

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re  
BURGESS BIOPOWER, LLC, *et al.*<sup>1</sup>  
  
Debtors.

Chapter 11  
  
Case No. 24-10235 (LSS)  
(Jointly Administered)

**FIRST AMENDED JOINT CHAPTER 11 PLAN FOR  
BURGESS BIOPOWER, LLC AND BERLIN STATION, LLC**

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Dated: April 11, 2024

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Burgess BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors' corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

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## INTRODUCTION

Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”), the debtors and debtors in possession in the above captioned cases (collectively, the “Debtors”), propose this Plan for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used but not otherwise defined shall have the respective meanings ascribed to such terms in Article I.A of the Plan.

Holders of Claims and Interests should refer to the Disclosure Statement for a discussion of the Debtors’ history, business, assets, results of operations, and historical financial information, projections, as well as a summary and description of the Plan and certain related matters. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

The Chapter 11 Cases are being jointly administered for procedural purposes only. Notwithstanding the foregoing, the Plan constitutes a separate plan for each Debtor, and each Debtor is a proponent of its own plan within the meaning of section 1129 of the Bankruptcy Code; provided, however, that upon the occurrence of a Severance Trigger Date, the Plan shall apply solely as to Berlin and the Plan as to Burgess shall be withdrawn.

The Debtors shall pursue Confirmation of the Plan and, if one or more Qualified Bidders are designated in accordance with the Bidding Procedures (to the extent Filed), pursue the Sale Transaction(s) on a parallel path and implement such Sale Transaction(s) in connection with Confirmation and Consummation of the Plan. If one or more Successful Bidders is not designated pursuant to the Bidding Procedures and no Sale Transaction(s) are consummated by the applicable Sale Milestone or are otherwise terminated, not consummated, or not capable of being consummated, in each case, by the applicable outside sale date in accordance with the terms of the applicable Sale Transaction Documents, then the Debtors and the Senior Lenders shall seek to consummate the Plan without a Sale Transaction. If the Sale Transaction(s) are consummated, the Sale Proceeds shall be distributed in accordance with the Plan.

This Plan is consistent with the Restructuring Support Agreement, and all Consenting Parties are bound to support the Plan in accordance with the Restructuring Support Agreement.

**All holders of Claims entitled to vote on the Plan are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan.**

### **I. DEFINED TERMS AND RULES OF INTERPRETATION**

#### **A. Defined Terms**

As used in the Plan, capitalized terms have the meanings set forth below.

“510(b) Claim” means any Claim against the applicable Debtor that is subordinated pursuant to section 510(b) of the Bankruptcy Code.

“Administrative Claim” means a Claim entitled to priority for costs and expenses of administration of the applicable Debtor’s Estate under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses

incurred on or after the Petition Date of preserving the applicable Estate and operating the businesses of the Debtors; (b) Allowed Professional Fee Claims in the applicable Chapter 11 Cases; (c) all fees and charges assessed against the applicable Debtors' Estates under chapter 11 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930; (d) Adequate Protection Fees and Expenses (as defined in the DIP Orders); and (e) the Restructuring Expenses.

"Administrative Claims Bar Date" means the deadline for Filing requests for payment of Administrative Claims (other than DIP Claims, the Adequate Protection Claims, the Professional Fee Claims and Restructuring Expenses, which shall be paid in accordance with the DIP Orders and the Plan, as applicable), which shall be thirty (30) days after the Plan Effective Date, except as specifically set forth in the Plan or a Final Order.

"Affiliate" means, with respect to a particular Person, any other Person controlling, controlled by or under common control with such particular Person.

"Allowed" means with respect to a Claim, except as otherwise provided herein: (a) a Claim in a liquidated amount as to which no objection has been Filed prior to or on the applicable objection deadline and that is either evidenced by a timely Filed Proof of Claim or that is not required to be evidenced by a Proof of Claim under the Plan, the Bankruptcy Code, or a Final Order; (b) a Claim that is scheduled by the Debtors on their Schedules as neither disputed, contingent, nor unliquidated, and for which no Proof of Claim has been Filed in an unliquidated or different amount; or (c) a Claim that is deemed "Allowed" (i) pursuant to the Plan, (ii) in any stipulation approved by the Bankruptcy Court, (iii) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or (iv) by Final Order (including any Claim to which the Debtors had objected or which the Bankruptcy Court had allowed prior to such Final Order); provided, that with respect to a Claim described in clauses (a) through (c) above, such Claim shall be considered Allowed only if and to the extent no objection to the allowance of such Claim has been Filed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or if such an objection had been Filed, it was overruled and such Claim was Allowed by a Final Order; provided, further, that no Claim of any Person subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Person pays in full the amount that it owes to the applicable Debtor, Reorganized Debtor, or Wind-Down Debtor, as applicable.

"Assumed Executory Contracts and Unexpired Leases List" means the list compiled by the Debtors, with the consent of the Senior Lenders, of Executory Contracts and Unexpired Leases that will be assumed by the Reorganized Debtors pursuant to the Plan, which list may be amended from time to time with the consent of the Senior Lenders.

"Assumption and Assignment Procedures" has the meaning assigned to it in the Bidding Procedures Order, if applicable.

"Avoidance Actions" means any and all actual or potential avoidance, recovery, subordination, or other Claims, Causes of Action, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including Claims, Causes of Action, or remedies under

sections 502, 510, 542, 544, 545, 547 through and including 553, and 724(a) of the Bankruptcy Code or under similar local, state, federal, or foreign statutes and common law.

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

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

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of title 28 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, each as it may exist on any relevant date to the extent applicable to the Chapter 11 Cases.

“Berlin” has the meaning set forth in the Introduction.

“Berlin Facility” means the 75-megawatt biomass-fueled power plant located on an approximately 62-acre site in Berlin, New Hampshire (and such real property which is owned by Berlin).

“Bidding Procedures” means, if applicable, the procedures governing the sale process with respect to any Sale Transaction(s), as approved by the Bankruptcy Court pursuant to the Bidding Procedures Order (as such procedures may be altered, amended, modified, or supplemented from time to time in accordance with their terms and otherwise in accordance with the Restructuring Support Agreement), which shall provide for the Sale Transaction(s) pursuant to the Plan and be reasonably acceptable to the Debtors and the Senior Lenders.

“Bidding Procedures Motion” means, if Filed, the motion Filed by the Debtors in the Chapter 11 Cases seeking approval of, among other things, the Bidding Procedures.

“Bidding Procedures Order” means, if applicable, that certain order of the Bankruptcy Court approving the relief sought in the Bidding Procedures Motion, the form and substance of which shall be reasonably acceptable to the Debtors and the Senior Lenders.

“Burgess” has the meaning set forth in the Introduction.

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

“Cash” means legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.

“Causes of Action” means, collectively, any and all Claims, interests, damages, remedies, demands, rights, actions, suits, claims, cross-claims, counterclaims, third-party claims, obligations, liabilities, defenses, offsets, powers, privileges, licenses, indemnities, guaranties, franchises, debts, liens, losses, costs (including attorneys’ fees and costs of defense and investigation), expenses, controversies, assessments, penalties, fines, charges, promises, commitments, appeals, omissions, contingencies, sums of money, judgments, executions and causes of action of any kind,



nature or character whatsoever (whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly, indirectly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise). Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and Claims under contracts or for breaches of duties imposed by applicable law; (b) the right to object to or otherwise contest Claims or Interests; (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) such Claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any Claim under any state, federal or foreign law, including any fraudulent transfer or similar Claim or claim.

“Chapter 11 Case(s)” means, when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, and when used with reference to all of the Debtors, the jointly administered cases pending for the Debtors under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

“Claim” means any claim, as defined in section 101(5) of the Bankruptcy Code, to the extent not paid during the course of the Chapter 11 Cases.

“Claims, Noticing, and Solicitation Agent” means Epiq Corporate Restructuring, LLC, as the noticing, claims, and solicitation agent retained by the Debtors in the Chapter 11 Cases.

“Claims Register” means the official register of Claims maintained by the Claims, Noticing, and Solicitation Agent.

“Class” means a category of Claims or Interests established for the purposes of the Plan pursuant to section 1122(a) of the Bankruptcy Code.

“Compensation and Benefits Programs” means all employment and severance agreements and policies, and all employment, consulting, wages, compensation, and benefit plans and policies, workers’ compensation programs, savings plans, retirement plans, deferred compensation plans, supplemental executive retirement plans, healthcare plans, disability plans, severance benefit plans, incentive and retention plans, programs, and payments, life and accidental death and dismemberment insurance plans and programs, for all employees and consultants of the Debtors, and all amendments and modifications thereto, applicable to the Debtors’ current and former employees, consultants, non-employee directors and managers, in each case existing with the Debtors as of immediately prior to the Plan Effective Date.

“Confirmation” means entry of a Confirmation Order on the docket of the Chapter 11 Cases of the Debtors within the meaning of Bankruptcy Rules 5003 and 9021.

“Confirmation Date” means a date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases of the Debtors.

“Confirmation Hearing” means a hearing before the Bankruptcy Court at which the Debtors seek entry of the Confirmation Order.

“Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, including all exhibits, appendices, supplements and related documents, which shall be in form and substance reasonably acceptable to the Debtors and the Senior Lenders, and, absent repayment in full in Cash of the DIP Facility, the DIP Lenders.

“Consenting Parties” means the parties to the Restructuring Support Agreement.

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

“Control” (including, with its correlative meanings, “controlling,” “controlled by,” and “under common control with”) means, with respect to any Person, the possession, directly or indirectly, of the power to direct the management and policies of such Person whether through the ownership of voting securities, by contract or otherwise.

“Cure Amount” means the amount, including an amount of \$0.00, required to cure any monetary defaults under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the parties to such Executory Contract or Unexpired Lease) that is to be assumed by the Debtors (and, in a Sale Scenario, potentially assigned to the Purchaser(s)) pursuant to sections 365 or 1123 of the Bankruptcy Code).

“Debtor” or “Debtors” has the meaning set forth in the Introduction.

“Definitive Documents” means all documents implementing the Plan, which shall be consistent with the Restructuring Support Agreement (including the consent rights set forth therein), and shall include, as applicable and dependent upon the Restructuring Transactions actually implemented as determined in accordance with the Restructuring Support Agreement: (a) all pleadings Filed by any Debtor in the Chapter 11 Cases (and related orders), including the First Day Pleadings and all proposed orders sought pursuant thereto; (b) the DIP Facility Documents (as defined in the Restructuring Support Agreement), the DIP Motion, and the DIP Orders; (c) the Plan; (d) the Disclosure Statement; (e) the Solicitation Materials as they relate to the Plan and any motion seeking approval thereof; (f) the memorandum of law in support of approval of the Disclosure Statement and Confirmation of the Plan; (g) the Confirmation Order; (h) each of the documents comprising the Plan Supplement; (i) if applicable, the Bidding Procedures, the Bidding Procedures Motion and Bidding Procedures Order; (j) if applicable, any Purchase Agreement(s) and the order or orders approving the sale or sales contemplated thereby; (k) the Plan Administrator Agreement(s); (l) the New Organizational Documents; (m) any and all filings with or notices to any governmental or regulatory authority, in each case, as may be required under applicable law in connection with the Chapter 11 Cases, the Restructuring Transactions, or the occurrence of the Plan Effective Date; and (n) any and all other deeds, agreements, filings, notifications, pleadings, orders, certificates, letters, or instruments or other documents relating to the Restructuring Transactions or reasonably desirable or necessary to consummate and document the Restructuring Transactions or the transactions contemplated by the Restructuring Support Agreement, including any agreements, instruments, pleadings, orders, and/or other documentation Filed in the Chapter 11 Cases (including any exhibits, annexes, schedules, amendments, modifications, or supplements made from time to time thereto in accordance with their terms).

“DIP Agent” means Deutsche Bank Trust Company Americas, in its capacity as administrative agent and collateral agent under the DIP Facility.

“DIP Claims” means all Claims of the DIP Lenders and the DIP Agent derived from, based upon, relating to, or arising under the DIP Facility and Final DIP Order.

“DIP Distribution Amount” means the (a) New Reorganized Debtor Equity in Berlin and Burgess and (b) Refunds, collectively, in value equal to the lesser of (i) the DIP Claims and (ii) the Valuation of the Debtors plus the Refunds.

“DIP Facility” means the senior secured superpriority debtor in possession financing facility approved pursuant to the DIP Orders.

“DIP Lenders” has the meaning set forth in the Restructuring Support Agreement.

“DIP Motion” means the motion Filed by the Debtors in the Chapter 11 Cases seeking approval of the DIP Facility, the form and substance of which shall be reasonably acceptable to the Debtors, the Senior Lenders and the DIP Lenders.

“DIP Orders” means the Interim DIP Order and the Final DIP Order.

“Disallowed” means, with respect to a Claim, a Claim (or portion thereof) that has been denied, dismissed, or overruled pursuant to the Plan or a Final Order.

“Disclosure Statement” means the disclosure statement for the Plan, including all exhibits and schedules thereto.

“Disputed” means, with respect to a Claim, (a) any such Claim to the extent neither Allowed nor Disallowed under the Plan or a Final Order or deemed Allowed under sections 502, 503 or 1111 of the Bankruptcy Code, or (b) any such Claim to the extent the applicable Debtors or any party in interest have interposed a timely objection to such Claim before the deadlines imposed by the Confirmation Order, which objection has not been withdrawn or determined by a Final Order. To the extent only the Allowed amount of a Claim is disputed, such Claim shall be deemed Allowed in the amount not disputed, if any, and Disputed as to the balance of such Claim.

“Disputed Claims Reserve” means, in the event one or more Sale Transaction(s) are consummated and a Plan Administrator is appointed for the Debtors, a Cash reserve established in accordance with Article VII.D of this Plan, in the amount equal to the aggregate amount that would be distributable to holders of Disputed Claims against the Debtors if such Disputed Claims were Allowed Claims on the Plan Effective Date.

“Distribution Record Date” means, (i) if the Sale Transaction(s) are consummated, seven (7) days prior to the Plan Effective Date; (ii) if the Sale Transaction(s) are not Consummated, ten (10) Business Days after the date the Debtors File a notice of consummation of a Stand-Alone Restructuring Transaction on the docket of the applicable Chapter 11 Cases; or (iii) such other date as agreed upon among the Debtors and the Senior Lenders.

“Estate” or “Estates” means the estate(s) of a Debtor(s) created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Chapter 11 Case.

“Exculpated Parties” means (a) the Debtors; (b) the officers of each of the Debtors and the members of any board of managers or directors of each Debtor, in each case, who served in the Debtors’ Chapter 11 Cases after the Petition Date through the Plan Effective Date; (c) any independent directors of the Debtors; and (d) all Professionals retained by the Debtors or the independent directors in the Debtors’ Chapter 11 Cases.

“Executory Contract” means a contract to which one or more of the Debtors is a party and that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

“File,” “Filed,” or “Filing” means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court (including requests for allowance of an Administrative Claim) or, with respect to the filing of a Proof of Claim, the Claims, Noticing, and Solicitation Agent.

“Final DIP Order” means the order of the Bankruptcy Court approving the DIP Facility on the final basis, the form and substance of which shall be reasonably acceptable to the Debtors, the DIP Lenders and the Senior Lenders.

“Final Order” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, vacated, stayed, modified, or amended, and as to which the time to appeal, seek leave to appeal, or seek certiorari has expired and no appeal or petition for certiorari or motion for leave to appeal has been timely taken, or as to which any appeal that has been taken or any petition for certiorari or motion for leave to appeal that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari or leave to appeal could be sought or the new trial, reargument, leave to appeal, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice, provided, however, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code has been or may be filed with respect to such order or judgment.

“First Day Pleadings” means those certain motions, applications, and related pleadings Filed by the Debtors on the Petition Date.

“General Unsecured Claim” means any prepetition, general unsecured Claim against one or more of the Debtors (including rejection damages Claims and any deficiency Claim that holders of the Senior Notes Claims may have) that are not Priority Tax Claims or Other Priority Claims, any Claims on account of the Debtors’ indemnification obligations in favor of any current or former employee, officer, director, consultant, or independent contractor of the Debtors shall (w) be released pursuant to the Plan, (x) not be considered General Unsecured Claims under the Plan, (y) be deemed Disallowed under the Plan, and (z) receive no recovery under the Plan. For the avoidance of doubt, any deficiency claims that either the holders of the Senior Notes Claims

and/or the Subordinated Note Claims may have against Burgess shall not be considered General Unsecured Claims.

“Governance Documents” means, with respect to any Person that is an entity, such entity’s organizational and governance documents, including its certificate or articles of incorporation, certificate of formation or certificate of limited partnership, its bylaws, limited liability company agreement, operating agreement, or limited partnership agreement, and any indemnification agreements, stockholders agreements, or registration rights agreements (or equivalent governing documents of any of the foregoing).

“Governmental Unit” has the meaning set forth in section 101(27) of the Bankruptcy Code.

“Impaired” means with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

“Intercompany Claim” means any Claim against a Debtor held by another Debtor.

“Intercreditor Agreement” means that certain Collateral Agency, Subordination, and Intercreditor Agreement, dated as of September 2, 2011, as amended by that certain Amended and Restated Collateral Agency, Subordination and Intercreditor Agreement, dated as of October 25, 2012, by and among Berlin, the Senior Lenders, Deutsche Bank Trust Company Americas, in its capacity as collateral agent for the Senior Lenders and the Subordinated Lenders (as defined in the Final DIP Order) and as depositary.

“Interest” means the rights of the holders of the common stock, membership interests or other equity interests issued by a Debtor and outstanding immediately prior to the Petition Date, and any options, warrants or other rights with respect thereto, or any other instruments evidencing an ownership interest in the applicable Debtor and the rights of any Person to purchase or demand the issuance of any of the foregoing.

“Interim DIP Order” means the Bankruptcy Court order approving the DIP Facility, on an interim basis, the form and substance of which shall be reasonably acceptable to the Debtors, the DIP Lenders and the Senior Lenders.

“Lease” means the lease by and between lessee Burgess and lessor Berlin dated September 2, 2011.

“Lien” has the meaning set forth in section 101(37) of the Bankruptcy Code.

“New Board” means, in a Stand-Alone Restructuring Scenario or a Sale Scenario involving a Plan Sponsor, the respective board of managers or member managers, as applicable, of the Reorganized Debtors immediately following the occurrence of the Plan Effective Date, to be appointed in accordance with the Plan and the New Organizational Documents.

“New Organizational Documents” means, collectively, the Governance Documents of the Reorganized Debtors, which shall be determined by and be acceptable in form and substance solely to the Senior Lenders.

“New Reorganized Debtor Equity” means the equity interests in the applicable Reorganized Debtor (or if neither Reorganized Debtor is specified, in both Reorganized Debtors), to be issued on the Plan Effective Date.

“O&M Agreement” means the Operations and Maintenance Agreement by and between Berlin and CS Berlin Ops, Inc. dated as of January 19, 2018, as amended, assigned, or amended and assigned from time to time.

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

“Other Secured Claim” means any Secured Claim against any applicable Debtor, other than the DIP Claims, the Senior Notes Claims, the Subordinated Claims, and Intercompany Claims.

“Person” means an individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, unlimited liability company, professional corporation, government or any agency or political subdivision thereof or any other entity.

“Petition Date” means February 8, 2024.

“Plan” means this joint plan of reorganization or liquidation, as applicable, as it pertains to the Debtors, including any supplements and exhibits hereto, as it and they may be altered, amended, modified, or supplemented from time to time in accordance with their terms; provided, further, that upon a Severance Trigger Date, then the Plan solely as it applies to Berlin.

“Plan Administrator” means, in the event of a Sale Transaction that results in one or more Wind-Down Debtors, the Person, or any successor thereto, selected by the Senior Lenders to administer such Wind-Down Debtor(s), which will have all powers and authority set forth in Article IV.B.3 of the Plan.

“Plan Administrator Agreement” means, in the event of a Sale Transaction that results in one or more Wind-Down Debtors, the agreement between the Plan Administrator and the Debtors, in form and substance reasonably acceptable to the Plan Administrator, the Debtors and the Senior Lenders, regarding the administration of such Wind-Down Debtor(s)’ assets and other matters related to their applicable Estate(s), which shall be Filed as part of the Plan Supplement.

“Plan Effective Date” means the date that is the first Business Day after the Confirmation Date on which (i) no stay of the Confirmation Order is in effect and (ii) all conditions precedent to the occurrence of the Plan Effective Date set forth in Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan. The Debtors shall File a notice of the occurrence of the Plan Effective Date on the docket of these Chapter 11 Cases.

“Plan Sponsor” means, solely in connection with a Plan Sponsor Alternative, a third party provider of equity financing for the Restructuring.

“Plan Sponsor Alternative” means one or more Sale Transaction(s) whereby a Plan Sponsor provides equity financing and acquires all or a portion of the New Reorganized Debtor Equity.

“Plan Supplement” means the compilation of documents and forms of documents, schedules and exhibits (or substantially final forms thereof), in each case (1) subject to the terms and provisions of the Restructuring Support Agreement (including the consent rights set forth therein), as may be altered, amended, modified, or supplemented from time to time through and including the Plan Effective Date in accordance with the terms of the Plan and the Restructuring Support Agreement and in accordance with the Bankruptcy Code and the Bankruptcy Rules and (2) as applicable and dependent upon the Restructuring Transactions actually implemented as determined in accordance with the Restructuring Support Agreement, including the following documents: (a) the New Organizational Documents; (b) to the extent known, the identities of the members of the New Board; (c) the Schedule of Retained Causes of Action; (d) the Assumed Executory Contracts and Unexpired Leases List; (e) the form of the Plan Administrator Agreement, if applicable; (f) the form of the Purchase Agreement(s), if applicable; (g) the form of the amended O&M Agreement (if applicable); (h) the form of the amended Project Management Agreement (if applicable); and (i) any and all other documentation that is contemplated by the Plan.

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

“Pro Forma Owners” means the Senior Lenders and/or DIP Lenders.

“Pro Rata” means the proportion that an Allowed Claim or an Allowed Interest in a particular Class bears to the aggregate amount of Allowed Claims or Allowed Interests in that Class.

“Professional” means any Person: (a) retained pursuant to a Final Order of the Bankruptcy Court in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

“Professional Fee Claims” means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

“Professional Fee Escrow Account” means an interest-bearing Cash account funded by the Debtors with Cash on the Plan Effective Date in the Professional Fee Escrow Amount in accordance with Article II.B of the Plan and the DIP Orders, which shall be allocated to the Debtors’ Estates.

“Professional Fee Escrow Amount” means the aggregate amount of Professional Fee Claims and other fees and expenses that the Professionals estimate they have incurred or will incur in rendering services to the Debtors prior to and as of the Plan Effective Date and in accordance

with the Final DIP Order, which estimates shall be delivered by the Professionals to the Debtors and the Senior Lenders as set forth in Article II.B.3 of the Plan, and which shall be allocated to the Debtors' Estates.

“Project Management Agreement” means the Project Management Agreement between Cate Street Capital, Inc. and Berlin, dated as of June 29, 2011, as assigned by Cate Street Capital, Inc. to CS Operations, Inc., and as may have otherwise been amended or assigned from time to time, including by that certain rescission agreement and amendment dated as of February 8, 2024.

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

“Purchase Agreement(s)” means, if applicable, an asset purchase agreement(s) or equity purchase agreement(s) in form and substance reasonably acceptable to the Debtors and the Senior Lenders and as approved by the Bankruptcy Court, that, among other things, (a) does not have any financing or diligence contingency, (b) demonstrates that the Purchaser(s) has the wherewithal to promptly close the subject Sale Transaction(s), and (c) provides that closing thereunder shall occur on or before the applicable Sale Milestone.

“Purchaser(s)” means, if applicable, one or more third-party Persons (including, if applicable, a Plan Sponsor) selected to purchase all or substantially all of (a) the Debtors' assets or (b) the New Reorganized Debtor Equity, in each case, in accordance with the Bidding Procedures Order.

“Qualified Bid” means, if applicable, an offer to purchase all or substantially all of the Debtors' assets or all or a portion of the equity interests in the Reorganized Debtors that complies in all respects with the Bidding Procedures (unless otherwise agreed by the Debtors and the Senior Lenders) or a bid submitted by the Senior Lenders and/or DIP Lenders for all or substantially all of the Debtors' assets or equity interests in the Reorganized Debtors.

“Qualified Bidder” means, if applicable, (a) a party that timely submits a Qualified Bid in accordance with the Bidding Procedures, (b) the DIP Lenders, (c) the Senior Lenders, or (d) the Senior Notes Agent (on behalf of the Senior Lenders).

“Quarterly Fees” has the meaning set forth in Article XII.C.

“Refunds” has the meaning set forth in Article IV.A.3.

“Reinstated” means, with respect to a Claim or an Interest, that such Claim or Interest shall be rendered Unimpaired under the Plan in accordance with section 1124(2) of the Bankruptcy Code.

“Related Party” means, each of, and in each case in its capacity as such, current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such equity interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees,



advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of any Person), accountants, investment bankers, representatives, and other professionals and advisors, and any such Person's respective successors, assigns, heirs, executors, estates, and nominees.

"Released Party" means, in its capacity as such, each of: (a) the Debtors and their Estates; (b) the officers of each of the Debtors and the members of any board of managers or directors of each Debtor, and employees of each Debtor; (c) the DIP Lenders and the DIP Agent and their respective Related Parties; (d) the Senior Lenders and their respective Related Parties; (e) the Senior Notes Agent and their Related Parties; (f) all holders of Claims or Interests that (A) vote to accept the Plan; (B) vote to reject the Plan and do not elect to opt out of the releases contained in Article VIII of the Plan; or (C) are Unimpaired and do not timely File an objection to the releases contained in Article VIII of the Plan that is not resolved before Confirmation; and (g) in the event of one or more Sale Transaction(s), each Purchaser and the Plan Administrator (if applicable); provided, however, that no Person (other than the Debtors and the employees of each of the Debtors) shall be a Released Party unless such Person is also a Releasing Party hereunder; provided further, that if any Person that otherwise would qualify as a Sponsor has not signed the Restructuring Support Agreement on or prior to the Petition Date, then such Person shall not be a Released Party in any capacity.

"Releasing Party" means, in its capacity as such, each of: (a) the officers of each of the Debtors, the members of any board of managers of each Debtor and the managing members (or comparable governing bodies or Persons) of any Debtor; (b) the DIP Lenders and the DIP Agent; (c) the Senior Lenders; (d) the Senior Notes Agent; (e) the Sponsors and their Related Parties; (f) all holders of Claims or Interests that (A) vote to accept the Plan; (B) vote to reject the Plan and do not elect to opt out of the releases contained in Article VIII of the Plan, or (C) are Unimpaired under the Plan and elect not to opt out of the releases contained in Article VIII of the Plan (or otherwise do not object to the releases prior to the objection deadline to Confirmation of the Plan); (g) in the event of one or more Sale Transaction(s), each Purchaser and the Plan Administrator (if applicable); (h) the parties to the Restructuring Support Agreement otherwise not set forth in the preceding clauses; and (i) each Related Party of each Person in clause (a) through clause (h), but solely in their capacity as such, and solely to the extent the Person to whom they are related can bind them to releases under the terms of applicable non-bankruptcy law or otherwise obtains their agreement to be bound by the releases contained in the Plan.

"Reorganized Debtors" means the Debtors on and after the Plan Effective Date, together with any successor or assign thereto, by merger, consolidation, reorganization, or otherwise, whether in the form of a corporation, limited liability company, partnership, or other form, as the case may be, on and after the Plan Effective Date.

"Restructuring" means the Debtors' restructuring to be consummated pursuant to the Plan and in accordance with the Restructuring Support Agreement, which shall consist of either (a) one or more Sale Transaction(s) or (b) a Stand-Alone Restructuring Transaction.

“Restructuring Expenses” means the reasonable and documented fees and expenses incurred by the Senior Notes Agent, the DIP Agent, the Senior Lenders and the DIP Lenders, in each case, whether incurred prepetition or postpetition.

“Restructuring Support Agreement” means the Restructuring Support Agreement between the Debtors and the Consenting Parties, dated as of February 8, 2024, as may be altered, amended, modified, or supplemented from time to time in accordance with its terms.

“Restructuring Transactions” means any transactions described in, approved by, contemplated by, or necessary to effectuate the Plan and the Restructuring Support Agreement.

“Right to Use Agreement” means the Right to Use Agreement between Berlin and Burgess, dated as of September 2, 2011.

“Sale Milestone” means the date upon which the Debtors, with the consent and at the direction of the Senior Lenders, will take certain actions in connection with the pursuit of a Sale Transaction(s) pursuant to the Plan, as set forth in the Restructuring Support Agreement.

“Sale Proceeds” means, with respect to any Sale Transaction, the net Cash proceeds, debt or equity interests in the Purchaser(s), and/or other proceeds or consideration received by the Debtors or the Reorganized Debtors (whether directly or on account of the purchase of their interests in the Debtors) in connection with such Sale Transaction(s).

“Sale Scenario” means the event in which the Debtors and the Senior Lenders agree that one or more actionable Qualified Bids has been received on or prior to the applicable Sale Milestone set forth in the Restructuring Support Agreement, such Qualified Bid(s) are pursued with respect to one or more Sale Transaction(s) at the direction of the Senior Lenders, and such Sale Transaction(s) are consummated pursuant to the Plan. For the avoidance of doubt, the Sale Scenario may include a Plan Sponsor Alternative.

“Sale Transaction(s)” means a sale or sales of (a) all or substantially all of the right, title, and interest in the assets of the Debtors or (b) all or substantially all of the Interests in either of the Reorganized Debtors, including through a Plan Sponsor Alternative, pursuant to sections 1129 and 363 of the Bankruptcy Code and one or more Purchase Agreement(s), which sale shall be acceptable to and at the direction of the Senior Lenders and consummated pursuant to the Plan.

“Sale Transaction Documents” means all documents executed and delivered by the Debtors and, as applicable, the Senior Lenders, and the Purchaser(s), in connection with the Sale Transaction(s), which shall be reasonable acceptable to the Debtors and the Senior Lenders.

“Schedule of Retained Causes of Action” means the schedule of the Causes of Action of the Debtors or the Debtors’ Estates that are not released, waived, or transferred pursuant to the Plan, to be Filed as part of the Plan Supplement, as the same may be amended, modified, or supplemented from time to time by the Debtors, with the consent of the Senior Lenders. Without limiting the foregoing, the Schedule of Retained Causes of Action shall include all Causes of Action that any Debtor may have against Public Services Company of New Hampshire (d/b/a Eversource Energy), all of which shall vest with the Reorganized Berlin in a Stand-Alone Restructuring Scenario; provided, further, that in the event the Plan as to Burgess is severed and

withdrawn as provided for in Article X.E, then the Causes of Action that Burgess may have against Public Services Company of New Hampshire (d/b/a Eversource Energy) shall be transferred to Berlin in connection with the sale of Burgess's assets to the Pro Forma Owners.

“Schedules” means, if Filed, the schedules of assets and liabilities and the statement of financial affairs Filed by each Debtor with the Bankruptcy Court pursuant to sections 521 and 1106(a)(2) of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules and statement may be amended or supplemented by such Debtor at any point prior to the Plan Effective Date.

“Secured Claim” means a Claim (a) secured by a Lien on property in which any of the Debtors has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Final Order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in such Debtor's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to the Plan, or separate order of the Bankruptcy Court, as a Secured Claim.

“Securities Act” means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a-77aa.

“Security” means a security, as defined in Section 2(a)(1) of the Securities Act.

“Senior Lenders” means the beneficial holders or investment advisors, sub-advisors, or managers of funds or discretionary accounts that hold the Senior Notes.

“Senior Notes” means, collectively, the Series A Fixed Rate Notes, Series B Fixed Rate Notes and Floating Rate Notes (each as defined in the Senior Notes Purchase Agreement) issued pursuant to the Senior Notes Documents.

“Senior Notes Agent” means Deutsche Bank Trust Company Americas, the collateral agent and depository under the Senior Notes Documents, and any successor thereto.

“Senior Notes Claims” means all Claims of the holders of the Seniors Notes in an aggregate principal amount of at least \$115,350,000 plus interest, fees, premiums, and expenses, and, if applicable, the Senior Notes Agent derived from, based upon, relating to, or arising under the Senior Notes Purchase Agreement and Senior Notes Documents.

“Senior Notes Distribution Amount” means any New Reorganized Debtor Equity and Refunds available for distribution after satisfaction of the DIP Claims pursuant to Article II.D of the Plan.

“Senior Notes Documents” means the Senior Notes Purchase Agreement and all agreements, documents, notes and instruments in respect thereof, in each case as amended or modified from time to time.

“Senior Notes Purchase Agreement” means that certain Note Purchase Agreement, dated as of September 2, 2011 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof), pursuant to which Berlin issued the Senior Notes.

“Severance Trigger Date” means the conditions under Article X.E of the Plan are met and the Plan as it relates to Burgess is withdrawn.

“Solicitation Materials” means the materials to be distributed together with the Plan and Disclosure Statement to holders of Claims entitled to vote on the Plan, which shall be in form and substance reasonably acceptable to the Debtors and the Senior Lenders.

“Sponsors” means, collectively, BBP #1, LLC, BBP #2, LLC and Burgess Holding, LLC; provided, that if any such Person has not signed the Restructuring Support Agreement on or prior to the Petition Date, then such Person shall not be (i) entitled to receive or have the benefit of any release, exculpation, injunction, indemnification or insurance provisions in the Plan or any of the Definitive Documents in any respect (whether directly or indirectly as a Related Party of any Released Party or any other Person) and (ii) provided any consent rights under the Restructuring Support Agreement or this Plan.

“Stand-Alone Restructuring Scenario” means the pursuit of Confirmation and Consummation of the Plan where the Debtors and the Senior Lenders agree not to pursue any Sale Transaction(s).

“Stand-Alone Restructuring Transaction(s)” means all actions and transactions as may be necessary or appropriate to effectuate the Stand-Alone Restructuring Scenario, which transactions shall be approved by the Debtors and the Senior Lenders.

“Subordinated Note Claims” means Claims arising under or related to (1) the CD Subordinated Loan Agreement, dated as of September 2, 2012 by and between Berlin and the lenders party thereto and the Allonges to Notes, dated September 5, 2018, executed in connection with the assignment of the Claims under the CD Subordinated Loan Agreement to Berlin BioPower Investment Fund, LLC or (2) the Greenline Subordinated Loan Agreement by and between Berlin and Greenline CDF Subfund XVIII LLC, dated as of October 25, 2012, in each case, as may be amended, restated, amended and restated, supplemented, waived or otherwise modified.

“Subordination Agreement” means the Subordination Agreement dated as of November 19, 2013 by Deutsche Bank Trust Company Americas as Collateral Agent filed at the Coos County Registry of Deeds at Book 1390, page 285.

“Successful Bidder” means, if applicable, a third party, any or all of the Senior Lenders (or their designees), the Senior Notes Agent on behalf of the Senior Lenders (or their designees), or a Plan Sponsor whose Qualified Bid is determined by the Debtors and the Senior Lenders to be the highest or otherwise best Qualified Bid, in accordance with the Bidding Procedures Order.

“U.S. Trustee” means the Office of the United States Trustee for the District of Delaware.

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

“Unimpaired” means with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not Impaired within the meaning of section 1124 of the Bankruptcy Code.

“Valuation” means the value of the Debtors established in the valuation report that the Debtors File with the Bankruptcy Court.

“Wind Down” means, in a Sale Scenario, following the closing of the Sale Transaction(s), the process to wind down, dissolve and liquidate the applicable Debtors’ Estates and distribute the Wind-Down Assets in accordance with Article III of the Plan.

“Wind-Down Assets” means, in a Sale Scenario, the assets of the Debtors’ Estates to vest in the Wind-Down Debtors on the Plan Effective Date, which shall be administered by the Plan Administrator, including but not limited to, (i) if applicable, the Sale Proceeds to the extent not distributed on the Plan Effective Date and (ii) any Causes of Action retained by the Debtors.

“Wind-Down Budget” means a budget for the reasonable activities and expenses necessary to effectuate the Wind Down of the Debtors’ Estates, which budget, activities, and reasonable expenses shall be subject to the consent of the Senior Lenders and, absent repayment in full in Cash of the DIP Facility, the DIP Lenders. The Wind-Down Budget shall include line-item estimates for, among other things, such reasonable post-Plan Effective Date fees and expenses incurred by the Wind-Down Debtor(s)’ retained professionals.

“Wind-Down Debtor(s)” means, in a Sale Scenario, any Debtor on or after the Plan Effective Date to the extent the Interests in such Debtor are not acquired directly or indirectly by the Purchaser(s) in connection with the Sale Transaction(s). For the avoidance of doubt, the term “Reorganized Debtor” includes a Wind-Down Debtor.

## **B. Rules of Interpretation**

For purposes of the Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, includes both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; provided, that nothing in this clause (2) shall affect any party’s consent rights over any of the Definitive Documents or any amendments thereto as provided for in the Restructuring Support Agreement and related exhibits; (3) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, restated, supplemented, or otherwise modified in accordance with the Plan; (4) any reference to a Person as a holder of a Claim or Interest includes that Person’s successors and assigns; (5) unless otherwise specified, all references herein to “Articles” are references to Articles of the Plan; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (8) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with, applicable federal law, including the Bankruptcy Code and the Bankruptcy Rules, or, if no rule of

law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (12) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time and as applicable to the Chapter 11 Cases, unless otherwise stated; (13) the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation"; (14) references to "Proofs of Claim," "holders of Claims," "Disputed Claims," and the like shall include "Proofs of Interest," "holders of Interests," "Disputed Interests," and the like, as applicable; (15) any immaterial effectuating provisions may be interpreted in a manner that is consistent with the overall purpose and intent of the Plan; (16) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; (17) all references herein to consent, acceptance, or approval shall be deemed to include the requirement that such consent, acceptance, or approval be evidenced by a writing, which may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail; and (18) any term used in capitalized form that is not otherwise defined but that is used in the Bankruptcy Code or Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

### **C. Computation of Time**

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Subject to the requirements of any Definitive Document, any action to be taken on the Plan Effective Date may be taken on or as soon as reasonably practicable after the Plan Effective Date.

### **D. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); provided, however, that corporate or limited liability company governance matters relating to the Debtors or the Reorganized Debtors, as applicable, shall be governed by the laws of the state of incorporation or formation of the applicable Debtor or the Reorganized Debtors, as applicable.

#### **E. Reference to Monetary Figures**

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

#### **F. Controlling Document**

In the event of an inconsistency between the Plan and the Plan Supplement with respect to the Plan, the terms of the relevant document in the Plan Supplement with respect to the Plan shall control unless otherwise specified in such Plan Supplement document with respect to the Plan. In the event of an inconsistency between the Plan and any other instrument or document created or executed pursuant to the Plan, or between the Plan and the Disclosure Statement, the Plan shall control. The provisions of the Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effectuate the purposes of each; provided, however, that if there is determined to be any inconsistency between any provision of the Plan and any provision of the Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of the Plan.

#### **G. Nonconsolidated Plan**

The Plan is being proposed as a joint chapter 11 plan of the Debtors for administrative purposes only and constitutes a separate chapter 11 plan for each Debtor; provided, however, that upon the occurrence of a Severance Trigger Date, the Plan shall apply solely as to Berlin and the Plan as to Burgess shall be withdrawn. The Plan is not premised upon the substantive consolidation of the Debtors' Estates.

#### **H. Consent Rights of the Consenting Parties**

Notwithstanding anything in the Plan to the contrary, any and all information, consultation, and consent rights of the Consenting Parties set forth in the Restructuring Support Agreement with respect to the form and substance of the Plan, all exhibits to the Plan, and the Plan Supplement, and any other Definitive Documents, including any amendments, restatements, supplements, or other modifications to such agreements and documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by reference and fully enforceable as if stated in full herein until such time as the Restructuring Support Agreement is terminated in accordance with its terms. Failure to reference the rights referred to in the immediately preceding sentence in the Plan shall not impair such rights. In case of any conflict between the consent rights of the Consenting Parties that are set forth in the Restructuring Support Agreement and those parties' consent rights that are set forth in the Plan or the Plan Supplement, the consent rights set forth in the Restructuring Support Agreement shall control.

The signing of the applicable Definitive Documents will be subject to, among other things, the negotiation by the Debtors, the Senior Lenders, and, to the extent applicable, the Successful Bidder, the Plan Sponsor, and/or the Plan Administrator, of acceptable terms and conditions for the Definitive Documents as well as additional legal, accounting, financial, tax, business and regulatory due diligence.

## **II. UNCLASSIFIED CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, DIP Claims and Priority Tax Claims have not been classified against the Debtors.

### **A. Administrative Claims**

Requests for payment of Administrative Claims (except for DIP Claims, Adequate Protection Claims, Professional Fee Claims and Restructuring Expenses) must be Filed and served, if with respect to the Debtors, on the Reorganized Debtors or Wind-Down Debtor(s), as applicable, no later than the applicable Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order(s). Holders of Administrative Claims that are required to File and serve a request for payment of such Claims that fail to do so shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, the Reorganized Debtors, or Wind-Down Debtor(s), as applicable, or their respective property, and such Administrative Claims shall be deemed discharged as of the Plan Effective Date without the need for any objection or any notice to any Person or an order of the Bankruptcy Court.

Except to the extent that a holder of an Allowed Administrative Claim agrees to a less favorable treatment, to the extent an Allowed Administrative Claim has not been paid in full or otherwise satisfied during the Chapter 11 Cases, each holder of an Allowed Administrative Claim (other than Professional Fee Claims, DIP Claims, Adequate Protection Claims and Restructuring Expenses) shall receive, in full and final satisfaction of its Allowed Administrative Claim, payment in full in Cash in accordance with the following: (1) if such Administrative Claim is Allowed on or prior to the Plan Effective Date, on the Plan Effective Date; (2) if such Administrative Claim is not Allowed as of the Plan Effective Date, no later than thirty (30) days after the date on which such Administrative Claim is Allowed; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim; or (4) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

### **B. Professional Fee Claims**

#### **1. Final Fee Applications and Payment of Professional Fee Claims**

All final requests for payment of Professional Fee Claims must be Filed no later than forty-five (45) days after the Plan Effective Date. The Bankruptcy Court shall determine the Allowed amounts of all Professional Fee Claims in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior Bankruptcy Court orders.

#### **2. Professional Fee Escrow Accounts**

On the Plan Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals in respect of Allowed Professional Fee Claims until all Allowed Professional Fee Claims have been paid in full, and the



funds held in the Professional Fee Escrow Account shall not be considered property of the Debtors' Estates. No Liens, Claims, or Interests shall encumber the Professional Fee Escrow Account or Cash held therein.

The applicable Debtors' obligations to pay the Allowed Professional Fee Claims shall be limited to the funds held in the Professional Fee Escrow Accounts. When all Allowed Professional Fee Claims have been paid in full, any remaining funds held in the applicable Professional Fee Escrow Accounts shall be returned to the Senior Lenders, the Reorganized Debtors or the Wind-Down Debtors, as applicable.

### 3. Professional Fee Escrow Amounts

The Professionals shall provide a reasonable and good-faith estimate of the Professional Fee Claims projected to be outstanding as of the Plan Effective Date, and shall deliver such estimate to the Debtors at least three (3) Business Days before the anticipated Plan Effective Date; provided, however, that such estimate shall not be considered or deemed an admission or limitation with respect to the amount of the fees and expenses that are the subject of the Professional's final request for payment of Professional Fee Claims and such Professionals are not bound by such estimates. If a Professional does not provide an estimate, the Debtors, with the consent of the Senior Lenders, may estimate the unpaid and unbilled fees and expenses of such Professional.

### 4. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Plan Effective Date, the Reorganized Debtors or the Plan Administrator, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation of the Plan incurred by the Reorganized Debtors, as determined by the Reorganized Debtors or the Plan Administrator, as applicable. Upon the Plan Effective Date, any requirement that the Reorganized Debtors' or Wind-Down Debtors' Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention for services rendered after such date shall terminate, and the Reorganized Debtors and the Plan Administrator, as applicable, may employ any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

## **C. Debtors' Restructuring Expenses**

On the Plan Effective Date or as reasonably practicable thereafter (to the extent not previously paid during the course of the Debtors' Chapter 11 Cases), the Debtors shall pay in full in Cash all outstanding Restructuring Expenses incurred or estimated to be incurred by the Senior Notes Agent, the DIP Agent, the Senior Lenders and the DIP Lenders through and including the Plan Effective Date in accordance with, and subject to, the terms set forth herein and in the Restructuring Support Agreement and/or the DIP Orders (as applicable), without any requirement to File a fee application with the Bankruptcy Court, without the need for itemized time detail, and without any requirement for Bankruptcy Court review or approval.

All Restructuring Expenses to be paid by the Debtors on the Plan Effective Date shall be estimated prior to and as of the Plan Effective Date and such estimates shall be delivered to the Debtors at least three (3) Business Days before the anticipated Plan Effective Date; provided, however, that such estimates shall not be considered an admission or limitation with respect to such Restructuring Expenses. On the Plan Effective Date or as soon as reasonably practicable thereafter, invoices for all Restructuring Expenses incurred by the Senior Notes Agent, the DIP Agent, the Senior Lenders or the DIP Lenders prior to and as of the Plan Effective Date shall be submitted to the Debtors. In addition, the Debtors, the Reorganized Debtors, and the Wind-Down Debtor(s) (as applicable) shall continue to pay, when due and payable in the ordinary course, Restructuring Expenses related to implementation, consummation, and defense of the Plan, whether incurred before, on, or after the Plan Effective Date.

#### **D. DIP Claims**

The DIP Claims shall be Allowed in the amount outstanding under the DIP Facility on the Plan Effective Date. In full and final satisfaction thereof, each Allowed DIP Claim shall (a) in a Sale Scenario, be paid in full in Cash (unless an Allowed DIP Claim is being credit bid as part of the bid by the Successful Bidder, in which case such Allowed DIP Claim shall be satisfied in accordance with the order approving the Sale Transaction); or (b) in a Stand-Alone Restructuring Scenario, be converted into the New Reorganized Debtor Equity in Berlin and the New Reorganized Debtor Equity in Burgess in the cumulative amount of the DIP Distribution Amount, and in either the Sale Scenario or the Stand-Alone Restructuring Scenario be afforded such other treatment as is acceptable to the DIP Lenders in their sole discretion; provided, that each holder of an Allowed DIP Claim shall receive the same treatment under the Plan unless a holder agrees to less favorable treatment.

#### **E. Priority Tax Claims**

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, the Allowed Priority Tax Claims, each holder of an Allowed Priority Tax Claim shall receive treatment consistent with section 1129(a)(9) of the Bankruptcy Code by the applicable Debtor against which such Allowed Priority Tax Claims are validly asserted.

### **III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

#### **A. Classification of Claims and Interests**

The Classes of Claims and Interests listed below classify Claims and Interests for all purposes, including voting on, and distributions pursuant to, the Plan in accordance with sections 1122 and 1123(a) of the Bankruptcy Code. The Plan deems a Claim or Interest to be classified in a particular Class only to the extent that (i) the Claim or Interest is an Allowed Claim or Interest and qualifies within the description of that Class and it shall be deemed classified in a different Class to the extent that it qualifies within the description of such different Class and (ii) such Allowed Claim or Allowed Interest has not been satisfied, released, or otherwise settled prior to the Plan Effective Date.

The Plan provides for separate treatment of Claims against and Interests in the Debtors. The Plan groups the Debtors together solely for the purpose of describing their treatment under the Plan, tabulating votes on and Confirmation of the Plan, and making distributions. Such groupings shall not affect any Debtor’s status as a separate legal entity, change the organizational structure of the Debtors’ business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger of consolidation of any legal entities, or cause the transfer of any assets. Except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities.

The following table designates the Classes of Claims against and Interests in the Debtors and specifies which Classes are (i) Impaired and Unimpaired under the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, and (iii) presumed to accept or deemed to reject the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Claims, and Priority Tax Claims have not been classified. The classification of Claims and Interests set forth herein shall apply separately to each Debtor. Certain of the Debtors may not have Claims or Interests in a particular Class, and any such Classes shall be treated as set forth in Article III.B of the Plan.

1. Berlin Claims

| <b>Class</b> | <b>Designation</b>        | <b>Impairment</b> | <b>Voting Rights</b>                       |
|--------------|---------------------------|-------------------|--|
| Class 1A     | Other Secured Claims      | Unimpaired        | Not Entitled to Vote<br>(Deemed to Accept) |
| Class 2A     | Other Priority Claims     | Unimpaired        | Not Entitled to Vote<br>(Deemed to Accept) |
| Class 3A     | Senior Notes Claims       | Impaired          | Entitled to Vote                           |
| Class 4A     | Subordinated Notes Claims | Impaired          | Not Entitled to Vote<br>(Deemed to Reject) |
| Class 5A     | General Unsecured Claims  | Impaired          | Not Entitled to Vote<br>(Deemed to Reject) |
| Class 6A     | 510(b) Claims             | Impaired          | Not Entitled to Vote<br>(Deemed to Reject) |
| Class 7A     | Intercompany Claims       | Impaired          | Not Entitled to Vote<br>(Deemed to Reject) |
| Class 8A     | Interests                 | Impaired          | Not Entitled to Vote<br>(Deemed to Reject) |

2. Burgess Claims

| <b>Class</b> | <b>Designation</b>   | <b>Impairment</b> | <b>Voting Rights</b>                       |
|--------------|----------------------|-------------------|--|
| Class 1B     | Other Secured Claims | Unimpaired        | Not Entitled to Vote<br>(Deemed to Accept) |

| Class    | Designation              | Impairment | Voting Rights                              |
|----------|--------------------------|------------|--|
| Class 2B | Other Priority Claims    | Unimpaired | Not Entitled to Vote<br>(Deemed to Accept) |
| Class 3B | Senior Notes Claims      | Impaired   | Entitled to Vote                           |
| Class 4B | General Unsecured Claims | Unimpaired | Not Entitled to Vote<br>(Deemed to Accept) |
| Class 5B | 510(b) Claims            | Unimpaired | Not Entitled to Vote<br>(Deemed to Accept) |
| Class 6B | Intercompany Claims      | Unimpaired | Not Entitled to Vote<br>(Deemed to Accept) |
| Class 7B | Interests                | Impaired   | Not Entitled to Vote<br>(Deemed to Reject) |

## B. Treatment of Berlin Claims and Interests

The holders of the following Claims and Interests against Berlin shall receive the treatment described below in full and final satisfaction of such Claim or Interest.

### 1. Class 1A – Other Secured Claims against Berlin

- (a) *Classification:* Class 1A consists of all Other Secured Claims against Berlin.

*Treatment:* On the Plan Effective Date, except to the extent that a holder of an Other Secured Claim against Berlin has agreed to a less favorable treatment, each holder of an Other Secured Claim against Berlin, at the option of the Debtors with the consent of the Senior Lenders, shall receive payment in full in Cash on the Plan Effective Date, or otherwise receive treatment consistent with the provisions of section 1129(a) of the Bankruptcy Code that renders its Allowed Other Secured Claim Unimpaired.

- (b) *Voting:* Class 1A is Unimpaired under the Plan. Holders of Claims in Class 1A are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

### 2. Class 2A – Other Priority Claims against Berlin

- (a) *Classification:* Class 2A consists of all Other Priority Claims against Berlin.

- (b) *Treatment:* On the Plan Effective Date, except to the extent that a holder of an Allowed Other Priority Claim against Berlin has agreed to a less favorable treatment, each holder of an Allowed Other

Priority Claim against Berlin shall receive, at the option of the Debtors with the consent of the Senior Lenders, payment in full in Cash or such other treatment that would render its Allowed Other Priority Claim Unimpaired.

- (c) *Voting:* Class 2A is Unimpaired under the Plan. Holders of Claims in Class 2A are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

3. Class 3A – Senior Notes Claims

- (a) *Classification:* Class 3A consists of all Senior Notes Claims.
- (b) *Allowance:* On the Plan Effective Date, the Senior Notes Claims shall be Allowed in the principal amount of at least \$115,350,000, plus any accrued and unpaid interest and all accrued and unpaid fees, expenses, premiums and indemnities, less the amount of Roll-Up Loans pursuant to the DIP Orders.
- (c) *Treatment:* Except to the extent a holder of a Senior Notes Claim agrees to a less favorable treatment, in full and final satisfaction of such Claims:
  - (i) Stand-Alone Restructuring Scenario: In a Stand-Alone Restructuring Scenario, each holder of a Senior Notes Claim or its designee shall receive on account of such Senior Notes Claim, to the extent there is value for such Senior Note Claims after satisfaction of DIP Claims, its Pro Rata share of the Senior Notes Distribution Amount; or
  - (ii) Sale Scenario: In a Sale Scenario, each holder of a Senior Notes Claim or its designee shall receive on account of such Senior Notes Claim its Pro Rata share of (x) the Sale Proceeds remaining after satisfaction of the Administrative Claims (including the DIP Claims) and Claims in Classes 1 and 2, and after reserving as Wind-Down Assets an amount equal to the Wind-Down Budget, and (y) all rights to, and proceeds of, the Wind-Down Assets.
- (d) *Voting:* Class 3A is Impaired under the Plan. Holders of the Senior Notes Claims are entitled to vote to accept or reject the Plan.

4. Class 4A – Subordinated Notes Claims

- (a) *Classification:* Class 4A consists of all Subordinated Notes Claims.

- (b) *Treatment:* On the Plan Effective Date, all Subordinated Notes Claims will receive no distribution.
- (c) *Voting:* Class 4A is Impaired under the Plan. Holders of Claims in Class 4A are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

5. Class 5A – General Unsecured Claims against Berlin

- (a) *Classification:* Class 5A consists of all General Unsecured Claims against Berlin.
- (b) *Treatment:* On the Plan Effective Date, all General Unsecured Claims against Berlin will receive no distribution.
- (c) *Voting:* Class 5A is Impaired under the Plan. Holders of Claims in Class 5 are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

6. Class 6A – 510(b) Claims against Berlin

- (a) *Classification:* Class 6A consists of all 510(b) Claims against Berlin.
- (b) *Treatment:* On the Plan Effective Date, all 510(b) Claims against Berlin will receive no distribution.
- (c) *Voting:* Class 6A is Impaired under the Plan. Holders of Claims in Class 6A are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

7. Class 7A – Intercompany Claims against Berlin

- (a) *Classification:* Class 7A consists of all Intercompany Claims against Berlin.
- (b) *Treatment:* On the Plan Effective Date, all Intercompany Claims against Berlin will either receive no distribution or be Reinstated, at the option of the Pro Forma Owners.
- (c) *Voting:* Class 7A is Impaired under the Plan. Holders of Claims in Class 7A are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

8. Class 8A – Interests in Berlin
  - (a) *Classification:* Class 8A consists of all Interests in Berlin.
  - (b) *Treatment:* On the Plan Effective Date, all Interests in Berlin will be cancelled and released.
  - (c) *Voting:* Class 8A is Impaired under the Plan. Holders of Interests in Class 8A are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

### **C. Treatment of Burgess Claims and Interests**

The holders of the following Claims and Interests against Burgess shall receive the treatment described below in full and final satisfaction of such Claim or Interest.

1. Class 1B – Other Secured Claims against Burgess
  - (a) *Classification:* Class 1B consists of all Other Secured Claims against Burgess.

*Treatment:* On the Plan Effective Date, except to the extent that a holder of an Other Secured Claim against Burgess has agreed to a less favorable treatment, each holder of an Other Secured Claim against Burgess, at the option of the Debtors with the consent of the Senior Lenders, shall receive payment in full in Cash on the Plan Effective Date, or otherwise receive treatment consistent with the provisions of section 1129(a) of the Bankruptcy Code that renders its Allowed Other Secured Claim Unimpaired.
  - (b) *Voting:* Class 1B is Unimpaired under the Plan. Holders of Claims in Class 1B are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.
2. Class 2B – Other Priority Claims against Burgess
  - (a) *Classification:* Class 2B consists of all Other Priority Claims against Burgess.
  - (b) *Treatment:* On the Plan Effective Date, except to the extent that a holder of an Allowed Other Priority Claim against Burgess has agreed to a less favorable treatment, each holder of an Allowed Other Priority Claim against Burgess shall receive, at the option of the Debtors with the consent of the Senior Lenders, payment in full in Cash, or such other treatment that would render its Allowed Other Priority Claim Unimpaired.

- (c) *Voting:* Class 2B is Unimpaired under the Plan. Holders of Claims in Class 2B are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

3. Class 3B – Senior Notes Claims

- (a) *Classification:* Class 3B consists of all Senior Notes Claims.
- (b) *Allowance:* On the Plan Effective Date, the Senior Notes Claims shall be Allowed in the principal amount of \$115,350,000, plus any accrued and unpaid interest and all accrued and unpaid fees, expenses, premiums and indemnities, less the amount of Roll-Up Loans pursuant to the DIP Orders.
- (c) *Treatment:* Except to the extent a holder of a Senior Notes Claim agrees to a less favorable treatment, in full and final satisfaction of such Claims:
  - (i) Stand-Alone Restructuring Scenario: In a Stand-Alone Restructuring Scenario, each holder of a Senior Notes Claim or its designee shall receive on account of such Senior Notes Claim, to the extent there is value for such Senior Note Claims after satisfaction of DIP Claims, its Pro Rata share of the Senior Notes Distribution Amount; or
  - (ii) Sale Scenario: In a Sale Scenario, each holder of a Senior Notes Claim or its designee shall receive on account of such Senior Notes Claim its Pro Rata share of the Sale Proceeds remaining after satisfaction of the Administrative Claims (including the DIP Claims) and all rights to, and proceeds of, the Wind-Down Assets.
- (d) *Voting:* Class 3B is Impaired under the Plan. Holders of the Senior Notes Claims are entitled to vote to accept or reject the Plan

4. Class 4B – General Unsecured Claims against Burgess

- (a) *Classification:* Class 4B consists of all General Unsecured Claims against Burgess.
- (b) *Treatment:* On the Plan Effective Date, except to the extent that a holder of an Allowed General Unsecured Claim against Burgess has agreed to a less favorable treatment, each holder of an Allowed General Unsecured Claim against Burgess shall receive, at the option of the Debtors with the consent of the Senior Lenders, payment in full in Cash, or such other treatment that would render its Allowed General Unsecured Claim Unimpaired.



- (c) *Voting:* Class 4B is Unimpaired under the Plan. Holders of Claims in Class 4B are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

5. Class 5B – 510(b) Claims against Burgess

- (a) *Classification:* Class 5B consists of all 510(b) Claims against Burgess.
- (b) *Treatment:* On the Plan Effective Date, except to the extent that a holder of an Allowed 510(b) Claim against Burgess has agreed to a less favorable treatment, each holder of an Allowed 510(b) Claim against Burgess shall receive, at the option of the Debtors with the consent of the Senior Lenders, payment in full in Cash, or such other treatment that would render its Allowed 510(b) Claim Unimpaired.
- (c) *Voting:* Class 5B is Unimpaired under the Plan. Holders of Claims in Class 5B are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

6. Class 6B – Intercompany Claims against Burgess

- (a) *Classification:* Class 6B consists of all Intercompany Claims against Burgess.
- (b) *Treatment:* On the Plan Effective Date, all Intercompany Claims against Burgess will be Reinstated.
- (c) *Voting:* Class 6B is Unimpaired under the Plan. Holders of Claims in Class 6B are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

7. Class 7B – Interests in Burgess

- (a) *Classification:* Class 7B consists of all Interests in Burgess.
- (b) *Treatment:* On the Plan Effective Date, all Interests in Burgess will be cancelled and released, and the New Reorganized Debtor Equity in Burgess will be distributed to the holders of DIP Claims and if a Senior Notes Distribution Amount exists, then holders of the Senior Notes Claims in accordance with the Plan.
- (c) *Voting:* Class 7B is Impaired under the Plan. Holders of Interests in Class 7B are conclusively deemed to have rejected the Plan

pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

#### **D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing herein shall affect the rights of the Debtors, Reorganized Debtors, or Wind-Down Debtors, as applicable, in respect of any Unimpaired Claims, including all legal and equitable defenses to such Claims or rights of setoffs or recoupments. Unless expressly Allowed herein, Unimpaired Claims shall remain Disputed Claims.

Notwithstanding anything to the contrary in the Plan, Plan Supplement or Confirmation Order, until an Unimpaired Claim (including cure claims related to the assumption of Executory Contracts and Unexpired Leases, and claims for damages related to the rejection of the same), or which is an Administrative Claim or Priority Tax Claim has been (x) paid in full in accordance with applicable law, or on terms agreed to between the holder of such Claim and the Debtors, the Reorganized Debtors or Wind-Down Debtors, as applicable, or (y) otherwise satisfied or disposed of as determined by a court of competent jurisdiction: (a) the provisions of Article VIII.A hereof (but as to Article VIII.A.2 only to the extent that such provision releases claims that could be asserted derivatively by the holder of such Claim) shall not apply or take effect with respect to such Claim, (b) such Claim shall not be deemed settled, satisfied, resolved, released, discharged, barred or enjoined, (c) the property of each of the Debtors' Estates that vests in the applicable Reorganized Debtor pursuant to the Plan shall not be free and clear of such Claims, and (d) any Liens of holders of Unimpaired Claims, Administrative Claims or Priority Tax Claims shall not be deemed released.

Holders of Unimpaired Claims shall not be required to File a Proof of Claim with the Bankruptcy Court. Holders of Unimpaired Claims shall not be subject to any claims resolution process in Bankruptcy Court in connection with their Claims, and shall retain all their rights under applicable non-bankruptcy law to pursue their Claims against the Debtors or Reorganized Debtors or other entity in any forum with jurisdiction over the parties. The Debtors and Reorganized Debtors shall retain all defenses, counterclaims, rights to setoff, and rights to recoupment as to Unimpaired Claims. If the Debtors or the Reorganized Debtors dispute any Unimpaired Claim, such dispute shall be determined, resolved or adjudicated in the manner as if the Chapter 11 Cases had not been commenced.

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

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims entitled to vote against each Debtor (if there exists one Class of Claims that is Impaired against a given Debtor). The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

## **F. Subordinated Claims**

The Subordinated Claims against Burgess are expressly subordinated to the Claims of the Senior Lenders under the Intercreditor Agreement and the DIP Lenders under the Final DIP Order, and are not entitled to any recovery in accordance with the Intercreditor Agreement and Final DIP Order. Accordingly, the holders of Subordinated Claims against Burgess shall not receive any recovery from, and shall be enjoined and estopped from pursuing any claims against, the Debtors, their Estates, the Reorganized Debtors, the Senior Lenders, the DIP Lenders, or any other Person on account of the Subordinated Claims, under the Plan or otherwise.

Except as expressly provided herein, the allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective treatment thereof under the Plan take into account the relative priority of the Claims in each Class, whether arising under a contract, principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, and subject to the Restructuring Support Agreement, the Debtors reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

## **G. Elimination of Vacant Classes**

Any Class that does not have a Claim or Interest in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated from the Plan for all purposes.

## **H. Controversy Concerning Impairment**

If a controversy arises as to whether any Claims or any Class of Claims are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

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

## **A. General**

### **1. General Settlement of Claims and Interests**

After the Plan Effective Date, the Reorganized Debtors and/or the Wind-Down Debtor(s), as applicable, may compromise and settle any Claim and/or Cause of Action against the Debtors' Estate(s) without any further notice to or action, order, or approval of the Bankruptcy Court.

### **2. Restructuring Transactions**

On or about the Plan Effective Date, the Debtors, the Reorganized Debtors, and the Wind-Down Debtor(s) (in each case with the consent of the Senior Lenders), may take all actions as may be necessary or appropriate to effectuate the Restructuring Transactions, including: (a) the execution and delivery of any appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, formation, organization, dissolution, or liquidation containing terms that are consistent with the terms of the

Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Persons may agree, including the documents comprising the Plan Supplement; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable Persons agree; (c) the execution, delivery, and filing, if applicable, of appropriate certificates or articles of incorporation, formation, reincorporation, merger, amalgamation, consolidation, conversion, arrangement, continuance, or dissolution pursuant to applicable law; (d) the Sale Transaction(s), if any; (e) such other transactions that are required to effectuate the Restructuring Transactions in the most efficient manner for the Debtors and the Senior Lenders, including in regard to tax matters and any mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (f) the selection of the New Board; (g) the authorization, issuance, and distribution of the New Reorganized Debtor Equity; (h) the appointment of the Plan Administrator (if applicable); (i) the execution, delivery, and adoption of the New Organizational Documents; and (j) all other act or actions contemplated or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions, including making filings or recordings that may be required by applicable law.

### 3. Insurance Policies

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under the Plan. On the Plan Effective Date, unless an insurance policy (i) was specifically designated for assignment to the Purchaser, if applicable, (ii) was rejected by the Debtors pursuant to a Bankruptcy Court order, or (iii) is the subject of a motion to reject Filed by the Debtors that remains pending on the date of the Confirmation Hearing with respect to the Plan, (a) the Reorganized Debtors or the Wind-Down Debtor(s), as applicable, shall be deemed to have assumed each such insurance policy and any agreements, documents, and instruments relating to coverage of all insured Claims and (b) such insurance policy and any agreements, documents, or instruments relating thereto shall vest in the Reorganized Debtors or the Wind-Down Debtor(s), as applicable.

All refunds under any insurance policy agreement under which the Debtors are covered that are due and owing by the insurance carriers (the "Refunds") shall be paid directly to the DIP Lenders and holders of Allowed Senior Notes Claims (as applicable). Any person or entity that receives any Refund shall turnover such Refund to the DIP Lenders and to the holders of the Allowed Senior Notes Claims (as applicable), within two business days of receipt and the DIP Lenders and the holders of the Allowed Senior Notes Claims (as applicable) are authorized to collect any unpaid Refunds directly from the insurance carriers without further order of the Bankruptcy Court.

### 4. Section 1146 Exemption

To the maximum extent permitted pursuant to section 1146(a) of the Bankruptcy Code, any transfer of property (whether from a Debtor to a Reorganized Debtor or to any other Person) under, in furtherance of, or in connection with the Plan, including pursuant to any Sale Transaction(s) or a Stand-Alone Restructuring Transaction (in each case, as applicable) or (1) the issuance, distribution, transfer, or exchange of any debt, equity Security, or other interest in the

Debtors or the Reorganized Debtors, including the New Reorganized Debtor Equity, if applicable, (2) the Restructuring Transactions; (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (4) the making, assignment, or recording of any lease or sublease; or (5) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any tax or governmental assessment under any law imposing a document recording tax, stamp tax, conveyance tax, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee regulatory filing or recording fee, sales and use tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment against the Debtors and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forgo the collection of any such tax, recordation fee, or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. The Bankruptcy Court shall retain specific jurisdiction with respect to these matters.

#### 5. Cancellation of Securities and Agreements

On the Plan Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of the Debtors under any certificate, Security, share, note, bond, credit agreement, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Interest (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligation of or ownership interest in the Debtors that are Reinstated pursuant to the Plan, if any) shall be cancelled solely as to the Debtors, and the Reorganized Debtors or the Wind-Down Debtors, as applicable, shall not have any continuing obligations thereunder or relating to the cancellation thereof; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in such Debtors (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligation of or ownership interest in such Debtors that are specifically Reinstated pursuant to the Plan) shall be released and discharged.

#### 6. No Recourse for any Cancellation of Debt Income

No party, including Governmental Units, the Sponsors or any Related Party of any Sponsor, shall have any recourse to the Debtors, the Reorganized Debtors, the Wind-Down Debtors, the Senior Lenders, the Senior Notes Agent, the DIP Agent, the DIP Lenders, the holders

of the New Reorganized Debtor Equity, or any Related Party of the foregoing, on account of any cancellation of debt income, whether on a theory of contribution, indemnification, or otherwise, stemming from the Restructuring Transactions.

7. Effectuating Documents; Further Transactions

On and after the Plan Effective Date, the Reorganized Debtors or Wind-Down Debtors, as applicable, and the officers and members of the New Board or the Plan Administrator, as applicable, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, and the New Organizational Documents, and the Securities issued pursuant to the Plan in the name of and on behalf of the applicable Reorganized Debtors or the Wind-Down Debtors, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

8. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, unless expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or assigned to the Purchaser(s) in any Sale Transaction(s), the Reorganized Debtors and Wind-Down Debtors, as applicable, shall retain and may enforce all rights to commence or pursue any and all Causes of Action of the applicable Debtors' Estates, not otherwise so waived, relinquished, exculpated, released, compromised, settled or assigned (as the case may be), whether arising before or after the Petition Date, including, but not limited to, any actions specifically enumerated in the Schedule of Retained Causes of Action, and the Reorganized Debtors' or the Wind-Down Debtor(s)' rights to commence, prosecute, compromise, settle or release such Causes of Action shall be preserved notwithstanding the occurrence of the Plan Effective Date, other than the Claims and Causes of Action released pursuant to the releases and exculpations contained in Article VIII hereof. Unless any Cause of Action is expressly waived, relinquished, exculpated, released, compromised, or settled under the Plan or a Final Order, such Cause of Action is preserved for later adjudication, and no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to any such Cause of Action upon, after, or as a consequence of the Confirmation of the Plan or the occurrence of the Plan Effective Date.

**No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors, the Reorganized Debtors or the Wind-Down Debtor(s), as applicable, will not pursue any and all available Causes of Action against it. The Debtors, the Reorganized Debtors, and the Wind-Down Debtor(s), as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan, including Article VIII of the Plan.**

The Reorganized Debtors and Wind-Down Debtor(s), as applicable, (i) reserve and shall retain all Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan and (ii) shall have the exclusive right,

authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

## **B. Restructuring of the Debtors Effectuated Through the Sale Scenario**

In a Sale Scenario, the following provisions shall apply. The Confirmation Order with respect to the Plan shall authorize, pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code, all actions necessary or appropriate to effectuate the Sale Transaction(s), including, (i) the execution and delivery of the Purchase Agreement(s) and all other Sale Transaction Documents, (ii) the transfer of the purchased assets or the New Reorganized Debtor Equity free and clear of all Liens, Claims, charges, or other encumbrances, to the applicable Purchaser(s), (iii) all transactions contemplated by the Purchase Agreement(s), including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code, (iv) if applicable, the appointment of the Plan Administrator, and (v) if applicable, the execution and delivery of the Plan Administrator Agreement.

### **1. Closing of the Sale Transaction(s)**

On the Plan Effective Date, the Debtors shall be authorized to consummate the Sale Transaction(s) with the Purchaser(s) and/or any other applicable party and, among other things, the Debtors' assets specified in the Purchase Agreement(s) (including any Executory Contracts and Unexpired Leases the applicable Purchaser(s) wish to assume) or the New Reorganized Debtor Equity, as applicable, shall be transferred to and vest in the applicable Purchaser(s) free and clear of all Liens, Claims, Interests, charges or other encumbrances, purchase rights, options or rights of first refusal, pursuant to the terms of the applicable Sale Transaction Documents and the order of the Bankruptcy Court approving the Sale Transaction(s) contemplated thereby, which may be the Confirmation Order, and the Purchaser(s) may operate the purchased assets in the ordinary course, without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

### **2. Wind-Down and Dissolution of the Debtors**

In a Sale Scenario, to the extent there is at least one Wind-Down Debtor on the Plan Effective Date, then such Wind-Down Debtor(s) shall continue in existence after the Plan Effective Date for purposes of: (a) winding down the Debtors' businesses and affairs as expeditiously as reasonably possible and liquidating any assets held by the Wind-Down Debtor(s) after the Plan Effective Date; (b) performing the Debtors' remaining obligations under any Sale Transaction Documents, if any; (c) resolving any Disputed Claims against the Debtors; (d) making distributions on account of Allowed Claims against the Debtors in accordance with the Plan to the extent not made on the Plan Effective Date; (e) filing appropriate tax returns, if any; and (f) administering the Plan in an efficient manner. The Wind-Down Debtor(s) shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (x) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, and (y) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case

without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.

On the Plan Effective Date, any assets of the Debtors' Estates remaining after the closing of the Sale Transaction(s) shall vest in the Wind-Down Debtor(s) for the purpose of liquidating the Debtors' Estates and Consummation of the Plan. Such assets shall be held free and clear of all Liens, Claims, Interests, charges or other encumbrances, purchase rights, options or rights of first refusal, except as otherwise provided in the Plan. Any distributions to be made under the Plan from such assets shall be made by the Plan Administrator or its designee. The Wind-Down Debtor(s) and the Plan Administrator shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

Any contrary provision hereof notwithstanding, following the occurrence of the Plan Effective Date and the making of distributions on the Plan Effective Date pursuant hereto, (i) any of the Debtors' Cash held by the Wind-Down Debtor(s) in excess of the Wind-Down Budget and (ii) the proceeds of any non-Cash assets of the Debtors' Estates vested in the Wind-Down Debtor(s), shall be payable to holders of DIP Claims and Senior Notes Claims until such claims are indefeasibly paid in full in Cash. The Plan Administrator shall make such distributions in Cash in accordance with Article III hereof.

### 3. The Plan Administrator

On and after the Plan Effective Date, to the extent applicable, the Plan Administrator, shall be appointed by the Debtors with the consent of the Senior Lenders.

The Plan Administrator shall not be required to post any bond or surety or other security for the performance of its duties hereunder unless otherwise ordered by the Bankruptcy Court. In the event that the Plan Administrator is so ordered, all costs and expenses of procuring any such bond or surety shall be paid for with Cash from the Wind-Down Assets.

The Plan Administrator may resign at any time upon thirty (30) days' written notice to the Bankruptcy Court; provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Plan Administrator relating to the Wind-Down Debtor(s) shall be terminated.

#### (a) The Plan Administrator's Rights and Powers

The powers of the Plan Administrator shall include any and all powers and authority necessary or helpful to implement and carry out the provisions of the Plan and any applicable orders of the Bankruptcy Court. The Plan Administrator shall be the representative of the Debtors' Estates appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

Without limiting the foregoing, the Plan Administrator shall (a) hold, liquidate, invest, supervise, and protect the Wind-Down Assets; (b) effectuate the distributions contemplated under the Plan; (c) object to or settle Disputed Claims against the Debtors; (d) establish and maintain the Disputed Claims Reserve with respect to the Disputed Claims against the Debtors or their Estates;



(e) prosecute any or all of the Causes of Action retained by the Wind-Down Debtor(s); (f) pay all reasonable fees, expenses, debts, charges, and liabilities of the Wind-Down Debtor(s); (g) file tax returns for, pay taxes of, and represent the interests of the Wind-Down Debtor(s) or the Debtors' Estates, as applicable, before any taxing authority in all matters, including any action, suit, proceeding, or audit; (h) File the operating report for the Debtors' Estates for the month in which the Plan Effective Date occurs and all subsequent quarterly reports; (i) take any action necessary to wind down the business and affairs of the Wind-Down Debtor(s); and (j) file appropriate certificates of dissolution of the Wind-Down Debtor(s) pursuant to applicable state or provincial law.

As soon as practicable after the Plan Effective Date, the Plan Administrator shall cause the Wind-Down Debtor(s) to comply with, and abide by, the terms of the Plan and take any actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. Except to the extent necessary to complete the Wind-Down of any of the Debtors' remaining assets or operations from and after the Plan Effective Date, the Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from the State of New Hampshire and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have canceled pursuant to the Plan all Interests in the Debtors, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Plan Effective Date. The Filing of the final monthly operating report for the Debtors' Estates (for the month in which the Plan Effective Date occurs) and all subsequent quarterly post-Confirmation reports shall be the responsibility of the Plan Administrator.

The Plan Administrator shall act for the Wind-Down Debtor(s) in the same fiduciary capacity as applicable to a board of directors and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Plan Effective Date, the persons acting as members, managers, or officers of the Debtor(s) shall be deemed to have resigned and a representative of the Plan Administrator shall be appointed as the sole manager and sole officer of the Wind-Down Debtor(s) and shall succeed to the powers of the Debtors' directors, managers and officers. From and after the Plan Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Wind-Down Debtor(s). For the avoidance of doubt, the foregoing shall not limit the authority of the Wind-Down Debtor(s) or the Plan Administrator, as applicable, to continue the employment of any former member, manager, or officer, including pursuant to any transition services or other agreement, in each case, to the extent permitted by applicable law.

(b) Retention of the Plan Administrators' Professionals

The Plan Administrator shall have the right to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of its duties. The reasonable fees and expenses of such professionals shall be paid from the Wind-Down Assets upon the monthly submission of statements to the Plan Administrator. The payment of the reasonable fees and expenses of the Plan Administrator's retained professionals shall be made in the ordinary course of business in

accordance with the Wind-Down Budget and shall not be subject to the approval of the Bankruptcy Court.

(c) Compensation of the Plan Administrator

All reasonable costs, expenses, and obligations incurred by the Plan Administrator in administering the Plan, the Wind-Down Debtor(s)' Estates, or in any manner connected, incidental, or related thereto, shall be paid from the Wind-Down Assets in accordance with the Wind-Down Budget and on the terms set forth in the Plan Administrator Agreement. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator on or after the Plan Effective Date (including taxes imposed on the Wind-Down Debtors) in connection with its duties hereunder and the Plan Administrator Agreement shall be paid without any further notice to, or action, order, or approval of, the Bankruptcy Court.

(d) Indemnification, Insurance, and Liability Limitation

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed indemnified by the Wind-Down Debtor(s) to the fullest extent permitted by applicable law from any claims or Causes of Action relating to or arising in connection with the performance of its duties hereunder or under the Plan Administrator Agreement, except for claims and Causes of Action related to any act or omission that is determined by Final Order of a court of competent jurisdiction to have constituted fraud, willful misconduct, or gross negligence. The Plan Administrator may obtain, at the expense of the Wind-Down Debtor(s) and in accordance with the Plan Administrator Agreement, commercially reasonable liability or other appropriate insurance with respect to the foregoing indemnification obligations. Any such insurance shall be paid solely from the Wind-Down Assets in accordance with the Wind-Down Budget. The Plan Administrator may rely upon all written information previously generated by the Debtors.

Notwithstanding anything to the contrary contained herein, the Plan Administrator in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Wind-Down Debtor(s).

(e) Tax Returns

The Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Wind-Down Debtor(s) and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of any Wind-Down Debtor or the Estate of its predecessor Debtor, as determined under applicable tax laws.

4. Vesting of Assets in the Wind-Down Debtor(s) or Purchaser(s)

Except as otherwise provided herein, on the Plan Effective Date, all Wind-Down Assets shall vest in the Wind-Down Debtor(s), free and clear of all Liens, Claims, Interests, charges, or other encumbrances, purchase rights, options or rights of first refusal, unless expressly provided otherwise by the Plan or the Confirmation Order. On and after the Plan Effective Date, the Wind-Down Debtor(s) may use, acquire, or dispose of property and compromise or settle any Claims,

Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

5. Sources of Consideration for Plan Distributions.

The Plan Administrator shall fund distributions under the Plan, to the extent not made on the Plan Effective Date, with Cash on hand, the Sale Proceeds, if any, and proceeds of the Debtors' retained Causes of Action not settled, released, discharged, enjoined, or exculpated on or prior to the Plan Effective Date.

**C. Restructuring of the Debtors Effectuated Through a Stand-Alone Restructuring Transaction**

If a Stand-Alone Restructuring Transaction occurs, the following provisions shall apply:

1. [Intentionally Omitted]
2. Release of Liens

Subject to the distributions provided for in the Plan, except as otherwise provided herein, or any contract, agreement, instrument, or another document created pursuant to or in connection with the Plan, on the Plan Effective Date, all mortgages, deeds of trust, Liens, pledges, rights, or other security interests against any property of the applicable Debtors' Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, rights, or other security interests shall revert automatically to the applicable Debtor. All holders of Secured Claims against the Debtors or any of their property (and such holders' agents) shall release any collateral or other property of the applicable Debtor (including any cash collateral and possessory collateral) held by such holder (or such holders' agents), and take such actions as may be reasonably requested by the Reorganized Debtors to evidence the release of the applicable security interests, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such security interests.

3. Sources of Consideration for Plan Distributions

The Reorganized Debtors shall fund distributions under the Plan with the New Reorganized Debtor Equity, Cash on hand, and Cash generated from operations.

From and after the Plan Effective Date, the Reorganized Debtors, subject to any applicable limitations set forth in any post-Plan Effective Date agreement (including the New Organizational Documents), shall have the right and authority without further notice to or action, order, or approval of the Bankruptcy Court to raise additional capital and obtain additional financing as the New Board of the applicable Reorganized Debtors deems appropriate.

#### 4. Issuance of New Reorganized Debtor Equity; Section 1145 Exemption

On the Plan Effective Date, the Reorganized Debtors shall issue the New Reorganized Debtor Equity to the holders of the Allowed DIP Claims and Allowed Senior Notes Claims, in each case, as applicable, and without the need for any further corporate action or further notice to, action or order of the Bankruptcy Court. The shares of the New Reorganized Debtor Equity issued under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance of the New Reorganized Debtor Equity under the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Person receiving such distribution or issuance. The issuance of the New Reorganized Debtor Equity by the Reorganized Debtors shall be authorized without the need for any further corporate action or without any further action by the Debtors or Reorganized Debtors or by holders of any Claims or Interests against the Debtors, as applicable. As a condition to receiving the New Reorganized Debtor Equity, each holder entitled to a distribution of New Reorganized Debtor Equity, including holders of Allowed DIP Claims and Allowed Senior Notes Claims (as applicable), will be required to execute and deliver the New Organizational Documents, as applicable; provided however, that, notwithstanding any failure to execute the New Organizational Documents, as applicable, any Person that is entitled to and accepts a distribution of New Reorganized Debtor Equity under the Plan, by accepting such distribution, will be deemed to have accepted and consented to the terms of the New Organizational Documents, without the need for execution by any party thereto. The New Reorganized Debtor Equity will not be registered under the Securities Act or listed on any exchange as of the Plan Effective Date.

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of the New Reorganized Debtor Equity after the Petition Date shall be exempt from, among other things, the registration requirements of Section 5 of the Securities Act or any similar federal, state, or local law in reliance on section 1145 of the Bankruptcy Code or, only to the extent such exemption under section 1145 of the Bankruptcy Code is not available, any other available exemption from registration under the Securities Act. Pursuant to section 1145 of the Bankruptcy Code, such New Reorganized Debtor Equity will be freely tradable in the United States without registration under the Securities Act by the recipients thereof, subject to the provisions of (1) section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in Section 2(a)(11) of the Securities Act and compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments, (2) any other applicable regulatory approvals, and (3) any restrictions in the New Organizational Documents.

Any Securities distributed pursuant to Section 4(a)(2) of the Securities Act will be considered “restricted securities” as defined by Rule 144 of the Securities Act and may not be resold under the Securities Act or applicable state securities laws absent an effective registration statement, or pursuant to an applicable exemption from registration, under the Securities Act and applicable state securities laws and subject to any restrictions in the New Organizational Documents.

Notwithstanding anything to the contrary in the Plan, no Person shall be entitled to require a legal opinion regarding the validity of any transaction contemplated by the Plan, including, for the avoidance of doubt, whether the issuance of the New Reorganized Debtor Equity is exempt from the registration requirements of Section 5 of the Securities Act.

Recipients of the New Reorganized Debtor Equity are advised to consult with their own legal advisors as to the availability of any exemption from registration under the Securities Act and any applicable state securities laws.

#### 5. Corporate Existence

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, on and after the Plan Effective Date, each Reorganized Debtor, as applicable, shall continue to exist as a separate corporation, limited liability company, partnership, or other form of entity, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form of entity, as the case may be, pursuant to the applicable law in the jurisdiction in which the particular Debtor is incorporated or formed and pursuant to their respective certificate of incorporation and bylaws (or other similar Governance Documents) in effect prior to the Plan Effective Date, except to the extent such certificate of incorporation and bylaws (or other similar Governance Documents) are amended under the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law).

After the Plan Effective Date, the respective certificate of incorporation and bylaws (or other formation documents) of one or more of the Reorganized Debtors may be amended or modified in accordance with their terms without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. On or after the Plan Effective Date, one or more of the Reorganized Debtors may be disposed of, dissolved, wound down, or liquidated without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

#### 6. New Organizational Documents

On or immediately prior to the Plan Effective Date, the New Organizational Documents shall be adopted automatically by the Reorganized Debtors. To the extent required under the Plan or applicable non-bankruptcy law, the Reorganized Debtors shall file their respective New Organizational Documents with the applicable Secretaries of State and/or other applicable authorities in their respective states, provinces, or countries of incorporation in accordance with the corporate laws of the respective states, provinces, or countries of incorporation. The New Organizational Documents shall, among other things: (1) authorize the issuance of the New Reorganized Debtor Equity; (2) not provide for any indemnification, contribution, reimbursement, or any other liability for the Reorganized Debtors to the Sponsors or their Related Parties for any claim whatsoever, including but not limited to on account of cancelation of debt income; and (3) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting equity securities of the Debtors. After the Plan Effective Date, each Reorganized Debtor may amend and restate its limited liability company

agreement, certificate of incorporation and other formation and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of the New Organizational Documents.

7. Vesting of Assets in the Reorganized Debtors

Except as otherwise provided herein, or in any agreement, instrument or other document incorporated in the Plan, on the Plan Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property in each Debtor's Estate, all Causes of Action of the Debtors' Estates (other than any Causes of Action that are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan) and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges and/or other encumbrances, purchase rights, options or rights of first refusal. On and after the Plan Effective Date, except as otherwise provided herein, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and pursue, compromise or settle any Claims, Interests, or Causes of Action with respect to the Debtors without further notice to, action, or approval of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

8. Directors, Managers, and Officers

As of the Plan Effective Date, the term of the current members of the boards of directors or managers or any managing member of the Debtors shall expire, and the New Board and the officers or managers of each of the Reorganized Debtors shall be appointed in accordance with the respective New Organizational Documents.

Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtors shall disclose, in advance of the Confirmation Hearing, the identity and affiliations of any Person proposed to serve on the New Board or be an officer of any of the Reorganized Debtors. To the extent any such director, manager or officer is an "insider" (as defined in the Bankruptcy Code), the Debtors also shall disclose the nature of any compensation to be paid to such director, manager or officer. Each such director, manager and officer shall serve from and after the Plan Effective Date pursuant to the terms of the New Organizational Documents.

9. Employee and Retiree Benefits

To the extent that the Debtors and Senior Lenders determine that any Compensation and Benefits Programs shall remain in place after the Plan Effective Date, the Debtors, with the consent of the Senior Lenders, will list such agreement on the Assumed Executory Contracts and Unexpired Leases List, and such agreement will be assumed as of the Plan Effective Date. If the Debtors do not list such agreement on the Assumed Executory Contracts and Unexpired Leases List, such agreement shall be deemed rejected in accordance with Article V of the Plan without any resulting Claims assertable against the Debtors or their Estates.

## V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

### A. Assumption and Rejection of Executory Contracts and Unexpired Leases

#### 1. In a Sale Scenario

On the Plan Effective Date, (i) each Executory Contract and Unexpired Lease designated for assumption and assignment to a Purchaser in accordance with any Purchase Agreement shall be assumed by the applicable Debtor and assigned to the applicable Purchaser pursuant to the terms of the applicable Purchase Agreement and applicable orders of the Bankruptcy Court, and (ii) all Executory Contracts and Unexpired Leases not designated for assumption and assignment to the Purchaser in any Purchase Agreement, to the extent not previously rejected or terminated, shall be automatically rejected.

Each Executory Contract and Unexpired Lease assumed pursuant to this Article V.A.1 and assigned to a Purchaser shall vest in and be fully enforceable by the applicable Purchaser in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court.

#### 2. In a Stand-Alone Restructuring Scenario

On the Plan Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, all Executory Contracts and Unexpired Leases, to the extent not previously rejected or terminated, shall be deemed rejected under section 365 of the Bankruptcy Code (other than the Restructuring Support Agreement, which, if not terminated prior to Confirmation, shall be deemed assumed as of the Confirmation Date), without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) was previously assumed by a Debtor; (2) expired or was terminated pursuant to its own terms or by agreement of the parties thereto; (3) is the subject of a motion to assume Filed by the Debtors on or before the date of entry of the applicable Confirmation Order; or (4) is listed on the Assumed Executory Contracts and Unexpired Leases List; provided, that that rejections of Unexpired Leases of non-residential real property shall be effective as of the later of (a) the Plan Effective Date and (b) the date on which the leased premises are unconditionally surrendered to the landlord under such rejected Unexpired Lease.

Each Executory Contract and Unexpired Lease assumed pursuant to this Article V.A.2 of the Plan, shall re-vest in and be fully enforceable by the applicable Reorganized Debtor in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court.

#### 3. O&M Agreement and Project Management Agreement in a Stand-Alone Restructuring Scenario

In the Stand-Alone Restructuring Scenario, on the Plan Effective Date, the O&M Agreement and the Project Management Agreement shall, at the election of the Senior Lenders, be deemed either (1) rejected or (2) assumed under section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court.

In the event the Pro Forma Owners and the counterparties to the O&M Agreement and/or the Project Management Agreement enter into any amendment in connection with the assumption of the O&M Agreement and Project Management Agreement, the form of the amended O&M Agreement and/or the amended Project Management Agreement (as applicable) shall be included in the Plan Supplement.

In the event of rejection or termination of the Project Management Agreement and/or O&M Agreement (as applicable), CS Berlin Ops, Inc. and CS Operations, Inc. (as applicable) shall (x) continue to perform under such rejected or terminated contract in a manner consistent with past practices (including continued assignment of current personnel) for a period of time as reasonably necessary for the Debtors or the Pro Forma Owners to enter into a new project management agreement or operations and maintenance agreement (as applicable) with either (i) CS Berlin Ops, Inc. and CS Operations, Inc. (as applicable) until such time as replacement agreements acceptable to the Pro Forma Owners are executed and in full force and effect or (ii) a successor operator(s) until such time that a successor operator has effective agreements, and all of the information and resources needed, to operate the Debtors' or the Reorganized Debtors' business, in the sole discretion of the Pro Forma Owners and (y) in the case of a successor operator(s), to assist the successor operator(s) through the conclusion of such transition; provided, however, that the obligations of CS Berlin Ops, Inc. and CS Operations, Inc. under this paragraph are conditioned upon each such entity being compensated for its services in a manner and amount consistent with past practices on a monthly basis as had been provided for in the rejected and/or terminated Project Management Agreement and O&M Agreement (as applicable).

#### 4. Lease and Right to Use Agreement in a Stand-Alone Restructuring Scenario

In the Stand-Alone Restructuring Scenario, on the Plan Effective Date, the Lease and Right to Use Agreement shall be deemed assumed by both Berlin and Burgess; provided, further, in the event the Plan as to Burgess is severed and withdrawn as provided for in Article X.E, then, in connection with the Pro Forma Owners' acquisition of Burgess' assets through a sale, the Lease and Right to Use Agreement shall, at the Pro Forma Owners' discretion, be either: (1) terminated by both parties thereto in form and substance acceptable to the Pro Forma Owners, (2) assumed by Berlin and shall be assumed and assigned by Burgess to the Reorganized Berlin or to a third party designated by the Pro Forma Owners, or (3) rejected by Burgess.

#### **B. Approval of Assumption, Assignment and Rejection**

Entry of the Confirmation Order shall, subject to and upon the occurrence of the Plan Effective Date, constitute the Bankruptcy Court's approval of the assumptions, assignments or rejections, as applicable, of the Executory Contracts and Unexpired Leases under the Plan. Any motion of the Debtors to assume an Executory Contract or Unexpired Lease pending on the Plan Effective Date shall be subject to approval by the Bankruptcy Court by a Final Order.

Notwithstanding anything to the contrary in the Plan, the Debtors and the Reorganized Debtors, as applicable, reserve the right to amend, modify, or supplement the Assumed Executory Contracts and Unexpired Leases List to add or remove any Executory Contract or Unexpired Lease to such list at any time prior to the Plan Effective Date (or prior to such later date as may be designated in any Purchase Agreement, as applicable), subject to the consent of the Senior Lenders.



The Debtors or the Reorganized Debtors shall provide notice of any amendments to the Assumed Executory Contracts and Unexpired Leases List to their counterparties affected thereby.

### **C. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Unless otherwise provided by a Final Order, Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to the Plan, if any, must be Filed with the Bankruptcy Court within thirty (30) days after the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, (2) the effective date of such rejection, or (3) the Plan Effective Date. All Allowed Claims arising from the rejection of a Debtor's Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims against such Debtor. No non-Debtor party to a rejected Executory Contract or Unexpired Lease shall be permitted to setoff or recoup any amounts owed to the Debtors under such rejected Executory Contract or Unexpired Lease against any Allowed rejection damages.

**Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time shall be automatically Disallowed, released, and discharged, and forever barred from assertion without the need for any objection or further notice to, or action, order, or approval of, the Bankruptcy Court or any other Person, any such Claim shall be released, and discharged, notwithstanding anything in the Schedules or any Proof of Claim to the contrary, and such Claim shall not be enforceable against the Debtors, the Reorganized Debtors, the Debtors' Estates, or the Wind-Down Debtor(s) as applicable, or their respective properties.**

### **D. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed**

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied by the applicable Debtor(s) party to such Executory Contract or Unexpired Lease, pursuant to section 365(b)(1) of the Bankruptcy Code, (i) in a Stand-Alone Restructuring Scenario, by payment of the Cure Amount in Cash on the Plan Effective Date by the Debtors or on such other terms as the parties to such Executory Contracts or Unexpired Leases, with the consent of the Senior Lenders, may agree, and (ii) in a Sale Scenario, in accordance with the Assumption and Assignment Procedures and the terms of the applicable Purchase Agreement(s). In the event of an unresolved dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of the Reorganized Debtors or Purchaser(s) (as applicable) or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code), or (3) any other matter pertaining to assumption, the payment of the Cure Amount required by section 365(b)(1) of the Bankruptcy Code shall be resolved by a Final Order.

The Debtors shall serve on the applicable counterparties notices of proposed assumption and proposed Cure Amounts pursuant to the terms of the Bidding Procedures. **Any objection by a counterparty to an Executory Contract or Unexpired Lease to the proposed assumption or Cure Amount must be Filed and served to be actually received by no later than the applicable objection deadline set forth in the Bidding Procedures Order.** Any counterparty to an Executory Contract or Unexpired Lease designated for assumption that fails to object timely to the

proposed assumption, Cure Amount or adequate assurance of future performance shall be deemed to have consented to all of the foregoing.

Assumption (or assumption and assignment, as applicable) of an Executory Contract or Unexpired Lease pursuant to the Plan shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under such Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.**

#### **E. Preexisting Obligations under Executory Contracts and Unexpired Leases.**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the applicable Debtor(s) thereunder. In particular, notwithstanding any non-bankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, outstanding Cash payments, warranties or continued maintenance obligations on any goods previously purchased by the Debtors from a non-Debtor counterparty to a rejected Executory Contract or Unexpired Lease.

#### **F. Modifications, Amendments, Supplements, Restatements, or Other Agreements**

Unless otherwise provided in the Plan, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to the Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Debtors' Chapter 11 Cases shall not be deemed to alter the prepetition nature of the applicable Executory Contracts or Unexpired Leases, or the validity, priority, or amount of any Claims that may arise in connection therewith.

#### **G. Reservation of Rights**

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Assumed Executory Contracts and Unexpired Leases List, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Reorganized Debtors, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease under the Plan.

## **H. Nonoccurrence of the Plan Effective Date**

In the event that the Plan Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases of nonresidential property pursuant to section 365(d)(4) of the Bankruptcy Code.

## **I. Contracts and Leases Entered Into After the Petition Date**

Contracts and leases entered into by a Debtor after the Petition Date, as well as any Executory Contracts and Unexpired Leases assumed by a Debtor, shall be performed by the applicable Debtor, Reorganized Debtor(s), Purchaser(s), or Plan Administrator, as applicable, in the ordinary course of business. Such contracts and leases that are not rejected under the Plan shall survive and remain unaffected by entry of the Confirmation Order.

## **VI. PROVISIONS GOVERNING DISTRIBUTIONS**

### **A. Timing and Calculation of Amounts to Be Distributed**

Unless otherwise provided in the Plan, on the Plan Effective Date (or if a Claim is not an Allowed Claim on the Plan Effective Date, on the date that such Claim becomes an Allowed Claim), each holder of an Allowed Claim shall receive, subject to the provisions of Article VII hereof, the full amount of the distribution that the applicable Plan provides on account of Allowed Claims in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as otherwise provided in the Plan, holders of Allowed Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or after the Plan Effective Date.

### **B. Delivery of Distributions**

#### **1. Persons Responsible**

Distributions under the Plan shall be made by (i) in a Sale Scenario, by the Plan Administrator or the Debtors and (ii) in a Stand-Alone Restructuring Scenario, by the Reorganized Debtors.

Except as otherwise provided herein, all distributions shall be made to the holders of Allowed Claims at the address for each such holder as indicated in the applicable Debtor's records as of the date of the relevant distribution; provided, however, that the address for each holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that holder; provided further, however, that the manner of distributions shall be determined at the discretion of the Reorganized Debtors or the Plan Administrator, as applicable.

2. Record Date for Distribution

On the Distribution Record Date, the Claims Register shall be closed with respect to Claims held against the Debtors and any party responsible for making distributions under the Plan shall be authorized and entitled to recognize only those record holders of such Claims that are listed on the Claims Register as of the close of business on the Distribution Record Date.

3. Minimum Distributions

Notwithstanding any other provision of the Plan, the Reorganized Debtors, the Wind-Down Debtor(s), or the Plan Administrator, as applicable, shall not be required to make distributions of less than \$50 in value (whether Cash or otherwise), and each Claim to which this limitation applies shall be discharged, and its holder shall be forever barred pursuant to Article VIII of the Plan from asserting such Claim against the Debtors, their applicable Estates, the Reorganized Debtors, the Wind-Down Debtors, as applicable, or their respective property, as applicable.

4. No Fractional Distributions

No fractional shares of the New Reorganized Debtor Equity shall be distributed and no Cash shall be distributed in lieu of such fractional shares. When any distribution pursuant to the Plan on account of an Allowed Claim would otherwise result in the issuance of a number of shares of New Reorganized Debtor Equity that is not a whole number, the number of shares of New Reorganized Debtor Equity to be distributed shall be rounded as follows: (a) fractions of one-half (1/2) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half (1/2) shall be rounded to the next lower whole number. The total number of authorized shares or units of New Reorganized Debtor Equity to be distributed to holders of Allowed DIP Claims, Allowed Senior Notes Claims shall be adjusted as necessary to account for the foregoing rounding.

**C. Distributions and Undeliverable or Unclaimed Distributions**

In the event that a distribution to any holder of an Allowed Claim is returned as undeliverable, no distribution to such holder shall be made unless and until the Reorganized Debtors or the Plan Administrator, as applicable, have determined the then-current address of such holder, at which time the distribution shall be made to such holder without interest; provided, however, that, at the expiration of six (6) months from the Plan Effective Date, any such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code. After such date, all unclaimed property shall automatically revert to the Reorganized Debtors or the Wind-Down Debtors, as applicable, without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any holder to such property shall be discharged and forever barred.

**D. Surrender of Cancelled Instruments or Securities**

On the Plan Effective Date or as soon as reasonably practicable thereafter, each holder of a certificate or instrument evidencing a Claim that has received no distribution or an Interest that has been cancelled in accordance with Article IV.A.5 hereof shall be deemed to have surrendered

such certificate or instrument. Such surrendered certificate or instrument shall be cancelled solely with respect to the applicable Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis à vis one another with respect to such certificate or instrument, including with respect to any indenture or agreement that governs the rights of the holder of a Claim or Interest, which shall continue in effect for purposes of allowing holders to receive distributions under the Plan, charging liens, priority of payment, and indemnification rights. Notwithstanding anything to the contrary herein, this paragraph shall not apply to certificates or instruments evidencing Claims that are Unimpaired under the Plan.

#### **E. Compliance with Tax Requirements**

The Debtors, Reorganized Debtors or Wind-Down Debtors, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, with respect to the distributions pursuant to the Plan, and all such distributions shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors or the Plan Administrator shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such compliance, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtors and the Plan Administrator, as applicable, reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

#### **F. Allocations**

Distributions on account of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to accrued but unpaid prepetition interest.

#### **G. No Postpetition Interest on Claims**

Unless otherwise specifically provided for in the Plan, Confirmation Order or DIP Order, or required by applicable bankruptcy and non-bankruptcy law, postpetition interest shall not accrue or be paid on any Claim, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any such Claim.

#### **H. Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency published in *The Wall Street Journal*, National Edition, on the Petition Date.

## **I. Setoffs and Recoupment**

Except as expressly provided in the Plan, each Reorganized Debtor or Wind-Down Debtor, as applicable, may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any Plan distributions to be made on account of an Allowed Claim any and all Claims, rights, and Causes of Action that such Reorganized Debtor or Wind-Down Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim shall constitute a waiver or release by a Reorganized Debtor, a Wind-Down Debtor or its successor of any and all Claims, rights, and Causes of Action that such Reorganized Debtor or Wind-Down Debtor may have against the applicable claimholder. In no event shall any holder of a Claim, notwithstanding any indication in such holder's Proof of Claim that such holder asserts, has, or intends to preserve any right of setoff or recoupment pursuant to section 553 of the Bankruptcy Code or otherwise, be entitled to set off or recoup its Claim against any claim, right, or Cause of Action of the Debtor, Reorganized Debtor or Wind-Down Debtor(s), as applicable.

## **J. Claims Paid or Payable by Third Parties**

### **1. Claims Paid by Third Parties**

To the extent the holder of a Claim receives payment in full on account of such Claim from a third party, such Claim shall be Disallowed and expunged from the Claims Register without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a holder of a Claim receives a distribution on account of such Claim and thereafter receives payment from a third party on account of such Claim, such holder shall, within two weeks of receipt of the latter, repay or return to the applicable Reorganized Debtor or Wind-Down Debtors, as applicable, the portion of the received Plan distribution, if any, by which its total recovery on account of the Claim exceeds the Allowed amount of such Claim.

### **2. Claims Payable by Third Parties**

The availability, if any, of any insurance policy for the satisfaction of an Allowed Claim shall be determined by the terms of the applicable Debtor(s)'s insurance policies. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part any Allowed Claim (if and to the extent adjudicated by a court of competent jurisdiction), then, immediately upon such insurers' agreement, the applicable portion of such Claim may be Disallowed and expunged from the Claims Register without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

Nothing contained in the Plan shall constitute or be deemed a waiver of any Claim or Cause of Action that any Debtor or any Person may hold against any insurer under any insurance policies, nor shall anything contained herein constitute a waiver by any insurer of any defenses, including coverage defenses.

## **VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS**

### **A. Allowance of Claims**

After the Plan Effective Date, the Reorganized Debtors and Wind-Down Debtors, as applicable, shall have and retain any and all rights and defenses the applicable Debtor had immediately before the Plan Effective Date. No Claim shall be deemed an Allowed Claim unless and until such Claim is Allowed under the Plan or under any order entered in the Chapter 11 Cases before the Plan Effective Date (including the Confirmation Order), when such order becomes a Final Order.

### **B. No Distributions Pending Allowance**

If an objection to a Claim or a portion thereof is Filed, no distribution shall be made on account of such Claim or the applicable portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

### **C. Claims Administration Responsibilities**

Except as otherwise specifically provided in the Plan, after the Plan Effective Date, the Reorganized Debtors and the Plan Administrator, as applicable, shall have the authority to: (1) File, withdraw, or litigate to judgment objections to Claims against the applicable Estate; (2) settle, compromise, or otherwise resolve Disputed Claims against the applicable Estate without any further notice to or action, order, or approval by the Bankruptcy Court; (3) administer any applicable Disputed Claims Reserve; and (4) administer and adjust the applicable Claims Register to reflect any settlements, compromises or Final Orders resolving Disputed Claims or the fact that any Claim has been paid or satisfied, or that any Proof of Claim that has been amended or superseded, cancelled or otherwise expunged (including pursuant to the Plan), in each case without any further notice to or action, order, or approval by the Bankruptcy Court.

### **D. Disputed Claims Reserve**

In a Sale Scenario, on the Plan Effective Date, the Plan Administrator shall establish a reserve in the amount equal to the aggregate amount that would be distributable to holders of Disputed Claims against any of the Debtors if such Disputed Claims were Allowed Claims on the Plan Effective Date; provided, for the avoidance of doubt, the Reorganized Debtors shall not be required to reserve any amount on account of Disputed Claims which shall be satisfied, resolved, litigated, or otherwise disputed in the ordinary course of business.

To the extent any funds remain in the Disputed Claims Reserve after all Disputed Claims against any of the Debtors have been either Allowed and paid or Disallowed, such funds shall revert to the Wind-Down Debtors.

### **E. Estimation of Claims**

Before or after the Plan Effective Date, the Debtors, Reorganized Debtors, or Wind-Down Debtor(s), as applicable, may (but are not required to) at any time request that the Bankruptcy

Court estimate any Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to such Claim or during the appeal relating to such objection. Notwithstanding any provision in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or that otherwise has not yet been resolved by a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the relevant Debtor, Reorganized Debtor or Wind-Down Debtor, as applicable, may elect to pursue a supplemental proceeding to object to any ultimate allowance of such Claim.

#### **F. Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the later of (1) 180 days after the Plan Effective Date and (2) such other period of limitation as may be fixed by the Bankruptcy Court.

#### **G. Disallowance of Claims**

Any Claims held by Persons from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code, or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Person have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, from that Person have been turned over or paid to the Reorganized Debtors or Wind-Down Debtors, as applicable.

All Claims against any Debtor, whether Filed or listed in any of the Debtor's Schedules, on account of an indemnification, surety and/or contribution obligation to any of the following Persons or entities shall be deemed satisfied and expunged from the Claims Register as of the Plan Effective Date, without any further notice to or action, order, or approval of the Bankruptcy Court: (i) current or former director of any Debtor, (ii) current or former officer of any Debtor; (iii) current or former employee of any Debtor; (iv) current or former insider of any Debtor; (v) holder, whether directly or indirectly, of an Interest in any Debtor; (vi) current or former operator of any Debtor, including the operator pursuant to the O&M Agreement; (vii) current or former project manager of any Debtor, including the manager under the Project Management Agreement; and (viii) any Affiliate of the Persons or entities set forth in the foregoing clauses (i) through (vii); provided, further, that the holder of any such Claim shall not be entitled to any distributions under the Plan on account of such Claims.

#### **H. Distributions After Allowance**

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order allowing a Disputed Claim becomes a



Final Order, the Reorganized Debtors, the Wind-Down Debtor(s) or Plan Administrator, as applicable, shall provide to the holder of such Claim the distribution (if any) to which such holder is entitled, without interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law.

## **VIII. RELEASES, INJUNCTION AND RELATED PROVISIONS**

### **A. Plan Releases, Injunction and Related Provisions**

#### **1. Discharge of Claims and Termination of Interests in the Debtors**

In the Stand-Alone Restructuring Scenario or any Sale Scenario involving a Plan Sponsor, upon entry of the Confirmation Order, and except as otherwise provided in the Plan, the Debtors shall be discharged to the fullest extent permitted by section 1141(d) of the Bankruptcy Code. The Confirmation Order shall be a judicial determination of the discharge of all Claims against, and Interests in, the Debtors subject to the occurrence of the Plan Effective Date, including any claims, causes of action, or prayers for relief seeking substantive consolidation, successor liability, alter ego liability and other theories of liability between and among the Debtors, any of their current or former affiliated entities, or any other Person.

In a Sale Scenario (other than a Sale Scenario involving a Plan Sponsor), pursuant to the provisions of section 1141(d)(3) of the Bankruptcy Code, the Debtors shall not be entitled to a discharge and shall be wound down as set forth in the Plan and the Plan Administrator Agreement.

#### **2. Releases by the Debtors**

**Notwithstanding anything in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Plan Effective Date, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released by each of the Debtors, their respective Estates, and any Person seeking to exercise the rights of any of the Debtors or their Estates (including any successors to any of the Debtors or their Estates or any Estate representatives appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code), in each case, on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Persons who may purport to assert any Cause of Action, derivatively, by, through, for, or because of any of the foregoing Persons, from any and all Claims and Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort or otherwise, that any of the Debtors, their Estates, the Reorganized Debtors or Wind-Down Debtor(s), as applicable, or any successors to or representatives of the foregoing appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, would have been legally entitled to assert in their own right (whether individually or collectively) or that any holder of any Claim against or any Interest in, any of the Debtors could have asserted on behalf of any of the Debtors or their Estates, based on, relating to, or in any manner arising from, in whole or in part: any of the Debtors (including the capital structure, management, ownership, or operations thereof); any Security of any of the Debtors; the subject matter of, or the transactions or**

events giving rise to, any Claim, Cause of Action or Interest; the business or contractual arrangements between any Debtor and a Released Party; the Senior Notes Documents; any of the Debtors' restructuring efforts; any Avoidance Actions held by any of the Debtors or their Estates; any intercompany transactions performed by any of the Debtors; the Debtors' Chapter 11 Cases (including the Filing thereof and any relief obtained by the Debtors therein); the formulation, preparation, dissemination, negotiation, or Filing of the Plan, the Plan Supplement, the Restructuring Support Agreement, the DIP Facility, the Disclosure Statement, or the Bidding Procedures Order (and the procedures approved thereby); any Restructuring Transaction, contract, instrument, release, or other agreement or document (including any legal opinion requested by any Person regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order with respect to the Plan in lieu of such legal opinion) created or entered into in connection with the Plan, the Restructuring Support Agreement, or the Bidding Procedures Order; the solicitation of votes on the Plan, the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the implementation of the Plan, including the issuance or distribution of Securities or any other property pursuant to the Plan; or any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Plan Effective Date other than Claims and liabilities resulting therefrom arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, in each case, solely to the extent determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Plan Effective Date Claims or obligations of any Person under the Plan, the Confirmation Order with respect to the Plan, any Restructuring Transaction, any Definitive Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan. For the avoidance of doubt, the releases set forth solely in Article VIII.A.2 do not release any direct claims or causes of action of a third party against the Released Parties, but shall be a release of any derivative claims asserted by third parties against the Released Parties.

### **3. Releases by Holders of Claims Against and Interests In the Debtors**

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Plan Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or non-contingent, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part: any of the Debtors (including the capital structure, management, ownership, or operation thereof); any security of any of the Debtors or any of the Reorganized Debtors; the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan; the business or contractual arrangements between any Debtor and any Released Party; the Senior Notes Documents; the assertion or

enforcement of rights and remedies against any of the Debtors; the Debtors' in- or out-of-court restructuring efforts; any Avoidance Actions held by any of the Debtor(s) or their Estates; intercompany transactions between or among a Debtor and another Debtor; the Chapter 11 Cases; the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring Support Agreement, the DIP Facility, the Disclosure Statement, the Bidding Procedures Order, the Plan, or the Plan Supplement; the Filing of the Debtors' Chapter 11 Cases; the Disclosure Statement, the Plan, the solicitation of votes with respect to the Plan, the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, the distribution of property under the Plan or any other related agreement, or any cancellation of debt income realized in connection with the Plan; or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Plan Effective Date, other than Claims and liabilities resulting therefrom arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (i) any party of any obligations related to customary banking products, banking services or other financial accommodations (except as may be expressly amended or modified by the Plan or any other financing document under and as defined therein) or (ii) any post-Plan Effective Date obligations of any Person under the Plan, the Confirmation Order, any Stand-Alone Restructuring Transaction, any Definitive Document or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, the Purchase Agreement(s), if any, or any Claim or obligation arising under the Plan.

#### 4. Exculpation from Claims Relating to the Plan

Except as otherwise specifically provided in the Plan or the Confirmation Order with respect to the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby exculpated from, any Claims and Causes of Action related to any act or omission occurring between and including the Petition Date and the Plan Effective Date in connection with, relating to, or arising out of: the Debtors' Chapter 11 Cases (including the Filing thereof); the formulation, preparation, dissemination, negotiation, Filing, or termination of the Restructuring Support Agreement, the Plan, the Disclosure Statement, the Bidding Procedures Order, the DIP Facility, or any contract, instrument, release or other agreement or document created or entered into in connection with the Debtors' Chapter 11 Cases, whether or not included in the Plan Supplement or constituting a Definitive Document; the Restructuring Transactions contemplated by the Plan and any prepetition transactions relating to any of the foregoing; the pursuit of Confirmation of the Plan, the pursuit of Consummation of the Plan, the administration and implementation of the Plan, including the issuance and distribution of Securities pursuant to the Plan, or the distribution of property under the Plan; any Purchase Agreement(s); or any other related act or omission, transaction, event, or other occurrence taking place on or before or in connection with the

**Plan Effective Date, except for Claims and liabilities resulting therefrom related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence by an Exculpated Party.**

**The Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan in all respects.**

**5. Injunction**

**Except as otherwise expressly provided in the Plan or the Confirmation Order with respect to the Plan, all Persons who have held, hold, or may hold any Claims or Causes of Action against, or Interests in, any of the Debtors that have been released, discharged, or are subject to release or exculpation hereunder are permanently enjoined, from and after the Plan Effective Date, from taking any of the following actions against any of the Debtors, the Reorganized Debtors, the Wind-Down Debtor(s), as applicable, or any of the other Exculpated Parties or any of the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with any such Claim, Cause of Action or Interest; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against any of the Exculpated Parties or Released Parties on account of or in connection with any such Claim, Cause of Action or Interest; (3) creating, perfecting, or enforcing any Lien or encumbrance of any kind against any of the Exculpated Parties, Released Parties or their property on account of or in connection with or with respect to any such Claim, Cause of Action or Interest; and (4) asserting any right of setoff or subrogation against any obligation due from any of the Exculpated Parties, Released Parties or against their property on account of or in connection with any such Claim, Cause of Action or Interest unless, with respect to setoff, such holder has Filed a motion requesting the right to perform such setoff on or before the Plan Effective Date or Filed a Proof of Claim that asserts or preserves any such right, and until such motion has been granted or the Filed Proof of Claim is Allowed.**

**Upon entry of the Confirmation Order with respect to the Plan, all holders of Claims and Causes of Action against, and Interests in, any of the Debtors and their respective Related Parties shall be enjoined from taking any actions to interfere with the implementation of the Plan or any Sale Transaction(s) (if applicable).**

**B. Protections Against Discriminatory Treatment**

**To the maximum extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Persons, including all Governmental Units, shall not discriminate against the Reorganized Debtors or Wind-Down Debtor(s), as applicable, or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors or Wind-Down Debtor(s), as applicable, or another Person with whom the Reorganized Debtors or Wind-Down Debtor(s), as applicable, have been associated, solely because the relevant Debtor has been a debtor under chapter 11 of the Bankruptcy Code, was insolvent before the commencement of or during the Debtors' Chapter 11 Cases, or did not pay a debt that is discharged hereunder.**

**C. Document Retention**

On and after the Plan Effective Date, the Reorganized Debtors, or the Wind-Down Debtor(s), as applicable, may maintain documents in accordance with their prepetition standard document retention policy, as may be altered, amended, modified, or supplemented.

**D. Term of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court in effect on the applicable Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Plan Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

**E. Unknown Claims**

The waivers and releases provided in this Plan are intended to include both known and unknown Claims and Causes of Action. The Debtors and the other Releasing Parties understand that they may later discover Claims, Causes of Action or facts that may be different than, or in addition to, those which the Debtors or any other Releasing Party now knows or believes to exist with respect to the Debtors, and which, if known at the Plan Effective Date may have materially affected the decision of the Debtors and any other Releasing Party to enter into it. Nevertheless, the Debtors and the Releasing Parties hereby waive any right, Causes of Action or Claim that might arise as a result of such different or additional Claims, Causes of Action or facts. The Debtors and the Releasing Parties are aware of, read, understand and have been fully advised by their attorneys as to the contents of the provisions of California Civil Code section 1542 and any other similar state, federal or foreign law and hereby expressly waive any and all rights, benefits and protections of such section 1542 and each such other similar law, which provides:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

**IX. CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN**

**A. Conditions Precedent to the Effective Date for the Plan**

It shall be a condition to the occurrence of the Plan Effective Date that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.B hereof:

1. The Restructuring Support Agreement shall remain in full force and effect and shall not have been terminated by the Senior Lenders;

2. No termination event under Section 10.1 of the Restructuring Support Agreement shall have occurred and no default thereunder shall exist that would permit the Senior Lenders to terminate the Restructuring Support Agreement, in each case that is not expressly waived in writing by the Senior Lenders;

3. The Bankruptcy Court shall have entered the DIP Orders, and the Final DIP Order shall be in full force and effect, and no termination event shall have occurred under the DIP Facility that is not expressly waived in writing by the DIP Lenders;

4. The Bankruptcy Court shall have approved the Disclosure Statement, which may be approved by the Confirmation Order, with respect to the Plan;

5. The Confirmation Order approving the Plan is in form and substance consistent in all respects with the Restructuring Support Agreement and otherwise in form and substance reasonably acceptable to the Senior Lenders, shall be a Final Order (unless otherwise waived by the Senior Lenders) and shall:

- (a) Authorize the Debtors to take all actions necessary to enter into, implement, and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with the Plan;
- (b) Authorize the Debtors, if applicable, to execute and deliver all Purchase Agreements, if any;
- (c) Decree the provisions in the Confirmation Order with respect to the Plan and the Plan to be non-severable and mutually dependent;
- (d) Authorize the Reorganized Debtors or Wind-Down Debtor(s), as applicable, to: (i) implement the Restructuring; (ii) make all distributions required under the Plan, including any Cash and the New Reorganized Debtor Equity, in each case, as applicable; and (iii) enter into any applicable agreements, transactions, and sales of property as set forth in the Plan Supplement as applicable to the Debtors and the Plan;
- (e) Decree that the Restructuring Transactions under the Plan are not subject to the Subordination Agreement and that the Senior Notes Agent, the holders of the Senior Notes Claims, the DIP Agent and the DIP Lenders shall have no liability whatsoever under the Subordination Agreement;
- (f) Provide for the Bankruptcy Court's retention of jurisdiction over implementation of the Plan and the issues set forth in Article XI of the Plan; and
- (g) Authorize the implementation of the Plan in accordance with its terms;

6. The final version of each Definitive Document, including each document contained in the Plan Supplement, to the extent applicable to the Plan (including any exhibits, amendments, modifications, or supplements thereto) shall (a) be in form and substance consistent in all material

respects with the Restructuring Support Agreement and otherwise approved by the applicable parties thereto consistent with their respective consent and approval rights as set forth in the Restructuring Support Agreement, (b) have been executed or deemed executed and delivered by each party thereto and any conditions precedent related thereto shall have been satisfied or waived by the applicable party or parties, if applicable, and (c) shall be adopted on terms consistent with the Restructuring Support Agreement;

7. In the Stand-Alone Restructuring Scenario, (a) the Debtors shall have delivered to the Senior Lenders (1) a Phase I Environmental Assessment by TRC Environmental Corp. (or a similarly reputable firm) and (2) a detailed engineering report by Black & Veatch Management Consulting (or a similarly reputable firm), and which reports in greater detail than the annual engineering reports routinely performed by the Debtors, in each case of (1) and (2), in form and substance acceptable to the Senior Lenders in their sole discretion, (b) the Berlin Facility shall have continuously been in operation in the ordinary course of business since the Petition Date, (c) the Debtors shall have in place an agreement to sell power in form and substance acceptable to the Senior Lenders in their sole discretion; and (d) the Debtors shall have obtained any and all necessary regulatory certifications, authorizations and approvals, including any required from the Federal Energy Regulatory Commission and ISO New England;

8. In the Stand-Alone Restructuring Scenario, in the event of a rejection of any of the O&M Agreement or Project Management Agreement that would occur on or before the Plan Effective Date, then the Pro Forma Owners shall have in place an agreement with an asset manager and an agreement with an operator that each have the employees required to continue the Reorganized Debtors' operations in the ordinary course of business on or before the Plan Effective Date;

9. Any and all authorizations, certifications, consents, regulatory approvals, rulings, actions, documents and agreements necessary to implement, consummate and effectuate the applicable Restructuring Transactions shall have been obtained, effected and executed, including prior approval by FERC under Federal Power Act Section 203 of the transactions contemplated herein and continued effectiveness of Burgess market-based rate authorization and related tariff to sell wholesale electric energy and related services at market-based rates (FERC Docket No. ER14-16), and certifications as a qualifying small power production facility (FERC Docket No. QF11-238) and exempt wholesale generator (FERC Docket No. EG14-1), and related rights and exemptions; provided, further, in the event the Plan as to Burgess is severed and withdrawn as provided for in Article X.E, then Berlin shall be required to obtain the necessary certification, including certifications of the Berlin Facility as a qualifying small power production facility and Berlin itself as an exempt wholesale generator, and market-based rate authorization and related tariff to sell wholesale electric energy and related services, on or prior to the Plan Effective Date;

10. In a Stand-Alone Restructuring Scenario, in the event the Plan as to Burgess is severed and withdrawn as provided for in Article X.E, then the closing of the sale of Burgess' assets shall occur simultaneously with the Plan Effective Date or as otherwise agreed to by the Pro Forma Owners.

11. In a Sale Scenario, all conditions precedent (except for the occurrence of the Plan Effective Date) to the closing under each Purchase Agreement have been satisfied or waived in accordance therewith;

12. In a Stand-Alone Restructuring Scenario or a Sale Scenario involving the sale of equity in the Reorganized Debtors, the New Reorganized Debtor Equity shall have been issued on or immediately before the Plan Effective Date;

13. The Professional Fee Escrow Account shall have been established and funded in accordance with Article II.B hereof; and

14. All Restructuring Expenses allocable to the Debtors pursuant to the Restructuring Support Agreement and the Plan and all fees and expenses payable under the DIP Orders by the Debtors shall have been paid in full.

#### **B. Waiver of Conditions**

The conditions to the occurrence of the Plan Effective Date set forth in this Article IX may be waived by the Debtors, with the prior written consent of the Senior Lenders, without notice to, action, or approval of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan.

#### **C. Substantial Consummation**

Substantial Consummation of the Plan shall be deemed to occur on the Plan Effective Date.

#### **D. Effect of Failure of Conditions**

If the Consummation of the Plan does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by the applicable Debtor or any other Person, or any Claims or Interests by any holders thereof; (2) prejudice in any manner the rights of each applicable Debtor, any holder of Claims or Interests, or any other Person; or (3) constitute an admission, acknowledgment, offer or undertaking by the applicable Debtors, any holder of Claims or Interests, or any other Person in any respect; provided, further, that, if the Restructuring Support Agreement is terminated, all provisions of the Restructuring Support Agreement that survive termination thereof shall remain in effect in accordance with the terms thereof.

### **X. MODIFICATION, REVOCATION OR WITHDRAWAL OF THE PLAN**

#### **A. Sale Transaction(s)**

The Plan contemplates the possibility of the Sale Transaction(s). If the Sale Transaction(s) occur(s), the Debtors, with the consent of the Senior Lenders, may or may not File a modified Plan (including any necessary conforming and immaterial changes thereto), in form and substance acceptable to the Senior Lenders and, absent repayment in full in Cash of the DIP Facility, the DIP Lenders, evidencing the Sale Transaction(s). Subject to the consent of the Senior Lenders and, absent repayment in full in Cash of the DIP Facility, the DIP Lenders, the Debtors shall not be



required to make additional disclosures or re-solicit votes for such modified Plan pursuant to section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

#### **B. Modification and Amendments**

Subject to the terms of the Restructuring Support Agreement and subject to the consent rights set forth in the Restructuring Support Agreement (which are incorporated herein pursuant to Article I.H of the Plan), except as otherwise specifically provided in the Plan, the Debtors reserve the right to (1) modify the Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan and (2) subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 (as well as those restrictions on modifications set forth in the Plan), to alter, amend or modify the Plan with respect to any Debtor, one or more times, before or after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify the Plan, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

#### **C. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation of votes thereon are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation.

#### **D. Revocation or Withdrawal of Plan**

Subject to the terms of the Restructuring Support Agreement and subject to the consent rights set forth in the Restructuring Support Agreement (which are incorporated herein pursuant to Article I.H of the Plan), the Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to File other plan(s) of reorganization. If the Debtors revoke or withdraw the Plan or if Confirmation or Consummation of the Plan does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan, the assumption or rejection of any Executory Contracts or Unexpired Leases under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any claims by the applicable Debtor or any other Person, or any Claims or Interests by any holders thereof; (b) prejudice in any manner the rights of each applicable Debtor, any holder of Claims or Interests, or any other Person; or (c) constitute an admission, acknowledgment, offer or undertaking by the applicable Debtors, any holder of Claims or Interests, or any other Person in any respect; provided, further, that, if the Restructuring Support Agreement is terminated, all provisions of the Restructuring Support Agreement that survive termination thereof shall remain in effect in accordance with the terms thereof.

#### **E. Severance of Burgess from Plan**

At the option of the Pro Forma Owners, the Plan for Burgess shall be severed from the Plan for Berlin, and the Plan for Burgess shall be deemed withdrawn, if (i) the aggregate amount of

Claims asserted against Burgess exceeds an aggregate amount of \$250,000 or (ii) any order from a court of competent determining and/or enforcing any purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any ownership interest in, or the right to acquire an ownership interest in, Burgess or its assets (other than the holder of Class 7B on account of its Interest in Burgess). Upon such withdrawal of the Plan, (A) the Senior Lenders or the DIP Lenders, each in their sole discretion, may purchase and acquire the assets of Burgess, including the assumption and assignment to them (or their designees) of any Executory Contracts or Unexpired Leases and any and all claims Burgess may have against Public Service Company of New Hampshire (d/b/a Eversource Energy), pursuant to the Bidding Procedures Order, (B) the Senior Lenders' obligations to consummate the Restructuring shall be conditioned on Berlin obtaining the necessary certifications, including certifications of the Berlin Facility as a qualifying small power production facility and Berlin itself as an exempt wholesale generator, and market-based rate authorization and related tariff to sell wholesale electric energy and related services, on or prior to the Plan Effective Date, (C) Berlin shall File an amended Plan, in form and substance acceptable to the Senior Lenders, reflecting the severing of Burgess from the Plan and (D) the Confirmation Order shall provide that any treatment under the Plan of Claims against and Interests in, Burgess shall not be included in the Confirmation of Berlin's Plan. This provision may only be amended or modified with the express written consent of the Senior Lenders.

## **XI. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Plan Effective Date, the Bankruptcy Court shall retain jurisdiction after the Plan Effective Date over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of, any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims;
2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals;
3. Resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease, the determination of any Claim arising therefrom, including the Cure Amounts, or any other matter related to Executory Contracts and Unexpired Leases; (b) the amending, modifying, or supplementing, after the Plan Effective Date, of the Assumed Executory Contracts and Unexpired Leases List; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;
4. Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
5. Adjudicate, decide, or resolve any motions, adversary proceedings, contested or any other matters, and grant or deny any applications pending on the Plan Effective Date;

6. Adjudicate, decide, or resolve any and all matters related to sections 1141, 1145, and 1146 of the Bankruptcy Code;

7. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and of all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, including the Restructuring Support Agreement and the documents comprising the Plan Supplement;

8. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with Consummation, including interpretation or enforcement of the Plan, any Person's obligations incurred in connection with the Plan, or, as applicable, the amended O&M Agreement, the amended Project Management Agreement, or the Purchase Agreement(s);

9. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with Consummation or enforcement of the Plan;

10. Resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions, exculpations, and other provisions contained in Article VIII of the Plan, and enter such orders as may be necessary or appropriate to enforce or implement such releases, injunctions, exculpations, and other provisions;

11. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan;

13. Adjudicate any and all disputes arising from or relating to distributions under the Plan;

14. Consider any modifications of the Plan to cure any defect or omission or to reconcile any inconsistency in the Confirmation Order;

15. Determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

16. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, or the Restructuring, including disputes arising under agreements, documents, or instruments executed in connection with the Plan or the Restructuring, whether they arise before, on or after the Plan Effective Date;

17. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

18. Enforce and interpret all orders entered by the Bankruptcy Court in the Chapter 11 Cases;

19. Hear any other matter not inconsistent with the Bankruptcy Code; and
20. Enter an order or final decree closing any of the Chapter 11 Cases.

## **XII. MISCELLANEOUS PROVISIONS**

### **A. Immediate Binding Effect**

Subject to Article IX and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Plan Effective Date, the terms of the Plan and the documents contained in the Plan Supplement, shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, or the Wind-Down Debtor(s), as applicable, and any and all holders of Claims against and Interests in the Debtors (irrespective of whether their Claims or Interests are Allowed or whether they have accepted the Plan), all Persons that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Person acquiring property under the Plan and any and all non-Debtor counterparties to the Executory Contracts and Unexpired Leases.

### **B. Additional Documents**

On or before the Plan Effective Date, and subject to the terms of the Restructuring Support Agreement, including the consent rights set forth therein, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Reorganized Debtors or the Wind-Down Debtor(s), as applicable, all holders of Allowed Claims receiving distributions under the Plan, and all other parties in interest may, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

### **C. Payment of Statutory Fees**

All fees due and payable by the Debtors' Estates pursuant to section 1930 of Title 28 of the U.S. Code, together with the statutory rate of interest set forth in section 3717 of Title 31 of the U.S. Code to the extent applicable ("Quarterly Fees") prior to the Plan Effective Date shall be paid by the Debtors on the Plan Effective Date. After the Plan Effective Date, the Debtors and the Reorganized Debtors shall be jointly and severally liable to pay any and all Quarterly Fees when due and payable. The Debtors shall File all monthly operating reports due prior to the Plan Effective Date when they become due, using UST Form 11-MOR. After the Plan Effective Date, each of the Reorganized Debtors shall File with the Bankruptcy Court separate UST Form 11-PCR reports when they become due. Each and every one of the Debtors and the Reorganized Debtors shall remain obligated to pay Quarterly Fees to the U.S. Trustee until the earliest of that particular Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to File any Administrative Claim in the case, and shall not be treated as providing any release under the Plan.

**D. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order confirming the Plan and the Confirmation Order shall have no force or effect if the Plan Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor or any holder of a Claim or Interest unless and until the Plan Effective Date has occurred.

**E. Successors and Assigns**

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, Affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of any such Person.

**F. Notices**

To be effective, all notices, requests and demands shall be in writing (including by e-mail or facsimile transmission), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed to the following:

1. If to the Debtors, to:

Berlin Station, LLC  
c/o CS Operations, Inc.  
631 US Hwy 1, #300  
North Palm Beach, Florida 33408

with copies to:

Foley Hoag LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02210  
Attention: Kenneth S. Leonetti  
E-mail: [ksl@foleyhoag.com](mailto:ksl@foleyhoag.com)

- and -

Foley Hoag LLP  
1301 Avenue of the Americas, 25th Floor  
New York, New York 10019  
Attention: Alison D. Bauer  
William F. Gray, Jr.  
Jiun-Wen Bob Teoh  
E-mail: [abauer@foleyhoag.com](mailto:abauer@foleyhoag.com)

[wgray@foleyhoag.com](mailto:wgray@foleyhoag.com)  
[jteoh@foleyhoag.com](mailto:jteoh@foleyhoag.com)

- and -

Gibbons P.C.  
300 Delaware Avenue, Suite 1015  
Wilmington, Delaware 19801  
Attention: Katharina Earle  
E-mail: [kearle@gibbonslaw.com](mailto:kearle@gibbonslaw.com)

- and -

Gibbons P.C.  
One Gateway Center  
Newark, New Jersey 07102  
Attention: Robert K. Malone  
Kyle P. McEvelly  
E-mail: [rmalone@gibbonslaw.com](mailto:rmalone@gibbonslaw.com)  
[kmcevilly@gibbonslaw.com](mailto:kmcevilly@gibbonslaw.com)

2. If to the Senior Lenders or the DIP Lenders, to:

Greenberg Traurig, LLP  
One International Place, Suite 2000  
Boston, MA 02110  
Attention: Julia Frost-Davies  
Email: [Julia.FrostDavies@gtlaw.com](mailto:Julia.FrostDavies@gtlaw.com)

- and -

Greenberg Traurig, LLP  
One Vanderbilt Avenue  
New York, New York 10017  
Attention: Oscar N. Pinkas  
Email: [pinkaso@gtlaw.com](mailto:pinkaso@gtlaw.com)

- and -

Greenberg Traurig, LLP  
222 Delaware Avenue Suite 1600  
Wilmington, DE 19801  
Attention: Anthony Clark  
Email: [Anthony.Clark@gtlaw.com](mailto:Anthony.Clark@gtlaw.com)

If a Person wishes to continue to receive notices or documents after the Plan Effective Date, such Person must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002.

After the Plan Effective Date, the Reorganized Debtors, or the Wind-Down Debtor(s), as applicable, are authorized to limit the list of Persons receiving documents pursuant to Bankruptcy Rule 2002 to those Persons who have Filed such renewed requests in the applicable Chapter 11 Cases.

#### **G. Entire Agreement**

Except as otherwise indicated, the Plan, the Restructuring Support Agreement, the Plan Supplement, the Definitive Documents (in their final forms) and the Confirmation Order supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on the subjects covered thereby, all of which have become merged and integrated into the Plan and the Confirmation Order.

#### **H. Exhibits**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan, as applicable, as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Debtors' notice, claims, and balloting agent at <https://dm.epiq11.com/Burgess> or the Bankruptcy Court's website at <http://www.deb.uscourts.gov/>. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

#### **I. Non-Severability of Plan Provisions**

Except as provided for in Article X.E of the Plan, the provisions of the Plan, including its release, injunction, exculpation and compromise provisions, are mutually dependent and non-severable, other than as described below. The Confirmation Order shall constitute a judicial determination, and shall provide, that each term and provision of the applicable Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors, consistent with the terms set forth herein; and (3) non-severable and mutually dependent.

#### **J. Closing of Chapter 11 Cases**

The Reorganized Debtors or the Plan Administrator, as applicable, shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order necessary to close the Chapter 11 Cases.

#### **K. Conflicts**

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement, the Plan Supplement, or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern

and control. In the event of an inconsistency between the Confirmation Order and the Plan, the Confirmation Order shall control.

**L. Rates**

The Plan does not provide for the change of any rate that is within the jurisdiction of any governmental regulatory commission after the occurrence of the Plan Effective Date.

*[Remainder of Page Left Intentionally Blank]*



Dated this April 11, 2024

/s/ Dean Vomero  
Dean Vomero  
Chief Restructuring Officer