

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

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| <p>In re:</p> <p>TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC.,</p> <p style="text-align: center;">Debtors.</p> | <p>Chapter 11 Cases</p> <p>14-40987-MSH 14-40988-MSH 14-40989-MSH</p> <p>Jointly Administered</p> |
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CERTIFICATE OF SERVICE

I, Andrew G. Lizotte, hereby certify that I have this day caused to be served a copy of the following documents via operation of this Court’s CM/ECF System, by Electronic Mail and by First Class Mail, postage prepaid as indicated on the attached service listed as **(I) Group A** and by First Class Mail, Postage Prepaid as indicated to **(II) Group B**:

- *First Amended Plan of Reorganization of Stephen B. Darr, Chapter 11 Trustee of Telexfree, LLC, Telexfree, Inc. and Telexfree Financial, Inc.;*
- *First Amended Disclosure Statement with Respect to First Amended Liquidating Plan of Reorganization of Stephen B. Darr, Chapter 11 Trustee of Telexfree, LLC, Telexfree, Inc. and Telexfree Financial, Inc.;*
- *Order (I) Approving First Amended Disclosure Statement with Respect to the First Amended Liquidating Plan, (II) Establish a Record Holder Date, (III) Approving Solicitation Procedures, Form of Participant Notice and Forms of Ballots, (IV) Establishing Deadlines for the Filing of Objections to Confirmation of Chapter 11 Plan and for the Submission of Ballots, and (V) Scheduling Hearing on Plan Confirmation;*
- *Important Notice Regarding Liquidating Plan; and*
- *Class 4 Ballot for Accepting or Rejecting Liquidating Plan of Reorganization*

/s/ Andrew G. Lizotte
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Dated: June 2, 2020
780785



Telexfree, LLC
Solicitation Service List

**GROUP A: By CM/ECF, Electronic Mail and First Class Mail
(as indicated)**

***(Received (i) Plan, (ii) Disclosure Statement, (iii) Order of Court,
(iv) Important Notice re: Liquidating Plan)***

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GROUP B:

**PLAN, DISCLOSURE STATEMENT, ORDER OF
COURT, PLAN SUMMARY and VENDOR
BALLOT**

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INTRODUCTION¹

Pursuant to Section 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Stephen B. Darr, the Chapter 11 Trustee (“Chapter 11 Trustee”) of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (together, “TelexFree” or the “Debtors”) provides this disclosure statement (the “Disclosure Statement”) to all of TelexFree’s known creditors² and parties in interest. The purpose of this Disclosure Statement is to provide the information deemed necessary for creditors to make an informed decision in exercising their rights to vote on the *Liquidating Plan of Reorganization of Stephen B. Darr, Chapter 11 Trustee of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.* (the “Plan”) dated as of the date of this Disclosure Statement. The Chapter 11 Trustee has filed the Plan simultaneously with the filing of this Disclosure Statement. The description of the Plan in this Disclosure Statement is in summary form and is qualified by reference to the actual terms and conditions of the Plan, which should be reviewed carefully before making a decision to accept or reject the Plan.

The information contained in this Disclosure Statement has been provided by the Chapter 11 Trustee based upon information available to the Chapter 11 Trustee regarding TelexFree’s records, business and affairs. Except as otherwise expressly indicated, such information has not been subject to audit or independent review. Although great effort has been made to be accurate, neither the Chapter 11 Trustee nor his respective professional advisors warrant the accuracy of the information contained in this Disclosure Statement.

No representations concerning TelexFree, including the value of their Assets or the aggregate dollar amount of Claims which may be allowed, are authorized other than as set forth in this Disclosure Statement. Any representations, warranties or agreements made to secure acceptance or rejection of the Plan that differ from those contained in this Disclosure Statement should not be relied upon in voting on the Plan.

Any descriptions of legal principles contained in this Disclosure Statement do not constitute a legal opinion and may not be relied upon by any creditor or party in interest. Each creditor or party in interest should consult with their own legal advisors with respect to any legal principles described in this Disclosure Statement.

This Disclosure Statement has been prepared by the Chapter 11 Trustee to provide creditors with adequate information so that they can make an informed judgment about the Plan. Each creditor should read this Disclosure Statement or the Plan Summary and the Plan in their entirety before voting on the Plan.

Subject to Bankruptcy Court approval, Participants will receive an “Important Notice Regarding Liquidating Plan” (the “Plan Summary”) which will provide a summary of the Participants’ Plan treatment, options, and procedures for completing the Ballot and

¹ Capitalized terms not otherwise defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan.

² For purposes of the Disclosure Statement, “creditors” shall mean any person who has filed a Claim against TelexFree, including Participants and Vendors, and whose claim has not been disallowed.

obtaining payment from the Estates. The Plan Summary will refer Participants to the website <http://www.kccllc.net/telexfree> so that they can review the Plan and Disclosure Statement.

The Chapter 11 Trustee believes that the Plan provides the quickest and largest recovery to creditors. **ACCORDINGLY, THE CHAPTER 11 TRUSTEE URGES ALL CREDITORS TO VOTE IN FAVOR OF THE PLAN.**

**I. QUESTIONS AND ANSWERS REGARDING THIS
DISCLOSURE STATEMENT AND PLAN**

A. What is Chapter 11?

Chapter 11 is the primary chapter of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) that addresses reorganization of business enterprises. Chapter 11 is designed to promote equality of treatment for creditors, subject to certain priority distribution rules of the Bankruptcy Code.

The filing of a Chapter 11 case creates a bankruptcy “Estate” that includes all of the property interests of the debtor, in this case TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.

Confirmation of a plan of reorganization by the Bankruptcy Court is the principal objective of a Chapter 11 case. The Plan provides for the distribution of assets to creditors and is binding upon TelexFree, all creditors or equity interest holders of TelexFree, and any other person as may be ordered by the Bankruptcy Court.

B. Why is the Chapter 11 Trustee sending me this Disclosure Statement?

Stephen B. Darr, the Chapter 11 Trustee of TelexFree, is requesting Bankruptcy Court approval of the Plan filed with this Disclosure Statement. Before soliciting votes to accept the Plan, the Chapter 11 Trustee is required by the Bankruptcy Code to prepare and circulate a Disclosure Statement containing adequate information to enable creditors to make an informed judgment regarding acceptance of the Plan. This Disclosure Statement is being submitted in accordance with these requirements.

C. Am I entitled to vote on the Plan?

Your ability to vote on, and your distribution under, the Plan, if any, depends upon the type of Claim you hold. Each category of holders of Claims and Equity Interests, as set forth in Article III of the Plan, is referred to as a “Class”. Each Class’s voting status is described below. If you joined TelexFree as a member or promoter to purchase and sell Membership Plans and/or VoIP Plans, you are a “Participant” and a member of either Class 2 (for Participants who hold an Allowed Claim of \$4,250 or less) or Class 3 (for all other Participants holding Allowed Claims).

| Class | Claims and Equity Interests | Status | Voting Rights |
|-------|--------------------------------|------------|----------------------|
| 1 | Priority Claims | Unimpaired | Not entitled to vote |
| 2 | Participant Convenience Claims | Impaired | Entitled to vote |
| 3 | General Participant Claims | Impaired | Entitled to vote |
| 4 | Vendor Claims | Impaired | Entitled to vote |
| 5 | Equity Interests | Impaired | Not entitled to vote |

D. How do I vote for or against the Plan and what is the voting deadline?

Detailed instructions regarding how to vote on the Plan are contained on the ballots distributed to holders of Claims that are entitled to vote on the Plan. Each ballot must be properly executed, completed, and delivered in accordance with the instructions provided.

The deadline to vote on the Plan is **June 30, 2020 at 5:00 p.m. Eastern Time.**

E. What are the sources of funds to make payments to Participants under the Plan?

The Plan will be funded from Restitution Funds, SEC Settlement Funds, and Available Cash.

Restitution Funds consist of those monies recovered by the United States after the filing of the Bankruptcy Cases and turned over to the Chapter 11 Trustee. To date, the United States has turned over to the Chapter 11 Trustee the sum of \$145,471,294. The Chapter 11 Trustee is informed that additional Restitution Funds will be turned over to him by the United States in the approximate amount of \$11,000,000. The Restitution Funds will be paid to holders of Allowed Participant Claims, less Restitution Costs up to \$7,500,000. Restitution Costs are those costs associated with resolving Participant Claims and distributing the Restitution Funds to Participants.

The SEC Settlement Funds consists of those monies recovered by the Chapter 11 Trustee in connection with certain settlements involving the Chapter 11 Trustee, the SEC, and third parties. To date, the Chapter 11 Trustee has recovered approximately \$2,500,000 in SEC Settlement Funds. The SEC Settlement Funds will be paid to holders of Allowed Participant Claims, net of SEC Settlement Costs equal to ten percent (10%) of such funds to cover the costs associated with implementing the SEC settlements and distributing the SEC Settlement Funds.

Available Cash consists of all Cash recovered by the Chapter 11 Trustee, less amounts necessary to pay Allowed Claims under the Plan other than Participant Claims and less costs of administration. Excluding the Restitution and SEC Settlement Costs, the Cash in the Estates is currently approximately \$18,000,000. Additional funds in an undetermined amount are expected to be recovered in the future from the Class Action Litigation and other avoidance actions.

F. How much will I receive from the TelexFree Estates if the Plan is approved?

Only Participants who have Allowed Claims will be entitled to receive a distribution. If your claim is subject to a pending objection, you will not be entitled to receive a distribution until and unless the Claim has been Allowed; holders of claims that have already been disallowed and Participants who have not filed a claim will not receive a distribution.

The following chart provides a summary of the anticipated recovery to holders of Allowed Claims and Equity Interests under the Plan. Any estimates of Claims and Equity Interests in this Disclosure Statement may vary from the final amounts allowed by the Bankruptcy Court. Your right to receive distributions under the Plan depends upon the ability of the Chapter 11 Trustee to obtain confirmation of the Plan and meet the conditions necessary to consummate the Plan.

The proposed distributions and classifications under the Plan are based upon a number of factors, including amounts actually recovered by the United States and turned over to the Chapter 11 Trustee for distribution, as well as the total amount of Claims that are Allowed. Accordingly, recoveries actually received by holders of Claims may differ materially from the projected recoveries listed in the table below.

THE PROJECTED RECOVERIES SET FORTH BELOW ARE ESTIMATES ONLY AND THEREFORE ARE SUBJECT TO CHANGE. FOR A COMPLETE DESCRIPTION OF THE CHAPTER 11 TRUSTEE'S CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS, YOU SHOULD REFER TO THE ENTIRE PLAN.

[remainder of page intentionally left blank]

| Class | Claim or Equity Interest | Treatment | Estimated Amount of Claims | Projected Plan Recovery |
|-------|--|--|----------------------------|---|
| N/A | Service Settlement Claim | Payment in full on or about Effective Date. | \$7,741,220 | 100% |
| N/A | Service Subordinated Tax Claims | Subordinated to payment in full of Allowed Administrative Expense Claims and Allowed Participant Claims. | \$7,741,220 | 0% |
| | Miscellaneous State Tax Claims | Payment in full upon the later of the Effective Date or entry of an order of the Bankruptcy Court allowing such Claim. | \$200,000 | 100% |
| 1 | Other Priority Claims | Payment in full in full upon the later of the Effective Date or entry of an order of the Bankruptcy Court allowing such Claim. | \$0 | 100% |
| 2 | Participant with claims of \$4,250 or less (estimated number of claims 78,759) | A single distribution from the Restitution Funds as soon as practicable after the later of the Effective Date or entry of an order of the Bankruptcy Court allowing such Claim. | \$125,000,000 | 43% |
| 3 | Participant Claims other than Class 2 (estimated number of claims 22,327) | One or more distributions as follows: (i) An initial distribution from the Restitution Funds, the SEC Settlement Funds, and Available Cash, in the approximate amount of 39% of each Allowed Claim, as soon as practicable after the later of the Effective Date or the entry of an order of the Bankruptcy Court allowing such Claim,; (ii) Additional distributions from Restitution Funds, SEC Settlement Funds, and Available Cash as and when such proceeds become available to the Liquidating Trustee, in the estimated range of 2-10% of each Allowed Class 3 Claim. | \$230,000,000 | Initial distribution (39%); additional distribution range (2-10%) |
| 4 | Vendor Claims (estimated number of claims less than 10) | A single distribution from Available Cash as soon as practicable after the later of the Effective Date or the entry of an order of the Bankruptcy Court allowing such Claim equal to a <i>pro rata</i> share of \$50,000. | \$75,000 to \$125,000 | 40% to 65% |
| 5 | Equity Interests | Equity Interests shall be deemed canceled and terminated as of the Effective Date, and the holders of Equity Interests shall not receive or retain any property or interest in property on account of such Equity Interest. | \$0 | 0% |

G. When do I get my distribution, upon Confirmation or when the Plan becomes effective, and what is meant by “Confirmation” and “Effective Date”?

“Confirmation” of the Plan refers to approval of the Plan by the Bankruptcy Court. The Plan does not become effective, however (the “Effective Date”) until the conditions set forth in the Plan have been satisfied including sufficient number of votes in favor of the Plan are submitted by Participants. Initial distributions to holders of Allowed Participant Claims will occur as soon as practicable after the Effective Date, as specified in the Plan. The timing and amount of any additional distributions to holders of Allowed Participant Claims will depend upon the Liquidating Trustee’s recovery of additional funds and the determination of the final amount of Allowed Participant Claims.

H. What do I need to do to get my distribution?

You should receive electronically the Plan Summary containing a link to the Ballot. In order to receive a distribution on an Allowed Claim, you must complete and submit the Ballot. The Ballot will require you to provide certain information, including the method of electronic payment to you. Claimants who are not United States residents will not receive a distribution unless they provide the Ballot information to ensure that the distribution is in compliance with the Office of Foreign Asset Control. If you do not complete the Ballot, you will not receive a distribution.

I. What happens to my recovery if the Plan is not confirmed or does not go effective?

If the Plan is not confirmed or does not go effective, there will be a substantial delay in you receiving a distribution and it is likely that you will receive less than the amounts proposed in the Plan. For a more detailed discussion of the consequences of failure to confirm the Plan, see Article XV of this Disclosure Statement.

J. Will the final amount of Participant Claims affect my distribution under the Plan?

The final amount of Allowed Participant Claims will not affect distributions to holders of Allowed Class 2 Claims. The final amount of Allowed Participant Claim will affect the ultimate recovery to holders of Allowed Class 3 Claims.

K. Why is the Bankruptcy Court holding a Confirmation Hearing and when is the hearing?

The Bankruptcy Code requires the Bankruptcy Court to hold a hearing on confirmation of the Plan. The Confirmation Hearing, once set, may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served in accordance with the Bankruptcy Rules, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put into place additional procedures governing the Confirmation

Hearing. Subject to Section 1127 of the Bankruptcy Code, the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

The Bankruptcy Code provides that a party in interest may object to Confirmation. An objection to Confirmation of the Plan must be filed with the Bankruptcy Court and served on the Chapter 11 Trustee **by June 30, 2020 at 4:30 p.m. Eastern Time** in accordance with the applicable order of the Bankruptcy Court so that it is actually received on or before the deadline to file such objections as set forth therein.

The Bankruptcy Court has scheduled a hearing on confirmation of the Plan to commence on **July 8, 2020 at 2:00 Eastern Time**, or as soon thereafter as the parties can be heard. The Confirmation Hearing will be held before the Honorable Melvin S. Hoffman, United States Bankruptcy Judge, John W. McCormack Post Office and Court House, 12th Floor, 5 Post Office Square, Boston, Massachusetts, 02109. At the hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements of the Bankruptcy Code, including whether it is feasible and whether it is in the best interests of holders of Claims and Equity Interests. The Bankruptcy Court will also receive and consider a Report of Plan Voting prepared by the Chapter 11 Trustee and his agents and summarizing the votes for acceptance or rejection of the Plan by the parties entitled to vote.

L. Who do I contact if I have additional questions regarding the Disclosure Statement and the Plan?

If you have any questions regarding this Disclosure Statement or the Plan, please contact the Chapter 11 Trustee by electronic mail at: **ClaimResponse@TelexFreeClaims.com**.

M. Does the Chapter 11 Trustee recommend voting in favor of the Plan?

Yes, the Chapter 11 Trustee believes that the Plan is in the best interests of creditors because it will provide for the largest and fastest return to creditors.

II. GENERAL INFORMATION

2.1 Introduction

TelexFree commenced these Chapter 11 cases by filing voluntary Chapter 11 petitions for relief on April 13, 2014 (the "Petition Date") in the United States Bankruptcy Court for the District of Nevada.

On or about April 22, 2014, the Office of the United States Trustee filed a motion for the appointment of a Chapter 11 Trustee based upon the allegations that TelexFree was operating a Ponzi scheme. On April 23, 2014, the Securities and Exchange Commission ("SEC") filed a motion to transfer venue of the TelexFree bankruptcy cases to the Bankruptcy Court for the District of Massachusetts. By order dated May 6, 2014, the motion to change venue was allowed, and the TelexFree bankruptcy cases were transferred to the United States Bankruptcy Court for the District of Massachusetts (hereinafter, the "Bankruptcy Court").

On May 30, 2014, the Bankruptcy Court approved the motion to appoint a Chapter 11 Trustee. On June 6, 2014, Stephen B. Darr was appointed the Chapter 11 Trustee of the Bankruptcy Estates of TelexFree.

2.2 Description of the Debtors

TelexFree, Inc. is a Massachusetts corporation. Carlos Wanzeler and James Merrill are identified as the shareholders of TelexFree, Inc. TelexFree, LLC is a Nevada corporation that was incorporated by Wanzeler, Merrill, and Carlos Costa, a resident of Brazil. Wanzeler and Merrill are believed to be the sole members of TelexFree, LLC. TelexFree Financial, Inc. is a Florida corporation formed in 2013. TelexFree Financial, Inc. is wholly owned by TelexFree, LLC.

TelexFree ostensibly operated a multi-level marketing enterprise engaged in the sale of voice over internet protocol (“VOIP”) services, but, in actuality, TelexFree operated a Ponzi and pyramid scheme involving as many as a million or more participants in multiple countries (hereinafter, persons who became involved in TelexFree’s Ponzi and pyramid scheme shall be referred to as “Participants”). TelexFree, and an affiliated company located in Brazil known as Ympactus Comercial Ltda. (“Ympactus”), together extracted as much as \$1,800,000,000 from individuals located throughout the world over a period of approximately two years.³

While TelexFree offered to provide a VOIP service for a monthly charge of \$49.90 to conduct international phone calls, TelexFree’s primary business was the recruitment of new Participants to generate revenues to enable it to perpetrate the Ponzi scheme while benefiting Wanzeler, Merrill, Costa and certain Participants.

2.3 Nature of TelexFree Business and Compensation

While Participants could purchase a VOIP plan, Participants overwhelmingly purchased membership plans which allowed the Participants to earn ‘credits’. Each time that a Participant purchased a membership plan, the Participant established a User Account with TelexFree. Depending on the membership plan purchased, Participants received a number of VOIP service packages and were required to place daily internet advertisements. In exchange for the placement of the advertisements, Participants received TelexFree “credits” on a weekly basis. Participants could also receive credits based upon bonuses or commissions “earned” during their involvement in the scheme. Bonuses and commissions were principally based upon the recruitment of new Participants into the scheme as part of a Participant’s “downline.”

Participants could also receive credits for commissions arising from the sale of the VOIP service. There was no requirement, however, that Participants actually sell the VOIP service, and VOIP sale revenues were an insignificant portion of the total revenues collected by TelexFree. The credits issued to Participants could be redeemed for cash, transferred to another Participant, or applied in satisfaction of an invoice for the purchase of a membership plan.

³ Individuals who participated in Ympactus are not eligible to make a claim in the TelexFree bankruptcy for their participation in Ympactus.

TelexFree's business plan was complicated in and of itself. The scheme's complexity was expanded further, however, through a web of inter-Participant activity. Participants could purchase membership plans by making payment directly to TelexFree. Transactions where Participants paid TelexFree directly to satisfy an invoice for a membership plan or VoIP Package are referred to as "Direct Transactions". Rather than paying funds directly to TelexFree, many Participants became involved in TelexFree by paying their membership fee (and on occasion a VoIP plan fee) directly to a recruiting Participant. In these circumstances, the recruiting Participant retained the payment received from the recruited Participant and satisfied the TelexFree invoice to the recruited Participant by redeeming his/her accumulated credits (hereinafter referred to as "Triangular Transactions").

There also appears to have been an active secondary market of buying and selling credits between Participants, unrelated to the issuance of a TelexFree invoice. In some instances, Participants sold credits "earned" through their involvement in the Ponzi scheme. In other instances, TelexFree issued to Participants "manual credits," that is, credits issued by TelexFree not based upon any aspect of the compensation scheme, which credits could then be sold to other Participants. As discussed in more detail below, some of the manual credits were issued to associates of Wanzeler and Costa without consideration and who in turn are believed to have sold those manual credits for cash.

The TelexFree Ponzi and pyramid scheme was modeled after a similar scheme run by Wanzeler and Costa in Brazil through an entity known as Ympactus. Ympactus initially grew much more rapidly than TelexFree, with growth accelerating in the fall of 2012 through the early summer of 2013. In June 2013, the Brazilian authorities suspended the operations of Ympactus and froze its assets in Brazil based upon allegations that it was a Ponzi scheme. Following the shutdown of Ympactus, the focus of the Ponzi scheme shifted to expanding TelexFree. TelexFree's revenues increased dramatically such that by the end of 2013 and early 2014, TelexFree was generating as much as \$50,000,000 per month, without regard to inter-Participant transactions for which cash did not pass to TelexFree. As their operations grew in size and complexity, TelexFree was unable to maintain any semblance of normal banking relationships. Multiple banks closed TelexFree's operating accounts apparently based upon suspicious activity in those accounts.

In March 2014, TelexFree introduced a new business plan in a vain attempt to address the illegal nature of the scheme. The new plan was unanimously rejected by the Participants and triggered a 'run on the bank' where \$58,000,000 or more was paid out to certain Participants in several weeks. During the same period, an additional \$100,000,000 was requested by Participants but was not paid. As a consequence, the Debtors filed their Chapter 11 cases in the United States Bankruptcy Court for the District of Nevada on April 13, 2014.

After the bankruptcy cases were transferred to Massachusetts and the Chapter 11 Trustee was appointed, the Department of Justice ("DOJ") brought a criminal action against the Debtors' then principals, Carlos Wanzeler and James Merrill. Merrill entered a guilty plea and was sentenced to seventy-two (72) months in prison. Wanzeler fled the country. Upon

information and belief, the United States and Brazil are negotiating an agreement for Wanzeler's return to the United States.

III. SIGNIFICANT POST PETITION EVENTS

3.1 Reconstruction of Debtors' Records

Immediately following the filing by TelexFree of its bankruptcy cases, the SEC commenced an action against TelexFree, its officers and certain high-level Participants and Promoters in the United States District Court in Massachusetts.⁴ The SEC action alleged, among other things, that TelexFree was engaged in a Ponzi and pyramid scheme and was raising funds through the fraudulent and unregistered offering of securities. Contemporaneously with the commencement of an action by the SEC, federal authorities including Homeland Securities Investigations ("HSI") seized TelexFree's assets, books, and records, including among other things, forty-six (46) computers and servers that housed substantially all of the data to reconcile Participant activity. The information on the computers and servers comprised the backbone of TelexFree's system of accounting for Participant activity.

Most of TelexFree's records were kept electronically on the computers and servers that were seized by HSI. Following the Chapter 11 Trustee's appointment, HSI made copies of TelexFree's electronic records available to the Chapter 11 Trustee. Upon receipt of the electronic records, the Chapter 11 Trustee undertook the laborious task of reconstructing TelexFree's financial records.

TelexFree's principal electronic recordkeeping system was known by the acronym "SIG." SIG was used by TelexFree to record and track Participants' activity. TelexFree's database contains the combined activity of both Ympactus and TelexFree. It was therefore necessary to separately identify activity of the Participants from that of the participants in the Ympactus scheme (the "Ympactus Participants") for purposes of administering TelexFree bankruptcy cases. The Chapter 11 Trustee was able to identify and segregate the TelexFree Participants from Ympactus Participants based on various factors including the currency used for payment of the membership invoice, the country of origin for a Participant's bank accounts, electronic mail addresses, and physical mail addresses.

The database identified more than 2,100,000 electronic mail addresses for Participants in the operations of both TelexFree and Ympactus. Of these, the Chapter 11 Trustee identified approximately 1,000,000 as belonging to Participants in TelexFree, with the balance related to Ympactus. The database also identified more than 17,000,000 different User Accounts, of which approximately 12,000,000 were those of TelexFree Participants and 5,000,000 were those of Ympactus Participants.

After reconstructing SIG, the Chapter 11 Trustee worked to better understand the SIG database structure. Because a new User Account was established each time a Participant purchased a membership plan, it was essential for the Chapter 11 Trustee to be able to determine

⁴ In addition to the SEC, the Commonwealth of Massachusetts, Securities Division commenced an administrative proceeding against TelexFree.

which User Accounts should be linked to specific Participants. Unfortunately, the database did not link individuals to their User Accounts. Thus, the Chapter 11 Trustee developed an algorithm to link User Accounts to Participants to enable a means to link all of an individual Participant's User Accounts.

Once the Chapter 11 Trustee was able to reconstruct TelexFree's financial records and develop the algorithm to link User Accounts, he was able to better understand the complex web of transactions that made up the TelexFree scheme. The Chapter 11 Trustee was further able to extract detailed information from the records to determine the amount each Participant invested in TelexFree and the payments each Participant received from TelexFree. The ability to link individual User Accounts and determine the amount each Participant invested and received from TelexFree was critical to a determination by the Chapter 11 Trustee of which Participants were Net Losers, that is, Participants who invested more in TelexFree than the Participants received back from TelexFree, and which Participants were Net Winners, that is, Participants who received more from TelexFree than the Participants invested in TelexFree.

3.2 Critical Rulings by the Bankruptcy Court

A. Bankruptcy Court determines TelexFree to be a Ponzi and Pyramid Scheme

In addition to the examination of the financial records of TelexFree and the development of the algorithm, the Chapter 11 Trustee conducted interviews with former employees of TelexFree and a sample of Participants. After evaluating all of the information which he gathered through his various investigations and in consultation with his counsel, the Chapter 11 Trustee concluded that the TelexFree scheme had aspects of both a Ponzi scheme and a pyramid scheme.

TelexFree was a Ponzi scheme because the membership fees paid by new Participants were used largely to satisfy compensation requirements for existing Participants. It was a pyramid scheme because existing Participants were paid to recruit new Participants into their "downline", thereby forming a triangle, or pyramid, underneath them, and were compensated based in part upon the efforts of those Participants who were members of their downline, without regard to the sale of an actual product, the VoIP Plan. The Chapter 11 Trustee further determined that a finding by the Bankruptcy Court that TelexFree operated a Ponzi and pyramid scheme would establish certain presumptions that would facilitate the pursuit of recovery actions and the resolution of Participant claims.

Accordingly, on or about October 7, 2015, the Chapter 11 Trustee filed a motion for a determination that TelexFree was operating a Ponzi and pyramid scheme (the "Ponzi Motion"). Judge Hoffman of the Bankruptcy Court conducted an evidentiary hearing on the Ponzi Motion on November 24, 2015. On November 25, 2015, Judge Hoffman found that TelexFree had perpetrated a Ponzi and pyramid scheme and that such finding was the law of the cases. The Ponzi finding was important because it created a presumption that transfers made by or on behalf of TelexFree to Participants were made by TelexFree with actual intent to defraud creditors, and that TelexFree was insolvent from its inception. As discussed later, these findings were critical to the Chapter 11 Trustee's ability to pursue recovery from Net Winners.

B. Bankruptcy Court determines that Net Equity Formula governs the Allowance of Participant Claims

The Ponzi Motion further sought a determination from the Bankruptcy Court that the amount of a Participant's claim should be based upon the amount that the Participant paid to TelexFree, less the amount the Participant received from TelexFree. This methodology for determining claims is referred to as "Net Equity Formula." Under the Net Equity Formula, only Participants who paid more to TelexFree than they received from TelexFree ("Net Losers") would be entitled to receive a distribution from the bankruptcy cases.

Establishing a methodology for allowance of Participant claims was central to the administration of the bankruptcy cases. Claims of Participants in a Ponzi scheme bankruptcy case are typically determined based upon some variation of the "Net Equity" methodology – that is, an investor has a claim only to the extent that he can establish that he is a "Net Loser", that is, the amount of his investment exceeded any money he received from his participation in the Ponzi scheme. Conversely, "Net Winners" are subject to actions by an estate representative to recover amounts received in excess of the principal invested. Lost interest, fictitious profits, and other types of losses are generally not permitted.

The use of the Net Equity Formula in the TelexFree bankruptcy cases was complicated by the unique circumstances presented in these cases by the Triangular Transactions. The calculation of Net Equity was unique because Participants often paid into the scheme through the use of Triangular Transactions. The Chapter 11 Trustee concluded that amounts paid by new Participants for a TelexFree Membership Plan or VoIP Plan pursuant to a Triangular Transaction should be included in determining Net Equity. Otherwise, the result would be inequitable, in that Participants who purchased TelexFree plans directly from TelexFree would be allowed a claim, while those purchasing a membership plan through a Triangular Transaction would be deprived of a claim. Because the bankruptcy Estates would recognize a claim for amounts paid to purchase a TelexFree plan through a Triangular Transaction, fairness required that Participant's claims should be reduced for amounts paid by a recruited Participant to a recruiting Participant through a Triangular Transaction.

By order dated January 26, 2016, Judge Hoffman approved the use of the Net Equity Formula for determining Participant Claims. The order provided that Participant Claims would be determined based upon the difference between amounts invested into the TelexFree scheme and amounts recovered, including account activity in Triangular Transactions.

To further ensure that only Net Losers were receiving distributions, the Chapter 11 Trustee applied the algorithm that he had developed to link User Accounts to capture all of the Participants' accounts so that all of the transactions were properly counted in making the Net Equity determination as to the Participant's right to participate in the distribution.

C. Bankruptcy Court determines that the Chapter 11 Trustee had the exclusive right to pursue Net Winners

During the course of the bankruptcy cases, Judge Hoffman was called upon to determine the Chapter 11 Trustee's right as the exclusive person to pursue recovery against Net Winners

arising from Triangular Transactions. On September 23, 2015, a group of creditors who separately pursued recovery in multi-district litigation in the United States District Court for the District of Massachusetts amended their complaint to pursue claims against certain Net Winners. Those creditors asserted that they, and not the Chapter 11 Trustee, had the right to sue and collect from those Net Winners. The action by those creditors and their assertion of the right to pursue such claims was in direct conflict with the Chapter 11 Trustee's exclusive right to pursue claims against the same Net Winners for the benefit of the bankruptcy Estates. As a consequence, on October 7, 2015, the Chapter 11 Trustee brought an action before the Bankruptcy Court seeking a determination that the Chapter 11 Trustee had the exclusive right to pursue Net Winners in Triangular Transactions.⁵

After briefing by the parties, Judge Hoffman determined on December 18, 2017 that the Chapter 11 Trustee had the sole and exclusive right to pursue claims against Net Winners on account of amounts received from Triangular Transactions. Judge Hoffman's proposed findings of fact and conclusions of law were adopted by the United States District Court on October 1, 2018. The creditors then appealed the findings and conclusions to the Court of Appeals for the First Circuit which also affirmed Judge Hoffman's ruling as adopted by the United States District Court by judgment dated October 29, 2019.

D. The Bankruptcy Court determines that the Service's claim for return of the tax refund is a prepetition claim.

After his appointment, the Chapter 11 Trustee filed original and/or amended tax returns for TelexFree for years 2012, 2013, and 2014 asserting no tax liability and requesting refunds for 2012 in the amount of \$886,700 and for 2013 in the amount of \$15,792,982. In December 2016, the Internal Revenue Service (the "Service") issued a refund for 2013 in the amount of \$15,532,440 (the "2013 Tax Refund"). Subsequently, the Service asserted that the 2013 Tax Refund had been paid in error and demanded that the Chapter 11 Trustee return the monies or that the Service have an administrative claim for the amount of the 2013 Tax Refund. The Chapter 11 Trustee commenced an action on July 30, 2018 to, among other things, dispute the administrative status of the Service's claims and the issue was presented to the Bankruptcy Court on a motion for summary judgment. By judgment dated March 26, 2020, the Bankruptcy Court found in favor of the Chapter 11 Trustee, finding the Service's claim for the 2013 Tax Refund was a prepetition unsecured claim. As discussed below, this determination was a significant factor leading to a settlement of the disputes between the Chapter 11 Trustee and the Service and the formulation of the Plan.

IV POST PETITION ASSET RECOVERIES

The Chapter 11 Trustee with the assistance of his professionals Murphy & King, P.C. and Huron Consulting Group (and Huron's predecessor Mesirow Financial Consulting LLC) pursued recovery from third parties on account of various claims and causes of action of the Estates. Set forth below is a summary of the significant actions pursued by the Chapter 11 Trustee and recoveries obtained therefrom.

⁵ See adversary proceeding 15-4055.

4.1 Fees Paid to Debtor's Professionals

Shortly after his appointment, the Chapter 11 Trustee requested the Court establish a bar date by which professionals retained by TelexFree before the appointment of the Chapter 11 Trustee were required to submit applications detailing the amount they had been paid by TelexFree and what services they had rendered. On or about August 4, 2014, those professionals filed applications for compensation and reimbursement of expenses which sought aggregate compensation of approximately \$2,250,000. Certain of the professionals also disclosed that they had been paid substantial retainers by TelexFree.

The Chapter 11 Trustee reviewed the applications for compensation and based upon this review and analysis, the Chapter 11 Trustee with the assistance of his counsel objected to each of the compensation requests. The Chapter 11 Trustee and his counsel reached settlements of the disputed fee requests. These settlements resulted in a reduction in the aggregate compensation sought by those professionals of nearly \$1,200,000. In addition, because those professionals had been paid retainers totaling nearly \$5,600,000, the settlement of the fee requests resulted in the Chapter 11 Trustee's recovery of approximately \$4,300,000 from the TelexFree professionals for the benefit of the bankruptcy Estates. In addition, the Chapter 11 Trustee recovered approximately \$1,000,000 from attorney Garvey Schubert and the law firm of Babener & Associates, both of whom had represented TelexFree prior to the bankruptcy filings.

4.2 Allied Wallet

In order to facilitate transfers of funds by and between TelexFree and the Participants, TelexFree contracted with various payment processing companies. One of TelexFree's principal payment processors was Allied Wallet. The Chapter 11 Trustee analyzed the various payment processor accounts, particularly the Allied Wallet account, to determine what, if any, monies of TelexFree the payment processors were holding. The Chapter 11 Trustee determined that Allied Wallet was holding substantial sums of TelexFree's monies. After detailed analysis of TelexFree's account at Allied Wallet and establishment of a reasonable reserve, the Chapter 11 Trustee was able to recover from Allied Wallet on behalf of the bankruptcy Estates in excess of \$11,000,000.

4.3 Restitution Funds

Merrill and Wanzeler each were charged with various violations of the United States criminal code in connection with the implementation of the TelexFree Ponzi and pyramid scheme, in the case styled *United States of America v. James Merrill and Carlos Wanzeler*, case no. 14-CR-40028-TSH (the "Criminal Action") pending in the United States District Court for the District of Massachusetts (the "District Court").

The indictment also contained a Forfeiture Allegation, which provided notice that the United States sought forfeiture upon conviction of one or more of the offenses charged, of any property, real or personal, that constituted, or was derived from, proceeds traceable to the commission of the offenses. The United States further sought to have the forfeited assets made available for distribution to victims of the Ponzi scheme.

On October 24, 2016, Merrill pled guilty to several counts of the indictment pursuant to a written plea agreement executed on October 24, 2016. As part of the plea agreement, Merrill consented to the forfeiture of the assets identified in an exhibit to the plea agreement. In connection with Merrill's plea, the United States submitted its Sentencing Memorandum to the District Court which stated the intention of the United States to use the pending TelexFree bankruptcy cases and the claims filing process developed by the Chapter 11 Trustee to funds from the forfeited assets to victims of the TelexFree scheme who were Net Losers. The United States stated its intention was to distribute the forfeited assets by transferring such assets to the Chapter 11 Trustee under an agreement that the Chapter 11 Trustee would use the assets to compensate victims. The United States acknowledged that without the use of the Chapter 11 Trustee's claims process, restitution would be impractical and costly.

On March 22, 2017, the District Court accepted Merrill's plea and sentenced Merrill to seventy-two (72) months in prison. On that same date, the District Court entered a Preliminary Order of Forfeiture (the "Preliminary Order"). Pursuant to the Preliminary Order, Merrill's interest in the forfeited assets, consisting of approximately \$145,000,000 in cash, real and personal property, was forfeited to the United States, subject to any claims of third parties.

Fabio Wanzeler and Priscilla Costa were the only parties to assert any claims to any of the forfeited assets. Their claims were limited to certain real properties located in Florida and both of their objections were resolved by agreement. Fabio Wanzeler agreed to release any interest in one parcel of real property, which was to be sold by the Chapter 11 Trustee, and to pay \$250,000 to purchase another parcel of real property. Priscilla Costa agreed that eight of the ten condominiums subject to the forfeiture Order would be forfeited to the United States for sale by the Chapter 11 Trustee, with the proceeds to be distributed to compensate victims through the bankruptcy cases.

On July 11, 2017, the District Court entered the Restitution Order. The Restitution Order provides for restitution to Participants in coordination with the Chapter 11 Trustee to avoid duplication of effort and inconsistent findings, and to reduce administrative costs, conserve judicial resources, and facilitate global accounting of funds distributed to Participants. The Restitution Order provides that restitution will be limited to Participants who have allowed, timely filed claims determined in accordance with the Net Equity Formula previously approved by the Bankruptcy Court by order dated January 26, 2016.

Pursuant to the Restitution Order, the United States has delivered \$145,471,294 to the Chapter 11 Trustee, representing certain of the forfeited assets. Funds turned over to the Chapter 11 Trustee by the United States, net of the Restitution Costs (as defined below) shall be referred to as the "Restitution Funds". The Chapter 11 Trustee has been informed that he is likely to receive approximately \$11,000,000 in additional Restitution Funds after certain assets have been liquidated.

On April 22, 2020, the Chapter 11 Trustee with the assent of the United States Attorney for Massachusetts, filed a motion to Modify the Restitution Order. Pursuant to the motion, the Chapter 11 Trustee sought authority to use up to \$7,500,000 (the "Restitution Costs") of the Restitution Funds to reimburse the bankruptcy Estates for the costs associated with the Trustee's

performance of his obligations under the Restitution Order. On April 23, 2020, the District Court allowed the Trustee's Motion to Modify the Restitution Order.

The amount sought for the Restitution Costs is substantially less than the amount of fees and expenses incurred and to be incurred by the Chapter 11 Trustee in resolving Participant Claims and making distribution of funds in accordance with the Restitution Order. Through the spring of 2018, the fees and expenses of the bankruptcy Estates, including those incurred in connection with the claim allowance process, were paid from recoveries obtained by the Chapter 11 Trustee. Since the spring of 2018, the Chapter 11 Trustee has incurred fees and expenses associated with the claims allowance process which have not been paid because of the pending litigation with the Service, as described below. The Chapter 11 Trustee will incur additional fees and expenses in obtaining Bankruptcy Court approval of the Plan, making multiple distributions to Participants, and filing reports with the District Court in accordance with the Restitution Order. The fees and expenses incurred and to be incurred by the Chapter 11 Trustee and his professionals will be subject to the approval of the Bankruptcy Court

4.4 SEC Settlement Funds

The Chapter 11 Trustee has worked cooperatively with the SEC in obtaining recoveries against several high-level Participants and members of TelexFree's senior management that were defendants in either civil actions brought by the SEC, litigation brought by the Chapter 11 Trustee, or both. Settlements were made with Sanderley Rodrigues; (ii) Randy and Sonia Crosby; (iii) Santiago de la Rosa; (iv) Fabio Wanzeler. A settlement was also reached with Joseph Craft, the former chief financial officer of TelexFree and his affiliated entities. These settlements generated more than \$2,500,000 in payments to the bankruptcy Estates. The SEC Settlement Funds, net of an amount equal to ten percent (10%) of the recoveries (the "SEC Settlement Costs"), are available for distribution to holders of Allowed Participant Claims.

4.5 Class Action Litigation against Net Winners

The Bankruptcy Court's finding that TelexFree was engaged in a Ponzi and pyramid scheme gave rise to a presumption that distributions to Participants in excess of their investments constituted fictitious profits that can be recovered by the Chapter 11 as a fraudulent transfer.

Because of this finding and presumption, the Chapter 11 Trustee undertook a detailed analysis of all the Participants' transactions to determine which Participants were Net Winners. The Chapter 11 Trustee accomplished this analysis by applying the various algorithms that had been developed to aggregate Participants' User Accounts and to match the counterparties to the Triangular Transactions. Upon the completion of his analysis, the Chapter 11 Trustee brought two adversary proceedings under the seldom-used procedure of defendant class action. A defendant class action differs from the usual class action litigation in that in a defendant class action, there is a single or limited number of plaintiffs and numerous defendants, whereas in the usual class action there are numerous plaintiffs with a discrete and limited number of defendants. The Chapter 11 Trustee employed this novel procedure in order to obtain binding determinations by the Bankruptcy Court with respect to certain issues common to all Net Winners.

The Chapter 11 Trustee brought two defendant Class Actions. In one defendant Class Action, the Chapter 11 Trustee designated a class of approximately 15,000 defendants who were Net Winners residing in the United States (referred to as the “Domestic Class Action”). In the other defendant Class Action, the Chapter 11 Trustee named approximately 78,000 Net Winners who resided outside of the United States (the “Foreign Class Action”). Each Class Action sought a determination that the Net Winnings of each Net Winner were fraudulent transfers that could be recovered by the Chapter 11 Trustee and to ultimately obtain a judgment against each individual Net Winner in the amount of his/her Net Winnings. The Bankruptcy Court has certified the Domestic Class Action and the Foreign Class Action, and counsel has been appointed with respect to those Class Actions.

The prosecution of the Domestic and Foreign Class Actions was impeded by certain competing litigation in the District Court. Prior to the commencement of the TelexFree bankruptcy proceeding, various individuals brought civil class actions against TelexFree and its various senior managers, promoters, payment processors and banks, as well as TelexFree’s lawyers and accountants. All of these various class-action complaints were consolidated in one action before the District Court. In the consolidated action, the District Court appointed a Plaintiffs’ Interim Executive Committee (“PIEC”) to prosecute the consolidated actions.

As part of its amended complaint, the PIEC sought to pursue claims against substantially the same Net Winners who were defendants in the Domestic Class Action. The action by the PIEC created a conflict as to who was the proper person to prosecute the class actions against the Net Winners and who had the authority to settle those claims. The overlapping of the PIEC action and the Domestic Class Action substantially impaired the Chapter 11 Trustee’s ability to prosecute and collect from the Net Winners who received at least a portion of their Net Winnings from Triangular Transactions. Accordingly, the Chapter 11 Trustee commenced an action in the Bankruptcy Court to confirm his exclusive right to prosecute, settle and/or collect the claims against Net Winners who had received a portion of their Net Winnings in Triangular Transactions. As described above, the Chapter 11 Trustee was found to have the exclusive standing to prosecute the claims against the Net Winners.

Presently it is not possible to estimate the likely recovery from the two Defendant Class Actions. There are uncertainties in obtaining judgments against each individual Net Winner and then collecting those judgments from individuals, many of whom are located outside the United States. The Chapter 11 Trustee has reached settlement with several Net Winners. The Chapter 11 Trustee commenced a separate action against David and Linda Hackett for fraudulent transfer of property and ultimately settled all claims against the Hacketts for \$455,000. The Chapter 11 Trustee settled claims against Net Winners Priscilla Costa and Fabio Wanzeler, in coordination with the United States, resulting in recovery of more than \$1,000,000.

4.6 Litigation against Wanzeler and Affiliates

The Chapter 11 Trustee used the reconstructed TelexFree electronic records, along with the various algorithms he had developed, to investigate suspicious transactions involving Wanzeler, his family and individuals closely associated with him. Upon completion of his investigation, the Chapter 11 Trustee concluded that there were numerous fraudulent transactions in accounts associated with Wanzeler and related parties. Accordingly, the Chapter 11 Trustee

filed a Complaint asserting that Wanzeler and others engaged in fraudulent transactions primarily concerning the issuance of manual credits to his family and friends which were then converted to cash, either by being redeemed through TelexFree, sold to other Participants or used in Triangular Transactions.

Certain of the Defendants, primarily Wanzeler and Wanzeler family members, have answered the Complaint and denied the allegations. The other Defendants named therein have been defaulted. Certain of the Defendants in this action were also defendants in actions brought by the SEC and entered into the settlements discussed above in Section 4.4.

The Chapter 11 Trustee does not have an estimate as to the likely recovery against the remaining defendants. It is anticipated that any recovery from Wanzeler and his family and associates will be achieved through the combination of this litigation and the criminal actions brought by the United States against Wanzeler once he has been returned to the United States. The Chapter 11 Trustee anticipates coordinating his collection efforts with those of the United States and arriving at a resolution similar to that which was reached between the Chapter 11 Trustee and the United States with respect to James Merrill.

4.7 Other Recoveries

During the course of the Bankruptcy Cases, the Chapter 11 commenced approximately ten (10) avoidance actions against parties other than Participants. The Chapter 11 negotiated resolutions of these avoidance actions, resulting in judgments totaling in excess of \$200,000 and the waiver of approximately \$100,000 in administrative claims.

After the appointment of the Chapter 11 Trustee, the United States turned over to the Chapter 11 Trustee numerous cashier's checks payable to TelexFree. When the Chapter 11 Trustee attempted to negotiate the checks, the financial institutions that issued the cashier's checks refused to honor the checks. The Chapter 11 Trustee and his attorneys reviewed the Estates' rights in connection with the dishonored checks and made demand on the various financial institutions to honor the checks. Ultimately, as a result of the Chapter 11 Trustee's efforts, a total of approximately \$700,000 of the cashier's checks were honored and paid to the bankruptcy Estates.

Prior to the Petition Date, TelexFree invested more than \$2,000,000 in Sunwind Energy and its affiliates (collectively "Sunwind") for the development of a wind farm project in the mid-western United States. The documents evidencing the investment were incomplete in several material respects. The Chapter 11 Trustee was able to reconstruct the transactions and TelexFree's claim against Sunwind. After lengthy negotiations with representatives of Sunwind and exchange of documents, the parties agreed to the terms of TelexFree's investment in Sunwind and Sunwind's obligation to TelexFree. Pursuant to this agreement, Sunwind acknowledged an indebtedness of approximately \$3,000,000 to the bankruptcy Estates. Further, Sunwind agreed that this amount would be paid upon either financing, the sale or lease of Sunwind's assets or a change in control of Sunwind's ownership. Sunwind was never able to obtain financing necessary to pay its obligation to the bankruptcy Estates or to develop the project. Subsequently, Sunwind did enter into an agreement to sell its assets to a third party. The Chapter 11 Trustee and the buyer reached an agreement to allow the sale to proceed and for the bankruptcy Estates to receive money from the sale. The agreement as approved by the

Bankruptcy Court provided for the Chapter 11 Trustee to receive \$150,000 at the closing of the sale to the buyer and to receive up to an additional \$1,000,000 based upon the buyer's success in developing the project.

V. RESOLUTION OF DISPUTES WITH SERVICE

After his appointment, the Chapter 11 Trustee with the assistance of his accountants KPMG, LLC filed original and/or amended tax returns for TelexFree for years 2012, 2013, and 2014 asserting no tax liability, requesting refunds for 2012 in the amount of \$886,700 and for 2013 in the amount of \$15,792,982. Following the Chapter 11 Trustee's receipt of the 2013 Tax Refund, the Service (i) provided notice of the disallowance of substantially all of the expenses deducted by the Chapter 11 Trustee for 2012, 2013, and 2014, (ii) asserted administrative claims totaling \$69,000,000 and prepetition priority and nonpriority claims in excess of \$300,000,000; (iii) demanded a return of the 2013 Tax Refund, and (iv) disallowed the request for refund for 2012.

After extensive negotiations, the Service agreed to subordinate the prepetition Claims of \$300,000,000 and \$52,593,821 of its \$69,000,000 in Administrative Claims to the payment of Allowed Administrative Claims and Allowed Participant Claims. The Service did not, however, agree to subordinate its claim for return of the 2013 Tax Refund nor \$1,334,143 of its Administrative Claim for alleged income tax liability for the year 2014. The Service's continued pursuit of its remaining Administrative Claims created a substantial impediment to the Chapter 11 Trustee's ability to finalize a plan to distribute money to Participants holding Allowed Claims. Accordingly, the Chapter 11 Trustee commenced litigation against the Service seeking a determination that: (1) no tax was due was 2012, 2013, and 2014, (2) the bankruptcy Estates were entitled to retain the 2013 Tax Refund, (3) the Service be compel to turnover to the bankruptcy Estates the 2012 refund, and (4) the Service's claims be disallowed (the "Service Litigation").

The Chapter 11 Trustee moved for summary judgment on the issue of the Service's assertion of Administrative Claim status for the 2013 Tax Refund and for disallowance of the Service's asserted Administrative Claim for the 2014 taxes. The motion was opposed by the Service. Before the Bankruptcy Court determined the Chapter 11 Trustee's motion for summary judgment, the Service moved for summary judgment on its assertions that its disallowance of the advertising expenses, commission expenses, Ympactus bad debt, and casualty loss deduction were all appropriate.

On March 26, 2020, the Court determined both motions for summary judgment. Judge Hoffman ruled in favor of the Chapter 11 Trustee, disallowing the Service's asserted administrative status for the Service's claim for the 2013 Tax Refund and for taxes allegedly due for that 2014 tax year. The Court declined to rule on the deductibility of the claimed business expenses and casualty loss, finding that there were genuine issues of material fact with respect to the allowance of those deductions which precluded the granting of summary judgment. Accordingly, a trial would be necessary to determine those issues. While the Court decision on the issue of the status of the Service's Administrative Claim was significant, there remained significant issues to be resolved and the Service and the Chapter 11 Trustee continued to pursue settlement discussions.

On April 22, 2020, after lengthy negotiations and approval process, the Chapter 11 Trustee and the Service entered into a settlement agreement subject to approval by the Bankruptcy Court. The purpose of the settlement is to resolve all of the disputes concerning the Service's claims thereby enabling the Chapter 11 Trustee to among other things proceed to propose and obtain approval of a Plan to distribute the Restitution Funds, SEC Settlement Funds, and Available Cash to Participants who are the holders of Allowed Claims. The terms of the settlement provide essentially as follows:

- (i) The Service shall retain the payments made by TelexFree for tax year 2012 and the Chapter 11 Trustee shall waive his claim for a tax refund for 2012 in the amount of \$886,700;
- (ii) The 2013 Tax Refund shall be distributed as follows:
 - (a) \$7,741,220.39 to the Chapter 11 Trustee for payment of Administrative Claims and Allowed Claims of Participants;
 - (b) \$7,741,220 to the Service (the "Settlement Payment"); and
 - (c) \$50,000 for distribution to holders of Allowed Vendor Claims;
- (iii) The Service shall have an Allowed Priority Tax Claim, subordinated to the payment of all Allowed Administrative Expense Claims and Allowed Participant Claims, in the amount of \$7,741,220.39;
- (iv) TelexFree shall retain a net operating loss ("NOL") for tax year 2014 in the approximate amount of \$500,000,000 to the extent the Debtors or Reorganized Debtors have taxable income during the bankruptcy cases. TelexFree shall not be able to transfer, assign or sell the NOL, and the NOL may be used to offset taxable income arising from the liquidation and distribution of assets of the Debtors and the Reorganized Debtors, including any Restitution Funds; and
- (v) The terms of the settlement will be incorporated into the Plan and the Service shall not oppose such Plan.

The proposed settlement with the Service is fair and reasonable and in the best interests of the bankruptcy Estates and their creditors including the Participants who are the holders of Allowed Claims. The settlement agreement finally resolves the Services' substantial Administrative and Priority Claims for tax years 2012 through 2014 thereby removing a major impediment to confirmation of the Plan and distribution to Participants who are holders of Allowed Claims. The settlement also provides assurance that the Liquidating Trustee will not become embroiled in further litigation with the Service. Importantly, the agreement allows the Debtors and the Reorganized Debtors to retain the NOL to offset any income realized by the Debtors and Reorganized Debtors.

Absent approval of the Service Settlement, the Chapter 11 Trustee and the Service would need to continue with their litigation, which would result in the bankruptcy Estates continuing to incur administrative costs and would further delay the implementation of a Plan and distribution to creditors. While the Bankruptcy Court decision disallowed the Service's Administrative Claim based upon the 2013 Tax Refund and the asserted taxes for 2014, the decision did not

resolve the amount of the Service's claim because the Bankruptcy Court found that there were factual issues to be determined at trial.

It is likely that if the Chapter 11 Trustee were to prevail after a trial in the Bankruptcy Court with respect to the deductibility of the advertising expenses, commissions, Ympactus bad debt, and casualty loss deduction, the Service would also appeal that decision. Any such appeal by the Service would come only after the Bankruptcy Court entered a final decision, after conducting a trial, on all of the issues in the litigation. While the Chapter 11 Trustee believes that he would ultimately prevail in the litigation, there would be a substantial delay and a substantial increase in costs in resolving the disputes with the Service. Most significantly, the lack of finality with respect to the status and amount of the Service's claim would result in continued delay in the Chapter 11 Trustee's ability to distribute money to the Participants holding Allowed Claims.

In reaching his decision to settle with the Service, the Chapter 11 Trustee carefully weighed all of the costs and benefits associated with the continued litigation against the terms of the settlement, including but not limited to the uncertainty of his ultimate success in the litigation with the Service and the cost and delay that would result from the continued and protracted litigation. A particularly significant factor motivating the Chapter 11 Trustee's decision to proceed with settlement is that the settlement is the most expeditious way to effectuate a resolution of the disputes with the Service thereby clearing a major obstacle to confirming the Plan and to preserve \$500,000,000 in NOL's to eliminate any further tax liability. The Chapter 11 Trustee has taken into consideration all of factors detailed above in concluding that the proposed settlement with the Service is fair and reasonable and in the best interest of the bankruptcy Estates, and should be approved in conjunction with confirmation of the Plan.

VI. CLAIMS DETERMINATION AND ALLOWANCE

6.1 Claims Administration

In the initial stages of the Chapter 11 cases, Participants filed claims both with the Bankruptcy Court and with the Chapter 11 Trustee's claims agent, Kurtzman Carson Consultants ("KCC"). Claims or victim notification forms were also filed with the Federal Bureau of Investigation and the Massachusetts Secretary of State. An initial review showed that these claims were deficient in numerous respects. The claims asserted wildly differing amounts, including claims for accumulated credits, punitive damages, lost profits, and other claims not allowable in accordance with the Net Equity Formula. The claims were largely handwritten, and often did not clearly identify the User Accounts owned by the Participant or provide sufficient information to identify the Participant's User Accounts. It became evident that these claims would have to be reconciled with the TelexFree records on a painstaking, claim-by-claim basis. Because there were upwards of one million Participants and more than one billion Participant transactions, a manual reconciliation of all claims could potentially have consumed all of the resources in these cases.

The Chapter 11 Trustee determined that an automated system was needed to confirm the accuracy of Participant claims, based upon the Net Equity Formula, against the TelexFree records. In order for the Chapter 11 Trustee to address these issues, an electronic claim filing process needed to be established that would enable Participants to access the TelexFree records

and provide Participants an opportunity to confirm or deny Net Equity activity as reflected in the TelexFree records, or to make other adjustments.

On October 7, 2015, the Chapter 11 Trustee filed his *Motion by Chapter 11 Trustee for Entry of Order Fixing Bar Date for Filing Proofs of Claim, Approving Form and Manner of Providing Notice, Directing that Claims Be Filed Electronically, and Approving Content of Electronic Proofs of Claim* (the “Claims Motion”). Pursuant to the Claims Motion, the Chapter 11 Trustee sought to establish an electronic process for the filing of claims by Participants that would supersede the claims that had been earlier submitted in multiple locations.

On January 26, 2016, the Court entered an order approving the Claims Motion (the “Claims Order”). The Claims Order provided for a bar date of not less than ninety (90) days after the Electronic Portal became operational and notice of the bar date had been sent to all creditors. The Claims Order approved the form and manner of notice of the bar date, including electronic mail notice to all known Participants in English, Spanish and Portuguese, and constructive notice through certain multi-level marketing websites. The Claims Order further directed Participants to file claims using the form specifically designed for Participants (the “Participant Claim Form”) and for Vendors to file claims using a form more closely resembling the official claim form (the “Standard Claim Form”).

The Claims Order provides that the submission of an electronic proof of claim (“ePOC”) through the Electronic Portal:

shall be the sole and exclusive method of filing claims in these cases. Any claims previously filed or hereinafter filed that do not comply with the ePOC process set forth herein shall be disallowed without further order of the Court, including any proofs of claim previously filed with KCC or the Court and any victim notification forms submitted to the FBI or the Massachusetts Secretary of State. Participants and other claimants are instructed not to file any proofs of claim with the Bankruptcy Court or with KCC. [Docket entry 688, ¶15].

Upon entering the Electronic Portal, Participants were provided an opportunity to enter all personally identifiable information that was used in opening User Accounts with TelexFree, including name, User Account number, address and phone information and passcodes. This information was then matched against TelexFree’s records to identify User Accounts attributable to the Participant. Participants then had an opportunity to accept or reject any User Account that were ascribed to them.

After the User Account identification process was completed, Participants were provided the detailed transaction activity associated with each User Account, including both Direct Transactions and Triangular Transactions. The ePOC aggregated the transaction activity in all of the User Accounts to arrive at a proposed claim amount. The Participant could then add, delete, or modify transactions and provide supporting documentation for any changes made. The claim was then submitted through the Electronic Portal.

On May 27, 2016, after the Electronic Portal became operational, the Chapter 11 Trustee filed a *Notice of Deadline for Filing Electronic Proofs of Claim and Claims Procedures* (the “Bar Date Notice”). The Bar Date Notice established an initial bar date of September 26, 2016

(the “First Bar Date”) for the filing of electronic claims and was served in accordance with the provisions of the Claims Order. On or about September 21, 2016, the Chapter 11 Trustee filed a motion to extend the First Bar Date to December 31, 2016 (the “Second Bar Date”). This motion was granted by order dated September 23, 2016, and notice of the Second Bar Date was served in accordance with the terms of the Claims Order. In light of the wide publicity emanating from Merrill’s anticipated entry of a guilty plea, on or about December 8, 2016, the Chapter 11 Trustee filed a second motion to extend the deadline for filing an ePOC to March 15, 2017 [docket entry 827, the “Final Bar Date”]. This motion was granted by order dated December 21, 2016 and notice of the Final Bar Date was served in accordance with the terms of the Claims Order.

There were 131,351 timely filed Participant Claims and 777 late filed Participant Claims submitted through the Electronic Portal, which was closed shortly after the Final Bar Date. Due to the number of claims filed and because Participants are typically unrepresented, dispersed throughout the world, and often speak a primary language other than English, the Chapter 11 Trustee needed to establish a specially tailored process to resolved disputed claims.

On or about October 16, 2017, the Chapter 11 Trustee filed a *Motion by Chapter 11 Trustee to Establish Omnibus Procedures for the Resolution of Disputed Participant Claims*, which was approved by the Bankruptcy Court by order dated December 26, 2017 (the “Claims Procedure Order”). Pursuant to the Claims Procedure Order, the Bankruptcy Court established a two-part process for the resolution of disputed claims. The first step, which did not entail any Bankruptcy Court involvement, provided for the Chapter 11 Trustee to send a Participant with a disputed claim a notice of proposed adjustment in his/her claim amount (the “First Notice”). If a Participant submitted a timely response to the First Notice, the Chapter 11 Trustee would attempt to resolve the dispute by agreement and, absent resolution, the Chapter 11 Trustee would file an objection to the disputed Participant claim with the Bankruptcy Court. If a Participant did not submit a timely response to the First Notice, the Chapter 11 Trustee would file a second notice with the Bankruptcy Court requesting claim disallowance, or reduction, in accordance with the First Notice.

The Chapter 11 Trustee sent First Notices to 21,135 Participants in accordance with the Claims Procedure Order. Of this amount, 19,136 Participants did not respond and were sent Second Notices. The Chapter 11 Trustee filed three omnibus objections to claims with respect to those Participants who filed responses to the First Notice and whose claims could not be resolved by agreement.

The Chapter 11 Trustee filed thirty-two motions to disallow approximately 8,000 claims that showed a negative balance (that is, the claims reflected that the Participants were Net Winners under the Net Equity Formula). The Chapter 11 Trustee also filed sixteen motions to disallow approximately 4,000 claims that showed a balance due of \$0 based upon the Net Equity Formula.

The aggregate amount claimed by Participants was in excess of \$1,000,000,000. As a result of the Chapter 11 Trustee’s claims resolution efforts, 100,320 Participant Claims have been conditionally allowed either in the amount filed with the Electronic Portal or in a reduced amount, reflecting aggregate allowed claims in the amount of \$350,351,049. There are 18,509 Participant claims filed showing a net loss that have been disallowed, and there are 11,686

Participants claims filed as Net Winners or as Zero Dollar Claims that have been disallowed. There are approximately 1,600 claims that remain unresolved.

Approximately 3,000 persons filed Standard Claim Forms, which was the form reserved for Vendor claims. The Chapter 11 Trustee believes, based upon a review of the Standard Claims, that substantially all of these claims represent claims of Participants that were misfiled. The dollar amount of actual Vendor claims that are potentially allowable is expected to be less than \$100,000. The Chapter 11 Trustee notified each party who submitted a Standard Claim Form that, if they were a Participant, they would need to file a Participant Claim Form to be considered for allowance. Participants were given thirty (30) days to submit a corrected form before the Electronic Portal was closed.

6.2 Claims against the Estates

The following is an estimate of the claims against the Estates. The actual amount of such claims may vary depending upon the resolution of disputed claims and administrative costs that may be incurred as a result of unforeseen circumstances.

A. Administrative Claims

Since his appointment, the Chapter 11 Trustee has been paying the Estates' obligations in the ordinary course of business and, therefore, does not believe that there will be any substantial unpaid administrative claims on account of post-petition trade debt.

Since the Chapter 11 Trustee's appointment, the professionals retained by the Chapter 11 Trustee have filed for and obtained Bankruptcy Court approval for interim compensation for the period from their appointment until the spring of 2018. Since his appointment, the Chapter 11 Trustee has not sought or been paid any commission to date. The estimated unpaid fees and expenses of the Chapter 11 professionals through the anticipated Effective Date of June 30, 2020 are as follows: (i) Huron Consulting Group, financial advisors to the Chapter 11 Trustee, fees and expenses for the period April 1, 2018 through the Effective Date of \$4,900,000; (ii) Murphy & King, P.C., counsel to the Chapter 11 Trustee, fees and expenses for the period April 1, 2018 through the Effective Date of \$2,500,000; (iii) KPMG, LLC, tax advisors to the Chapter 11 Trustee, fees and expenses for the period March 1, 2018 through the Effective Date of \$800,000; (iv) Milligan Rona, Duran & King, counsel to the class action defendants, for potential fees and expenses totaling \$175,000; and (v) Stoneturn, financial advisors to the class action defendants, for potential fees and expenses totaling \$33,000.⁶ The Chapter 11 Trustee has indicated that he intends to seek approval of a commission to him for his services during the Chapter 11 cases in the approximate amount of \$3,000,000.

The Professional Fee Claims will be paid by the Chapter 11 Trustee or Liquidating Trustee subject to the filing of applications for compensation and approval by the Bankruptcy Court after notice and hearing. The Chapter 11 Trustee also estimates that fees may be due to

⁶ The amounts stated for Milligan Rona and Stoneturn reflect the difference between the budget for such professionals authorized by the Bankruptcy Court to be paid from the Estates, subject to court approval, and amounts paid to date.

the Office of the United States Trustee in the amount of approximately \$250,000 based upon the Plan distributions to be made shortly after the Effective Date.

B. Tax Claims

The Settlement Payment to the Service shall be paid following the Effective Date. The Service Settlement also grants the Service an Allowed Priority Tax Claim in the amount of \$7,741,220.39 subordinated to the payment of all Allowed Administrative Expense Claims and Allowed Participant Claims. Because holders of Allowed Participant Claims are not expected to receive one hundred percent (100%) of their Allowed Claims, it is highly unlikely that the Service will receive a distribution on account of its subordinated tax claim.

The Chapter 11 Trustee believes that the Estates may have miscellaneous tax liability to certain states, in an amount not to exceed \$200,000. Any such Claims will be paid on the later of the Effective Date or the date of allowance of such Claims.

C. Participant Claims

The Chapter 11 Trustee estimates that the total allowed Participant Claims will be in the range of \$350,000,000 to \$360,000,000. The total amount of Allowed Participant claims will not be known until all disputed claims are resolved.

D. Vendor Claims

The Chapter 11 Trustee projects that the number of Allowed Vendor Claims, consisting of unpaid operating expenses incurred by TelexFree prior to the Chapter 11 filings, are less than ten and the aggregate amount of such Allowed Claims is likely to be in the range of \$75,000 to \$125,000.

6.3 Participant Recovery

There are approximately 78,759 holders of Allowed (Class 2) Participant Convenience Claims holding aggregate Allowed Claims of approximately \$125,000,000. Under the Plan, holders of Allowed Class 2 Claims will be entitled to receive a one-time distribution of 43% to be made as soon as practicable after the Effective Date. If each holder of an Allowed Class 2 Claim were to accept the Class 2 treatment rather than elect Class 3 treatment, the total distributions to holders of Allowed Class 2 Claims will be approximately \$54,000,000.

There are approximately 22,327 holders of other Allowed (Class 3) Participant Claims holding aggregate Allowed Claims of approximately \$230,000,000, in addition to any Class 2 claimants that elect Class 3 treatment. Under the Plan, holders of Allowed Class 3 Claims will receive an initial *Pro Rata* distribution of Restitution Funds, SEC Settlement Funds, and Available Cash as soon as practicable after the Effective Date in the estimated amount of approximately 39%. If no holders of Allowed Class 2 Claims elect Class 3 treatment, the total initial distribution to holders of Allowed Class 3 Claims will be approximately \$91,000,000. Allowed Class 3 Claims shall also be entitled to receive additional *Pro Rata* distributions as proceeds become available.

The amount of the distributions to holders of Allowed Class 3 Claims will be impacted by both the amount of Assets available for distribution as well as the total amount of Allowed Class 3 Claims after the claims determination process is completed. If all holders of Allowed Class 2 Claims accept the treatment in Class 2, the pool of Allowed Claims in Class 3 is estimated to be approximately \$230,000,000, but the final amount will be subject to completion of the claims determination process.

Additional distributions to holders of Allowed Class 3 Claims will be funded principally from the additional Restitution Funds and recoveries from the Class Action Litigation or other avoidance actions. As referenced earlier, herein, the Chapter 11 Trustee is informed that additional Restitution Funds are estimated to be approximately \$11,000,000. Additional recoveries from the Class Action Litigation and other avoidance actions are difficult to estimate. The Class Action Litigation is not concluded and, while the Chapter 11 Trustee believes he will prevail in the litigation, there is no guaranty that the litigation will be successful. Assuming that the Liquidating Trustee does prevail in the litigation, the Chapter 11 Trustee anticipates there may be difficulties in collecting judgments. With respect to domestic defendants, many of them may have suffered adverse economic consequences from COVID-19 and with respect to the nonresident defendants, there are issues respecting the foreign recognition of United States judgments as well as collectability issues. Finally, the costs of obtaining judgments, including the associated legal fees and expenses, could be substantial. The foregoing considerations render a projection of recoveries speculative.

Based upon the foregoing, the Chapter 11 Trustee estimates that holders of Allowed Class 3 Claims could receive one or more additional distributions in the aggregate range of 2-10% of Allowed Claims. These amounts may vary depending upon the actual recoveries.

VII. MEANS FOR IMPLEMENTATION OF THE PLAN

7.1 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 he shall distribute such assets to holders of Allowed Participant Claims in accordance with the terms of the Plan.

7.2 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.

7.3 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.

7.4 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.

7.5 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.

7.6 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.

7.7 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.

7.8 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.

Except as otherwise set forth in the Plan and the Confirmation Order, as of the Effective Date, the Liquidating Trusts shall be the successors to TelexFree for all purposes. The Restitution Assets shall vest in the Restitution Liquidating Trust, and the Estate Assets shall vest in the Estate Liquidating Trust, free and clear of all Liens and encumbrances, but subject to payment of the Claims as provided in the Plan.

VIII. DISTRIBUTIONS ON CLAIMS AND RESOLUTION OF DISPUTED CLAIMS

8.1 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.

8.2 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.

8.3 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.

8.4 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.

8.5 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.

IX. LIQUIDATING TRUSTEE

9.1 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.

9.2 Corporate Authority.

As set forth in Section VII of this Disclosure Statement, 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.

9.3 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 Estate 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.

9.4 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.

9.5 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.

9.6 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 9.8(a) of this Disclosure Statement.

9.7 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.

9.8 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 7.8(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 9.8(a) herein.

(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 9.8(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 Estate 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.

9.9 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.

9.10 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.

9.11 Liquidating Trustee's Indemnification.

The Liquidating Trustee shall be indemnified by, held harmless, and receive reimbursement from the Estate 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 9.8(a) herein.

9.12 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.

9.13 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.

9.14 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.

9.15 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.

X. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

10.1 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. The Chapter

11 Trustee is not aware of the existence of any Executory Contracts or Unexpired Leases at this time.

10.2 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 Estate Liquidating Trust 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.

10.3 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 Estate Liquidating Trust 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 Estate 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 Estate Liquidating Trustee will be treated as Nonpriority Unsecured Claims subject to the provisions of the Plan. The Estate 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.

XI. SOLICITATION AND VOTING PROCEDURES

11.1 Voting Rights.

This Disclosure Statement is being distributed to holders of Claims in those Classes that are entitled to vote to accept or reject the Plan. If your Claim or Equity Interest is not included in the Voting Classes, you are not entitled to vote and you will not receive a solicitation package. If you are a holder of a Claim in a Voting Class, you should read your ballot and carefully follow the instructions included in the ballot. The Chapter 11 Trustee is only soliciting votes from holders of Allowed Claims in Classes 2, 3, and 4.

11.2 Required Acceptances for Confirmation.

At the Confirmation Hearing, the Bankruptcy Court must determine, among other things, whether each Impaired Class has accepted the Plan. Under Section 1126 of the Bankruptcy Code, an Impaired Class of Claims is deemed to have accepted the Plan if at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Claims of Class members who have voted to accept or reject the Plan have voted for acceptance of the Plan. Unless there is acceptance of the Plan by all members of an Impaired Class, the Bankruptcy Court must also determine that Class members will receive under the Plan property of a value, as of the Effective Date, that is not less than the amount that such Class members would receive or retain if TelexFree was liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date.

The Plan may be confirmed notwithstanding that one or more Impaired Classes have not accepted the Plan if the Bankruptcy Court finds that the Plan does not discriminate unfairly against, and is fair and equitable as to, such Class or Classes. This provision is set forth in Section 1129(b) of the Bankruptcy Code and requires that, among other things, the class of Claims or Equity Interests must either receive the full value of their Claims or Equity Interests or, if they receive less, no Class with junior distribution priority may receive or retain anything from the Estates on account of such junior interest unless the junior class provides “new value” or other consideration to TelexFree. The Chapter 11 Trustee intends to proceed toward confirmation provided that at least one Impaired Class has voted to accept the Plan. The Chapter 11 Trustee reserves the right to seek to confirm the Plan under Section 1129(b) of the Bankruptcy Code.

11.3 Risk Factors

There are a variety of factors that all holders of Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may impact recoveries under the Plan include:

- (i) the financial information contained in the Disclosure Statement has not been audited and is based upon an analysis of data available at the time of the preparation of the Plan and Disclosure Statement;
- (ii) although the Chapter 11 Trustee believes that the Plan complies with all applicable provisions of the Bankruptcy Code, the Chapter 11 Trustee can neither assure such compliance nor that the Bankruptcy Court will confirm the Plan;
- (iii) Any delays in Confirmation of the Plan could result in, among other things, increased Administrative Claims and delays in distributing funds to creditors.

11.4 Voting Deadline

The voting deadline is **June 30, 2020 at 5:00 p.m. Eastern Time**. In order to be counted as votes to accept or reject the Plan, all ballots must be properly executed, completed, and delivered in accordance with the instructions on the ballot so that the ballots are received on or prior to the voting deadline. If a ballot is received after the voting deadline, it will not be counted unless the Chapter 11 Trustee determines otherwise. The Chapter 11 Trustee may

extend the voting deadline for any reason and for any holder of a Claim in a Voting Class without further notice or solicitation to any party.

11.5 Electronic Ballot Submissions

Participants will be provided access to their voting ballots electronically through the Plan Summary. The following ballots will not be counted in determining the acceptance or rejection of the Plan, absent further order of the Bankruptcy Court:

- (i) Any ballot that contains insufficient information to permit the identification of the holder of the Claim;
- (ii) Any ballot cast by a person or entity that does not hold a Claim that is Allowed or otherwise entitled to vote on the Plan; and
- (iii) Any ballot received after the voting deadline.

In the case of the foregoing, the Chapter 11 Trustee shall separately schedule and report such ballots to the Bankruptcy Court, reserving all rights to seek the entry of an order treating those ballots as votes accepting the Plan, after review and determination by the Bankruptcy Court.

XII. RELEASE AND SATISFACTION OF CLAIMS

12.1 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.

12.2 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.

12.3 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.

12.4 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.

12.5 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.

12.6 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.

12.7 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.

XIII. TAX CONSIDERATIONS

The following is a general summary of certain material federal income tax consequences of the Plan and the distributions provided under the Plan. This summary does not discuss all aspects of federal taxation that may be relevant to a particular creditor in light of its individual investment circumstances or to certain creditors or shareholders subject to special treatment under the federal income tax laws (for example, tax-exempt organizations, financial institutions, broker-dealers, life insurance companies, foreign corporations or individuals who are not citizens or residents of the United States). This summary does not discuss any aspects of state, local or foreign taxation. The impact on foreign holders of claims and equity interests is not discussed.

This summary is based upon the Internal Revenue Code of 1986, as amended (the “IRC”), the Treasury regulations (including temporary regulations) promulgated thereunder, judicial authorities and current administrative rulings, all as in effect on the date hereof and all of which are subject to change (possibly with retroactive effect) by legislation, administrative action or judicial decision. Moreover, due to a lack of definitive judicial or administrative authority or interpretation and the complexity of the transactions contemplated in the Plan, substantial uncertainties exist with respect to various tax consequences of the Plan. The Chapter 11 Trustee has not requested a ruling from the Service with respect to these matters and no opinion of counsel has been sought or obtained by the Chapter 11 Trustee with respect thereto. There can be no assurance that the Service or any state or local taxing authorities will not challenge any or all of the tax consequences of the Plan, or that such a challenge, if asserted, would not be sustained. **FOR THE FOREGOING REASONS, CREDITORS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS AS TO THE SPECIFIC TAX CONSEQUENCES (FOREIGN, FEDERAL, STATE AND LOCAL) TO THEM OF THE PLAN. THE CHAPTER 11 TRUSTEE IS NOT MAKING ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE CONFIRMATION AND CONSUMMATION OF THE PLAN AS TO ANY CREDITOR, NOR IS THE CHAPTER 11 TRUSTEE RENDERING ANY FORM OF LEGAL OPINION AS TO SUCH TAX CONSEQUENCES.**

A. Federal Income Tax Consequences to the Debtors.

Cancellation of Indebtedness. Generally, the Debtors and Reorganized Debtors will realize cancellation of debt (“COD”) income to the extent, if at all, that the Liquidating Trustee pays a creditor pursuant to the Plan an amount of consideration in respect of a Claim against the Debtors that is worth less than the amount of such Claim. For this purpose, the amount of consideration paid to a creditor generally will equal the amount of cash or the fair market value of property paid to such creditor. Because the Debtors will be in a bankruptcy case at the time the COD income is realized (if any is realized), the Liquidating Trustee will not be required to include COD income in gross income, but rather will be required to reduce tax attributes by the amount of COD income so excluded.

B. Tax Consequences to Creditors.

In General. The federal income tax consequences of the implementation of the Plan to a holder of a Claim will depend, among other things, on: (a) whether such Claim constitutes a debt or a security for federal income tax purposes, (b) whether the holder of the Claim receives

consideration in more than one tax year, (c) whether the holder of the Claim is a resident of the United States, (d) whether all the consideration received by the holder of the Claim is deemed to be received by the holder of the Claim as part of an integrated transaction, (e) whether the holder of the Claim reports income using the accrual or cash method of accounting, and (f) whether the holder has previously taken a bad debt deduction or worthless security deduction with respect to the Claim.

Gain or Loss on Exchange. Generally, a holder of an Allowed Claim will realize a gain or loss on the exchange under the Plan of his or her Allowed Claim for cash and other property in an amount equal to the difference between (i) the sum of the amount of any cash and the fair market value on the date of the exchange of any other property received by the holder (other than any consideration attributable to accrued but unpaid interest on the Allowed Claim), and (ii) the adjusted basis of the Allowed Claim exchanged therefore (other than basis attributable to accrued but unpaid interest previously included in the holder's taxable income). Any gain recognized generally will be a capital gain (except to the extent the gain is attributable to accrued but unpaid interest or accrued market discount, as described below) if the Claim was a capital asset in the hands of an exchanging holder, and such gain would be a long-term capital gain if the holder's holding period for the Claim surrendered exceeded one (1) year at the time of the exchange.

Any loss recognized by a holder of an Allowed Claim will be a capital loss if the Claim constitutes a "security" for federal income tax purposes or is otherwise held as a capital asset. For this purpose, a "security" is a debt instrument with interest coupons or in registered form.

THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN MANY AREAS, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OWN TAX ADVISOR REGARDING SUCH TAX CONSEQUENCES.

XIV. PLAN FEASIBILITY

On the Effective Date, the Chapter 11 Trustee will have sufficient funds to pay in full the Service Settlement, projected Allowed Administrative Expense Claims, Allowed Priority Claims, and Allowed Priority Tax Claims that have not been voluntarily subordinated. There are no Allowed Secured Claims. The Chapter 11 Trustee will use \$50,000 from the Service Settlement to pay Class 4 Allowed Claims. The Restitution Fund, SEC Settlement Funds, and Available Cash will be utilized to make the required distributions to holders of Allowed Participant Claims in Classes 2 and 3. Accordingly, the Plan satisfies the feasibility requirements of Section 1129 of the Bankruptcy Code.

XV. BEST INTERESTS OF CREDITORS

In the event of a conversion of the bankruptcy cases to Chapter 7, the Chapter 11 Trustee believes that the amount and timing of distributions would be adversely affected. Conversion of the bankruptcy cases would require the appointment of a Chapter 7 Trustee. The Bankruptcy Court could appoint a person other than the Chapter 11 Trustee as Chapter 7 trustee, which

would create a substantial learning curve and delay in administering the bankruptcy cases.

The Bankruptcy Court is also required to establish a new bar date for the filing of Claims upon conversion to Chapter 7. The Estates have already invested many months and substantial resources in the claims determination process, including the establishment of the Electronic Portal, the noticing of an initial bar date and extended bar dates over a period of nearly a year, the examination of more than 130,000 claims timely filed, and the implementation of a process for resolving disputed claims. Any effort to alter or replicate this process would cause substantial delays, greatly increase administrative costs, and create significant confusion to the Participants throughout the world who invested in TelexFree. Thus, the amount to be distributed would be less, and any distribution would likely be delayed by a year or more. There would be no cognizable benefit to a conversion to Chapter 7, as a Chapter 7 trustee and his professionals would administer the bankruptcy cases in the same manner as is currently being performed

For the reasons set forth above, creditors will receive or retain under the Plan at least the amount or value that such creditors would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code, and such distribution will likely occur in a more expeditious manner. Consequently, the best interests of creditors requirement set forth in Section 1129(a)(7) of the Bankruptcy Code has been satisfied.

Based upon the prospects for reduced costs and earlier payment to creditors, the Chapter 11 Trustee recommends that the wind-down and liquidation of TelexFree's financial affairs be completed pursuant to the terms of the Plan.

Dated: May 28, 2020

By: _____
Stephen B. Darr
Chapter 11 Trustee
TelexFree LLC, TelexFree, Inc., and
TelexFree Financial, Inc.

/s/ Andrew G. Lizotte
MURPHY & KING, Professional Corporation
One Beacon Street
Boston, MA 02108
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By: 
Stephen B. Darr
Chapter 11 Trustee
TelexFree LLC, TelexFree, Inc., and
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/s/ Andrew G. Lizotte
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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. 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 Trustee's 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

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.

- 2 -

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.

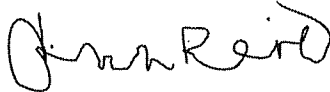
Please contact Edward J. Murphy of the Civil Trial Section, Northern Region with respect to moving the Bankruptcy Court to approve the settlement. He can be reached at 202-307-6064 or edward.j.murphy@usdoj.gov.

- 3 -

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.

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

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

and timely notice of the hearing on the Motion (the “Hearing”) had been given; and it appearing that such notice was adequate and sufficient; and all appearances at the Hearing having been duly noted on the record of the Hearing, and, upon the Motion, the Disclosure Statement, and the record of the Hearing and all of the proceedings before the Court and after due deliberation and sufficient cause appearing therefor; and it appearing that no party-in-interest will be prejudiced hereby, it is

ORDERED, FOUND AND DETERMINED THAT:

1. Pursuant to Section 1125(b) of the Bankruptcy Code and Rule 3017(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (a) the Disclosure Statement is approved as containing adequate information within the meaning of Section 1125 of the Bankruptcy Code and (b) to the extent not withdrawn, settled or resolved, all objections to the Disclosure Statement are overruled.

2. The Disclosure Statement and the Motion are hereby approved.

3. For voting purposes and mailing of notices and Solicitation Packages (as defined below) pursuant to this Order, **May 28, 2020, at 5:00 p.m.** Eastern Time, shall be the “Record Holder Date” for the holders of Claims.¹

4. Holders of Claims in Classes 2, 3, and 4 which have not been disallowed by order of the Court are entitled to vote to accept or reject the Plan (the “Voting Claims”). Where the holder of such a Claim is a transferee or assignee of the Claim rather than its original holder, such transferee or assignee shall be permitted to vote such Claim subject to: (a) evidence of the transfer and assignment of the Claim having been filed in accordance with Federal Rule of Bankruptcy Procedure 3001 as of the close of business on the Record Holder Date, and (b) if an

¹ Capitalized terms not otherwise defined in this order shall have the meanings ascribed to them in the Motion.

objection to the transfer of a Voting Claim in accordance with Rule 3001 of the Federal Rules of Bankruptcy Procedure is pending on the close of business on the date of the Voting Deadline, the Court having entered an order temporarily allowing of such Claim for the purpose of voting pursuant to Section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018(a).

5. The Participant Notice, the Participant Ballot, and the Vendor Ballot, attached as Exhibits B, C, and D, respectively, to the Motion are hereby approved, as amended (ECF No. 3338), with the Participant Notice to be further amended on page 3 to contain language corresponding to paragraph 13 of this order.

6. On or before June 2, 2020, the Trustee shall cause to be served:

(a) upon the holders of Voting Claims in Classes 2 and 3, the Participant Notice in the form approved by the Court by electronic mail transmission; and

(b) upon the holders of Voting Claims in Class 4, the Vendor Solicitation Package containing: a copy of the Plan (with exhibits), a copy of the Disclosure Statement (with exhibits), a Vendor Ballot in the form approved by the Court, and a copy of this Order by first-class mail (collectively, the "Solicitation Packages").

7. Holders of asserted Claims that have been disallowed by order of the Court will not receive Solicitation Packages or further notice with respect to the Plan or Disclosure Statement.

8. All holders of Voting Claims must deliver completed Ballots so as to be received no later than **5:00 p.m., Eastern Time, on June 30, 2020** (the "Voting Deadline"). Holders of Voting Claims in Classes 2 and 3 must deliver by the Voting Deadline Participant Ballots electronically to BMC Group, Inc. as directed in the ballot. Holders of Voting Claims in Class 4

must deliver by the Voting Deadline Vendor Ballots by first-class mail, electronic mail, hand-delivery, overnight courier or facsimile to Trustee's counsel at:

Murphy & King, Professional Corporation
Attn: Andrew G. Lizotte, Esq.
One Beacon Street
Boston, MA 02108
Facsimile: (617) 423-0498
Email: alizotte@murphyking.com

9. Any Ballot received after the Voting Deadline shall not be counted other than as provided for in this Order.

10. HOLDERS OF VOTING CLAIMS IN CLASSES 2 AND 3 MUST COMPLETE AND SUBMIT THE BALLOT, INCLUDING INSTRUCTIONS FOR ELECTRONIC PAYMENT (AND, IF NOT A RESIDENT OF THE UNITED STATES, INFORMATION TO ENSURE COMPLIANCE WITH THE OFFICE OF FOREIGN ASSET CONTROL) IN ORDER TO RECEIVE PAYMENT. IF SUCH HOLDER DOES NOT SUBMIT THE BALLOT, SUCH HOLDER WILL NOT RECEIVE A DISTRIBUTION.

11. For purposes of voting, the amount of a Claim used to tabulate acceptance or rejection of the Plan shall be one of the following:

- a. the amount set forth as a Claim in the Debtors' Schedules that is not listed as contingent, unliquidated or disputed (*excluding* scheduled Claims that have been superseded by filed Claims);
- b. the amount set forth on a timely-filed proof of claim that has not been disallowed or reduced by the Court on or before the Voting Deadline; or
- c. the amount estimated and temporarily allowed with respect to a Claim pursuant to an order of this Court for voting purposes prior to computation of the vote on the Plan.

12. With respect to Ballots submitted by a holder of a Claim:

- a. any Ballot that is substantially completed, executed and timely returned that does not indicate an acceptance or rejection of the Plan, shall be deemed to be a vote to accept the Plan;
- b. any Ballot that is returned indicating acceptance or rejection of the Plan but that is unsigned shall not be counted, provided, however, that any Ballot returned by electronic mail or similar electronic means that includes

- an electronic signature, as that term is defined by applicable state law, shall be counted;
- c. whenever a holder of a Claim casts more than one Ballot voting the same Claim prior to the Voting Deadline, only the last timely Ballot received shall be counted;
 - d. if a holder of a Claim casts simultaneous duplicative ballots that are voted inconsistently, such Ballots shall count as one vote accepting the Plan;
 - e. each holder of more than one Claim in a particular Class shall be entitled to cast only one Ballot regardless of the number of timely-filed proofs of claim in such Class by such holder;
 - f. each holder of a Claim shall be deemed to have voted the full amount of its Claim or Claims in each particular Class;
 - g. each holder who holds a Claim or Claims in more than one Class shall be entitled to cast one Ballot per Class, *provided, however*, that holders of Claims in Class 2 (Convenience Participant Claim) may only elect treatment as either a holder of a Class 2 Claim (Convenience Participant Claim), or as a holder of a Class 3 Claim (General Participant Claim);
 - h. any Ballots that partially reject and partially accept the Plan shall be deemed a vote to accept the Plan in the full amount of such Claim;
 - i. a Ballot cast by a holder of a Claim that is subject to a pending objection on the Voting Deadline shall not be counted; and
 - j. any Ballot indicating a vote for acceptance or rejection of the Plan and is signed, but fails to provide a complete mailing address, shall be counted if the balloting agent can reasonably determine the identity of the holder of the Claim by reference to the Creditor Matrix, Schedules, return envelope, facsimile, or electronic mail by which said Ballot is delivered, or otherwise.

13. The hearing to consider confirmation of the Plan is scheduled for **July 8, 2020, at 2:00 p.m.**, Eastern Time. Because of concerns of public health and safety, the Court has not yet determined whether the hearing will be held in-person, by telephonic, or other means. Interested parties will be provided additional information at a later date as to the manner in which the hearing will be conducted and opportunities to participate.

14. Any objection to the confirmation of the Plan (“Confirmation Objection”) must be filed with the Clerk of the Bankruptcy Court, United States Bankruptcy Court, before the Honorable Judge Melvin S. Hoffman, Courtroom 2, J.W. McCormack Post Office & Court House, 5 Post Office Square, 12th Floor, Boston, MA 02109–3945, together with proof of service, no later than **4:30 p.m., Eastern Time, on or before June 30, 2020**, and must be served upon: (i) counsel to the Trustee, Murphy & King, Professional Corporation, One Beacon Street, Boston, Massachusetts 02108 (Attn: Andrew G. Lizotte, Esquire); and (ii) the Office of the United States Trustee for the District of Massachusetts, 446 Main Street, 14th Floor, Worcester, Massachusetts 01608 (Attn: Lisa D. Tingue, Esq.) (collectively the “Service Parties”).

15. Any Confirmation Objection must (a) be in writing, (b) state the name and address of the objecting party, (c) comply with the Federal Rules of Bankruptcy Procedure and the Massachusetts Local Bankruptcy Rules, and (d) state the amount of the objector’s claim or the nature of its interest, and the nature of the objection and the legal basis therefore.

16. CONFIRMATION OBJECTIONS NOT FILED AND SERVED AS SET FORTH IN THIS ORDER MAY BE DEEMED WAIVED AND MAY NOT BE CONSIDERED BY THE COURT.



Melvin S. Hoffman
United States Bankruptcy Judge

Dated: May 28, 2020

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

| | | |
|-----------------------------------|---|------------------------------|
| <u>In Re:</u> |) | |
| |) | 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 |
| |) | |

IMPORTANT NOTICE REGARDING LIQUIDATING PLAN

WHY YOU ARE RECEIVING THIS NOTICE:

You are receiving this Notice because:

- You have participated in TelexFree (a "Participant") and you filed a Claim in TelexFree's bankruptcy cases and your Claim has either been conditionally allowed (an "Allowed Participant Claim") or is not yet resolved (a "Disputed Participant Claim").

This Notice contains a summary of the treatment and payment of Allowed Participant Claims under the *TelexFree Liquidating Plan of Reorganization* ("Plan") filed on May 6, 2020 by Stephen B. Darr, the Chapter 11 Trustee ("Trustee") of TelexFree. To review the Plan, the Disclosure Statement, and the Order approving the Disclosure Statement for additional details about the terms and conditions of the Plan and the expected distributions, please go to kccllc.net/TelexFree and click the link "**Disclosure Statement and Liquidating Plan of Reorganization**".

THE TREATMENT AND PAYMENT OF ALLOWED PARTICIPANT CLAIMS:

The Plan divides Participants who have Allowed Participant Claims into two groups:

- (1) Participants who have Allowed Participant Claims of **\$4,250 or less** (the "Convenience Participant Claims"); and
- (2) Participants who have Allowed Participant Claim of **more than \$4,250** ("General Participant Claims").

The Plan treatment for each group is set forth below.

TREATMENT AND PAYMENT OF CONVENIENCE PARTICIPANT CLAIMS:

If you have an Allowed Participant Claim for \$4,250 or less, the Plan gives you the right to:

- **Receive a one-time payment equal to 43% of your Allowed Participant Claim.** This payment is expected to be made as soon as practicable after the Bankruptcy Court approves the Plan **OR**
- **Elect to be treated and paid as a General Participant Claim.** If you have an Allowed Participant Claim of \$4,250 or less and you prefer to be treated and paid as a General

Participant Claim holder, you will need to elect that treatment on the voting ballot and then your Claim will be treated and paid as a General Participant Claim, described below.

TREATMENT AND PAYMENT OF GENERAL PARTICIPANT CLAIMS:

If you have an Allowed Participant Claim of more than \$4,250, the Plan gives you the right to:

- (1) **Receive an initial payment estimated to be approximately 39% of your Allowed Participant Claim**, paid as soon as practicable after the Bankruptcy Court approves the Plan; **AND**
- (2) **Receive additional payments that may become available in amounts yet undetermined** based upon Available Funds and the final amounts of the Allowed Participant Claims.

The amount and timing of any additional payments on your Allowed Participant Claim depends on the timing and amount of additional recoveries. For additional information about the potential for additional distributions, you should review Section 6.3 of the Disclosure Statement at the link referenced above.

| YOUR LEGAL RIGHTS AND OPTIONS | |
|---|--|
| HOW TO CHECK THE STATUS OF YOUR CLAIM | If you do not know the status or the amount of your Participant Claim, you can go to the Claims Register at the website http://registry.telexfreeclaims.com . You can use that link to find your Claim information by typing in your Claim number. If you cannot find your Claim, you can send an inquiry to ClaimResponse@TelexFreeClaims.com . |
| COMPLETE AND RETURN YOUR BALLOT BY JUNE 30, 2020 AT 5:00 P.M. EASTERN TIME | It is important that you complete and return your ballot by the deadline so that your vote can be taken into account in obtaining Court approval of the Plan and so that you can receive your distribution. Your ballot can be accessed by clicking HERE . Your username and your passcode for each claim was provided via email. YOU MUST COMPLETE THE BALLOT, INCLUDING INSTRUCTIONS FOR ELECTRONIC PAYMENT (AND IF YOU ARE NOT A RESIDENT OF THE UNITED STATES INFORMATION TO ENSURE COMPLIANCE WITH THE OFFICE OF FOREIGN ASSET CONTROL) IN ORDER TO RECEIVE YOUR PAYMENT. IF YOU DO NOT SUBMIT YOUR BALLOT, YOU WILL NOT RECEIVE A DISTRIBUTION. |
| ELECT TO BE TREATED AS A GENERAL PARTICIPANT CLAIM | If you have a Convenience Participant Claim and would like your Claim to be treated and paid as a General Participant Claim, you will need to make the election referenced on the ballot. |
| FILE OBJECTION TO THE PLAN BY JUNE 30, 2020 AT 4:30 P.M. EASTERN TIME | You have right to object to the Plan and explain to the Court why you disagree with the Plan. Objections must be mailed to the Clerk, United States Bankruptcy Court, 5 Post Office Square, Boston, MA 02109 so that it is received by June 30, 2020 and a copy must be sent to the undersigned counsel. |

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|---|---|
| ATTEND THE PLAN CONFIRMATION HEARING ON JULY 8, 2020 AT 2:00 P.M. EASTERN TIME | <p>You <u>may</u>, but are not required to, attend the hearing on the Court's approval of the Plan. The hearing on the Plan will be held at the United States Bankruptcy Court, Courtroom 2, 5 Post Office Square, Boston, MA 02109 on July 8, 2020 at 2:00 p.m. Eastern Time You may be able to participate telephonically and that information will be posted on the Telexfree website prior to the scheduled hearing.</p> <p>If you do not speak English, you must supply your own interpreter.</p> <p>YOU ARE NOT REQUIRED TO ATTEND THE HEARING IN ORDER TO RECEIVE A DISTRIBUTION UNDER THE PLAN.</p> |
| QUESTIONS | If you have any questions about the information contained in this Notice, you may contact ClaimResponse@TelexFreeClaims.com . |

If the Plan is not approved, there will be additional costs incurred by the TelexFree bankruptcy estates that will likely reduce the amount paid to Participants and substantially delay payments to Participants. **Accordingly, the Trustee recommends that you vote to accept the Plan by timely submitting your ballot.**

Stephen B. Darr, Chapter 11 Trustee
By his attorneys,

/s/ Andrew G. Lizotte
Harold B. Murphy (BBO #362610)
Andrew G. Lizotte (BBO #559609)
Murphy & King, Professional Corporation
One Beacon Street
Boston, MA 02108

Dated: May 28, 2020
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