

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

**In Re:** )  
 )  
 ) **Chapter 11**  
 )  
**TELEXFREE, LLC ,** ) **Case No. 14-40987-MSH**  
**TELEXFREE, INC.,** ) **Case No. 14-40988-MSH**  
**TELEXFREE FINANCIAL, INC.,** ) **Case No. 14-40989-MSH**  
 )  
**Debtors.** ) **Jointly Administered**

**FIRST AMENDED LIQUIDATING PLAN OF REORGANIZATION OF STEPHEN B. DARR, CHAPTER 11 TRUSTEE OF TELEXFREE, LLC, TELEXFREE, INC., AND TELEXFREE FINANCIAL, INC.**

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Dated: May 28, 2020



Stephen B. Darr, the acting Chapter 11 Trustee of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc., hereby submits the following liquidating plan of reorganization under Section 1121 of the United States Bankruptcy Code.

## ARTICLE I DEFINITIONS AND CONSTRUCTION OF TERMS

For purposes of the Plan, the following terms shall have the meanings specified in this Article I. A capitalized term used but not defined in the Plan that is also used in the Bankruptcy Code shall have the meaning ascribed to that term in the Bankruptcy Code. Wherever from the context it appears appropriate, each term stated shall include both the singular and the plural, and pronouns shall include the masculine, feminine and neuter, regardless of how stated. The words “in the Plan,” “the Plan,” “hereto,” “herein”, “hereunder” and other words of similar import refer to the Plan as a whole and not to any particular Section, sub-Section or clause contained in the Plan. The rules of construction contained in Section 102 of the Bankruptcy Code shall apply to the terms of the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan.

**1.1** “Administrative Expense Claim” shall mean a Claim for costs and expenses of administration of the Bankruptcy Cases that is Allowed under Section 503(b) of the Bankruptcy Code and that is entitled to priority under Section 507(a)(2) of the Bankruptcy Code, including, but not limited to: (a) any actual and necessary costs and expenses, incurred on or after the Petition Date, of preserving and operating the Estates; (b) Professional Fee Claims; (c) all fees and charges assessed against the Estates under Chapter 123 of Title 28 of the United States Code; and (d) all other Claims entitled to administrative claim status pursuant to a Non-Appealable Order of the Bankruptcy Court.

**1.2** “Affiliate” shall mean any Person that is an affiliate of the Debtors under the Bankruptcy Code.

**1.3** “Allowed” shall mean, with reference to any Claim:

- (a) A Claim as to which a timely proof of claim has been filed through the Electronic Portal by the Bar Date or Supplemental Bar Date (if applicable) and either (i) no objection thereto, or application to estimate, equitably subordinate or otherwise limit recovery, has been made on or before any applicable deadline, or (ii) if an objection thereto, or application to estimate, equitably subordinate or otherwise limit recovery has been interposed, the extent to which such Claim has been allowed (whether in whole or in part) by a Non-Appealable Order;
- (b) A Claim arising from the recovery of property under Section 550 or 553 of the Bankruptcy Code and allowed in accordance with Section 502(h) of the Bankruptcy Code;
- (c) Any Claim expressly allowed or provided for in the Plan or pursuant to an order of the Bankruptcy Court including, without limitation, the Confirmation Order.

**1.4** “Asset(s)” shall mean all of the Debtors’ and the Estates’ right, title, and interest in and to property of whatever type or nature, whether tangible or intangible and wherever situated, together with the proceeds thereof.

**1.5** “Available Cash” shall mean Cash after payment or reserve for payment of: (a) Administrative Claims; (b) Priority Claims; (c) Priority Tax Claims; (d) distribution to Class 4 Claims; and (e) Liquidation Costs.

**1.6** “Avoidance Actions” shall mean Causes of Action inuring to the Estates pursuant to Sections 502, 510, 541, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including but not limited to fraudulent transfer laws.

**1.7** “Ballot” shall mean the document sent to holders of Claims to vote on acceptance or rejection of the Plan.

**1.8** “Bankruptcy Cases” shall mean the Debtors’ bankruptcy cases pending in the Bankruptcy Court.

**1.9** “Bankruptcy Code” shall mean Title 11 of the United States Code, as amended from time to time.

**1.10** “Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Massachusetts in which the Bankruptcy Cases are pending and, to the extent of any reference under 28 U.S.C. §157, the unit of such District Court specified pursuant to 28 U.S.C. §151.

**1.11** “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure as promulgated under 28 U.S.C. § 2075, and any local rules of the Bankruptcy Court.

**1.12** “Bar Date” shall mean March 15, 2017 or the Supplemental Bar Date.

**1.13** “Business Day” shall mean any day other than a Saturday, Sunday or legal holiday recognized in the Commonwealth of Massachusetts.

**1.14** “Cash” shall mean lawful currency of the United States of America (including wire transfers, cashier’s checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks and money orders) held by the Liquidating Trustee, other than the Restitution Funds and the SEC Settlement Funds but including the Restitution Costs and SEC Settlement Costs.

**1.15** “Cash Equivalents” shall mean equivalents of Cash in the form of readily marketable securities or instruments issued by a Person other than the Debtors or an Affiliate, including, without limitation, readily marketable direct obligations of, or obligations guaranteed by, the United States of America, commercial paper of domestic corporations carrying a

Moody's Rating of "A" or better, or equivalent rating of any other nationally recognized rating service, interest-bearing certificates of deposit, or other similar obligations of domestic banks or other financial institutions included in the list of approved institutions promulgated by the Office of the United States Trustee.

**1.16** "Causes of Action" shall mean, without limitation, any and all actions, causes of action, choses in action, defenses, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, Claims or proceedings to recover money or property and demands of any nature whatsoever, whether known or unknown, in law, equity or otherwise including, without limitation, (a) Avoidance Actions, (b) rights of setoff, counterclaim and recoupment, (c) claims and defenses on contracts or for breaches of duties imposed by law, (d) the right to object to Claims or Equity Interests, (e) claims and defenses pursuant to Section 362 of the Bankruptcy Code, (f) claims and defenses for fraud, negligence, conversion, mistake, duress, indemnification and usury, (g) claims and defenses for the violation of M.G.L. c. 93A, (h) claims and defenses for unjust enrichment, and (i) claims for tax refunds.

**1.17** "Chapter 11 Trustee" shall mean Stephen B. Darr, the trustee of the Debtors appointed by order of the Bankruptcy Court dated June 6, 2014.

**1.18** "Claim" shall mean a claim against a Person or its property as defined in Section 101(5) of the Bankruptcy Code, including, without limitation, (a) any right to payment, whether or not such right is reduced to judgment, and whether or not such right is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (b) any right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, or is fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. The term Claim shall include claims asserted by Participants and Vendors.

**1.19** "Class(es)" shall mean those classes designated in Article III of the Plan.

**1.20** "Class Action Litigation" shall mean the adversary proceedings numbered 16-4006 and 16-4007 pending in the Bankruptcy Court.

**1.21** "Collateral" shall mean any property or interest in property of the Estates subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

**1.22** "Confirmation" shall mean confirmation of this Plan by the Bankruptcy Court under Section 1129 of the Bankruptcy Code.

**1.23** "Confirmation Date" shall mean the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket in the Bankruptcy Cases.

**1.24** "Confirmation Hearing" shall mean the hearing before the Bankruptcy Court on Confirmation of the Plan.

**1.25** “Confirmation Order” shall mean the order of the Bankruptcy Court confirming the Plan pursuant to the provisions of the Bankruptcy Code, and any supplementary orders of the Bankruptcy Court issued in furtherance of the Plan.

**1.26** “Contingent or Unliquidated Claim” shall mean any Claim for which a proof of claim has been filed with the Electronic Portal but which was not filed in a sum certain, or for which the event that would give rise to such a liability or debt has not occurred and is dependent upon a future event that has not occurred or may never occur, and which has not been Allowed.

**1.27** “Criminal Action” shall mean the action commenced by the United States against James Merrill and Carlos Wanzeler in the District Court, case no. 14-cr-40028-TSH.

**1.28** “Cure Claims” means pre-petition amounts due to counterparties to Executory Contracts and Unexpired Leases that have been assumed by the Debtors.

**1.29** “Debtors” shall mean, collectively, TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.

**1.30** “Disclosure Statement” shall mean the disclosure statement relating to the Plan, including, without limitation, all amendments, exhibits and schedules thereto, in the form approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code.

**1.31** “Disputed Claim” shall mean:

- (a) If no proof of claim relating to a Claim has been filed, a Claim that is listed in the Schedules as unliquidated, disputed or contingent; or
- (b) If a proof of claim relating to a Claim has been filed with the Electronic Portal, a Claim as to which a timely objection or request for estimation, or request to equitably subordinate or otherwise limit recovery in accordance with the Bankruptcy Code and the Bankruptcy Rules, has been made, or which is otherwise disputed by the Debtors, Chapter 11 Trustee, the Liquidating Trustee, or a party with standing to dispute the Claim in accordance with applicable law, which objection, request for estimation, action to limit recovery or dispute has not been withdrawn or determined by Non-Appealable Order; or
- (c) A Claim that is a Contingent or Unliquidated Claim.

**1.32** “Disputed Claim Amount” shall mean the amount set forth in the proof of claim relating to a Disputed Claim or an amount estimated pursuant to an order of the Bankruptcy Court in respect of a Disputed Claim in accordance with Section 502(c) of the Bankruptcy Code.

**1.33** “Disputed Claims Reserve” shall have the meaning set forth in Section 7.4 of the Plan.

1.34 “Distribution Record Date” shall mean the date of approval of the Disclosure Statement.

1.35 “District Court” shall mean the United States District Court for the District of Massachusetts.

1.36 “Dos Santos Litigation” shall mean the adversary proceeding *Darr v. Dos Santos, et al*, Adv. Proc. No. 15-4055.

1.37 “Effective Date” shall mean the first Business Day on which the conditions set forth in Article XI of the Plan have been satisfied.

1.38 “Electronic Portal” shall mean the internet website **telexfreeclaims.com** that was established for Participants and Vendors to electronically file proofs of claim with respect to claims arising prior to the Petition Date.

1.39 “Equity Interest” shall mean the interest of any holder of any voting or non-voting equity of the Debtors, including treasury stock and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire at any time such equity.

1.40 “Estate Released Parties” shall mean the Chapter 11 Trustee, and his agents, financial advisors, accountants, consultants, attorneys, employees, partners and representatives, in each case, only in their capacity as such.

1.41 “Estates” shall mean the estates of the Debtors created by the Bankruptcy Cases pursuant to Section 541 of the Bankruptcy Code.

1.42 “Executory Contract” shall mean a contract as to which the Debtors are a party that is subject to assumption or rejection under Section 365 of the Bankruptcy Code.

1.43 “Impaired” shall mean, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of Section 1124 of the Bankruptcy Code.

1.44 “Lien” shall have the meaning set forth in Section 101(37) of the Bankruptcy Code; except that (a) a lien that has been avoided in accordance with Sections 544, 545, 546, 547, 548, 549 or 553 of the Bankruptcy Code shall not constitute a Lien, and (b) all Liens shall be discharged as of the Effective Date unless specifically preserved under the Plan.

1.45 “Liquidation Costs” shall mean all of the post-Effective Date costs of administering the Plan including without limitation the fees and expenses of the Liquidating Supervisor and his agents, insurance, bonding premiums, and taxes.

1.46 “Liquidating Trustee” shall mean Stephen Darr, or his successor.

**1.47** “Membership Plan” shall mean an AdCentral or AdCentral Family membership plan sold by TelexFree to Participants.

**1.48** “Modified Restitution Order” shall mean the Restitution Order entered by the District Court in the Criminal Action on July 11, 2017 [docket entry 367], as modified by the District Court by order dated April 23, 2020 [docket entry 436].

**1.49** “Non-Appealable Order” shall mean an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, the operation or effect of which has not been reversed, stayed, modified or amended and, as to which (a) the time to appeal, seek leave to appeal or certiorari, or request re-argument, review or rehearing has expired and as to which no appeal, petition for leave to appeal or certiorari, or request for re-argument, review or rehearing has been timely filed, or (b) any appeal, petition for leave to appeal or certiorari, re-argument, review, or rehearing that has been or may be made has been resolved by the highest court to which the order or judgment was appealed, from which leave to appeal or certiorari was sought, or to which the request was made, and no further appeal or petition for leave to appeal or certiorari, or request for re-argument, review or rehearing has been or can be taken or granted, and as a result of which such order shall have become final and non-appealable in accordance with applicable law; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not cause such order not to be a Non-Appealable Order.

**1.50** “Nonpriority Unsecured Claim” shall mean a Claim that is not: (a) an Administrative Expense Claim; (b) a Secured Claim, (c) a Priority Claim; (d) a Priority Tax Claim; (e) a Participant Claim, or (d) an Equity Interest.

**1.51** “Participant” shall mean a person who purchased at least one VoIP Plan or Membership Plan in TelexFree.

**1.52** “Participant Claim” shall mean the electronic proof of claim that was required to be filed by Participants through the Electronic Portal on or before the Bar Date, or the Supplemental Bar Date.

**1.53** “Participant Convenience Claim” shall mean a Participant Claim in the amount of \$4,250 or less.

**1.54** “Person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association or organization, governmental agency or political subdivision.

**1.55** “Permitted Investment” shall mean Cash Equivalents having maturities sufficient to enable the Liquidating Trustee to make the payments required under the Plan.

**1.56** “Petition Date” shall mean April 13, 2014.

**1.57** “Plan” shall mean this *Liquidating Plan of Reorganization of Stephen B. Darr, Chapter 11 Trustee of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.*, including, without limitation, all exhibits, supplements, appendices and schedules to the Plan, either in their present form or as the same may be altered, amended or modified from time to time.

**1.58** “Priority Claims” shall mean all Claims, if any, entitled to priority under Section 507(a) of the Bankruptcy Code other than Priority Tax Claims and Administrative Expense Claims.

**1.59** “Priority Tax Claims” shall mean any Claim of a governmental unit entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

**1.60** “Professionals” shall mean those Persons (a) employed pursuant to an order of the Bankruptcy Court in accordance with Sections 327 or 1103 of the Bankruptcy Code and to be compensated for services pursuant to Sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, or (b) for which compensation and reimbursement is allowed by the Bankruptcy Court pursuant to Section 503(b)(4) of the Bankruptcy Code.

**1.61** “Professional Fee Claims” shall mean the fees and expenses of Professionals under Sections 330, 331, or 503 of the Bankruptcy Code approved by an Order of the Bankruptcy Court.

**1.62** “Pro Rata” shall mean, (a) when used with reference to a distribution of property under the Plan, proportionately so that with respect to a particular Allowed Claim, the ratio of (i)(1) the amount of property distributed on account of such Claim to (2) the amount of such Claim, is the same as the ratio of (ii)(1) the amount of property distributed on account of all Allowed Claims of the Class to (2) the amount of all Allowed Claims in that Class.

**1.63** “Reorganized Debtors” shall mean the Debtors from and after the Effective Date.

**1.64** “Restitution Costs” shall mean an amount not to exceed \$7,500,000 to be paid to the Chapter 11 Trustee and his agents pursuant to the terms of the Modified Restitution Order.

**1.65** “Restitution Funds” shall mean those funds recovered by the United States on account of restitution, restoration, forfeiture or otherwise in connection with the Criminal Action and turned over to the Chapter 11 Trustee for distribution to Participants holding Allowed Claims, less the Restitution Costs.

**1.66** “Schedules” shall mean the schedules of assets and liabilities, the list of holders of interests and the statements of financial affairs filed by the Chapter 11 Trustee under Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules, lists and statements have been or may be supplemented or amended from time to time.

**1.67** “SEC” shall mean the Securities and Exchange Commission.



**1.68** “SEC Settlement Costs” shall mean an amount equal to ten percent (10%) of the funds paid to the Chapter 11 Trustee pursuant to those settlements among the SEC, the Chapter 11 Trustee, and third parties that included a recovery of funds paid to the Chapter 11 Trustee and specifically earmarked for distribution to Allowed Participant Claims.

**1.69** “SEC Settlement Funds” shall mean those funds paid to the Chapter 11 Trustee in connection with those settlements among the SEC, the Chapter 11 Trustee, and third parties that included a recovery of funds paid to the Chapter 11 Trustee and specifically earmarked for distribution to Allowed Participant Claims, less the SEC Settlement Costs.

**1.70** “Secured Claim” shall mean any Claim that is secured by a Lien on Collateral to the extent of the value of such Collateral, as determined in accordance with Section 506(a) of the Bankruptcy Code, or, in the event that such Claim is a claim of setoff under Section 553 of the Bankruptcy Code, to the extent of such setoff.

**1.71** “Service” shall mean the Internal Revenue Service.

**1.72** “Service Settlement” shall mean the agreement dated April 22, 2020 by and between the Chapter 11 Trustee and the Service and attached hereto as Exhibit “A”.

**1.73** “Standard Claim” shall mean the proof of claim required to be filed by Vendors through the Electronic Portal on or before the Bar Date.

**1.74** “Supplemental Bar Date” shall mean April 19, 2018.

**1.75** “TelexFree” shall mean, collectively, TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.

**1.76** “Unexpired Lease” shall mean a lease as to which the Debtors are a party that is subject to assumption or rejection under Section 365 of the Bankruptcy Code.

**1.77** “Unimpaired” shall mean a Claim or Equity Interest that is not impaired within the meaning of Section 1124 of the Bankruptcy Code.

**1.78** “United States” shall mean the United States of America.

**1.79** “Vendor” shall mean a person who is owed money by TelexFree on account of a Nonpriority Unsecured Claim and who is not a Participant.

**1.80** “VoIP Plan” shall mean a voice over internet protocol package sold by TelexFree to a Participant.

**1.81** “Wanzeler Litigation” shall mean the adversary proceeding numbered 16-4032 pending in the Bankruptcy Court.

**ARTICLE II**  
**TREATMENT OF ALLOWED UNCLASSIFIED CLAIMS**

**2.1 Non-Classification.**

As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims against the Debtors are not classified for the purposes of voting on, or receiving distributions under, the Plan. All such Claims are instead treated separately in accordance with the terms set forth in this Article II.

**2.2 Administrative Expense Claims.**

(a) General. On, or as soon as reasonably practicable after, the later of (a) the Effective Date, (b) the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or (c) the date on which an Allowed Administrative Expense Claim becomes payable under any agreement or applicable law relating thereto, each holder of such Allowed Administrative Expense Claim shall receive from Cash, in full and final satisfaction, settlement, and release of, and in exchange for, such Allowed Administrative Expense Claim, an amount equal to the unpaid portion of such Allowed Administrative Expense Claim. Notwithstanding the foregoing, (y) any Allowed Administrative Expense Claim based on a liability incurred by the Estates in the ordinary course of business during the Bankruptcy Cases may be paid in the ordinary course of business from Cash in accordance with the terms and conditions of any agreement relating thereto and (z) any Allowed Administrative Expense Claim may be paid from Cash when payable under applicable law or on such other terms as may be agreed to between the holder of such Claim and the Liquidating Trustee.

(b) U.S. Trustee's Fees. The outstanding fees due to the United States Trustee pursuant to 11 U.S.C. § 1930 shall be paid in full from Cash on or before the Effective Date.

(c) Professional Compensation and Expense Reimbursement Claims.

- (i) Within twenty (20) days after the Confirmation Date, each Professional shall file a final application for the allowance of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date.
- (ii) Any Allowed Professional Fee Claim shall receive from Cash: (i) payment upon entry of an order approving such Claim, or (ii) payment as agreed between the holder of the Allowed Administrative Expense Claim and the Liquidating Trustee.
- (iii) All fees and expenses of Professionals retained by the Liquidating Trustee for services rendered after the Effective Date shall be paid from Cash by the Liquidating Trustee upon the receipt of reasonably detailed invoices in such amounts and on such terms as such Professional and the Liquidating Trustee agree. No further order or authorization from the Bankruptcy

Court shall be necessary to permit the payment of the fees and expenses of Professionals for services rendered after the Effective Date.

**2.3 Priority Tax Claims.**

On, or as soon as reasonably practicable after, the later of (a) the Effective Date or (b) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, settlement, and release of, and in exchange for, such Allowed Priority Tax Claim, (i) payment in accordance with Section 1129(a)(9)(C) of the Bankruptcy Code, or (ii) payment as agreed between the holder of the Allowed Priority Tax Claim and the Chapter 11 Trustee or Liquidating Trustee. Payment shall be made from Cash.

**ARTICLE III  
CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

The Claims against, and Equity Interests in, the Debtors are categorized below for all purposes under the Plan including voting, Confirmation and distribution pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Equity Interest falls within the description of such other Classes.

**3.1 Claim and Equity Interest Categories.**

Claims against and Equity Interests in the Debtors have been classified as follows:

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
1	Priority Claims	Unimpaired	No
2	Participant Convenience Claims	Impaired	Yes
3	Participant Claims	Impaired	Yes
4	Vendor Claims	Impaired	Yes
5	Equity Interests	Impaired	No

**ARTICLE IV  
TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**4.1 Class 1 – Priority Claims**

(a) Classification. Class 1 consists of the Allowed Priority Claims.

- (b) Impairment and Voting. The Priority Claims are Unimpaired under the Plan and shall be deemed to have accepted the Plan.
- (c) Claim Treatment. In full and complete satisfaction, settlement, and release of the Allowed Priority Claims, the holders of Allowed Class 1 Claims shall be paid in full from Cash upon the later of the Effective Date or entry of an order of the Bankruptcy Court allowing such Claim.

#### **4.2 Class 2 – Participant Convenience Claims**

- (a) Classification. Class 2 consists of the Allowed Participant Convenience Claims.
- (b) Impairment and Voting. Allowed Participant Convenience Claims are Impaired under the Plan. The holder of an Allowed Participant Convenience Claim shall be entitled to vote to accept or reject the Plan.
- (c) Claim Treatment. In full and complete satisfaction, settlement, and release of the Allowed Participant Convenience Claims, each holder of an Allowed Class 2 Claim shall receive a single distribution from the Restitution Funds as soon as practicable after the Effective Date, in an amount equal to forty-three percent (43%) of such holder's Allowed Claim.
- (d) Election. The holder of an Allowed Participant Convenience Claim shall be treated as the holder of a Class 2 Claim unless such holder affirmatively elects on a timely submitted Ballot to be treated as the holder of a Class 3 Claim.

#### **4.3 Class 3 – Participant Claims**

- (a) Classification. Class 3 consists of (i) Allowed Participant Claims that are not Allowed Participant Convenience Claims; and (ii) those Allowed Participant Claims that have elected to be treated as holders of Class 3 Claims.
- (b) Impairment and Voting. Allowed Participant Claims are Impaired under the Plan. The holder of an Allowed Participant Claim shall be entitled to vote to accept or reject the Plan.
- (c) Claim Treatment. In full and complete satisfaction, settlement, and release of the Allowed Participant Claims, each holder of an Allowed Class 3 Claim shall receive:
  - (i) As soon as practicable following the Effective Date, an initial Pro Rata distribution from the Restitution Funds, the SEC

Settlement Funds, and Available Cash as of the Effective Date; and

- (ii) Additional Pro Rata distributions of the Restitution Funds, SEC Settlement Funds and Available Cash as such funds become available, in such amounts and at such times as the Liquidating Trustee shall determine in his reasonable discretion in consultation with the Office of the United States Attorney.

#### **4.4 Class 4 - Vendor Claims.**

- (a) Classification. Class 4 consists of the Allowed Vendor Claims.
- (b) Impairment and Voting. The Vendor Claims are Impaired under the Plan. Each holder of a Class 4 Claim shall be entitled to vote to accept or reject the Plan.
- (c) Claim Treatment. In full and complete satisfaction, settlement, and release of the Class 4 Claims, each holder of an Allowed Vendor Claim shall be paid from Cash a *Pro Rata* distribution of \$50,000 from Cash not to exceed one hundred percent (100%) of the Allowed Claim, as soon as practicable following the Effective Date.

#### **4.5 Class 5 – Equity Interest.**

- (a) Classification. Class 5 consists of all Equity Interests in the Debtors.
- (b) Impairment and Voting. Class 5 is Impaired under the Plan. Each holder of an Equity Interest shall be conclusively deemed to have rejected the Plan.
- (c) Treatment. The holders of Equity Interests shall not receive or retain any property or interest in property on account of such Equity Interest.

#### **4.6 Reservation of Rights.**

The Liquidating Trustee reserves the right to, among other things, (a) contest the right of the holder of any Claim to vote on the Plan, or designate the vote of the holder of any Claim, (b) contest the right of the holder of any Claim or Equity Interest to receive distributions under the Plan, and (c) seek to subordinate any Claim for inequitable conduct or otherwise.

#### **4.7 Special Provision Regarding Unimpaired Claims.**

Except as otherwise provided in this Plan, nothing shall affect the Liquidating Trustee's rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including

but not limited to, all rights with respect to legal and equitable defenses to, setoffs against, or recoupments of Unimpaired Claims.

#### **4.8 Voting of Claims.**

Each holder of an Allowed Claim in an Impaired Class that retains or receives property under the Plan shall be entitled to vote separately to accept or reject the Plan. Each holder of the foregoing Allowed Claims electing to vote shall do so on a duly executed and delivered ballot and in accordance with procedures set forth in the applicable order of the Bankruptcy Court establishing Plan voting procedures.

#### **4.9 Acceptance by Impaired Classes.**

An Impaired class of Claims shall have accepted the Plan if (a) the holders (other than any holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the holders (other than any holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

#### **4.10 Elimination of Classes.**

To the extent applicable, any Class that does not contain any Allowed Claims or any Claims temporarily allowed for voting purposes under Bankruptcy Rule 3018, as of the date of the commencement of the Confirmation Hearing, shall be deemed to have been deleted from this Plan for purposes of (a) voting to accept or reject this Plan and (b) determining whether it has accepted or rejected this Plan under Section 1129(a)(8) of the Bankruptcy Code.

#### **4.11 Nonconsensual Confirmation.**

If any Impaired Class entitled to vote does not accept the Plan by the requisite majorities provided in Sections 1126(c) or 1126(d) of the Bankruptcy Code, as applicable, or if any Impaired class is deemed to have rejected the Plan, the Chapter 11 Trustee reserves the right (a) to seek Confirmation of the Plan under Section 1129(b) of the Bankruptcy Code; and/or (b) to amend the Plan in accordance with Section 13.3 of the Plan.

### **ARTICLE V SERVICE SETTLEMENT**

#### **5.1 Service Settlement Agreement**

The Chapter 11 Trustee has entered into the Service Settlement with the Service, which is attached hereto as Exhibit A and incorporated by reference. Pursuant to Bankruptcy Rule 9019 and for the good and valuable consideration set forth in the Service Settlement, the Service Settlement shall constitute a good faith compromise of the Claims of the Chapter 11 Trustee and the Service through tax year 2014. The entry of the Confirmation Order shall constitute the

Bankruptcy Court's approval of the full and complete compromise or settlement of the Claims through tax year 2014, as well as a finding by the Bankruptcy Court that the Service Settlement and all of its terms and conditions set forth therein are in the best interests of the Debtors, their Estates and holders of Claims and is fair, equitable and reasonable. The Chapter 11 Trustee shall be authorized to take all actions necessary to consummate the Service Settlement in accordance with its terms.

## **ARTICLE VI MEANS FOR IMPLEMENTATION OF THE PLAN**

### **6.1 Vesting of Assets**

All Assets shall re-vest in the Reorganized Debtors on the Effective Date, free and clear of all Liens and encumbrances, but subject to the payment of claims as provided in the Plan. Except as may be expressly provided in this Plan or in a Non-Appealable Order of the Bankruptcy Court, no Asset shall be deemed abandoned and no defense, set-off, counterclaim or right of recoupment of the Debtors shall be deemed waived, released or compromised. The Liquidating Trustee shall maintain custody of the Restitution Funds and the SEC Settlement Funds and shall distribute such assets to holders of Allowed Participant Claims in accordance with the terms of the Plan.

### **6.2 Substantive Consolidation.**

#### **A. Consolidation of the Estates**

The entry of the Confirmation Order shall constitute approval by the Bankruptcy Court of the substantive consolidation of the Debtors and their respective Estates for all purposes relating to the Plan, including for purposes of voting, confirmation and distributions. If this substantive consolidation is approved, (a) for all purposes associated with the confirmation and consummation of the Plan, all assets and liabilities of the Debtors shall be treated as though they were merged into a single economic unit, (b) no distribution shall be made under the Plan on account of any Claim held by any one of the Debtors against any of the other Debtors and such intercompany Claims will be extinguished, (c) no distribution shall be made under the Plan on account of any intercompany interest held by any one of the Debtors in any of the other Debtors except to the extent necessary to effect the substantive consolidation provided for herein, (d) all guarantees of any one of the Debtors of the obligations of any of the other Debtors, to the extent such exist, shall be eliminated so that any Claim against any one of the Debtors, and any guarantee thereof executed by any of the other Debtors, shall be one obligation of the consolidated Debtors' Estates, and (e) every Claim that is timely filed in the Chapter 11 Cases of any of the Debtors shall be deemed filed against the consolidated Estates and shall be one Claim against, and one obligation of, the Estates.

#### **B. Allowance of Claims against Multiple Debtors**

Claims against more than one of the Debtors arising from the same injury, damage, cause of action or common facts shall be Allowed only once as if such Claim were against a single Debtor.

**C. Cure of Defaults**

Any alleged defaults under any applicable agreement, including executory contracts and unexpired leases, with the Debtors arising from substantive consolidation under the Plan shall be deemed cured as of the Effective Date.

**D. Administration of Consolidated Estate**

As soon as practicable after the Effective Date, the Liquidating Trustee is authorized to submit an order to the Bankruptcy Court in form and substance acceptable to the United States Trustee that closes each of the Chapter 11 Cases except the case of TelexFree LLC, case no. 14-40987. The Debtors' consolidated estate shall be administered through TelexFree, LLC.

**E. Setoff and Defenses.**

The substantive consolidation effected pursuant to the Plan shall not affect, without limitation, the Estates' defenses to any claim or cause of action, including (i) the ability to assert any counterclaim; (ii) the Estates' setoff or recoupment rights; (iii) requirements for any third party to establish mutuality prior to substantive consolidation in order to assert a right of setoff against the Estates.

**6.3 Corporate Action.**

Confirmation of the Plan shall constitute authorization for the Chapter 11 Trustee and the Liquidating Trustee to effectuate the Plan and to execute, issue, deliver, file or record all contracts, instruments and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan without further notice to or action, order or approval of the Bankruptcy Court or any other entity except for those expressly required pursuant to the Plan. All matters provided for in the Plan involving any corporate action to be taken by or required of the Chapter 11 Trustee in connection with the Plan shall be deemed to have occurred, and be effective as provided herein, and shall be authorized, approved and, to the extent taken prior to the Effective Date, ratified in all respects, without any requirement of further action by the Liquidating Trustee, his agents, representatives, or employees.

**6.4 Preservation of Causes of Action.**

Except as provided in, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, the Confirmation Order, any Non-Appealable Order, or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, the Liquidating Trustee will exclusively retain and may enforce, and the Liquidating Trustee expressly reserves and preserves for these purposes, in accordance with Sections 1123(a)(5)(A) and 1123(b)(3) of the Bankruptcy Code, any Claims, Causes of Action and demands and rights relating thereto that the Debtors or their Estates may hold against any Person or entity. No preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise)



or laches shall apply to them by virtue of or in connection with the Confirmation, consummation or effectiveness of the Plan.

#### **6.5 Default.**

No event of default under the Plan shall occur unless, in the event of a breach of the Liquidating Trustee's obligations under the Plan, the holder of the Allowed Claim asserting the default shall provide written notice of such breach to the Liquidating Trustee and such breach is not cured: (i) in the event of a breach that can be cured by the payment of a sum of money, within fifteen (15) days of the Liquidating Trustee's receipt of such notice; and (ii) for any other breach, within thirty (30) days of the Liquidating Trustee's receipt of such notice, provided that, if such non-monetary breach cannot reasonably be cured within such 30-day period and the Liquidating Trustee has commenced curing such breach and continues to cure such breach, the thirty (30) day period shall be extended for such time as is reasonably necessary to cure such breach.

#### **6.6 Resignation of Officers and Directors.**

Upon the Effective Date, all of the Debtors' officers and members of its board of directors shall be deemed to have resigned without the necessity of any further action or writing and they shall be released from any responsibilities, duties and obligations that arise after the Effective Date to the Debtor or its Creditors under the Plan or applicable law. Under no circumstances shall such parties be entitled to any compensation from the Debtor or the Liquidating Trustee for services provided after the Effective Date.

#### **6.7 Dissolution of the Debtors.**

Upon the completion of the administration of Assets and the distributions under the Plan, the Reorganized Debtors shall be deemed to be dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Reorganized Debtor or payments to be made in connection therewith; provided, however, that the Liquidating Trustee, on behalf of the Debtors, shall file with the appropriate state authority or authorities a certificate or statement of dissolution referencing this Plan. The Reorganized Debtors shall not be required to file any documents, or take any other action, to withdraw their business operations from any states in which the Debtors were previously conducting business operations.

#### **6.8 Further Authorization.**

The Liquidating Trustee, on behalf of the Estates, shall be entitled to seek such orders, judgments, injunctions, and rulings and take such actions as deemed necessary to carry out the intentions and purposes, and to give full effect to the provisions, of the Plan.

**ARTICLE VII**  
**DISTRIBUTIONS ON CLAIMS AND RESOLUTION OF DISPUTED CLAIMS**

**7.1 Method of Distributions Under the Plan.**

(a) In General. Subject to Bankruptcy Rule 9010, and except as otherwise provided in the Plan, all distributions under the Plan to be made by, or on behalf of, the Liquidating Trustee to the holder of each Allowed Claim shall be made principally by electronic transfer or physical check. The Liquidating Trustee shall have no obligation to locate such holders whose distributions or notices are properly sent but nevertheless returned.

(b) Distributions to be on Business Days. Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.

(c) Fractional Dollars. Whenever any payment of a fraction of a dollar would otherwise be called for, the actual payment may reflect a rounding of such fraction to the nearest whole dollar (rounding down in the case of \$0.50 or less, and rounding up in the case of more than \$0.50).

(d) Minimum Distributions. The Liquidating Trustee reserves the right to defer or forgo distributions if the amount of a distribution will result in a *de minimus* dividend. The Liquidating Trustee will determine the minimum amount of Available Cash that must be available to issue a dividend to holders of Allowed Class 3 Claims, in consultation with the Office of the United States Attorney.

(e) Distributions to Holders as of the Distribution Record Date. The Liquidating Trustee shall be entitled to rely upon the register of Claims as of the Distribution Record Date.

(f) Office of Foreign Assets Control (OFAC). The Liquidating Trustee may withhold distributions otherwise payable to holders of Allowed Claims if the claimant is located outside of the United States and has not provided information to the Liquidating Trustee to ensure compliance with the Office of Foreign Assets Control (“OFAC”). If a claimant fails to respond to a request for OFAC certification for more than six months, the Liquidating Trustee may expunge the claim, in which case the party otherwise entitled to such distribution shall be deemed to have forfeited its right to the distribution and any future distributions, and the Liquidating Trustee may redistribute the Cash to other beneficiaries under the Plan as if such Claim was disallowed.

(g) Interest and Penalties on Claims. Unless otherwise specifically provided for in the Plan or the Confirmation Order, post-petition interest and penalties shall not accrue or be paid on any Claims and no holder of a Claim shall be entitled to interest and penalties accruing on or after the Petition Date through the date such Claim is satisfied in accordance with the terms of this Plan.

## **7.2 Objections to Disputed Claims.**

Prior to the Effective Date, any objections to Claims against the Estates shall be prosecuted by the Chapter 11 Trustee. On and after the Effective Date, any objections to Claims against the Estates shall be prosecuted by the Liquidating Trustee and such objections to Claims shall be filed within one year after the Effective Date.

## **7.3 Estimation of Claims.**

After the Effective Date, the Liquidating Trustee may, at any time, estimate any Disputed Claim in his reasonable discretion regardless of whether the Chapter 11 Trustee or the Liquidating Trustee have previously objected to such Claim. The Bankruptcy Court shall have jurisdiction to estimate a Disputed Claim at any time, including, without limitation, during litigation concerning such Claim or an objection to such Claim. If the Bankruptcy Court determines the maximum limitation of a Disputed Claim, such determination shall not preclude the Liquidating Trustee from pursuing any supplemental proceedings to object to any payment of such Claim. All of the aforementioned Claims objections, estimation and resolution procedures are cumulative and not exclusive remedies.

## **7.4 Disputed Claims Reserve.**

(a) Establishment. A reserve shall be maintained equal to 100% of the distributions which the Chapter 11 Trustee reasonably believes that the holders of Disputed Claims would be entitled to under the Plan if the Disputed Claim Amounts were Allowed Claims or such lesser amount as required by a Non-Appealable Order.

(b) Investment of Cash. Cash in the Disputed Claims Reserve may be invested only in Cash Equivalents having maturities sufficient to enable the holder of the Disputed Claim Reserve to make all necessary payments to holders of Disputed Claims if, and when, such Disputed Claims become Allowed Claims. Any interest, income, distributions or accretions on account of such investment in Cash Equivalents in the Disputed Claims Reserve shall be for the sole benefit and account of the Liquidating Trustee, and the Liquidating Trustee shall be solely responsible for the payment of any income or other taxes arising therefrom.

(c) Distributions Upon Allowance of Disputed Claims. The holder of a Disputed Claim that becomes an Allowed Claim after the Effective Date shall receive distributions of Cash from the Disputed Claims Reserve as soon as practicable following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Non-Appealable Order. Such distributions shall be made in accordance with the Plan based upon the distributions that would have been made to the holder of such a Claim under the Plan if the Disputed Claim had been an Allowed Claim on or prior to the Effective Date. No holder of a Disputed Claim shall have any claim against the respective Disputed Claims Reserve with respect to such Claim until the Disputed Claim shall become an Allowed Claim.

**7.5 Reversion of Unclaimed Checks.**

If a check or other payment remains unclaimed for a period of six months after distribution, the party otherwise entitled to such distribution shall be deemed to have forfeited its right to the distribution and any future distributions, and the Liquidating Trustee may redistribute the Cash to other beneficiaries under the Plan as if such Claim was disallowed.

**ARTICLE VIII  
LIQUIDATING TRUSTEE**

**8.1 Appointment of Liquidating Trustee, Administration of Reorganized Debtors.**

As of the Effective Date, Stephen Darr shall be the Liquidating Trustee. The Reorganized Debtors shall remain in existence for the purpose of permitting the Liquidating Trustee to: (a) retain and compensate agents to assist in implementing the terms of the Plan; (b) administer, manage, invest, liquidate, sell or otherwise dispose of the Assets, (c) to resolve Disputed Claims and make distributions of Available Cash in accordance with the Plan; and (d) conduct an orderly wind down of the Reorganized Debtors' business and affairs.

**8.2 Corporate Authority.**

In accordance with Section 6.1 of this Plan and herein, as of the Effective Date the Liquidating Trustee shall have the exclusive right and duty to manage the Reorganized Debtors, subject, however, to any limitations of liability set forth in this Plan. As of the Effective Date, the Liquidating Trustee is empowered and authorized to satisfy such responsibilities, duties and obligations without any further corporate authority (such as approval by any shareholders) that may have been required prior to the Effective Date. As of the Effective Date, all actions of the Debtors shall be taken by the Liquidating Trustee, or his designee, in the name of and on behalf of the Reorganized Debtors and/or the Estates. The Liquidating Trustee shall be authorized to enter his appearance on behalf of the Reorganized Debtors in any litigation or other legal proceeding pending as of the Effective Date.

**8.3 Liquidating Trustee's Rights and Powers.**

The Liquidating Trustees rights and powers shall include, subject to any limitations set forth in this Plan, the right and power to:

(a) Sell at public or private sale, lease, exchange, transfer, convey or otherwise dispose of, on such terms and conditions, and at such time or times as the Liquidating Trustee shall determine, any or all of the Assets (whether tangible or intangible);

(b) Grant options, make contracts, retain brokers, deliver deeds or other instruments of conveyance or transfer, and/or delegate to an attorney in fact the power to execute all documents necessary to accomplish a sale, lease, exchange, transfer, conveyance or other disposal of any Estate Asset;

(c) Obtain and maintain such space, facilities, equipment, supplies and personnel as shall be reasonably necessary for the performance of the Liquidating Trustee's duties;

(d) Open and close accounts on behalf of the Reorganized Debtors with any banking, financial or investment institution, make deposits and withdrawals of cash and other property into or from any such account, make or endorse checks with respect to any such account;

(e) Complete and file federal and state tax returns on behalf of the Reorganized Debtors;

(f) Pay all reasonable and necessary costs of administration, including professional fees, associated with the administration of this Plan, the Reorganized Debtors and/or the Assets;

(g) Subject to the limitations contained in this Plan, pay, compromise, settle, adjust, agree to, investigate, pursue, or contest any and all Claims;

(h) Make the distributions in accordance with the terms of this Plan;

(i) Investigate, prosecute, litigate, sell, transfer or abandon any Cause of Action, including, but not limited to, Avoidance Actions;

(j) Employ, consult with, and compensate counsel, brokers, consultants, custodians, investment advisors, asset services, expert witnesses, auditors, accountants, other agents and any other individuals and/or professionals (any of which may be the Liquidating Trustee and his or her firm) in connection with the administration of this Plan, the Reorganized Debtors and/or the Assets;

(k) File a suit in interpleader or in the nature of interpleader in any court of competent jurisdiction with respect to any Estate Asset;

(l) File any other appropriate action for relief in a court of competent jurisdiction;  
and

(m) Take such steps as provided as necessary and proper to close the Bankruptcy Case and dissolve the Reorganized Debtors.

#### **8.4 Vesting of Estate Powers.**

Upon the Effective Date, the Liquidating Trustee shall be vested with the standing of and with all rights, powers and benefits afforded to a "trustee" under the Bankruptcy Code with respect to all Assets and rights belonging to the Estate and/or the Reorganized Debtors, including, without limitation the standing and authority to commence, prosecute and compromise objections to Claims and Causes of Action, whether initially filed by the Debtors or the Chapter 11 Trustee or as may be filed by the Liquidating Trustee. The Liquidating Trustee shall stand in the same position as the Debtors and/or the Estates with respect to any claim the Debtors and/or the Estates may have had to an attorney-client privilege, the work product doctrine, or any other privilege against production, and the Liquidating Trustee shall succeed to all of the Debtors' and/or the Estates' rights to preserve, assert or waive any such privilege.

### **8.5 Limitations on Liquidating Trustee's Liabilities as to Losses.**

The Liquidating Trustee shall not be responsible, and shall have no liability whatsoever to any person for any loss to the Reorganized Debtors resulting from the investment of the Assets, or their proceeds, in any Permitted Investments. The Liquidating Trustee shall not invest or reinvest any Assets other than in a Permitted Investment. The Liquidating Trustee shall not have any liability to any retirement, employee benefit, or pension plan of the Debtors in excess of the amounts available to be distributed from such Plans.

### **8.6 Selection of Agents.**

The Liquidating Trustee may retain his or her firm or company to provide professional services in conjunction with his duties under this Plan. The Liquidating Trustee shall not be liable for any loss to the Reorganized Debtors or any person with an interest in the Reorganized Debtors by reason of any mistake or default of any such agent or consultant unless such mistake or default breaches the standard of care set forth in Section 8.8(a) of this Plan.

### **8.7 Maintenance of Register.**

The Liquidating Trustee shall at all times maintain a register of the names, addresses, and amount of the Claims and Equity Interests in the Reorganized Debtors as of the Effective Date and as revised from time to time thereafter.

### **8.8 Liability of Liquidating Trustee.**

(a) Standard of Care. The Liquidating Trustee shall not be liable for any action taken or omitted to be taken by him in good faith and in the exercise of reasonable judgment and believed to be within the discretion or power conferred by this Plan, or be responsible for the consequences of any act or failure to act, except for bad faith, gross negligence or willful misconduct. The Liquidating Trustee shall not have any fiduciary relationship with any party by virtue of this Plan except as specifically set forth in this Agreement:

- (i) The Liquidating Trustee shall not, solely by virtue of his position as Liquidating Trustee, be liable or in any way responsible for the acts or omissions of the Debtors, its board of directors, officers, employees, or agents, that occurred prior to the Effective Date.
- (ii) Unless indemnified to his satisfaction against liability and expense, the Liquidating Trustee shall not be compelled to do any act or to take any action toward the execution or enforcement of the powers created under this Plan or to prosecute or defend any suit in respect of this Plan. If the Liquidating Trustee requests approval from the Bankruptcy Court with respect to any act or action in connection with this Plan, the Liquidating Trustee shall be entitled (but shall not be required) to refrain (without incurring any liability to any person by so refraining) from such act or action unless and until he has received such instructions or approval. In no event shall the Liquidating Trustee or any of his representatives be required to take any action which he reasonably determines could lead to criminal or civil liability.

- (iii) The Liquidating Trustee shall not be responsible in any manner to the Debtors, the Estates, any holder of a Claim or Interest, or any party-in-interest for:
  - (i) the creditworthiness of any party and the risks involved to the Reorganized Debtors or such holder or party-in-interest;
  - (ii) the effectiveness, enforceability, genuineness, validity, or any due execution of this Plan as to any person other than the Liquidating Trustee;
  - (iii) any representation, warranty, document, certificate, report, or statement made herein or furnished hereunder or in connection with this Plan that does not constitute a breach of the standard of care set forth in Section 8.8(a) of this Plan on the part of the Liquidating Trustee;
  - (iv) the existence, priority or perfection of any existing Lien; or
  - (v) the observation or compliance with any of the terms, covenants, or conditions of this Plan on the part of any party thereto other than the Liquidating Trustee.
- (iv) The Debtors, holders of Claims or Equity Interests and parties-in-interest, by voting for this Plan and/or accepting the benefits of this Plan, have agreed not to sue or otherwise pursue or seek damages from the Liquidating Trustee except for actions or omissions which violate the standard of care set forth in Section 8.8(a) of this Plan.

(b) No Liability for Acts of Predecessor. No successor Liquidating Trustee shall be in any way responsible for the acts or omissions of any preceding Liquidating Trustee, nor shall he be obligated to inquire into the validity or propriety of any such act or omission unless such successor Liquidating Trustee expressly assumes such responsibility. Any successor Liquidating Trustee shall be entitled to accept as conclusive any final accounting and statement of Assets furnished to such successor Liquidating Trustee by any preceding Liquidating Trustee and shall be responsible only for those Assets included in such statement.

(c) No Implied Obligations. The Liquidating Trustee's liability shall be limited to the performance of such duties and obligations as are specifically set forth in this Plan. The Liquidating Trustee shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations, or warranties in this Plan, in the Disclosure Statement or in any documents or instrument evidencing or otherwise constituting a part of the Assets. The Liquidating Trustee makes no representations as to the value of the Assets.

(d) Reliance by Liquidating Trustee on Documents or Advice of Counsel or Other persons. The Liquidating Trustee may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel, statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Agent to be genuine and to be signed or presented by the proper persons. Subject to his obligation to meet the standard of care in Section 8.8(a), the Liquidating

Trustee shall have no liability for any act which he may do or omit to do in reliance upon the foregoing.

(e) No Personal Obligation for the Debtors' Liabilities. Holders of Claims and Equity Interests, and other persons transacting business with the Liquidating Trustee in his capacity as Liquidating Trustee, shall be limited to the Assets to satisfy any liability incurred by the Liquidating Trustee to such person in carrying out the terms of this Plan, and the Liquidating Trustee shall have no personal obligation to satisfy any such liability.

#### **8.9 Reports; Tax Returns.**

The Liquidating Trustee shall prepare and submit any and all reports required under the Plan and as may be further ordered by the Bankruptcy Court. After the Effective Date, the Liquidating Trustee shall be responsible for the filing of any and all federal and state tax returns required by law to be filed by the Reorganized Debtors, including the final tax returns, and shall pay all tax liabilities arising from such tax returns.

#### **8.10 Liquidating Trustee's Compensation.**

It is anticipated that the Liquidating Trustee can fulfill his duties on a part-time basis. The Liquidating Trustee's shall be entitled to compensation, at an hourly fee equal to the regular rates for the Liquidating Trustee as then in effect, provided that such hourly rate may be adjusted from time to time in the ordinary course of business. The Liquidating Trustee shall be entitled to reimbursement for all reasonable out-of-pocket expenses incurred in the performance of his duties under the Plan. The Liquidating Trustee shall not be entitled to a commission.

#### **8.11 Liquidating Trustee's Indemnification.**

The Liquidating Trustee shall be indemnified by, held harmless, and receive reimbursement from the Assets for any and all claims, actions, demands, losses, damages, expenses, and liabilities, including without limitation court costs, attorneys' fees and accountants' fees incurred, except in the event that a court of competent jurisdiction determines that such losses or claims were the result of a breach of the standard of care set forth in Section 7.8(a) of this Plan.

#### **8.12 Removal of Liquidating Trustee.**

The Liquidating Trustee may be removed only for cause upon a motion to the Court. If the Liquidating Trustee is removed for cause, the Liquidating Trustee shall not be entitled to any accrued but unpaid fees, reimbursements or other compensation unless approved by the Bankruptcy Court. The term "cause" shall mean: (a) the Liquidating Trustee's gross negligence or willful failure to perform his duties under this Plan, (b) the Liquidating Trustee's misappropriation or embezzlement of any Assets or the proceeds of the Assets, or (c) the Liquidating Trustee's continued or repeated negligence or failure to perform his duties under this Plan. If a Liquidating Trustee is unwilling or unable to serve by virtue of his inability to perform his duties due to death, illness, or other physical or mental disability, subject to a final accounting, such Liquidating Trustee shall be entitled to receive all accrued and unpaid fees, reimbursement of expenses, and other compensation incurred before his removal, and to any out-



of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Liquidating Trustee.

**8.13 Resignation of Liquidating Trustee.**

A Liquidating Trustee may resign upon motion to the Bankruptcy Court, which resignation shall become effective at the time specified by the Court. If a Liquidating Trustee resigns from his position hereunder, subject to a final accounting, such Liquidating Trustee shall be entitled to receive all accrued unpaid fees, reimbursement of expenses, and other compensation incurred before his resignation, and any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties to the successor Liquidating Trustee.

**8.14 Successor Liquidating Trustee.**

In the event that a Liquidating Trustee is removed, resigns, or otherwise ceases to serve as Liquidating Trustee, a successor Liquidating Trustee may be appointed by the Office of the United States Trustee, subject to approval by the Bankruptcy Court, or *sua sponte* by order of the Bankruptcy Court.

**8.15 Third Parties.**

There is no obligation on the part of any party transacting business with the Reorganized Debtors or any agent of the Reorganized Debtors (including the Liquidating Trustee) to: (a) inquire into the validity, expediency, or propriety of any transaction, (b) inquire into the authority of the Liquidating Trustee, or any agent of the Liquidating Trustee, to enter into or consummate the transaction, or (c) to monitor the application of the purchase money or other consideration paid or delivered to the Reorganized Debtors.

**ARTICLE IX  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**9.1 Assumption of Executory Contracts And Unexpired Leases.**

Pursuant to Sections 1123(b)(2) and 365(a) of the Bankruptcy Code, any Executory Contract or Unexpired Lease (excluding insurance policies) that (a) has not expired by its own terms on or prior to the Confirmation Date, (b) has not been assumed, assumed and assigned or rejected with the approval of the Bankruptcy Court on or prior to the Confirmation Date, (c) is not the subject of a motion to assume or reject which is pending at the time of the Confirmation Date, or (d) is not designated by the Chapter 11 Trustee as being an Executory Contract or Unexpired Lease to be assumed at the time of Confirmation of the Plan, shall be deemed rejected on the Effective Date. The entry of the Confirmation Order by the Bankruptcy Court shall constitute the approval of the rejection of Executory Contracts and Unexpired Leases pursuant to this section of the Plan and Sections 365(a) and 1123(b)(2) of the Bankruptcy Code.

## **9.2 Payments Related to the Assumption of Executory Contracts And Unexpired Leases.**

(a) Payment of Claims Arising From Assumed Contracts And Leases. Cure Claims arising from the assumption of an Executory Contract or Unexpired Lease shall be paid in such amounts as are or have been determined by the Bankruptcy Court, in full and complete satisfaction, settlement and release of such Claims.

(b) Disputed Claims and Bar Date. If there is a dispute regarding (i) the amount of any claim arising from the assumption or rejection of an Executory Contract or Unexpired Lease, (ii) the ability of the Estates or the Liquidating Trustee or any assignee to provide “adequate assurance of further performance,” within the meaning of Section 365 of the Bankruptcy Code, under an Executory Contract or Unexpired Lease to be assumed, or (iii) any other matter pertaining to the assumption or assumption and assignment of any Executory Contract or Unexpired Lease, the payment of any Claim related to the foregoing will be made following entry of a Non-Appealable Order resolving the dispute and approving the assumption.

## **9.3 Rejection Damage Claims.**

If the rejection of an Executory Contract or Unexpired Lease by the Estates pursuant to the Confirmation Order results in a Claim by the other party or parties to such Executory Contract or Unexpired Lease, any claim for damages, if not previously evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Estates, the Reorganized Debtors, and their respective properties, agents, successors, or assigns, unless a statement of claim is filed with the Bankruptcy Court and served upon the Chapter 11 Trustee or Liquidating Trustee and his counsel on or before thirty (30) days following the Confirmation Date. Unless otherwise ordered by the Bankruptcy Court or provided in the Plan, all such Claims for which statements of claim are timely filed and served on the Chapter 11 Trustee or Liquidating Trustee will be treated as Nonpriority Unsecured Claims subject to the provisions of the Plan. The Liquidating Trustee shall have the right to object to any such Claim for rejection damages in accordance with the Plan. This section shall pertain only to those claimants that are not Participants and who are parties to an Executory Contract or Unexpired Lease.

## **ARTICLE X RELEASE AND SATISFACTION OF CLAIMS**

### **10.1 Compromise and Settlement of Claims, Interests and Controversies.**

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Equity Interests and controversies relating to the contractual, legal and subordination rights that a holder of a Claim may have with respect to any Allowed Claim or Equity Interest, or any distribution to be made on account of such Allowed Claim or Equity Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of the full and complete compromise or settlement of all such Claims, Equity Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement

is in the best interests of the Debtors, their Estates and holders of Claims and Equity Interests and is fair, equitable and reasonable. Following the Effective Date, the Liquidating Trustee may compromise and settle Claims against the Debtors and their Estates and Causes of Action without any further notice to or action, order or approval of the Bankruptcy Court.

### **10.2 Release of Claims.**

Pursuant to Section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the distributions, rights and treatment that are provided in the Plan shall be in full and final satisfaction, settlement, and release, effective as of the Effective Date, of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Equity Interests in, the Debtors, the Assets, the Estates, and the Reorganized Debtors, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands and liabilities that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a proof of Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is filed or deemed filed pursuant to Section 501 of the Bankruptcy Code; (ii) a Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is Allowed pursuant to Section 502 of the Bankruptcy Code; or (iii) the holder of such a Claim or Equity Interest has accepted the Plan. Except as otherwise provided herein, any default by the Debtors with respect to any Claim or Equity Interest that existed before or on account of the filing of the Bankruptcy Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the release of all Claims and Equity Interests subject to the Effective Date occurring, except as otherwise expressly provided in the Plan.

### **10.3 Release by TelexFree**

Pursuant to Section 1123(b) of the Bankruptcy Code and to the extent allowed by applicable law, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, the Estate Released Parties are deemed released and discharged by the Debtors, the Reorganized Debtors, and the Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of TelexFree, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Reorganized Debtors, or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Equity Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Bankruptcy Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Estate Released Party, the restructuring of Claims and Equity Interests before or during the Bankruptcy Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Confirmation Date, other than Claims or liabilities arising out of or

relating to any act or omission of an Estate Released Party that constitutes a failure to perform the duty to act in good faith, with the care of an ordinarily prudent person and in a manner the Estate Released Party reasonably believed to be in the best interests of the Estates (to the extent such duty is imposed by applicable non-bankruptcy law) where such failure to perform constitutes willful misconduct or gross negligence.

#### **10.4 Exculpation**

Notwithstanding anything contained in the Plan to the contrary, effective as of the Effective Date, the Estates and the Estate Released Parties shall not have or incur any liability for any act or omission taken or not taken between the Petition Date and the Effective Date in connection with, relating to, or arising out of the Bankruptcy Cases, the negotiation and filing of the Disclosure Statement, the Plan or any document implementing the Plan, the settlement of Claims or renegotiation of executory contracts and leases, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, or any obligations that they have under or in connection with the Plan or the transactions contemplated in the Plan, except for their willful misconduct or gross negligence and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

#### **10.5 Injunction**

From and after the Effective Date, all Persons are permanently enjoined from commencing or continuing in any manner against the Chapter 11 Trustee, TelexFree, their Estates, the Reorganized Debtors, the Liquidating Trustee, their successors and assigns, and any of their assets and properties, any suit, action or other proceeding, on account of or respecting any Claim, demand, liability, obligation, debt, right, cause of action, interest or remedy released or to be released pursuant to the Plan or the Confirmation Order. The distributions, rights and treatment that are provided in the Plan shall be in full and final satisfaction, settlement, and release, effective as of the Effective Date, of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Equity Interests in, the Debtors, the Assets, the Estates, and the Reorganized Debtors and the Liquidating Trustee, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands and liabilities that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a proof of Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is filed or deemed filed pursuant to Section 501 of the Bankruptcy Code; (ii) a Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is Allowed pursuant to Section 502 of the Bankruptcy Code; or (iii) the holder of such a Claim or Equity Interest has accepted the Plan. This injunction shall not pertain to conduct not otherwise enjoined under the Bankruptcy Code.

## **10.6 Release of Liens**

Except as otherwise expressly provided in the Plan or in the Confirmation Order, on the Effective Date, to the extent such exist, all mortgages, deeds of trust, liens, pledges or other security interests against property of the Estates shall be fully released and discharged and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens, pledges or other security interest shall revert to the Estates and the Liquidating Trustee. To the extent deemed necessary or advisable by the Liquidating Trustee, any holder of a Claim shall promptly provide the Liquidating Trustee with an appropriate instrument of cancellation, discharge or release, as the case may be, in suitable form for recording wherever necessary to evidence such cancellation, discharge or release, including the cancellation, discharge or release of any Lien securing such Claim.

## **10.7 Setoffs.**

Except as otherwise provided in the Plan, nothing contained in the Plan shall constitute a waiver or release by the Estates of any rights of setoff the Estates may have against any Person.

# **ARTICLE XI CONDITIONS PRECEDENT TO THE EFFECTIVE DATE OF THE PLAN**

## **11.1 Conditions Precedent to Confirmation.**

The following are conditions precedent to Confirmation of the Plan, each of which must be satisfied unless waived in accordance with Section 11.3 of this Plan:

(a) The Confirmation Order and the Plan, including any schedules, documents, supplements and exhibits thereto, shall be in form and substance reasonably acceptable to the Chapter 11 Trustee.

## **11.2 Conditions Precedent to the Effective Date.**

As a condition precedent to the occurrence of the Effective Date under the Plan, the Confirmation Order shall have been entered by the Bankruptcy Court and five (5) days shall have lapsed without the entry of an order staying the effect of the Confirmation Order.

## **11.3 Waiver of Conditions.**

The conditions to Confirmation of the Plan and to occurrence of the Effective Date set forth in this Article XI may be waived at any time by the Chapter 11 Trustee; *provided, however*, that the Chapter 11 Trustee may not waive entry of the Confirmation Order.

## **11.4 Effect of Non-occurrence of Conditions to the Effective Date.**

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors, or (b) prejudice in any

manner the rights of the Estates, or constitute an admission, acknowledgement, offer or undertaking by the Estates or the Chapter 11 Trustee. Notwithstanding the foregoing, the non-occurrence of conditions to the Effective Date shall not preclude the Chapter 11 Trustee from requesting Bankruptcy Court approval of the Service Settlement.

## **ARTICLE XII RETENTION OF JURISDICTION**

From and after the occurrence of the Effective Date, the Bankruptcy Court shall have jurisdiction over the matters arising out of, and related to, the Bankruptcy Cases and the Plan, as legally permissible, pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code including, without limitation:

(a) To hear and determine any and all objections to the allowance, disallowance, determination, liquidation, classification or estimation of any Claims or Equity Interests or any controversies as to the priority and classification of any Claims (or any security with respect thereto) or Equity Interests or to estimate any Disputed Claim;

(b) To hear and determine any and all Professional Fee Claims, authorized pursuant to the Plan or the Bankruptcy Code;

(c) To hear and determine any and all applications (whether or not pending at or on the Confirmation Date) related to the rejection, assumption or assumption and assignment of Executory Contracts and Unexpired Leases to which the Debtors are a party, and to hear, determine and allow any Claims resulting therefrom;

(d) To enforce and adjudicate the provisions of the Plan;

(e) To correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in the Confirmation Order as may be necessary to carry out the purpose and the intent of the Plan;

(f) To determine any Claim or liability to a governmental unit which may be asserted as a result of the transactions contemplated in the Plan;

(g) To hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code;

(h) To determine such other matters as may be necessary if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(i) To resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, enforcement or vacatur of the Plan or any Person's obligations incurred in connection with the Plan;

(j) To 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, except as otherwise provided herein;

(k) To determine any other matters that may arise in connection with the Plan, the Disclosure Statement, the Confirmation Order or any other contract, instrument, release, indenture or other agreement or document created in connection with the foregoing;

(l) To resolve any cases, controversies, suits or disputes with respect to releases, injunctions and other provisions contained in Article X hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions or other provisions;

(m) To hear and determine any Claims, rights, demands and Causes of Action arising prior to the Effective Date preserved pursuant to Section 6.4 of the Plan including but not limited to claims asserted by the Chapter 11 Trustee against the defendants in the Class Action Litigation and the Wanzeler Litigation; and

(n) To enter an order and/or final decree concluding the Bankruptcy Case.

### **ARTICLE XIII MISCELLANEOUS**

#### **13.1 Continuation of Injunctions or Stays until Effective Date.**

All injunctions or stays provided for in the Bankruptcy Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

#### **13.2 Exemption from Transfer Taxes.**

In accordance with Section 1146(c) of the Bankruptcy Code: (a) the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, including any merger agreements or agreements of consolidation, deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan, or the re-vesting, transfer or sale of any real or personal property of the Estates pursuant to, in implementation of, or as contemplated by the Plan including the vesting of the Assets in the Reorganized Debtors, (b) the making, delivery, creation, assignment, amendment or recording of any note or other obligation for the payment of money or any mortgage, deed of trust or other security interest under, in furtherance of, or in connection with the Plan, and the issuance, renewal, modification or securing of indebtedness by such means, and (c) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee or other similar tax, sales tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment. Each recorder of deeds or similar official for any county, city or governmental unit in which any instrument under the Plan is to be recorded shall, pursuant to the

Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any such tax or governmental assessment.

### **13.3 Amendment or Modification of the Plan.**

Alterations, amendments or modifications of the Plan may be proposed in writing by the Chapter 11 Trustee at any time prior to the Confirmation Date, provided that the Plan, as altered, amended or modified, satisfies the conditions of Sections 1122 and 1123 of the Bankruptcy Code, and the Chapter 11 Trustee shall have complied with Section 1125 of the Bankruptcy Code. The Plan may be altered, amended or modified at any time before or after the Confirmation Date and before substantial consummation, provided that the Plan, as altered, amended or modified, satisfies the requirements of Sections 1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended or modified, under Section 1129 of the Bankruptcy Code. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder. The Chapter 11 Trustee or the Liquidating Trustee may, without notice to holders of Claims insofar as it does not materially and adversely affect the interests of any such holders, correct any defect or omission in the Plan and any exhibit to the Plan or in any Plan Document.

### **13.4 Severability.**

If, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court may, upon the request of the Chapter 11 Trustee, alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable according to its terms.

### **13.5 Revocation or Withdrawal of the Plan.**

The Chapter 11 Trustee reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Chapter 11 Trustee revokes or withdraws the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void.

### **13.6 Binding Effect.**

The rights, duties and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Person.



### **13.7 Notices.**

All notices, requests and demands to or upon the Chapter 11 Trustee or the Liquidating Trustee shall only be effective if in writing and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered, addressed as follows:

Stephen Darr  
Managing Director  
Huron Consulting Group  
100 High Street  
Suite 2301  
Boston, MA 02110  
Tel: 617-226-5593

With a copy to:

MURPHY & KING, Professional Corporation  
One Beacon Street  
Boston, MA 02108  
Attn: Harold B. Murphy, Esq.  
Andrew G. Lizotte, Esq.  
Tel: 617- 423-0400

### **13.8 Governing Law.**

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts, without giving effect to the principles of conflicts of law of such jurisdiction.

### **13.9 Post-Confirmation Fees, Final Decree.**

The Liquidating Trustee will be responsible for timely payment of the fees incurred pursuant to 28 U.S.C. § 1930(a)(6) until the Bankruptcy Cases are converted, dismissed, or closed. Such fees shall be computed based only upon disbursement of Cash. The Liquidating Trustee may request that the Bankruptcy Cases be closed notwithstanding that there may be proceedings relating to Disputed Claims still pending subject to the right to request that the Bankruptcy Case be reopened as circumstances require. After Confirmation, the Liquidating Trustee will serve the United States Trustee with a quarterly financial report for each quarter (or portion thereof) the case remains open. The quarterly financial report shall include the following:

- (a) A statement of all disbursements made during the course of the quarter, whether or not pursuant to the Plan;

- (b) A summary, by class, of amounts distributed or property transferred to each recipient under the Plan, and an explanation of the failure to make any distributions or transfers of property under the Plan;
- (c) The Liquidating Trustee's projections as to his continuing ability to comply with the terms of the Plan;
- (d) A description of any other factors which may materially affect the Liquidating Trustee's ability to consummate the Plan; and
- (e) An estimated date when an application for final decree will be filed with the court (in the case of the final quarterly report, the date the decree was filed).


The Liquidating Trustee shall provide an informational report to the United States respecting all distributions from the Restitution Funds.

**13.10 Headings.**

Headings are used in the Plan for convenience and reference only, and shall not constitute a part of the Plan for any other purpose.

**13.11 Inconsistency.**

In the event of any inconsistency between the Plan and the Disclosure Statement or any other instrument or document created or executed pursuant to the Plan, the terms of the Plan shall govern.

  
By: Stephen B. Darr  
Chapter 11 Trustee

/s/ Andrew G. Lizotte  
MURPHY & KING, Professional Corporation  
One Beacon Street  
Boston, MA 02108  
Attn: Harold B. Murphy, Esq. (BBO #362610)  
Andrew G. Lizotte, Esq. (BBO #559609)  
Telephone: (617) 423-0400  
Facsimile: (617) 556-8985

780690

**EXHIBIT A**



**U.S. Department of Justice**

**Tax Division**

Please reply to: Office of Review  
P.O. Box 310  
Washington, D.C. 20044

DJ 5-36-11469  
CMN 2017101308

April 22, 2020

VIA EMAIL [hmurphy@murphyking.com](mailto:hmurphy@murphyking.com)

Harry B. Murphy, Esquire  
Murphy & King  
One Beacon Street  
Boston, MA 02108

Re: *Stephen Darr, Chapter 11 Trustee v. United States, et. al.*  
Adv. Pro. 18-4091 (Bankr. D. Mass.)

*In re TelexFree, LLC.*, and consolidated cases  
Case no. 14-40987-MSH (Chapter 11) (Bankr. D. Mass.)

Dear Mr. Murphy:

This is in reference to your offer dated November 8, 2019, submitted on behalf of Stephen Darr in his capacity as trustee of the above-referenced consolidated bankruptcy cases, to compromise the issues raised in the above-referenced adversary proceeding on the following terms:

1. The settlement will be in full satisfaction of all claims filed by the Internal Revenue Service on behalf of the United States ("IRS") against Stephen B. Darr, the Chapter 11 Trustee (the "Trustee"), and TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, "TelexFree"), through tax year 2014.
2. The IRS will retain all payments made by TelexFree related to tax year 2012, and the Trustee will waive his claim for a tax refund for tax year 2012 in the amount of \$886,700.
3. The tax refund erroneously issued to the Trustee on behalf of TelexFree for tax year 2013 in the amount of \$15,532,440.39 will be distributed as follows:
  - a. \$7,741,220.39 to the Trustee;
  - b. \$7,741,220 to the IRS (the "Settlement Payment"); and
  - c. \$50,000 for distribution to holders of allowed nonpriority unsecured claims against TelexFree, other than claims of Participants. As used in this letter, the term "claims of Participants" refers to those claims, or portions thereof, which subordination has been authorized pursuant to Tax Directive 137.

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4. The IRS will have an allowed prepetition, priority unsecured claim pursuant to 11 U.S.C § 507(a)(8) with respect to the erroneous income tax refund pertaining to calendar year 2013, subordinated to the payment of all allowed administrative expense claims and allowed claims of Participants, in the amount of \$7,741,220.

5. The IRS will recover nothing on its additional claims related to tax year 2013, which are contained in Claim No. 2988-1 and have already been voluntarily subordinated.

6. The IRS will recover nothing on its request for payment as an administrative expense of TelexFree's 2014 income taxes, which is contained in Claim No. 2987-2 and has already been voluntarily subordinated except for \$1,334,143.

7. The net operating loss of TelexFree for tax year 2014 as reported in the amount of \$535,594,148 will be available to offset any tax liability for tax year 2015 and thereafter. This net operating loss is not transferable in any manner and can only be applied to federal income tax liabilities incurred by the debtors' estates during the pendency of the bankruptcy.

8. Upon entry of a final, nonappealable order of the Bankruptcy Court approving the settlement, the Adversary Proceeding will be dismissed with prejudice, with the parties to bear their own costs and expenses, including any attorney fees.

9. The settlement is subject to (1) final approval of the agreement with the United States Attorney to provide \$7,500,000 in funding for administrative expenses, and (2) approval of the Bankruptcy Court.

10. The IRS will not oppose any plan of liquidation propounded by the Trustee that provides for treatment of the IRS's claims consistent with the settlement.

This offer has been accepted on behalf of the Attorney General. By copy of this letter, we are advising both the United States Attorney for the District of Massachusetts and the Chief Counsel's office of the Internal Revenue Service. Acceptance of this offer has no effect on any matter or claim that the United States (a) may assert on behalf of any agency other than the Internal Revenue Service or (b) may assert on behalf of the Internal Revenue Service in connection with taxpayers other than the debtors in these consolidated actions.

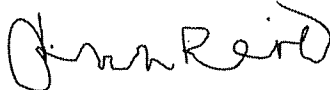
Please contact Edward J. Murphy of the Civil Trial Section, Northern Region with respect to moving the Bankruptcy Court to approve the settlement. He can be reached at 202-307-6064 or [edward.j.murphy@usdoj.gov](mailto:edward.j.murphy@usdoj.gov).

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If you have any questions, please do not hesitate to contact Mr. Murphy or Michael Wilcove at 202-514-6474 or [michael.n.wilcove@usdoj.gov](mailto:michael.n.wilcove@usdoj.gov).

Sincerely yours,

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General

By: 

ANN REID  
Chief, Office of Review

cc: Andrew E. Lelling, Esquire  
United States Attorney  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
Attn: Mary Murrane, Esquire  
By email: [mary.murrane@usdoj.gov](mailto:mary.murrane@usdoj.gov)

Stephen C. Best, Esquire  
Associate Area Counsel (LB&I)  
Internal Revenue Service  
10 Causeway Street  
Room 401  
Boston, MA 02222-1061  
Attn: Athena K. Caiazzo, Esquire  
By email: [athena.k.caiazzo@irsounsel.treas.gov](mailto:athena.k.caiazzo@irsounsel.treas.gov)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

<hr/>		)	
<b>In Re:</b>		)	
		)	<b>Chapter 11</b>
		)	
<b>TELEXFREE, LLC ,</b>		)	<b>Case No. 14-40987-MSH</b>
<b>TELEXFREE, INC.,</b>		)	<b>Case No. 14-40988-MSH</b>
<b>TELEXFREE FINANCIAL, INC.,</b>		)	<b>Case No. 14-40989-MSH</b>
		)	
<b>Debtors.</b>		)	<b>Jointly Administered</b>
<hr/>		)	

**FIRST AMENDED LIQUIDATING PLAN OF REORGANIZATION OF STEPHEN B. DARR, CHAPTER 11 TRUSTEE OF TELEXFREE, LLC, TELEXFREE, INC., AND TELEXFREE FINANCIAL, INC.**

**MURPHY & KING, Professional Corporation**  
One Beacon Street  
Boston, MA 02108  
Harold B. Murphy, Esq.  
Andrew G. Lizotte, Esq.  
Telephone: (617) 423-0400  
Facsimile: (617) 423-0498

Counsel to Stephen B. Darr, Chapter 11 Trustee  
TelexFree, LLC,  
TelexFree, Inc.,  
TelexFree Financial, Inc.

Dated: May 28~~6~~, 2020

Stephen B. Darr, the acting Chapter 11 Trustee of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc., hereby submits the following liquidating plan of reorganization under Section 1121 of the United States Bankruptcy Code.

**ARTICLE I  
DEFINITIONS AND CONSTRUCTION OF TERMS**

For purposes of the Plan, the following terms shall have the meanings specified in this Article I. A capitalized term used but not defined in the Plan that is also used in the Bankruptcy Code shall have the meaning ascribed to that term in the Bankruptcy Code. Wherever from the context it appears appropriate, each term stated shall include both the singular and the plural, and pronouns shall include the masculine, feminine and neuter, regardless of how stated. The words “in the Plan,” “the Plan,” “hereto,” “herein”, “hereunder” and other words of similar import refer to the Plan as a whole and not to any particular Section, sub-Section or clause contained in the Plan. The rules of construction contained in Section 102 of the Bankruptcy Code shall apply to the terms of the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan.

**1.1** “Administrative Expense Claim” shall mean a Claim for costs and expenses of administration of the Bankruptcy Cases that is Allowed under Section 503(b) of the Bankruptcy Code and that is entitled to priority under Section 507(a)(2) of the Bankruptcy Code, including, but not limited to: (a) any actual and necessary costs and expenses, incurred on or after the Petition Date, of preserving and operating the Estates; (b) Professional Fee Claims; (c) all fees and charges assessed against the Estates under Chapter 123 of Title 28 of the United States Code; and (d) all other Claims entitled to administrative claim status pursuant to a Non-Appealable Order of the Bankruptcy Court.

**1.2** “Affiliate” shall mean any Person that is an affiliate of the Debtors under the Bankruptcy Code.

**1.3** “Allowed” shall mean, with reference to any Claim:

- (a) A Claim as to which a timely proof of claim has been filed through the Electronic Portal by the Bar Date or Supplemental Bar Date (if applicable) and either (i) no objection thereto, or application to estimate, equitably subordinate or otherwise limit recovery, has been made on or before any applicable deadline, or (ii) if an objection thereto, or application to estimate, equitably subordinate or otherwise limit recovery has been interposed, the extent to which such Claim has been allowed (whether in whole or in part) by a Non-Appealable Order;
- (b) A Claim arising from the recovery of property under Section 550 or 553 of the Bankruptcy Code and allowed in accordance with Section 502(h) of the Bankruptcy Code;
- (c) Any Claim expressly allowed or provided for in the Plan or pursuant to an order of the Bankruptcy Court including, without limitation, the Confirmation Order.



**1.4** “Asset(s)” shall mean all of the Debtors’ and the Estates’ right, title, and interest in and to property of whatever type or nature, whether tangible or intangible and wherever situated, together with the proceeds thereof.

**1.5** “Available Cash” shall mean Cash after payment or reserve for payment of: (a) Administrative Claims; (b) Priority Claims; (c) Priority Tax Claims; (d) distribution to Class 4 Claims; and (e) Liquidation Costs.

**1.6** “Avoidance Actions” shall mean Causes of Action inuring to the Estates pursuant to Sections 502, 510, 541, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including but not limited to fraudulent transfer laws.

**1.7** “Ballot” shall mean the document sent to holders of Claims to vote on acceptance or rejection of the Plan.

**1.8** “Bankruptcy Cases” shall mean the Debtors’ bankruptcy cases pending in the Bankruptcy Court.

**1.9** “Bankruptcy Code” shall mean Title 11 of the United States Code, as amended from time to time.

**1.10** “Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Massachusetts in which the Bankruptcy Cases are pending and, to the extent of any reference under 28 U.S.C. §157, the unit of such District Court specified pursuant to 28 U.S.C. §151.

**1.11** “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure as promulgated under 28 U.S.C. § 2075, and any local rules of the Bankruptcy Court.

**1.12** “Bar Date” shall mean March 15, 2017 or the Supplemental Bar Date.

**1.13** “Business Day” shall mean any day other than a Saturday, Sunday or legal holiday recognized in the Commonwealth of Massachusetts.

**1.14** “Cash” shall mean lawful currency of the United States of America (including wire transfers, cashier’s checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks and money orders) held by the Liquidating Trustee, other than the Restitution Funds and the SEC Settlement Funds but including the Restitution Costs and SEC Settlement Costs.

**1.15** “Cash Equivalents” shall mean equivalents of Cash in the form of readily marketable securities or instruments issued by a Person other than the Debtors or an Affiliate, including, without limitation, readily marketable direct obligations of, or obligations guaranteed by, the United States of America, commercial paper of domestic corporations carrying a

Moody's Rating of "A" or better, or equivalent rating of any other nationally recognized rating service, interest-bearing certificates of deposit, or other similar obligations of domestic banks or other financial institutions included in the list of approved institutions promulgated by the Office of the United States Trustee.

**1.16** "Causes of Action" shall mean, without limitation, any and all actions, causes of action, choses in action, defenses, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, Claims or proceedings to recover money or property and demands of any nature whatsoever, whether known or unknown, in law, equity or otherwise including, without limitation, (a) Avoidance Actions, (b) rights of setoff, counterclaim and recoupment, (c) claims and defenses on contracts or for breaches of duties imposed by law, (d) the right to object to Claims or Equity Interests, (e) claims and defenses pursuant to Section 362 of the Bankruptcy Code, (f) claims and defenses for fraud, negligence, conversion, mistake, duress, indemnification and usury, (g) claims and defenses for the violation of M.G.L. c. 93A, (h) claims and defenses for unjust enrichment, and (i) claims for tax refunds.

**1.17** "Chapter 11 Trustee" shall mean Stephen B. Darr, the trustee of the Debtors appointed by order of the Bankruptcy Court dated June 6, 2014.

**1.18** "Claim" shall mean a claim against a Person or its property as defined in Section 101(5) of the Bankruptcy Code, including, without limitation, (a) any right to payment, whether or not such right is reduced to judgment, and whether or not such right is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (b) any right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, or is fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. The term Claim shall include claims asserted by Participants and Vendors.

**1.19** "Class(es)" shall mean those classes designated in Article III of the Plan.

**1.20** "Class Action Litigation" shall mean the adversary proceedings numbered 16-4006 and 16-4007 pending in the Bankruptcy Court.

**1.21** "Collateral" shall mean any property or interest in property of the Estates subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

**1.22** "Confirmation" shall mean confirmation of this Plan by the Bankruptcy Court under Section 1129 of the Bankruptcy Code.

**1.23** "Confirmation Date" shall mean the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket in the Bankruptcy Cases.

**1.24** "Confirmation Hearing" shall mean the hearing before the Bankruptcy Court on Confirmation of the Plan.

**1.25** “Confirmation Order” shall mean the order of the Bankruptcy Court confirming the Plan pursuant to the provisions of the Bankruptcy Code, and any supplementary orders of the Bankruptcy Court issued in furtherance of the Plan.

**1.26** “Contingent or Unliquidated Claim” shall mean any Claim for which a proof of claim has been filed with the Electronic Portal but which was not filed in a sum certain, or for which the event that would give rise to such a liability or debt has not occurred and is dependent upon a future event that has not occurred or may never occur, and which has not been Allowed.

**1.27** “Criminal Action” shall mean the action commenced by the United States against James Merrill and Carlos Wanzeler in the District Court, case no. 14-cr-40028-TSH.

**1.28** “Cure Claims” means pre-petition amounts due to counterparties to Executory Contracts and Unexpired Leases that have been assumed by the Debtors.

**1.29** “Debtors” shall mean, collectively, TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.

**1.30** “Disclosure Statement” shall mean the disclosure statement relating to the Plan, including, without limitation, all amendments, exhibits and schedules thereto, in the form approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code.

**1.31** “Disputed Claim” shall mean:

- (a) If no proof of claim relating to a Claim has been filed, a Claim that is listed in the Schedules as unliquidated, disputed or contingent; or
- (b) If a proof of claim relating to a Claim has been filed with the Electronic Portal, a Claim as to which a timely objection or request for estimation, or request to equitably subordinate or otherwise limit recovery in accordance with the Bankruptcy Code and the Bankruptcy Rules, has been made, or which is otherwise disputed by the Debtors, Chapter 11 Trustee, the Liquidating Trustee, or a party with standing to dispute the Claim in accordance with applicable law, which objection, request for estimation, action to limit recovery or dispute has not been withdrawn or determined by Non-Appealable Order; or
- (c) A Claim that is a Contingent or Unliquidated Claim.

**1.32** “Disputed Claim Amount” shall mean the amount set forth in the proof of claim relating to a Disputed Claim or an amount estimated pursuant to an order of the Bankruptcy Court in respect of a Disputed Claim in accordance with Section 502(c) of the Bankruptcy Code.

**1.33** “Disputed Claims Reserve” shall have the meaning set forth in Section 7.4 of the Plan.

**1.34** “Distribution Record Date” shall mean the date of approval of the Disclosure Statement.

**1.35** “District Court” shall mean the United States District Court for the District of Massachusetts.

**1.36** “Dos Santos Litigation” shall mean the adversary proceeding *Darr v. Dos Santos, et al*, Adv. Proc. No. 15-4055.

**1.37** “Effective Date” shall mean the first Business Day on which the conditions set forth in Article XI of the Plan have been satisfied.

**1.38** “Electronic Portal” shall mean the internet website **telexfreeclaims.com** that was established for Participants and Vendors to electronically file proofs of claim with respect to claims arising prior to the Petition Date.

**1.39** “Equity Interest” shall mean the interest of any holder of any voting or non-voting equity of the Debtors, including treasury stock and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire at any time such equity.

**1.40** “Estate Released Parties” shall mean the Chapter 11 Trustee, and his agents, financial advisors, accountants, consultants, attorneys, employees, partners and representatives, in each case, only in their capacity as such.

**1.41** “Estates” shall mean the estates of the Debtors created by the Bankruptcy Cases pursuant to Section 541 of the Bankruptcy Code.

**1.42** “Executory Contract” shall mean a contract as to which the Debtors are a party that is subject to assumption or rejection under Section 365 of the Bankruptcy Code.

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

**1.44** “Lien” shall have the meaning set forth in Section 101(37) of the Bankruptcy Code; except that (a) a lien that has been avoided in accordance with Sections 544, 545, 546, 547, 548, 549 or 553 of the Bankruptcy Code shall not constitute a Lien, and (b) all Liens shall be discharged as of the Effective Date unless specifically preserved under the Plan.

**1.45** “Liquidation Costs” shall mean all of the post-Effective Date costs of administering the Plan including without limitation the fees and expenses of the Liquidating Supervisor and his agents, insurance, bonding premiums, and taxes.

**1.46** “Liquidating Trustee” shall mean Stephen Darr, or his successor.

**1.47** “Membership Plan” shall mean an AdCentral or AdCentral Family membership plan sold by TelexFree to Participants.

**1.48** “Modified Restitution Order” shall mean the Restitution Order entered by the District Court in the Criminal Action on July 11, 2017 [docket entry 367], as modified by the District Court by order dated April 23, 2020 [docket entry 436].

**1.49** “Non-Appealable Order” shall mean an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, the operation or effect of which has not been reversed, stayed, modified or amended and, as to which (a) the time to appeal, seek leave to appeal or certiorari, or request re-argument, review or rehearing has expired and as to which no appeal, petition for leave to appeal or certiorari, or request for re-argument, review or rehearing has been timely filed, or (b) any appeal, petition for leave to appeal or certiorari, re-argument, review, or rehearing that has been or may be made has been resolved by the highest court to which the order or judgment was appealed, from which leave to appeal or certiorari was sought, or to which the request was made, and no further appeal or petition for leave to appeal or certiorari, or request for re-argument, review or rehearing has been or can be taken or granted, and as a result of which such order shall have become final and non-appealable in accordance with applicable law; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not cause such order not to be a Non-Appealable Order.

**1.50** “Nonpriority Unsecured Claim” shall mean a Claim that is not: (a) an Administrative Expense Claim; (b) a Secured Claim, (c) a Priority Claim; (d) a Priority Tax Claim; (e) a Participant Claim, or (d) an Equity Interest.

**1.51** “Participant” shall mean a person who purchased at least one VoIP Plan or Membership Plan in TelexFree.

**1.52** “Participant Claim” shall mean the electronic proof of claim that was required to be filed by Participants through the Electronic Portal on or before the Bar Date, or the Supplemental Bar Date.

**1.53** “Participant Convenience Claim” shall mean a Participant Claim in the amount of \$4,250 or less.

**1.54** “Person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association or organization, governmental agency or political subdivision.

**1.55** “Permitted Investment” shall mean Cash Equivalents having maturities sufficient to enable the Liquidating Trustee to make the payments required under the Plan.

**1.56** “Petition Date” shall mean April 13, 2014.

**1.57** “Plan” shall mean this *Liquidating Plan of Reorganization of Stephen B. Darr, Chapter 11 Trustee of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.*, including, without limitation, all exhibits, supplements, appendices and schedules to the Plan, either in their present form or as the same may be altered, amended or modified from time to time.

**1.58** “Priority Claims” shall mean all Claims, if any, entitled to priority under Section 507(a) of the Bankruptcy Code other than Priority Tax Claims and Administrative Expense Claims.

**1.59** “Priority Tax Claims” shall mean any Claim of a governmental unit entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

**1.60** “Professionals” shall mean those Persons (a) employed pursuant to an order of the Bankruptcy Court in accordance with Sections 327 or 1103 of the Bankruptcy Code and to be compensated for services pursuant to Sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, or (b) for which compensation and reimbursement is allowed by the Bankruptcy Court pursuant to Section 503(b)(4) of the Bankruptcy Code.

**1.61** “Professional Fee Claims” shall mean the fees and expenses of Professionals under Sections 330, 331, or 503 of the Bankruptcy Code approved by an Order of the Bankruptcy Court.

**1.62** “Pro Rata” shall mean, (a) when used with reference to a distribution of property under the Plan, proportionately so that with respect to a particular Allowed Claim, the ratio of (i)(1) the amount of property distributed on account of such Claim to (2) the amount of such Claim, is the same as the ratio of (ii)(1) the amount of property distributed on account of all Allowed Claims of the Class to (2) the amount of all Allowed Claims in that Class.

**1.63** “Reorganized Debtors” shall mean the Debtors from and after the Effective Date.

**1.64** “Restitution Costs” shall mean an amount not to exceed \$7,500,000 to be paid to the Chapter 11 Trustee and his agents pursuant to the terms of the Modified Restitution Order.

**1.65** “Restitution Funds” shall mean those funds recovered by the United States on account of restitution, restoration, forfeiture or otherwise in connection with the Criminal Action and turned over to the Chapter 11 Trustee for distribution to Participants holding Allowed Claims, less the Restitution Costs.

**1.66** “Schedules” shall mean the schedules of assets and liabilities, the list of holders of interests and the statements of financial affairs filed by the Chapter 11 Trustee under Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules, lists and statements have been or may be supplemented or amended from time to time.

**1.67** “SEC” shall mean the Securities and Exchange Commission.

**1.68** “SEC Settlement Costs” shall mean an amount equal to ten percent (10%) of the funds paid to the Chapter 11 Trustee pursuant to those settlements among the SEC, the Chapter 11 Trustee, and third parties that included a recovery of funds paid to the Chapter 11 Trustee and specifically earmarked for distribution to Allowed Participant Claims.

**1.69** “SEC Settlement Funds” shall mean those funds paid to the Chapter 11 Trustee in connection with those settlements among the SEC, the Chapter 11 Trustee, and third parties that included a recovery of funds paid to the Chapter 11 Trustee and specifically earmarked for distribution to Allowed Participant Claims, less the SEC Settlement Costs.

**1.70** “Secured Claim” shall mean any Claim that is secured by a Lien on Collateral to the extent of the value of such Collateral, as determined in accordance with Section 506(a) of the Bankruptcy Code, or, in the event that such Claim is a claim of setoff under Section 553 of the Bankruptcy Code, to the extent of such setoff.

**1.71** “Service” shall mean the Internal Revenue Service.

**1.72** “Service Settlement” shall mean the agreement dated April 22, 2020 by and between the Chapter 11 Trustee and the Service and attached hereto as Exhibit “A”.

**1.73** “Standard Claim” shall mean the proof of claim required to be filed by Vendors through the Electronic Portal on or before the Bar Date.

**1.74** “Supplemental Bar Date” shall mean April 19, 2018.

**1.75** “TelexFree” shall mean, collectively, TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.

**1.76** “Unexpired Lease” shall mean a lease as to which the Debtors are a party that is subject to assumption or rejection under Section 365 of the Bankruptcy Code.

**1.77** “Unimpaired” shall mean a Claim or Equity Interest that is not impaired within the meaning of Section 1124 of the Bankruptcy Code.

**1.78** “United States” shall mean the United States of America.

**1.79** “Vendor” shall mean a person who is owed money by TelexFree on account of a Nonpriority Unsecured Claim and who is not a Participant.

**1.80** “VoIP Plan” shall mean a voice over internet protocol package sold by TelexFree to a Participant.

**1.81** “Wanzeler Litigation” shall mean the adversary proceeding numbered 16-4032 pending in the Bankruptcy Court.

**ARTICLE II  
TREATMENT OF ALLOWED UNCLASSIFIED CLAIMS**

**2.1 Non-Classification.**

As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims against the Debtors are not classified for the purposes of voting on, or receiving distributions under, the Plan. All such Claims are instead treated separately in accordance with the terms set forth in this Article II.

**2.2 Administrative Expense Claims.**

(a) General. On, or as soon as reasonably practicable after, the later of (a) the Effective Date, (b) the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or (c) the date on which an Allowed Administrative Expense Claim becomes payable under any agreement or applicable law relating thereto, each holder of such Allowed Administrative Expense Claim shall receive from Cash, in full and final satisfaction, settlement, and release of, and in exchange for, such Allowed Administrative Expense Claim, an amount equal to the unpaid portion of such Allowed Administrative Expense Claim. Notwithstanding the foregoing, (y) any Allowed Administrative Expense Claim based on a liability incurred by the Estates in the ordinary course of business during the Bankruptcy Cases may be paid in the ordinary course of business from Cash in accordance with the terms and conditions of any agreement relating thereto and (z) any Allowed Administrative Expense Claim may be paid from Cash when payable under applicable law or on such other terms as may be agreed to between the holder of such Claim and the Liquidating Trustee.

(b) U.S. Trustee's Fees. The outstanding fees due to the United States Trustee pursuant to 11 U.S.C. § 1930 shall be paid in full from Cash on or before the Effective Date.

(c) Professional Compensation and Expense Reimbursement Claims.

- (i) Within twenty (20) days after the Confirmation Date, each Professional shall file a final application for the allowance of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date.
- (ii) Any Allowed Professional Fee Claim shall receive from Cash: (i) payment upon entry of an order approving such Claim, or (ii) payment as agreed between the holder of the Allowed Administrative Expense Claim and the Liquidating Trustee.
- (iii) All fees and expenses of Professionals retained by the Liquidating Trustee for services rendered after the Effective Date shall be paid from Cash by the Liquidating Trustee upon the receipt of reasonably detailed invoices in such amounts and on such terms as such Professional and the Liquidating Trustee agree. No further order or authorization from the Bankruptcy



Court shall be necessary to permit the payment of the fees and expenses of Professionals for services rendered after the Effective Date.

**2.3 Priority Tax Claims.**

On, or as soon as reasonably practicable after, the later of (a) the Effective Date or (b) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, settlement, and release of, and in exchange for, such Allowed Priority Tax Claim, (i) payment in accordance with Section 1129(a)(9)(C) of the Bankruptcy Code, or (ii) payment as agreed between the holder of the Allowed Priority Tax Claim and the Chapter 11 Trustee or Liquidating Trustee. Payment shall be made from Cash.

**ARTICLE III  
CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

The Claims against, and Equity Interests in, the Debtors are categorized below for all purposes under the Plan including voting, Confirmation and distribution pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Equity Interest falls within the description of such other Classes.

**3.1 Claim and Equity Interest Categories.**

Claims against and Equity Interests in the Debtors have been classified as follows:

Class	Designation	Impairment	Entitled to Vote
1	Priority Claims	Unimpaired	No
2	Participant Convenience Claims	Impaired	Yes
3	Participant Claims	Impaired	Yes
4	Vendor Claims	Impaired	Yes
5	Equity Interests	Impaired	No

**ARTICLE IV  
TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**4.1 Class 1 – Priority Claims**

- (a) Classification. Class 1 consists of the Allowed Priority Claims.

- (b) Impairment and Voting. The Priority Claims are Unimpaired under the Plan and shall be deemed to have accepted the Plan.
- (c) Claim Treatment. In full and complete satisfaction, settlement, and release of the Allowed Priority Claims, the holders of Allowed Class 1 Claims shall be paid in full from Cash upon the later of the Effective Date or entry of an order of the Bankruptcy Court allowing such Claim.

#### **4.2 Class 2 – Participant Convenience Claims**

- (a) Classification. Class 2 consists of the Allowed Participant Convenience Claims.
- (b) Impairment and Voting. Allowed Participant Convenience Claims are Impaired under the Plan. The holder of an Allowed Participant Convenience Claim shall be entitled to vote to accept or reject the Plan.
- (c) Claim Treatment. In full and complete satisfaction, settlement, and release of the Allowed Participant Convenience Claims, each holder of an Allowed Class 2 Claim shall receive a single distribution from the Restitution Funds as soon as practicable after the Effective Date, in an amount equal to forty-three percent (43%) of such holder's Allowed Claim.
- (d) Election. The holder of an Allowed Participant Convenience Claim shall be treated as the holder of a Class 2 Claim unless such holder affirmatively elects on a timely submitted Ballot to be treated as the holder of a Class 3 Claim.

#### **4.3 Class 3 – Participant Claims**

- (a) Classification. Class 3 consists of (i) Allowed Participant Claims that are not Allowed Participant Convenience Claims; and (ii) those Allowed Participant Claims that have elected to be treated as holders of Class 3 Claims.
- (b) Impairment and Voting. Allowed Participant Claims are Impaired under the Plan. The holder of an Allowed Participant Claim shall be entitled to vote to accept or reject the Plan.
- (c) Claim Treatment. In full and complete satisfaction, settlement, and release of the Allowed Participant Claims, each holder of an Allowed Class 3 Claim shall receive:
  - (i) As soon as practicable following the Effective Date, an initial Pro Rata distribution from the Restitution Funds, the SEC

Settlement Funds, and Available Cash as of the Effective Date;  
and

- (ii) Additional Pro Rata distributions of the Restitution Funds, SEC Settlement Funds and Available Cash as such funds become available, in such amounts and at such times as the Liquidating Trustee shall determine in his reasonable discretion in consultation with the Office of the United States Attorney.

**4.4 Class 4 - Vendor Claims.**

- (a) Classification. Class 4 consists of the Allowed Vendor Claims.
- (b) Impairment and Voting. The Vendor Claims are Impaired under the Plan. Each holder of a Class 4 Claim shall be entitled to vote to accept or reject the Plan.
- (c) Claim Treatment. In full and complete satisfaction, settlement, and release of the Class 4 Claims, each holder of an Allowed Vendor Claim shall be paid from Cash a *Pro Rata* distribution of \$50,000 from Cash not to exceed one hundred percent (100%) of the Allowed Claim, as soon as practicable following the Effective Date.

**4.5 Class 5 – Equity Interest.**

- (a) Classification. Class 5 consists of all Equity Interests in the Debtors.
- (b) Impairment and Voting. Class 5 is Impaired under the Plan. Each holder of an Equity Interest shall be conclusively deemed to have rejected the Plan.
- (c) Treatment. The holders of Equity Interests shall not receive or retain any property or interest in property on account of such Equity Interest.

**4.6 Reservation of Rights.**

The Liquidating Trustee reserves the right to, among other things, (a) contest the right of the holder of any Claim to vote on the Plan, or designate the vote of the holder of any Claim, (b) contest the right of the holder of any Claim or Equity Interest to receive distributions under the Plan, and (c) seek to subordinate any Claim for inequitable conduct or otherwise.

**4.7 Special Provision Regarding Unimpaired Claims.**

Except as otherwise provided in this Plan, nothing shall affect the Liquidating Trustee's rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including

but not limited to, all rights with respect to legal and equitable defenses to, setoffs against, or recoupments of Unimpaired Claims.

**4.8 Voting of Claims.**

Each holder of an Allowed Claim in an Impaired Class that retains or receives property under the Plan shall be entitled to vote separately to accept or reject the Plan. Each holder of the foregoing Allowed Claims electing to vote shall do so on a duly executed and delivered ballot and in accordance with procedures set forth in the applicable order of the Bankruptcy Court establishing Plan voting procedures.

**4.9 Acceptance by Impaired Classes.**

An Impaired class of Claims shall have accepted the Plan if (a) the holders (other than any holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the holders (other than any holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

**4.10 Elimination of Classes.**

To the extent applicable, any Class that does not contain any Allowed Claims or any Claims temporarily allowed for voting purposes under Bankruptcy Rule 3018, as of the date of the commencement of the Confirmation Hearing, shall be deemed to have been deleted from this Plan for purposes of (a) voting to accept or reject this Plan and (b) determining whether it has accepted or rejected this Plan under Section 1129(a)(8) of the Bankruptcy Code.

**4.11 Nonconsensual Confirmation.**

If any Impaired Class entitled to vote does not accept the Plan by the requisite majorities provided in Sections 1126(c) or 1126(d) of the Bankruptcy Code, as applicable, or if any Impaired class is deemed to have rejected the Plan, the Chapter 11 Trustee reserves the right (a) to seek Confirmation of the Plan under Section 1129(b) of the Bankruptcy Code; and/or (b) to amend the Plan in accordance with Section 13.3 of the Plan.

**ARTICLE V  
SERVICE SETTLEMENT**

**5.1 Service Settlement Agreement**

The Chapter 11 Trustee has entered into the Service Settlement with the Service, which is attached hereto as Exhibit A and incorporated by reference. Pursuant to Bankruptcy Rule 9019 and for the good and valuable consideration set forth in the Service Settlement, the Service Settlement shall constitute a good faith compromise of the Claims of the Chapter 11 Trustee and the Service through tax year 2014. The entry of the Confirmation Order shall constitute the

Bankruptcy Court's approval of the full and complete compromise or settlement of the Claims through tax year 2014, as well as a finding by the Bankruptcy Court that the Service Settlement and all of its terms and conditions set forth therein are in the best interests of the Debtors, their Estates and holders of Claims and is fair, equitable and reasonable. The Chapter 11 Trustee shall be authorized to take all actions necessary to consummate the Service Settlement in accordance with its terms.

**ARTICLE VI  
MEANS FOR IMPLEMENTATION OF THE PLAN**

**6.1 Vesting of Assets**

All Assets shall re-vest in the Reorganized Debtors on the Effective Date, free and clear of all Liens and encumbrances, but subject to the payment of claims as provided in the Plan. Except as may be expressly provided in this Plan or in a Non-Appealable Order of the Bankruptcy Court, no Asset shall be deemed abandoned and no defense, set-off, counterclaim or right of recoupment of the Debtors shall be deemed waived, released or compromised. The Liquidating Trustee shall maintain custody of the Restitution Funds and the SEC Settlement Funds and shall distribute such assets to holders of Allowed Participant Claims in accordance with the terms of the Plan.

**6.2 Substantive Consolidation.**

**A. Consolidation of the Estates**

The entry of the Confirmation Order shall constitute approval by the Bankruptcy Court of the substantive consolidation of the Debtors and their respective Estates for all purposes relating to the Plan, including for purposes of voting, confirmation and distributions. If this substantive consolidation is approved, (a) for all purposes associated with the confirmation and consummation of the Plan, all assets and liabilities of the Debtors shall be treated as though they were merged into a single economic unit, (b) no distribution shall be made under the Plan on account of any Claim held by any one of the Debtors against any of the other Debtors and such intercompany Claims will be extinguished, (c) no distribution shall be made under the Plan on account of any intercompany interest held by any one of the Debtors in any of the other Debtors except to the extent necessary to effect the substantive consolidation provided for herein, (d) all guarantees of any one of the Debtors of the obligations of any of the other Debtors, to the extent such exist, shall be eliminated so that any Claim against any one of the Debtors, and any guarantee thereof executed by any of the other Debtors, shall be one obligation of the consolidated Debtors' Estates, and (e) every Claim that is timely filed in the Chapter 11 Cases of any of the Debtors shall be deemed filed against the consolidated Estates and shall be one Claim against, and one obligation of, the Estates.

**B. Allowance of Claims against Multiple Debtors**

Claims against more than one of the Debtors arising from the same injury, damage, cause of action or common facts shall be Allowed only once as if such Claim were against a single Debtor.

**C. Cure of Defaults**

Any alleged defaults under any applicable agreement, including executory contracts and unexpired leases, with the Debtors arising from substantive consolidation under the Plan shall be deemed cured as of the Effective Date.

**D. Administration of Consolidated Estate**

As soon as practicable after the Effective Date, the Liquidating Trustee is authorized to submit an order to the Bankruptcy Court in form and substance acceptable to the United States Trustee that closes each of the Chapter 11 Cases except the case of TelexFree LLC, case no. 14-40987. The Debtors' consolidated estate shall be administered through TelexFree, LLC.

**E. Setoff and Defenses.**

The substantive consolidation effected pursuant to the Plan shall not affect, without limitation, the Estates' defenses to any claim or cause of action, including (i) the ability to assert any counterclaim; (ii) the Estates' setoff or recoupment rights; (iii) requirements for any third party to establish mutuality prior to substantive consolidation in order to assert a right of setoff against the Estates.

**6.3 Corporate Action.**

Confirmation of the Plan shall constitute authorization for the Chapter 11 Trustee and the Liquidating Trustee to effectuate the Plan and to execute, issue, deliver, file or record all contracts, instruments and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan without further notice to or action, order or approval of the Bankruptcy Court or any other entity except for those expressly required pursuant to the Plan. All matters provided for in the Plan involving any corporate action to be taken by or required of the Chapter 11 Trustee in connection with the Plan shall be deemed to have occurred, and be effective as provided herein, and shall be authorized, approved and, to the extent taken prior to the Effective Date, ratified in all respects, without any requirement of further action by the Liquidating Trustee, his agents, representatives, or employees.

**6.4 Preservation of Causes of Action.**

Except as provided in, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, the Confirmation Order, any Non-Appealable Order, or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, the Liquidating Trustee will exclusively retain and may enforce, and the Liquidating Trustee expressly reserves and preserves for these purposes, in accordance with Sections 1123(a)(5)(A) and 1123(b)(3) of the Bankruptcy Code, any Claims, Causes of Action and demands and rights relating thereto that the Debtors or their Estates may hold against any Person or entity. No preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise)

or laches shall apply to them by virtue of or in connection with the Confirmation, consummation or effectiveness of the Plan.

**6.5 Default.**

No event of default under the Plan shall occur unless, in the event of a breach of the Liquidating Trustee's obligations under the Plan, the holder of the Allowed Claim asserting the default shall provide written notice of such breach to the Liquidating Trustee and such breach is not cured: (i) in the event of a breach that can be cured by the payment of a sum of money, within fifteen (15) days of the Liquidating Trustee's receipt of such notice; and (ii) for any other breach, within thirty (30) days of the Liquidating Trustee's receipt of such notice, provided that, if such non-monetary breach cannot reasonably be cured within such 30-day period and the Liquidating Trustee has commenced curing such breach and continues to cure such breach, the thirty (30) day period shall be extended for such time as is reasonably necessary to cure such breach.

**6.6 Resignation of Officers and Directors.**

Upon the Effective Date, all of the Debtors' officers and members of its board of directors shall be deemed to have resigned without the necessity of any further action or writing and they shall be released from any responsibilities, duties and obligations that arise after the Effective Date to the Debtor or its Creditors under the Plan or applicable law. Under no circumstances shall such parties be entitled to any compensation from the Debtor or the Liquidating Trustee for services provided after the Effective Date.

**6.7 Dissolution of the Debtors.**

Upon the completion of the administration of Assets and the distributions under the Plan, the Reorganized Debtors shall be deemed to be dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Reorganized Debtor or payments to be made in connection therewith; provided, however, that the Liquidating Trustee, on behalf of the Debtors, shall file with the appropriate state authority or authorities a certificate or statement of dissolution referencing this Plan. The Reorganized Debtors shall not be required to file any documents, or take any other action, to withdraw their business operations from any states in which the Debtors were previously conducting business operations.

**6.8 Further Authorization.**

The Liquidating Trustee, on behalf of the Estates, shall be entitled to seek such orders, judgments, injunctions, and rulings and take such actions as deemed necessary to carry out the intentions and purposes, and to give full effect to the provisions, of the Plan.

**ARTICLE VII  
DISTRIBUTIONS ON CLAIMS AND RESOLUTION OF DISPUTED CLAIMS**

**7.1 Method of Distributions Under the Plan.**

(a) In General. Subject to Bankruptcy Rule 9010, and except as otherwise provided in the Plan, all distributions under the Plan to be made by, or on behalf of, the Liquidating Trustee to the holder of each Allowed Claim shall be made principally by electronic transfer or physical check. The Liquidating Trustee shall have no obligation to locate such holders whose distributions or notices are properly sent but nevertheless returned.

(b) Distributions to be on Business Days. Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.

(c) Fractional Dollars. Whenever any payment of a fraction of a dollar would otherwise be called for, the actual payment may reflect a rounding of such fraction to the nearest whole dollar (rounding down in the case of \$0.50 or less, and rounding up in the case of more than \$0.50).

(d) Minimum Distributions. The Liquidating Trustee reserves the right to defer or forgo distributions if the amount of a distribution will result in a *de minimus* dividend. The Liquidating Trustee will determine the minimum amount of Available Cash that must be available to issue a dividend to holders of Allowed Class 3 Claims, in consultation with the Office of the United States Attorney.

(e) Distributions to Holders as of the Distribution Record Date. The Liquidating Trustee shall be entitled to rely upon the register of Claims as of the Distribution Record Date.

(f) Office of Foreign Assets Control (OFAC). The Liquidating Trustee may withhold distributions otherwise payable to holders of Allowed Claims if the claimant is located outside of the United States and has not provided information to the Liquidating Trustee to ensure compliance with the Office of Foreign Assets Control (“OFAC”). If a claimant fails to respond to a request for OFAC certification for more than six months, the Liquidating Trustee may expunge the claim, in which case the party otherwise entitled to such distribution shall be deemed to have forfeited its right to the distribution and any future distributions, and the Liquidating Trustee may redistribute the Cash to other beneficiaries under the Plan as if such Claim was disallowed.

(g) Interest and Penalties on Claims. Unless otherwise specifically provided for in the Plan or the Confirmation Order, post-petition interest and penalties shall not accrue or be paid on any Claims and no holder of a Claim shall be entitled to interest and penalties accruing on or after the Petition Date through the date such Claim is satisfied in accordance with the terms of this Plan.



## 7.2 Objections to Disputed Claims.

Prior to the Effective Date, any objections to Claims against the Estates shall be prosecuted by the Chapter 11 Trustee. On and after the Effective Date, any objections to Claims against the Estates shall be prosecuted by the Liquidating Trustee and such objections to Claims shall be filed within one year after the Effective Date.

## 7.3 Estimation of Claims.

After the Effective Date, the Liquidating Trustee may, at any time, estimate any Disputed Claim in his reasonable discretion regardless of whether the Chapter 11 Trustee or the Liquidating Trustee have previously objected to such Claim ~~or whether the Bankruptcy Court has ruled on any such objection~~. The Bankruptcy Court shall have jurisdiction to estimate a Disputed Claim at any time, including, without limitation, during litigation concerning such Claim or an objection to such Claim. If the Bankruptcy Court determines the maximum limitation of a Disputed Claim, such determination shall not preclude the Liquidating Trustee from pursuing any supplemental proceedings to object to any payment of such Claim. All of the aforementioned Claims objections, estimation and resolution procedures are cumulative and not exclusive remedies.

## 7.4 Disputed Claims Reserve.

(a) Establishment. A reserve shall be maintained equal to 100% of the distributions which the Chapter 11 Trustee reasonably believes that the holders of Disputed Claims would be entitled to under the Plan if the Disputed Claim Amounts were Allowed Claims or such lesser amount as required by a Non-Appealable Order.

(b) Investment of Cash. Cash in the Disputed Claims Reserve may be invested only in Cash Equivalents having maturities sufficient to enable the holder of the Disputed Claim Reserve to make all necessary payments to holders of Disputed Claims if, and when, such Disputed Claims become Allowed Claims. Any interest, income, distributions or accretions on account of such investment in Cash Equivalents in the Disputed Claims Reserve shall be for the sole benefit and account of the Liquidating Trustee, and the Liquidating Trustee shall be solely responsible for the payment of any income or other taxes arising therefrom.

(c) Distributions Upon Allowance of Disputed Claims. The holder of a Disputed Claim that becomes an Allowed Claim after the Effective Date shall receive distributions of Cash from the Disputed Claims Reserve as soon as practicable following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Non-Appealable Order. Such distributions shall be made in accordance with the Plan based upon the distributions that would have been made to the holder of such a Claim under the Plan if the Disputed Claim had been an Allowed Claim on or prior to the Effective Date. No holder of a Disputed Claim shall have any claim against the respective Disputed Claims Reserve with respect to such Claim until the Disputed Claim shall become an Allowed Claim.

**7.5 Reversion of Unclaimed Checks.**

If a check or other payment remains unclaimed for a period of six months after distribution, the party otherwise entitled to such distribution shall be deemed to have forfeited its right to the distribution and any future distributions, and the Liquidating Trustee may redistribute the Cash to other beneficiaries under the Plan as if such Claim was disallowed.

**ARTICLE VIII  
LIQUIDATING TRUSTEE**

**8.1 Appointment of Liquidating Trustee, Administration of Reorganized Debtors.**

As of the Effective Date, Stephen Darr shall be the Liquidating Trustee. The Reorganized Debtors shall remain in existence for the purpose of permitting the Liquidating Trustee to: (a) retain and compensate agents to assist in implementing the terms of the Plan; (b) administer, manage, invest, liquidate, sell or otherwise dispose of the Assets, (c) to resolve Disputed Claims and make distributions of Available Cash in accordance with the Plan; and (d) conduct an orderly wind down of the Reorganized Debtors' business and affairs.

**8.2 Corporate Authority.**

In accordance with Section 6.1 of this Plan and herein, as of the Effective Date the Liquidating Trustee shall have the exclusive right and duty to manage the Reorganized Debtors, subject, however, to any limitations of liability set forth in this Plan. As of the Effective Date, the Liquidating Trustee is empowered and authorized to satisfy such responsibilities, duties and obligations without any further corporate authority (such as approval by any shareholders) that may have been required prior to the Effective Date. As of the Effective Date, all actions of the Debtors shall be taken by the Liquidating Trustee, or his designee, in the name of and on behalf of the Reorganized Debtors and/or the Estates. The Liquidating Trustee shall be authorized to enter his appearance on behalf of the Reorganized Debtors in any litigation or other legal proceeding pending as of the Effective Date.

**8.3 Liquidating Trustee's Rights and Powers.**

The Liquidating Trustees rights and powers shall include, subject to any limitations set forth in this Plan, the right and power to:

- (a) Sell at public or private sale, lease, exchange, transfer, convey or otherwise dispose of, on such terms and conditions, and at such time or times as the Liquidating Trustee shall determine, any or all of the Assets (whether tangible or intangible);
- (b) Grant options, make contracts, retain brokers, deliver deeds or other instruments of conveyance or transfer, and/or delegate to an attorney in fact the power to execute all documents necessary to accomplish a sale, lease, exchange, transfer, conveyance or other disposal of any Estate Asset;

- (c) Obtain and maintain such space, facilities, equipment, supplies and personnel as shall be reasonably necessary for the performance of the Liquidating Trustee's duties;
- (d) Open and close accounts on behalf of the Reorganized Debtors with any banking, financial or investment institution, make deposits and withdrawals of cash and other property into or from any such account, make or endorse checks with respect to any such account;
- (e) Complete and file federal and state tax returns on behalf of the Reorganized Debtors;
- (f) Pay all reasonable and necessary costs of administration, including professional fees, associated with the administration of this Plan, the Reorganized Debtors and/or the Assets;
- (g) Subject to the limitations contained in this Plan, pay, compromise, settle, adjust, agree to, investigate, pursue, or contest any and all Claims;
- (h) Make the distributions in accordance with the terms of this Plan;
- (i) Investigate, prosecute, litigate, sell, transfer or abandon any Cause of Action, including, but not limited to, Avoidance Actions;
- (j) Employ, consult with, and compensate counsel, brokers, consultants, custodians, investment advisors, asset services, expert witnesses, auditors, accountants, other agents and any other individuals and/or professionals (any of which may be the Liquidating Trustee and his or her firm) in connection with the administration of this Plan, the Reorganized Debtors and/or the Assets;
- (k) File a suit in interpleader or in the nature of interpleader in any court of competent jurisdiction with respect to any Estate Asset;
- (l) File any other appropriate action for relief in a court of competent jurisdiction;  
and
- (m) Take such steps as provided as necessary and proper to close the Bankruptcy Case and dissolve the Reorganized Debtors.

#### **8.4 Vesting of Estate Powers.**

Upon the Effective Date, the Liquidating Trustee shall be vested with the standing of and with all rights, powers and benefits afforded to a "trustee" under the Bankruptcy Code with respect to all Assets and rights belonging to the Estate and/or the Reorganized Debtors, including, without limitation the standing and authority to commence, prosecute and compromise objections to Claims and Causes of Action, whether initially filed by the Debtors or the Chapter 11 Trustee or as may be filed by the Liquidating Trustee. The Liquidating Trustee shall stand in the same position as the Debtors and/or the Estates with respect to any claim the Debtors and/or the Estates may have had to an attorney-client privilege, the work product doctrine, or any other privilege against production, and the Liquidating Trustee shall succeed to all of the Debtors' and/or the Estates' rights to preserve, assert or waive any such privilege.

**8.5 Limitations on Liquidating Trustee's Liabilities as to Losses.**

The Liquidating Trustee shall not be responsible, and shall have no liability whatsoever to any person for any loss to the Reorganized Debtors resulting from the investment of the Assets, or their proceeds, in any Permitted Investments. The Liquidating Trustee shall not invest or reinvest any Assets other than in a Permitted Investment. The Liquidating Trustee shall not have any liability to any retirement, employee benefit, or pension plan of the Debtors in excess of the amounts available to be distributed from such Plans.

**8.6 Selection of Agents.**

The Liquidating Trustee may retain his or her firm or company to provide professional services in conjunction with his duties under this Plan. The Liquidating Trustee shall not be liable for any loss to the Reorganized Debtors or any person with an interest in the Reorganized Debtors by reason of any mistake or default of any such agent or consultant unless such mistake or default breaches the standard of care set forth in Section 8.8(a) of this Plan.

**8.7 Maintenance of Register.**

The Liquidating Trustee shall at all times maintain a register of the names, addresses, and amount of the Claims and Equity Interests in the Reorganized Debtors as of the Effective Date and as revised from time to time thereafter.

**8.8 Liability of Liquidating Trustee.**

(a) Standard of Care. The Liquidating Trustee shall not be liable for any action taken or omitted to be taken by him in good faith and in the exercise of reasonable judgment and believed to be within the discretion or power conferred by this Plan, or be responsible for the consequences of any act or failure to act, except for bad faith, gross negligence or willful misconduct. The Liquidating Trustee shall not have any fiduciary relationship with any party by virtue of this Plan except as specifically set forth in this Agreement:

- (i) The Liquidating Trustee shall not, solely by virtue of his position as Liquidating Trustee, be liable or in any way responsible for the acts or omissions of the Debtors, its board of directors, officers, employees, or agents, that occurred prior to the Effective Date.
- (ii) Unless indemnified to his satisfaction against liability and expense, the Liquidating Trustee shall not be compelled to do any act or to take any action toward the execution or enforcement of the powers created under this Plan or to prosecute or defend any suit in respect of this Plan. If the Liquidating Trustee requests approval from the Bankruptcy Court with respect to any act or action in connection with this Plan, the Liquidating Trustee shall be entitled (but shall not be required) to refrain (without incurring any liability to any person by so refraining) from such act or action unless and until he has received such instructions or approval. In no event shall the Liquidating Trustee or any of his representatives be required to take any action which he reasonably determines could lead to criminal or civil liability.

- (iii) The Liquidating Trustee shall not be responsible in any manner to the Debtors, the Estates, any holder of a Claim or Interest, or any party-in-interest for:
  - (i) the creditworthiness of any party and the risks involved to the Reorganized Debtors or such holder or party-in-interest;
  - (ii) the effectiveness, enforceability, genuineness, validity, or any due execution of this Plan as to any person other than the Liquidating Trustee;
  - (iii) any representation, warranty, document, certificate, report, or statement made herein or furnished hereunder or in connection with this Plan that does not constitute a breach of the standard of care set forth in Section 8.8(a) of this Plan on the part of the Liquidating Trustee;
  - (iv) the existence, priority or perfection of any existing Lien; or
  - (v) the observation or compliance with any of the terms, covenants, or conditions of this Plan on the part of any party thereto other than the Liquidating Trustee.
- (iv) The Debtors, holders of Claims or Equity Interests and parties-in-interest, by voting for this Plan and/or accepting the benefits of this Plan, have agreed not to sue or otherwise pursue or seek damages from the Liquidating Trustee except for actions or omissions which violate the standard of care set forth in Section 8.8(a) of this Plan.

(b) No Liability for Acts of Predecessor. No successor Liquidating Trustee shall be in any way responsible for the acts or omissions of any preceding Liquidating Trustee, nor shall he be obligated to inquire into the validity or propriety of any such act or omission unless such successor Liquidating Trustee expressly assumes such responsibility. Any successor Liquidating Trustee shall be entitled to accept as conclusive any final accounting and statement of Assets furnished to such successor Liquidating Trustee by any preceding Liquidating Trustee and shall be responsible only for those Assets included in such statement.

(c) No Implied Obligations. The Liquidating Trustee's liability shall be limited to the performance of such duties and obligations as are specifically set forth in this Plan. The Liquidating Trustee shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations, or warranties in this Plan, in the Disclosure Statement or in any documents or instrument evidencing or otherwise constituting a part of the Assets. The Liquidating Trustee makes no representations as to the value of the Assets.

(d) Reliance by Liquidating Trustee on Documents or Advice of Counsel or Other persons. The Liquidating Trustee may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel, statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Agent to be genuine and to be signed or presented by the proper persons. Subject to his obligation to meet the standard of care in Section 8.8(a), the Liquidating

Trustee shall have no liability for any act which he may do or omit to do in reliance upon the foregoing.

(e) No Personal Obligation for the Debtors' Liabilities. Holders of Claims and Equity Interests, and other persons transacting business with the Liquidating Trustee in his capacity as Liquidating Trustee, shall be limited to the Assets to satisfy any liability incurred by the Liquidating Trustee to such person in carrying out the terms of this Plan, and the Liquidating Trustee shall have no personal obligation to satisfy any such liability.

#### **8.9 Reports; Tax Returns.**

The Liquidating Trustee shall prepare and submit any and all reports required under the Plan and as may be further ordered by the Bankruptcy Court. After the Effective Date, the Liquidating Trustee shall be responsible for the filing of any and all federal and state tax returns required by law to be filed by the Reorganized Debtors, including the final tax returns, and shall pay all tax liabilities arising from such tax returns.

#### **8.10 Liquidating Trustee's Compensation.**

It is anticipated that the Liquidating Trustee can fulfill his duties on a part-time basis. The Liquidating Trustee's shall be entitled to compensation, at an hourly fee equal to the regular rates for the Liquidating Trustee as then in effect, provided that such hourly rate may be adjusted from time to time in the ordinary course of business. The Liquidating Trustee shall be entitled to reimbursement for all reasonable out-of-pocket expenses incurred in the performance of his duties under the Plan. The Liquidating Trustee shall not be entitled to a commission.

#### **8.11 Liquidating Trustee's Indemnification.**

The Liquidating Trustee shall be indemnified by, held harmless, and receive reimbursement from the Assets for any and all claims, actions, demands, losses, damages, expenses, and liabilities, including without limitation court costs, attorneys' fees and accountants' fees incurred, except in the event that a court of competent jurisdiction determines that such losses or claims were the result of a breach of the standard of care set forth in Section 7.8(a) of this Plan.

#### **8.12 Removal of Liquidating Trustee.**

The Liquidating Trustee may be removed only for cause upon a motion to the Court. If the Liquidating Trustee is removed for cause, the Liquidating Trustee shall not be entitled to any accrued but unpaid fees, reimbursements or other compensation unless approved by the Bankruptcy Court. The term "cause" shall mean: (a) the Liquidating Trustee's gross negligence or willful failure to perform his duties under this Plan, (b) the Liquidating Trustee's misappropriation or embezzlement of any Assets or the proceeds of the Assets, or (c) the Liquidating Trustee's continued or repeated negligence or failure to perform his duties under this Plan. If a Liquidating Trustee is unwilling or unable to serve by virtue of his inability to perform his duties due to death, illness, or other physical or mental disability, subject to a final accounting, such Liquidating Trustee shall be entitled to receive all accrued and unpaid fees, reimbursement of expenses, and other compensation incurred before his removal, and to any out-

of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Liquidating Trustee.

**8.13 Resignation of Liquidating Trustee.**

A Liquidating Trustee may resign upon motion to the Bankruptcy Court, which resignation shall become effective at the time specified by the Court. If a Liquidating Trustee resigns from his position hereunder, subject to a final accounting, such Liquidating Trustee shall be entitled to receive all accrued unpaid fees, reimbursement of expenses, and other compensation incurred before his resignation, and any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties to the successor Liquidating Trustee.

**8.14 Successor Liquidating Trustee.**

In the event that a Liquidating Trustee is removed, resigns, or otherwise ceases to serve as Liquidating Trustee, a successor Liquidating Trustee may be appointed by the Office of the United States Trustee, subject to approval by the Bankruptcy Court, or *sua sponte* by order of the Bankruptcy Court.

**8.15 Third Parties.**

There is no obligation on the part of any party transacting business with the Reorganized Debtors or any agent of the Reorganized Debtors (including the Liquidating Trustee) to: (a) inquire into the validity, expediency, or propriety of any transaction, (b) inquire into the authority of the Liquidating Trustee, or any agent of the Liquidating Trustee, to enter into or consummate the transaction, or (c) to monitor the application of the purchase money or other consideration paid or delivered to the Reorganized Debtors.

**ARTICLE IX  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**9.1 Assumption of Executory Contracts And Unexpired Leases.**

Pursuant to Sections 1123(b)(2) and 365(a) of the Bankruptcy Code, any Executory Contract or Unexpired Lease (excluding insurance policies) that (a) has not expired by its own terms on or prior to the Confirmation Date, (b) has not been assumed, assumed and assigned or rejected with the approval of the Bankruptcy Court on or prior to the Confirmation Date, (c) is not the subject of a motion to assume or reject which is pending at the time of the Confirmation Date, or (d) is not designated by the Chapter 11 Trustee as being an Executory Contract or Unexpired Lease to be assumed at the time of Confirmation of the Plan, shall be deemed rejected on the Effective Date. The entry of the Confirmation Order by the Bankruptcy Court shall constitute the approval of the rejection of Executory Contracts and Unexpired Leases pursuant to this section of the Plan and Sections 365(a) and 1123(b)(2) of the Bankruptcy Code.

**9.2 Payments Related to the Assumption of Executory Contracts And Unexpired Leases.**

(a) Payment of Claims Arising From Assumed Contracts And Leases. Cure Claims arising from the assumption of an Executory Contract or Unexpired Lease shall be paid in such amounts as are or have been determined by the Bankruptcy Court, in full and complete satisfaction, settlement and release of such Claims.

(b) Disputed Claims and Bar Date. If there is a dispute regarding (i) the amount of any claim arising from the assumption or rejection of an Executory Contract or Unexpired Lease, (ii) the ability of the Estates or the Liquidating Trustee or any assignee to provide “adequate assurance of further performance,” within the meaning of Section 365 of the Bankruptcy Code, under an Executory Contract or Unexpired Lease to be assumed, or (iii) any other matter pertaining to the assumption or assumption and assignment of any Executory Contract or Unexpired Lease, the payment of any Claim related to the foregoing will be made following entry of a Non-Appealable Order resolving the dispute and approving the assumption.

**9.3 Rejection Damage Claims.**

If the rejection of an Executory Contract or Unexpired Lease by the Estates pursuant to the Confirmation Order results in a Claim by the other party or parties to such Executory Contract or Unexpired Lease, any claim for damages, if not previously evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Estates, the Reorganized Debtors, and their respective properties, agents, successors, or assigns, unless a statement of claim is filed with the Bankruptcy Court and served upon the Chapter 11 Trustee or Liquidating Trustee and his counsel on or before thirty (30) days following the Confirmation Date. Unless otherwise ordered by the Bankruptcy Court or provided in the Plan, all such Claims for which statements of claim are timely filed and served on the Chapter 11 Trustee or Liquidating Trustee will be treated as Nonpriority Unsecured Claims subject to the provisions of the Plan. The Liquidating Trustee shall have the right to object to any such Claim for rejection damages in accordance with the Plan. This section shall pertain only to those claimants that are not Participants and who are parties to an Executory Contract or Unexpired Lease.

**ARTICLE X  
RELEASE AND SATISFACTION OF CLAIMS**

**10.1 Compromise and Settlement of Claims, Interests and Controversies.**

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Equity Interests and controversies relating to the contractual, legal and subordination rights that a holder of a Claim may have with respect to any Allowed Claim or Equity Interest, or any distribution to be made on account of such Allowed Claim or Equity Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of the full and complete compromise or settlement of all such Claims, Equity Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement



is in the best interests of the Debtors, their Estates and holders of Claims and Equity Interests and is fair, equitable and reasonable. Following the Effective Date, the Liquidating Trustee may compromise and settle Claims against the Debtors and their Estates and Causes of Action without any further notice to or action, order or approval of the Bankruptcy Court.

### **10.2 Release of Claims.**

Pursuant to Section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the distributions, rights and treatment that are provided in the Plan shall be in full and final satisfaction, settlement, and release, effective as of the Effective Date, of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Equity Interests in, the Debtors, the Assets, the Estates, and the Reorganized Debtors, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands and liabilities that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a proof of Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is filed or deemed filed pursuant to Section 501 of the Bankruptcy Code; (ii) a Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is Allowed pursuant to Section 502 of the Bankruptcy Code; or (iii) the holder of such a Claim or Equity Interest has accepted the Plan. Except as otherwise provided herein, any default by the Debtors with respect to any Claim or Equity Interest that existed before or on account of the filing of the Bankruptcy Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the release of all Claims and Equity Interests subject to the Effective Date occurring, except as otherwise expressly provided in the Plan.

### **10.3 Release by TelexFree**

Pursuant to Section 1123(b) of the Bankruptcy Code and to the extent allowed by applicable law, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, the Estate Released Parties are deemed released and discharged by the Debtors, the Reorganized Debtors, and the Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of TelexFree, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Reorganized Debtors, or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Equity Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Bankruptcy Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Estate Released Party, the restructuring of Claims and Equity Interests before or during the Bankruptcy Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Confirmation Date, other than Claims or liabilities arising out of or

relating to any act or omission of an Estate Released Party that constitutes a failure to perform the duty to act in good faith, with the care of an ordinarily prudent person and in a manner the Estate Released Party reasonably believed to be in the best interests of the Estates (to the extent such duty is imposed by applicable non-bankruptcy law) where such failure to perform constitutes willful misconduct or gross negligence.

#### **10.4 Exculpation**

Notwithstanding anything contained in the Plan to the contrary, effective as of the Effective Date, the Estates and the Estate Released Parties shall not have or incur any liability for any act or omission taken or not taken between the Petition Date and the Effective Date in connection with, relating to, or arising out of the Bankruptcy Cases, the negotiation and filing of the Disclosure Statement, the Plan or any document implementing the Plan, the settlement of Claims or renegotiation of executory contracts and leases, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, or any obligations that they have under or in connection with the Plan or the transactions contemplated in the Plan, except for their willful misconduct or gross negligence and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

#### **10.5 Injunction**

From and after the Effective Date, all Persons are permanently enjoined from commencing or continuing in any manner against the Chapter 11 Trustee, TelexFree, their Estates, the Reorganized Debtors, the Liquidating Trustee, their successors and assigns, and any of their assets and properties, any suit, action or other proceeding, on account of or respecting any Claim, demand, liability, obligation, debt, right, cause of action, interest or remedy released or to be released pursuant to the Plan or the Confirmation Order. The distributions, rights and treatment that are provided in the Plan shall be in full and final satisfaction, settlement, and release, effective as of the Effective Date, of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Equity Interests in, the Debtors, the Assets, the Estates, and the Reorganized Debtors and the Liquidating Trustee, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands and liabilities that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a proof of Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is filed or deemed filed pursuant to Section 501 of the Bankruptcy Code; (ii) a Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is Allowed pursuant to Section 502 of the Bankruptcy Code; or (iii) the holder of such a Claim or Equity Interest has accepted the Plan. This injunction shall not pertain to conduct not otherwise enjoined under the Bankruptcy Code.

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**10.6 Release of Liens**

Except as otherwise expressly provided in the Plan or in the Confirmation Order, on the Effective Date, to the extent such exist, all mortgages, deeds of trust, liens, pledges or other security interests against property of the Estates shall be fully released and discharged and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens, pledges or other security interest shall revert to the Estates and the Liquidating Trustee. To the extent deemed necessary or advisable by the Liquidating Trustee, any holder of a Claim shall promptly provide the Liquidating Trustee with an appropriate instrument of cancellation, discharge or release, as the case may be, in suitable form for recording wherever necessary to evidence such cancellation, discharge or release, including the cancellation, discharge or release of any Lien securing such Claim.

**10.7 Setoffs.**

Except as otherwise provided in the Plan, nothing contained in the Plan shall constitute a waiver or release by the Estates of any rights of setoff the Estates may have against any Person.

**ARTICLE XI  
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE OF THE PLAN**

**11.1 Conditions Precedent to Confirmation.**

The following are conditions precedent to Confirmation of the Plan, each of which must be satisfied unless waived in accordance with Section 11.3 of this Plan:

(a) The Confirmation Order and the Plan, including any schedules, documents, supplements and exhibits thereto, shall be in form and substance reasonably acceptable to the Chapter 11 Trustee.

**11.2 Conditions Precedent to the Effective Date.**

As a condition precedent to the occurrence of the Effective Date under the Plan, the Confirmation Order shall have been entered by the Bankruptcy Court and five (5) days shall have lapsed without the entry of an order staying the effect of the Confirmation Order.

**11.3 Waiver of Conditions.**

The conditions to Confirmation of the Plan and to occurrence of the Effective Date set forth in this Article XI may be waived at any time by the Chapter 11 Trustee; *provided, however*, that the Chapter 11 Trustee may not waive entry of the Confirmation Order.

**11.4 Effect of Non-occurrence of Conditions to the Effective Date.**

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors, or (b) prejudice in any manner the rights of the Estates, or constitute an admission, acknowledgement, offer or undertaking by the Estates or the Chapter 11 Trustee. Notwithstanding the foregoing, the non-occurrence of conditions to the Effective Date shall not preclude the Chapter 11 Trustee from requesting Bankruptcy Court approval of the Service Settlement.

**ARTICLE XII  
RETENTION OF JURISDICTION**

From and after the occurrence of the Effective Date, the Bankruptcy Court shall have jurisdiction over the matters arising out of, and related to, the Bankruptcy Cases and the Plan, as legally permissible, pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code including, without limitation:

- (a) To hear and determine any and all objections to the allowance, disallowance, determination, liquidation, classification or estimation of any Claims or Equity Interests or any controversies as to the priority and classification of any Claims (or any security with respect thereto) or Equity Interests or to estimate any Disputed Claim;
- (b) To hear and determine any and all Professional Fee Claims, authorized pursuant to the Plan or the Bankruptcy Code;
- (c) To hear and determine any and all applications (whether or not pending at or on the Confirmation Date) related to the rejection, assumption or assumption and assignment of Executory Contracts and Unexpired Leases to which the Debtors are a party, and to hear, determine and allow any Claims resulting therefrom;
- (d) To enforce and adjudicate the provisions of the Plan;
- (e) To correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in the Confirmation Order as may be necessary to carry out the purpose and the intent of the Plan;
- (f) To determine any Claim or liability to a governmental unit which may be asserted as a result of the transactions contemplated in the Plan;
- (g) To hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code;
- (h) To determine such other matters as may be necessary if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(i) To resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, enforcement or vacatur of the Plan or any Person's obligations incurred in connection with the Plan;

(j) To 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, except as otherwise provided herein;

(k) To determine any other matters that may arise in connection with the Plan, the Disclosure Statement, the Confirmation Order or any other contract, instrument, release, indenture or other agreement or document created in connection with the foregoing;

(l) To resolve any cases, controversies, suits or disputes with respect to releases, injunctions and other provisions contained in Article X hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions or other provisions;

(m) To hear and determine any Claims, rights, demands and Causes of Action arising prior to the Effective Date preserved pursuant to Section 6.4 of the Plan including but not limited to claims asserted by the Chapter 11 Trustee against the defendants in the Class Action Litigation and the Wanzeler Litigation; and

(n) To enter an order and/or final decree concluding the Bankruptcy Case.

### **ARTICLE XIII MISCELLANEOUS**

#### **13.1 Continuation of Injunctions or Stays until Effective Date.**

All injunctions or stays provided for in the Bankruptcy Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

#### **13.2 Exemption from Transfer Taxes.**

In accordance with Section 1146(c) of the Bankruptcy Code: (a) the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, including any merger agreements or agreements of consolidation, deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan, or the re-vesting, transfer or sale of any real or personal property of the Estates pursuant to, in implementation of, or as contemplated by the Plan including the vesting of the Assets in the Reorganized Debtors, (b) the making, delivery, creation, assignment, amendment or recording of any note or other obligation for the payment of money or any mortgage, deed of trust or other security interest under, in furtherance of, or in connection with the Plan, and the issuance, renewal, modification or securing of indebtedness by such means, and (c) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, shall not be

subject to any document recording tax, stamp tax, conveyance fee or other similar tax, sales tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment. Each recorder of deeds or similar official for any county, city or governmental unit in which any instrument under the Plan is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any such tax or governmental assessment.

### **13.3 Amendment or Modification of the Plan.**

Alterations, amendments or modifications of the Plan may be proposed in writing by the Chapter 11 Trustee at any time prior to the Confirmation Date, provided that the Plan, as altered, amended or modified, satisfies the conditions of Sections 1122 and 1123 of the Bankruptcy Code, and the Chapter 11 Trustee shall have complied with Section 1125 of the Bankruptcy Code. The Plan may be altered, amended or modified at any time before or after the Confirmation Date and before substantial consummation, provided that the Plan, as altered, amended or modified, satisfies the requirements of Sections 1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended or modified, under Section 1129 of the Bankruptcy Code. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder. The Chapter 11 Trustee or the Liquidating Trustee may, without notice to holders of Claims insofar as it does not materially and adversely affect the interests of any such holders, correct any defect or omission in the Plan and any exhibit to the Plan or in any Plan Document.

### **13.4 Severability.**

If, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court may, upon the request of the Chapter 11 Trustee, alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable according to its terms.

### **13.5 Revocation or Withdrawal of the Plan.**

The Chapter 11 Trustee reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Chapter 11 Trustee revokes or withdraws the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void.

### **13.6 Binding Effect.**

The rights, duties and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Person.

**13.7 Notices.**

All notices, requests and demands to or upon the Chapter 11 Trustee or the Liquidating Trustee shall only be effective if in writing and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered, addressed as follows:

Stephen Darr  
Managing Director  
Huron Consulting Group  
100 High Street  
Suite 2301  
Boston, MA 02110  
Tel: 617-226-5593

With a copy to:

MURPHY & KING, Professional Corporation  
One Beacon Street  
Boston, MA 02108  
Attn: Harold B. Murphy, Esq.  
Andrew G. Lizotte, Esq.  
Tel: 617- 423-0400

**13.8 Governing Law.**

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts, without giving effect to the principles of conflicts of law of such jurisdiction.

**13.9 Post-Confirmation Fees, Final Decree.**

The Liquidating Trustee will be responsible for timely payment of the fees incurred pursuant to 28 U.S.C. § 1930(a)(6) until the Bankruptcy Cases are converted, dismissed, or closed. Such fees shall be computed based only upon disbursement of Cash. The Liquidating Trustee may request that the Bankruptcy Cases be closed notwithstanding that there may be proceedings relating to Disputed Claims still pending subject to the right to request that the Bankruptcy Case be reopened as circumstances require. After Confirmation, the Liquidating Trustee will serve the United States Trustee with a quarterly financial report for each quarter (or portion thereof) the case remains open. The quarterly financial report shall include the following:

- (a) A statement of all disbursements made during the course of the quarter, whether or not pursuant to the Plan;
- (b) A summary, by class, of amounts distributed or property transferred to each recipient under the Plan, and an explanation of the failure to make any distributions or transfers of property under the Plan;
- (c) The Liquidating Trustee's projections as to his continuing ability to comply with the terms of the Plan;
- (d) A description of any other factors which may materially affect the Liquidating Trustee's ability to consummate the Plan; and
- (e) An estimated date when an application for final decree will be filed with the court (in the case of the final quarterly report, the date the decree was filed).

The Liquidating Trustee shall provide an informational report to the United States respecting all distributions from the Restitution Funds.

**13.10 Headings.**

Headings are used in the Plan for convenience and reference only, and shall not constitute a part of the Plan for any other purpose.

**13.11 Inconsistency.**

In the event of any inconsistency between the Plan and the Disclosure Statement or any other instrument or document created or executed pursuant to the Plan, the terms of the Plan shall govern.

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By: Stephen B. Darr  
Chapter 11 Trustee

/s/ Andrew G. Lizotte  
MURPHY & KING, Professional Corporation  
One Beacon Street  
Boston, MA 02108  
Attn: Harold B. Murphy, Esq. (BBO #362610)  
Andrew G. Lizotte, Esq. (BBO #559609)  
Telephone: (617) 423-0400  
Facsimile: (617) 556-8985



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