND ADMINISTRATION OF ESTATE ASSETS AND THE MEANS OF IMPLEMENTATION OF THE PLAN. THE DISCLOSURE STATEMENT ALSO SUMMARIZES CERTAIN FINANCIAL INFORMATION CONCERNING THE DEBTOR AND THE CLAIMS ASSERTED AGAINST THE DEBTOR IN THE CHAPTER 11 CASE. WHILE THE DEBTOR BELIEVES THAT THE DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS AND INFORMATION SUMMARIZED, HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD REVIEW THE ENTIRE PLAN AND EACH OF THE DOCUMENTS REFERENCED THEREIN AND HEREIN, AND SHOULD SEEK THE ADVICE OF THEIR OWN COUNSEL AND OTHER ADVISORS BEFORE CASTING THEIR BALLOTS ON THE PLAN.

EXCEPT FOR THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED HERETO, NO REPRESENTATIONS CONCERNING THE DEBTOR, THE DEBTOR’S ASSETS AND LIABILITIES, THE PAST OR FUTURE OPERATIONS OF THE DEBTOR, THE PLAN AND ITS TERMS, OR ALTERNATIVES TO THE PLAN ARE AUTHORIZED, NOR ARE ANY SUCH REPRESENTATIONS TO BE RELIED UPON IN ARRIVING AT A DECISION WITH RESPECT TO THE PLAN. ANY INFORMATION WITH RESPECT TO SUCH TOPIC AREAS THAT IS PROVIDED TO SECURE ACCEPTANCE OR REJECTION OF THE PLAN AND THAT IS NOT CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED HERETO IS UNAUTHORIZED AND SHOULD BE REPORTED IMMEDIATELY TO THE DEBTOR’S COUNSEL.

STATEMENTS AND FINANCIAL INFORMATION HEREIN CONCERNING THE DEBTOR, INCLUDING, WITHOUT LIMITATION, HISTORICAL INFORMATION, INFORMATION REGARDING THE DEBTOR’S ASSETS AND LIABILITIES, AND INFORMATION REGARDING CLAIMS AND INTERESTS ASSERTED OR OTHERWISE EVIDENCED IN THE DEBTOR’S CHAPTER 11 CASE, HAVE BEEN DERIVED FROM NUMEROUS SOURCES INCLUDING, WITHOUT LIMITATION, THE DEBTOR, THE DEBTOR’S BOOKS AND RECORDS, THE DEBTOR’S SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS, AND COURT RECORDS. ALTHOUGH THE DEBTOR REASONABLY BELIEVES THAT THE HISTORICAL AND FINANCIAL INFORMATION SET FORTH HEREIN IS ACCURATE, COMPLETE AND RELIABLE, THE DEBTOR AND ITS PROFESSIONALS HAVE NOT TAKEN ANY INDEPENDENT ACTION TO VERIFY THE ACCURACY, COMPLETENESS OR RELIABILITY OF SUCH HISTORICAL

INFORMATION AND THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. THEREFORE, NEITHER THE DEBTOR NOR ITS PROFESSIONALS WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS COMPLETE, ACCURATE AND RELIABLE. HOWEVER, THE DEBTOR HAS REVIEWED THE INFORMATION SET FORTH HEREIN AND, BASED UPON THE SOURCES OF INFORMATION AVAILABLE, GENERALLY BELIEVES SUCH INFORMATION TO BE COMPLETE.

UNLESS INDICATED OTHERWISE, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF MARCH 6, 2017, AND NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH THE PLAN SHALL, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH HEREIN SINCE THE DATE THE DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN THE PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED.

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THIS DISCLOSURE STATEMENT CONTAINS PROJECTED FINANCIAL INFORMATION REGARDING THE DEBTOR, RECOVERIES UNDER THE PLAN, AND CERTAIN OTHER FORWARD-LOOKING STATEMENTS, ALL OF WHICH ARE BASED UPON VARIOUS ASSUMPTIONS AND ESTIMATES AS OF MARCH 6, 2017, OR SUCH OTHER TIME AS IS SPECIFIED. SUCH INFORMATION WILL NOT BE UPDATED TO REFLECT EVENTS OCCURRING AFTER SAID DATE(S), AND SUCH INFORMATION IS SUBJECT TO INHERENT UNCERTAINTIES AND TO A WIDE VARIETY OF SIGNIFICANT BUSINESS, ECONOMIC AND COMPETITIVE RISKS. CONSEQUENTLY, ACTUAL EVENTS, CIRCUMSTANCES, EFFECTS AND RESULTS MAY VARY SIGNIFICANTLY FROM THOSE INCLUDED IN OR CONTEMPLATED BY SUCH PROJECTED FINANCIAL INFORMATION AND SUCH OTHER FORWARD-LOOKING STATEMENTS. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ON [REDACTED], 2017, AFTER NOTICE AND HEARING, THE BANKRUPTCY COURT ENTERED AN ORDER CONDITIONALLY APPROVING THE DISCLOSURE STATEMENT AS CONTAINING INFORMATION OF THE KIND AND IN SUFFICIENT DETAIL TO ENABLE HOLDERS OF CLAIMS AND EQUITY INTERESTS WHOSE VOTES ON THE PLAN ARE BEING SOLICITED TO MAKE AN INFORMED JUDGMENT ON WHETHER TO ACCEPT OR REJECT THE PLAN. A TRUE AND CORRECT COPY OF THE ORDER CONDITIONALLY APPROVING THE DISCLOSURE STATEMENT IS

ATTACHED HERETO AS **EXHIBIT “A”** AND IS INCORPORATED HEREIN FOR ALL PURPOSES. THE APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTEE OF THE ACCURACY AND COMPLETENESS OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.

NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT, EXPRESS OR IMPLIED, IS INTENDED TO GIVE RISE TO ANY COMMITMENT OR OBLIGATION OF THE DEBTOR, THE COMMITTEE, OR ANY OTHER PARTY, NOR SHALL IT BE CONSTRUED AS CONFERRING UPON ANY PERSON ANY RIGHTS, BENEFITS OR REMEDIES OF ANY NATURE WHATSOEVER. THE DISCLOSURE STATEMENT IS INFORMATIONAL ONLY. ADDITIONALLY, HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH HOLDER OF A CLAIM OR EQUITY INTEREST SHOULD CONSULT THEIR LEGAL, FINANCIAL, AND TAX ADVISORS, AS APPROPRIATE, AS TO ANY MATTER CONCERNING THE PLAN, THE EFFECTS OF IMPLEMENTATION OF THE PLAN AND THE VOTING PROCEDURES APPLICABLE TO THE PLAN.

#### **Disclosure Regarding Forward-Looking Statements**

This Disclosure Statement contains forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”). All statements, other than statements of historical facts, included in this Disclosure Statement that address activities, events or developments that the Debtor expects, projects, believes or anticipates will or may occur in the future are forward-looking statements. These statements can be identified by the use of forward-looking terminology including “may,” “believe,” “anticipate,” “estimate,” “continue,” “foresee,” “project,” “could,” or other similar words. These forward-looking statements may include, but are not limited to, references to procedures in connection with the Debtor’s Chapter 11 Case and the distribution of the Debtor’s assets pursuant to the Plan, the Debtor’s financial projections and liquidation analysis, and the Debtor’s future operating results. Forward-looking statements are not guarantees of performance. The Debtor has based these statements on the Debtor’s assumptions and analyses in light of the Debtor’s experience and perception of historical trends, current conditions, expected future developments, and other factors the Debtor believes are appropriate in the circumstances. No assurance can be given that these assumptions are accurate. Moreover, these statements are subject to a number of risks and uncertainties.

All subsequent written and oral forward looking information attributable to the Debtor are expressly qualified in their entirety by the foregoing. In light of these risks, uncertainties and assumptions, the events anticipated by the Debtor’s forward-looking statements may not occur, and you should not place any undue reliance on any of the Debtor’s forward-looking statements. The Debtor’s forward-looking statements speak only as of the date made and the Debtor undertakes no obligation to update or revise its forward-looking statements, whether as a result of new information, future events, or otherwise.

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## **I.** **INTRODUCTION**

### **A. Background**

On December 4, 2016, Team Express Distributing, LLC (the “**Debtor**”) and the Official Committee of Unsecured Creditors (the “**Committee**”) (collectively, the “**Proponents**”) filed the *Joint Chapter 11 Plan of Liquidation for Team Express Distributing, LLC* (the “**Plan**”) with the United States Bankruptcy Court for the Western District of Texas (the “**Bankruptcy Court**”), styled as Case No. 15-53044 (the “**Chapter 11 Case**”). A copy of the Plan is attached hereto as **Exhibit B**. The Debtor hereby submits this Disclosure Statement (the “**Disclosure Statement**”), pursuant to section 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the “**Bankruptcy Code**”), in connection with the solicitation of acceptances or rejections of the Plan from certain Holders of Claims against and Equity Interests in the Debtor.<sup>1</sup>

On December 16, 2015, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, initiating the Chapter 11 Case. Pursuant to Bankruptcy Code sections 1107(a) and 1108, the Debtor is continuing to operate its business and to manage its financial affairs as a debtor-in-possession. No trustee or examiner has been appointed in the Chapter 11 Case.

On January 8, 2016, the United States Trustee for Region 7 (the “**UST**”) filed its *Notice of Appointment of Committee of Unsecured Creditors*, appointing the Committee. [Docket No. 44].

The Debtor submits this Disclosure Statement in connection with the solicitation of votes on the Plan. This Disclosure Statement is being mailed to each Holder of a Claim against and each Holder of an Equity Interest in the Debtor. With respect to voting on the Plan, pursuant to the Bankruptcy Code, all Holders of (a) Claims in Impaired Classes 2 and 5 under the Plan and (b) Equity Interests in Impaired Class 6 under the Plan, are entitled to vote. Claims in Classes 1, 3, and 4 are Unimpaired under the Plan, and therefore, each Holder of a Class 1, 3, and 4 Claim is presumed to have accepted the Plan.

The Proponents believe they have promulgated the Plan consistent with the provisions of the Bankruptcy Code. The Proponents believe that the Plan provides affected Claimants and Equity Interests with distribution rights on account of their Claims and Equity Interests that are at least equal to, if not greater than, what they would obtain if the Chapter 11 Case were converted to a chapter 7 liquidation case and the Debtor’s remaining assets were liquidated within the parameters of chapter 7 of the Bankruptcy Code. The Proponents believe that the Plan is fair and equitable to all Classes of Claims and Equity Interests under the Plan.

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<sup>1</sup> Any capitalized terms not defined herein shall have the meaning ascribed to them in Article 1 of the Plan.

**B. The Purpose of this Disclosure Statement**

The Bankruptcy Code generally requires the proponent of a chapter 11 plan to prepare and file with the bankruptcy court a “disclosure statement” that provides information of the kind, and in sufficient detail, that would enable a typical holder of claims or interests in a class impaired under the plan to make an informed judgment with respect to the plan. This Disclosure Statement provides such information, as well as information regarding certain deadlines with respect to confirmation of the Plan.

This Disclosure Statement is not intended to replace careful review and analysis of the Plan. Rather, it is submitted as an aid and supplement in your review of the Plan, and attempts to explain the terms and implications of the Plan. Every effort has been made to fully explain the various aspects of the Plan as it may affect Holders of Claims and Equity Interests. All Persons receiving this Disclosure Statement are urged to review all of the exhibits to this Disclosure Statement, in addition to reviewing the text of this Disclosure Statement. If you have any questions, you may contact counsel for the Debtor. Contact information for such counsel is set forth within this Disclosure Statement, as well as on the cover page hereof.

Holders of Claims and Equity Interests should read this Disclosure Statement in its entirety prior to voting on the Plan. No solicitation of votes on the Plan may be made except pursuant to this Disclosure Statement, an Order of the Bankruptcy Court approving this Disclosure Statement, and section 1125 of the Bankruptcy Code. No other party has been authorized to use any information concerning the Debtor or its operations, assets and liabilities, other than the information contained in this Disclosure Statement, to solicit votes on the Plan.

**B. Recommendation of the Proponents to Approve the Plan**

The Proponents approve the solicitation of acceptances of the Plan and all of the transactions contemplated thereunder. In light of the benefits to be attained by the Holders of Claims against and Equity Interests in the Debtor contemplated under the Plan, the Proponents recommend that such Holders of Claims and Equity Interests vote to accept the Plan. The Proponents reached this decision after considering the alternatives to the Plan that are available to the Debtor. These alternatives include liquidation under chapter 7 of the Bankruptcy Code or liquidation under chapter 11 of the Bankruptcy Code with an alternative plan of liquidation. The Proponents determined, after consulting with their advisors, that the transactions contemplated in the Plan would likely result in a distribution of greater value to creditors and stockholders than the alternatives.

THE PROPONENTS BELIEVE THAT THE PLAN AND THE TREATMENT OF CLAIMS AND INTERESTS THEREUNDER IS IN THE BEST INTERESTS OF HOLDERS OF CLAIMS AND INTERESTS.

**II.**  
**VOTING PROCEDURES AND REQUIREMENTS**

**A. Ballots and Voting Deadline**

Each Holder of a Claim or Equity Interest in an Impaired Class is entitled to vote on the Plan and shall be provided a Ballot along with this Disclosure Statement. If a Holder holds Claims or Equity Interests in more than one impaired Class, such Claimant has been provided a separate Ballot for each such Class. The Ballot is to be used by the Claimant to accept or reject the Plan. Ballots will be distributed to Holders of Claims and Equity Interests with a solicitation package. Each Ballot will not contain information specific to each such Holder; rather, if a Holder's Claim or Equity Interest, as listed on the returned Ballot, conflicts with the Debtor's schedules and/or books and records, the lower amount of the two shall be used for calculation.

To ensure that their Ballot is deemed timely and considered, each Claimant must (a) carefully review the Ballot and the instructions set forth thereon, (b) provide all of the information requested on the Ballot, (c) sign the Ballot and (d) return the completed and signed Ballot to Debtor's counsel by the Voting Deadline, as defined below.

By Order of the Bankruptcy Court, the "Voting Deadline" is                     , 2017 at 5:00 p.m. (prevailing Central Time). Therefore, in order for a Ballot to be counted for voting purposes, the completed and signed Ballot must be **received** at the address specified below by not later than such Voting Deadline:

**GARDERE WYNNE SEWELL LLP  
C/O MATTHEW J. PYEATT  
2021 MCKINNEY AVENUE, SUITE 1600  
DALLAS, TEXAS 75201**

**B. Claimants Solicited to Vote**

Each Holder of a Claim or Equity Interest in an Impaired Class under the Plan is being solicited to vote on the Plan. However, unless otherwise provided in the Plan, as to any Claim for which a proof of Claim was filed and as to which an objection has been lodged, if such objection is still pending as of the Voting Deadline, the Holder's vote associated with such Claim or Equity Interest will not be counted to the extent of the objection to the Claim or Equity Interest, unless the Holder files a motion and obtains an Order of the Bankruptcy Court temporarily allowing the Claim or Equity Interest in an amount that the Bankruptcy Court deems proper for the purpose of voting on the Plan. **Such motion must be heard and determined by the Bankruptcy Court at least ten (10) days prior to the Confirmation Hearing.** In addition, a Holder's vote may be disregarded if the Bankruptcy Court determines that the Holder's acceptance or rejection of the Plan was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code, or that the Holder is an insider of a Debtor within the meaning of section 101(31) of the Bankruptcy Code.

### **C. Definition of Impairment**

Pursuant to section 1124 of the Bankruptcy Code, except to the extent that the holder of a particular claim or equity interest within a class agrees to less favorable treatment of the holder's claim or equity interest, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan does at least one of the following two (2) things:

1. The plan leaves unaltered the legal, equitable and contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest; or

2. Notwithstanding any contractual provision or applicable law that entitles the holder of such claim or equity interest to demand or receive accelerated payment of such claim or equity interest after the occurrence of a default, the plan:

- a. cures any such default that occurred before or after the commencement of the case under the Bankruptcy Code, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured;
- b. reinstates the maturity of such claim or equity interest as such maturity existed before such default;
- c. compensates the holder of such claim or equity interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;
- d. if such claim or such equity interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensates the holder of such claim or equity interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and
- e. does not otherwise alter the legal, equitable or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

### **D. Classes Impaired Under the Plan**

Because Class 1, 3, and 4 Claims are Unimpaired under the Plan, pursuant to section 1126(f) of the Bankruptcy Code, the Holders of Claims in Classes 1, 3 and 4 are conclusively presumed to accept the Plan. The following Classes of Claims are or may be Impaired under the Plan and are entitled to vote on the Plan:

Class 2: MB Financial Claim

Class 5: General Unsecured Claims

### Class 6: Equity Interests

Acceptances of the Plan are being solicited only from those Holders of Claims and Equity Interests in impaired Classes that will or may receive a distribution under the Plan. Accordingly, the Debtor is soliciting acceptances only from Holders of (a) Claims in Classes 2 and 5 and (b) Equity Interests in Class 6.

With respect to the foregoing, the Proponents specifically reserve the right to determine and contest, if necessary, (a) the Impaired or Unimpaired status of a Class under the Plan, and (b) whether any Ballots cast by the Holder of a Claim or Equity Interest within such a Class should be counted for purposes of confirmation of the Plan.

#### **E. Vote Required for Class Acceptance**

Pursuant to section 1126(c) of the Bankruptcy Code, a Class of Claims under the Plan shall be deemed to have accepted the Plan if the Plan is accepted by Claimants holding at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims within such Class held by Claimants that have accepted or rejected the Plan.

Pursuant to section 1126(e) of the Bankruptcy Code, on request of a party in interest in the Chapter 11 Case, and after notice and a hearing, the Bankruptcy Court may designate the vote of any Claimant whose acceptance or rejection of the Plan was not: (a) in good faith; (b) solicited or procured in good faith; or (c) made in accordance with the provisions of the Bankruptcy Code.

#### **F. Absolute Priority Rule**

Under the Bankruptcy Code, a plan must be fair and equitable with respect to each impaired, nonaccepting class of claims or interests. Often referred to as the “absolute priority rule,” this concept generally provides that a nonaccepting class of holders of claims or interests cannot be compelled to accept less than full compensation while a more junior creditor or equity holder receives a distribution or retains its interest in the debtor. The value of the MS Dynamics Claim is the most valuable asset the Debtor possesses, and the Proponents believe that the value of the MS Dynamics Claim is sufficient to provide distribution to Holders of Equity Interests in the Debtor. To ensure that the creditors are fairly protected and that the value of the MS Dynamics Claim is maximized for the creditors and equity alike, the Proponents agreed, after extended negotiations, to a tiered waterfall distribution scheme of proceeds received from the MS Dynamics Claim.

**III.**  
**CONFIRMATION OF THE PLAN**

**A. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan.

The Confirmation Hearing has been scheduled to commence on \_\_\_\_\_, **2017 at 5:00 p.m. (prevailing Central Time)**, before the Honorable Craig A. Gargotta, United States Bankruptcy Judge, United States Bankruptcy Court, Hipolito F. Garcia Federal Building and United States Courthouse, 615 E. Houston St., Room 505, San Antonio, Texas 78205. Any objection to confirmation of the Plan must be made in writing, and such written objection must be filed with the Bankruptcy Court and served on the following parties by not later than on \_\_\_\_\_, **2017 at 5:00 p.m. (prevailing Central Time)**:

**Debtor:**

Team Express Distributing, LLC  
c/o Michael Marney  
1116 E. Bluestem Ct.  
Andover, KS 67002

**With copies to:**

Marcus A. Helt  
Matthew J. Pyeatt  
Gardere Wynne Sewell LLP  
2021 McKinney Avenue, Suite 1600  
Dallas, TX 75201

**Committee:**

Joseph M. Coleman  
John J. Kane  
Kane Russell Coleman & Logan PC  
1601 Elm Street, Suite 3700  
Dallas, TX 75201

**United States Trustee:**

James W. Rose, Jr.  
615 E. Houston Street, Suite 533  
San Antonio, TX 78205

**UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY FILED AND SERVED, IT WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

**B. Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the confirmation requirements of section 1129(a) of the Bankruptcy Code have been satisfied. Only in the event that all of these requirements have been satisfied, and that all other conditions to confirmation set forth in the Plan have been met, will the Bankruptcy Court enter an Order confirming the Plan under section 1129(a). The requirements of section 1129(a) applicable to a corporate debtor are as follows:

1. The plan complies with the applicable provisions of the Bankruptcy Code.
2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.
3. The plan has been proposed in good faith and not by any means forbidden by law.
4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.
5. The proponent of the plan has disclosed:
  - a. the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan, and the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity interest holders and with public policy; and
  - b. the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.
6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.
7. With respect to each impaired class of claims or interests:
  - a. each holder of a claim or equity interest of such class has accepted the plan or 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 such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on such date; or
  - b. if section 1111(b)(2) of the Bankruptcy Code applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.
8. With respect to each class of claims or interests, such class has accepted the plan or such class is not impaired under the plan.
9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that:

- a. with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
- b. with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim, or (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;
- c. with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim, (ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303 of the Bankruptcy Code, and (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b) of the Bankruptcy Code); and
- d. with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code, but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in paragraph 9(c) above.

**10.** If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

**11.** Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

**12.** All fees payable under section 1930 of Title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

**13.** The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

**14.** All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

If a sufficient number of Claimants and amounts of Claims in impaired Classes under the Plan vote to accept the Plan, the Debtor believes that the Plan will satisfy all of the applicable statutory requirements of section 1129(a) of the Bankruptcy Code. As discussed below, however, the Debtor believes that the Plan may be confirmed under the “cramdown” provisions of section 1129(b) of the Bankruptcy Code.

### **C. Cramdown**

Pursuant to section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may confirm the Plan at the request of the Proponents if: (a) all of the requirements of section 1129(a) of the Bankruptcy Code, with the exception of section 1129(a)(8), are met with respect to the Plan; (b) at least one Class of Claims that is impaired under the Plan has accepted the Plan (excluding the votes of insiders); and (c) with respect to each impaired Class that has not accepted the Plan, the Plan does not “discriminate unfairly” and is “fair and equitable.”

A plan does not “discriminate unfairly” within the meaning of the Bankruptcy Code if the classification of claims under the plan complies with the Bankruptcy Code and no particular class will receive more than it is legally entitled to receive for its claims or interests.

“Fair and equitable,” on the other hand, has a different meaning for classes of secured claims, classes of unsecured claims and classes of equity interests, as described below:

**1.** With respect to a class of secured claims that rejects the plan, to be “fair and equitable” the plan must, among other things, provide:

- a. that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims, and that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder’s interest in the estate’s interest in such property;
- b. for the realization of such holders of the indubitable equivalent of such claims; or
- c. for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under (a) or (b) above.

**2.** With respect to a class of unsecured claims that rejects the plan, to be “fair and equitable” the plan must, among other things, provide:

- a. that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
  - b. that the holder of any claim or equity interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or equity interest any property.
- 3.** With respect to a class of equity interests that rejects the plan, to be “fair and equitable” the plan must, among other things, provide:
- a. that each holder of an equity interest of such class receive or retain on account of such equity interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such equity interest; or
  - b. that the holder of any equity interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior equity interest any property.

In the event that at least one impaired Class of Claims under the Plan accepts the Plan, the Proponents may request the Bankruptcy Court confirm the Plan in accordance with the cramdown provisions of section 1129(b) of the Bankruptcy Code. The Proponents believe that all of the requirements of section 1129(a) of the Bankruptcy Code (with the exception of section 1129(a)(8)) will be satisfied, that at least one Class of impaired Claims will accept the Plan (excluding the votes of insiders), and that the Plan does not unfairly discriminate against and is fair and equitable in relation to each of the Classes that may vote to reject the Plan.

#### **IV.** **PLAN OVERVIEW**

In December 2015, after consulting with MB Financial Bank, N.A. (“**M.B. Financial**”), and after weighing various alternatives, the Debtor made the decision to commence the Chapter 11 Case. After filing the Chapter 11 Case, the Debtor, with Bankruptcy Court approval, sold a substantial portion of its Assets on May 20, 2016.

The Plan is designed to accomplish the liquidation of the remaining assets of the Debtor’s Estate and provide a mechanism for the Distribution of the proceeds of such liquidation to beneficiaries of the Estate. The Plan contemplates the continuing existence of the Debtor, and provides for the creation of (a) a Liquidation Trust consisting of a Liquidation Trustee and a Liquidation Trust Committee, and (b) a Litigation Oversight Committee. On the Effective Date of the Plan, the Debtor shall convey all of its Assets, except the MS Dynamics Lawsuit, to the Liquidation Trust. A copy of the Liquidation Trust Agreement, which shall govern the actions of, among others, the Liquidation Trustee, is attached the Plan. The purpose of the Liquidation Trust is to effectuate the administration and orderly liquidation of the Estate’s remaining Assets, including Causes of Action (other than the MS Dynamics Lawsuit). The Trust’s beneficiaries are Holders of Allowed Claims against or Equity Interests in the Debtor, as outlined in the Plan.

The Plan provides that, from and after the Effective Date, the Debtor will continue to exist as a separate corporate entity or other business-entity form until dissolved by the Debtor, which shall not occur without prior permission from the Bankruptcy Court until the later of (a) the MS Dynamics Lawsuit and the MS Dynamics Claim have been fully and finally resolved by settlement or final judgment; and (b) thirty (30) days after the Final Distribution Date. The Debtor's actions after the Effective Date include (a) conveying the Assets (other than the MS Dynamics Lawsuit) to the Liquidation Trust, (b) winding up the Debtor's affairs, and (c) filing appropriate tax returns.

The Plan provides that, on the Effective Date, all remaining officers or directors of the Debtor shall be deemed to have resigned, except two Surviving Officers, Mike Marney and Mark Marney. The Surviving Officers' rights and responsibilities under the Plan include distributing proceeds of remaining assets, filing appropriate tax returns, and filing a certificate of cancellation at the appropriate time. Under the Plan, the Surviving Officers shall have the right and authority, but not the obligation, to wind up the Debtor. On the Effective Date, a Litigation Oversight Committee shall be formed and continue for the purpose of supervising prosecution of the MS Dynamics Lawsuit. The Litigation Governance and Cooperation Agreement shall govern the prosecution and resolution of the MS Dynamics Lawsuit.

The Liquidation Trustee shall make Distributions to the Holders of Allowed Claims and Equity Interests, according to the Classes and treatment specified for such Classes set forth in the Plan according to the priorities specified in the Bankruptcy Code.

The Plan contemplates the settlement of the claim against the Estate asserted by MB Financial, including a release of MB Financial with respect to claims, actions, and demands against MB Financial. The Plan also sets forth a distribution scheme regarding any Net MS Dynamics Proceeds recovered, and establishes procedures for the administration of the MS Dynamics Lawsuit in a manner most likely to result in a favorable recovery that is beneficial to Holders of Allowed Claims and Equity Interests.

The Plan specifies the means for accomplishing these objectives, and pertinent provisions of the Plan in relation thereto are described in detail in this Disclosure Statement. The Plan divides Claims against the Debtor into six (6) separate Classes of Claims and Equity Interests, and then sets out the treatment to be provided to each such Class under the Plan. Sections 1122 and 1123 of the Bankruptcy Code require such classification and mandate that each Class of Claims or Equity Interests contains Claims and Equity Interests that are substantially similar to one another. The various Classes of Claims and Equity Interests and the treatment provided under the Plan to each such Class are discussed in greater detail in later sections of this Disclosure Statement.

The following table sets out the Proponents' estimate of the total Allowed amount of Claims and Equity Interests falling within each Class (as asserted or scheduled), and summary of the treatment afforded to each Class under the Plan. The information set forth within the table is qualified in its entirety by the more detailed information regarding the Plan set forth in this Disclosure Statement, the exhibits hereto (including the Plan itself) and the additional disclosures which follow the table.

<b>SUMMARY OF TREATMENT OF CLASSES UNDER THE PLAN</b>		
<b>Class</b>	<b>Estimated Amounts</b>	<b>General Treatment Under Plan</b>
<p>Unclassified –Allowed Administrative Expense Claims</p>	<p>Est. Unpaid and Allowable Claims (including Allowed Professional Compensation and Reimbursement Claims): Approximately \$733,000</p>	<p>Except to the extent that any Person entitled to payment of an Administrative Claim agrees otherwise, each Holder of an Allowed Administrative Claim (other than Professional Fee Claims) shall, in full and final satisfaction of any Administrative Expense Claim, receive Cash in amount equal to such Allowed Administrative Expense Claim on or as soon as reasonably practicable following the later to occur of: (a) the Effective Date and (b) the date on which such Administrative Claim becomes an Allowed Administrative Expense Claim; <i>provided, however,</i> Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtor up to and including the date of the Asset Sale may be paid after five (5) Business Days’ notice to the Committee at any time in full in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.</p> <p>All requests for allowance and payment of Professional Fee Claims must be filed with the Bankruptcy Court and served on the Post-Confirmation Service List no later than sixty (60) days after the Effective Date. Any such Professional Fee Claim for which an application or request for payment is not filed with the Bankruptcy Court within that time period shall be released and forever barred, and shall not be entitled to Distributions under the Plan. Objections to the payment of such Professional Fee Claims must be filed no later than seven (7) days prior to the hearing on such Professional Fee Claims. All Professional Fee Claims shall be paid from Available Cash in accordance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules, as well as any prior Orders entered by the Bankruptcy Court. No Professional Fee Claim shall be Allowed on account of services rendered or expenses incurred by a professional prior to the Effective Date unless payment for such services and expenses has been allowed and approved by the Bankruptcy Court.</p>

<b>SUMMARY OF TREATMENT OF CLASSES UNDER THE PLAN</b>		
<b>Class</b>	<b>Estimated Amounts</b>	<b>General Treatment Under Plan</b>
Unclassified – Allowed Priority Tax Claims	Est. Allowable Claims: Unknown	<p>Except to the extent that a Holder of an Allowed Priority Tax Claim has been paid prior to the Effective Date, and unless otherwise agreed to in writing by the Proponents and the Holder, each Holder of an Allowed Priority Tax Claim shall be paid from Available Cash in an amount equal to the unpaid portion of such Allowed Priority Tax Claim on the first Distribution Date following the Allowance Date for such Priority Tax Claim. To the extent that there is insufficient Available Cash to pay all Claims that have priority over any Allowed Priority Tax Claims, no Distributions will be made on account of Allowed Priority Tax Claims until the Debtor holds sufficient Available Cash to pay all Claims holding priority over such Allowed Priority Tax Claims in full, and the Disputed Claim Reserve is fully funded. For the avoidance of doubt, the Liquidation Trustee retains all of the Estate’s rights under § 505 of the Bankruptcy Code with respect to any Priority Tax Claim, all of which rights are deemed automatically transferred to the Liquidation Trust on the Effective Date.</p> <p>Est. recovery: 100%</p>
1 – Secured Tax Claims	Est. Allowable Claims: \$53,000	<p>Each Class 1 Claim that is an Allowed Claim shall be satisfied, at the Liquidation Trustee’s option, in full satisfaction, release, and discharge of and exchange for such Claim, by (a) return of the Collateral to the holder of each Class 1 Claim in full and final satisfaction of that Holder’s Class 1 Claim, or (b) payment of the proceeds upon liquidation of the Collateral that secures that Class 1 Claim, less any expenses incurred in the liquidation. Any Deficiency Claim of the Holder of a Class 1 Claim shall be included as a Class 5 General Unsecured Claim.</p> <p>Est. recovery: 100%</p>

<b>SUMMARY OF TREATMENT OF CLASSES UNDER THE PLAN</b>		
<b>Class</b>	<b>Estimated Amounts</b>	<b>General Treatment Under Plan</b>
2 – MB Financial Claim	Est. Allowable Claims: \$0 -\$15,000	<p>Pursuant to the MB Financial Settlement, MB Financial shall have an Allowed Class 2 Claim in the amount of the Expense Cap as more fully detailed in Section 3.2.1 of the Plan. On the Effective Date and following approval of the MB Financial Settlement and receipt of such payment, MB Financial shall be deemed to have been paid in full, and shall release all liens, rights, title, and interests in any of the Assets of the Debtor or the Estate. MB Financial shall have no further Claim against the Debtor, Liquidation Trust, or Estate.</p> <p>Est. recovery: 100%</p>
3 – Other Secured Claims	Est. Allowable Claims: Unknown	<p>Each Class 3 Claim that is an Allowed Claim shall be satisfied as provided in the Sale Order.</p> <p>Est. recovery: Unknown</p>
4 – Other Priority Claims	Est. Allowable Claims: Unknown	<p>Except to the extent that a Holder of an Allowed Priority Claim has been paid prior to the Effective Date, or agrees with the Proponents to different treatment, each Holder of an Allowed Priority Claim against the Debtor and/or the Estate shall receive Cash in an amount equal to the Allowed amount of such Priority Claim as soon as reasonably practicable after the Effective Date.</p> <p>Est. recovery: Unknown</p>

<b>SUMMARY OF TREATMENT OF CLASSES UNDER THE PLAN</b>		
<b>Class</b>	<b>Estimated Amounts</b>	<b>General Treatment Under Plan</b>
5 – General Unsecured Claims	Est. Allowable Claims: \$25,116,177.12 - \$27,792,106.17	<p>Except to the extent that a Holder of a Class 5 General Unsecured Claim has been paid prior to the Effective Date, or agrees to different treatment, each Holder of an Allowed Class 5 General Unsecured Claim against the Debtor and/or the Estate shall be entitled to receive its Pro Rata share of the net proceeds of the Assets, including any portion of the Allocation of Net MS Dynamics Proceeds payable to Class 5 General Unsecured Claims pursuant to the terms of Section 3.3 of the Plan. The Liquidating Trustee may make multiple Distributions to Holders of Allowed Class 5 General Unsecured Claims, and shall endeavor to make Distributions at least on an annual basis. Notwithstanding the foregoing, the Liquidating Trustee shall determine the amount and timing of such Distributions.</p> <p>Est. recovery: Unknown</p>

<b>SUMMARY OF TREATMENT OF CLASSES UNDER THE PLAN</b>		
<b>Class</b>	<b>Estimated Amounts</b>	<b>General Treatment Under Plan</b>
6 – Equity Interests	Est. Allowable Claims: Unknown	<p>After payment in full of or reservation for Claims in Classes 1 through 5 by the Liquidating Trustee, the Liquidating Trustee shall distribute remaining net proceeds of the Assets to the Debtor for distribution to Holders of Allowed Class 6 Equity Interests in such amounts as agreed by the Debtor or subsequently determined by the Bankruptcy Court. For the avoidance of doubt, no Distributions shall be made to Holders of Class 6 Equity Interests unless Allowed (a) Administrative Expense Claims, (b) Professional Fee Claims, (c) Priority Tax Claims, and (d) Claims in Classes 1– 5 have been paid in full and the Reserves contain sufficient Available Cash to pay (x) any Disputed Claim in full or in such other amounts as agreed in writing by the Holder of such Claim and the Liquidating Trustee, and (y) all actual and anticipated, reasonable expenses of the Liquidation Trustee and the Debtor. In addition, Class 6 shall be entitled to the Equity portion of the Allocation of the Net MS Dynamics Proceeds as part of the Equity / Creditor MS Dynamics Settlement. The Equity portion of the Allocation of the Net MS Dynamics Proceeds shall be remitted to and distributed by the Debtor.</p> <p>Est. recovery: Unknown</p>

**Factors and Assumptions Applied in Arriving at Estimates**

The estimated Allowable Claims per Class in the foregoing table have been derived from the Schedules for the Debtor’s Estate prepared by the Debtor and its Professionals using information from the Debtor’s books and records and other information available to them, as well as proofs of Claims filed by Claimants in the Chapter 11 Case and Orders entered by the Bankruptcy Court.

One Hundred and Seven (107) proofs of Claim have been filed in the Chapter 11 Case, totaling approximately \$25,590,852.40. The aggregate total of the amounts of claims scheduled by the Debtor is approximately \$28,727,131.16. For those Claimants listed on the Schedules who have also filed proofs of Claim in the Chapter 11 Case, applicable Bankruptcy Rules provide that the proofs of Claim have superseded any amounts reflected in the Schedules. To the extent Claims scheduled by the Debtor have not been superseded by proofs of Claim, the

estimates in the foregoing table take into account Claims scheduled in a liquidated, non-contingent and undisputed amount. Where duplicative or amended Claims appear to have been filed, including Scheduled Claims, the foregoing estimates assume that duplicates and superseded Claims will be Disallowed in favor of, at most, a single surviving Claim. The estimates also include application of merit-based objections known to the Debtor and its counsel as of the date of this Disclosure Statement and, therefore, constitute their best estimate, as of the date of Filing of this Disclosure Statement, of the ultimate allowable amount of Claims in each such Class.

The ultimate resolution of Claims is inherently uncertain. Moreover, the Debtor has not completed its evaluation of all Claims and cannot presume the validity of merit-based disputes or objections thereto. Any Claim which is a Disputed Claim may be Disallowed or reduced in amount if an objection has been or is timely hereafter filed and sustained by the Bankruptcy Court. Because the resolution of Disputed Claims involves many factual and legal issues which may or may not be resolved as anticipated, no assurance can be given that the anticipated amount of Allowable Claims in each Class would be achieved were these assumptions included in the foregoing estimates. The Debtor believes that the ultimate universe of Allowed Claims will be substantially lower than the face amount of the filed proofs of Claims, and that the current estimates of Allowable Claims shown herein above in each Class are reasonably precise given the particular circumstances.

Notwithstanding, the foregoing estimates contained herein shall not be deemed as any admission on the part of the Debtor, the Committee, the Estate, the Liquidation Trustee, or the Surviving Officers as to the validity of any Claim. Similarly, the projected recovery levels reflected in the table above are estimates only, there is no guaranty that such levels of recovery will be achieved, and such estimates shall not constitute an admission on the part of the Debtor or the Estate to the validity of any Disputed Claims. Any Claim which is not Allowed by an Order of the Bankruptcy Court or pursuant to a settlement approved by an Order of the Bankruptcy Court may be Disallowed or reduced in amount if an objection has been, or is timely hereafter, filed and sustained by the Bankruptcy Court. Except as otherwise provided in the Plan, all objections and other defenses to Disputed Claims are preserved under the Plan.

## V.

### **HISTORICAL AND BACKGROUND INFORMATION**

#### **A. The Debtor's Business**

Prior to the Asset Sale, the Debtor was a San Antonio-based, multi-channel retailer that sold a wide range of sporting goods, primarily focusing on team sports such as football, baseball, basketball, soccer, and others, manufactured by adidas, Easton Sports, Louisville Slugger, Nike, Inc., Oakley, Russell Athletic, Schutt Sports, Spalding, Under Armour, and Wilson Sporting Goods, among many others. At or around the Petition Date, the Debtor operated from three locations in San Antonio, Texas, and employed approximately two hundred (200) employees.

The Debtor was founded in San Antonio, Texas in 1990 as Southwest Baseball Supply, and was in continual operation until the Asset Sale. In January 2013, an investment team led by the Debtor's Chief Executive Officer, Mark S. Marney, purchased the Debtor through a stock-

purchase transaction.

## **B. Events Leading to Commencement of the Chapter 11 Case & the MS Dynamics Lawsuit**

In 2014, Microsoft Corporation (“**Microsoft**”) and Junction Solutions, Inc. (“**Junction Solutions**”), a Denver-based software developer, convinced the Debtor to change its Enterprise Resource Planning (“**ERP**”) system by purchasing and installing Microsoft Dynamics software. That software and its implementation by Junction Solutions were failures. These failures, and the disruption caused by Microsoft’s and Junction Solutions’ attempts to remedy these failures, severely interrupted and damaged the Debtor’s business by making it impossible for the Debtor to timely ship goods, operate customer service, enter sales orders, order and receive new products, or perform basic accounting transactions – all causing the Debtor to lose millions of dollars in revenue, profit, and future business opportunities. Consequently, the Debtor began to fall behind on payments to its vendors, vendor relationships deteriorated, and credit was put on hold. Additionally, certain non-monetary events of default were triggered under the Debtor’s revolving credit agreement with M.B. Financial. All of these necessitated the filing of the Chapter 11 Case.

As of the commencement of the Chapter 11 Case, the Debtor’s ERP system was functional – albeit far from what was promised. In early October 2015, the Debtor filed a lawsuit against Microsoft and Junction Solutions (defined in the Plan as the “**MS Dynamics Lawsuit**”) to recover the millions of dollars of damage caused by the software and implementation failure.

The Debtor filed the Chapter 11 Case, in part, to stabilize operations, preserve value for all stakeholders, and prove to its vendors that it could still (a) be profitable selling its products and (b) maximize the payback on its existing credit exposure.

## **C. Pre-Petition Indebtedness**

On January 9, 2013, the Debtor entered into that certain *Credit and Security Agreement* (the “**Credit Agreement**”) with Cole Taylor Bank (“**Cole Taylor**”) providing the Debtor a revolving line of credit with a maximum revolving loan limit not to exceed \$8,000,000.00. The Credit Agreement was later modified by that certain *First Amendment to Credit and Security Amendment* dated May 14, 2014 (the “**Amendment**”), increasing the total amount of the maximum revolving loan limit to an amount not to exceed \$12,000,000.00 (the Credit Agreement, the Amendment, the Forbearance Agreement (defined below), the Second Forbearance Agreement (defined below), and all other documents executed and/or delivered by the Debtor in connection therewith are collectively referred to herein as the “**Prepetition Loan Documents**”).

In August 2014, MB Financial acquired the Prepetition Loan Documents upon its acquisition of Cole Taylor. As of the Petition Date, the outstanding principal amount of the indebtedness due and owing under the Prepetition Loan Documents was believed to be roughly \$6,009,008.23, plus accrued and unpaid interest, fees and other costs and expenses payable under the terms of the Prepetition Loan Documents (the “**Prepetition Secured Debt**”). MB Financial asserted a lien on substantially all of the Debtor’s assets, including the Cash Collateral (defined

below).

The software failure affected the value of Debtor's business such that it triggered non-monetary events of default under the Prepetition Loan Documents. On September 9, 2015, the Debtor and MB Financial entered into that certain *Forbearance Agreement and Amendment to Credit and Security Agreement* (the "**Forbearance Agreement**"). Pursuant to the Forbearance Agreement, and in exchange for valuable consideration, MB Financial agreed to forbear from exercising its respective rights and remedies under the terms of the Prepetition Loan Documents.

Effective as of December 8, 2015, the Debtor and MB Financial entered into that certain *Second Forbearance Agreement and Amendment to Credit and Security Agreement* (the "**Second Forbearance Agreement**"). Pursuant to the Second Forbearance Agreement, the Debtor was not in monetary default to MB Financial under the terms of the Prepetition Loan Documents. The Debtor's non-monetary defaults under the terms of the Prepetition Loan Documents were exclusively limited to a breach of certain financial covenants ("**Prepetition Defaults**"). The Debtor continued to service all monetary obligations arising in connection with the credit facility evidenced by the Prepetition Loan Documents. In exchange for valuable consideration, MB Financial agreed to forbear from exercising its respective rights and remedies under the terms of the Prepetition Loan Documents.

#### **D. Junction Solutions' Characterization of the MS Dynamics Lawsuit**

Junction Solutions disputes the Proponents' characterization of the MS Dynamics Lawsuit contained herein and in the Plan. The Proponents have included Junction Solutions' characterization of the MS Dynamics Lawsuit directly below in order to fully apprise Holders of Claims and Equity Interests of competing viewpoints regarding the MS Dynamics Lawsuit for purposes of a more informed voting process. The Proponents strongly oppose Junction Solutions' interpretation of the MS Dynamics Lawsuit and none of the statements below are to be construed as statements or representations regarding the Proponents' position with respect to the MS Dynamics Lawsuit. Junction Solutions' description of the MS Dynamics Lawsuit is as follows:

"The Debtor's claims against Junction Solutions lack merit. In 2014, the Debtor entered into a contract with Junction Solutions for the provision of consulting services for the current version of Microsoft Dynamics AX. The contract contains specific, unambiguous limitations of liability and warranty that are fatal to the Debtor's contractual claims.

To circumvent the contract at the center of the dispute (and, in particular, its limitation of liability clause), the Debtor alleges "fraudulent inducement," contending that it was deceived into entering into the contract by Microsoft and Junction Solutions. The Debtor further maintains that Microsoft and Junction Solutions' misrepresentations were responsible for driving the Debtor out of business and into bankruptcy. These claims constitute a transparent attempt to shift responsibility for the Debtors' poor business practices and management. Junction Solutions contends that the Debtor's management team drove the company into the ground and that the Debtor is attempting to rewrite

history through litigation to compensate for its history of poor decision-making. Indeed, Junction Solutions contends that — despite an utter lack of in-house expertise — the Debtor opted to assume responsibility for important aspects of the software implementation (at least on paper) to get a heavy price discount on the Junction Solutions contract. But the Debtor failed — and was unable — to follow through on several of its key responsibilities under the agreement.

The Debtor has not met its payment obligations under the contract, but at the same time continues to use the MS Dynamics system provisioned by Junction Solutions. These facts cannot reasonably be disputed. Junction Solutions therefore is entitled to payment of all amounts owed per the contract, plus interest. Additionally, since the Debtor has not paid, its continued use of customized software constitutes copyright infringement, and Junction Solutions is entitled to monetary damages and injunctive relief preventing the Debtor's ongoing use of the software.

Junction Solutions may assert additional claims that may come to light based on further investigation.”

## **VI.** **SIGNIFICANT PLEADINGS FILED IN THE CHAPTER 11 CASE**

During the course of the Chapter 11 Case, various pleadings have been filed with the Bankruptcy Court. The following is a description of the more significant pleadings filed during the pendency of the Chapter 11 Case to the extent not discussed elsewhere in this Disclosure Statement. For a comprehensive listing of the pleadings that have been filed in the Chapter 11 Case, the docket for the Chapter 11 Case should be reviewed, and relevant pleadings referenced therein may be obtained from the Clerk's Office of the Bankruptcy Court, via the online PACER system or at [www.upshotservices.com/teamexpress](http://www.upshotservices.com/teamexpress).

### **A. Commencement of Case**

On December 16, 2015, the Debtor filed its voluntary petition under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued in the management and possession of its business and property as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed.

Had the Debtor not commenced the Chapter 11 Case, its ability to finance, sell or restructure its business, maximize value and preserve and enhance the Debtor's financial health would likely have been severely compromised, which would have risked serious interruption of the Debtor's business and significantly impacted the Debtor's going-concern value. The commencement of the Chapter Case and implementation of an orderly sale process under the supervision of the Bankruptcy Court, with Concourse Team Express, LLC providing a floor against which interested parties could bid, permitted the Debtor to consummate a going-concern sale of all or substantially all of its assets and to maximize value of its Estate for all interested parties.

## **B. Employment of Professionals**

### **1. Debtor's Counsel**

On January 12, 2016, the Debtor filed its *Application for Order Authorizing Employment of Gardere Wynne Sewell LLP as Counsel to the Debtor and the Debtor-in-Possession as of the Petition Date* [Docket No. 52], pursuant to which the Debtor sought authority to employ Gardere Wynne Sewell LLP as its general bankruptcy counsel, effective as of the Petition Date. This application was approved by Order of the Bankruptcy Court [Docket No. 115] entered on February 4, 2016.

### **2. Other Professionals of the Debtor**

On January 15, 2016, the Debtor filed its *Application for Order Authorizing Employment of Treadstone Capital Advisors, LLC as Financial Advisor and Investment Banker to the Debtor and the Debtor-in-Possession as of the Petition Date* [Docket No. 61], pursuant to which the Debtor sought authority to employ Treadstone Capital Advisors, LLC as financial advisor and investment banker to the Debtor. On March 22, 2016, the Bankruptcy Court entered its *Agreed Order Granting Application to Employ Treadstone Capital Advisors, LLC as Financial Advisor and Investment Banker to the Debtor as of the Petition Date* [Docket No. 164], approving the Debtor's retention of Treadstone Capital Advisors.

On January 14, 2016, the Debtor filed its *Application for Order Authorizing Retention of McKool Smith, PC as Special Counsel for the Debtor as of the Petition Date* [Docket No. 63], pursuant to which the Debtor sought authority to employ McKool Smith, PC as special counsel to the Debtor in connection with the MS Dynamics Lawsuit. On February 17, 2016, the Bankruptcy Court entered its *Order Granting Application to Employ McKool Smith, PC as Special Counsel for the Debtor as of the Petition Date* [Docket No. 148], approving the Debtor's retention of McKool Smith as special counsel to the Debtor.

On January 15, 2016, the Debtor filed its *Application for Order Authorizing Employment of Cain & Skarnulis PLLC as Counsel to the Debtor and the Debtor-in-Possession as of the Petition Date* [Docket No. 68], pursuant to which the Debtor sought authority to employ Cain & Skarnulis PLLC as special counsel to the Debtor in connection with an investigation of the Debtor initiated by the Attorney General of Texas prior to the Petition Date. On February 9, 2016, the Bankruptcy Court entered its *Order Granting Application to Employ Cain & Skarnulis PLLC as Special Counsel to the Debtor as of the Petition Date* [Docket No. 126], approving the Debtor's retention of Cain & Skarnulis as special counsel to the Debtor.

On February 29, 2016, the Debtor filed its *Application for Order Authorizing and Approving Employment of Padgett, Stratemann & Co., L.L.P. as Accountants and Tax Advisors to the Debtor and the Debtor-in-Possession to February 1, 2016* [Docket No. 155], pursuant to which the Debtor sought authority to employ Padgett, Stratemann & Co., L.L.P. as accountants and tax advisors to the Debtor. On March 24, 2016 the Bankruptcy Court entered its *Order Granting Application to Employ Padgett, Stratemann & Co., L.L.P. as Accountants and Tax Advisors to the Debtor and the Debtor-in-Possession Effective as of February 1, 2016* [Docket No. 174], approving the Debtor's retention of Padgett, Stratemann & Co., L.L.P.

### **3. Professionals for the Committee**

On January 8, 2016, the United States Trustee appointed the Committee. On February 3, 2016, the Committee filed its *Application for Order Authorizing the Employment of Kane Russell Coleman & Logan PC as Attorneys for the Official Committee of Unsecured Creditors* [Docket No. 112] pursuant to which the Committee sought authority to employ Kane Russell Coleman & Logan PC as attorneys for the Committee. On February 29, 2016, the Bankruptcy Court entered an order [Docket No. 254] approving the Committee's retention of Kane Russell Coleman & Logan PC as of January 8, 2016.

On January 31, 2016, the Committee filed its *Application to Employ Bridgepoint Consulting, LLC as Financial Advisor to the Official Committee of Unsecured Creditors* [Docket No. 107], pursuant to which the Committee sought authority to employ Bridgepoint Consulting, LLC as the financial advisor to the Committee. On February 29, 2016, the Bankruptcy Court entered an order [Docket No. 253] approving the Committee's retention of Bridgepoint, effective January 25, 2016.

### **C. Financing of Operations and Administration of the Estate**

#### **1. Employee Compensation and Benefits**

On December 18, 2015, the Debtor filed its *Emergency Motion for Authority to Pay Prepetition Wages and Other Employee-Benefit Claims* [Docket No. 10], pursuant to which the Debtor sought authority to pay certain prepetition wages and benefits and to continue prepetition health insurance and benefits through the pendency of the Chapter 11 Case. This motion was granted by Order of the Bankruptcy Court [Docket No. 38] entered on January 5, 2016.

#### **2. Authorization to Use Cash Collateral**

On December 18, 2015, the Debtor filed its *Emergency Motion for Interim and Final Orders Authorizing Use of Cash Collateral and Scheduling Final Hearing* [Docket No. 15], pursuant to which the Debtor sought authority to use the cash collateral of the Debtor's secured lender, MB Financial. On December 23, 2015, the Bankruptcy Court entered its *Stipulated First Interim Order Authorizing Debtor's Use of Cash Collateral and Granting Adequate Protection and Related Relief* [Docket No. 28] (which was later corrected on January 14, 2016 at Docket No. 62), which (a) authorized the Debtor to use cash collateral through January 13, 2016, (b) granted adequate protection as set forth therein, and (c) granted liens to M.B. Financial. Subsequently, the Court entered three more interim orders and one agreed extension extending the Debtor's use of cash collateral through May 20, 2016. *See* Docket Nos. 75, 123, 179, and 235. On July 29, 2016, the Court entered its *Stipulated Fifth and Final Order Regarding Cash Collateral and Granting Adequate Protection and Related Relief* [Docket No. 289].

### **D. Sale of Substantially All of the Assets of the Debtor's Estate**

On April 15, 2016, the Debtor filed its *Amended and Restated Motion for Order (i) Approving Amended Bid Procedures Relating to Sale of Substantially All of the Estate's Assets; (ii) Approving Amended Bid Protections; (iii) Scheduling a Hearing to Approve the Sale; (iv) Approving the Form and Manner of Notices; (v) Establishing Procedures Relating to the*

*Assumption and Assignment of Certain Contracts, Including Notice of Proposed Cure Amounts; and (vi) Granting Related Relief* [Docket No. 186], pursuant to which the Debtor requested Bankruptcy Court approval of procedures governing a potential auction for the sale of its Assets. On April 21, 2016, the Court entered an order [Docket No. 194] granting the relief requested in this motion.

On April 25, 2016, the Debtor filed its *Notice of Stalking-Horse APA*, pursuant to which the Debtor identified Concourse Team Express LLC as the “stalking-horse bidder” for all or substantially all of the Debtor’s assets.

On April 25, 2016, the Debtor filed its *Motion for Order Approving/Authorizing (i) Sale of Substantially All of the Estate’s Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests and (ii) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale* [Docket No. 207], pursuant to which the Debtor requested Bankruptcy Court approval of a sale of all or substantially all of its assets to Concourse Team Express LLC. After a hearing on the relief requested in this motion held on May 6, 2016, the Court entered an order granting the relief requested therein [Docket No. 227].

On May 20, 2016, the Debtor closed a sale of substantially all of its assets to Concourse Team Express LLC.

#### **E. Bar Dates**

With respect to parties other than Governmental Units, the last date on which proofs of Claim could be timely filed against the Debtor was April 11, 2016. With respect to Governmental Units, the last date on which proofs of Claim could be timely filed against the Debtor was June 13, 2016.

On May 22, 2016, the Bankruptcy Court entered its *Agreed Order Establishing the Deadline for Filing Administrative Claims and Approving the Form and Manner of Notice Thereof* [Docket No. 165], establishing May 26, 2016 as the deadline for parties asserting an Administrative Expense Claim against the Debtor. On March 24, 2016, the Debtor filed its *Notice of Entry of Bar Date Order Establishing Deadline for Filing Application for Payment of Administrative Claims Against the Debtor* [Docket No. 167], which was subsequently served by UpShot Services, LLC to all parties in interest.

## **VII.**

### **SUMMARY OF THE CLAIMS, CLASSIFICATION AND TREATMENT UNDER THE PLAN**

#### **A. Introduction**

The Plan constitutes a liquidating chapter 11 plan for the Debtor. The Plan provides for the creation of a Liquidation Trust to liquidate the Debtor’s assets and to distribute the resulting Cash to Holders of Claims and Equity Interests in accordance with the terms of the Plan and the priority of claims provisions of the Bankruptcy Code. The Plan also provides for the continuing existence of the Debtor and its retention of the MS Dynamics Claim for future litigation and

distribution of proceeds therefrom to Holders of Claims and Equity Interests in accordance with the terms of the Plan. Except as otherwise provided by order of the Bankruptcy Court, distributions will occur as is practicable after the Effective Date and at various intervals thereafter, as more fully described in the Plan and the Liquidation Trust Agreement. From and after the Effective Date, the Debtor will continue to exist as a separate corporate entity or other business-entity form until dissolved by the Debtor, which shall not occur without prior permission from the Bankruptcy Court until the later of (a) the MS Dynamics Lawsuit and the MS Dynamics Claim have been fully and finally resolved by settlement or final judgment; and (b) thirty (30) days after the Final Distribution Date.

THE FOLLOWING IS A SUMMARY OF SOME OF THE SIGNIFICANT ELEMENTS OF THE PLAN. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED INFORMATION SET FORTH IN THE PLAN.

## **B. Classification of Claims and Equity Interests**

The Plan provides for the division of Claims against and Equity Interests in the Debtor (except Administrative Expense Claims and Priority Tax Claims) into Classes. A Claim is classified within a particular Class only to the extent that the Claim qualifies under the description of that Class. A proof of Claim asserting a Claim which is properly includable in more than one Class is only entitled to inclusion within a particular Class to the extent that it qualifies under the description of such Class, and shall be included within a different Class(es) to the extent that it qualifies under the description of such different Class(es). The Plan classifies Claims and Equity Interests as follows:

### **Unclassified Claims**

Allowed Administrative Expense Claims  
Allowed Priority Tax Claims

### **Classified Claims and Equity Interests**

Class 1: Secured Tax Claims  
Class 2: MB Financial Claim  
Class 3: Other Secured Claims  
Class 4: Other Priority Claims  
Class 5: General Unsecured Claims  
Class 6: Equity Interests

## **C. Treatment of Unclassified Claims Under the Plan**

### **1. Treatment of Allowed Administrative Claims**

Pursuant to the Plan, except to the extent that any Person entitled to payment of an Administrative Expense Claim agrees otherwise, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) shall, in full and final satisfaction of any Administrative Expense Claim, receive Cash in amount equal to such Allowed Administrative

Expense Claim on or as soon as reasonably practicable following the later to occur of: (a) the Effective Date and (b) the date on which such Administrative Claim becomes an Allowed Administrative Expense Claim; *provided, however*, Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtor up to and including the date of the Asset Sale may be paid after five (5) Business Days' notice to the Committee at any time in full in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

## **2. Treatment of Professional Compensation and Reimbursement Claims**

Pursuant to the Plan, with respect to Professional Fee Claims, requests for allowance and payment of Professional Fee Claims must be filed with the Bankruptcy Court and served on the Post-Confirmation Service List no later than sixty (60) days after the Effective Date. Any such Professional Fee Claim for which an application or request for payment is not filed with the Bankruptcy Court within that time period shall be released and forever barred, and shall not be entitled to Distributions under the Plan. Objections to the payment of such Professional Fee Claims must be filed no later than seven (7) days prior to the hearing on such Professional Fee Claims. All Professional Fee Claims shall be paid in accordance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules, as well as any prior Orders entered by the Bankruptcy Court. No Professional Fee Claim shall be Allowed on account of services rendered or expenses incurred by a professional prior to the Effective Date unless payment for such services and expenses has been allowed and approved by the Bankruptcy Court.

## **3. Treatment of Allowed Priority Tax Claims**

Pursuant to the Plan, except to the extent that a Holder of an Allowed Priority Tax Claim has been paid prior to the Effective Date, and unless otherwise agreed to in writing by the Proponents and the Holder, each Holder of an Allowed Priority Tax Claim shall be paid out of Available Cash in an amount equal to the unpaid portion of such Allowed Priority Tax Claim on the first Distribution Date following the Allowance Date for such Priority Tax Claim. To the extent that there is insufficient Available Cash to pay all Claims that have priority over any Allowed Priority Tax Claims, no Distributions will be made on account of Allowed Priority Tax Claims until the Debtor holds sufficient Available Cash to pay all Claims holding priority over such Allowed Priority Tax Claims in full, and the Disputed Claim Reserve is fully funded. For the avoidance of doubt, the Liquidation Trustee retains all of the Estate's rights under § 505 of the Bankruptcy Code with respect to any Priority Tax Claim, all of which rights are deemed automatically transferred to the Liquidation Trust on the Effective Date.

## **4. Payment of Statutory Fees and Post-Petition Date Taxes**

Furthermore, pursuant to the Plan, notwithstanding anything herein, all fees payable pursuant to 28 U.S.C. § 1930 and all Claims of a Governmental Unit of the type described in § 503(b)(1)(B)-(C) of the Bankruptcy Code that were filed prior to the Administrative Claim Bar Date shall be treated as Allowed Administrative Expense Claims when such amounts become due and payable by the Debtor or the Liquidation Trust under applicable non-bankruptcy law. Such dates shall be the Allowance Date.

**D. Treatment of Classified Claims and Equity Interests Under the Plan**

**1. Treatment of Secured Tax Claims (Class 1)**

Pursuant to the Plan, Class 1 is unimpaired. Class 1 shall include only the Secured Tax Claim(s). Each Holder of a Class 1 Claim is entitled to vote to accept or reject the Plan. Until paid in full, each Holder of a Class 1 Claim that is an Allowed Claim shall retain its Lien in the Collateral that secured the Class 1 Claim on the Petition Date in the same priority as existed on the Petition Date. The amount, validity, extent, value, and priority of each Class 1 Claim will be subject to determination by the Bankruptcy Court or pursuant to an agreement between the Liquidation Trustee and the Holder of a Class 1 Claim. Each Class 1 Claim that is an Allowed Claim shall be satisfied, at the Liquidation Trustee's option, in full satisfaction, release, and discharge of and exchange for such Claim, by (a) return of the Collateral to the holder of each Class 1 Claim in full and final satisfaction of that Holder's Class 1 Claim, or (b) payment of the proceeds upon liquidation of the Collateral that secures that Class 1 Claim, less any expenses incurred in the liquidation. Any Deficiency Claim of the Holder of a Class 1 Claim shall be included as a Class 5 General Unsecured Claim.

**2. Treatment of MB Financial Claim (Class 2)**

Pursuant to the Plan, Class 2 is impaired. Class 2 shall include only the Secured Claim of MB Financial. Pursuant to the MB Financial Settlement, MB Financial shall have an Allowed Class 2 Claim in the amount of the Expense Cap as more fully detailed in Section 3.2.1 of the Plan. On the Effective Date and following approval of the MB Financial Settlement and receipt of such payment, MB Financial shall be deemed to have been paid in full, and shall release all liens, rights, title, and interests in any of the Assets of the Debtor or the Estate. MB Financial shall have no further Claim against the Debtor, Liquidation Trust, or Estate.

**3. Treatment of Other Secured Claims (Class 3)**

Pursuant to the Plan, Class 3 is unimpaired. Each Holder of a Class 3 Claim is presumed to have accepted the Plan. Until paid in full, each Holder of a Class 3 Claim that is an Allowed Claim shall retain its Lien in the Collateral that secured the Class 3 Claim in the same priority as existed at the time such Lien arose. Each Class 3 Claim that is an Allowed Claim shall be satisfied as provided in the Sale Order. Notwithstanding anything in the Plan to the contrary, all Liens held by a Holder of a Class 3 Claim shall be released on the Effective Date of the Plan.

**4. Treatment of Other Priority Claims (Class 4)**

Pursuant to the Plan, Class 4 is unimpaired. Holders of Allowed Priority Claims are presumed to have accepted the Plan. Except to the extent that a Holder of an Allowed Priority Claim has been paid prior to the Effective Date, or agrees with the Proponents to different treatment, each Holder of an Allowed Priority Claim against the Debtor and/or the Estate shall receive Cash in an amount equal to the Allowed amount of such Priority Claim as soon as reasonably practicable after the Effective Date.

**5. Treatment of General Unsecured Claims (Class 5)**

Pursuant to the Plan, Class 5 is impaired. Class 5 shall include only Class 5 General Unsecured Claims. Each Holder of a Class 5 Claim is entitled to vote to accept or to reject the Plan. Except to the extent that a Holder of a Class 5 General Unsecured Claim has been paid prior to the Effective Date, or agrees to different treatment, each Holder of an Allowed Class 5 General Unsecured Claim against the Debtor and/or the Estate shall be entitled to receive its Pro Rata share of the net proceeds of the Assets, including any portion of the Allocation of Net MS Dynamics Proceeds payable to Class 5 General Unsecured Claims pursuant to the terms of Section 3.3 of the Plan. The Liquidating Trustee may make multiple Distributions to Holders of Allowed Class 5 General Unsecured Claims, and shall endeavor to make Distributions at least on an annual basis. Notwithstanding the foregoing, the Liquidating Trustee shall determine the amount and timing of such Distributions.

For some time, the Committee and Holders of a super-majority of the Equity Interests, and their respective counsel, have discussed and negotiated how to distribute the Net MS Dynamics Proceeds. After good-faith, arms-length, and thorough negotiations, to avoid the expense, inconvenience, delay, and uncertainty of litigation related thereto, the Committee and Holders of a super-majority of the Equity Interests have agreed to fully and completely resolve the following: (a) how to divide and distribute any Net MS Dynamics Proceeds; and (b) how to administer the MS Dynamics Lawsuit in a manner most likely to result in a favorable recovery that is beneficial to Holders of Allowed Claims and Equity Interests.

The Net MS Dynamics Proceeds shall be allocated as follows: (a) the first \$100,000 will be paid to the Liquidation Trust for distribution to Holders of Allowed Class 1 through Class 5 Claims (the “**Creditors**”) pursuant to the Plan and the Liquidation Trust Agreement; (b) the next \$2,000,000.00 will be split/paid equally (50%-50%) between the Liquidation Trust for distribution pursuant to the Plan and the Liquidation Trust Agreement and the Debtor for distribution to Holders of Allowed Equity Interests; (c) the next \$8,500,000.00 will be paid to Liquidation Trust for distribution to the Creditors pursuant to the Plan and the Liquidation Trust Agreement; (d) the next \$2,000,000.00 will be paid to the Debtor for distribution to Holders of Allowed Equity Interests; and (e) the remaining Net MS Dynamics Proceeds will be split (i) 40% to the Liquidation Trust for distribution to the Creditors pursuant to the Plan and the Liquidation Trust Agreement until the principal amount of Claims in Classes 1 through 5 are paid in full and (ii) 60% to the Debtor for distribution to Holders of Allowed Equity Interests (Class 6); and (f) after payment in full of principal to the Holders of Allowed Claims in Classes 1 through 5 by the Liquidation Trust, the remaining Net MS Dynamics Proceeds will be paid to the Debtor for distribution to Holders of Allowed Equity Interests (hereinafter, the “**Allocation of the Net MS Dynamics Proceeds**”).

The Litigation Governance and Cooperation Agreement shall govern the prosecution and resolution of the MS Dynamics Lawsuit. On the Effective Date, and in accordance with the Litigation Governance and Cooperation Agreement, the Debtor shall form or cause to be formed the Litigation Oversight Committee. The Litigation Oversight Committee shall retain and have the exclusive authority and standing to prosecute, enforce, pursue, sue on, settle or compromise the MS Dynamics Lawsuit and any associated ancillary proceedings or suits. The Litigation Oversight Committee shall be the “Client Contact” for McKool Smith's prosecution of the MS Dynamics Lawsuit. The Litigation Oversight Committee shall also have full authority relating to the enforcement of all defenses, counterclaims, and rights that have been asserted or could be

asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Estate in the MS Dynamics Lawsuit. Collectively, the Allocation of the Net MS Dynamics Proceeds and the Litigation Governance and Cooperation Agreement shall be referred to as the “**Equity/Creditor MS Dynamics Settlement.**”

The Proponents believe that the terms of the Equity / Creditor MS Dynamics Lawsuit and Allocation of MS Dynamics Settlement are fair and equitable and in the best interests of the Estate and its Claimants and Equity Interest Holders. As a result, the Equity / Creditor MS Dynamics Settlement, including the Litigation Governance and Cooperation Agreement’s terms, should be approved by the Bankruptcy Court in the Confirmation Order pursuant to Bankruptcy Rule 9019(b).

## **6. Treatment of Equity Interests (Class 6)**

Pursuant to the Plan, Class 6 is impaired. Each Holder of an Allowed Equity Interest is entitled to vote to accept or reject the Plan. After payment in full of or reservation for Claims in Classes 1 through 5 by the Liquidating Trustee, the Liquidating Trustee shall distribute remaining net proceeds of the Assets to the Debtor for distribution to Holders of Allowed Class 6 Equity Interests in such amounts as agreed by the Debtor or subsequently determined by the Bankruptcy Court. For the avoidance of doubt, no Distributions shall be made to Holders of Class 6 Equity Interests unless Allowed (a) Administrative Expense Claims, (b) Professional Fee Claims, (c) Priority Tax Claims, and (d) Claims in Classes 1– 5 have been paid in full and the Reserves contain sufficient Available Cash to pay (x) any Disputed Claim in full or in such other amounts as agreed in writing by the Holder of such Claim and the Liquidating Trustee, and (y) all actual and anticipated, reasonable expenses of the Liquidation Trustee and the Debtor. In addition, Class 6 shall be entitled to the Equity portion of the Allocation of the Net MS Dynamics Proceeds as part of the Equity / Creditor MS Dynamics Settlement. The Equity portion of the Allocation of the Net MS Dynamics Proceeds shall be remitted to and distributed by the Debtor.

Pursuant to the Plan, Class 5 is impaired. Class 5 shall include only Class 5 General Unsecured Claims. Each Holder of a Class 5 Claim is entitled to vote to accept or to reject the Plan. Except to the extent that a Holder of a Class 5 General Unsecured Claim has been paid prior to the Effective Date, or agrees to different treatment, each Holder of an Allowed Class 5 General Unsecured Claim against the Debtor and/or the Estate shall be entitled to receive its Pro Rata share of the net proceeds of the Assets, including any portion of the Allocation of Net MS Dynamics Proceeds payable to Class 5 General Unsecured Claims pursuant to the terms of Section 3.3 of the Plan. The Liquidating Trustee may make multiple Distributions to Holders of Allowed Class 5 General Unsecured Claims, and shall endeavor to make Distributions at least on an annual basis. Notwithstanding the foregoing, the Liquidating Trustee shall determine the amount and timing of such Distributions.

For some time, the Committee and Holders of a super-majority of the Equity Interests, and their respective counsel, have discussed and negotiated how to distribute the Net MS Dynamics Proceeds. After good-faith, arms-length, and thorough negotiations, to avoid the expense, inconvenience, delay, and uncertainty of litigation related thereto, the Committee and Holders of a super-majority of the Equity Interests have agreed to fully and completely resolve

the following: (a) how to divide and distribute any Net MS Dynamics Proceeds; and (b) how to administer the MS Dynamics Lawsuit in a manner most likely to result in a favorable recovery that is beneficial to Holders of Allowed Claims and Equity Interests.

The Net MS Dynamics Proceeds shall be allocated as follows: (a) the first \$100,000 will be paid to the Liquidation Trust for distribution to Creditors pursuant to the Plan and the Liquidation Trust Agreement; (b) the next \$2,000,000.00 will be split/paid equally (50%-50%) between the Liquidation Trust for distribution pursuant to the Plan and the Liquidation Trust Agreement and the Debtor for distribution to Holders of Allowed Equity Interests; (c) the next \$8,500,000.00 will be paid to Liquidation Trust for distribution to the Creditors pursuant to the Plan and the Liquidation Trust Agreement; (d) the next \$2,000,000.00 will be paid to the Debtor for distribution to Holders of Allowed Equity Interests; and (e) the remaining Net MS Dynamics Proceeds will be split (i) 40% to the Liquidation Trust for distribution to the Creditors pursuant to the Plan and the Liquidation Trust Agreement until the principal amount of Claims in Classes 1 through 5 are paid in full and (ii) 60% to the Debtor for distribution to Holders of Allowed Equity Interests (Class 6); and (f) after payment in full of principal to the Holders of Allowed Claims in Classes 1 through 5 by the Liquidation Trust, the remaining Net MS Dynamics Proceeds will be paid to the Debtor for distribution to Holders of Allowed Equity Interests.

The Litigation Governance and Cooperation Agreement shall govern the prosecution and resolution of the MS Dynamics Lawsuit. On the Effective Date, and in accordance with the Litigation Governance and Cooperation Agreement, the Debtor shall form or cause to be formed the Litigation Oversight Committee. The Litigation Oversight Committee shall retain and have the exclusive authority and standing to prosecute, enforce, pursue, sue on, settle or compromise the MS Dynamics Lawsuit and any associated ancillary proceedings or suits. The Litigation Oversight Committee shall be the "Client Contact" for McKool Smith's prosecution of the MS Dynamics Lawsuit. The Litigation Oversight Committee shall also have full authority relating to the enforcement of all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Estate in the MS Dynamics Lawsuit.

The Proponents believe that the terms of the Equity / Creditor MS Dynamics Lawsuit and Allocation of MS Dynamics Settlement are fair and equitable and in the best interests of the Estate and its Claimants and Equity Interest Holders. As a result, the Equity / Creditor MS Dynamics Settlement, including the Litigation Governance and Cooperation Agreement's terms, should be approved by the Bankruptcy Court in the Confirmation Order pursuant to Bankruptcy Rule 9019(b).

## **VIII.** **MEANS FOR IMPLEMENTATION OF THE PLAN**

### **A. Plan Funding**

Funds needed to make distributions under the Plan will come from the Debtor's Cash on hand and the Causes of Action. As of the filing of this Disclosure Statement, the Estate has approximately \$1,171,000 in Cash (including \$1,000,000 as part of the Adjustment Escrow Account as provided in section 2.2(b)(i) of the APA). Additionally, the Debtor believes the Net

MS Dynamics Proceeds could be significant.

**B. Debtor**

From and after the Effective Date, the Debtor will continue to exist as a separate corporate entity or other business-entity form until dissolved by the Debtor, which shall not occur without prior permission from the Bankruptcy Court until the later of (a) the MS Dynamics Lawsuit and the MS Dynamics Claim have been fully and finally resolved by settlement or final judgment; and (b) thirty (30) days after the Final Distribution Date.

**C. Purpose of the Debtor after the Effective Date**

Pursuant to the Plan, following the Effective Date, the Debtor and its representative(s) will take such action as is necessary under the laws of the State of Texas, federal law, and other applicable law to effect the terms and provisions of the Plan and the Plan Documents. Such action shall be subject to Section 8.1 of the Plan and include (a) winding up the Debtor's affairs, if determined necessary by the Debtor in its sole and absolute discretion; (b) distributing proceeds of all remaining assets in its possession consistent with the Plan; and (c) filing appropriate tax returns.

**D. Debtor's Governance after the Effective Date**

On the Effective Date, automatically and without further action, any and all remaining officers or directors of the Debtor shall be deemed to have resigned. The Surviving Officers, in their sole and absolute discretion, and except as otherwise provided by the Plan, shall have the right and authority, but not the obligation, to wind up the Debtor. The Surviving Officers shall provide ten (10) days' notice to the Post-Confirmation Service List prior to winding up the Debtor. Unless otherwise set forth in the Plan, upon the liquidation of all Assets pursuant to the Plan and the filing by or on behalf of the Debtor a certification to that effect with the Bankruptcy Court, the Debtor shall be deemed dissolved for all purposes without the necessity for further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith; *provided, however*, the Surviving Officer(s) shall file with the appropriate state authority a certificate of cancellation. From and after the Effective Date, the Debtor shall not be required to file any document, or taken any action, to withdraw its business operation from any state in which the Debtor was previously conducting its business operation. The Debtor and its Surviving Officers shall reasonably cooperate with the Liquidation Trustee to effectuate the Plan's terms.

**E. Surviving Officer(s)**

The Surviving Officers will administer the Plan on the Debtor's behalf in a manner consistent with the Plan. All actions taken by the Surviving Officers pursuant to the Plan shall be taken in the Debtor's name.

In performance of his duties, each Surviving Officer shall have the rights and powers of a debtor-in-possession under § 1107 of the Bankruptcy Code, and such other rights, powers, and duties incident to causing performance of the obligations under the Plan or otherwise as may be reasonably necessary, including, without limitation, filing of any necessary tax returns.

After the Effective Date, and with consistent of the Litigation Oversight Committee and consistent with the Plan, the Surviving Officer may, among other things, use, pledge, acquire, and/or dispose of any property free of any restrictions imposed by the Bankruptcy Code.

The Confirmation Order shall provide that the Debtor, with consent by the Litigation Oversight Committee and consistent with the Plan, has express authority to convey, transfer, and assign any and all property of the Debtor consistent with the terms of the Plan and to take all actions necessary to effectuate the same.

The Confirmation Order shall provide that, with consent by the Litigation Oversight Committee and consistent with the Plan, the Surviving Officers have standing to (a) pursue on the Debtor's behalf Causes of Action not transferred to the Liquidation Trust and (b) enforce performance of the obligations under the Plan and the performance of other provisions of the Plan that affect the treatment of Equity Interests.

**F. Payment of Fees and Expenses to Surviving Officers.**

The Surviving Officers may, with the prior approval of the Liquidation Trustee which shall not be unreasonably withheld, employ on the Debtor's behalf professionals, as such term is used in the Bankruptcy Code, necessary to assist the Surviving Officers perform their duties under the Plan. Such professionals shall be entitled to (a) compensation at their respective standard hourly rates for time spent administering the implementation of the Plan and (b) reimbursement of necessary costs and expenses incurred while administering the implementation of the Plan, without motion, application, notice, hearing, or other order of the Bankruptcy Court. The Surviving Officers shall be compensated out of the Net MS Dynamics Proceeds payable to Equity Interests in the manner set forth on an exhibit to the Plan.

**G. Accounts.**

The Surviving Officer(s) may establish one or more interest-bearing accounts as it determines may be necessary or appropriate to effectuate the provisions of the Plan. To the extent reasonably possible, the Surviving Officers shall attempt to indemnify the funds in accordance with § 345 of the Bankruptcy Code.

**H. Resignation, Replacement, or Termination of Surviving Officer.**

From and after the Effective Date, the Surviving Officers or their successors shall continue to serve in their capacity as the only officers, directors, and responsible persons of the Debtor through the earlier of (a) the date the Debtor is dissolved in accordance with the Plan; and (b) the date the Surviving Officers resign or are replaced or terminated pursuant to the Plan. If both Surviving Officers resign, are terminated, or are unable to serve as a director, then a successor Surviving Officer shall be selected by a majority vote of the Holders of Allowed Equity Interests after consultation with the Litigation. The successor Surviving Officer shall then be deemed to be the Surviving Officer for all purposes under the Plan. Notwithstanding anything herein to the contrary, the Surviving Officers may be terminated by the Bankruptcy Court after notice and hearing and only on a showing by clear and convincing evidence that the Surviving Officer(s) is guilty of gross negligence, bad faith, self-dealing, or willful misconduct.

**I. Formation of the Litigation Oversight Committee.**

On the Effective Date, the Litigation Oversight Committee shall be formed and continue for the purpose of supervising prosecution of the MS Dynamics Lawsuit. If a member of the Litigation Oversight Committee resigns or is terminated or unable to serve as a member thereof, then a successor member shall be selected by the Surviving Officers, in consultation with the Litigation Oversight Committee; *provided, however*, that if no agreement on the replacement member can be reached by the Surviving Officers and a majority of the current members of the Litigation Oversight Committee, the Bankruptcy Court shall have jurisdiction and authority to resolve such dispute and appoint the replacement member. The Litigation Oversight Committee members shall be reimbursed by the Liquidation Trust for all reasonable expenses incurred during the performance of their duties under the Plan. The Liquidation Trust shall be entitled to reimbursement for the payment of such expenses from the first proceeds of the Net MS Dynamics Proceeds. Only the neutral third member of the Litigation Oversight Committee shall

be compensated for that member's service on the Litigation Oversight Committee, in an amount to be agreed upon by the Plan Proponents prior to the Effective Date of the Plan. The Litigation Oversight Committee shall continue in existence until such time as either (a) the Litigation Oversight Committee deems it appropriate by a majority vote to dissolve itself or (b) all members of the Litigation Oversight Committee resign; provided, however, that the Litigation Oversight Committee shall dissolve no later than the date a Final Order is entered closing the Case.

**J. Approval by the Litigation Oversight Committee.**

If the Surviving Officers cannot obtain approval of a majority of the Litigation Oversight Committee members to act under the Plan, the Surviving Officers may petition the Bankruptcy Court for approval of the same so long as the Chapter 11 Case remains open, and after the Chapter 11 Case is closed, the Surviving Officer may petition any court of competent jurisdiction for such approval. In any instance where a Surviving Officer petitions any court for approval of any action, such action shall be noticed on the Liquidation Trustee, all members of the Liquidation Trust Committee, and all members of the Litigation Oversight Committee. In any instance where the approval of an action of the Surviving Officer by the Litigation Oversight Committee involves a Claim or Cause of Action against a member of the Litigation Oversight Committee or any other instance where a particular member of the Litigation Oversight Committee has a conflict of interest as to a particular decision to be approved by the Litigation Oversight Committee, such member shall not be eligible to vote on such action, and in the event of any disagreement between the remaining members of the Litigation Oversight Committee resulting in a tie vote of the remaining members of the Litigation Oversight Committee, the Surviving Officers' decision shall control.

**K. Creation of the Liquidation Trust.**

On the Effective Date, the Liquidation Trust shall be created. The Liquidation Trust shall be governed by the Liquidation Trust Agreement, the Plan, and the Confirmation Order. The terms of the employment of the Liquidation Trustee shall be part of the Plan Supplement and approved as part of the Confirmation Hearing. On the Effective Date, the Debtor shall transfer all Assets, including Cash and Causes of Action free and clear of all Liens, Claims, interests and encumbrances, with the sole exception of the MS Dynamics Lawsuit, to the Liquidation Trust. All transfers to the Liquidation Trust shall be free and clear of all liens, claims, interests, and encumbrances. Except as specifically set forth herein, holders of Allowed Claims shall look solely to the Liquidation Trust for the satisfaction of their Claims. For the avoidance of doubt, nothing herein shall be construed to restrict or limit the ability of the Liquidation Trustee to assert Causes of Action transferred to the Liquidation Trust. For federal income-tax purposes, the transfer of the Assets as set forth herein to the Liquidation Trust will be deemed to be a transfer to the holders of Allowed Claims (i.e. the Liquidation Trust beneficiaries), followed by a deemed transfer by such beneficiaries to the Liquidation Trust.

**L. Treatment of the Liquidation Trust for Federal Income-Tax Purposes**The Liquidation Trust will be established for the primary purpose of liquidating the Assets and distributing the proceeds thereof, in accordance with Treas. Reg. § 301.7701-4(d). The Liquidation Trust has no objective to continue or engage in any trade or business, except to the

extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust. The Liquidation Trust will liquidate the Assets and distribute their proceeds in an expeditious but orderly manner, and will make timely Distributions to Holders of Allowed Claims and the Debtor in accordance with the Plan, Confirmation Order, and Liquidation Trust Agreement. The Liquidation Trust shall not unduly prolong its duration, and shall not be deemed a successor-in-interest of the Debtor for any purpose other than as specifically set forth herein or in the Liquidation Trust Agreement.

The Liquidation Trust is intended to be treated as a "liquidating trust" pursuant to Treasury Regulation § 301.7701-4(d) and as a "grantor trust for federal income-tax purposes, pursuant to Section 671 through 679 of the Internal Revenue Code of 1986, as amended (the "IRC Code"). If the Liquidation Trust shall fails or ceases to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), the Liquidation Trustee shall take such action as it shall deem appropriate to have the Liquidation Trust classified as a partnership for federal-tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership within the meaning of Section 7704 of the IRC Code), including, if necessary, creating or converting it into a Delaware limited partnership or limited liability company that is so classified. For federal income-tax purposes, Holders of Allowed Claims will be treated as the grantors and owners of the Liquidation Trust; therefore, they will be responsible for the payment of tax on their respective allocable share of the taxable income of the Liquidation Trust.

**M. General Powers of the Liquidation Trust** Subject to any express limitations, the Liquidation Trustee, on behalf of the Liquidation Trust, shall have all of the rights, powers and privileges set forth in the Plan, the Confirmation Order and the Liquidation Trust Agreement. The Liquidation Trustee is authorized to take all such actions that, in its judgment, are necessary and appropriate to effectuate the purposes of the Plan, including but not limited to the following:

1. Make all Distributions contemplated under the Plan;
2. Upon approval by the majority of the Liquidation Trust Committee members, but without further approval of the Bankruptcy Court, use, sell, assign, transfer, abandon, or otherwise dispose of at a public or private sale any remaining property of the Debtor or the Estate, other than the MS Dynamics Lawsuit, for the purpose of liquidating and converting such assets to Cash, making Distributions, and administering and fully consummating the Plan.
3. Consistent with maintaining the value of and liquidating the residual Assets of the Liquidation Trust, invest in time or demand deposits, including certificates of deposit issued by any bank approved as a depository institution by the United States Trustee's office, United States Treasury bonds and other securities guaranteed by the full faith and credit of the United States of America or any agency thereof;
4. Supervise and administer the resolution, settlement and payment of Allowed Claims and the Distributions to the Holders of Allowed Claims and the Debtor in accordance with the Plan;

**5.** Enter into any agreement on behalf of the Liquidation Trust required by or consistent with the Plan and perform all of the obligations required of the Liquidation Trustee under the Liquidation Trust Agreement or the Plan;

**6.** Abandon any of the assets of the Liquidation Trust if the Liquidation Trustee, after consultation with the Liquidation Trust Committee, concludes that such assets are of no material benefit to the Claimants;

**7.** Participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any legal proceeding, administrative proceeding, arbitative proceeding or other non-judicial proceeding and litigate claims and Causes of Action on behalf of the Liquidation Trust, including without limitation all state and federal causes of action or any other litigation which constitute an asset of the Liquidation Trust and pursue to settlement or judgment such actions. The Liquidation Trustee may engage attorneys to prosecute Causes of Action, and otherwise represent the Liquidation Trust generally;

**8.** Participate as a party-in-interest in any proceeding before the United States Bankruptcy Court involving the a bankruptcy case;

**9.** Act in the name of or in the place of the Liquidation Trust or the Debtor in any action before the United States Bankruptcy Court or any other judicial or administrative body;

**10.** Take actions and exercise remedies against any entity that owes money to the Debtor (or the Liquidation Trust), including without limitation, the remedies available under any deed of trust, security agreement, contract, promissory note, bond, guarantee or other instrument or document; make compromises regarding any deed of trust, security agreement, promissory note, bond, guarantee or other instrument or document; and, declare or waive defaults regarding any deed of trust, security agreement, promissory note, bond, guarantee or other instrument or document;

**11.** Select, employ, and compensate such professionals, consultants, agents or employees, whether or not formerly employed or engaged by the Debtor, as the Liquidation Trustee deems necessary to assist in the administration of the affairs of the Liquidation Trust;

**12.** Hold any unclaimed distribution or payment to the holder of an Allowed Claim in accordance with the Plan;

**13.** Propose any amendment, modification or supplement to the Plan or the Liquidation Trust Agreement;

**14.** File dissolution/termination documents with the appropriate governmental agencies to dissolve the Liquidation Trust;

**15.** Receive, conserve and manage the assets of the Liquidation Trust and sell, pursuant to 11 U.S.C. § 363(f), 11 U.S.C. § 1123(a)(5) and the Plan, or otherwise dispose of such assets for a price and upon such terms and conditions as the Liquidation Trustee deems most

beneficial to the Creditors and execute such deeds, bills of sale, assignments and other instruments in connection therewith;

16. Open and maintain bank accounts on behalf of or in the name of the Liquidation Trust;

17. Pay all taxes, make all tax withholdings and file tax returns and tax information returns and make tax elections by and on behalf of the Liquidation Trust;

18. Pay all lawful expenses, debts, and liabilities of the Liquidation Trust;

19. Enforce all provisions of the Plan and the Confirmation Order;

20. Protect, perfect and defend the title to any of the assets of the Liquidation Trust and enforce any bonds, mortgages or other obligations or liens owned by the Liquidation Trust;

21. Carry insurance coverage, including insurance to protect the Liquidation Trust, the Liquidation Trustee and the Liquidation Trust Committee against claims brought against the Liquidation Trust, the Liquidation Trustee or the Liquidation Trust Committee acting within such capacities, in amounts as the Liquidation Trustee deems advisable. Notwithstanding the above, the Liquidation Trustee shall be under no obligation to obtain or carry such insurance;

22. Establish such reserves for taxes, assessments and other expenses of administration of the Liquidation Trust (including without limitation the Disputed Claims Reserve) as in the Liquidation Trustee's judgment may be necessary and appropriate for the proper operation of matters incident to the affairs of the Liquidation Trust;

23. Exercise such other powers and duties as are necessary or appropriate in the Liquidation Trustee's discretion to accomplish the purposes of the Plan; and

24. Obtain prior Liquidation Trust Committee approval, by at least a majority vote, regarding matters (i) affecting Liquidation Trust Assets in the amount of \$100,000 or greater; or (ii) relating to the Liquidation Trust's retention of and fee arrangements with professionals representing the Liquidation Trust.

**N. Obligations of the Liquidation Trustee** Notwithstanding anything in the Plan or the Liquidation Trust Agreement to the contrary, the Liquidation Trustee shall have the following duties to:

1. Prepare periodic reports in accordance with Section 8.13 of the Plan.

2. Maintain records and books of account relating to the Liquidation Trust's assets, the management thereof and all transactions undertaken by the Liquidation Trustee on behalf of the Liquidation Trust. The Liquidation Trustee shall also maintain records and books of account relating to all Distributions contemplated under the Plan.

3. Open, maintain, and close, as appropriate, bank accounts in the name of the Liquidation Trustee and to deposit any Cash in accounts, as it deems appropriate, and, interest

earned, if any, shall be added to the Liquidation Trust's Assets and distributed in accordance with the Plan. The Liquidation Trustee shall be authorized, but not required, to continue to use any bank accounts used by the Debtor prior to the Effective Date. The Liquidation Trustee shall not be obligated to deposit Cash Assets of the Liquidation Trust into an interest-bearing bank account.

4. Establish and maintain the Disputed Claims Reserve in accordance with the terms of the Plan;

5. Conduct an analysis of Claims, to the extent not completed prior to the Effective Date. Prosecute, negotiate and reconcile objections and potential objections to Claims, including litigating, compromising or otherwise resolving such Claim objections, as necessary and appropriate;

6. File all reports and appropriate tax returns as necessary;

7. Take such actions as are necessary to prosecute, determine not prosecute, resolve or compromise, as appropriate, all Causes of Action;

8. Conduct investigations deemed appropriate by the Liquidation Trustee, including, if deemed appropriate, examinations under Rule 2004 of the Federal Rules of Bankruptcy Procedure;

9. Conduct the administration of the Chapter 11 Case and the Plan, including to obtain a Final Decree and to pay any U.S. Trustee quarterly fees; and

10. Periodically consult with, advise, and seek input from the Liquidation Trust Committee on matters material to the administration of the Liquidation Trust.

**O. Resignation/Removal of the Liquidation Trustee** The Liquidation Trustee may resign at any time by filing a written notice of resignation with the Bankruptcy Court by providing same to the Post Confirmation Service List. Any such resignation shall become effective on the earlier of (i) sixty (60) days after the filing date of such notice; and (ii) the appointment of a successor Liquidation Trustee. The Liquidation Trust Committee may remove the Liquidation Trustee at its discretion upon unanimous vote of all members without approval of the Bankruptcy Court; provided, however, that the Liquidation Trust Committee shall provide the Liquidation Trustee with thirty (30) days written notice of its intent to remove the Liquidation Trustee. If the Liquidation Trustee believes that its removal is not in the best interests of the Beneficiaries, then the Liquidation Trustee may seek Bankruptcy Court approval to continue as Liquidation Trustee. If such authority is sought, the Bankruptcy Court shall hear the matter and issue an Order resolving whether the Liquidation Trustee shall continue or be replaced, or as is otherwise appropriate under the circumstances. All reasonable fees and expenses incurred by the Liquidation Trustee and the Liquidation Trust Committee in pursuit of the removal or continuation of the Liquidation Trustee shall be paid by the Liquidation Trust.

**P. Appointment of Successor Liquidation Trustee**In the event of the death, resignation or removal of the Liquidation Trustee, the Liquidation Trust Committee shall designate a successor Liquidation Trustee. Any successor Liquidation Trustee appointed hereunder shall execute and

file with the Bankruptcy Court and serve upon the Post Confirmation Service List a statement accepting such appointment, setting forth the terms of engagement, and agreeing to be bound by the terms of the Plan, Confirmation Order and the Liquidation Trust Agreement and upon such filing, the successor Liquidation Trustee shall immediately become vested with all the rights, powers, trusts and duties of the Liquidation Trustee.

**Q. Liquidation Trustee Settlement Authority**The Liquidation Trustee shall be authorized to (a) resolve objections to Claims, (b) enter into settlements of Causes of Action, and (c) otherwise resolve disputes, without notice or further order of the Bankruptcy Court; provided, however, that, with respect to matters involving more than \$100,000 in controversy, the Liquidation Trustee shall only be authorized to resolve such matters in accordance with Article XI of the Plan.

**R. Bonding of Liquidation Trustee**The Liquidation Trustee will not be obligated to obtain a bond but may do so, in its sole discretion, in which case the expense incurred by such bonding will be paid by the Liquidation Trust.

**S. Post-Confirmation Operating Reports**Every three months, beginning on the last business day of the third month anniversary of the Effective Date, or such other date as shall be determined by the Liquidation Trustee, the Liquidation Trustee shall file a report with the Bankruptcy Court setting forth the assets, liabilities, and activities of the Liquidation Trust during the prior three months, including a statement of all amounts paid for compensation of professionals and the Liquidation Trustee, and the Liquidation Trustee shall serve a copy upon the Post Confirmation Service List.

**T. Payment of Fees and Expenses to the Liquidation Trustee**The Liquidation Trustee may employ, without Bankruptcy Court order but only following the approval of the Liquidation Trust Committee, professional persons, as such term is used in the Bankruptcy Code, to assist the Liquidation Trustee in carrying out duties under the Plan. The Liquidation Trustee and its professionals shall be entitled to the payment of their reasonable fees and the reimbursement of their reasonable and necessary expenses incurred in carrying out the Liquidation Trustee's duties under the Plan. The Liquidation Trustee and its professionals shall be compensated pursuant to their respective terms of engagement for time spent administering the implementation of the Plan, the resolution of objections to Claims, and such other actions relating to the administration of the Liquidation Trust, without further motion, application, notice, hearing, or other order of the Bankruptcy Court; provided, however, that such fees and expenses shall be reported to the Liquidation Trust Committee who may assert questions and concerns therewith and, if those questions and concerns are not resolved, the Liquidation Trust Committee may, with unanimous consent of the Liquidation Trust Committee Members, file objections to such fees and expenses with the Bankruptcy Court.

**U. The Dissolution of the Committee**On the Effective Date, the Committee shall be dissolved and the members, employees, agents, advisors, affiliates, and representatives (including, without limitation, attorneys, financial advisors, and other Professionals) shall be released from and discharged of and from all further authority, duties, responsibilities, and obligations related to, arising from and in connection with the Chapter 11 Case.

**V. Formation of Liquidation Trust Committee** Also on the Effective Date, a Liquidation Trust Committee shall be formed. The Liquidation Trust Committee shall be comprised of three (3) members designated by the Committee at least three (3) Business Days prior to the commencement of the Confirmation Hearing. In the event of the death or resignation of any member of the Liquidation Trust Committee, the remaining members of the Liquidation Trust Committee appointed by the Committee shall have the right to designate a successor. If a Liquidation Trust Committee member assigns or releases its Claims against the Liquidation Trust or releases the Liquidation Trust of the obligation to pay its Claim, such act shall constitute a resignation from the Liquidation Trust Committee. Remaining members of the Liquidation Trust Committee shall endeavor to designate a successor within fourteen (14) days of any such death or resignation but may, in the interim, continue to function despite its reduced number.

**W. Operation of the Liquidation Trust Committee** The members of the Liquidation Trust Committee shall undertake their duties as specified in the Plan and Liquidation Trust Agreement. In serving as a member of the Liquidation Trust Committee, such members shall not assume or be deemed to have assumed any liability to any Claimant, Equity Interest Holder, the Debtor, the Liquidation Trust, the Liquidation Trustee, or any other parties-in-interest in the Chapter 11 Case, and shall not be liable for any acts or omissions while acting in that capacity, except for acts or omissions constituting gross negligence, willful misconduct, or fraud. The Liquidation Trust Committee shall have the right to retain counsel or other professionals without further order of the Bankruptcy Court, who shall be paid their reasonable fees and expenses by the Liquidation Trust. In addition, the members of the Liquidation Trust Committee shall serve without compensation, but shall be entitled to reimbursement from the Liquidation Trust of their reasonable expenses incurred in connection with their duties as members of the Liquidation Trust Committee. The Bankruptcy Court shall retain jurisdiction to hear any disputes relating to the fees and expenses of the Liquidation Trust Committee's professionals, which disputes, if any, shall be resolved by the Bankruptcy Court after notice and hearing.

**X. Rights and Duties of the Liquidation Trust Committee** The Liquidation Trust Committee is not the Litigation Oversight Committee. The Liquidation Trust Committee shall act to fulfill its duties as detailed in the Liquidation Trust Agreement and in the Plan. It shall:

1. Have the right to review and consult with the Liquidation Trustee regarding the prosecution, abandonment, settlement, or release of any objections, Claims, or Causes of Action, and otherwise with regard to the administration of the Liquidation Trust;
2. Have the right to review and consult with the Liquidation Trustee regarding any proposed sales and other dispositions of Assets belonging to the Liquidation Trust;
3. Have the right to approve or disapprove, by prior majority vote, of any action of the Liquidation Trustee affecting the Liquidation Trust or Liquidation Trust Assets in the amount of \$100,000 or greater;
4. Be vested with authority to remove the Liquidation Trustee, or any successor Liquidation Trustee, appointed pursuant to the Plan and the Liquidation Trust Agreement, and to appoint a successor Liquidation Trustee should the Liquidation Trustee be removed, resign, or become incapacitated;

**5.** Perform such additional functions as may be agreed to by the Liquidation Trustee, or that are otherwise provided for in the Plan, the Confirmation Order, or the Liquidation Trust Agreement.

**Y. Approval by the Liquidation Trust Committee** If the Liquidation Trustee cannot obtain approval of a majority of the Liquidation Trust Committee members to act under the Plan and Liquidation Trust Agreement, the Liquidation Trustee may petition the Bankruptcy Court for approval of same so long as the Chapter 11 Case remains open, and after the Chapter 11 Case is closed, the Liquidation Trustee may petition any court of competent jurisdiction for such approval. In any instance where the Liquidation Trustee petitions any court for approval of any action, such action shall be noticed on all members of the Liquidation Trust Committee and the Debtor. In any instance where the approval of an action of the Liquidation Trustee by the Liquidation Trust Committee involves a Claim or Cause of Action against a member of the Liquidation Trust Committee or any other instance where a particular member of the Liquidation Trust Committee has a conflict of interest as to a particular decision to be approved by the Liquidation Trust Committee, such member shall not be eligible to vote on such action, and in the event of any disagreement between the remaining members of the Liquidation Trust Committee resulting in a tie vote of the remaining members of the Liquidation Trust Committee, the Liquidation Trustee's decision shall control.

**Z. Establishment of Disputed Claim Reserve** The Liquidation Trustee shall establish a reserve account in which an amount of Cash is held by the Liquidation Trustee in reserve for Liquidation Trust Expenses and, in the reasonable discretion of the Liquidation Trustee, amounts that are or are expected to become due and owing by the Liquidation Trust on or following the Effective Date, including without limitation amounts that may become payable on account of Disputed Claims, and any expenses that, in the reasonable discretion of the Liquidation Trustee, are likely to become Liquidation Trust Expenses, such as (a) any litigation expenses, and reasonable legal fees related thereto, of the Liquidation Trust or Liquidation Trustee; (b) funds that the Liquidation Trust is holding as Unclaimed Property; and (c) the costs of filing tax returns and other reports that the Liquidation Trustee may be required to file.

**AA. Investments** All Cash held by the Debtor in any account or otherwise shall be invested in accordance with § 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Bankruptcy Court, and that such account shall be held for the benefit of holders of Allowed Claims and Equity Interests in the Chapter 11 Case.

**BB. Limitation on Liability of Liquidation Entities** The Liquidation Entities shall not be liable or otherwise responsible in any manner whatsoever for any act or omission of any kind or character, in any capacity, to any Claimant, Equity Interest holder, Person, party in interest, or any third party, with the sole exception for specific acts or omissions determined by Final Order to arise solely from gross negligence, willful misconduct, or fraud. The Liquidation Trustee may, in connection with the performance of its duties and in its sole and absolute discretion, consult with the Liquidation Trustee's professionals, and will not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such professionals, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, the Liquidation Trustee will not be under any obligation to consult with the Liquidation Trustee's professionals, and the determination not to consult will not

result in the imposition of liability on the Liquidation Trustee, its professionals, or any other of the Liquidation Entities.

No recourse will ever be had, directly or indirectly, against the Liquidation Trustee or the Liquidation Trust arising from or otherwise related to any legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge or note, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed or otherwise agreed or consented to, whether expressly or impliedly, by the Liquidation Trustee relating directly or indirectly to the Plan, the Liquidation Trust Agreement or by reason of the creation of any indebtedness by the Liquidation Trustee or otherwise by the Liquidation Trustee carrying out its duties or discretion under the Liquidation Trust Agreement or the Plan. All such liabilities, covenants, and agreements of the Liquidation Entities, or any of them, whether in writing or otherwise, pursuant to or in carrying out the purpose of the Plan or the Trust Agreement will be enforceable only against, and will be satisfied only out of, the Liquidation Trust Assets or such part thereof as will, under the terms of any such agreement or understanding, be liable therefore, or will be evidence only of a right of payment out of the Liquidation Trust Assets, as the case may be. Every undertaking, contract, covenant, agreement or understanding entered into in writing by the Liquidation Trustee may (but will not be necessary to invoke the full protections of these Limitations of Liabilities) provide expressly against the personal liability of the Liquidation Trustee.

**CC. Indemnification of Liquidation Entities**The Liquidation Trust shall indemnify and hold harmless the Liquidation Trustee and all other Liquidation Entities from and against and in respect to any and all liabilities, losses, damages, claims, causes of action, costs and expenses in connection with any action, suit, proceeding, or investigation brought by or threatened against such Liquidation Entities, including, but not limited to attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions, provided, however, that no such indemnification will be made for such actions or omissions of the Liquidation Trustee or any other of the Liquidation Entities solely as a result of gross negligence, willful misconduct, or fraud as determined by Final Order.

**DD. Approval of Agreements**The solicitation of votes on the Plan shall be deemed a solicitation for the approval of the Plan Documents and all transactions contemplated by the Plan. Entry of the Confirmation Order shall constitute approval of the Plan Documents, and such transactions and authorization for the Marneys and the Debtor to execute and deliver each of the Plan Documents.

**EE. Employee Benefit Plans**All employee-benefit plans, policies, and programs implemented by the Debtor and not previously terminated by the Debtor or otherwise addressed by a separate Final Order as of the Effective Date shall be terminated as of the Effective Date. Except as otherwise provided in the Plan, employee-benefit plans, policies, and programs shall include all healthcare plans, disability plans, severance-benefit plans, life, accidental-death and dismemberment-insurance plans (to the extent not executory contracts assumed under the Plan), and pension/retirement plans (including the 401(k) programs). If the termination of any such plan, policy, or program gives rise to a Claim by an employee or any other entity, such Claim shall be forever barred and shall not be enforceable against the Debtor or the Estate, or its affiliates, successors, or properties, unless a proof of Claim is Filed and served on the Debtor and

the Liquidation Trustee within thirty (30) days after the Effective Date. This time deadline shall constitute reasonable notice for all purposes for filing such a proof of claim.

**FF. Release of Liens and Perfection of Liens** Except as otherwise provided in the Plan, any Plan Document, or the Confirmation Order: (a) each holder of a Secured Claim or a judgment shall on the Effective Date (i) turn over and release to the Liquidation Trustee any and all Collateral that secures or purportedly secures such Claim and such Lien shall automatically, and without further action by any Debtor or the Liquidation Trustee, be deemed released, and (ii) execute such documents and instruments as the Debtor or the Liquidation Trustee request to evidence such Claim holder's release of such property or Lien; and (b) on the Effective Date, all right, title, and interest in any and all property of the Debtor shall vest in the Debtor free and clear of all Claims and Liens, including, without limitation, Liens, escrows, charges, pledges, encumbrances, and/or security interests of any kind. Any such holder that fails to execute and deliver such release of Liens within thirty (30) days of the Effective Date shall be deemed to have no further Claim against the Debtor or the Assets and shall not participate in any Distribution hereunder. Notwithstanding the immediately preceding sentence, any holder of a Disputed Claim shall not be required to execute and deliver such release until such time as the holder's Claim is Allowed or Disallowed.

**GG. Further Transactions** On the Effective Date, the Marneys, Liquidation Trustee, or the Debtor, as applicable, shall execute and deliver such further documents, instruments, and agreements as are necessary to effectuate and further evidence the terms and conditions of the Plan.

**HH. Entry of Final Decree** As soon as is practicable after the Effective Date, and after consultation with the Debtor, the Liquidation Trustee shall File an application with the Clerk of the Court requesting the entry of a Final Decree closing the Chapter 11 Case; *provided, however*, the Liquidation Trustee shall not file an application for Final Decree until and unless the conditions to the Plan becoming effective as set forth herein have been fully met, all pending Causes of Action have been resolved by Final Order of a court of competent jurisdiction or agreement with the Debtor, objections to Disputed Claims have been resolved by Final Order of the Bankruptcy Court or agreement with the Debtor, and the Final Distribution has been made.

**II. Section 1146 Exemption** Pursuant to § 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local government officials or agents to forego collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfer of property without the payment of any such tax or governmental assessment.

## **IX.**

### **RETENTION OF RIGHTS TO PURSUE CAUSES OF ACTION AND EFFECTUATE SETOFFS, RECOUPMENT, ETC.**

Except as otherwise ordered by the Bankruptcy Court OR AS SPECIFICALLY AND EXPLICITLY PROVIDED in the Plan, ALL Causes of Action shall be preserved by the Debtor

under the Plan. Pursuant to § 1123(b)(3) of the Bankruptcy Code, the Liquidation Trustee (as a representative of the Debtor) shall retain and have the exclusive authority and standing to prosecute, enforce, pursue, sue on, settle or compromise any and all Causes of Action (including Avoidance Actions), other than the MS Dynamics Lawsuit which shall remain in the possession of the Debtor and administered by the Litigation Oversight Committee, that belong to the Debtor and arose before the Effective Date, including all Causes of Action of a trustee and debtor-in-possession under the Bankruptcy Code, other than those expressly released or compromised as part of or pursuant to the Plan or by other order of the Bankruptcy Court entered prior to the Effective Date. The Causes of Action retained include, without limitation, all Claims and Causes of Action listed or referenced in the Disclosure Statement or Plan Document.

The Liquidation Trustee (as the Debtor's / Estate's representative) shall also retain and may prosecute and enforce all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Estate. No claim, right, Cause of Action, or other Asset shall be deemed waived or otherwise forfeited by the Debtor's failure to identify such property in the Debtor's Schedules or the Disclosure Statement accompanying the Plan. The Debtor and the Liquidation Trustee will continue to review payments made by and transactions involving the Debtor prior to the Petition Date to determine whether actions to avoid such payments and transactions should be brought. Failure to specifically identify potential actions in the Plan shall not be deemed a waiver of any such action by the Debtor or any other party.

The Litigation Oversight Committee shall retain and have the exclusive authority and standing to prosecute, enforce, pursue, sue on, settle or compromise the MS Dynamics Lawsuit and any associated ancillary proceedings or suits. The Litigation Oversight Committee shall also retain and may prosecute and enforce all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Estate in the MS Dynamics Lawsuit.

Notwithstanding anything to the contrary in the Plan, the Plan shall not be interpreted to (i) diminish, inhibit, or otherwise restrain the full and complete prosecution of the MS Dynamics Lawsuit for the benefit of holders of Claims and Equity Interests; (ii) provide substantive or procedural rights or benefits to the defendants in the MS Dynamics Lawsuit that arise from the Confirmation of the Plan; or (iii) negate or otherwise destroy any privilege possessed by the Debtor, all of which shall be extended from the Debtor to the Litigation Oversight Committee by operation of the Confirmation Order. The Plan is not intended to modify Junction Solutions' rights of recoupment, if any, against the Debtor's claims against Junction Solutions in the MS Dynamics Lawsuit.

## **X.**

### **OTHER SIGNIFICANT PLAN PROVISIONS**

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

Section 365 of the Bankruptcy Code sets out various provisions regarding executory contracts and unexpired leases. Pursuant to the Plan, all executory contracts and leases of the Debtor that were not previously assumed and assigned or rejected by the Debtor in a prior Final

Order from the Bankruptcy Court are deemed rejected, unless otherwise dealt with by the Plan, the Confirmation Order or any other Final Order entered by the Bankruptcy Court prior to the Effective Date. Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute the approval, pursuant to §§ 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the Executory Contracts and Unexpired Leases.

The Plan further provides that any Claim for damages arising from the rejection of an executory contract or unexpired lease pursuant to the Plan must be asserted in a proof of Claim filed with the Bankruptcy Court not later than thirty (30) days after the Effective Date. Any such rejection Claims not timely filed shall be released and forever barred from assertion against the Debtor or the Assets. Any other bar date previously established for the filing of Claims based on the rejection of executory contracts or unexpired leases shall not be affected by this provision.

## **B. Distributions Under the Plan**

### **1. Allowed Claims**

Distributions under the Plan will only be made to Claimants holding Allowed Claims. A Claim or Interest is "Allowed" under the Plan: (a) to the extent that it is listed in the Schedules in a liquidated, non-contingent and undisputed amount, but only if no proof of Claim or proof of Interest is filed with the Bankruptcy Court to evidence such Claim or Interest on or before the Bar Date and no objection thereto has been timely filed; (b) as evidenced by a proof of Claim or proof of Interest filed on or before the Bar Date, but only to the extent asserted in a liquidated amount, and only if no objection to the allowance of the Claim or Interest or no motion to expunge the proof of Claim or Interest has been timely filed; or (c) to the extent allowed by a Final Order of the Bankruptcy Court.

### **2. Delivery of Distributions**

The Plan provides that, Subject to Bankruptcy Rule 9010, Distributions to Holders of Allowed Claims and Allowed Equity Interests will be made by mail at (a) the address of each such Holder as set forth on the proofs of Claim filed by such Holders or in the Debtor's records; (b) the address set forth in any written notice of address change filed with the Bankruptcy Court and delivered to the Debtor and the Liquidation Trustee in writing after the date of any related proof of Claim; (c) the address reflected in the Schedules if no proof of Claim is filed and the Debtor has not received a written notice of address change; or (d) the address delivered by any Claimant to the Liquidation Trustee within sixty (60) days after the Effective Date. If any Distribution is returned as undeliverable, no further Distributions to such Holder will be made unless and until the Liquidation Trustee is notified in writing of such Claimant's then-current address within ninety (90) days of the date on which the attempted Distributions was mailed.

### **3. Unclaimed Distributions and Uncashed Checks**

In accordance with the terms of the Plan, unclaimed Distributions shall be held in the Reserve for the benefit of the potential Claimants. All claims for undeliverable Distributions must be made by the ninetieth (90th) day following the date on which delivery the Distribution was initially mailed. The Claim on which an undelivered or unclaimed Distribution was made

shall be treated as a Disputed Claim until such 90-day period has passed, and if no party contacts the Liquidating Trustee in writing to seek payment of such Claim within the 90-day period, then such Claim shall be treated as Disallowed in full by Final Order of the Bankruptcy Court. After expiration of the 90-day period, all unclaimed Distributions will revert to the Liquidation Trust for deposit into the Available Cash fund to be reallocated and distributed to the Holders of Allowed Claims and Equity Interests, and the Claim of any Holder with respect to such an unclaimed Distribution will be released and forever barred. Checks issued in respect of Allowed Claims will be null and void if not negotiated within ninety (90) days after the date of issuance thereof, and such Holder will forfeit its right to such Distribution. In no event shall any funds escheat to the State of Texas.

#### **4. Due Authorization by Claimants**

Pursuant to the Plan, every Claimant who elects to participate in the Distributions provided for herein warrants that the Claimant is authorized to accept in consideration of its Claim against the Debtor the Distributions provided for in the Plan and that there are no outstanding commitments, agreements, or understandings, express or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by the Claimant under the Plan.

#### **5. Setoffs**

Except as otherwise expressly provided in the Plan and pursuant to §§ 502(d) or 553 of the Bankruptcy Code or any applicable non-bankruptcy law, the Liquidation Trustee or the Debtor, as the case may be, may set off against any Distribution to be made pursuant to the Plan on account of an Allowed Claim any claims, rights or Causes of Action held by the Debtor against the Holder of the Allowed Claim, or in relation to the Allowed Claim; *provided, however,* that neither the failure to effect such a setoff nor the allowance of any Claim shall constitute a waiver or release by the Debtor of any such claims, rights or Causes of Action. If the Debtor fails to set off against a Claim and seek to collect from the Holder of such Claim after Distribution to that Holder pursuant to the Plan, the Debtor shall be entitled to full recovery on the claims of the Debtor or the Estate, if any, against the Holder of such Claim.

#### **6. Additional Charges**

Under the terms of the Plan, except as may be expressly provided in the Plan or allowed by Final Order of the Bankruptcy Court, no distribution shall be made to Holders of Equity Interests until the principal amount of all Allowed Claims is paid in full.

#### **7. Compliance with Tax Requirements**

In connection with the Plan, the Debtor shall comply with all withholding and reporting requirements imposed on it by any Governmental Unit, and all Distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.

## **8. *De Minimis* Distributions and Rounding**

Pursuant to the Plan, Distributions to Holders of Allowed Claims will not be made if such Distribution will result in a Distribution amount of less than \$100.00, unless a request therefore is made in writing to the Debtor. Where the calculation of a Distribution results in a fraction of a cent owing, the calculation shall be rounded down to the nearest whole cent for purposes of paying (or reserving) the Distribution.

### **C. Means for Resolving Disputed Claims**

Pursuant to the Plan, following the Effective Date, an objection to the allowance of any Claim shall be in writing and may only be filed by the Liquidation Trustee at any time on or before the Claims Objection Deadline. Any Disputed Claim as to which an objection is not filed on or before the Claims Objection Deadline shall be deemed to constitute an Allowed Claim under the Plan following the Claims Objection Deadline.

Notwithstanding the foregoing, any party in interest that otherwise would have standing to object to a Claim absent the provisions of the Plan, may, on or before the Claims Objection Deadline, file a motion with the Bankruptcy Court requesting standing to so object on the basis that an advance, written demand has been made by the movant on the Debtor prior to the Confirmation Date or to the Liquidation Trustee thereafter to object to the Claim, and that said Debtor or Liquidation Trustee has unjustifiably refused or failed to respond. Any such motion filed by the Claims Objection Deadline shall, if granted, toll the Claims Objection Deadline solely with respect to the Claim which is the subject of the motion, until and including the date which is ten (10) business days following the date of entry of the Bankruptcy Court's order on the motion.

Under the terms of the Plan, until a Contingent Claim becomes an Allowed Claim or is Disallowed, the Claim will be treated as a Disputed Claim for all purposes under the Plan. The Holder of a Contingent Claim will be entitled to a Distribution under the Plan only when the Contingent Claim becomes an Allowed Claim. Any Contingent Claim for reimbursement or contribution held by a Person that may be liable with the Debtor on a Claim of a Claimant is Disallowed as of the Effective Date if: (a) that Claimant's Claim is Disallowed; (b) the Claim for reimbursement or contribution is contingent as of the Effective Date; or (c) that Person asserts a right of subrogation to the rights of the Claimant under § 509 of the Bankruptcy Code.

Except as otherwise expressly contemplated by the Plan, following the later of the Effective Date and the applicable Bar Date, no original or amended proof of Claim may be filed in the Chapter 11 Case to assert a Claim against the Debtor or the Estate without prior authorization of the Bankruptcy Court, and any such proof of Claim that is filed without such authorization shall be deemed null, void and of no force or effect; *provided, however*, that the Holder of a Claim that has been evidenced in the Chapter 11 Case by the filing of a proof of Claim on or before the Bar Date shall be permitted to file an amended proof of Claim in relation to such Claim at any time if the sole purpose of the amendment is to reduce the amount of the Claim asserted.

From and after the Effective Date, pursuant to Bankruptcy Rule 9019(b) and § 105(a) of the Bankruptcy Code, the Liquidation Trustee shall be entitled to compromise and settle his objections to Disputed Claims, subject to the Liquidation Trustee Committee approval as follows:

- a. If the Face Amount of the Disputed Claim is less than \$100,000.00, the Liquidation Trustee will be authorized and empowered to settle its objection to such Disputed Claim and execute the necessary documents, including a stipulation of settlement or release, with no further approval of or notice to the Bankruptcy Court.
- b. If the Face Amount of the Disputed Claim is greater than \$100,000.00, and after obtaining prior approval of the Liquidation Trust Committee, the Liquidation Trustee will be authorized and empowered to settle its objection to such Disputed Claim, and execute the necessary documents, including a stipulation of settlement or release, upon fourteen (14) days' notice filed with the Bankruptcy Court. If no objection to the proposed settlement of the Disputed Claim is filed within the fourteen-day time period established by Section 11.4.2 or if any objecting party withdraws its objection to such settlement for any reason, the Liquidation Trustee may (i) enter into the proposed settlement without further notice, and without the necessity of a motion hearing or order of the Bankruptcy Court, or (ii) if any objecting party does not withdraw its objection.
- c. Forego entry into the settlement agreement that is the subject of an objection,
- d. Modify the terms of the settlement agreement in a way that results in the withdrawal of all objections, or
- e. Set the objection for hearing in the Bankruptcy Court and request permission to enter into the settlement agreement over any pending objection.

#### **D. Effects of Confirmation of the Plan; Injunction and Exculpation**

##### **1. Legally Binding Effect**

The provisions of the Plan shall bind all Holders of Claims and/or Equity Interests, and all other parties-in-interest, whether or not they accept the Plan. On and after the Effective Date, all Holders of Claims and Equity Interests shall be precluded and enjoined from asserting any Claim against the Debtor or the Assets, based on any action or inaction of any kind that occurred prior to the Confirmation Date except as permitted under the Plan.

##### **2. Vesting of Property of Debtor and the Estate Free and Clear**

Upon the Effective Date of the Plan, (a) the Assets other than the MS Dynamics Lawsuit shall be immediately deemed conveyed to the Liquidation Trust free and clear of all Liens and (b) the MS Dynamics Lawsuit shall remain property of the Post-Confirmation Debtor free and clear of all Liens.

### 3. Preservation of Avoided Transfers and Liens

As the case may be, the Post-Confirmation Debtor or the Liquidation Trustee shall retain and preserve, as Estate property, any transfers and Liens avoided with respect to property of the Estate in accordance with § 551 of the Bankruptcy Code.

### 4. Protection of Certain Parties in Interest

Provided the respective officers, directors, shareholders, members, representatives, attorneys, financial advisors, and agents of the Debtor or the Committee act or have acted in good faith, they will not be liable to any Holder of a Claim or Equity Interest, or other party with respect to any action, forbearance from action, decision, strategy, position, or exercise of discretion in connection with: (a) the ordinary course of business operations of the Debtor after the Petition Date; (b) the proposal or implementation of any of the transactions provided for or contemplated in the Plan or Plan Document; or (c) the administration of the Plan or the assets and property to be distributed pursuant to the Plan other than for fraud, willful misconduct, or gross negligence. The Debtor, the Committee, and their respective affiliates, officers, directors, shareholders, members, representatives, attorneys, financial advisors, and agents may rely on the opinions of counsel, certified public accountants, and other experts or professionals employed by the Debtor and the Committee, respectively, and such reliance will constitute evidence of good faith. In an action, suit, or proceeding by a Holder of a Claim or Equity Interest or other party in interest contesting any action by or non-action of the Debtor or the Committee (including the members thereof) or the respective representatives, attorneys, financial advisors, or agents, the successful party is entitled to recover reasonable attorneys' fees and expenses in addition to any other available remedy.

### 5. Exculpation

Neither the Debtor, the Marneys, the Debtor's professionals (including Gardere Wynne Sewell LLP and Treadstone Capital Advisors, LLC) nor the Committee, Committee members, and the Committee's professionals, including Kane Russell Coleman & Logan P.C. and Bridgepoint Consulting LLC, nor any Liquidation Entities (collectively, the "Exculpated Parties" and individually, an "Exculpated Party") shall have or incur any liability to any Holder of a Claim or Interest or any other Person or Entity for any act or omission in connection with, or arising out of, or related to, directly or indirectly, the Chapter 11 Case, including, without limitation, the planning, filing or the administration of the Chapter 11 Case, including the formulation, preparation, dissemination, approval, confirmation, administration, or consummation of the Plan, the Disclosure Statement, the solicitation of votes for or confirmation of the Plan or consummation or administration of the Plan or Distributions under the Plan, except for fraud, willful misconduct, or gross negligence. From and after the Effective Date, the Marneys, the Surviving Officers, members of the Litigation Oversight Committee, Liquidation Trustee, Liquidation Trust Committee and each of its members, and any professional hired by any of the foregoing parties all solely in their capacity as such shall be exculpated by Holders of Claims and Equity Interests from any and all Claims, Causes of Action, and other assertions of liability arising out of the discharge of the powers and duties conferred on them by the Plan, Plan Document, or any order of the Bankruptcy Court entered pursuant to and in furtherance of the

Plan or applicable law, except for actions or omissions to act arising out of fraud, gross negligence, or willful misconduct of such Persons.

## **6. Injunction**

Except as otherwise provided in the Plan or the Confirmation Order, from and after the Confirmation Date, all Holders of Claims and Equity Interests against and in the Debtor are permanently restrained and enjoined from taking any of the following actions against the (a) Assets, (b) the Surviving Officers, the Debtor, the Marneys, or the respective professionals, agents, and advisors of the Surviving Officers, the Debtor, or the Marneys, (c) the Committee, each member of the Committee, and professionals, agents, and advisors of the Committee, and (d) the Liquidation Entities (collectively, (a) through (d) above are the “**Injunction Beneficiaries**” and individually, an “**Injunction Beneficiary**”) on account of any such Claims or Equity Interests: (a) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim, or Equity Interest against the Injunction Beneficiaries, other than to enforce any right to a Distribution pursuant to the Plan or a prior order of the Bankruptcy Court approving a sale or transfer of property of the Estate; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against the Injunction Beneficiaries; (c) creating, perfecting, or enforcing any encumbrance, security interest, or Lien of any kind against the Injunction Beneficiaries; (d) asserting any right of setoff, subrogation, or recoupment of any kind against (i) any obligation due the Debtor or the Liquidation Trust, (ii) the Assets, or (iii) the Injunction Beneficiaries; (e) performing any act, in any manner, in any place whatsoever, that does not conform to or comply with, or is inconsistent with, the provisions of the Plan; and (f) assert any right to damages or compensation, Cause of Action, liability, or right against the Injunction Beneficiaries; *provided, however,* that each Holder of a Disputed Claim may continue to prosecute its proof of Claim in the Bankruptcy Court and all Holders of Claims shall be entitled to enforce their rights under the Plan, and any agreements executed or delivered pursuant to or in connection with the Plan. If allowed by the Bankruptcy Court, any Injunction Beneficiary injured by any willful violation of such injunction shall recover actual damages, including, without limitation, costs and attorneys’ and experts’ fees and disbursements and, in appropriate circumstances, may recover punitive damages. Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays imposed by the Bankruptcy Code under §§ 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date, shall remain in full force and effect with respect to the Debtor until the Effective Date.

## **7. Release**

On the Effective Date, the Exculpated Parties shall be unconditionally and are hereby deemed to be unconditionally released from any and all claims, obligations, suits, judgments, damages, losses, rights, remedies, causes of action, charges, costs, debts, indebtedness, or liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based in whole or in part on any act or omission, transaction, event or other occurrence taking place between the Petition Date and the Effective Date, which is in any way relating to the Debtor, the Chapter 11 Case, any property of the Debtor, the business or operations of the Debtor, the Plan and any Plan Supplement, or any of the transactions contemplated thereby; provided, however, that this release provision shall not be applicable to

any liability found by a court of competent jurisdiction to have resulted from fraud, willful misconduct, or gross negligence of any such party nor shall this release apply to any prepetition acts of any of the officers, directors, members or managers of any of the Debtor. The Confirmation Order shall enjoin the prosecution by any Person, Entity, or party in interest, whether directly, derivatively or otherwise, of any such claim, obligation, suit, judgment, damage, loss, right, remedy, cause of action, charge, cost, debt, indebtedness, or liability that arose or accrued during such period or was or could have been asserted against any of the Exculpated Parties, except as otherwise provided in the Plan or in the Confirmation Order. Each Exculpated Party shall have the right to independently seek enforcement of this release provision. This release provision is an integral part of the Plan and is essential to the Plan's implementation.

## **8. Plan Indemnification**

The Liquidation Trust shall indemnify and hold harmless the Surviving Officers, Liquidation Trustee, all other Liquidation Entities (including Kane Russell Coleman & Logan P.C. and Bridgepoint Consulting LLC), all members of the Litigation Oversight Committee, and the Debtor's professionals (including Gardere Wynne Sewell LLP and Treadstone Capital Advisors, LLC) (collectively, the "Plan Indemnification Parties" and individually, an "Indemnified Party") from and against and in respect to any and all liabilities, losses, damages, claims, causes of action, costs and expenses in connection with any action, suit, proceeding, or investigation brought or threatened against any Indemnified Party and related to that Indemnified Party's performance of its duties and obligations under the Plan, *provided, however*, that no such indemnification will be made for any actions or omissions of any Indemnified Party as a result of that Indemnified Party's bad faith, gross negligence, willful misconduct, or fraud as determined by a Final Order. The Liquidation Trust shall be reimbursed for any indemnification payments by the first proceeds of the Net MS Dynamics Proceeds. If no claim for indemnification from any Indemnified Party has been asserted against the Liquidation Trust at the time the Net MS Dynamics Proceeds are paid to the Liquidation Trust, the Liquidation Trust shall have no obligation to reserve any funds against any unknown or potential yet unasserted indemnification claim.

## **9. Insurance**

Confirmation and consummation of the Plan shall have no effect on insurance policies of the Debtor in which the Debtor is or was the insured party. Each insurance company is prohibited from – and the Confirmation Order shall include an injunction against – denying, refusing, altering, or delaying coverage on any basis regarding or related to the Chapter 11 Case or the Plan.

## **10. Closing of the Chapter 11 Case**

When (a) all Disputed Claims have become Allowed Claims or Disallowed Claims, (b) all Assets have been administered and liquidated, and (c) all Available Cash and Reserves have been distributed in accordance with the Plan, including that the Final Distribution has been made, the Liquidation Trustee or the Surviving Officer, as the case may be, shall ask the Bankruptcy

Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

**XI.**  
**CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVENESS OF THE**  
**PLAN**

**A. Conditions to Confirmation.**

The occurrence of the Confirmation Date is subject to satisfaction or waiver of each of the following conditions:

- a. The Bankruptcy Court shall have approved the Disclosure Statement by Final Order in form and substance acceptable to the Proponents in their sole and absolute discretion.
- b. The Bankruptcy Court shall have entered the Confirmation Order in form and substance acceptable to the Proponents in their sole and absolute discretion.

**B. Conditions to Effective Date.**

The occurrence of the Effective Date of the Plan is subject to the occurrence or waiver of each of the following conditions precedent:

- a. Either (a) the Confirmation Order has become a Final Order or (b) no stay of the Confirmation Order or motion for stay, or other motion described in Bankruptcy Rule 8002(b), of the Confirmation Order shall be in effect or pending and no other relief shall have been entered nor any facts exist that would render the doctrine of “mootness” inapplicable as a matter of law.
- b. There shall be no injunction or court order restraining consummation of the transactions provided for in the Plan.
- c. All Plan Documents, including exhibits and the Plan Supplement, shall be in form and substance reasonably acceptable to the Proponents and shall have been executed and delivered by the parties thereto, and all conditions to the effectiveness of such documents shall have been satisfied or waived as provided therein.
- d. All actions necessary to implement the Plan have been effected.

**C. Notice of Effective Date.**

On or before ten (10) Business Days after occurrence of the Effective Date, the Debtor shall mail or cause to be mailed to the Post Confirmation Service List a notice that informs such Holders of the following: (a) entry of the Confirmation Order; (b) occurrence of the Effective Date; (c) the deadline to file applications for Administrative Expense Claims (including claims for professional compensation and expense reimbursements) that arose after the Administrative

Claim Bar Date; and (d) such other matters that the Debtor deems appropriate.

## **XII.** **RETENTION OF JURISDICTION**

### **A. Retention of Jurisdiction.**

Notwithstanding entry of the Confirmation Order, or the entry of a final decree, with respect to the Chapter 11 Case, or any of them, the Bankruptcy Court shall retain jurisdiction from and after the Effective Date, to the fullest extent legally permitted, over the Chapter 11 Case, all proceedings arising under, arising in or related to the Chapter 11 Case, the Confirmation Order and the Plan including, without limitation, jurisdiction to:

- a. Determine (a) any Disputed Claims, Disputed Equity Interests and all related Claims remaining in controversy or otherwise Disputed after the Confirmation Date including rights and liabilities under contracts giving rise to such Claims, (b) the validity, extent, priority, and avoidability and nonavoidability of consensual and nonconsensual Liens and other encumbrances, (c) pre-confirmation tax liability pursuant to § 505 of the Bankruptcy Code, and (d) controversies and disputes regarding the interpretation of the Plan and documents executed in connection therewith;
- b. Allow, disallow, estimate, liquidate or determine any Claim or Equity Interest against or in the Debtor and to enter or enforce any Order requiring the filing of any such Claim or Equity Interest before a particular date;
- c. Determine / Approve all matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease of the Debtor pursuant to § 365 of the Bankruptcy Code and the Plan;
- d. Determine any request for payment of a potential Administrative Expense Claim, including compensation of parties entitled thereto, or fees and reimbursements to the Debtor;
- e. Resolve controversies and disputes regarding the interpretation and implementation of the Plan, any disputes relating to whether or not a timely and proper proof of Claim was filed or whether a Disallowed Claim or Disallowed Equity Interest should be reinstated;
- f. Implement the provisions of the Plan and enter Orders and injunctions in aid of confirmation and consummation of the Plan, including any disputes concerning the enforceability or applicability of the releases and injunctions contained herein;
- g. Issue injunctions, enter and implement other orders and take such other actions as may be necessary or appropriate to execute, interpret, implement, consummate, or enforce the terms and conditions of the Plan (including all exculpations and injunctions), any Plan Document, the Plan Supplement, or

any transaction contemplated under any of the foregoing, the Confirmation Order, or any other order of the Bankruptcy Court, or to maintain the integrity of the Plan following confirmation;

- h. Determine issues relating to the garnishment of any Distributions payable under the terms of the Plan;
- i. Modify the Plan pursuant to § 1127 of the Bankruptcy Code;
- j. Preside over and adjudicate any and all Causes of Action that arose prior to the Confirmation Date or in connection with the implementation of the Plan, whether or not pending on the Confirmation Date;
- k. Resolve disputes concerning any reserves with respect to Disputed Claims and Disputed Equity Interests or the administration thereof;
- l. Resolve any disputes concerning whether a person or entity had sufficient notice of the Chapter 11 Case, any applicable Bar Date, the hearing on the approval of the Disclosure Statement as containing adequate information, or the Confirmation Hearing for the purpose of determining whether a Claim or Equity Interest is barred hereunder or for any other purpose;
- m. Preside over and determine any and all applications, claims, pending adversary proceedings, and contested matters (including, without limitation, any adversary proceeding or other proceeding to recharacterize agreements or reclassify Claims or Equity Interests) in the Chapter 11 Case;
- n. Enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- o. Seek the issuance of such orders in aid of execution of the Plan, to the extent authorized by § 1142 of the Bankruptcy Code;
- p. Consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- q. Recover all assets of the Debtor and property of the Estate, wherever located;
- r. Resolve any dispute relating to the approval and payment of the fees and expenses of the Debtor, or the Committee, and their professionals;
- s. Resolve matters concerning state, local, and federal taxes in accordance with §§ 346, 505, and 1146 of the Bankruptcy Code;
- t. Hear any other matter not inconsistent with the Bankruptcy Code;

- u. Resolve any and all disputes or controversies relating to Distributions to be made, and/or reserves or escrows to be established, under the Plan;
- v. Enter a final decree closing the Chapter 11 Case;
- w. Enforce any injunctions granted under the Plan;
- x. Approve settlements relating to any of the above;
- y. Determine any and all motions, applications, adversary proceedings, contested or litigated matters, including Causes of Action initiated by, against, or otherwise involving the Debtor, the Surviving Officers, the Liquidation Trustee, the Liquidation Trust, or the Liquidation Trust Committee;
- z. Hear and determine all matters necessary to enforce the rights, remedies, and obligations reserved for the Debtor, the Surviving Officers, the Liquidation Trustee, Liquidation Trust, or Liquidation Trust Committee in the Plan, the Plan Documents, the Plan Supplement, the Confirmation Order, or the Liquidation Trust Agreement, including interpreting any provision of any of the foregoing; and
- aa. Enter an order concluding, closing, or terminating the Chapter 11 Case.

**B. Limitation on Jurisdiction and Authority.**

In no event shall the provisions of the Plan be deemed to confer in the Bankruptcy Court jurisdiction greater than that established by the provisions of 28 U.S.C. §§ 157 and 1334 or authority to enter final judgments beyond that provided by applicable law, including the Constitution of the United States.

**C. No New Requirements.**

The grant of jurisdiction to the Bankruptcy Court herein over a matter or issue does not mean that Bankruptcy Court approval is required for such matters or issues, nor does it otherwise affect the substantive legal requirements or the requirements in any agreement pertaining to such matters or issues.

**XIII.**  
**MISCELLANEOUS PROVISIONS**

**A. Authorization.**

The Debtor and the Liquidation Trustee, after the Effective Date, shall be authorized to perform all reasonable, necessary and authorized acts to consummate the terms and conditions of the Plan.

**B. Amendment of the Plan.**

The Proponents reserve the right, in accordance with the Bankruptcy Code, with the consent of the Committee, to amend or modify the Plan prior to the Confirmation Date. After the Effective Date, the Liquidation Trustee or the Debtor may, on order of the Bankruptcy Court, amend or modify the Plan in accordance with § 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

**C. Non-Confirmation of the Plan.**

The Proponents reserve the right to withdraw the Plan at any time prior to the Confirmation Date. If the Proponents withdraw the Plan prior to the Confirmation Date, or if the Confirmation Date or the Effective Date does not occur, then the Plan shall be deemed null and void. In such event, nothing contained in the Plan shall be deemed to constitute an admission of any liability or of the viability of any defense to liability on the part of the Debtor, the Estate, or any other Person.

**D. No Admissions.**

Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission by the Debtor with respect to any matter set forth herein, including, without limitation, liability on any Claim or the propriety of any Claim's classification.

**E. Filing of Additional Documentation.**

On or before the Effective Date, the Debtor may file with the Bankruptcy Court such agreements and other documents as may be reasonably necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**F. Governing Law.**

Except to the extent the Bankruptcy Code or the Bankruptcy Rules are applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with the laws of the State of Texas, without giving effect to the principles of conflicts of law thereof.

**G. Headings.**

Each heading preceding an article, section or paragraph of the Plan is inserted for convenience only and shall not affect interpretation or construction of the Plan.

**H. Severability.**

Should any term or provision of the Plan be determined by the Bankruptcy Court to be invalid, void or unenforceable, such determination shall in no way limit or affect the enforceability or operative effect of any other provision of the Plan. If any term or provision of the Plan is of such a character as to deny Confirmation, the Debtor reserves the right to strike

such provisions from the Plan and seek Confirmation of the Plan as modified. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the 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 the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**I. All Claims and Equity Interests.**

The Plan is intended to deal with all Claims of whatever character whether or not Disputed, contingent, or liquidated and whether or not Allowed by the Bankruptcy Court under § 502 of the Bankruptcy Code against and Equity Interests in the Debtor. However, only those Claims and Equity Interests Allowed shall be entitled to receive the treatment afforded by the Plan.

**J. Successors and Assigns.**

All of the rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person.

**K. Computation of Time.**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006 shall apply unless otherwise set forth in the Plan or determined by the Bankruptcy Court.

**L. Section 1125(e) Good-Faith Compliance.**

The Proponents and their respective representatives and professionals shall be deemed to have acted in “good faith” under § 1125(e) of the Bankruptcy Code.

**M. No Stay of Confirmation Order**

The Confirmation Order shall contain a waiver of any stay of enforcement otherwise applicable, including Bankruptcy Rules 3020(e) and 7062.

**N. Notices.**

Any notice required to be given under the Plan shall be in writing and, except for a notice of change of address, shall be considered complete on the earlier of: (a) three (3) days following the date the notice is sent by United States mail, postage prepaid, or by overnight courier service, or in the case of mailing to a non-United States address, air mail, postage prepaid, or personally delivered; (b) the date the notice is actually received by the Entities on the Post-Confirmation Service List by facsimile or computer transmission; or (c) three (3) days following the date the notice is sent to those Entities on the Post-Confirmation Service List as such Service List is adopted by the Bankruptcy Court at the hearing on confirmation of the Plan, as such list may be

amended from time-to-time by written notice from the Persons on the Post-Confirmation Service List. Unless and until otherwise directed, any pleading, notice or other document required or permitted by the Plan to be served on or delivered to the Debtor, or, if after the Effective Date, the Debtor and the U.S. Trustee, as the case may be, shall be sent by U.S. first class mail, postage prepaid, to:

Debtor:

Team Express Distributing, LLC  
c/o Michael Marney  
1116 E. Bluestem Ct.  
Andover, KS 67002

With copies to:

Marcus A. Helt  
Matthew J. Pyeatt  
Gardere Wynne Sewell LLP  
2021 McKinney Ave., Suite 1600  
Dallas, TX 75201

Committee:

Joseph M. Coleman  
John J. Kane  
Kane Russell Coleman & Logan PC  
1601 Elm Street, Suite 3700  
Dallas, TX 75201

United States Trustee:

James W. Rose, Jr.  
615 E. Houston Street, Suite 533  
San Antonio, TX 78205

**O. U.S. Trustee Fees.**

The Debtor will pay only unpaid, but accrued fees owed to the U.S. Trustee on or before the Effective Date of the Plan. After the Effective Date, the Debtor shall file with the Bankruptcy Court and serve on the U.S. Trustee quarterly financial reports in a format prescribed by the U.S. Trustee, and the Liquidation Trustee shall pay post-Effective Date quarterly fees to the U.S. Trustee until a final decree is entered or the Chapter 11 Case is converted or dismissed.

**XIV.**

**LIQUIDATION ANALYSIS, FEASIBILITY, AND RISK FACTORS**

**A. Liquidation Analysis**

The Plan provides for the liquidation of the remaining Assets of the Debtor after the Sale Transaction. The recovery to Holders of Claims against and Equity Interests in the Debtor is derived primarily from the remaining Cash, the Adjustment Escrow Amount (as defined in the APA), and the Net MS Dynamics Proceeds. Because the Debtor's sole remaining Assets are primarily cash on hand and certain Causes of Action, including the MS Dynamics Claim, a liquidation of the Debtor's Estate under chapter 7 of the Bankruptcy Code necessarily will result in less recovery to unsecured creditors than under the Plan because, under the Plan, distributions are able to be made without incurring additional administrative expenses and statutory

commissions of a chapter 7 trustee. Using the statutory fee provided in Bankruptcy Code § 326, a chapter 7 trustee would be entitled to commission of approximately 3% of all moneys disbursed or turned over in the Chapter 11 Case, plus the incurrence of attorneys' fees by a chapter 7 trustee. Such fees are anticipated to be substantial for any chapter 7 trustee and trustee counsel to familiarize themselves with the Debtor, the Estate, the procedural history, and the terms of the Plan. Attached hereto as **Exhibit C** is a Liquidation Analysis prepared by the Debtor and its professionals for use in projecting recoveries and distributions under the Plan. The Liquidation Analysis, the figures reported therein, and the methodology used to create the Liquidation Analysis are subject to the "Disclaimer" provided in this Disclosure Statement.

For these reasons, Holders of Claims against and Equity Interests in the Debtor under the Plan will be greater than they would receive under a liquidation pursuant to chapter 7 of the Bankruptcy Code.

### **B. Feasibility of the Plan**

Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor unless such liquidation is proposed in the Plan.

The Bankruptcy Court previously authorized and the Debtor consummated the sale of substantially all of the Debtor's assets to Concourse Team Express, LLC. The remaining assets of the Debtor following the Asset Sale, the deposit of the Adjustment Escrow Amount, and the prosecution of the Causes of Action will fund distributions under the Plan and the costs of administering the Liquidation Trust. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code because it provides for the liquidation of the Debtor's assets and the distribution of the proceeds of that liquidation by the Liquidation Trust to Holders of Claims against and Equity Interests in the Debtor.

### **C. Risks Associated with the Plan**

Both the confirmation and consummation of the Plan are subject to a number of risks. There are certain risks inherent in the confirmation process under the Bankruptcy Code. If certain standards set forth in the Bankruptcy Code are not met, the Bankruptcy Court will not confirm the Plan even if Holders of Claims against and Equity Interests in the Debtor vote to accept the Plan. Although the Proponents believe that the Plan meets such standards, there can be no assurance that the Bankruptcy Court will reach the same conclusion. If the Bankruptcy Court were to determine that such requirements were not met, it could require the Proponents to re-solicit acceptances, which could delay and/or jeopardize confirmation of the Plan. The Proponents believe that the solicitation of votes on the Plan will comply with section 1126(b) and that the Bankruptcy Court will confirm the Plan. The Proponents, however, can provide no assurance that modifications of the Plan will not be required to obtain confirmation of the Plan, or that such modifications will not require a re-solicitation of acceptances.

**XV.**  
**COMPARISON OF PLAN TO ALTERNATIVES**

**A. Chapter 7 Liquidation**

The most realistic alternative to the Plan is conversion of the Chapter 11 Case from a proceeding under chapter 11 of the Bankruptcy Code to a proceeding under chapter 7 of the Bankruptcy Code. A chapter 7 case, sometimes referred to as a “straight liquidation,” requires the liquidation of all of a Debtor’s assets by a chapter 7 trustee. The cash realized from liquidation is subject to distribution to creditors in accordance with section 726 of the Bankruptcy Code. Whether a bankruptcy case is one under chapter 7 or chapter 11, allowed secured claims, allowed administrative claims and allowed priority claims, unless subordinated pursuant to section 510 of the Bankruptcy Code, are entitled to be paid in cash, in full, before unsecured creditors and Equity Interests receive anything. Thus, in a chapter 7 case, the recovery, if any, to creditors holding non-priority unsecured claims will depend upon the net proceeds left in the estate after all of the Debtor’s assets have been reduced to cash and all claims of higher priority have been satisfied in full.

The Plan preserves Causes of Action and provides that the Liquidation Trustee will assert such Causes of Action, other than the MS Dynamics Lawsuit, which shall remain in the possession of the Debtor and administered by the Litigation Oversight Committee, as appropriate. If the Chapter 11 Case were converted to chapter 7, those same Causes of Action would be available for prosecution by the chapter 7 trustee as he deemed appropriate. Under either scenario, an estate representative or successor would have to expend funds to investigate Causes of Action, file Causes of Action, and litigate Causes of Action to settlement or judgment. The Proponents are unable to value the recoveries from the Causes of Action, but do not believe that their value would change much whether prosecuted by the Liquidation Trustee or a chapter 7 trustee. The Proponents believe, however, that the expense associated with a chapter 7 trustee administration, as detailed below, would be more expensive than the administration undertaken by the Liquidation Trustee.

Chapter 7 liquidation adds an additional layer of expenses. As referenced above, conversion of a bankruptcy case to chapter 7 will trigger the appointment of a chapter 7 trustee having the responsibility of liquidating a Debtor’s assets. Pursuant to sections 326 and 330 of the Bankruptcy Code, the chapter 7 trustee will be entitled to reasonable compensation in relation to the level of disbursements made to creditors, as follows: (a) up to 25% of the first \$5,000 disbursed; (b) up to 10% of the amount disbursed in excess of \$5,000 but not in excess of \$50,000; (c) up to 5% of any amount disbursed in excess of \$50,000 but not in excess of \$1,000,000; and (d) up to 3% of any amount disbursed in excess of \$1,000,000. Additionally, the chapter 7 trustee will be entitled to retain his or her own professionals to assist in the liquidation and administration of the estate. The fees and expenses of such professionals, to the extent allowed, are also entitled to priority in payment as Administrative Claims. Chapter 7 administrative costs are entitled to priority in payment over chapter 11 administrative costs. Nevertheless, chapter 11 administrative costs continue to have priority over all other non-administrative priority claims and non-priority unsecured claims in the bankruptcy case.

The Proponents are opposed to conversion of the Chapter 11 Case to chapter 7 for several reasons. First, conversion of the Chapter 11 Case will re-open the Bar Date and enable additional and otherwise time-barred Claims to be asserted. Second, the Proponents believe that conversion of the Chapter 11 Case could lead to additional layers of fees and expenses for the reasons stated in the prior paragraph. Third, conversion to chapter 7 could result in the appointment of a trustee having no experience or knowledge of the prior proceedings in the Chapter 11 Case or of the Debtor's business, its books and records and its assets. A substantial amount of time would be required in order for the chapter 7 trustee and the trustee's professionals to become familiar with the Debtor, its business operations, its assets, and pending litigation in order to wind up the Chapter 11 Case effectively.

With respect to the "best interest of creditors" test of section 1129(a)(7) of the Bankruptcy Code, the Proponents do not believe that Claimants will achieve a greater recovery under chapter 7 than under the Plan. Inasmuch as the Plan is a plan of liquidation and most hard assets have already been sold, any comparison of likely distributions to holders of Allowed Claims under the Plan to likely distributions to holders of Allowed Claims in a chapter 7 proceeding is similar, except that the Proponents contend that the Plan incorporates beneficial compromises which may not be available in a chapter 7 proceeding, and in a chapter 7 proceeding the potential for additional administrative expense and additional Claims demonstrates that the distributions under the Plan are likely to exceed, or at least be equal to, the distributions that would be made under chapter 7 of the Bankruptcy Code.

#### **B. Continuation of the Chapter 11 Case.**

Now that the sale transaction with Concourse Team Express, LLC has been approved and consummated, the Debtor has no realistic proposition for reorganization or continuation of its business. As a result, the Debtor would have difficulty sustaining the administrative expenses associated with continued bankruptcy proceedings.

#### **C. Alternative Plans**

To date, no other proposed Chapter 11 plans have been filed in the Chapter 11 Case, and the Proponents do not anticipate that any other Chapter 11 plan will be filed. If the Plan is not confirmed, the Debtor, or any other party in interest in the Chapter 11 Cases, could propose a different plan or plans. Such plans might involve either a reorganization and continuation of the Debtor's business, or an orderly liquidation of their assets, or a combination of both.

#### **D. Dismissal**

The most remote alternative possibility is dismissal of the Chapter 11 Case. If dismissal were to occur, the Debtor would no longer have the protection of the automatic stay and other applicable provisions of the Bankruptcy Code. Dismissal would force a race among Claimants to take control and dispose of the Debtor's available assets, and unsecured Claimants, on an aggregate basis, would very likely fail to realize any recovery on their Claims.

**XVI.**  
**MATERIAL UNCERTAINTIES AND RISKS**

In considering whether to vote to accept or reject the Plan, Claimants entitled to vote should consider the following risks associated with the Plan: (a) that all of the conditions to confirmation of the Plan are not satisfied or waived (as applicable); (b) that all of the conditions to the effectiveness of the Plan are not satisfied or waived (as applicable) or that such conditions are delayed by a significant period of time; (c) that estimations and projections may ultimately prove to be materially inaccurate; and (d) that the prosecution of Causes of Action does not result in significant recoveries.

There can also be no assurance that the Plan will not be modified up to and through the Confirmation Date, and the Proponents reserve the right to modify the Plan, subject to compliance with the Bankruptcy Code, in the event the modification becomes warranted or necessary in furtherance of confirmation.

**XVII.**  
**CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

**A. Introduction**

Implementation of the Plan may have federal, state and local tax consequences to the Debtor and its Estate, as well as to Claimants and Equity Interest holders of the Debtor. No tax opinion has been sought or will be obtained with respect to any tax consequences of the Plan, and the following disclosure does not constitute and is not intended to constitute either a tax opinion or tax advice to any Person.

This disclosure is provided for informational purposes only. Moreover, this disclosure summarizes only certain of the federal income tax consequences associated with the Plan's confirmation and implementation and does not attempt to comment on all such aspects. Similarly, this disclosure does not attempt to consider any facts or limitations applicable to any particular Claimant or Equity Interest holder that may modify or alter the consequences described below. This disclosure does not address state, local or foreign tax consequences or the consequences of any federal tax other than the federal income tax.

This disclosure is based upon the provisions of the Internal Revenue Code of 1986, as amended (the "**Tax Code**"), the regulations promulgated thereunder, existing judicial decisions, and administrative rulings. In light of the expansiveness of such authorities, no assurance can be given that legislative, judicial or administrative changes will not be forthcoming that would affect the accuracy of the discussion below. Any such changes could be material and could be retroactive with respect to the transactions entered into or completed prior to the enactment or promulgation thereof. Finally, the tax consequences of certain aspects of the Plan are uncertain due to a lack of applicable legal authority and may be subject to judicial or administrative interpretations that differ from the discussion below.

**CLAIMANTS AND EQUITY INTEREST HOLDERS, THEREFORE, ARE ADVISED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM AND TO THE DEBTOR OF THE TRANSACTIONS**

**CONTEMPLATED BY THE PLAN, INCLUDING FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.**

**B. Federal Income Tax Consequences to the Claimants**

In general, a holder of a Claim should recognize gain or loss equal to the amount realized under the Plan in respect to its Claim less the amount of such holder's basis in its Claim. Any gain or loss recognized in the exchange may be long-term or short-term capital gain or loss, or ordinary income or loss, depending upon the nature of the Claim and the holder, the length of time the holder held the Claim and whether the Claim was acquired at a discount. If the holder realizes a capital loss, its deduction of the loss may be subject to limitations under the Tax Code. The holder's aggregate tax basis for any Distribution received under the Plan generally will equal the amount realized. The amount realized by a holder generally will equal the sum of the Distribution the holder received less the amount (if any) allocable to Claims for interest.

**C. Tax Withholding**

The Plan provides for the Debtor and the Liquidation Trustee to comply with all tax withholding and reporting requirements validly imposed on them by any governmental authority. Accordingly, it provides that Distributions made pursuant thereto shall be subject to such withholding and reporting requirements, and authorizes the Liquidation Trustee to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including, without limitation, payment of applicable withholding taxes from a Claimant's Distribution, and conditioning a Person's Distributions upon receipt of necessary tax reporting information from a Claimant.

**D. Disclaimers**

**PERSONS CONCERNED WITH THE TAX CONSEQUENCES OF THE PLAN SHOULD CONSULT THEIR OWN ACCOUNTANTS, ATTORNEYS AND/OR ADVISORS. THE PROPONENTS MAKE THE ABOVE-NOTED DISCLOSURE OF POSSIBLE TAX CONSEQUENCES FOR THE SOLE PURPOSE OF ALERTING READERS TO TAX ISSUES THAT THEY MAY WISH TO CONSIDER. THE PROPONENTS CANNOT, AND DO NOT, REPRESENT THAT THE TAX CONSEQUENCES MENTIONED ABOVE ARE COMPLETELY ACCURATE BECAUSE, AMONG OTHER THINGS, THE TAX LAW EMBODIES MANY COMPLICATED RULES THAT MAKE IT DIFFICULT TO STATE ACCURATELY WHAT THE TAX IMPLICATIONS OF ANY ACTION MIGHT BE.**

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, THE PROPONENTS INFORM ALL RECIPIENTS OF THIS DISCLOSURE STATEMENT THAT ANY U.S. TAX INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING THE EXHIBITS HERETO) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (A) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (B)**

**PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY  
TRANSACTION OR MATTER ADDRESSED HEREIN.**

**XVIII.  
RECOMMENDATION AND CONCLUSION**

**A. Recommendation**

The Plan provides for an equitable distribution to Holders of Claims against and Equity Interests in the Debtor through an orderly liquidation of the remaining assets. The Proponents believe that any alternative to confirmation of the Plan, such as attempt by another party in interest to file a plan or conversion to chapter 7, could result in significant delays, litigation, and costs. Moreover, the Proponents believe that creditors will receive greater and earlier recoveries under the Plan than those that would be achieved under an alternative plan. The Proponents believe that the Plan complies with section 1129 of the Bankruptcy Code and is fair and equitable and in the best interests of the Debtor, the Estate and Claimants. Accordingly, the Proponents urge Holders of Claims against and Equity Interests in the Debtor receiving Ballots to vote to accept the Plan.

DATED: March 6, 2017

Respectfully submitted:

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By: /s/ Marcus A. Helt

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**ATTORNEYS FOR DEBTOR AND  
DEBTOR-IN-POSSESSION**

**EXHIBIT A**

**ORDER CONDITIONALLY APPROVING DISCLOSURE STATEMENT**

**(to be provided once entered)**

**EXHIBIT B**

**JOINT CHAPTER 11 PLAN OF LIQUIDATION  
FOR TEAM EXPRESS DISTRIBUTING, LLC**

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**In re:** §  
§  
**Team Express Distributing, LLC** § **Chapter 11**  
§  
**Debtor.** § **Case No. 15-53044**  
§  
§

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**JOINT CHAPTER 11 PLAN OF  
LIQUIDATION FOR TEAM EXPRESS DISTRIBUTING, LLC**

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Dated: December 4, 2016

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**LIST OF EXHIBITS**

- Exhibit A:** Causes of Action
- Exhibit B:** Liquidation Trust Agreement
- Exhibit C:** Litigation Governance and Cooperation Agreement
- Exhibit D:** List of Equity Interests in the Debtor
- Exhibit E** Allocation of Net MS Dynamics Proceeds Payable to Holders of Class 6 Equity Interests

## INTRODUCTION

Team Express Distributing, LLC, the debtor and debtor-in-possession (the “**Debtor**”),<sup>1</sup> in the above-captioned Chapter 11 Case, and the Committee, hereby propose the following *Joint Chapter 11 Plan of Liquidation for Team Express Distributing, LLC* pursuant to § 1121 of the Bankruptcy Code. Reference is made to the Disclosure Statement for risk factors and a summary and analysis of the Plan and certain related matters. The Debtor and the Committee are the joint proponents of the Plan within the meaning of § 1129 of the Bankruptcy Code.

This Plan constitutes a liquidating chapter 11 plan for the Debtor. The Plan provides for the Debtor’s assets to be liquidated over time and for the proceeds to be distributed by a Liquidation Trustee to Holders of Allowed Claims and Interests in accordance with the terms of the Plan and the priority of claims provisions of the Bankruptcy Code. Except as otherwise provided by order of the Bankruptcy Court, distributions will occur within thirty (30) days of the Effective Date or as soon thereafter as is practicable and at various intervals thereafter.

Subject to the restrictions on modifications set forth in § 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Section 15.2 of the Plan, as co-proponents, the Debtor and the Committee expressly reserve the right to alter, amend or modify the Plan, one or more times, before its confirmation, for the resolution of its outstanding Claims and Equity Interests.

All Holders of Claims against, and Equity Interests in, the Debtor are encouraged to read the Plan, the Disclosure Statement, and the related solicitation materials in their entirety before voting to accept or reject the Plan.

NOTWITHSTANDING ANYTHING IN THIS PLAN TO THE CONTRARY, UNLESS OTHERWISE STATED, ALL STATEMENTS IN THIS PLAN AND IN THE ACCOMPANYING DISCLOSURE STATEMENT CONCERNING THE DEBTOR’S HISTORY, THE HISTORY OF THE DEBTOR’S BUSINESS, THE PAST OR PRESENT FINANCIAL CONDITION OF THE DEBTOR, TRANSACTIONS TO WHICH THE DEBTOR WAS OR IS A PARTY, OR THE EFFECT OF CONFIRMATION OF THE PLAN ON SECURED CREDITORS, UNSECURED CREDITORS, OR HOLDERS OF EQUITY INTERESTS ARE ATTRIBUTABLE EXCLUSIVELY TO THE DEBTOR AND NOT ANY OTHER PARTY.

## ARTICLE I. DEFINITIONS

### 1.1 Definitions.

As used in the Plan, the following terms shall have the respective meanings specified below. Any term used in the Plan not defined below or herein shall be interpreted in accordance with the Rules of Construction and Interpretation set forth in the following Articles of this Plan. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine and the feminine gender shall include

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<sup>1</sup> Capitalized terms shall have the meanings ascribed to them in Article I of the Plan.

the masculine.

**“Administrative Expense Claim”** means a Claim for payment of an administrative expense of a kind specified in §§ 503(b), 507(b), and 1114(e)(2) of the Bankruptcy Code and referred to in § 507(a)(2) of the Bankruptcy Code, including, without limitation, the actual, necessary costs and expenses incurred on or after the Petition Date for preserving the Estate of the Debtor, any actual and necessary costs and expenses of operating the business of the Debtor incurred on or after the Petition Date but prior to the Effective Date, any indebtedness or obligations incurred or assumed by the Estate in connection with the conduct of the Debtor’s business on or after the Petition Date and prior to the Effective Date, any Professional Fee Claim, all fees and charges assessed against the Estate under Chapter 123, Title 28, United States Code, and any Claim granted administrative-expense priority status by Final Order.

**“Administrative Expense Claim Bar Date”** is May 26, 2016.

**“Allowance Date”** means the date on which a Claim is Allowed.

**“Allowed”** means a Claim or Equity Interest that: (a) is listed in the Schedules in a liquidated, non-contingent, and undisputed known amount, but only if no proof of Claim or proof of Equity Interest is filed with the Bankruptcy Court to evidence such Claim or Equity Interest on or before the Bar Date and no objection thereto has been timely filed; (b) is evidenced by a proof of Claim or proof of Equity Interest filed on or before the Bar Date, but only if no objection to the allowance of the Claim or Equity Interest or no motion to expunge the proof of Claim or Equity Interest has been timely filed; (c) is allowed by a Final Order; or (d) is otherwise allowed pursuant to the terms of the Plan. Notwithstanding any other provision of the Plan, the term Allowed in reference to any Claim shall not include any Claim or Equity Interest held by any Claimant or purported Equity Interest Holder against whom the Debtor or the Liquidation Trustee has asserted a Cause of Action by filing an objection or complaint/ petition with a court of competent jurisdiction. No Allowed Claim or Equity Interest shall include any penalty or any interest accrued after the Petition Date.

**“APA”** means that certain *Asset Purchase and Sale Agreement*, dated as of April 23, 2016, by and between the Debtor on the one hand, and Concourse Team Express LLC, on the other hand. A copy of the APA shall be included in the Plan Supplement.

**“Assets”** means all asset of the Estate as of the Effective Date, including “property of the estate” as described in § 541 of the Bankruptcy Code, including, without limitation, all right, title, and interest in and to all Cash, any Earn-Out Payment, and any Avoidance Action or other Causes of Action that the Debtor or its Estate may have as of the Effective Date or any time thereafter.

**“Asset Sale”** means the sale of substantially all of the Debtor’s assets to the Purchaser, which closed on May 20, 2016, pursuant to § 363 of the Bankruptcy Code and the APA.

**“Available Cash”** means all Cash held by the Debtor or the Liquidation Trustee, as the case may be, net of Reserves, including all cash held in escrow in which the Debtor owns a right, title, or interest, including the Adjustment Escrow Amount (as defined in the APA).

**“Avoidance Actions”** means any cause of action commenced, or that that may be commenced before or after the Effective Date, pursuant to §§ 510, 522, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552, or 553 of the Bankruptcy Code, including, without limitation, such actions that arise under state law for fraudulent conveyance and other similar avoidance actions other than Purchased Preferences.

**“Ballot”** means the form or forms that will be distributed along with the Disclosure Statement to Holders of Allowed Claims in Classes that are Impaired under the Plan and entitled to vote, which the Holders of Impaired Claims may use to vote to accept or reject the Plan.

**“Bankruptcy Code”** means Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*

**“Bankruptcy Court”** means the United States Bankruptcy Court for the Western District of Texas, San Antonio Division.

**“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, as amended and prescribed under section 2075, Title 28, United States Code, as applicable to the Chapter 11 Case, together with the Local Rules of the Bankruptcy Court.

**“Bar Date”** means the last date on which proofs of Claim may be timely filed against the Debtor unless otherwise extended by Final Order of the Bankruptcy Court, which is (a) April 11, 2016, for the filing of proofs of Claim by all parties other than Governmental Units, and (b) June 13, 2016, for the filing of proofs of Claims by all Governmental Units.

**“Beneficiaries”** means all individuals and entities entitled to Distributions from the Estate pursuant to the Plan.

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

**“Cash”** means Cash and cash equivalents.

**“Causes of Action”** means any action, cause of action, suit, account, controversy, agreement, promise, right to legal remedy, right to equitable remedy, right to payment, and claim, including Avoidance Actions, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or indirectly or derivatively, in law, equity or otherwise, including, without limitation: (a) any claim or right to recover damages (general, exemplary, or otherwise) relating to or based on (i) fraud, negligence, gross negligence, willful misconduct, or any tort actions, (ii) violations of federal or state securities laws, (iii) violations of applicable corporate or partnership laws, (iv) breaches of fiduciary or agency duties, (v) unjust enrichment, suit on a sworn account, accounting, quantum meruit, restitution, (vi) malpractice, (vii) breach of contract, (viii) conversion, (ix) recharacterization, (x) alter ego, aiding and abetting, conspiracy, *respondeat superior*, or other vicarious or secondary liability claims relating to all of the aforementioned claims, or (xi) any other claim of the Debtor against any party, to the extent not specifically compromised or released pursuant to the Plan, or a Final Order entered by the Bankruptcy Court after notice and

opportunity for hearing; (b) any claims of the Debtor for subordination under § 510 of the Bankruptcy Code or under other applicable laws; (c) any objection to any Disputed Claim that includes as a basis any counterclaim by the Debtor or the Estate for affirmative relief, and is pending and not resolved by Final Order as of the Effective Date, together with all liability of the Debtor or the Estate on account of such Disputed Claims; and (d) all claims and defenses asserted by the Debtor or the Liquidation Trustee, as the case may be, in a contested matter or an adversary proceeding or other civil litigation. Causes of Action also specifically include: (i) Avoidance Actions, (ii) all tort and common law claims held by the Debtor against any person, including, without limitation, the following: (a) Persons that were or are joint venturers or partners with, or controlling persons of, the Debtor, (b) Governmental Units, including taxing authorities, (c) Holders of Equity Interests; and (iii) all claims held by the Debtor whether in contract, tort, or statutory law against current or former: (a) customers, (b) Claimants, (c) officers and directors, (d) suppliers (including any person with whom the Debtor ever did business), (e) employees, (f) managers and affiliates, (g) insurers (including, without limitation, for directors and officers liability coverage, business interruption, or similar claims), and (h) professionals used by Debtor. For the avoidance of doubt, but without limitation, the Causes of Action include the causes of action against the persons listed on **Exhibit A** to the Plan.

**“Chapter 11 Case”** or **“Case”** means Debtor’s bankruptcy case commenced by the filing of a voluntary petition for relief for the Debtor on December 16, 2015, under chapter 11 of the Bankruptcy Code, and which is being administered under Case No. 15-53044 pending before the Bankruptcy Court.

**“Claim”** means any right to payment from the Debtor or the Estate, whether or not such right is reduced to judgment, liquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, known or unknown; or any right to an equitable remedy against the Debtor or the Estate for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, known or unknown or as otherwise within the definition of “claim” as set forth in § 101(5) of the Bankruptcy Code

**“Claimant”** means a Person holding a Claim against the Debtor, property of the Debtor, the Estate, or any Asset.

**“Claims Objection Deadline”** means one hundred and twenty (120) days after the Effective Date, unless such date is extended by the Bankruptcy Court upon motion filed with the Bankruptcy Court on or prior to such date.

**“Class”** means any group of substantially similar Claims or Equity Interests classified by the Plan pursuant to § 1122 of the Bankruptcy Code.

**“Class 5 General Unsecured Claim”** means a Claim against the Debtor, other than an Administrative Expense Claim, Priority Tax Claim, Secured Tax Claim, MB Financial Claim, Other Secured Claim, Other Priority Claim, or Equity Interest.

**“Clerk”** means the Clerk of the Bankruptcy Court.

“**Closing**” means consummation and effectuation of the transaction contemplated by and pursuant to the terms and conditions of the APA, as more fully described in § 3.1 of the APA, which occurred on May 20, 2016.

“**Collateral**” means any property or interest in property of the Estate that is subject to a Lien to secure the payment or performance of a Claim, which such Lien is not avoided, subject to avoidance under the Bankruptcy Code, or other applicable law or otherwise invalid under the Bankruptcy Code or applicable law.

“**Committee**” means the Official Committee of Unsecured Creditors of the Debtor, appointed in the Chapter 11 Case by the United States Trustee on January 8, 2016, as such membership may be amended.

“**Confirmation**” means the entry of the Confirmation Order on the docket in the Chapter 11 Case.

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

“**Confirmation Hearing**” means the hearing held by the Bankruptcy Court pursuant to § 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, and any amendment thereto, confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

“**Contingent Claim**” means a Claim for which the Debtor’s legal duty to pay does not come into existence until triggered by the occurrence of a future event.

“**Creditor**” shall have the meaning ascribed to it in Section 3.3.1 of the Plan.

“**Debtor**” means Team Express Distributing, LLC, a Delaware limited liability company, as debtor and Debtor-in-Possession in the Chapter 11 Case that may or may not occur.

“**Debtor-in-Possession**” means the Debtor in its capacity as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

“**Deficiency Claim**” means any portion of a Secured Claim (a) to the extent the value of the Collateral securing such Claim is less than the amount of such Claim or (b) to the extent the amount of the Claim that is secured by a right of setoff is less than the amount of such Claim, each as determined pursuant to § 506(a) of the Bankruptcy Code.

“**Disallowed**” means a Claim or Equity Interest, any portion thereof, that: (a) has been disallowed by either a Final Order or pursuant to a settlement; (b) has been withdrawn by the Holder of the Claim or Equity Interest; (c)(i) is set forth in the Schedules at zero or as contingent, disputed, or unliquidated and (ii) as to which no proof of Claim or proof of Equity Interest has

been filed or deemed filed with the Bankruptcy Court by the Bar Date or pursuant to either the Bankruptcy Code or a Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law; or (d) has not been scheduled in the Schedules and as to which no proof of Claim or Equity Interest has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, a Final Order, or the Plan.

**“Disclosure Statement”** means the Disclosure Statement with respect to the Plan filed by the Debtor with the Bankruptcy Court pursuant to § 1125 of the Bankruptcy Code, as may be amended or supplemented.

**“Disputed Claim”** means the portion (including, when appropriate, the whole) of a Claim that is not an Allowed Claim as to which: (a) a proof of Claim has been filed or deemed filed under applicable law or Order of the Bankruptcy Court; (b) an objection has been filed; and (c) such objection has not been (i) withdrawn, (ii) overruled or denied in whole or in part pursuant to a Final Order, or (iii) granted in whole or in part pursuant to a Final Order. Before the Claim Objection Deadline, a Claim shall be considered a Disputed Claim: (a) if the amount or classification of the Claim specified in the proof of Claim exceeds the amount or classification of any corresponding Claim scheduled by the Debtor in its Schedules, to the extent of such excess; (b) in its entirety, if any corresponding Claim scheduled by the Debtor has been scheduled as disputed, contingent, or unliquidated in its Schedules; (c) in its entirety, if no corresponding Claim has been scheduled by the Debtor in its Schedules; or (d) such Claim is otherwise objectionable.

**“Disputed Claim Reserve”** means the amount of Cash held by the Liquidation Trustee following the Effective Date in reserve for Liquidation Trust Expenses and, in the reasonable discretion of the Liquidation Trustee, amounts that are or are expected to become due and owing by the Liquidation Trust on or following the Effective Date, including, without limitation, amounts that may become payable on account of Disputed Claims, and any expenses that, in the reasonable discretion of the Liquidation Trustee, are likely to become Liquidation Trust Expenses, such as (a) any litigation expenses, and reasonable legal fees related thereto, of the Liquidation Trust or the Liquidation Trustee; (b) funds that the Liquidation Trust is holding as Unclaimed Property; and (c) the costs of filing tax returns and other reports that the Liquidation Trustee or the Debtor may be required to file.

**“Distribution”** means the property distributed to the Holders of Allowed Claims or Equity Interests in accordance with the Plan, Confirmation Order, and Bankruptcy Code.

**“Distribution Date”** means as to all Claims and Equity Interests, the date that is within thirty (30) days after the dates on which the Liquidation Trustee determines, in his sole and absolute discretion, that sufficient Available Cash exists to (a) pay, in whole or in part, Allowed Claims of the highest priority of previously unpaid Claims and Allowed Equity Interests; (b) pay expenses applicable to the Liquidation Trust; and (c) deposit sufficient funds in the Reserves. The Distribution Date shall be on or after the Effective Date. The Effective Date and the Final Distribution Date are each considered a Distribution Date.

**“Earn-Out Payment”** means the Earn-Out Payment due and owing to the Estate by

Concourse Team Express, LLC and its successors and assigns pursuant to Section 2.3 of the APA, which, including all rights thereto, shall be assigned by the Liquidation Trust to the Debtor after the principal amount of the Claims in Classes 1 through 5 have been paid in full pursuant to Section 6.5.2.

**“Effective Date”** means the first Business Day date on which the conditions to the Effective Date identified in Article 13 of the Plan have been satisfied or waived and, as set forth in Sections 13.1 and 13.2 of the Plan, is the date on which the Plan becomes effective.

**“Entity”** means an entity as such term is defined in § 101(15) of the Bankruptcy Code.

**“Equity/Creditor MS Dynamics Settlement”** means the settlement regarding administration of the MS Dynamics Lawsuit and Allocation of MS Dynamics Lawsuit Proceeds described in Section 3.3, defined in Section 3.3.2 of the Plan, and approved by the Confirmation Order.

**“Equity Interest”** means any ownership interest in the Debtor represented by shares of stock, or membership or partnership interest in the Debtor, including, to the extent provided by applicable law, any warrant, option, or other security to acquire any of the foregoing in the Debtor, as set forth on **Exhibit D** to the Plan.

**“Estate”** means the bankruptcy estate created on the filing of the Chapter 11 Case pursuant to § 541 of the Bankruptcy Code, together with all rights, claims and interests appertaining thereto.

**“Exculpated Parties”** means the Exculpated Parties as defined in Section 12.5 of the Plan.

**“Face Amount”** means (i) as to a Disputed Claim, the full stated amount claimed by the Holder of such Claim in any proof of Claim timely filed, or deemed timely filed, with the Bankruptcy Court, and (ii) as to an Allowed Claim, the full stated amount of such Claim claimed by the Holder of such Claim in any proof of Claim timely filed, or deemed timely filed, with the Bankruptcy Court or the amount reflected in a Final Order or in the Schedules, as amended, if such claimant was not required to file a proof of Claim by reason of the Bankruptcy Rules, or in an amount agreed to by the Holder of such Claim and the Debtor.

**“Final Distribution”** means a Distribution made under the Plan, which represents the only or last Distribution to be made to a particular Class of Claimants.

**“Final Distribution Date”** means the date on which the Debtor makes the Final Distribution.

**“Final Order”** means an order or judgment under 28 U.S.C. § 158(a)(1) of the Bankruptcy Court or other court having jurisdiction over any matter that (a) has not been reversed, stayed, or vacated, (b) the time to appeal, petition for certiorari, or move for a new trial, re-argument, or rehearing has expired, and no such action has occurred, or (c) if a timely appeal is filed, upon completion of the appellate process either through the expiration of an initial

deadline for invoking further appellate jurisdiction or, if in the United States Supreme Court, through the issuance of that Court's final decision; *provided, however*, no order shall fail to be a Final Order because of the possibility that a motion pursuant to Rules 59 or 60 of the Federal Rules of Civil Procedure (and Bankruptcy Rules 9023 and 9024, respectively) may be filed to that order.

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

**“Holder”** means any Entity holding a Claim or an 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 § 1124 of the Bankruptcy Code.

**“Injunction Beneficiaries”** means the Injunction Beneficiaries as defined in Section 12.6 of the Plan.

**“Junction Solutions”** means that certain defendant Junction Solutions, Inc. and any culpable affiliate, successor, or assign identified by the Debtor in the MS Dynamics Lawsuit.

**“Lien”** means a charge against or interest in property to secure payment of a debt or performance of an obligation, including, but not limited to, a mortgage, deed-of-trust lien, security interest, judicial lien, judgment lien, pledge, encumbrance, or writ of attachment.

**“Litigation Oversight Committee”** means the Litigation Oversight Committee established on the Effective Date pursuant to this Plan. The Litigation Oversight Committee will consist of the following three (3) members: \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. The Litigation Oversight Committee will be responsible for prosecution of the MS Dynamics Lawsuit. For the avoidance of doubt, other than prosecution of the MS Dynamics Lawsuit, the Surviving Officers have sole responsibility and authority over the Debtor after the Effective Date.

**“Liquidation Entities”** means the Liquidation Trust, Liquidation Trustee, the Liquidation Trustee's affiliates (as defined in § 101(2) of the Bankruptcy Code), the Liquidation Trust Committee, the Liquidation Trust Committee Members, and all of their respective representatives, agents, professionals, employees, successors, or assigns.

**“Liquidation Trust”** means the Liquidation Trust established on the Effective Date pursuant to this Plan. The Liquidation Trust shall consist of the Liquidation Trustee and Liquidation Trust Committee, and shall be conveyed, as of the Effective Date, all Assets of the Debtor except the MS Dynamics Lawsuit. The Liquidation Trust shall not include, nor shall it oversee in any way, the prosecution of the MS Dynamics Lawsuit.

**“Liquidation Trust Agreement”** means the Liquidation Trust Agreement approved by the Bankruptcy Court and effective on the Effective Date. The Liquidation Trust Agreement shall enumerate the duties and obligations of the Liquidation Trustee and Liquidation Trust Committee.

**“Liquidation Trust Assets”** mean all Assets of the Debtor except the MS Dynamics Claim, MS Dynamics Lawsuit, or the MS Dynamics Lawsuit Proceeds. The Liquidation Trust Assets shall be conveyed through the Confirmation Order by the Debtor to the Liquidation Trust on the Effective Date. For the avoidance of doubt, notwithstanding anything in the Plan or Plan-related documents to the contrary, Liquidation Trust Assets shall not include the MS Dynamics Lawsuit, but it shall include the Net MS Dynamics Lawsuit Proceeds payable to the Creditors, as that term is used in Section 3.3 of this Plan.

**“Liquidation Trustee”** means Bridgepoint Consulting, LLC, in its capacity as trustee of the Liquidation Trust. Entry of the Confirmation Order shall constitute the approval of Liquidation Trustee as a professional person pursuant to the applicable provisions of the Bankruptcy Code. The Liquidation Trustee shall conduct the final liquidation of the Liquidation Trust Assets and cause the distribution of the Estate to holders of Allowed Class 5 General Unsecured Claims in accordance with the terms and conditions of this Plan and the Liquidation Trust Agreement.

**“Liquidation Trust Expenses”** means the actual and anticipated reasonable ordinary costs and expenses of the Liquidation Trustee in performing its duties as set forth in this Plan, the Liquidation Trust Agreement, and the Confirmation Order, including (a) the compensation to the Liquidation Trustee for services rendered, (b) payment of or reimbursement of the Liquidation Trustee for any and all costs, expenses (including fees and expenses of the Liquidation Trustee's respective professionals and any quarterly fees owed to the U.S. Trustee), and all liabilities incurred by the Liquidation Trustee in connection with the performance of its duties, and (c) payment or reimbursement of expenses of the Liquidation Trust Committee, to the extent provided for in the Plan.

**“Litigation Governance and Cooperation Agreement”** means that certain Litigation Governance and Cooperation Agreement that shall govern the rights and obligations of the Litigation Oversight Committee and the Marneys, and their respective professionals, attorneys, accountants. A copy of the Litigation Governance and Cooperation Agreement shall be included in the Plan Supplement and is referenced in Section 3.3.3 of the Plan.

**“Marneys”** means Mike Marney and Mark Marney.

**“MB Financial”** means MB Financial Bank, NA.

**“MB Financial Claim”** means the Claim asserted by MB Financial Bank, NA.

**“MB Financial Settlement”** means the settlement with MB Financial described in Section 3.2 of the Plan and approved by the Confirmation Order.

**“McKool Retention Agreement”** means that certain Retention Agreement between McKool Smith and the Debtor that was approved by the Bankruptcy Court on February 17, 2016, by entry of the McKool Smith Employment Order.

**“McKool Smith”** means McKool Smith A Professional Corporation, special counsel to the Debtor pursuant to the McKool Smith Employment Order.

**“McKool Smith Fee”** means the fee paid to McKool Smith as defined in the McKool Retention Agreement.

**“McKool Smith Employment Order”** means the *Order Granting Application to Employ McKool Smith, PC as Special Counsel for the Debtor as of the Petition Date* [Docket No. 148].

**“Microsoft”** means Microsoft Corporation, a defendant in the MS Dynamics Lawsuit, and any culpable affiliate, successor, or assign identified by the Debtor in the MS Dynamics Lawsuit.

**“MS Dynamics Claim”** means the claims, causes of action, counterclaims, defenses, privileges, evidentiary protections, and other protections of the Debtor against Microsoft, Junction Solutions, or any other Person in or otherwise related directly or indirectly to the subject matter or damages alluded to or asserted in the MS Dynamics Lawsuit, and as more fully described in § 1.2(d) of the APA.

**“MS Dynamics Lawsuit”** means that certain Civil Action No: 5:15-cv-00994-DAE, *Team Express Distributing, LLC, Plaintiff, v. Junction Solutions, Inc. and Microsoft Corp., Defendants*, pending in the United States District Court for the Western District of Texas, San Antonio Division and its progeny.

**“MS Dynamics Lawsuit Proceeds”** means proceeds of and any rights and related directly or indirectly to any judgment entered in favor of the Debtor and any settlement payable to the Debtor, in the MS Dynamics Lawsuit, and all proceeds of insurance policies of the Debtor related to the MS Dynamics Lawsuit, and as more fully defined in § 1.2(d) of the APA.

**“MS Dynamics Litigation Expenses”** means (a) “Litigation Expenses” as defined in the McKool Retention Agreement and (b) the reasonable reimbursable expenses incurred by a member of the Litigation Oversight Committee in accordance with the Plan.

**“Net MS Dynamics Proceeds”** means the MS Dynamics Lawsuit Proceeds after payment of the (a) MS Dynamics Litigation Expenses and (b) the McKool Smith Fee.

**“Order”** Any order, mandate, precept, command, or direction formally given or entered by court of competent jurisdiction.

**“Other Priority Claim”** means any Claim against the Debtor, other than an Administrative Expense Claim or Priority Tax Claim, entitled to priority in payment under § 507(a) of the Bankruptcy Code.

**“Other Secured Claim”** means any Secured Claim other than a Secured Tax Claim and the MB Financial Claim.

**“Penalty Claim”** means any Claim, secured or unsecured, priority or non-priority, arising before the Petition Date, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, to the extent that such fine, penalty, forfeiture, or damages are not

compensation for actual pecuniary loss suffered by the Claimant.

**“Person”** means as identified in § 101(41) of the Bankruptcy Code and includes an individual, corporation, partnership, joint venture, association, limited liability company, limited liability partnership, trust, estate, unincorporated organization, governmental entity or political subdivision thereof, or any other entity.

**“Petition Date”** means December 16, 2015, the date on which the Debtor filed its voluntary chapter 11 petition commencing the Chapter 11 Case.

**“Plan”** means this Joint Chapter 11 Plan of Liquidation for Team Express Distributing, LLC, as it may be amended or modified.

**“Plan Document”** means the documents to be executed, delivered, assumed, and/or performed in conjunction with the consummation of the Plan on the Effective Date.

**“Plan Supplement”** means the documents, including the Liquidation Trust Agreement and the Litigation Governance and Cooperation Agreement, that shall be contained in a separate submission filed with the Clerk of the Bankruptcy Court at least seven (7) days prior to the date on which the Confirmation Hearing shall commence or such shorter period as ordered by the Bankruptcy Court. The Plan Supplement may be reviewed via the Bankruptcy Court’s ECF docket for this Chapter 11 Case, via [www.upshotservices.com/teamexpress](http://www.upshotservices.com/teamexpress), or requested in writing from the Debtor’s counsel.

**“Post-Confirmation Service List”** means a list of parties-in-interest to whom post-confirmation service of process shall be provided. The Post-Confirmation Service List shall be limited, and shall consist of only (a) the Debtor, (b) the Marneys, (c) the Liquidation Trustee, (d) members of the Litigation Oversight Committee, (e) the United States Trustee, (f) any party who after entry of the Confirmation Order file a request for such notice with the Clerk, and (g) counsels/attorneys of records of the parties identified in (a) – (f).

**“Priority Tax Claim”** means a Claim of a Governmental Unit entitled to priority in payment as specified in §§ 502(i) and 507(a)(8) of the Bankruptcy Code, but excluding any portion of such Claim that is a Secured Tax Claim.

**“Professional Fee Claim”** means an Administrative Expense Claim under §§ 330(a), 331, or 503 of the Bankruptcy Code for compensation of a professional or other Person for services rendered or expenses incurred in the Chapter 11 Case on or prior to the Effective Date under §§ 327, 328, or 1103 of the Bankruptcy Code.

**“Proof of Claim”** or **“Proof of Interest”** means a proof of claim or proof of interest, as the case may be, filed with the Bankruptcy Court with respect to the Debtor pursuant to § 501 of the Bankruptcy Code and Bankruptcy Rules 3001, 3002, or 3003 in accordance with the various orders of the Bankruptcy Court.

**“Proponents”** means the Debtor and the Committee.

**“Pro Rata”** means the proportion that the dollar amount of an Allowed Claim in a Class bears to the aggregate amount of all Allowed Claims in such Class or if distribution is to multiple Classes of equal priority, the aggregate amount of all Allowed Claims in such Classes.

**“Purchased Preferences”** means all preferential-transfer actions, claims, and causes of action under § 547 of the Bankruptcy Code purchased by and conveyed to Concourse Team Express LLC pursuant to paragraph 18 of the Sale Order.

**“Reserves”** means the Disputed Claim Reserve and any funds held therein.

**“Sale Order”** means the *Order Approving Motion for Order Approving/Authorizing (i) Sale of Substantially All of the Estate’s Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests and (ii) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection With the Sale* entered on May 9, 2016 [Docket No. 227].

**“Schedules”** means the Schedules of Assets and Liabilities and the Statements of Financial Affairs filed by or on behalf the Debtor in the Chapter 11 Case pursuant to § 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as they have been or may hereafter be amended, modified or supplemented.

**“Secured Claim”** means a Claim, if any, that is (a) secured by a valid, perfected and enforceable Lien under applicable state law or by reason of a Final Order on property in which the Debtor’s Estate has an interest to the extent of the value of such property, or (b) subject to a permissible setoff under § 553 of the Bankruptcy Code, to the extent of such permissible setoff, in each case, as determined in accordance with § 506(a) of the Bankruptcy Code or as otherwise agreed upon in writing by the Debtor and the Holder of such Claim.

**“Secured Tax Claim”** means a Claim of a Governmental Unit for the payment of *ad valorem* taxes that is secured by property of the Debtor or the Estate.

**“Surviving Officers”** means Mark Marney and Mike Marney.

**“Unclaimed Property”** means any funds payable to holders of Claims that are unclaimed. Unclaimed Property shall include (a) checks (and the funds represented thereby) that have been returned as undeliverable without a proper forwarding address, (b) funds for checks that have not been presented and paid within ninety (90) days of their issuance, (c) checks (and the funds represented thereby) that were not mailed or delivered because of the absence of a proper address to mail or deliver such property and (d) checks (and the funds represented thereby) that are not mailed due to a lack of required tax identification information, but only following two mailed requests to the address of record of the prospective recipient for such tax identification information.

**“Unimpaired”** A Claim or Equity Interest that is not Impaired.

**“Unsecured Claim”** means any Claim that is not an Administrative Expense, Priority Tax Claim, Priority Claim, or Secured Claim, including (a) any Claim arising from the rejection

of an Executory Contract or Unexpired Lease under § 365 of the Bankruptcy Code and (b) any portion of a Claim to the extent the value of the holder's interest in the Estate's interest in the Property securing such Claim is less than the amount of the Claim, or to the extent that the amount of the Claim subject to setoff is less than the amount of the Claim, as determined pursuant to § 506(a) of the Bankruptcy Code.

All terms not expressly defined herein shall have the respective meanings given to such terms in § 101 of the Bankruptcy Code or as otherwise defined in applicable provisions of the Bankruptcy Code. The rules of construction set forth in § 102 of the Bankruptcy Code shall apply. Further, in computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

Unless otherwise specified herein, any reference to an individual or Entity as a Holder of a Claim or Equity Interest includes that individual's or Entity's successors, assigns and affiliates.

## **ARTICLE II. RULES OF CONSTRUCTION AND INTERPRETATION**

The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Plan as a whole and not to any particular article, section, subsection or clause contained in this Plan, unless the context requires otherwise. Whenever from the context it appears appropriate, each term stated in either the singular or the plural includes the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender include the masculine, feminine and the neuter. Captions, articles, and section headings in the Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan. Any phrase containing the term "include" or "including" means including without limitation without the necessity of repeating same in each instance. The rules set forth in § 102 of the Bankruptcy Code shall apply in the construction of the Plan to the extent that such rules are not inconsistent with any other provision of this Article of the Plan.

A capitalized term used in this Plan and not defined herein but that is defined in the Bankruptcy Code has the meaning assigned to the term in the Bankruptcy Code. A capitalized term used in this Plan and not defined herein or in the Bankruptcy Code but is defined in the Bankruptcy Rules has the meaning assigned to the term in the Bankruptcy Rules.

## **ARTICLE III. COMPROMISES AND SETTLEMENTS OF DISPUTES**

**3.1 Settlement Authority – Pre-Confirmation Compromises.** Pursuant to Bankruptcy Rule 9019(b), the Proponents may compromise and settle various Claims against the Debtor and Claims that the Debtor may have against any Person. The Confirmation Order shall authorize, and constitute Bankruptcy Court approval of, the compromises and settlements set forth in this Plan pursuant to Bankruptcy Rule 9019(b) and § 1123(b)(3) of the Bankruptcy Code. The Proponents reserve the right to modify the Plan to the extent any compromise and settlement described in this Plan is not approved by the Bankruptcy Court, in whole or in part.

**3.2 MB Financial Settlement.** Prior to confirmation of this Plan, MB Financial

asserted a claim against the Estate in an amount equal to at least \$6,117,246.52 that, according to MB Financial, was secured by substantially all of the Debtor's business assets. During this Chapter 11 Case, the Debtor made payments to MB Financial, decreasing its asserted claim against the Estate. Pursuant to the APA and Sale Order, certain assets that were subject to MB Financial's liens were sold to Concourse Team Express, LLC. At Closing, MB Financial received \$5,728,245.75. Thereafter, MB Financial expressed its intent to assert a claim against the Estate for certain expenses and interest in an approximate collective amount of at least \$90,000.00. MB Financial has asserted that its post-sale claim against the Estate remains secured by the Cash.

The Proponents (a) dispute the validity, priority, and extent of MB Financial's asserted lien and security interest in Estate assets and (b) contest MB Financial's right to and amount of costs and expenses to which MB Financial now claims it is entitled. For some time, MB Financial and the Proponents have been involved in existing and potential litigation related to their respective positions. The Proponents are confident in the Estate's position against MB Financial, and MB Financial has expressed confidence in its position. After good-faith, arms-length negotiations, to avoid the expense, inconvenience, delay, and uncertainty of further prosecuting, disputing, or pursuing the claims by and against MB Financial and the Estate, MB Financial and the Estate have agreed to fully and completely resolve their respective disputes and claims. A settlement agreement will be executed by the Estate, MB Financial, and the Committee to memorialize the MB Financial Settlement described herein. Significant terms of that compromise and settlement are as follows:

- 3.2.1** On the Effective Date, MB Financial shall have an Allowed Class 2 Claim that shall be deemed paid in full and final satisfaction upon payment of reimbursable costs and expenses not to exceed the Expense Cap of the Indemnification Reserve as those terms are defined under the Stipulated Fifth and Final Order Regarding Cash Collateral and Granting Adequate Protection and Related Relief [Docket No. 289].
- 3.2.2** On the Effective Date, MB Financial will (i) release all Liens against Estate assets, and (ii) release all Claims against the Debtor, the Estate, the Committee, and the Marneys.
- 3.2.3** MB Financial will cooperate with the Debtor, the Estate, the Committee, and the Marneys to execute any documents or agreements necessary to effectuate this settlement.
- 3.2.4** The Debtor, the Estate, and the Committee, and each holder of a Claim that does not vote to reject the Plan shall be deemed, as of the Effective Date, to forever release, acquit and discharge MB Financial and its affiliates, subsidiaries, parents, predecessors, successors, assigns, officers,

directors, shareholders, employees, agents, and attorneys, (the “**MB Financial Release**”) of and from any claims, actions, demands and/or causes of action, asserted or unasserted, specifically including, without limitation, any claims asserted or that could have been asserted in the Chapter 11 Case, or arising out of or in any way related to the negotiation, formulation, or preparation of the Plan or the Chapter 11 Case, as well as claims arising under any circumstance known and existing as of the date and time of execution hereof, save and except for the obligations specifically outlined under the Plan, and any claims and/or causes of action, that are or may be related to any breach, enforcement, or interpretation of the Plan or the obligations of the Parties thereunder.

The Proponents believe that the terms of the MB Financial Settlement are fair and equitable and in the best interests of the Estate. As a result, the MB Financial Settlement should be approved by the Bankruptcy Court in the Confirmation Order pursuant to Bankruptcy Rule 9019(b).

**3.3 Equity / Creditor MS Dynamics Settlement.** For some time, the Committee and Holders of a super-majority of the Equity Interests, and their respective counsel, have discussed and negotiated how to distribute the Net MS Dynamics Proceeds. After good-faith, arms-length, and through negotiations, to avoid the expense, inconvenience, delay, and uncertainty of litigation related thereto, the Committee and Holders of a super-majority of the Equity Interests have agreed to fully and completely resolve the following: (a) how to divide and distribute any Net MS Dynamics Proceeds; and (b) how to administer the MS Dynamics Lawsuit in a manner most likely to result in a favorable recovery that is beneficial to Holders of Allowed Claims and Equity Interests.

**3.3.1 Allocation of the Net MS Dynamics Proceeds.** The Net MS Dynamics Proceeds shall be allocated as follows: (a) the first \$100,000 will be paid to the Liquidation Trust for distribution to Holders of Allowed Class 1 through Class 5 Claims (the “**Creditors**”) pursuant to the Plan and the Liquidation Trust Agreement; (b) the next \$2,000,000.00 will be split/paid equally (50%-50%) between the Liquidation Trust for distribution pursuant to the Plan and the Liquidation Trust Agreement and the Debtor for distribution to Holders of Allowed Equity Interests; (c) the next \$8,500,000.00 will be paid to Liquidation Trust for distribution to the Creditors pursuant to the Plan and the Liquidation Trust Agreement; (d) the next \$2,000,000.00 will be paid to the Debtor for distribution to Holders of Allowed Equity Interests; and (e) the remaining Net MS Dynamics Proceeds will be split (i) 40% to the Liquidation Trust for distribution to the Creditors pursuant to the Plan and the Liquidation Trust Agreement until the principal amount of Claims in Classes 1 through 5 are paid in full and (ii) 60% to the Debtor for distribution to Holders of Allowed Equity Interests (Class 6); and (f) after payment in full of principal to the Holders of Allowed Claims in Classes 1 through 5 by the Liquidation Trust, the remaining Net MS Dynamics Proceeds will be paid to the Debtor for

distribution to Holders of Allowed Equity Interests (hereinafter, the “**Allocation of the Net MS Dynamics Proceeds**”).

**3.3.2 Litigation Governance and Cooperation Agreement.** The Litigation Governance and Cooperation Agreement shall govern the prosecution and resolution of the MS Dynamics Lawsuit. On the Effective Date, and in accordance with the Litigation Governance and Cooperation Agreement, the Debtor shall form or cause to be formed the Litigation Oversight Committee. The Litigation Oversight Committee shall retain and have the exclusive authority and standing to prosecute, enforce, pursue, sue on, settle or compromise the MS Dynamics Lawsuit and any associated ancillary proceedings or suits. The Litigation Oversight Committee shall be the “Client Contact” for McKool Smith’s prosecution of the MS Dynamics Lawsuit. The Litigation Oversight Committee shall also have full authority relating to the enforcement of all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Estate in the MS Dynamics Lawsuit. Collectively, the Allocation of the Net MS Dynamics Proceeds and the Litigation Governance and Cooperation Agreement shall be referred to as the “**Equity/Creditor MS Dynamics Settlement.**”

The Proponents believe that the terms of the Equity / Creditor MS Dynamics Lawsuit and Allocation of MS Dynamics Settlement are fair and equitable and in the best interests of the Estate and its Claimants and Equity Interest Holders. As a result, the Equity / Creditor MS Dynamics Settlement, including the Litigation Governance and Cooperation Agreement’s terms, should be approved by the Bankruptcy Court in the Confirmation Order pursuant to Bankruptcy Rule 9019(b).

**ARTICLE IV.  
DESIGNATION OF CLAIMS AND EQUITY INTERESTS**

**4.1 Summary.** In accordance with § 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified and are excluded from the Classes. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest (a) qualifies within the description of that Class, (b) is an Allowed Claim or Allowed Equity Interest in that Class, and (c) has not been paid, released or otherwise satisfied before the Effective Date. A proof of Claim asserting a Claim that could be included properly in more than one Class is only entitled to inclusion within a particular Class to the extent that it qualifies under the description of such Class, and shall be included within a different Class(es) to the extent that it qualifies under the description of such different Class(es).

**4.2 Classification of Claims and Equity Interests.** The following table is a summary of the classification and status of Claims and Equity Interests under the Plan:

Class	Status
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Class 1: Secured Tax Claims	Unimpaired – deemed to have accepted the Plan
Class 2: MB Financial Claim	Impaired – entitled to vote
Class 3: Other Secured Claims	Unimpaired – deemed to have accepted the Plan
Class 4: Other Priority Claims	Unimpaired – deemed to have accepted the Plan
Class 5: General Unsecured Claims	Impaired – entitled to vote
Class 6: Equity Interests	Impaired – entitled to vote

**4.3 Controversy Concerning Classification, Impairment or Voting Rights.** If a controversy or dispute should arise involving issues related to the classification, impairment or voting rights with respect to any Claim or Equity Interest, whether before or after the Confirmation Date, the Bankruptcy Court may, after notice and a hearing, determine such controversy. Without limiting the foregoing, the Bankruptcy Court may estimate for voting purposes the amount of any contingent or unliquidated Claim if the fixing or liquidation of, as the case may be, would unduly delay the administration of the Chapter 11 Case.

**4.4 Nonconsensual Confirmation.** If any Class of Claims is determined to be Impaired by the Bankruptcy Court, and if such Impaired Class of Claims votes not to accept the Plan by the requisite statutory majority required by § 1126(c) of the Bankruptcy Code, the Proponents reserve the right to: (a) reclassify any Claim, including reclassifying any Impaired Claim as Unimpaired; (b) amend the Plan; or (c) ask the Bankruptcy Court to confirm the Plan under § 1129(b) of the Bankruptcy Code.

**ARTICLE V.  
TREATMENT OF UNCLASSIFIED CLAIMS**

**5.1 Administrative Expense Claims.**

**5.1.1 Time for Filing Administrative Expense Claims.** Except as otherwise provided in this Plan or by Order of the Bankruptcy Court, all requests for payment of Administrative Expense Claims (other than Professional Fee Claims) incurred, accrued, or in existence prior to May 26, 2016, must have been filed by the Administrative Expense Claim Bar Date. Any such Administrative Expense Claim for which an application or request was not filed by the Administrative Claim Bar Date is released and

forever barred, and shall not be entitled to any Distribution of any kind or character under this Plan. For any Administrative Expense Claim (other than Professional Fee Claims) incurred, accrued, or arising or otherwise coming into existence after May 26, 2016, an application or request for payment must be filed in the Bankruptcy Court within fifteen (15) days after the Effective Date. The Plan shall constitute adequate and proper notice of such deadline. Such an application or request for such Administrative Expense Claim must include, at a minimum, (a) the name of the Holder of the Claim, (b) the amount of the Claim, (c) the basis for the Claim, (d) a detailed statement as to why such Claim is not subject to the Administrative Expense Claim Bar Date, and (e) all documents supporting such Claim. Failure to timely file and serve the Designated Notice required by this Plan on the Debtor, the Liquidation Trustee, and the Post-Confirmation Service List shall result in the Administrative Expense Claim being released and forever barred, and shall not be entitled to any Distribution whatsoever under this Plan. The United States Trustee is not required to file an application for the allowance of an Administrative Expense Claim with regards to fees due in accordance with 28 U.S.C. § 1930(a)(6).

**5.1.2 Treatment of Administrative Expense Claims.** Except to the extent that any Person entitled to payment of an Administrative Expense Claim agrees otherwise, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) shall, in full and final satisfaction of any Administrative Expense Claim, receive Cash in amount equal to such Allowed Administrative Expense Claim on or as soon as reasonably practicable following the later to occur of: (a) the Effective Date and (b) the date on which such Administrative Expense Claim becomes an Allowed Administrative Expense Claim; *provided, however,* Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtor up to and including the date of the Asset Sale may be paid after five (5) Business Days' notice to the Committee at any time in full in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

**5.2 Professional Compensation and Reimbursement Claims.** All requests for allowance and payment of Professional Fee Claims must be filed with the Bankruptcy Court and served on the Post-Confirmation Service List no later than sixty (60) days after the Effective Date. Any such Professional Fee Claim for which an application or request for payment is not filed with the Bankruptcy Court within that time period shall be released and forever barred, and shall not be entitled to Distributions under the Plan. Objections to the payment of such Professional Fee Claims must be filed no later than seven (7) days prior to the hearing on such Professional Fee Claims. All Professional Fee Claims shall be paid from Available Cash in accordance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules, as well as any prior Orders entered by the Bankruptcy Court. No Professional Fee Claim shall be Allowed on account of services rendered or expenses incurred by a professional prior to the Effective Date unless payment for such services and expenses has been allowed and approved by the Bankruptcy Court.

**5.3 Allowed Priority Tax Claim.** Except to the extent that a Holder of an Allowed Priority Tax Claim has been paid prior to the Effective Date, and unless otherwise agreed to in

writing by the Proponents and the Holder, each Holder of an Allowed Priority Tax Claim shall be paid from Available Cash in an amount equal to the unpaid portion of such Allowed Priority Tax Claim on the first Distribution Date following the Allowance Date for such Priority Tax Claim. To the extent that there is insufficient Available Cash to pay all Claims that have priority over any Allowed Priority Tax Claims, no Distributions will be made on account of Allowed Priority Tax Claims until the Debtor holds sufficient Available Cash to pay all Claims holding priority over such Allowed Priority Tax Claims in full, and the Disputed Claim Reserve is fully funded. For the avoidance of doubt, the Liquidation Trustee retains all of the Estate's rights under § 505 of the Bankruptcy Code with respect to any Priority Tax Claim, all of which rights are deemed automatically transferred to the Liquidation Trust on the Effective Date.

**5.4 Payment of Statutory Fees and Post-Petition Date Taxes.** Notwithstanding anything herein, all fees payable pursuant to 28 U.S.C. § 1930 and all Claims of a Governmental Unit of the type described in § 503(b)(1)(B)-(C) of the Bankruptcy Code that were filed prior to the Administrative Claim Bar Date shall be treated as Allowed Administrative Expense Claims when such amounts become due and payable by the Debtor or the Liquidation Trust under applicable non-bankruptcy law. Such dates shall be the Allowance Date.

## **ARTICLE VI. TREATMENT OF CLAIMS AND EQUITY INTERESTS**

### **6.1 Class 1: Secured Tax Claims.**

**6.1.1 Impairment and Voting.** Class 1 is Unimpaired under the Plan. Class 1 shall include only the Secured Tax Claim(s). Each Holder of a Class 1 Claim is presumed to have accepted the Plan.

**6.1.2 Claim and Lien Determination.** Until paid in full, each Holder of a Class 1 Claim that is an Allowed Claim shall retain its Lien in the Collateral that secured the Class 1 Claim on the Petition Date in the same priority as existed on the Petition Date. The amount, validity, extent, value, and priority of each Class 1 Claim will be subject to determination by the Bankruptcy Court or pursuant to an agreement between the Liquidation Trustee and the Holder of a Class 1 Claim.

**6.1.3 Treatment.** Each Class 1 Claim that is an Allowed Claim shall be satisfied, at the Liquidation Trustee's option, in full satisfaction, release, and discharge of and exchange for such Claim, by (a) return of the Collateral to the holder of each Class 1 Claim in full and final satisfaction of that Holder's Class 1 Claim, or (b) payment of the proceeds upon liquidation of the Collateral that secures that Class 1 Claim, less any expenses incurred in the liquidation. Any Deficiency Claim of the Holder of a Class 1 Claim shall be included as a Class 5 General Unsecured Claim.

### **6.2 Class 2: MB Financial Claim.**

**6.2.1 Impairment and Voting.** Class 2 is Impaired under the Plan. Class 2 shall include only the Secured Claim of MB Financial.

**6.2.2 Claim and Lien Determination.** Pursuant to the MB Financial Settlement, MB Financial shall have an Allowed Class 2 Claim in the amount of the Expense Cap as more fully detailed in Section 3.2.1 of this Plan. On the Effective Date and following approval of the MB Financial Settlement and receipt of such payment, MB Financial shall be deemed to have been paid in full, and shall release all liens, rights, title, and interests in any of the Assets of the Debtor or the Estate. MB Financial shall have no further Claim against the Debtor, Liquidation Trust, or Estate.

**6.2.3 Release of Liens.** Notwithstanding anything in this Plan to the contrary, all Liens and Claims held by a Holder of a Class 2 Claim shall be released on the Effective Date of the Plan.

**6.3 Class 3: Other Secured Claims.**

**6.3.1 Impairment and Voting.** Class 3 is Unimpaired under the Plan. Each Holder of a Class 3 Claim is presumed to have accepted the Plan.

**6.3.2 Claim and Lien Determination.** Until paid in full, each Holder of a Class 3 Claim that is an Allowed Claim shall retain its Lien in the Collateral that secured the Class 3 Claim in the same priority as existed at the time such Lien arose.

**6.3.3 Treatment.** Each Class 3 Claim that is an Allowed Claim shall be satisfied as provided in the Sale Order.

**6.3.4 Release of Liens.** Notwithstanding anything in this Plan to the contrary, all Liens held by a Holder of a Class 3 Claim shall be released on the Effective Date of the Plan.

**6.4 Class 4: Other Priority Claims.**

**6.4.1 Impairment and Voting.** Class 4 is Unimpaired under the Plan. Holders of Allowed Priority Claims are presumed to have accepted the Plan.

**6.4.2 Treatment.** Except to the extent that a Holder of an Allowed Priority Claim has been paid prior to the Effective Date, or agrees with the Proponents to different treatment, each Holder of an Allowed Priority Claim against the Debtor and/or the Estate shall receive Cash in an amount equal to the Allowed amount of such Priority Claim as soon as reasonably practicable after the Effective Date.

**6.5 Class 5: General Unsecured Claims.**

**6.5.1 Impairment and Voting.** Class 5 is Impaired under the Plan. Class 5 shall include only Class 5 General Unsecured Claims. Each Holder of a Class 5 Claim is entitled to vote to accept or to reject the Plan.

**6.5.2 Treatment.** Except to the extent that a Holder of a Class 5 General Unsecured Claim has been paid prior to the Effective Date, or agrees to different

treatment, each Holder of an Allowed Class 5 General Unsecured Claim against the Debtor and/or the Estate shall be entitled to receive its Pro Rata share of the net proceeds of the Assets, including any portion of the Allocation of Net MS Dynamics Proceeds payable to Class 5 General Unsecured Claims pursuant to the terms of Section 3.3 of the Plan. The Liquidation Trustee may make multiple Distributions to Holders of Allowed Class 5 General Unsecured Claims, and shall endeavor to make Distributions at least on an annual basis. Notwithstanding the foregoing, the Liquidation Trustee shall determine the amount and timing of such Distributions.

## **6.6 Class 6: Equity Interests.**

**6.6.1 Impairment and Voting.** Class 6 is Impaired under the Plan. Class 6 includes only the Equity Interests in the Debtor as set forth on **Exhibit D** to the Plan, each of which is Allowed under the Plan as of the Effective Date. Each Holder of an Allowed Equity Interest is entitled to vote to accept or reject the Plan.

**6.6.2 Treatment.** After payment in full of or reservation for Claims in Classes 1 through 5 by the Liquidation Trustee, the Liquidation Trustee shall distribute remaining net proceeds of the Assets to the Debtor for distribution to Holders of Allowed Class 6 Equity Interests. For the avoidance of doubt, no Distributions shall be made to Holders of Class 6 Equity Interests unless Allowed (a) Administrative Expense Claims, (b) Professional Fee Claims, (c) Priority Tax Claims, and (d) principal amount of the Claims in Classes 1– 5 have been paid in full and the Reserves contain sufficient Available Cash to pay (x) any Disputed Claim in full or in such other amounts as agreed in writing by the Holder of such Claim and the Liquidation Trustee, and (y) all actual and anticipated, reasonable expenses of the Liquidation Trustee and the Debtor. In addition, Class 6 shall be entitled to the Equity portion of the Allocation of the Net MS Dynamics Proceeds as part of the Equity / Creditor MS Dynamics Settlement. The Equity portion of the Allocation of the Net MS Dynamics Proceeds shall be remitted to and distributed by the Debtor.

## **ARTICLE VII.**

### **EFFECT OF REJECTION BY ONE OR MORE CLASSES OF CLAIMS**

**7.1 Impaired Classes to Vote.** Each Impaired Class of Claims shall be entitled to vote separately to accept or reject the Plan. Unless otherwise provided by the Plan, a Holder of a Disputed Claim that has not been temporarily allowed for purposes of voting on the Plan may vote only such Disputed Claim in an amount equal to the portion, if any, of such Claim shown as fixed, liquidated, and undisputed in the Schedules.

**7.2 Acceptance by Class of Claimants.** A Class shall have accepted the Plan if the Plan is accepted by at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have voted to accept or reject the Plan.

**7.3 Reservation of Cramdown Rights.** If any Impaired Class fails to accept this Plan in accordance with § 1129(a) of the Bankruptcy Code, the Proponents reserve the right to request the Bankruptcy Court to confirm the Plan in accordance with the provisions of § 1129(b)

of the Bankruptcy Code.

## **ARTICLE VIII. MEANS FOR IMPLEMENTATION OF THE PLAN**

**8.1 Debtor.** From and after the Effective Date, the Debtor will continue to exist as a separate corporate entity or other business-entity form until dissolved by the Debtor, which shall not occur without prior permission from the Bankruptcy Court until the later of (a) the MS Dynamics Lawsuit and the MS Dynamics Claim have been fully and finally resolved by settlement or final judgment; and (b) thirty (30) days after the Final Distribution Date.

**8.2 Purpose of the Debtor after the Effective Date.** Following the Effective Date, the Debtor and its representative(s) will take such action as is necessary under the laws of the State of Texas, federal law, and other applicable law to effect the terms and provisions of the Plan and the Plan Documents. Such action shall be subject to Section 8.1 and include (a) winding up the Debtor's affairs, if determined necessary by the Debtor in its sole and absolute discretion; (b) distributing proceeds of all remaining assets in its possession consistent with this Plan; and (c) filing appropriate tax returns.

**8.3 Debtor's Governance after the Effective Date.** On the Effective Date, automatically and without further action, any and all remaining officers or directors of the Debtor shall be deemed to have resigned, and the Surviving Officers, in their sole and absolute discretion, shall have the right and authority, but not the obligation, to wind up the Debtor. The Surviving Officers shall provide ten (10) days' notice to the Post-Confirmation Service List prior to winding up the Debtor. Unless otherwise set forth in the Plan, upon the liquidation of all Assets pursuant to the Plan and the filing by or on behalf of the Debtor a certification to that effect with the Bankruptcy Court, the Debtor shall be deemed dissolved for all purposes without the necessity for further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith; *provided, however,* the Surviving Officer(s) shall file with the appropriate state authority a certificate of cancellation. From and after the Effective Date, the Debtor shall not be required to file any document, or taken any action, to withdraw its business operation from any state in which the Debtor was previously conducting its business operation. The Debtor and its Surviving Officers shall reasonably cooperate with the Liquidation Trustee to effectuate the Plan's terms.

### **8.4 Surviving Officer(s).**

**8.4.1** The Surviving Officers shall perform their duties under the Plan in the Debtor's name and on the Debtor's behalf, and shall have the rights and powers necessary to do so.

**8.4.2** Upon the Effective Date, subject to Section 12.2 of the Plan, and in accordance with the Litigation Governance and Cooperation Agreement, the Surviving Officers may, among other things, use, pledge, acquire, and/or dispose of any property free of any restrictions imposed by the Bankruptcy Code.

**8.4.3** The Confirmation Order shall provide that the Debtor, with consent by the

Litigation Oversight Committee and consistent with this Plan, has express authority to convey, transfer, and assign any and all property of the Debtor consistent with the terms of the Plan and to take all actions necessary to effectuate the same.

**8.4.4** Upon the Effective Date, and in accordance with the terms of this Plan and the Litigation Governance and Cooperation Agreement, the Surviving Officers shall have standing to (a) pursue on the Debtor's behalf the MS Dynamics Claim, the MS Dynamics Lawsuit, and Causes of Action not transferred to the Liquidation Trust and (b) enforce performance of the obligations under the Plan and the performance of other provisions of the Plan that affect the treatment of Equity Interests.

**8.5 Payment of Fees and Expenses to Surviving Officers.** The Surviving Officers may, with the prior approval of the Liquidation Trustee which shall not be unreasonably withheld, employ on the Debtor's behalf professionals, as such term is used in the Bankruptcy Code, necessary to assist the Surviving Officers perform their duties under the Plan. Such professionals shall be entitled to (a) compensation at their respective standard hourly rates for time spent administering the implementation of the Plan and (b) reimbursement of necessary costs and expenses incurred while administering the implementation of the Plan, without motion, application, notice, hearing, or other order of the Bankruptcy Court. The Surviving Officers shall be compensated out of the Net MS Dynamics Proceeds payable to Equity Interests in the manner set forth on **Exhibit E** attached to this Plan.

**8.6 Accounts.** The Surviving Officer(s) may establish one or more interest-bearing accounts as it determines may be necessary or appropriate to effectuate the provisions of the Plan.

**8.7 Resignation, Replacement, or Termination of Surviving Officer.** From and after the Effective Date, the Surviving Officers or their successors shall continue to serve in their capacity as the only officers, directors, and responsible persons of the Debtor through the earlier of (a) the date the Debtor is dissolved in accordance with the Plan; and (b) the date the Surviving Officers resign or are replaced or terminated pursuant to this Plan. If both Surviving Officers resign, are terminated, or are unable to serve as a director, then a successor Surviving Officer shall be selected by a majority vote of the Holders of Allowed Equity Interests after consultation with the Litigation. The successor Surviving Officer shall then be deemed to be the Surviving Officer for all purposes under this Plan. Notwithstanding anything herein to the contrary, the Surviving Officers may be terminated by the Bankruptcy Court after notice and hearing and only on a showing by clear and convincing evidence that the Surviving Officer(s) is guilty of gross negligence, bad faith, self-dealing, or willful misconduct.

**8.8 Formation of the Litigation Oversight Committee.** On the Effective Date, the Litigation Oversight Committee shall be formed and continue for the purpose of supervising prosecution of the MS Dynamics Lawsuit. If a member of the Litigation Oversight Committee resigns or is terminated or unable to serve as a member thereof, then a successor member shall be selected by the Surviving Officers, in consultation with the Litigation Oversight Committee; *provided, however,* that if no agreement on the replacement member can be reached by the Surviving Officers and a majority of the current members of the Litigation Oversight Committee,

the Bankruptcy Court shall have jurisdiction and authority to resolve such dispute and appoint the replacement member. The Litigation Oversight Committee members shall be reimbursed by the Liquidation Trust for all reasonable expenses incurred during the performance of their duties under the Plan. The Liquidation Trust shall be entitled to reimbursement for the payment of such expenses from the first proceeds of the Net MS Dynamics Proceeds. Only the neutral third member of the Litigation Oversight Committee shall be compensated for that member's service on the Litigation Oversight Committee, in an amount to be agreed upon by the Plan Proponents prior to the Effective Date of the Plan. The Litigation Oversight Committee shall continue in existence until such time as either (a) the Litigation Oversight Committee deems it appropriate by a majority vote to dissolve itself or (b) all members of the Litigation Oversight Committee resign; *provided, however*, that the Litigation Oversight Committee shall dissolve no later than the date a Final Order is entered closing the Case.

**8.9 Approval by the Litigation Oversight Committee.** If approval by the Litigation Oversight Committee is required by this Plan, and if the Surviving Officers cannot obtain approval of a majority of the Litigation Oversight Committee members to act under the Plan, the Surviving Officers may petition the Bankruptcy Court for approval of the same so long as the Chapter 11 Case remains open, and after the Chapter 11 Case is closed, the Surviving Officer may petition any court of competent jurisdiction for such approval. In any instance where a Surviving Officer petitions any court for approval of any action, such action shall be noticed on the Liquidation Trustee, all members of the Liquidation Trust Committee, and all members of the Litigation Oversight Committee. In any instance where the approval of an action of the Surviving Officer by the Litigation Oversight Committee involves a Claim or Cause of Action against a member of the Litigation Oversight Committee or any other instance where a particular member of the Litigation Oversight Committee has a conflict of interest as to a particular decision to be approved by the Litigation Oversight Committee, such member shall not be eligible to vote on such action, and in the event of any disagreement between the remaining members of the Litigation Oversight Committee resulting in a tie vote of the remaining members of the Litigation Oversight Committee, the Surviving Officers' decision shall control.

**8.10 Creation of the Liquidation Trust.** On the Effective Date, the Liquidation Trust shall be created. The Liquidation Trust shall be governed by the Liquidation Trust Agreement, the Plan, and the Confirmation Order. The terms of the employment of the Liquidation Trustee shall be part of the Plan Supplement and approved as part of the Confirmation Hearing. On the Effective Date, the Debtor shall transfer all Assets, including Cash and Causes of Action free and clear of all Liens, Claims, interests and encumbrances, with the sole exception of the MS Dynamics Lawsuit, to the Liquidation Trust. All transfers to the Liquidation Trust shall be free and clear of all liens, claims, interests, and encumbrances. Except as specifically set forth herein, holders of Allowed Claims shall look solely to the Liquidation Trust for the satisfaction of their Claims. For the avoidance of doubt, nothing herein shall be construed to restrict or limit the ability of the Liquidation Trustee to assert Causes of Action transferred to the Liquidation Trust. For federal income-tax purposes, the transfer of the Assets as set forth herein to the Liquidation Trust will be deemed to be a transfer to the holders of Allowed Claims (i.e. the Liquidation Trust beneficiaries), followed by a deemed transfer by such beneficiaries to the Liquidation Trust.

**8.11 Treatment of the Liquidation Trust for Federal Income-Tax Purposes.** The Liquidation Trust will be established for the primary purpose of liquidating the Assets and distributing the proceeds thereof, in accordance with Treas. Reg. § 301.7701-4(d). The Liquidation Trust has no objective to continue or engage in any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust. The Liquidation Trust will liquidate the Assets and distribute their proceeds in an expeditious but orderly manner, and will make timely Distributions to Holders of Allowed Claims and the Debtor in accordance with the Plan, Confirmation Order, and Liquidation Trust Agreement. The Liquidation Trust shall not unduly prolong its duration, and shall not be deemed a successor-in-interest of the Debtor for any purpose other than as specifically set forth herein or in the Liquidation Trust Agreement.

The Liquidation Trust is intended to be treated as a "liquidating trust" pursuant to Treasury Regulation § 301.7701-4(d) and as a "grantor trust for federal income-tax purposes, pursuant to Section 671 through 679 of the Internal Revenue Code of 1986, as amended (the "IRC Code"). If the Liquidation Trust shall fails or ceases to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), the Liquidation Trustee shall take such action as it shall deem appropriate to have the Liquidation Trust classified as a partnership for federal-tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership within the meaning of Section 7704 of the IRC Code), including, if necessary, creating or converting it into a Delaware limited partnership or limited liability company that is so classified. For federal income-tax purposes, Holders of Allowed Claims will be treated as the grantors and owners of the Liquidation Trust; therefore, they will be responsible for the payment of tax on their respective allocable share of the taxable income of the Liquidation Trust.

**8.12 General Powers of the Liquidation Trustee.** Subject to any express limitations, the Liquidation Trustee, on behalf of the Liquidation Trust, shall have all of the rights, powers and privileges set forth in this Plan, the Confirmation Order and the Liquidation Trust Agreement. The Liquidation Trustee is authorized to take all such actions that, in its judgment, are necessary and appropriate to effectuate the purposes of the Plan, including but not limited to the following:

**8.12.1** Make all Distributions contemplated under the Plan;

**8.12.2** Upon approval by the majority of the Liquidation Trust Committee members, but without further approval of the Bankruptcy Court, use, sell, assign, transfer, abandon, or otherwise dispose of at a public or private sale any remaining property of the Debtor or the Estate, other than the MS Dynamics Lawsuit, for the purpose of liquidating and converting such assets to Cash, making Distributions, and administering and fully consummating the Plan.

**8.12.3** Consistent with maintaining the value of and liquidating the residual Assets of the Liquidation Trust, invest in time or demand deposits, including certificates of deposit issued by any bank approved as a depository institution by the United States Trustee's office, United States

Treasury bonds and other securities guaranteed by the full faith and credit of the United States of America or any agency thereof;

**8.12.4** Supervise and administer the resolution, settlement and payment of Allowed Claims and the Distributions to the Holders of Allowed Claims and the Debtor in accordance with this Plan;

**8.12.5** Enter into any agreement on behalf of the Liquidation Trust required by or consistent with the Plan and perform all of the obligations required of the Liquidation Trustee under the Liquidation Trust Agreement or this Plan;

**8.12.6** Abandon any of the assets of the Liquidation Trust if the Liquidation Trustee, after consultation with the Liquidation Trust Committee, concludes that such assets are of no material benefit to the Claimants;

**8.12.7** Participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any legal proceeding, administrative proceeding, arbitative proceeding or other non-judicial proceeding and litigate claims and Causes of Action on behalf of the Liquidation Trust, including without limitation all state and federal causes of action or any other litigation which constitute an asset of the Liquidation Trust and pursue to settlement or judgment such actions. The Liquidation Trustee may engage attorneys to prosecute Causes of Action, and otherwise represent the Liquidation Trust generally;

**8.12.8** Participate as a party-in-interest in any proceeding before the United States Bankruptcy Court involving the a bankruptcy case;

**8.12.9** Act in the name of or in the place of the Liquidation Trust or the Debtor in any action before the United States Bankruptcy Court or any other judicial or administrative body;

**8.12.10** Take actions and exercise remedies against any entity that owes money to the Debtor (or the Liquidation Trust), including without limitation, the remedies available under any deed of trust, security agreement, contract, promissory note, bond, guarantee or other instrument or document; make compromises regarding any deed of trust, security agreement, promissory note, bond, guarantee or other instrument or document; and, declare or waive defaults regarding any deed of trust, security agreement, promissory note, bond, guarantee or other instrument or document;

**8.12.11** Select, employ, and compensate such professionals, consultants, agents or employees, whether or not formerly employed or

engaged by the Debtor, as the Liquidation Trustee deems necessary to assist in the administration of the affairs of the Liquidation Trust;

**8.12.12** Hold any unclaimed distribution or payment to the holder of an Allowed Claim in accordance with this Plan;

**8.12.13** Propose any amendment, modification or supplement to this Plan or the Liquidation Trust Agreement;

**8.12.14** File dissolution/termination documents with the appropriate governmental agencies to dissolve the Liquidation Trust;

**8.12.15** Receive, conserve and manage the assets of the Liquidation Trust and sell, pursuant to 11 U.S.C. § 363(f), 11 U.S.C. § 1123(a)(5) and this Plan, or otherwise dispose of such assets for a price and upon such terms and conditions as the Liquidation Trustee deems most beneficial to the Creditors and execute such deeds, bills of sale, assignments and other instruments in connection therewith;

**8.12.16** Open and maintain bank accounts on behalf of or in the name of the Liquidation Trust;

**8.12.17** Pay all taxes, make all tax withholdings and file tax returns and tax information returns and make tax elections by and on behalf of the Liquidation Trust;

**8.12.18** Pay all lawful expenses, debts, and liabilities of the Liquidation Trust;

**8.12.19** Enforce all provisions of this Plan and the Confirmation Order;

**8.12.20** Protect, perfect and defend the title to any of the assets of the Liquidation Trust and enforce any bonds, mortgages or other obligations or liens owned by the Liquidation Trust;

**8.12.21** Carry insurance coverage, including insurance to protect the Liquidation Trust, the Liquidation Trustee and the Liquidation Trust Committee against claims brought against the Liquidation Trust, the Liquidation Trustee or the Liquidation Trust Committee acting within such capacities, in amounts as the Liquidation Trustee deems advisable. Notwithstanding the above, the Liquidation Trustee shall be under no obligation to obtain or carry such insurance;

**8.12.22** Establish such reserves for taxes, assessments and other expenses of administration of the Liquidation Trust (including without limitation the Disputed Claims Reserve) as in the Liquidation Trustee's

judgment may be necessary and appropriate for the proper operation of matters incident to the affairs of the Liquidation Trust;

**8.12.23** Exercise such other powers and duties as are necessary or appropriate in the Liquidation Trustee's discretion to accomplish the purposes of this Plan; and

**8.12.24** Obtain prior Liquidation Trust Committee approval, by at least a majority vote, regarding matters (a) affecting Liquidation Trust Assets in the amount of \$100,000 or greater; or (b) relating to the Liquidation Trust's retention of and fee arrangements with professionals representing the Liquidation Trust.

**8.13 Obligations of the Liquidation Trustee.** Notwithstanding anything in this Plan or the Liquidation Trust Agreement to the contrary, the Liquidation Trustee shall have the following duties to:

**8.13.1** Prepare periodic reports in accordance with Section 8.11 of the Plan.

**8.13.2** Maintain records and books of account relating to the Liquidation Trust's assets, the management thereof and all transactions undertaken by the Liquidation Trustee on behalf of the Liquidation Trust. The Liquidation Trustee shall also maintain records and books of account relating to all Distributions contemplated under the Plan.

**8.13.3** Open, maintain, and close, as appropriate, bank accounts in the name of the Liquidation Trustee and to deposit any Cash in accounts, as it deems appropriate, and, interest earned, if any, shall be added to the Liquidation Trust's Assets and distributed in accordance with the Plan. The Liquidation Trustee shall be authorized, but not required, to continue to use any bank accounts used by the Debtor prior to the Effective Date. The Liquidation Trustee shall not be obligated to deposit Cash Assets of the Liquidation Trust into an interest-bearing bank account.

**8.13.4** Establish and maintain the Disputed Claims Reserve in accordance with the terms of this Plan;

**8.13.5** Conduct an analysis of Claims, to the extent not completed prior to the Effective Date. Prosecute, negotiate and reconcile objections and potential objections to Claims, including litigating, compromising or otherwise resolving such Claim objections, as necessary and appropriate;

**8.13.6** File all reports and appropriate tax returns as necessary;

**8.13.7** Take such actions as are necessary to prosecute, determine not prosecute, resolve or compromise, as appropriate, all Causes of Action;

**8.13.8** Conduct investigations deemed appropriate by the Liquidation Trustee, including, if deemed appropriate, examinations under Rule 2004 of the Federal Rules of Bankruptcy Procedure;

**8.13.9** Conduct the administration of the Chapter 11 Case and the Plan, including to obtain a Final Decree and to pay any U.S. Trustee quarterly fees; and

**8.13.10** Periodically consult with, advise, and seek input from the Liquidation Trust Committee on matters material to the administration of the Liquidation Trust.

**8.14**            **Resignation/Removal of the Liquidation Trustee.** The Liquidation Trustee may resign at any time by filing a written notice of resignation with the Bankruptcy Court by providing same to the Post Confirmation Service List. Any such resignation shall become effective on the earlier to occur of (a) sixty (60) days after the filing date of such notice; and (b) the appointment of a successor Liquidation Trustee. The Liquidation Trust Committee may remove the Liquidation Trustee at its discretion upon unanimous vote of all members without approval of the Bankruptcy Court; *provided, however,* that the Liquidation Trust Committee shall provide the Liquidation Trustee with thirty (30) days written notice of its intent to remove the Liquidation Trustee. If the Liquidation Trustee believes that its removal is not in the best interests of the Beneficiaries, then the Liquidation Trustee may seek Bankruptcy Court approval to continue as Liquidation Trustee. If such authority is sought, the Bankruptcy Court shall hear the matter and issue an Order resolving whether the Liquidation Trustee shall continue or be replaced, or as is otherwise appropriate under the circumstances. All reasonable fees and expenses incurred by the Liquidation Trustee and the Liquidation Trust Committee in pursuit of the removal or continuation of the Liquidation Trustee shall be paid by the Liquidation Trust.

**8.15**            **Appointment of Successor Liquidation Trustee.** In the event of the death, resignation or removal of the Liquidation Trustee, the Liquidation Trust Committee shall designate a successor Liquidation Trustee. Any successor Liquidation Trustee appointed hereunder shall execute and file with the Bankruptcy Court and serve upon the Post Confirmation Service List a statement accepting such appointment, setting forth the terms of engagement, and agreeing to be bound by the terms of the Plan, Confirmation Order and the Liquidation Trust Agreement and upon such filing, the successor Liquidation Trustee shall immediately become vested with all the rights, powers, trusts and duties of the Liquidation Trustee.

**8.16**            **Liquidation Trustee Settlement Authority.** The Liquidation Trustee shall be authorized to (a) resolve objections to Claims, (b) enter into settlements of Causes of Action, and (c) otherwise resolve disputes, without notice or further order of the Bankruptcy Court; *provided, however,* that, with respect to matters involving more than \$100,000 in controversy, the

Liquidation Trustee shall only be authorized to resolve such matters in accordance with Article 11 of this Plan.

**8.17 Bonding of Liquidation Trustee.** The Liquidation Trustee will not be obligated to obtain a bond but may do so, in its sole discretion, in which case the expense incurred by such bonding will be paid by the Liquidation Trust.

**8.18 Post-Confirmation Operating Reports.** Every three months, beginning on the last business day of the third month anniversary of the Effective Date, or such other date as shall be determined by the Liquidation Trustee, the Liquidation Trustee shall file a report with the Bankruptcy Court setting forth the assets, liabilities, and activities of the Liquidation Trust during the prior three months, including a statement of all amounts paid for compensation of professionals and the Liquidation Trustee, and the Liquidation Trustee shall serve a copy upon the Post Confirmation Service List.

**8.19 Payment of Fees and Expenses to the Liquidation Trustee.** The Liquidation Trustee may employ, without Bankruptcy Court order but only following the approval of the Liquidation Trust Committee, professional persons, as such term is used in the Bankruptcy Code, to assist the Liquidation Trustee in carrying out duties under this Plan. The Liquidation Trustee and its professionals shall be entitled to the payment of their reasonable fees and the reimbursement of their reasonable and necessary expenses incurred in carrying out the Liquidation Trustee's duties under the Plan. The Liquidation Trustee and its professionals shall be compensated pursuant to their respective terms of engagement for time spent administering the implementation of the Plan, the resolution of objections to Claims, and such other actions relating to the administration of the Liquidation Trust, without further motion, application, notice, hearing, or other order of the Bankruptcy Court; *provided, however*, that such fees and expenses shall be reported to the Liquidation Trust Committee who may assert questions and concerns therewith and, if those questions and concerns are not resolved, the Liquidation Trust Committee may, with unanimous consent of the Liquidation Trust Committee Members, file objections to such fees and expenses with the Bankruptcy Court.

**8.20 The Dissolution of the Committee.** On the Effective Date, the Committee shall be dissolved and the members, employees, agents, advisors, affiliates, and representatives (including, without limitation, attorneys, financial advisors, and other Professionals) shall be released from and discharged of and from all further authority, duties, responsibilities, and obligations related to, arising from and in connection with the Chapter 11 Case.

**8.21 Formation of Liquidation Trust Committee.** Also on the Effective Date, a Liquidation Trust Committee shall be formed. The Liquidation Trust Committee shall be comprised of three (3) members designated by the Committee at least three (3) Business Days prior to the commencement of the Confirmation Hearing. In the event of the death or resignation of any member of the Liquidation Trust Committee, the remaining members of the Liquidation Trust Committee appointed by the Committee shall have the right to designate a successor. If a Liquidation Trust Committee member assigns or releases its Claims against the Liquidation Trust or releases the Liquidation Trust of the obligation to pay its Claim, such act shall constitute a resignation from the Liquidation Trust Committee. Remaining members of the Liquidation Trust

Committee shall endeavor to designate a successor within fourteen (14) days of any such death or resignation; *provided, however*, until a successor member is designated, the remaining members of the Liquidation Trust may continue to function despite its reduced number.

**8.22 Operation of the Liquidation Trust Committee.** The members of the Liquidation Trust Committee shall undertake their duties as specified in the Plan and Liquidation Trust Agreement. In serving as a member of the Liquidation Trust Committee, such members shall not assume or be deemed to have assumed any liability to any Claimant, Equity Interest Holder, the Debtor, the Liquidation Trust, the Liquidation Trustee, or any other parties-in-interest in the Chapter 11 Case, and shall not be liable for any acts or omissions while acting in that capacity, except for acts or omissions constituting gross negligence, willful misconduct, or fraud. The Liquidation Trust Committee shall have the right to retain counsel or other professionals without further order of the Bankruptcy Court, who shall be paid their reasonable fees and expenses by the Liquidation Trust. In addition, the members of the Liquidation Trust Committee shall serve without compensation, but shall be entitled to reimbursement from the Liquidation Trust of their reasonable expenses incurred in connection with their duties as members of the Liquidation Trust Committee. The Bankruptcy Court shall retain jurisdiction to hear any disputes relating to the fees and expenses of the Liquidation Trust Committee's professionals, which disputes, if any, shall be resolved by the Bankruptcy Court after notice and hearing.

**8.23 Rights and Duties of the Liquidation Trust Committee.** The Liquidation Trust Committee is not the Litigation Oversight Committee. The Liquidation Trust Committee shall act to fulfill their duties as detailed in the Liquidation Trust Agreement and in this Plan. It shall:

**8.23.1** Have the right to review and consult with the Liquidation Trustee regarding the prosecution, abandonment, settlement, or release of any objections, Claims, or Causes of Action, and otherwise with regard to the administration of the Liquidation Trust;

**8.23.2** Have the right to review and consult with the Liquidation Trustee regarding any proposed sales and other dispositions of Assets belonging to the Liquidation Trust;

**8.23.3** Have the right to approve or disapprove, by prior majority vote, of any action of the Liquidation Trustee affecting the Liquidation Trust or Liquidation Trust Assets in the amount of \$100,000 or greater;

**8.23.4** Be vested with authority to remove the Liquidation Trustee, or any successor Liquidation Trustee, appointed pursuant to this Plan and the Liquidation Trust Agreement, and to appoint a successor Liquidation Trustee should the Liquidation Trustee be removed, resign, or become incapacitated;

**8.23.5** Perform such additional functions as may be agreed to by the Liquidation Trustee, or that are otherwise provided for in this Plan, the Confirmation Order, or the Liquidation Trust Agreement.

**8.24 Approval by the Liquidation Trust Committee.** If the Liquidation Trustee cannot obtain approval of a majority of the Liquidation Trust Committee members to act under the Plan and Liquidation Trust Agreement, the Liquidation Trustee may petition the Bankruptcy Court for approval of same so long as the Chapter 11 Case remains open, and after the Chapter 11 Case is closed, the Liquidation Trustee may petition any court of competent jurisdiction for such approval. In any instance where the Liquidation Trustee petitions any court for approval of any action, such action shall be noticed on all members of the Liquidation Trust Committee and the Debtor. In any instance where the approval of an action of the Liquidation Trustee by the Liquidation Trust Committee involves a Claim or Cause of Action against a member of the Liquidation Trust Committee or any other instance where a particular member of the Liquidation Trust Committee has a conflict of interest as to a particular decision to be approved by the Liquidation Trust Committee, such member shall not be eligible to vote on such action, and in the event of any disagreement between the remaining members of the Liquidation Trust Committee resulting in a tie vote of the remaining members of the Liquidation Trust Committee, the Liquidation Trustee's decision shall control.

**8.25 Establishment of Disputed Claim Reserve.** The Liquidation Trustee shall establish a reserve account in which an amount of Cash is held by the Liquidation Trustee in reserve for Liquidation Trust Expenses and, in the reasonable discretion of the Liquidation Trustee, amounts that are or are expected to become due and owing by the Liquidation Trust and the Debtor on or following the Effective Date, including without limitation amounts that may become payable on account of Disputed Claims, and any expenses that, in the reasonable discretion of the Liquidation Trustee, are likely to become Liquidation Trust Expenses, including, without limitation, (a) any litigation expenses, and reasonable legal fees related thereto, of the Liquidation Trust or Liquidation Trustee; (b) funds that the Liquidation Trust is holding as Unclaimed Property; and (c) the costs of filing tax returns and other reports that the Liquidation Trustee or Debtor may be required to file.

**8.26 Investments.** All Cash held by the Debtor or Liquidation Trust in any account or otherwise shall be deposited or invested in accordance with § 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Bankruptcy Court, and that such account shall be held for the benefit of holders of Allowed Claims and Equity Interests in the Chapter 11 Case.

**8.27 Limitation on Liability of Liquidation Entities.** The Liquidation Entities shall not be liable or otherwise responsible in any manner whatsoever for any act or omission of any kind or character, in any capacity, to any Claimant, Equity Interest holder, Person, party in interest, or any third party, with the sole exception for specific acts or omissions determined by Final Order to arise solely from gross negligence, willful misconduct, or fraud. The Liquidation Trustee may, in connection with the performance of its duties and in its sole and absolute discretion, consult with the Liquidation Trustee's professionals, and will not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such professionals, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, the Liquidation Trustee will not be under any obligation to consult with the Liquidation Trustee's professionals, and the determination not to consult will not result in the imposition of liability on the Liquidation Trustee, its professionals, or any other of the Liquidation Entities.

No recourse will ever be had, directly or indirectly, against the Liquidation Trustee or the Liquidation Trust arising from or otherwise related to any legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge or note, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed or otherwise agreed or consented to, whether expressly or impliedly, by the Liquidation Trustee relating directly or indirectly to this Plan, the Liquidation Trust Agreement or by reason of the creation of any indebtedness by the Liquidation Trustee or otherwise by the Liquidation Trustee carrying out its duties or discretion under the Liquidation Trust Agreement or this Plan. All such liabilities, covenants, and agreements of the Liquidation Entities, or any of them, whether in writing or otherwise, pursuant to or in carrying out the purpose of this Plan or the Trust Agreement will be enforceable only against, and will be satisfied only out of, the Liquidation Trust Assets or such part thereof as will, under the terms of any such agreement or understanding, be liable therefore, or will be evidence only of a right of payment out of the Liquidation Trust Assets, as the case may be. Every undertaking, contract, covenant, agreement or understanding entered into in writing by the Liquidation Trustee may (but will not be necessary to invoke the full protections of these Limitations of Liabilities) provide expressly against the personal liability of the Liquidation Trustee.

**8.28 Indemnification of Liquidation Entities.** The Liquidation Trust shall indemnify and hold harmless the Liquidation Trustee and all other Liquidation Entities from and against and in respect to any and all liabilities, losses, damages, claims, causes of action, costs and expenses in connection with any action, suit, proceeding, or investigation brought by or threatened against such Liquidation Entities, including, but not limited to attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions, *provided, however*, that no such indemnification will be made for such actions or omissions of the Liquidation Trustee or any other of the Liquidation Entities solely as a result of gross negligence, willful misconduct, or fraud as determined by Final Order.

**8.29 Approval of Agreements.** The solicitation of votes on the Plan shall be deemed a solicitation for the approval of the Plan Documents and all transactions contemplated by the Plan. Entry of the Confirmation Order shall constitute approval of the Plan Documents, and such transactions and authorization for the Marneys and the Debtor to execute and deliver each of the Plan Documents.

**8.30 Employee Benefit Plans.** All employee-benefit plans, policies, and programs implemented by the Debtor and not previously terminated by the Debtor or otherwise addressed by a separate Final Order as of the Effective Date shall be terminated as of the Effective Date. Except as otherwise provided in the Plan, employee-benefit plans, policies, and programs shall include all healthcare plans, disability plans, severance-benefit plans, life, accidental-death and dismemberment-insurance plans (to the extent not executory contracts assumed under the Plan), and pension/retirement plans (including the 401(k) programs). If the termination of any such plan, policy, or program gives rise to a Claim by an employee or any other entity, such Claim shall be forever barred and shall not be enforceable against the Debtor or its Estate, affiliates, successors, estates, or properties, unless a proof of Claim is Filed and served on the Debtor and the Liquidation Trustee within thirty (30) days after the Effective Date. This time deadline shall constitute reasonable notice for all purposes for filing such a proof of claim.

**8.31 Release of Liens and Perfection of Liens.** Except as otherwise provided in the Plan, any Plan Document, or the Confirmation Order: (a) each holder of a Secured Claim or a judgment shall on the Effective Date (i) turn over and release to the Liquidation Trustee any and all Collateral that secures or purportedly secures such Claim and such Lien shall automatically, and without further action by any Debtor or the Liquidation Trustee, be deemed released, and (ii) execute such documents and instruments as the Debtor or the Liquidation Trustee request to evidence such Claim holder's release of such property or Lien; and (b) on the Effective Date, all right, title, and interest in any and all property of the Debtor shall vest in the Debtor free and clear of all Claims and Liens, including, without limitation, Liens, escrows, charges, pledges, encumbrances, and/or security interests of any kind. Any such holder that fails to execute and deliver such release of Liens within thirty (30) days of the Effective Date shall be deemed to have no further Claim against the Debtor or the Assets and shall not participate in any Distribution hereunder. Notwithstanding the immediately preceding sentence, any holder of a Disputed Claim shall not be required to execute and deliver such release until such time as the holder's Claim is Allowed or Disallowed.

**8.32 Further Transactions.** On the Effective Date, the Marneys, Liquidation Trustee, or the Debtor, as applicable, shall execute and deliver such further documents, instruments, and agreements as are necessary to effectuate and further evidence the terms and conditions of the Plan.

**8.33 Entry of Final Decree.** As soon as is practicable after the Effective Date, and after consultation with the Debtor, the Liquidation Trustee shall File an application with the Clerk of the Court requesting the entry of a Final Decree closing the Chapter 11 Case; *provided, however,* the Liquidation Trustee shall not file an application for Final Decree until and unless the conditions to the Plan becoming effective as set forth herein have been fully met, all pending Causes of Action have been resolved by Final Order of a court of competent jurisdiction or agreement with the Debtor, objections to Disputed Claims have been resolved by Final Order of the Bankruptcy Court or agreement with the Debtor, and the Final Distribution has been made.

**8.34 Section 1146 Exemption.** Pursuant to § 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local government officials or agents to forego collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfer of property without the payment of any such tax or governmental assessment.

**8.35 Retention of Rights to Pursue Causes of Action and Effectuate Setoffs, Recoupments, Etc.** Except as otherwise ordered by the Bankruptcy Court OR AS SPECIFICALLY AND EXPLICITLY PROVIDED in the Plan, ALL Causes of Action shall be preserved by the Debtor under this Plan. Pursuant to § 1123(b)(3) of the Bankruptcy Code, the Liquidation Trustee (as a representative of the Debtor) shall retain and have the exclusive authority and standing to prosecute, enforce, pursue, sue on, settle or compromise any and all Causes of Action (including Avoidance Actions), other than the MS Dynamics Lawsuit which shall remain in the possession of the Debtor and administered by the Litigation Oversight

Committee, that belong to the Debtor and arose before the Effective Date, including all Causes of Action of a trustee and debtor-in-possession under the Bankruptcy Code, other than those expressly released or compromised as part of or pursuant to the Plan or by other order of the Bankruptcy Court entered prior to the Effective Date. The Causes of Action retained include, without limitation, all Claims and Causes of Action listed or referenced in the Disclosure Statement or Plan Document. ALL PARTIES SHOULD READ ARTICLE IX OF THE DISCLOSURE STATEMENT CONCERNING PRESERVED CAUSES OF ACTION.

The Liquidation Trustee (as the Debtor's / Estate's representative) shall also retain and may prosecute and enforce all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Estate. No claim, right, Cause of Action, or other Asset shall be deemed waived or otherwise forfeited by the Debtor's failure to identify such property in the Debtor's Schedules or the Disclosure Statement accompanying the Plan. The Debtor and the Liquidation Trustee will continue to review payments made by and transactions involving the Debtor prior to the Petition Date to determine whether actions to avoid such payments and transactions should be brought. Failure to specifically identify potential actions in the Plan shall not be deemed a waiver of any such action by the Debtor or any other party.

The Litigation Oversight Committee shall retain and have the exclusive authority and standing to prosecute, enforce, pursue, sue on, settle or compromise the MS Dynamics Lawsuit and any associated ancillary proceedings or suits. The Litigation Oversight Committee shall also retain and may prosecute and enforce all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Estate in the MS Dynamics Lawsuit.

Notwithstanding anything to the contrary herein, this Plan shall not be interpreted to (i) diminish, inhibit, or otherwise restrain the full and complete prosecution of the MS Dynamics Lawsuit for the benefit of holders of Claims and Equity Interests; (ii) provide substantive or procedural rights or benefits to the defendants in the MS Dynamics Lawsuit that arise from the Confirmation of the Plan; or (iii) negate or otherwise destroy any privilege possessed by the Debtor, all of which shall be extended from the Debtor to the Litigation Oversight Committee by operation of the Confirmation Order.

## **ARTICLE IX. DISTRIBUTIONS UNDER THE PLAN**

**9.1 Delivery of Distributions.** Subject to Bankruptcy Rule 9010, Distributions to Holders of Allowed Claims and Allowed Equity Interests will be made by mail at (a) the address of each such Holder as set forth on the proofs of Claim filed by such Holders or in the Debtor's records; (b) the address set forth in any written notice of address change filed with the Bankruptcy Court and delivered to the Debtor and the Liquidation Trustee in writing after the date of any related proof of Claim; (c) the address reflected in the Schedules if no proof of Claim is filed and the Debtor has not received a written notice of address change; or (d) the address delivered by any Claimant to the Liquidation Trustee within sixty (60) days after the Effective Date. If any Distribution is returned as undeliverable, no further Distributions to such Holder

will be made unless and until the Liquidation Trustee is notified in writing of such Claimant's then-current address within ninety (90) days of the date on which the attempted Distributions was mailed.

**9.2 Unclaimed Distributions and Uncashed Checks.** Unclaimed Distributions shall be held in the Reserve for the benefit of the potential Claimants. All claims for undeliverable Distributions must be made by the ninetieth (90th) day following the date on which delivery the Distribution was initially mailed. The Claim on which an undelivered or unclaimed Distribution was made shall be treated as a Disputed Claim until such 90-day period has passed, and if no party contacts the Liquidation Trustee in writing to seek payment of such Claim within the 90-day period, then such Claim shall be treated as Disallowed in full by Final Order of the Bankruptcy Court. After expiration of the 90-day period, all unclaimed Distributions will revert to the Liquidation Trust for deposit into the Available Cash fund to be reallocated and distributed to the Holders of Allowed Claims and Equity Interests, and the Claim of any Holder with respect to such an unclaimed Distribution will be released and forever barred. Checks issued in respect of Allowed Claims will be null and void if not negotiated within ninety (90) days after the date of issuance thereof, and such Holder will forfeit its right to such Distribution. In no event shall any funds escheat to the State of Texas.

**9.3 Due Authorization by Claimants.** Every Claimant who elects to participate in the Distributions provided for herein warrants that the Claimant is authorized to accept in consideration of its Claim against the Debtor the Distributions provided for in this Plan and that there are no outstanding commitments, agreements, or understandings, express or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by the Claimant under this Plan.

**9.4 Setoffs.** Except as otherwise expressly provided in the Plan and pursuant to §§ 502(d) or 553 of the Bankruptcy Code or any applicable non-bankruptcy law, the Liquidation Trustee or the Debtor, as the case may be, may set off against any Distribution to be made pursuant to the Plan on account of an Allowed Claim any claims, rights or Causes of Action held by the Debtor against the Holder of the Allowed Claim, or in relation to the Allowed Claim; *provided, however*, that neither the failure to effect such a setoff nor the allowance of any Claim shall constitute a waiver or release by the Debtor of any such claims, rights or Causes of Action. If the Debtor fails to set off against a Claim and seek to collect from the Holder of such Claim after Distribution to that Holder pursuant to the Plan, the Debtor shall be entitled to full recovery on the claims of the Debtor or the Estate, if any, against the Holder of such Claim.

**9.5 Additional Charges.** Except as may be expressly provided in the Plan or allowed by Final Order of the Bankruptcy Court, no distribution shall be made to Holders of Equity Interests until the principal amount of all Allowed Claims is paid in full.

**9.6 Compliance with Tax Requirements.** In connection with the Plan, the Debtor and the Liquidation Trustee shall comply with all withholding and reporting requirements imposed on it by any Governmental Unit, and all Distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.

**9.7 De Minimis Distributions.** Ratable Distributions to Holders of Allowed Claims will not be made if such Distribution will result in a Distribution amount of less than \$100.00, unless a request therefore is made in writing to the Debtor.

**9.8 Rounding.** Where the calculation of a Distribution results in a fraction of a cent owing, the calculation shall be rounded down to the nearest whole cent for purposes of paying (or reserving) the Distribution.

## **ARTICLE X. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**10.1 Rejection of Executory Contracts and Unexpired Leases Not Assumed.** All executory contracts and leases of the Debtor that were not previously assumed and assigned or rejected by the Debtor in a prior Final Order from the Bankruptcy Court are deemed rejected, unless otherwise dealt with by the Plan, the Confirmation Order or any other Final Order entered by the Bankruptcy Court prior to the Effective Date. Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute the approval, pursuant to §§ 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the Executory Contracts and Unexpired Leases.

**10.2 Claims Based on Rejection of Executory Contracts of Unexpired Leases.** Any Claim for damages arising from the rejection of an executory contract or unexpired lease pursuant to the Plan must be asserted in a proof of Claim filed with the Bankruptcy Court not later than thirty (30) days after the Effective Date. Any such rejection Claims not timely filed shall be released and forever barred from assertion against the Debtor or the Assets. Any other bar date previously established for the filing of Claims based on the rejection of executory contracts or unexpired leases shall not be affected by this provision.

## **ARTICLE XI. PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

**11.1 Objections to Claims.** Following the Effective Date, an objection to the allowance of any Claim shall be in writing and may only be filed by the Liquidation Trustee at any time on or before the Claims Objection Deadline. Any Disputed Claim as to which an objection is not filed on or before the Claims Objection Deadline shall be deemed to constitute an Allowed Claim under the Plan following the Claims Objection Deadline.

**11.1.1** Notwithstanding the foregoing, any party in interest that otherwise would have standing to object to a Claim absent the provisions of this Plan, may, on or before the Claims Objection Deadline, file a motion with the Bankruptcy Court requesting standing to so object on the basis that an advance, written demand has been made by the movant on the Debtor prior to the Confirmation Date or to the Liquidation Trustee thereafter to object to the Claim, and that said Debtor or Liquidation Trustee has unjustifiably refused or failed to respond. Any such motion filed by the Claims Objection Deadline shall, if granted, toll the Claims Objection Deadline solely with respect to the Claim which is the subject of the motion, until and including the date which is ten (10) business days following the date of entry of the Bankruptcy Court's order on

the motion.

**11.2 Contingent Claims.** Until a Contingent Claim becomes an Allowed Claim or is Disallowed, the Claim will be treated as a Disputed Claim for all purposes under the Plan. The Holder of a Contingent Claim will be entitled to a Distribution under the Plan only when the Contingent Claim becomes an Allowed Claim. Any Contingent Claim for reimbursement or contribution held by a Person that may be liable with the Debtor on a Claim of a Claimant is Disallowed as of the Effective Date if: (a) that Claimant's Claim is Disallowed; (b) the Claim for reimbursement or contribution is contingent as of the Effective Date; or (c) that Person asserts a right of subrogation to the rights of the Claimant under § 509 of the Bankruptcy Code.

**11.3 Post-Confirmation Proofs of Claim and Amendments.** Except as otherwise expressly contemplated by the Plan, following the later of the Effective Date and the applicable Bar Date, no original or amended proof of Claim may be filed in the Chapter 11 Case to assert a Claim against the Debtor or the Estate without prior authorization of the Bankruptcy Court, and any such proof of Claim that is filed without such authorization shall be deemed null, void and of no force or effect; *provided, however*, that the Holder of a Claim that has been evidenced in the Chapter 11 Case by the filing of a proof of Claim on or before the Bar Date shall be permitted to file an amended proof of Claim in relation to such Claim at any time if the sole purpose of the amendment is to reduce the amount of the Claim asserted.

**11.4 Settlement of Disputed Claims.** From and after the Effective Date, pursuant to Bankruptcy Rule 9019(b) and § 105(a) of the Bankruptcy Code, the Liquidation Trustee shall be entitled to compromise and settle his objections to Disputed Claims, subject to the Liquidation Trustee Committee approval as follows:

**11.4.1** If the Face Amount of the Disputed Claim is less than \$100,000.00, the Liquidation Trustee will be authorized and empowered to settle its objection to such Disputed Claim and execute the necessary documents, including a stipulation of settlement or release, with no further approval of or notice to the Bankruptcy Court.

**11.4.2** If the Face Amount of the Disputed Claim is greater than \$100,000.00, and after obtaining prior approval of the Liquidation Trust Committee, the Liquidation Trustee will be authorized and empowered to settle its objection to such Disputed Claim, and execute the necessary documents, including a stipulation of settlement or release, upon fourteen (14) days' notice filed with the Bankruptcy Court. If no objection to the proposed settlement of the Disputed Claim is filed within the fourteen-day time period established by Section 11.4.2 or if any objecting party withdraws its objection to such settlement for any reason, the Liquidation Trustee may (i) enter into the proposed settlement without further notice, and without the necessity of a motion hearing or order of the Bankruptcy Court, or (ii) if any objecting party does not withdraw its objection.

**11.4.3** Forego entry into the settlement agreement that is the subject of an objection,

**11.4.4** Modify the terms of the settlement agreement in a way that results in the withdrawal of all objections, or

11.4.5 Set the objection for hearing in the Bankruptcy Court and request permission to enter into the settlement agreement over any pending objection.

## ARTICLE XII. EFFECT OF CONFIRMATION

**12.1 Legally Binding Effect.** The provisions of this Plan shall bind all Holders of Claims and/or Equity Interests, and all other parties-in-interest, whether or not they accept this Plan. On and after the Effective Date, all Holders of Claims and Equity Interests shall be precluded and enjoined from asserting any Claim against the Debtor or the Assets, based on any action or inaction of any kind that occurred prior to the Confirmation Date except as permitted under the Plan.

**12.2 Vesting of Property of Debtor and the Estate Free and Clear.** Upon the Effective Date of the Plan, (a) the Assets other than the MS Dynamics Lawsuit shall be immediately deemed conveyed to the Liquidation Trust free and clear of all Liens and (b) the MS Dynamics Lawsuit shall remain property of the Debtor free and clear of all Liens.

**12.3 Preservation of Avoided Transfers and Liens.** As the case may be, the Debtor or the Liquidation Trustee shall retain and preserve, as Estate property, any transfers and Liens avoided with respect to property of the Estate in accordance with § 551 of the Bankruptcy Code.

**12.4 Protection of Certain Parties in Interest.** Provided the respective officers, directors, shareholders, members, representatives, attorneys, financial advisors, and agents of the Debtor or the Committee act or have acted in good faith, they will not be liable to any Holder of a Claim or Equity Interest, or other party with respect to any action, forbearance from action, decision, strategy, position, or exercise of discretion in connection with: (a) the ordinary course of business operations of the Debtor after the Petition Date; (b) the proposal or implementation of any of the transactions provided for or contemplated in the Plan or Plan Document; or (c) the administration of the Plan or the assets and property to be distributed pursuant to the Plan other than for fraud, willful misconduct, or gross negligence. The Debtor, the Committee, and their respective affiliates, officers, directors, shareholders, members, representatives, attorneys, financial advisors, and agents may rely on the opinions of counsel, certified public accountants, and other experts or professionals employed by the Debtor and the Committee, respectively, and such reliance will constitute evidence of good faith. In an action, suit, or proceeding by a Holder of a Claim or Equity Interest or other party in interest contesting any action by or non-action of the Debtor or the Committee (including the members thereof) or the respective representatives, attorneys, financial advisors, or agents, the successful party is entitled to recover reasonable attorneys' fees and expenses in addition to any other available remedy.

**12.5 Exculpation.** Neither the Debtor, the Marneys, the Debtor's professionals (including Gardere Wynne Sewell LLP and Treadstone Capital Advisors, LLC) nor the Committee, Committee members, and the Committee's professionals, including Kane Russell Coleman & Logan P.C. and Bridgepoint Consulting LLC, nor any Liquidation Entities (collectively, the "Exculpated Parties" and individually, an "Exculpated Party") shall have or incur any liability to any Holder of a Claim or Interest or any other Person or Entity for any act

or omission in connection with, or arising out of, or related to, directly or indirectly, the Chapter 11 Case, including, without limitation, the planning, filing or the administration of the Chapter 11 Case, including the formulation, preparation, dissemination, approval, confirmation, administration, or consummation of the Plan, the Disclosure Statement, the solicitation of votes for or confirmation of the Plan or consummation or administration of the Plan or Distributions under the Plan, except for fraud, willful misconduct, or gross negligence. From and after the Effective Date, the Marneys, the Surviving Officers, members of the Litigation Oversight Committee, Liquidation Trustee, Liquidation Trust Committee and each of its members, and any professional hired by any of the foregoing parties all solely in their capacity as such shall be exculpated by Holders of Claims and Equity Interests from any and all Claims, Causes of Action, and other assertions of liability arising out of the discharge of the powers and duties conferred on them by the Plan, Plan Document, or any order of the Bankruptcy Court entered pursuant to and in furtherance of the Plan or applicable law, except for actions or omissions to act arising out of fraud, gross negligence, or willful misconduct of such Persons.

**12.6 Injunction.** Except as otherwise provided in the Plan or the Confirmation Order, from and after the Confirmation Date, all Holders of Claims and Equity Interests against and in the Debtor are permanently restrained and enjoined from taking any of the following actions against the (a) Assets, (b) the Surviving Officers, the Debtor, the Marneys, or the respective professionals, agents, and advisors of the Surviving Officers, the Debtor, or the Marneys, (c) the Committee, each member of the Committee, and professionals, agents, and advisors of the Committee, and (d) the Liquidation Entities (collectively, (a) through (d) above are the “**Injunction Beneficiaries**” and individually, an “**Injunction Beneficiary**”) on account of any such Claims or Equity Interests: (a) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim, or Equity Interest against the Injunction Beneficiaries, other than to enforce any right to a Distribution pursuant to the Plan or a prior order of the Bankruptcy Court approving a sale or transfer of property of the Estate; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against the Injunction Beneficiaries; (c) creating, perfecting, or enforcing any encumbrance, security interest, or Lien of any kind against the Injunction Beneficiaries; (d) asserting any right of setoff, subrogation, or recoupment of any kind against (i) any obligation due the Debtor or the Liquidation Trust, (ii) the Assets, or (iii) the Injunction Beneficiaries; (e) performing any act, in any manner, in any place whatsoever, that does not conform to or comply with, or is inconsistent with, the provisions of the Plan; and (f) assert any right to damages or compensation, Cause of Action, liability, or right against the Injunction Beneficiaries; *provided, however,* that each Holder of a Disputed Claim may continue to prosecute its proof of Claim in the Bankruptcy Court and all Holders of Claims shall be entitled to enforce their rights under the Plan, and any agreements executed or delivered pursuant to or in connection with the Plan. If allowed by the Bankruptcy Court, any Injunction Beneficiary injured by any willful violation of such injunction shall recover actual damages, including, without limitation, costs and attorneys’ and experts’ fees and disbursements and, in appropriate circumstances, may recover punitive damages. Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays imposed by the Bankruptcy Code under §§ 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date, shall remain in full force and effect with respect to the Debtor until the Effective Date.

**12.7 Release.** On the Effective Date, the Exculpated Parties shall be unconditionally and are hereby deemed to be unconditionally released from any and all claims, obligations, suits, judgments, damages, losses, rights, remedies, causes of action, charges, costs, debts, indebtedness, or liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based in whole or in part on any act or omission, transaction, event or other occurrence taking place between the Petition Date and the Effective Date, which is in any way relating to the Debtor, the Chapter 11 Case, any property of the Debtor, the business or operations of the Debtor, the Plan and any Plan Supplement, or any of the transactions contemplated thereby; provided, however, that this release provision shall not be applicable to any liability found by a court of competent jurisdiction to have resulted from fraud, willful misconduct, or gross negligence of any such party nor shall this release apply to any prepetition acts of any of the officers, directors, members or managers of any of the Debtor. The Confirmation Order shall enjoin the prosecution by any Person, Entity, or party in interest, whether directly, derivatively or otherwise, of any such claim, obligation, suit, judgment, damage, loss, right, remedy, cause of action, charge, cost, debt, indebtedness, or liability that arose or accrued during such period or was or could have been asserted against any of the Exculpated Parties, except as otherwise provided in the Plan or in the Confirmation Order. Each Exculpated Party shall have the right to independently seek enforcement of this release provision. This release provision is an integral part of the Plan and is essential to the Plan's implementation.

**12.8 Plan Indemnification.** The Liquidation Trust shall indemnify and hold harmless the Surviving Officers, Liquidation Trustee, all other Liquidation Entities (including Kane Russell Coleman & Logan P.C. and Bridgepoint Consulting LLC), all members of the Litigation Oversight Committee, and the Debtor's professionals (including Gardere Wynne Sewell LLP and Treadstone Capital Advisors, LLC) (collectively, the "Plan Indemnification Parties" and individually, an "Indemnified Party") from and against and in respect to any and all liabilities, losses, damages, claims, causes of action, costs and expenses in connection with any action, suit, proceeding, or investigation brought or threatened against any Indemnified Party and related to that Indemnified Party's performance of its duties and obligations under the Plan, *provided, however,* that no such indemnification will be made for any actions or omissions of any Indemnified Party as a result of that Indemnified Party's bad faith, gross negligence, willful misconduct, or fraud as determined by a Final Order. The Liquidation Trust shall be reimbursed for any indemnification payments by the first proceeds of the Net MS Dynamics Proceeds. If no claim for indemnification from any Indemnified Party has been asserted against the Liquidation Trust at the time the Net MS Dynamics Proceeds are paid to the Liquidation Trust, the Liquidation Trust shall have no obligation to reserve any funds against any unknown or potential yet unasserted indemnification claim.

**12.9 Insurance.** Confirmation and consummation of the Plan shall have no effect on insurance policies of the Debtor in which the Debtor is or was the insured party. Each insurance company is prohibited from – and the Confirmation Order shall include an injunction against – denying, refusing, altering, or delaying coverage on any basis regarding or related to the Chapter 11 Case or the Plan.

**12.10 Closing of the Chapter 11 Case.** When (a) all Disputed Claims have become

Allowed Claims or Disallowed Claims, (b) all Assets have been administered and liquidated, and (c) all Available Cash and Reserves have been distributed in accordance with this Plan, including that the Final Distribution has been made, the Liquidation Trustee or the Surviving Officer, as the case may be, shall ask the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

**ARTICLE XIII.  
CONDITIONS PRECEDENT TO CONFIRMATION  
AND EFFECTIVENESS OF THE PLAN**

**13.1 Conditions to Confirmation.** The occurrence of the Confirmation Date is subject to satisfaction or waiver of each of the following conditions:

**13.1.1** The Bankruptcy Court shall have approved the Disclosure Statement by Final Order in form and substance acceptable to the Proponents in their sole and absolute discretion.

**13.1.2** The Bankruptcy Court shall have entered the Confirmation Order in form and substance acceptable to the Proponents in their sole and absolute discretion.

**13.2 Conditions to Effective Date.** The occurrence of the Effective Date of the Plan is subject to the occurrence or waiver of each of the following conditions precedent:

**13.2.1** Either (a) the Confirmation Order has become a Final Order or (b) no stay of the Confirmation Order or motion for stay, or other motion described in Bankruptcy Rule 8002(b), of the Confirmation Order shall be in effect or pending and no other relief shall have been entered nor any facts exist that would render the doctrine of “mootness” inapplicable as a matter of law.

**13.2.2** There shall be no injunction or court order restraining consummation of the transactions provided for in the Plan.

**13.2.3** All Plan Documents, including exhibits and the Plan Supplement, shall be in form and substance reasonably acceptable to the Proponents and shall have been executed and delivered by the parties thereto, and all conditions to the effectiveness of such documents shall have been satisfied or waived as provided therein.

**13.2.4** All actions necessary to implement the Plan have been effected.

**13.3 Notice of Effective Date.** On or before ten (10) Business Days after occurrence of the Effective Date, the Debtor shall mail or cause to be mailed to the Post Confirmation Service List a notice that informs such Holders of the following: (a) entry of the Confirmation Order; (b) occurrence of the Effective Date; (c) the deadline to file applications for

Administrative Expense Claims (including claims for professional compensation and expense reimbursements) that arose after the Administrative Claim Bar Date; and (d) such other matters that the Debtor deems appropriate.

#### **ARTICLE XIV. RETENTION OF JURISDICTION**

**14.1 Retention of Jurisdiction.** Notwithstanding entry of the Confirmation Order, or the entry of a final decree, with respect to the Chapter 11 Case, or any of them, the Bankruptcy Court shall retain jurisdiction from and after the Effective Date, to the fullest extent legally permitted, over the Chapter 11 Case, all proceedings arising under, arising in or related to the Chapter 11 Case, the Confirmation Order and the Plan including, without limitation, jurisdiction to:

**14.1.1** Determine (a) any Disputed Claims, Disputed Equity Interests and all related Claims remaining in controversy or otherwise Disputed after the Confirmation Date including rights and liabilities under contracts giving rise to such Claims, (b) the validity, extent, priority, and avoidability and nonavoidability of consensual and nonconsensual Liens and other encumbrances, (c) pre-confirmation tax liability pursuant to § 505 of the Bankruptcy Code, and (d) controversies and disputes regarding the interpretation of the Plan and documents executed in connection therewith;

**14.1.2** Allow, disallow, estimate, liquidate or determine any Claim or Equity Interest against or in the Debtor and to enter or enforce any Order requiring the filing of any such Claim or Equity Interest before a particular date;

**14.1.3** Determine / Approve all matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease of the Debtor pursuant to § 365 of the Bankruptcy Code and the Plan;

**14.1.4** Determine any request for payment of a potential Administrative Expense Claim, including compensation of parties entitled thereto, or fees and reimbursements to the Debtor;

**14.1.5** Resolve controversies and disputes regarding the interpretation and implementation of the Plan, any disputes relating to whether or not a timely and proper proof of Claim was filed or whether a Disallowed Claim or Disallowed Equity Interest should be reinstated;

**14.1.6** Implement the provisions of the Plan and enter Orders and injunctions in aid of confirmation and consummation of the Plan, including any disputes concerning the enforceability or applicability of the releases and injunctions contained herein;

**14.1.7** Issue injunctions, enter and implement other orders and take such other actions as may be necessary or appropriate to execute, interpret, implement, consummate, or enforce the terms and conditions of the Plan (including all exculpations and injunctions), any Plan Document, the Plan Supplement, or any transaction contemplated under any of the foregoing, the Confirmation Order, or any other order of the Bankruptcy Court, or to maintain the integrity of the Plan following confirmation;

**14.1.8** Determine issues relating to the garnishment of any Distributions payable under the terms of the Plan;

**14.1.9** Modify the Plan pursuant to § 1127 of the Bankruptcy Code;

**14.1.10** Preside over and adjudicate any and all Causes of Action that arose prior to the Confirmation Date or in connection with the implementation of the Plan, whether or not pending on the Confirmation Date;

**14.1.11** Resolve disputes concerning any reserves with respect to Disputed Claims and Disputed Equity Interests or the administration thereof;

**14.1.12** Resolve any disputes concerning whether a person or entity had sufficient notice of the Chapter 11 Case, any applicable Bar Date, the hearing on the approval of the Disclosure Statement as containing adequate information, or the Confirmation Hearing for the purpose of determining whether a Claim or Equity Interest is barred hereunder or for any other purpose;

**14.1.13** Preside over and determine any and all applications, claims, pending adversary proceedings, and contested matters (including, without limitation, any adversary proceeding or other proceeding to recharacterize agreements or reclassify Claims or Equity Interests) in the Chapter 11 Case;

**14.1.14** Enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

**14.1.15** Seek the issuance of such orders in aid of execution of the Plan, to the extent authorized by § 1142 of the Bankruptcy Code;

**14.1.16** Consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

**14.1.17** Recover all assets of the Debtor and property of the Estate, wherever located;

**14.1.18** Resolve any dispute relating to the approval and payment of the fees and expenses of the Debtor, or the Committee, and their professionals;

**14.1.19** Resolve matters concerning state, local, and federal taxes in accordance with §§ 346, 505, and 1146 of the Bankruptcy Code;

**14.1.20** Hear any other matter not inconsistent with the Bankruptcy Code;

**14.1.21** Resolve any and all disputes or controversies relating to Distributions to be made, and/or reserves or escrows to be established, under the Plan;

**14.1.22** Enter a final decree closing the Chapter 11 Case;

**14.1.23** Enforce any injunctions granted under the Plan;

**14.1.24** Approve settlements relating to any of the above;

**14.1.25** Determine any and all motions, applications, adversary proceedings, contested or litigated matters, including Causes of Action initiated by, against, or otherwise involving the Debtor, the Surviving Officers, the Liquidation Trustee, the Liquidation Trust, or the Liquidation Trust Committee;

**14.1.26** Hear and determine all matters necessary to enforce the rights, remedies, and obligations reserved for the Debtor, the Surviving Officers, the Liquidation Trustee, Liquidation Trust, or Liquidation Trust Committee in the Plan, the Plan Documents, the Plan Supplement, the Confirmation Order, or the Liquidation Trust Agreement, including interpreting any provision of any of the foregoing; and

**14.1.27** Enter an order concluding, closing, or terminating the Chapter 11 Case.

**14.2 Limitation on Jurisdiction and Authority.** In no event shall the provisions of this Plan be deemed to confer in the Bankruptcy Court jurisdiction greater than that established by the provisions of 28 U.S.C. §§ 157 and 1334 or authority to enter final judgments beyond that provided by applicable law, including the Constitution of the United States.

**14.3 No New Requirements.** The grant of jurisdiction to the Bankruptcy Court herein over a matter or issue does not mean that Bankruptcy Court approval is required for such matters or issues, nor does it otherwise affect the substantive legal requirements or the requirements in

any agreement pertaining to such matters or issues.

## **ARTICLE XV. MISCELLANEOUS PROVISIONS**

**15.1 Authorization.** The Debtor and the Liquidation Trustee, after the Effective Date, shall be authorized to perform all reasonable, necessary and authorized acts to consummate the terms and conditions of the Plan.

**15.2 Amendment of the Plan.** The Proponents reserve the right, in accordance with the Bankruptcy Code, with the consent of the Committee, to amend or modify the Plan prior to the Confirmation Date. After the Effective Date, the Liquidation Trustee or the Debtor may, on order of the Bankruptcy Court, amend or modify the Plan in accordance with § 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

**15.3 Non-Confirmation of the Plan.** The Proponents reserve the right to withdraw this Plan at any time prior to the Confirmation Date. If the Proponents withdraw this Plan prior to the Confirmation Date, or if the Confirmation Date or the Effective Date does not occur, then this Plan shall be deemed null and void. In such event, nothing contained in this Plan shall be deemed to constitute an admission of any liability or of the viability of any defense to liability on the part of the Debtor, the Estate, or any other Person.

**15.4 No Admissions.** Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission by the Debtor with respect to any matter set forth herein, including, without limitation, liability on any Claim or the propriety of any Claim's classification.

**15.5 Filing of Additional Documentation.** On or before the Effective Date, the Debtor may file with the Bankruptcy Court such agreements and other documents as may be reasonably necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

**15.6 Governing Law.** Except to the extent the Bankruptcy Code or the Bankruptcy Rules are applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with the laws of the State of Texas, without giving effect to the principles of conflicts of law thereof.

**15.7 Headings.** Each heading preceding an article, section or paragraph of the Plan is inserted for convenience only and shall not affect interpretation or construction of the Plan.

**15.8 Severability.** Should any term or provision of the Plan be determined by the Bankruptcy Court to be invalid, void or unenforceable, such determination shall in no way limit or affect the enforceability or operative effect of any other provision of the Plan. If any term or provision of the Plan is of such a character as to deny Confirmation, the Debtor reserves the right to strike such provisions from the Plan and seek Confirmation of the Plan as modified. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and

provisions of the 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 the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**15.9 All Claims and Equity Interests.** The Plan is intended to deal with all Claims of whatever character whether or not Disputed, contingent, or liquidated and whether or not Allowed by the Bankruptcy Court under § 502 of the Bankruptcy Code against and Equity Interests in the Debtor. However, only those Claims and Equity Interests Allowed shall be entitled to receive the treatment afforded by the Plan.

**15.10 Successors and Assigns.** All of the rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person.

**15.11 Computation of Time.** In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006 shall apply unless otherwise set forth in the Plan or determined by the Bankruptcy Court.

**15.12 Section 1125(e) Good-Faith Compliance.** The Proponents and their respective representatives and professionals shall be deemed to have acted in “good faith” under § 1125(e) of the Bankruptcy Code.

**15.13 No Stay of Confirmation Order.** The Confirmation Order shall contain a waiver of any stay of enforcement otherwise applicable, including Bankruptcy Rules 3020(e) and 7062.

**15.14 Notices.** Any notice required to be given under this Plan shall be in writing and, except for a notice of change of address, shall be considered complete on the earlier of: (a) three (3) days following the date the notice is sent by United States mail, postage prepaid, or by overnight courier service, or in the case of mailing to a non-United States address, air mail, postage prepaid, or personally delivered; (b) the date the notice is actually received by the Entities on the Post-Confirmation Service List by facsimile or computer transmission; or (c) three (3) days following the date the notice is sent to those Entities on the Post-Confirmation Service List as such Service List is adopted by the Bankruptcy Court at the hearing on confirmation of the Plan, as such list may be amended from time-to-time by written notice from the Persons on the Post-Confirmation Service List. Unless and until otherwise directed, any pleading, notice or other document required or permitted by the Plan to be served on or delivered to the Debtor, or, if after the Effective Date, the Debtor and the U.S. Trustee, as the case may be, shall be sent by U.S. first class mail, postage prepaid, to:

Debtor:

With copies to:

Team Express Distributing, LLC  
c/o Michael Marney  
1116 E. Bluestem Ct.  
Andover, KS 67002

Marcus A. Helt  
Matthew J. Pyeatt  
Gardere Wynne Sewell LLP  
2021 McKinney Ave., Suite 1600  
Dallas, TX 75201

Committee:

Joseph M. Coleman  
John J. Kane  
Kane Russell Coleman & Logan PC  
1601 Elm Street, Suite 3700  
Dallas, TX 75201

United States Trustee:

James W. Rose, Jr.  
615 E. Houston Street, Suite 533  
San Antonio, TX 78205

**15.15 U.S. Trustee Fees.** The Debtor will pay only unpaid, but accrued fees owed to the U.S. Trustee on or before the Effective Date of the Plan. After the Effective Date, the Debtor shall file with the Bankruptcy Court and serve on the U.S. Trustee quarterly financial reports in a format prescribed by the U.S. Trustee, and the Liquidation Trustee shall pay post-Effective Date quarterly fees to the U.S. Trustee until a final decree is entered or the Chapter 11 Case is converted or dismissed.

Dated: December 4, 2016

Respectfully submitted by:

By: /s/ Marcus A. Helt  
Marcus A. Helt (TX 24052187)  
Matthew J. Pyeatt (TX 24086609)  
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**ATTORNEYS FOR THE DEBTOR AND  
DEBTOR-IN-POSSESSION**

By: /s/ Joseph M. Coleman  
Joseph M. Coleman (TX 0456610)  
John J. Kane (TX 20466794)  
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1601 Elm Street, Suite 3700

Dallas, TX 75201  
Telephone: (214) 777-4200  
Facsimile: (214) 777-4229

**ATTORNEYS FOR THE COMMITTEE**

**EXHIBIT A**

**CAUSES OF ACTION**

### **Causes of Action**

The Causes of Action (as defined in the Plan) specifically include any claims of the Estate related to the specific litigation listed in the Debtor's Statement of Financial Affairs, including but not limited to the MS Dynamics Claims identified in the MS Dynamics Lawsuit (which, for the avoidance of doubt, are not transferred to the Liquidation Trust and remain with the Debtor on the Effective Date) and the following Causes of Action and claims, all of which are retained by the Plan and the Confirmation Order:

all claims and Causes of Action listed in, referenced in, or attached as an exhibit to the Plan, the Disclosure Statement, the Schedules, Statements of Financial Affairs, or in any Plan Document, and all claims and causes of action for all contract theories of recovery, including contract and usury, quasi-contract claims, including quantum meruit, promissory estoppel, suit on a sworn account, money had and received, tort theories of liability, including tortious interference with existing contract, tortious interference with contractual/business relations, conversion, breach of fiduciary duty, fraud, bad faith denial of coverage or other insurance claim, constructive eviction, wrongful eviction, wrongful foreclosure, malpractice, libel, slander, malicious prosecution, negligence, gross negligence, premises liability, trade-secret misappropriation, misrepresentation; breach of warranty claims and related theories of recovery; statutory claims and related theories of recovery, including claims under the Bankruptcy Code, including objections

to the allowance of claims for disgorgement or otherwise, including any related to extent, priority, subordination, or validity of liens, claims under 11 U.S.C. §§ 509, 510, 542, 543, 544, 547, 548, 549, and 550, claims pursuant to the Texas Business and Commerce Code, including preferences, fraudulent transfers under all applicable law, including chapter 27, and claims pursuant to title 18 U.S.C., participatory, vicarious, secondary, and related theories of liability including, without limitation, aiding and abetting, conspiracy, principal-agent, partnership, alter ego, common enterprise, joint and several liability, proportionate responsibility, contribution, and veil piercing; equitable claims including claims for lien subordination and contempt; any such claim or cause of action relating to any counterclaim, demand, controversy, cost, debt, sum of money, account, reckoning, bond, bill, damage, obligation, liability, objection, legal proceeding, equitable proceeding, and execution of any nature, type, or description, avoidance action, fraudulent-transfer action, strong-arm-power action, state-law fraudulent-transfer action, improper assignment of interest, negligence, gross negligence, willful misconduct, usury, fraud, deceit, misrepresentation, conspiracy, unconscionability, duress, economic duress, defamation, control, interference with contractual and business relations, conflict of interest, misuse of insider information, concealment, disclosure,

secrecy, misuse of collateral, wrongful release of collateral, failure to inspect, environmental due diligence, negligent loan processing and administration, wrongful recoupment, wrongful setoff, violations of statutes and regulations of governmental entities, instrumentalities and agencies, equitable subordination, debt recharacterization, substantive consolidation, securities and antitrust laws violations, tying arrangements, deceptive trade practices, breach or abuse of any alleged fiduciary duty, breach of any special relationship, course of conduct or dealing, obligation of fair dealing, obligation of good faith, at law or in equity, in contract, in tort, or otherwise, known or unknown, suspected or unsuspected; and any claims or causes of action related to any matter listed on the Schedules or Statement of Financial Affairs of the Debtor, including all attachments and amendments thereto.

The Liquidation Trust shall have the right to supplement the Causes of Action as necessary. In connection with the Causes of Action, the following is designated as potential damages claims:

all available theories of recovery and damages, including, without limitation, all actual, punitive, and other statutory damage claims, rights to reimbursement and costs, and all other relief, general or special, at law or in equity, to which the Debtor, the Liquidation Trust, or the Liquidation Trustee may be rightfully entitled.

The following non-exhaustive and non-mutually exclusive list of entities and individuals as potential defendants to the Causes of Action includes all names listed in the Debtor's Schedules, and:

All trade vendors<sup>1</sup> and other creditors of the Debtor all entities and individuals that received transfers from or on behalf of the Debtor from December 16, 2011 to the present; all entities and individuals that owed fiduciary duties to the Debtor from December 16, 2011 to the present; all insurance companies with any insurance coverage in place for the benefit of the Debtor from December 16, 2011, to the present; all individuals and entities listed on the Schedules or Statement of Financial Affairs of the Debtor, including any attachments and amendments thereto; all companies that furnished utilities for the Debtor, all unsecured creditors of the Debtor, all investors of the Debtor and any non-Debtor Affiliates, any entity or individual in possession of or having control over property of the Debtor or operations of the Debtor; any entity or individual responsible or who contributed to any losses or damages suffered by the Debtor or its creditors or investors, any party that has appeared in the Chapter 11 Case, Junction Solutions, Inc., Microsoft Corporation, any other party named as a defendant in the MS Dynamics Lawsuit, and Brian Crosby (collectively referred to as the "**Potential Parties**").\*

The Potential Parties include all affiliates, successors, transferees, directors, officers, employees, and other agents of any entity or individual that would otherwise qualify as a Potential Party.

The Liquidation Trust shall have the right to supplement the Causes of Action as necessary throughout its investigation of the Debtor's affairs.

\*This is a non-exclusive list. The failure to include any name or title on this list, the Schedules, the Statements of Financial Affairs, the Plan, the Disclosure Statement, or any Plan document or supplement should not be construed as a waiver of any Cause of Action against that individual or

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<sup>1</sup> As provided in the APA, the Debtor's Assets do not include claims against trade vendors pursuant to 11 U.S.C. § 547.

Entity.

**EXHIBIT B**

**LIQUIDATION TRUST AGREEMENT**

**(to be provided in the Plan Supplement)**

**EXHIBIT C**

**LITIGATION GOVERNANCE AND COOPERATION AGREEMENT**

**(to be provided in the Plan Supplement)**

**EXHIBIT D**

**LIST OF EQUITY INTERESTS IN THE DEBTOR**

Member	Preferred Units	% of Preferred Units	Voting Common Units	% of Voting Common	% of Capital Account	Preferred Ratio
EL Partners Fund LLC Attn: Kevin Otis	135.00	3.02%	15,000	1.99%	2.87%	90.0%
Keith S. Furer	45.00	1.01%	5,000	0.66%	0.96%	90.0%
Anthony V. Manory	90.00	2.01%	10,000	1.33%	1.91%	90.0%
Mark S. Marney	392.14	8.76%	107,857	14.30%	9.56%	78.4%
Michael Marney	392.14	8.76%	107,857	14.30%	9.56%	78.4%
Richard W. & Debra S. Mouser	900.00	20.11%	100,000	13.26%	19.13%	90.0%
Richard W. Mouser Irrevocable Trust	900.00	20.11%	100,000	13.26%	19.13%	90.0%
Debra S. Mouser Irrevocable Trust 2	900.00	20.11%	100,000	13.26%	19.13%	90.0%
Richard Mouser	90.00	2.01%	138,571	18.37%	4.37%	39.4%
Kevin Otis	22.50	0.50%	2,500	0.33%	0.48%	90.0%
Tracy Sundlun	135.00	3.02%	15,000	1.99%	2.87%	90.0%
T&J investments LLC Attn: David C. Nesbitt	450.00	10.06%	50,000	6.63%	9.56%	90.0%
Gerald Woycik	22.50	0.50%	2,500	0.33%	0.48%	90.0%
<b>Total Issued and Outstanding</b>	<b>4,474.29</b>	<b>100.00%</b>	<b>754,285.00</b>	<b>100.00%</b>	<b>100.00%</b>	<b>85.6%</b>

**EXHIBIT E**

**ALLOCATION OF NET MS DYNAMICS PROCEEDS  
PAYABLE TO HOLDERS OF CLASS 6 EQUITY INTERESTS**

**Allocation of Net MS Dynamics Proceeds Payable to Holders of Class 6 Equity Interests**

- Tier 1 Management Fee paid to officers and others as deemed appropriate by the Board of Directors for participation and pursuit of the MS Dynamics Lawsuit  
  
15% of shareholder lawsuit proceeds until preferred and common shareholders are paid in full for contributed capital, and preferred shareholders receive annual interest payments at 8% for a period of 3 years.  
  
30% of shareholder lawsuit proceeds after preferred and common shareholders are paid in full for contributed capital, and preferred shareholders receive annual interest payments at 8% for a period of 3 years.
- Tier 2 Redemption of Preferred shares contributed capital
- Tier 3 Redemption of Common shares contributed capital
- Tier 4 Payment of 8% annual interest on Preferred shares with a maximum of 3 years of interest
- Tier 5 Remaining shareholder lawsuit proceeds will be distributed to Common shareholders

**EXHIBIT C**

**LIQUIDATION ANALYSIS**

**Team Express Distributing LLC**  
**Liquidation Analysis**  
(\$ millions)

As of 3/6/17

	<i>Hypothetical Liquidation Value</i>	
	<i>Low</i>	<i>High</i>
<b><u>ASSETS</u></b>		
Operating Cash*	0.163	0.227
Gardere Trust Account	0.008	0.008
Miscellaneous Litigation Claims	0.000	50.000
Adjustment Escrow Amount	1.000	1.000
<b>Total Assets Available for Distribution</b>	<b>1.171</b>	<b>51.235</b>
	<i>High</i>	<i>Low</i>
<b><u>Secured Claims</u></b>		
Secured Tax Claim of Bexar Appraisal District/Judson ISD**	0.053	0.053
	<b>0.053</b>	<b>0.053</b>
<b>Total Available for Distribution to Administrative Creditors and Unsecured Creditors</b>	<b>1.118</b>	<b>51.182</b>
<b><u>Unpaid Administrative Expenses***</u></b>		
Gardere	0.069	0.069
Cain & Skarnulis	0.012	0.012
Kane Russell	0.121	0.121
Bridgepoint	0.011	0.011
Foulston	0.004	0.004
VRC	0.016	0.016
Estimate professionals to confirmation	0.050	0.050
Total Professional Fees	0.283	0.283
Payment of Non-Professional Administrative Expenses and Priority Claims	0.450	0.450
<b>Estimated Administrative Expenses/Other Priority as of Effective Date</b>	<b>0.733</b>	<b>0.733</b>
<b>Total Assets Available for Distribution to Unsecured Creditors</b>	<b>0.385</b>	<b>50.449</b>
<b><u>Estimated Unsecured Claims</u></b>	<i>High</i>	<i>Low</i>
General Unsecured Creditors	25.116	27.792
<b>Total Estimated Unsecured Claims</b>	<b>25.116</b>	<b>27.792</b>
<b>Estimated Dividend to Unsecured Non-Subordinated Creditors</b>	<b>High 2%</b>	<b>Low 100%</b>

\*Low assumes MB Financial offsets against \$63,500 holdback; high assumes no such offset. The cash balance includes the return of the UPS deposit in the amount of \$75,000.

\*\*The Debtor's 2016 personal property tax above reflects the Debtor's pro rata portion of the estimated 2016 tax, as Concourse Team Express LLC is obligated to pay the remainder of the 2016 tax bill.

\*\*\*These amounts reflect known unpaid fees/expenses through November 2016.

\*\*\*\*The professionals employed by Liquidation Trustee, the Litigation Oversight Committee, and the Surviving Officers, if any, may incur additional administrative expense claims in accordance with the Plan that may reduce the estimates set forth herein.

**EXHIBIT D**

**CONFIRMATION HEARING NOTICE**

**(to be provided once filed)**