

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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In re	:	Chapter 11
	:	
ENTEGR A POWER GROUP LLC, <i>et al.</i> ,	:	Case No. 14- <del>11859</del> <u>11859</u> ( <u>PJW</u> )
	:	
Debtors.	:	<del>Joint Administration Requested</del> <u>(Jointly Administered)</u>

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**DEBTORS' JOINT MODIFIED PREPACKAGED PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Entegra Power Group LLC, Entegra TC LLC, Basso TP-2 Inc., EPG LLC, Union Power LLC, Union Power Partners, L.P., UPP Finance Co. LLC, Trans-Union Pipeline LLC, Trans-Union Interstate Pipeline, L.P., Entegra Power Services LLC, Union Power Employee Company LLC, and Gila River Energy HoldCo LLC, as debtors and debtors in possession in the above-captioned chapter 11 cases, jointly propose the following prepackaged chapter 11 plan of reorganization, as it may be amended, supplemented, restated, or modified from time to time, pursuant to section 1121(a) of title 11 of the United States Code. Only Holders of Allowed Prepetition Second Lien Claims, Allowed Prepetition Third Lien Claims, and Allowed Equity Interests in Parent are entitled to vote on the Plan. Prior to voting to accept or reject the Plan, such Holders are encouraged to read the Plan, the accompanying Disclosure Statement, and their respective exhibits and schedules in their entirety. No materials other than the Plan, the Disclosure Statement, and their respective exhibits and schedules have been authorized by the Debtors for use in soliciting acceptances or rejections of the Plan.

## **SECTION 1. DEFINITIONS AND INTERPRETATION**

### **A. Definitions.**

The following terms used herein shall have the respective meanings defined below (such meanings to be equally applicable to both the singular and plural):

**1.1 Act 9 Bonds** means those certain Union County, Arkansas Industrial Development Revenue Bonds (Union Power Partners, L.P. Project), Series 2001 (including effective when issued or deemed issued, those certain Industrial Development Revenue Bonds (Union Power Partners, L.P. Project), Series 2001 (restated 2005)), issued pursuant to the Act 9 Indenture.

**1.2 Act 9 Indenture** means the Trust Indenture, dated as of May 1, 2001 (as amended by that certain First Amendment to Trust Indenture, dated as of June 1, 2005), by and among Union County, Arkansas and the Act 9 Trustee for the benefit of the holders of the Act 9 Bonds.

**1.3 Act 9 Lease** means the Lease Agreement, dated as of May 1, 2001 (as amended by that certain First Amendment to Lease Agreement, dated as of June 1, 2005), between Union Power Partners, L.P. and Union County, Arkansas.

**1.4 Act 9 Trustee** means Regions Bank, Little Rock, Arkansas, in its capacity as Trustee under the Act 9 Indenture.

**1.5 Administrative Expense Claim** means any right to payment constituting a cost or expense of administration of any of the Chapter 11 Cases described in sections 503(b) or 1129(a)(4) of the Bankruptcy Code and entitled to priority under sections 507(a)(2) or 507(b) of the Bankruptcy Code, including, without limitation, (a) any actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Debtors' Estates or operating the Debtors' businesses; (b) any indebtedness or obligations incurred or assumed by the Debtors, as debtors in possession, during the Chapter 11 Cases; (c) any Allowed compensation for professional services rendered, and Allowed reimbursement of

expenses incurred, by a Professional retained by order of the Bankruptcy Court or otherwise Allowed pursuant to section 503(b) of the Bankruptcy Code; and (d) any Administrative Expense Claims Allowed by Final Order of the Bankruptcy Code in connection with the assumption of contracts or otherwise. Any fees or charges assessed against the Estate of any of the Debtors under section 1930, chapter 123 of title 28 of the United States Code are excluded from the definition of “Administrative Expense Claim” and shall be paid in accordance with Section 12.1 of the Plan.

**1.6** *Allowed* means, with respect to any Claim or Equity Interest, such Claim or Equity Interest or portion thereof against or in any Debtor: (a) as to which no objection or request for estimation has been filed, no litigation has commenced, and the Debtors otherwise have assented to the validity thereof; (b) as to which any objection or request for estimation that has been filed has been settled, waived, withdrawn, or denied by a Final Order; or (c) that is allowed pursuant to the terms of (i) a Final Order, (ii) an agreement by and among the Holder of such Claim or Equity Interest and the Debtors or the Reorganized Debtors, as applicable, *provided* that prior to the Effective Date for ETC, in the case of a Claim (x) by an employee or former employee of the Debtors for compensation or benefits or (y) the aggregate Allowed amount of which is greater than \$500,000, such agreement shall require the consent of the Participating Prepetition Lenders, or (iii) the Plan.

**1.7** *Amended Intercreditor Agreement* means that certain amended intercreditor agreement, by and among the New Second Lien Note Indenture Trustee, on behalf of itself and the New Second Lien Noteholders, the New Third Lien Agent, on behalf of itself and the New Third Lien Lenders, and the Reorganized Debtors. A form of the Amended Intercreditor Agreement will be included in the Plan Supplement.

**1.8** *Bankruptcy Code* means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the Petition Date, together with any amendments made thereto subsequent to the Petition Date, to the extent that any such amendments are applicable to the Chapter 11 Cases.

**1.9** *Bankruptcy Court* means the United States Bankruptcy Court for the District of Delaware, or such other court having jurisdiction over the Chapter 11 Cases or any proceeding within, or appeal of an order entered in, the Chapter 11 Cases.

**1.10** *Bankruptcy Rules* means the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms, or the local rules of the Bankruptcy Court, together with any amendments made thereto subsequent to the Petition Date, to the extent that any such amendments are applicable to the Chapter 11 Cases.

**1.11** *Business Day* means any day, other than a Saturday, Sunday, or any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order.

**1.12** *Cash* means legal tender of the United States of America.

**1.13 Causes of Action** means all claims, actions, causes of action, choses in action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and cross-claims of any of the Debtors and/or the Estates (including, but not limited to, those actions listed in the Plan Supplement) that are or may be pending on the Effective Date or instituted by the Reorganized Debtors after the Effective Date against any entity, based in law or equity, including, but not limited to, under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise or in law, equity, or otherwise and whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, whether asserted or unasserted as of the date of entry of the Confirmation Order. For the avoidance of doubt, “Cause of Action” (a) includes: (i) the right to object to Claims or Equity Interests; (ii) any claim pursuant to section 362 of the Bankruptcy Code; and (iii) any counterclaim or defense, including fraud, mistake, duress, usury, or recoupment and (b) excludes any claim pursuant to chapter 5 of the Bankruptcy Code.

**1.14 Chapter 11 Cases** means the jointly-administered cases under chapter 11 of the Bankruptcy Code commenced by the Debtors in the Bankruptcy Court.

**1.15 Claim** means a claim as defined in section 101(5) of the Bankruptcy Code, as supplemented by section 102(2) of the Bankruptcy Code, against a Debtor, including, but not limited to: (a) any right to payment from a Debtor whether or not any such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured or (b) any right to an equitable remedy for breach of performance if such performance gives rise to a right of payment from a Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, whether or not asserted.

**1.16 Class** means any group of substantially similar Claims or Equity Interests classified by the Plan pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

**1.17 Collateral** means any property or interest in property of the Estate of any Debtor subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge, or other encumbrance is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable non-bankruptcy law.

**1.18 Confirmation Date** means the date upon which the Clerk of the Bankruptcy Court enters the Confirmation Order.

**1.19 Confirmation Hearing** means the hearing(s) to be held by the Bankruptcy Court to consider confirmation of the Plan under section 1129 of the Bankruptcy Code.

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



**1.21 *Corporate Governance Term Sheet*** means that certain Corporate Governance Term Sheet attached as Exhibit 4 to the Restructuring Term Sheet.

**1.22 *Debtor Subsidiaries*** means, collectively, Entegra TC LLC, Basso TP-2 Inc., EPG LLC, Union Power LLC, Union Power Partners, L.P., UPP Finance Co. LLC, Trans-Union Pipeline LLC, Trans-Union Interstate Pipeline, L.P., Entegra Power Services LLC, Union Power Employee Company LLC, and Gila River Energy HoldCo LLC.

**1.23 *Debtors*** means, collectively, Entegra Power Group LLC, Entegra TC LLC, Basso TP-2 Inc., EPG LLC, Union Power LLC, Union Power Partners, L.P., UPP Finance Co. LLC, Trans-Union Pipeline LLC, Trans-Union Interstate Pipeline, L.P., Entegra Power Services LLC, Union Power Employee Company LLC, and Gila River Energy HoldCo LLC.

**1.24 *Disallowed*** means, with respect to any Claim or Equity Interest, such Claim or Equity Interest or portion thereof that has been disallowed or expunged by a Final Order or agreement by the Holder of the Claim or Equity Interest and the Debtors or the Reorganized Debtors.

**1.25 *Disbursement Agent*** means the Debtors or the Reorganized Debtors, or any Person designated by the Debtors or the Reorganized Debtors prior to the Confirmation Hearing, in the capacity as disbursement agent under the Plan.

**1.26 *Disclosure Statement*** means that written disclosure statement, dated July 3, 2014, relating to the Plan, including, without limitation, all exhibits and schedules thereto, as the same may be amended, supplemented, or otherwise modified from time to time, as approved by the Bankruptcy Court pursuant to sections 1125 and 1126(b) of the Bankruptcy Code.

**1.27 *Disputed*** means, with respect to any Claim or Equity Interest, all or the portion of any Claim against, or Equity Interest in, any Debtor that is neither Allowed nor Disallowed, including any Claim or Equity Interest as to which the Debtors have interposed an objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules and such objection or request for estimation has not been withdrawn or determined by a Final Order, or that otherwise is disputed by the Debtors in accordance with applicable law.

**1.28 *Distribution Record Date*** means the date of the Confirmation Hearing.

**1.29 *Distribution Threshold*** means the threshold at which Reorganized ETC has made cumulative distributions to holders of ETC Senior Equity Interests (including, without limitation, amounts received by the holders of ETC Senior Equity Interests through: (a) any self-tender offer for the ETC Senior Equity Interests consummated by Reorganized ETC or any of its controlled affiliates (regardless of the form of consideration paid); (b) any open market repurchases of the ETC Senior Equity Interests consummated by Reorganized ETC or any of its controlled affiliates (regardless of the form of consideration paid); (c) the proceeds of any new incremental debt to the New Third Lien Debt to the extent the proceeds of such new incremental debt are distributed as Cash payments to the holders of the ETC Senior Equity Interests; and (d) the fair market value of any assets of ETC or any of its subsidiaries that are transferred to the holders of the ETC Senior Equity Interests as a dividend or distribution in kind) in an amount of

\$1,285,000,000, less any Cash paid to the New Third Lien Lenders on account of the New Third Lien Debt, including any Cash paid to the New Third Lien Lenders in connection with any refinancing of the New Third Lien Debt.

**1.30** *Effective Date* means with respect to (a) Parent, the Business Day on or after the Confirmation Date specified by the Debtors on which (i) no stay of the Confirmation Order is in effect; (ii) the conditions to the effectiveness of the Plan specified in Section 9.1 have been satisfied or waived; and (iii) the Restructuring Transactions described in Section 5.2(a) have occurred and (b) the Debtor Subsidiaries, the Business Day specified by the Debtors after the Effective Date for Parent on which (i) no stay of the Confirmation Order is in effect; (ii) the conditions to the effectiveness of the Plan specified in Section 9.1 have been satisfied or waived; (iii) the Restructuring Transactions described in Section 5.2(a) have occurred; and (iv) the Tax Election has become effective.

**1.31** *Eligible Holder* has the meaning set forth in Section 12.2.

**1.32** *Entity* has the meaning set forth in section 101(15) of the Bankruptcy Code.

**1.33** *Equity Interest* means all outstanding ownership interests in any of the Debtors, including any interest evidenced by common or preferred stock, membership interest, option, or other right to purchase or otherwise receive any ownership interest in any of the Debtors, or any right to payment or compensation based upon any such interest, whether or not such interest is owned by the Holder of such right to payment or compensation.

**1.34** *Estates* means the estates of the Debtors created pursuant to section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases.

**1.35** *ETC* means Entegra TC LLC.

**1.36** *ETC Equity Interests* means, collectively, the ETC Series A Equity Interests, the ETC Series B Equity Interests, and the ETC Series C Equity Interests, to the extent outstanding.

**1.37** *ETC Senior Equity Interests* means, collectively, the ETC Series A Equity Interests and the ETC Series C Equity Interests, to the extent outstanding. As appropriate in context, "ETC Senior Equity Interests" may refer to both series of equity interests together, or, in the alternative, to one or the other series of equity interests, all in a manner consistent with the terms described in the Corporate Governance Term Sheet.

**1.38** *ETC Series A Equity Interests* means the equity interests of ETC that will be reclassified as Series A membership interests of ETC with the terms described in the Corporate Governance Term Sheet, to be set forth in the Reorganized ETC LLC Agreement.

**1.39** *ETC Series B Equity Interests* means the equity interests of ETC that will be reclassified as Series B membership interests of ETC with the terms described in the Corporate Governance Term Sheet, to be set forth in the Reorganized ETC LLC Agreement.

**1.40** *ETC Series C Equity Interests* means the equity interests of ETC that will be reclassified as Series C membership interests of ETC with the terms described in the Corporate Governance Term Sheet, to be set forth in the Reorganized ETC LLC Agreement.

**1.41** *Exchange Act* means the Securities Exchange Act of 1934, as amended, and all rules and regulations promulgated thereunder.

**1.42** *Final Order* means an order or judgment entered by the Bankruptcy Court or other court of competent jurisdiction: (a) that has not been reversed, stayed, modified, amended, or revoked, and as to which (i) any right to appeal or seek certiorari, review, reargument, stay, or rehearing has been waived or (ii) the time to appeal or seek certiorari, review, reargument, stay, or rehearing has expired and no appeal or petition for certiorari, review, reargument, stay, or rehearing is pending or (b) as to which an appeal has been taken or petition for certiorari, review, reargument, stay, or rehearing has been filed and (i) such appeal or petition for certiorari, review, reargument, stay, or rehearing has been resolved by the highest court to which the order or judgment was appealed or from which certiorari, review, reargument, stay, or rehearing was sought and (ii) the time to appeal further or seek certiorari, further review, reargument, stay, or rehearing has expired and no such further appeal or petition for certiorari, further review, reargument, stay, or rehearing is pending; *provided, however*, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion pursuant to sections 502(j) or 1144 of the Bankruptcy Code, rules 59 or 60 of the Federal Rules of Civil Procedure, or Bankruptcy Rules 9023 and 9024 may be filed with respect to such order or judgment.

**1.43** *General Unsecured Claim* means any Claim against any of the Debtors that is (a) not an Administrative Expense Claim, Priority Tax Claim, Priority Non-Tax Claim, Prepetition Second Lien Claim, Prepetition Third Lien Claim, Other Secured Claim, or Intercompany Claim or (b) otherwise determined by the Bankruptcy Court to be a General Unsecured Claim.

**1.44** *Holder* means the beneficial holder of any Claim or Equity Interest.

**1.45** *Impaired* has the meaning set forth in section 1124 of the Bankruptcy Code.

**1.46** *Incentive Compensation Term Sheet* means that certain Incentive Compensation Term Sheet attached as Exhibit 5 to the Restructuring Term Sheet.

**1.47** *Intercompany Claim* means any Claim held by (a) a Debtor against another Debtor or (b) a non-Debtor subsidiary of a Debtor against a Debtor.

**1.48** *Lien* means a lien as defined in section 101(37) of the Bankruptcy Code on or against any of the Debtors’ property or the Estates.

**1.49** *New Constituent Documents* means (a) with respect to Reorganized ETC, the Reorganized ETC LLC Agreement and the Reorganized ETC Certificate of Formation and (b) with respect to any other Reorganized Debtor, the certificate of incorporation, formation, or

registration (including, if applicable, certificate of name change), articles of incorporation or association, memorandum of association, memorandum of continuance, charter, by-laws, limited liability company agreements, or one or more similar agreements, instruments or documents constituting the organization or formation of such Reorganized Debtor, as amended and restated as of the Effective Date, in each case, amended and restated to, among other things, (i) prohibit the issuance of non-voting equity securities by such Reorganized Debtor to the extent required under section 1123(a)(6) of the Bankruptcy Code and (ii) otherwise give effect to the provisions of the Plan. Forms of the New Constituent Documents will be included in the Plan Supplement.

**1.50** *New LTI Plan* means the long-term incentive plan to be adopted by the board of directors of Reorganized ETC on or promptly following the Effective Date, consistent in all material respects with the terms set forth in the Incentive Compensation Term Sheet.

**1.51** *New Second Lien Debt Cash Payment* means the aggregate amount of Cash received by the Debtors as of the Effective Date on account of valid exercises of the New Second Lien Debt Participation Elections.

**1.52** *New Second Lien Debt Participation Election* means the irrevocable election that an eligible Prepetition Third Lien Lender may make on its voting ballot to purchase New Second Lien Series B Notes on a pro rata basis based on the principal amount of Prepetition Third Lien Debt held by such lender as of the Voting Record Date in relation to the aggregate principal amount of outstanding Prepetition Third Lien Debt.

**1.53** *New Second Lien Note Indenture* means the indenture by and among Reorganized ETC, as issuer, any corporate co-issuer required by the New Second Lien Noteholders, certain direct and indirect subsidiaries of Reorganized ETC, as guarantors, and the New Second Lien Note Indenture Trustee, as such indenture may be amended, supplemented, or modified from time to time in accordance with the terms thereof. The material terms of the New Second Lien Note Indenture are set forth in the term sheet attached as **Exhibit A**.

**1.54** *New Second Lien Note Indenture Trustee* means the indenture trustee under the New Second Lien Note Indenture, or any successor indenture trustee thereunder. The identity of the initial New Second Lien Note Indenture Trustee will be disclosed in the Plan Supplement

**1.55** *New Second Lien Noteholders* means the holders of the New Second Lien Notes.

**1.56** *New Second Lien Notes* means the second lien notes to be issued by Reorganized ETC pursuant to and in accordance with the New Second Lien Note Indenture.

**1.57** *New Second Lien Series A Notes* means the New Second Lien Notes issued to Holders of Allowed Prepetition Second Lien Claims pursuant to the Plan in an aggregate principal amount equal to the aggregate principal amount of the Prepetition Second Lien Claims, plus any capitalized and accrued and unwaived interest thereon as of the Effective Date for the Debtor Subsidiaries.

**1.58** *New Second Lien Series B Notes* means the New Second Lien Notes issued to Holders of Allowed Prepetition Third Lien Claims who make a valid and timely New Second Lien Debt Participation Election. The New Second Lien Series B Notes shall have the same priority and voting rights and be governed by the same terms and conditions as the New Second Lien Series A Notes. The proceeds of the New Second Lien Series B Notes shall be used solely to ratably prepay the New Second Lien Series A Notes at par (including any accrued and unpaid and unwaived interest in respect of such New Second Lien Series A Notes so prepaid).

**1.59** *New STI Plan* means the short-term incentive plan to be adopted by the board of directors of Reorganized ETC on or promptly following the Effective Date, consistent in all material respects with the terms set forth in the Incentive Compensation Term Sheet.

**1.60** *New Third Lien Agent* means Wells Fargo Bank, National Association, as administrative agent under the New Third Lien Credit Agreement, or any successor administrative agent thereunder.

**1.61** *New Third Lien Credit Agreement* means the \$550 million third lien credit agreement by and among the Reorganized Debtors, the New Third Lien Agent, and the lenders party thereto, as such credit agreement may be amended, supplemented, or modified from time to time in accordance with the terms thereof. The material terms of the New Third Lien Credit Agreement are set forth in the term sheet attached as **Exhibit B**.

**1.62** *New Third Lien Debt* means the Reorganized Debtors' obligations under the New Third Lien Credit Agreement.

**1.63** *New Third Lien Facility* means, collectively (a) the New Third Lien Credit Agreement and (b) the related loans, guarantees, pledges, security agreements, and other agreements and documents to be given or issued pursuant to or in connection with, the foregoing.

**1.64** *New Third Lien Lenders* means the lenders under the New Third Lien Credit Agreement.

**1.65** *Other Secured Claim* means any Secured Claim that is not a Prepetition Second Lien Claim or Prepetition Third Lien Claim.

**1.66** *Parent* means Entegra Power Group LLC.

**1.67** *Participating Prepetition Equity Holders* means the Holders of Equity Interests in Parent who have executed the Restructuring Support Agreement and hold approximately 60% of the Equity Interests in Parent.

**1.68** *Participating Prepetition Lenders* means the Participating Prepetition Second Lien Lenders and the Participating Prepetition Third Lien Lenders.

**1.69 *Participating Prepetition Second Lien Lenders*** means the Prepetition Second Lien Lenders who have executed the Restructuring Support Agreement and who hold 100% of the Prepetition Second Lien Claims.

**1.70 *Participating Prepetition Third Lien Lenders*** means the Prepetition Third Lien Lenders who have executed the Restructuring Support Agreement and who hold in excess of 66⅔% of the Prepetition Third Lien Claims.

**1.71 *Permitted Working Capital Facility*** means the first lien letter of credit or working capital facility not to exceed \$40 million permitted under the New Second Lien Note Indenture. In the event that the Debtors elect to enter into the Permitted Working Capital Facility on the Effective Date, the material terms of the Permitted Working Capital Facility will be included in the Plan Supplement.

**1.72 *Person*** has the meaning set forth in section 101(41) of the Bankruptcy Code.

**1.73 *Petition Date*** means the date on which the Debtors filed their petitions for relief commencing the Chapter 11 Cases.

**1.74 *Plan*** means this joint prepackaged plan of reorganization under chapter 11 of the Bankruptcy Code, including the exhibits and schedules hereto and the Plan Supplement, as may be amended, supplemented, or modified from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Restructuring Support Agreement, and the terms hereof.

**1.75 *Plan Documents*** means the documents to be executed, delivered, assumed, or performed in connection with the consummation and implementation of the Plan including, but not limited to, the New Constituent Documents, the Amended Intercreditor Agreement, the New Second Lien Note Indenture, and the New Third Lien Facility.

**1.76 *Plan Supplement*** means the compilation of documents (or forms thereof), schedules, and exhibits filed not later than ten (10) calendar days prior to the first date on which the Confirmation Hearing is scheduled to be held, as such documents, schedules, and exhibits may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the terms of this Plan.

**1.77 *Plan Support Party*** means any Person or Entity that is party to the Restructuring Support Agreement.

**1.78 *Prepetition Second Lien Agent*** means U.S. Bank National Association, as administrative agent under the Prepetition Second Lien Credit Agreement, or any successor administrative agent thereunder.

**1.79 *Prepetition Second Lien Claims*** means all Claims against any Debtor related to, arising out of, or in connection with, the Prepetition Second Lien Credit Agreement.

**1.80** *Prepetition Second Lien Credit Agreement* means the Credit Agreement (Second Lien), dated as of March 27, 2014, by and among the Debtors, the Prepetition Second Lien Agent, and the lenders party thereto, as amended, modified, or supplemented from time to time, together with all other agreements entered into and documents delivered in connection therewith.

**1.81** *Prepetition Second Lien Lenders* means the lenders under the Prepetition Second Lien Credit Agreement.

**1.82** *Prepetition Third Lien Agent* means Wells Fargo Bank, National Association (as successor to Credit Suisse AG, Cayman Islands Branch), as administrative agent under the Prepetition Third Lien Credit Agreement, or any successor administrative agent thereunder.

**1.83** *Prepetition Third Lien Claims* means all Claims against any Debtor related to, arising out of, or in connection with, the Prepetition Third Lien Credit Agreement.

**1.84** *Prepetition Third Lien Credit Agreement* means the Credit Agreement (Third Lien), dated as of April 19, 2007, by and among the Debtors, the Prepetition Third Lien Agent, and the lenders party thereto, as amended, modified, or supplemented from time to time, together with all other agreements entered into and documents delivered in connection therewith.

**1.85** *Prepetition Third Lien Lenders* means the lenders under the Prepetition Third Lien Credit Agreement.

**1.86** *Priority Non-Tax Claim* means any Claim against any of the Debtors entitled to priority in right of payment under section 507(a) of the Bankruptcy Code that is not an Administrative Expense Claim or a Priority Tax Claim.

**1.87** *Priority Tax Claim* means any Claim of a governmental authority of the kind entitled to priority in payment as specified in sections 502(i) or 507(a)(8) of the Bankruptcy Code.

**1.88** *Pro Rata Share* means, with respect to any distribution on account of any Allowed Claim or Allowed Equity Interest in any Class, a distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Allowed Claim or Allowed Equity Interest bears to the aggregate amount of all Claims or Equity Interests, as applicable, other than Disallowed Claims or Disallowed Equity Interests, as the case may be, in such Class.

**1.89** *Professionals* means (a) all professionals employed in the Chapter 11 Cases pursuant to sections 327, 328, 363, or 1103 of the Bankruptcy Code or otherwise and (b) all professionals or other entities seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

**1.90** *Released Parties* means, collectively, (a) all Persons engaged or retained by the Debtors in connection with the Chapter 11 Cases (including in connection with the preparation of, and analyses relating to, the Disclosure Statement, the Plan, and the Restructuring

Support Agreement); (b) the Reorganized Debtors; (c) the Prepetition Second Lien Agent; (d) the Prepetition Second Lien Lenders; (e) the Prepetition Third Lien Agent; (f) the Prepetition Third Lien Lenders; (g) the Plan Support Parties; (h) all Persons engaged or retained by the parties listed in (b) through (g) of this definition in connection with the Chapter 11 Cases (including in connection with the preparation of and analyses relating to the Disclosure Statement, the Plan, and the Restructuring Support Agreement); and (i) any and all affiliates, officers, directors, partners, employees, members, managers, members of boards of managers, advisors, attorneys, actuaries, financial advisors, accountants, investment bankers, agents, professionals, and representatives of each of the foregoing Persons and Entities (whether current or former, in each case in his, her, or its capacity as such).

**1.91 *Releasing Parties*** means each of the following in its capacity as such: (a) the Plan Support Parties; (b) the Prepetition Second Lien Agent; (c) the Prepetition Second Lien Lenders; (d) the Prepetition Third Lien Agent; (e) the Prepetition Third Lien Lenders; (f) each Holder of a Claim or Equity Interest who either votes to accept the Plan or is conclusively presumed to have accepted the Plan; and (g) each Holder of a Claim or Equity Interest who is entitled to vote on the Plan and (i) either votes to reject the Plan or abstains from voting to accept or reject the Plan and (ii) does not check the appropriate box on such Holder's timely submitted ballot to indicate that such Holder opts out of the releases set forth in Section 10.4.

**1.92 *Reorganized Debtor*** means any Debtor and any successors or assigns thereto, by merger, consolidation, or otherwise on or after the Effective Date.

**1.93 *Reorganized ETC*** means ETC and any successor or assign thereto, by merger, consolidation, or otherwise, on or after the Effective Date.

**1.94 *Reorganized ETC Certificate of Formation*** means the amended and restated certificate of formation of Reorganized ETC, which shall be filed with the Delaware Secretary of State on the Effective Date. A form of the Reorganized ETC Certificate of Formation will be included in the Plan Supplement.

**1.95 *Reorganized ETC LLC Agreement*** means the amended and restated limited liability company agreement of Reorganized ETC, which shall become effective on the Effective Date. The material terms of the Reorganized ETC LLC Agreement are set forth in the Corporate Governance Term Sheet and a form of the Reorganized ETC LLC Agreement will be included in the Plan Supplement.

**1.96 *Requisite Participating Prepetition Third Lien Lenders*** means, as of any date of determination, Participating Prepetition Third Lien Lenders holding at least two-thirds in amount of the Prepetition Third Lien Claims.

**1.97 *Restructuring Support Agreement*** means that certain agreement, dated as of June 27, 2014, by and among the Debtors and the Plan Support Parties, including all exhibits thereto, as may be amended, supplemented, or modified from time to time in accordance with its terms. A copy of the Restructuring Support Agreement is attached to the Disclosure Statement as Exhibit B.



**1.98 *Restructuring Term Sheet*** means that certain Restructuring Term Sheet attached as Exhibit A to the Restructuring Support Agreement.

**1.99 *Restructuring Transactions*** has the meaning set forth in Section 5.2.

**1.100 *Retained Actions*** has the meaning set forth in Section 7.5.

**1.101 *Secured Claim*** means a Claim against any Debtor that is secured by a valid, perfected, and enforceable Lien on, or security interest in, property of such Debtor, or that has the benefit of rights of setoff under section 553 of the Bankruptcy Code, but only to the extent of the value of the Holder's interest in such Debtor's interest in such property, or to the extent of the amount subject to setoff, the value of which shall be determined as provided in section 506 of the Bankruptcy Code.

**1.102 *Securities Act*** means the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder.

**1.103 *Tax Election*** has the meaning set forth in Section 5.2(a)(iii).

**1.104 *Unimpaired*** means, with respect to any Claim or Equity Interest, such Claim or Equity Interest that is not Impaired.

**1.105 *Union Facility*** means the 2,152 MW natural gas-fired combined-cycle power generation facility located in the SER region in Union County, Arkansas.

**1.106 *Voting Agent*** means Prime Clerk LLC.

**1.107 *Voting Record Date*** means June 30, 2014, the record date for purposes of determining, among other things, which Holders of Claims and Equity Interests are entitled to vote to accept or reject the Plan.

**B. Interpretation, Application of Definitions, and Rules of Construction.**

(a) For purposes of the Plan and unless otherwise specified herein: (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (ii) unless otherwise specified, any reference in the Plan to an existing document, schedule, or exhibit, whether or not filed with the Bankruptcy Court, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (iii) any reference to an Entity as a Holder of a Claim or Equity Interest includes that Entity's permitted successors and assigns; (iv) unless otherwise specified, all references in the Plan to sections are references to sections of the Plan; (v) the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular provision of the Plan; (vi) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with, applicable federal law,

including the Bankruptcy Code and Bankruptcy Rules; (vii) captions and headings to sections of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (viii) unless otherwise set forth in the Plan, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (ix) any term used in capitalized form in the Plan that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (x) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, as applicable to the Chapter 11 Cases, unless otherwise stated; (xi) any reference to an event occurring on a specified date, including on the Effective Date, shall mean that the event will occur on that date or as soon thereafter as reasonably practicable; and (xii) any immaterial effectuating provisions may be interpreted by the Reorganized Debtors after the Effective Date in such a manner that is consistent with the overall purpose and intent of the Plan all without further Bankruptcy Court order.

(b) In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

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

## **SECTION 2. UNCLASSIFIED CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified, and, thus, are excluded from the Classes of Claims and Equity Interests set forth in Section 3.

### **2.1 *Administrative Expense Claims.***

Except to the extent that the Holder of an Allowed Administrative Expense Claim agrees to a less favorable treatment, and except as provided in Section 2.3 below, each Holder of an Allowed Administrative Expense Claim against the Debtors shall receive, in full and complete settlement, release, and discharge of such Claim, Cash equal to the unpaid amount of such Allowed Administrative Expense Claim either on, or as soon as practicable after, the latest of (a) the Effective Date; (b) the date on which such Administrative Expense Claim becomes Allowed; (c) the date on which such Administrative Expense Claim becomes due and payable in the ordinary course of business under any agreement or understanding between the applicable Debtor and the Holder of such Allowed Administrative Expense Claim; and (d) such other date as may be mutually agreed to by such Holder and the Debtors or Reorganized Debtors, as applicable. Notwithstanding the foregoing, any Allowed Administrative Expense Claim representing obligations incurred in the ordinary course of business or assumed by any of the Debtors shall be paid in full, in Cash, or performed by the applicable Debtor or Reorganized Debtor in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to, such transactions.

## **2.2 Priority Tax Claims.**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each Holder of an Allowed Priority Tax Claim against the Debtors shall receive, in full and complete, settlement, release, and discharge of such Claim, Cash equal to the unpaid amount of such Allowed Priority Tax Claim either on, or as soon as practicable after, the latest of (a) the Effective Date; (b) the date on which such Priority Tax Claim becomes Allowed; (c) the date on which such Priority Tax Claim becomes due and payable; and (d) such other date as may be mutually agreed to by and among such Holder and the Debtors or Reorganized Debtors, as applicable; *provided, however*, that the Debtors shall be authorized, at their option, and in lieu of payment in full, in Cash, of an Allowed Priority Tax Claim as provided in clauses (a) through (d) above, to make deferred Cash payments on account thereof in the manner and to the extent permitted under section 1129(a)(9)(C) of the Bankruptcy Code.

## **2.3 Professional Fees.**

Each Professional requesting compensation pursuant to sections 330, 331, 363, or 503(b) of the Bankruptcy Code for services rendered in connection with the Chapter 11 Cases prior to the Effective Date shall (a) file with the Bankruptcy Court, and serve on the Reorganized Debtors, an application for allowance of final compensation and reimbursement of expenses in the Chapter 11 Cases on or before the forty-fifth (45th) day following the Effective Date and (b) after notice and a hearing in accordance with the procedures established by the Bankruptcy Code and any prior orders of the Bankruptcy Court in the Chapter 11 Cases, be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court.

For the avoidance of doubt, the immediately preceding paragraph shall not affect any professional-service Entity that is permitted to receive, and the Debtors are permitted to pay without seeking further authority from the Bankruptcy Court, compensation for services and reimbursement of expenses in the ordinary course of business (and in accordance with any relevant prior order of the Bankruptcy Court), the payments for which may continue notwithstanding the occurrence of confirmation of the Plan.

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Debtors or Reorganized Debtors, as applicable, may, upon submission of appropriate documentation and in the ordinary course of business, pay the post-Effective Date charges incurred by the Debtors for any Professional's fees, disbursements, expenses, or related support services without application to or obtaining approval from the Bankruptcy Court. On the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional for fees and charges incurred from and after the Effective Date in the ordinary course of business without any further notice to, or action, order, or approval of the Bankruptcy Court.

### SECTION 3. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

The following table designates the Classes of Claims against, and Equity Interests in, each of the Debtors, and specifies which of those Classes are (a) Impaired and entitled to vote to accept or reject each Plan, as applicable, in accordance with section 1126 of the Bankruptcy Code or (b) Unimpaired and presumed to accept each Plan, as applicable, and therefore, are not entitled to vote to accept or reject such Plans. A Claim or Equity Interest or portion thereof shall be deemed classified in a particular Class only to the extent that such Claim or Equity Interest or portion thereof qualifies within the description of such Class and shall be deemed classified in a different Class to the extent that the portion of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is considered to be in a particular Class only to the extent that such Claim or Equity Interest has not been paid or otherwise settled prior to the Effective Date. To the extent that a specified Class does not include any Allowed Claims or Allowed Equity Interests, then, as applicable, such Class shall be deemed to not exist.

This Plan, though proposed jointly and consolidated for purposes of making distributions to Holders of Claims or Equity Interests under this Plan, constitutes a separate Plan proposed by each Debtor. Therefore, the classifications set forth herein shall be deemed to apply separately with respect to each Plan proposed by, and the Claims against and Equity Interests in, each Debtor.

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
1	Priority Non-Tax Claims	Unimpaired	No (presumed to accept)
2	Prepetition Second Lien Claims	Impaired	Yes
3	Prepetition Third Lien Claims	Impaired	Yes
4	Other Secured Claims	Unimpaired	No (presumed to accept)
5	General Unsecured Claims	Unimpaired	No (presumed to accept)
6	Intercompany Claims	Unimpaired	No (presumed to accept)
7	Equity Interests in Debtor Subsidiaries	Unimpaired	No (presumed to accept)
8	Equity Interests in Parent	Impaired	Yes

### SECTION 4. TREATMENT OF CLAIMS AND EQUITY INTERESTS

#### 4.1 *Priority Non-Tax Claims (Class 1).*

- (a) Classification. Class 1 consists of all Allowed Priority Non-Tax Claims.

(b) Treatment. Except to the extent that a Holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment, each Holder of an Allowed Priority Non-Tax Claim shall receive, in full and complete settlement, release, and discharge of such Claim, Cash in an amount equal to the Allowed amount of such Claim either on, or as soon as practicable after, the latest of (i) the Effective Date; (ii) the date on which such Priority Non-Tax Claim becomes Allowed; (iii) the date on which such Priority Non-Tax Claim becomes due and payable in the ordinary course of business under any agreement or understanding between the applicable Debtor and the Holder of such Claim; and (iv) such other date as may be mutually agreed to by and among such Holder and the Debtors or the Reorganized Debtors, as applicable.

(c) Impairment and Voting. Class 1 is Unimpaired. The Holders of Claims in Class 1 are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, and accordingly, are not entitled to vote to accept or reject the Plan.

#### **4.2 *Prepetition Second Lien Claims (Class 2).***

(a) Classification. Class 2 consists of all Allowed Prepetition Second Lien Claims. Pursuant to the Plan, the Prepetition Second Lien Claims shall be Allowed in the aggregate principal amount of approximately \$236,903,333, plus accrued prepetition and postpetition interest through the Effective Date in accordance with Section 4.2(b) below.

(b) Treatment. Except to the extent that a Holder of an Allowed Prepetition Second Lien Claim agrees to a less favorable treatment, in exchange for the full and complete settlement, release, and discharge of such Claim, on the Effective Date or as soon as practicable thereafter, each Holder of an Allowed Prepetition Second Lien Claim shall receive its Pro Rata Share of (i) the New Second Lien Notes in the form of the New Second Lien Series A Notes and (ii) upon the prepayment of the applicable portion of its New Second Lien Series A Notes, as further described in Section 5.4 below, the aggregate amount of Cash received by the Debtors from the proceeds of the New Second Lien Series B Notes. The Pro Rata Share of the New Second Lien Debt Cash Payment allocable to each Holder of an Allowed Prepetition Second Lien Claim pursuant to clause (ii) above shall be determined in relation to the amount of outstanding principal and accrued and unwaived interest outstanding under the Prepetition Second Lien Credit Agreement on the Effective Date. If this Plan is consummated consistent in all material respects with the Restructuring Support Agreement and all exhibits thereto, all incremental default interest under the Prepetition Second Lien Credit Agreement shall be waived (providing to the Holders of Prepetition Second Lien Claims an Allowed Claim for accrued prepetition and postpetition interest at the non-default rate); *provided, however*, that if this Plan is not consummated consistent in all material respects with the Restructuring Support Agreement, the Prepetition Second Lien Lenders reserve their right to assert a Claim for interest at the default rate, and the Debtors reserve their right to dispute the same.

(c) Manner of Distribution to Holders of Allowed Prepetition Second Lien Claims. Except as otherwise provided in Section 5.2 below, on the Effective Date of the Plan for ETC or as soon as practicable thereafter, the applicable Debtors or Reorganized Debtors

shall make all distributions of New Second Lien Series A Notes and Cash, if any, to the Prepetition Second Lien Agent, who shall thereafter distribute such New Second Lien Series A Notes and Cash, if any, to the Holders of Allowed Prepetition Second Lien Claims. Such distributions by the Debtors or Reorganized Debtors, as applicable, shall be in complete satisfaction and discharge of all obligations of the Debtors to the Holders of Allowed Prepetition Second Lien Claims.

(d) Impairment and Voting. Class 2 is Impaired, and accordingly, the Holders of Claims in Class 2 are entitled to vote to accept or reject the Plan.

#### **4.3 *Prepetition Third Lien Claims (Class 3).***

(a) Classification. Class 3 consists of all Allowed Prepetition Third Lien Claims. Pursuant to the Plan, the Prepetition Third Lien Claims shall be Allowed in the aggregate principal amount of \$1,305,925,607 plus accrued prepetition interest since May 30, 2014.

(b) Treatment. Except to the extent that a Holder of an Allowed Prepetition Third Lien Claim agrees to a less favorable treatment, in exchange for the full and complete settlement, release, and discharge of such Claim, (i) on the Effective Date of the Plan for Parent each Holder of an Allowed Prepetition Third Lien Claim shall receive its Pro Rata Share of 100% of the ETC Series A Equity Interests; *provided, however*, that, if none of the conditions described under the heading “Regulatory Restrictions” in the Corporate Governance Term Sheet are satisfied prior to the Effective Date, affiliates of Wayzata Investment Partners LLC shall receive, in lieu of their Pro Rata Share of the ETC Series A Equity Interests, 100% of the ETC Series C Equity Interests (the terms of which are set forth in the Corporate Governance Term Sheet) and (ii) on the first Business Day following the Effective Date of the Plan for the Debtor Subsidiaries each Holder of an Allowed Prepetition Third Lien Claim shall receive its Pro Rata Share of the New Third Lien Debt. As a condition to the receipt of the ETC Senior Equity Interests, each Holder of a Prepetition Third Lien Claim must execute and submit a joinder to the Reorganized ETC LLC Agreement, which joinder will be included with the ballot. The ETC Senior Equity Interests allocable to each Holder of a Prepetition Third Lien Claim that fails to execute and submit a joinder to the Reorganized ETC LLC Agreement in accordance with the instructions to be attached to such joinder shall be held in escrow for one year following the Effective Date and shall be distributed (along with any rights or obligations, including, without limitation, distributions (if any), allocable to such ETC Senior Equity Interests) to such Holder if and when, during such one-year period, such Holder executes and submits a joinder to the Reorganized ETC LLC Agreement. The ETC Senior Equity Interests allocable to each Holder of a Prepetition Third Lien Claim that fails to execute and submit a joinder to the Reorganized ETC LLC Agreement within one year following the Effective Date shall be cancelled and extinguished, and such Holder shall be forever barred and enjoined from asserting any right to such ETC Senior Equity Interests against any of the Debtors, the Estates, or the Reorganized Debtors or their property.

One hundred percent (100%) of any net cash proceeds received by the Debtors on or following the Petition Date, but before the Effective Date, from the disposition of the generating block known as “Gila Block 3” to Tucson Electric Power, its affiliates, or any other

third-party purchaser shall be held by the Debtors until the closing date of the New Third Lien Credit Agreement and immediately thereafter shall be applied to prepay the New Third Lien Debt.

Additionally, each Holder of a Prepetition Third Lien Claim as of the Voting Record Date that (i) is an Eligible Holder (as defined in Section 12.2 below); (ii) votes to accept the Plan as to each Claim and Equity Interest held by such Holder and such Holder's controlled affiliates, to the extent applicable; and (iii) is not a Holder of a Prepetition Second Lien Claim or the affiliate of a Holder of a Prepetition Second Lien Claim, shall have the right (but not the obligation) to make an irrevocable New Second Lien Debt Participation Election. Subject to the terms of Section 5.4 below, each Holder of a Prepetition Third Lien Claim that makes a valid and timely New Second Lien Debt Participation Election shall receive its Pro Rata Share of the New Second Lien Series B Notes.

(c) Manner of Distribution to Holders of Allowed Prepetition Third Lien Claims. Except as otherwise provided in Section 5.2 below, the applicable Debtors or Reorganized Debtors shall make all distributions of (i) ETC Senior Equity Interests on the Effective Date of the Plan for Parent to the Prepetition Third Lien Agent, who shall thereafter distribute such ETC Senior Equity Interests to the Holders of Allowed Prepetition Third Lien Claims; (ii) New Third Lien Debt on the first Business Day following the Effective Date of the Plan for the Debtor Subsidiaries to the Prepetition Third Lien Agent, who shall thereafter distribute such New Third Lien Debt to the Holders of Allowed Prepetition Third Lien Claims; and (iii) the New Second Lien Series B Notes on the first Business Day following the Effective Date of the Plan for the Debtor Subsidiaries to the Prepetition Second Lien Agent, who shall thereafter distribute such New Second Lien Series B Notes to those Holders of Allowed Prepetition Third Lien Claims who made a valid and timely New Second Lien Debt Participation Election and have complied with all other related requirements.

(d) Impairment and Voting. Class 3 is Impaired, and accordingly, the Holders of Claims in Class 3 are entitled to vote to accept or reject the Plan.

#### **4.4 Other Secured Claims (Class 4).**

(a) Classification. Class 4 consists of all Allowed Other Secured Claims.

(b) Treatment. Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, each Holder of an Allowed Other Secured Claim shall receive, in full and complete settlement, release, and discharge of such Claim, in the sole discretion of the Debtors or the Reorganized Debtors, as applicable: (i) reinstatement of its Allowed Other Secured Claim in accordance with section 1124(2) of the Bankruptcy Code (including any Cash necessary to satisfy the requirements for reinstatement), such that such Claim is rendered Unimpaired; (ii) either (w) Cash in the full amount of such Allowed Other Secured Claim, including any non-default postpetition interest accrued pursuant to section 506(b) of the Bankruptcy Code, (x) the proceeds of the sale or disposition of the Collateral securing such Allowed Other Secured Claim, to the extent of the value of such Holder's secured interest in such Collateral, (y) the Collateral securing such Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid

pursuant to section 506(b) of the Bankruptcy Code, or (z) such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code; or (iii) such other treatment as may be mutually agreed to by and among such Holder and the Debtors or the Reorganized Debtors, as applicable. Any cure amount that the Debtors may be required to pay pursuant to section 1124(2) of the Bankruptcy Code on account of any such reinstated Other Secured Claim or any distributions due pursuant to clause (ii) above shall be paid or made, as applicable, either on, or as soon as practicable after, the latest of (1) the Effective Date; (2) the date on which such Other Secured Claim becomes Allowed; (3) the date on which such Other Secured Claim becomes due and payable; and (4) such other date as may be mutually agreed to by such Holder and the Debtors or the Reorganized Debtors, as applicable.

(c) Reservation of Rights. The failure of the Debtors or any other party in interest to file an objection, prior to the Effective Date, with respect to any Other Secured Claim that is reinstated by the Plan shall be without prejudice to the rights of the Reorganized Debtors or any other party in interest to contest or otherwise defend against such Claim in an appropriate forum (including the Bankruptcy Court, if applicable, in accordance with Section 11 below) when and if such Claim is sought to be enforced.

(d) Impairment and Voting. Class 4 is Unimpaired. The Holders of Claims in Class 4 are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, and accordingly, are not entitled to vote to accept or reject the Plan.

#### **4.5 General Unsecured Claims (Class 5).**

(a) Classification. Class 5 consists of all Allowed General Unsecured Claims.

(b) Treatment. Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, each Holder of an Allowed General Unsecured Claim shall receive, ~~in full and complete settlement, release, and discharge of such Claim,~~ in the sole discretion of the Debtors or Reorganized Debtors, as applicable: (i) reinstatement pursuant to section 1124(2) of the Bankruptcy Code (including any Cash necessary to satisfy the requirements for reinstatement), such that such Claim is rendered Unimpaired; (ii) ~~in full and complete settlement, release, and discharge of such Claim,~~ payment of the Allowed amount of such Holder's Claim in full, in Cash, on, or as soon as practicable after, the latest of (w) the Effective Date, (x) the date on which such General Unsecured Claim becomes Allowed, (y) the date on which such Allowed General Unsecured Claim otherwise is due and payable, and (z) such other date as may be mutually agreed to by and among such Holder and the Debtors or the Reorganized Debtors, as applicable; or (iii) ~~in full and complete settlement, release, and discharge of such Claim,~~ such other treatment as may be mutually agreed to by and among such Holder and the Debtors or the Reorganized Debtors, as applicable. Any cure amount that the Debtors may be required to pay pursuant to section 1124(2) of the Bankruptcy Code on account of any such reinstated General Unsecured Claim shall be paid on, or as soon as practicable after, the latest of (1) the Effective Date; (2) the date on which such General Unsecured Claim becomes Allowed; (3) the date on which such General Unsecured Claim otherwise is due and payable; and (4) such other date as may be



mutually agreed to by and among such Holder and the Debtors or the Reorganized Debtors, as applicable.

(c) Reservation of Rights. The failure of the Debtors or any other party in interest to file an objection, prior to the Effective Date, with respect to any General Unsecured Claim that is reinstated by the Plan shall be without prejudice to the rights of the Reorganized Debtors or any other party in interest to contest or otherwise defend against such Claim in an appropriate forum (including the Bankruptcy Court, if applicable, in accordance with Section 11 below) when and if such Claim is sought to be enforced.

(d) Impairment and Voting. Class 5 is Unimpaired. The Holders of Claims in Class 5 are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, and accordingly, are not entitled to vote to accept or reject the Plan.

#### **4.6 *Intercompany Claims (Class 6)***

(a) Classification. Class 6 consists of all Allowed Intercompany Claims.

(b) Treatment. On the Effective Date, all Allowed Intercompany Claims shall, in full and complete settlement, release, and discharge of such Claims, either be (i) reinstated, in full or in part, and treated in the ordinary course of business or (ii) cancelled and discharged, as mutually agreed upon by the Holder of such Intercompany Claim and the Debtors or the Reorganized Debtors, as applicable. Holders of Intercompany Claims shall not receive or retain any property on account of such Intercompany Claim to the extent that such Intercompany Claim is cancelled and discharged.

(c) Impairment and Voting. Class 6 is Unimpaired. The Holders of Claims in Class 6 are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, and accordingly, are not entitled to vote to accept or reject the Plan.

#### **4.7 *Equity Interests in Debtor Subsidiaries (Class 7)***

(a) Classification. Class 7 consists of all Allowed Equity Interests in Debtor Subsidiaries.

(b) Treatment. On the Effective Date, (i) all Allowed Equity Interests in Debtor Subsidiaries (excluding Basso-TP 2 Inc.) shall be reinstated and otherwise unaffected by the Plan and (ii) the Equity Interests in Basso-TP 2 Inc. shall be cancelled, extinguished, and discharged. Equity interests in Debtor Subsidiaries are Unimpaired solely to preserve the Debtors' corporate structure, and Holders of those Equity Interests shall not otherwise receive or retain any property on account of such Equity Interests.

(c) Impairment and Voting. Class 7 is Unimpaired. The Holders of Equity Interests in Class 7 are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, and accordingly, are not entitled to vote to accept or reject the Plan.

#### **4.8 *Equity Interests in Parent (Class 8)***

(a) Classification. Class 8 consists of all Allowed Equity Interests in Parent.

(b) Treatment. On the Effective Date for Parent, in full and complete settlement, release, and discharge of such Equity Interests (i) each Holder of an Allowed Equity Interest in Parent shall receive its Pro Rata Share of the ETC Series B Equity Interests and (ii) all Equity Interests in Parent shall be cancelled, extinguished, and discharged; *provided, however*, that Holders of Allowed Equity Interests in Parent who vote to accept the Plan may elect on their voting ballot to waive their right to receive their Pro Rata Share of the ETC Series B Equity Interests. The amount of ETC Series B Equity Interests that would have been allocable to Holders of Allowed Equity Interests in Parent who opt to waive their right to receive their Pro Rata Share of the ETC Series B Equity Interests shall be reallocated and distributed pro rata to those Holders who receive the ETC Series B Equity Interests. As a condition to the receipt of the ETC Series B Equity Interests, each Holder of an Allowed Equity Interest in Parent must execute and submit a joinder to the Reorganized ETC LLC Agreement, which joinder will be included with the ballot. The ETC Series B Equity Interests allocable to each Holder of an Allowed Equity Interest in Parent that fails to execute and submit a joinder to the Reorganized ETC LLC Agreement in accordance with the instructions to be attached to such joinder shall be held in escrow for one year following the Effective Date and shall be distributed (along with any rights or obligations, including without limitation, distributions (if any), allocable to such ETC Series B Equity Interests) to such Holder if and when, during such one-year period, such Holder executes and submits a joinder to the Reorganized ETC LLC Agreement. The ETC Series B Equity Interests allocable to each Holder of Allowed Equity Interests in Parent that fails to execute and submit a joinder to the Reorganized ETC LLC Agreement within one year following the Effective Date shall be cancelled and extinguished, and such Holder shall be forever barred and enjoined from asserting any right to such ETC Series B Equity Interests against any of the Debtors, the Estates, or the Reorganized Debtors or their property.

(c) Description of the ETC Series B Equity Interests. The terms and conditions of the ETC Series B Equity Interests shall be set forth in the Reorganized ETC LLC Agreement. Certain of the principal terms of the ETC Series B Equity Interests are summarized below.

(i) No Economic Interests Prior to Achievement of the Distribution Threshold. The right of holders of the ETC Series B Equity Interests to receive distributions shall be contingent upon the achievement of the Distribution Threshold. After the achievement of the Distribution Threshold, holders of ETC Series B Equity Interests shall be entitled to receive five percent (5%) of all distributions to holders of ETC Equity Interests made by Reorganized ETC (subject to adjustment for future dilution), with such amounts to be distributed ratably in proportion to the number of ETC Series B Equity Interests held from time to time by each such holder as a percentage of the total number of then outstanding ETC Series B Equity Interests.

(ii) Voting. As shall be set forth in the Reorganized ETC LLC Agreement, in respect of any matter to be voted on by the holders of ETC Equity

Interests, the holders of ETC Series B Equity Interests shall be entitled to cast an aggregate number of votes in respect of such ETC Series B Equity Interests equal to one percent (1%) of the total number of votes entitled to be cast by holders of ETC Senior Equity Interests in respect of such ETC Senior Equity Interests; *provided, however*, that from and after the achievement of the Distribution Threshold, the holders of ETC Series B Equity Interests shall be entitled to cast an aggregate number of votes in respect of such ETC Series B Equity Interests equal to five percent (5%) of the total number of votes entitled to be cast by the holders of ETC Senior Equity Interests in respect of such ETC Senior Equity Interests (subject to adjustment for future dilution). Notwithstanding the foregoing, until the achievement of the Distribution Threshold, the ETC Series B Equity Interests shall automatically be deemed to have been voted on any and all matters in the same proportion and in the same proportionate manner as the votes cast by the holders of the ETC Senior Equity Interests on such matters.

(iii) Transfer Restrictions. No terms of the ETC Series B Equity Interests shall cause Reorganized ETC (or any other of the Reorganized Debtors) to be treated as a publicly traded partnership for federal income tax purposes or to be required by the Securities Act or the Exchange Act, including sections 12(g) or 15(d) of the Exchange Act, or any other federal, state, or local securities laws, to register such new instruments with the Securities and Exchange Commission or any other similar regulatory authority or to file periodic records under section 13 or section 15(d) of the Exchange Act. Accordingly, the ETC Series B Equity Interests shall contain restrictions on the issuance and transfer of the ETC Series B Equity Interests and other provisions reasonably satisfactory to the Reorganized Debtors and the Requisite Participating Prepetition Third Lien Lenders that are intended to ensure that neither the issuance nor the transfer of the ETC Series B Equity Interests triggers such registration or reporting requirements.

(d) Impairment and Voting. Class 8 is Impaired, and accordingly, the Holders of Equity Interests in Class 8 are entitled to vote to accept or reject the Plan.

#### **4.9 *Non-consensual Confirmation.***

In the event that any Impaired Class of Claims or Equity Interests rejects the Plan or is deemed to have rejected the Plan, the Debtors (a) request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code with respect to such non-accepting Class, in which case the Plan shall constitute a motion for such relief and (b) reserve the right to amend the Plan in accordance with Section 12.7 below.

#### **4.10 *Subordinated Claims.***

The allowance, classification, and treatment of all Allowed Claims and Allowed Equity Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the

Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtors reserve the right to reclassify any Allowed Claim or Allowed Equity Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

## **SECTION 5. MEANS FOR IMPLEMENTATION OF THE PLAN**

### **5.1 *Compromise of Controversies.***

In consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims and controversies resolved under the Plan, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019. All distributions made to Holders of Allowed Claims and Allowed Equity Interests in any Class in accordance with the Plan are intended to be, and shall be, final.

### **5.2 *Restructuring Transactions.***

On or after the Confirmation Date, the Debtors shall be authorized to enter into such transactions and take such other actions as may be necessary or appropriate to effect a corporate restructuring of their businesses, to otherwise simplify the overall corporate structure of the Debtors, or to reincorporate certain of the Debtors under the laws of jurisdictions other than the laws of which such Debtors currently are incorporated, which restructuring may include one or more mergers, consolidations, dispositions, liquidations, or dissolutions as may be determined by the Debtors to be necessary or appropriate to result in substantially all of the respective assets, properties, rights, liabilities, duties, and obligations of certain of the Debtors vesting in one or more surviving, resulting, or acquiring corporations (collectively, the "**Restructuring Transactions**"). In each case in which the surviving, resulting, or acquiring corporation in any such transaction is a successor to a Debtor, such surviving, resulting, or acquiring corporation shall perform the obligations of such Debtor pursuant to the Plan to satisfy the Allowed Claims against, or Allowed Equity Interests in, such Debtor, except as provided in any contract, instrument, or other agreement or document effecting a disposition to such surviving, resulting, or acquiring corporation, which may provide that another Debtor shall perform such obligations.

In effecting the Restructuring Transactions, the Debtors shall be permitted to (i) execute and deliver appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable state law and such other terms to which the applicable entities may agree; (ii) execute and deliver appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, duty, or obligation on terms consistent with the terms of the Plan and having such other terms to which the applicable entities may agree; (iii) file appropriate certificates or articles of merger, consolidation, or dissolution pursuant to applicable state law; and (iv) take all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions.

The Restructuring Transactions shall include, without limitation, the following actions:

(a) On the Effective Date of the Plan for Parent:

(i) Parent shall transfer the ETC Senior Equity Interests to Holders of Allowed Prepetition Third Lien Claims in full and complete settlement, release, and discharge of Parent's obligations under the Prepetition Third Lien Credit Agreement.

(ii) Parent shall transfer the ETC Series B Equity Interests to Holders of Allowed Equity Interests in Parent.

(iii) ETC shall file an election to be treated as a partnership for U.S. federal income tax purposes, with an effective date (as indicated on line 8 of IRS form 8832) of the second Business Day after the Effective Date for Parent (the "**Tax Election**"). The approval of the Plan by the board of directors of ETC shall constitute the adoption of a plan of liquidation for ETC solely for tax purposes upon the Effective Date for Parent.

(iv) Parent shall initiate proceedings under applicable state law to dissolve and dissolve.

(a) On the first Business Day following the Effective Date of the Plan for Parent:

(i) Basso TP-2 Inc. shall transfer its assets to ETC, and shall initiate proceedings under applicable state law to dissolve and dissolve.

(b) On the third Business Day following the Effective Date of the Plan for Parent, which shall be one Business Day after the Effective Date of the Plan for the Debtor Subsidiaries:

(i) Reorganized ETC shall issue the New Second Lien Notes and the New Second Lien Note Indenture shall be effective in accordance with its terms.

(ii) In connection with entry into the New Second Lien Note Indenture and issuance of the New Second Lien Notes, the New Second Lien Debt Cash Payment shall be released from escrow (as described in Section 5.4 below) and distributed on a pro rata basis to Holders of Allowed Prepetition Second Lien Claims.

(iii) In full and complete settlement, release, and discharge of the obligations of the Debtor Subsidiaries under the Prepetition Third Lien Credit Agreement, the Reorganized Debtor Subsidiaries shall enter into the New Third Lien Facility, and the New Third Lien Credit Agreement shall be effective in accordance with its terms.

### **5.3 Sources of Cash for Plan Distribution.**

Except as otherwise provided in the Plan or Confirmation Order, all Cash required for payments to be made hereunder shall be obtained pursuant to the Debtors' and Reorganized Debtors' operations and Cash balances, the New Second Lien Notes, the New Third Lien Facility, and the Permitted Working Capital Facility, if the Debtors elect to enter into such Permitted Working Capital Facility on the Effective Date, and shall be made available for distributions to Disputed Claims that become Allowed and are entitled to Cash distributions.

### **5.4 New Second Lien Debt Participation Elections.**

Each Prepetition Third Lien Lender that makes a valid and timely New Second Lien Debt Participation Election shall (a) deposit an amount sufficient to purchase the original principal amount of its Pro Rata Share of New Second Lien Series B Notes in a non-interest bearing escrow account no later than one Business Day prior to the anticipated Effective Date of the Plan for the Debtor Subsidiaries (pursuant to a notice to be delivered to Holders of Prepetition Third Lien Claims by the Debtors no later than seven Business Days prior to the anticipated Effective Date for the Debtor Subsidiaries) and (b) continue to hold its Prepetition Third Lien Claim(s) as of the Distribution Record Date. If any Prepetition Third Lien Lender makes a valid and timely New Second Lien Debt Participation Election but fails to (i) deposit the amount required to fund all of its purchase of New Second Lien Series B Notes in escrow on or prior to the date prescribed by this paragraph and (ii) hold its Prepetition Third Lien Claim(s) as of the Distribution Record Date, as described in this Section 5.4, then its right to purchase New Second Lien Series B Notes shall automatically be deemed to be forfeited and extinguished.

### **5.5 Amended Intercreditor Agreement.**

On the Effective Date and without the need for any further corporate, limited liability, or partnership action, and without further action by the Holders of Claims or Equity Interests, the New Second Lien Note Indenture Trustee, on behalf of itself and the New Second Lien Noteholders, the New Third Lien Agent, on behalf of itself and the New Third Lien Lenders, and the Reorganized Debtors shall enter into the Amended Intercreditor Agreement. A form of the Amended Intercreditor Agreement will be included in the Plan Supplement.

### **5.6 Cancellation of Liens.**

On the Effective Date, all Liens securing any Secured Claim (other than a Lien with respect to a Secured Claim that is reinstated pursuant to Section 4.4 above or a Prepetition Second Lien Claim) shall be deemed released, and the Holder of such Secured Claim shall be authorized and directed to release any Collateral or other property of any Debtor (including any cash collateral) held by such Holder, and to take such actions as may be requested by the Reorganized Debtors to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. The filing of the Confirmation Order with any federal, state, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens. The Liens securing the Prepetition Second Lien Claims have been continuously perfected since the execution of that certain Credit Agreement (Second Lien), dated as of August 10, 2011, by and among the Debtors, Credit Suisse AG,

Cayman Islands Branch, and the lenders party thereto, and shall continue in force as perfected Liens securing the New Second Lien Notes on and after the Effective Date.

**5.7 Cancellation of Notes, Instruments, Debentures, and Equity Interests.**

So long as the treatments provided for in, and the distributions contemplated by, Section 4 are effectuated or made, on the Effective Date, but subject to this Section 5.7, each of (a) the Prepetition Second Lien Credit Agreement; (b) the Prepetition Third Lien Credit Agreement; (c) the Equity Interests in Parent; and (d) any other notes, bonds, indentures, certificates, or other instruments or documents evidencing or creating any Claims or Equity Interests that are Impaired by the Plan, shall be cancelled and deemed terminated and satisfied and discharged with respect to the Debtors, and the Holders thereof shall have no further rights or entitlements in respect thereof against the Debtors, except the rights to receive the distributions, if any, to which the Holders thereof are entitled under the Plan.

**5.8 Corporate Action.**

(a) Due Authorization. On the Effective Date, all matters provided for under the Plan that would otherwise require approval of the stockholders or directors of one or more of the Debtors shall be deemed to have occurred and shall be in effect on and after the Effective Date pursuant to the applicable general corporation (or similar) law of the jurisdictions in which the Debtors are incorporated, formed, or organized, as applicable, without any requirement of further action by the stockholders or directors of the Debtors or the Reorganized Debtors.

(b) General. On the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects without the need for any further corporate action and without further action by the Holders of Claims or Equity Interests, including, to the extent applicable, (i) the adoption of the New Constituent Documents; (ii) the selection of the directors, members, and officers for the Reorganized Debtors; (iii) the issuance of the New Second Lien Notes; (iv) the execution of and entry into the New Second Lien Note Indenture; (v) the execution of and entry into the New Third Lien Facility; (vi) the execution of and entry into the Amended Intercreditor Agreement; (vii) the offer and sale of the ETC Equity Interests; and (viii) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date). On the Effective Date, the appropriate officers, members, and boards of directors of the Reorganized Debtors shall be authorized and directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the Reorganized Debtors, including, to the extent applicable, (i) the New Second Lien Note Indenture; (ii) the New Third Lien Facility; (iii) the Amended Intercreditor Agreement; and (iv) any and all other agreements, documents, securities, and instruments relating to the foregoing (including, without limitation, security documents). The authorizations and approvals contemplated in this Section 5.8 shall be effective notwithstanding any requirements under any applicable non-bankruptcy law.

(c) New Constituent Documents. On or as soon as practicable after the Effective Date, the Reorganized Debtors shall (i) make any and all filings that may be required

in connection with the New Constituent Documents with the appropriate governmental offices or agencies and (ii) take any and all other actions that may be required to render the New Constituent Documents effective. After the Effective Date, the Reorganized Debtors may amend and restate their respective New Constituent Documents as permitted by the Plan, the laws of their respective state of incorporation or formation, and their respective New Constituent Documents, without further order of the Bankruptcy Court.

(d) Board of Directors of Reorganized ETC. Pursuant to section 1129(a)(5) of the Bankruptcy Code, the identity and affiliations of each proposed member of Reorganized ETC's initial board of directors (and, to the extent such Person is an insider, the nature of any compensation for such Person) will be disclosed in the Plan Supplement. Reorganized ETC's initial board of directors shall consist of five directors, as follows: one shall be the CEO of Reorganized ETC; one shall be designated by Luminus Management, LLC; and three shall be selected by the Participating Prepetition Third Lien Lenders, of whom one or more may be existing members of the board of directors of Parent prior to the Effective Date. Each member of Reorganized ETC's initial board of directors shall assume such position on the Effective Date. Any subsequent Reorganized ETC board of directors shall be elected, classified, and composed in a manner consistent with the Reorganized ETC LLC Agreement and applicable non-bankruptcy law. To facilitate the seamless transition from the current board of directors to the anticipated incoming board of directors, the Participating Prepetition Lenders may hire a consultant, whose reasonable fees and expenses shall be paid by the Debtors in an amount not to exceed \$250,000, to review and analyze the Debtors' operations and current and pro forma capital structure and provide a report(s) and consulting services to the incoming board of directors in advance of emergence.

(e) Officers of the Reorganized Debtors. Pursuant to section 1129(a)(5) of the Bankruptcy Code, the identity and affiliations of each of the initial officers of the Reorganized Debtors (and, to the extent such Person is an insider, the nature of any compensation for such Person) will be disclosed in the Plan Supplement.



### **5.9 *Direction Letters.***

Following the Confirmation Date, the Debtors or Reorganized Debtors, as applicable, may transmit direction letters to the Prepetition Second Lien Agent and/or the New Second Lien Note Indenture Trustee, as applicable, instructing the Prepetition Second Lien Agent or New Second Lien Note Indenture Trustee, as applicable, to complete, certify, and return to the Debtors or Reorganized Debtors a certification containing information necessary to issue the New Second Lien Series A Notes, and distribute the New Second Lien Debt Cash Payment, to Holders of Allowed Prepetition Second Lien Claims. Following the Confirmation Date, the Debtors or Reorganized Debtors, as applicable, may transmit direction letters to the Prepetition Third Lien Agent as of the Distribution Record Date instructing the Prepetition Third Lien Agent to complete, certify, and return to the Debtors or Reorganized Debtors a certification containing information necessary to transfer the ETC Senior Equity Interests to the Holders of Allowed Prepetition Third Lien Claims and facilitate the issuance of New Second Lien Series B Notes to Holders of Allowed Prepetition Third Lien Claims who made a valid and timely New Second Lien Debt Participation Election.

## **SECTION 6. DISTRIBUTIONS**

### **6.1 *Distribution Record Date.***

Distributions hereunder to the Holders of Allowed Claims and Allowed Equity Interests shall be made to the Holders of such Claims and Equity Interests as of the Distribution Record Date. Transfers of Claims and Equity Interests after the Distribution Record Date shall not be recognized for purposes of this Plan. On the Distribution Record Date, (a) the Prepetition Second Lien Agent shall provide a true and correct copy of the registry for the Prepetition Second Lien Claims to the Debtors and (b) the Prepetition Third Lien Agent shall provide a true and correct copy of the registry for the Prepetition Third Lien Claims to the Debtors. The Debtors, the Reorganized Debtors, or any party responsible for making distributions pursuant to this Section 6.1 shall be entitled to recognize and deal for all purposes hereunder only with those record Holders stated on the transfer ledgers as of the close of business on the Distribution Record Date.

### **6.2 *Date of Distributions.***

Except as otherwise provided herein, any distributions and deliveries to be made under the Plan shall be made on the applicable Effective Date or as soon as practicable thereafter. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

### **6.3 No Fractional Units.**

Notwithstanding anything contained herein to the contrary, no fractional units of ETC Equity Interests shall be issued or distributed under the Plan, and no Cash shall be distributed in lieu of such fractional units. When any distribution pursuant to the Plan on account of an Allowed Claim would otherwise result in the issuance of a number of units of ETC Equity Interests that is not a whole number, the actual number of units of ETC Equity Interests distributed shall be rounded as follows: (a) fractions of  $\frac{1}{2}$  (one-half) or greater shall be rounded up to the next whole number and (b) fractions of less than  $\frac{1}{2}$  (one-half) shall be rounded down to the next whole number with no further payment therefor. All Claims of a Holder shall be aggregated in making such determination. The total number of authorized units of ETC Equity Interests to be distributed to Holders of Allowed Claims shall be adjusted as necessary to account for the foregoing rounding.

### **6.4 Disbursement Agent.**

(a) General. Unless otherwise provided in the Plan, all distributions under the Plan shall be made on the Effective Date by the Reorganized Debtors as Disbursement Agent or such other Entity designated by the Reorganized Debtors as a Disbursement Agent. No Disbursement Agent hereunder, including, without limitation, the Prepetition Second Lien Agent or the Prepetition Third Lien Agent, shall be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

(b) Prepetition Second Lien Agent. The Prepetition Second Lien Agent shall be deemed to be the Holder of all Prepetition Second Lien Claims for purposes of distributions to be made under the Plan, and all distributions on account of Allowed Prepetition Second Lien Claims shall be made through the Prepetition Second Lien Agent or as otherwise agreed to by the Reorganized Debtors and the Prepetition Second Lien Agent. All distributions to Holders of Allowed Prepetition Second Lien Claims shall be governed by the Prepetition Second Lien Credit Agreement.

(c) Prepetition Third Lien Agent. The Prepetition Third Lien Agent shall be deemed to be the Holder of all Prepetition Third Lien Claims for purposes of distributions to be made under the Plan, and all distributions on account of Allowed Prepetition Third Lien Claims shall be made through the Prepetition Third Lien Agent or as otherwise agreed to by the Reorganized Debtors and the Prepetition Third Lien Agent. All distributions to Holders of Allowed Prepetition Third Lien Claims shall be governed by the Prepetition Third Lien Credit Agreement.

### **6.5 Rights and Powers of Disbursement Agent.**

Each Disbursement Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated by the Plan; (c) without further order of the Bankruptcy Court, employ professionals and incur reasonable fees and expenses to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the

Disbursement Agent by order of the Bankruptcy Court, pursuant to the Plan or as deemed by such Disbursement Agent to be necessary and proper to implement the provisions of the Plan.

**6.6 *Expenses of the Disbursement Agent.***

The amount of any reasonable fees and documented expenses incurred by each Disbursement Agent acting in such capacity (including taxes and reasonable attorneys' fees and expenses) on or after the Effective Date shall be paid in Cash by the Reorganized Debtors in the ordinary course of business.

**6.7 *Delivery of Distributions.***

(a) General. All distributions to any Holder of an Allowed Claim or Allowed Equity Interest shall be made to the address of such Holder as set forth in the books and records of the Debtors or its agents, as applicable, unless the Debtors or Reorganized Debtors have been notified in writing of a change of address.

(b) Undeliverable Distributions. In the event that any distribution to any Holder is returned as undeliverable or is otherwise unclaimed, the Disbursement Agent shall make no further distribution to such Holder unless and until such Disbursement Agent is notified in writing of such Holder's then current address. On, or as soon as practicable after, the date on which a previously undeliverable or unclaimed distribution becomes deliverable and claimed, the Disbursement Agent shall make such distribution without interest thereon. Any Holder of an Allowed Claim or Allowed Equity Interest that fails to assert a claim hereunder for an undeliverable or unclaimed distribution within one year after the Effective Date shall be deemed to have forfeited its claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting such Claim against any of the Debtors, the Estates, or the Reorganized Debtors or their property. After the first anniversary of the Effective Date, all property or interests in property not distributed pursuant to this Section 6.7(b) shall be deemed unclaimed property pursuant to section 347(b) of the Bankruptcy Code. Such property or interests in property shall be returned by the Disbursement Agent to the Reorganized Debtors, and the claim of any other Holder to such property or interests in property shall be discharged and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary. Nothing contained herein shall require, or be construed to require, the Disbursement Agent to attempt to locate any Holder of an Allowed Claim or Allowed Equity Interest.

**6.8 *Manner of Payment Under Plan.***

At the option of the applicable Disbursement Agent, any Cash payment to be made under the Plan may be made by a check or wire transfer or as otherwise required or provided in applicable agreements. All distributions of Cash shall be made by or on behalf of the applicable Debtor.

**6.9 *Setoffs and Recoupment.***

The Debtors and the Reorganized Debtors may, but shall not be required to, set off or recoup against any Claim (for purposes of determining the Allowed amount of such Claim

on which distribution shall be made), or the distributions to be made hereunder on account of such Claim, any Claims of any nature whatsoever that the Debtors or the Reorganized Debtors may have against the Holder of such Claim; *provided, however*, that neither the failure to exercise such setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or Reorganized Debtors of any such Claim the Debtors or the Reorganized Debtors may have against the Holder of such Claim.

**6.10 *Distributions After Effective Date.***

Distributions made after the Effective Date to Holders of Disputed Claims or Disputed Equity Interests that are not Allowed Claims or Allowed Equity Interests, as the case may be, as of the applicable Effective Date but that later become Allowed Claims or Allowed Equity Interests, shall be deemed to have been made on the applicable Effective Date.

**6.11 *Allocation of Distributions Between Principal and Interest.***

The aggregate consideration to be distributed to the Holders of Allowed Claims under the Plan shall be treated as first satisfying an amount equal to the stated principal amount of the Allowed Claims of such Holders, as determined for federal income tax purposes, and any remaining consideration as satisfying accrued, but unpaid, interest, if any.

**6.12 *No Postpetition Interest on Claims and Equity Interests/No Fees and Expenses.***

Unless otherwise specifically provided for in this Plan, the Confirmation Order, or any other order entered by the Bankruptcy Court or pursuant to the prepetition contractual rights of a Holder of a Claim, (a) postpetition interest shall not accrue on or after the Petition Date on account of any Claim or Equity Interest and no Holder of a Claim or Equity Interest shall be entitled to interest accruing on or after the Petition Date on any such Claim or Equity Interest and (b) no Holder of a Claim or Equity Interest shall be entitled to the payment of any fees or expenses incurred in connection with such Claim or Equity Interest.

**6.13 *Claims Paid or Payable by Third Parties.***

(a) Claims Paid by Third Parties. The Debtors or Reorganized Debtors, as applicable, shall reduce in full a Claim, and such Claim shall be Disallowed without an objection having to be filed and without any further notice to, or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment (before or after the Effective Date) on account of such Claim from a party that is not a Debtor or Reorganized Debtor. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or Reorganized Debtor on account of such Claim, such Holder shall, within ten (10) days of receipt thereof, repay or return the distribution to the applicable Debtor or Reorganized Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the Allowed amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Reorganized Debtor annualized interest at the federal judgment

rate, as in effect as of the Petition Date, on such amount owed for each Business Day after the 10-day grace period specified above until the amount is repaid.

(b) Claims Payable by Third Parties. No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agree to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement the applicable portion of such Claim may be expunged without an objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(c) Applicability of Insurance Policies. Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors, the Reorganized Debtors, or any Entity may hold against any other Entity under any insurance policies, including against insurers, nor shall anything contained in this Plan constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

#### **6.14 *Surrender of Cancelled Instruments or Securities.***

(a) Any Holder of a Claim or Equity Interest evidenced by the instruments, securities, or other documentation cancelled under Section 5.7 above (including the Prepetition Second Lien Agent and the Prepetition Third Lien Agent) shall surrender such applicable instruments, securities, or other documentation to the Reorganized Debtors or certify in writing that such instrument, security, or other documentation has been cancelled, in accordance with written instructions to be provided to such Holder by the Reorganized Debtors, unless waived in writing by the Debtors or the Reorganized Debtors. Any distribution required to be made hereunder on account of any such Claim or Equity Interest shall be treated as an undeliverable distribution under Section 6.7(b) above pending the satisfaction of the terms of this Section 6.14(a).

(b) Subject to Section 6.15 below, other than for instruments, securities, or other documentation certified as cancelled by the Prepetition Second Lien Agent or the Prepetition Third Lien Agent, as the case may be, in accordance with Section 6.14(a), any Holder of any Claim or Equity Interest evidenced by the instruments, securities, or other documentation cancelled under Section 5.7 above that fails to surrender such applicable instruments, securities, or other documentation in accordance with Section 6.14(a) within one year after the Effective Date shall have such Claim or Equity Interest, and the distribution on account of such Claim or Equity Interest, disgorged or forfeited, as applicable, and shall forever be barred from asserting such Claim or Equity Interest against any of the Reorganized Debtors or their respective property.

#### **6.15 *Lost, Stolen, Mutilated, or Destroyed Debt or Equity Securities.***

In addition to any requirements under any applicable agreement, any Holder of a Claim or Equity Interest evidenced by the instruments, securities, or other documentation cancelled under Section 5.7 above (including the Prepetition Second Lien Agent and the Prepetition Third Lien Agent), which instruments, securities, or other documentation have been lost, stolen, mutilated, or destroyed, shall, in lieu of surrendering such instruments, securities, or other documentation, (a) deliver evidence of such loss, theft, mutilation, or destruction that is reasonably satisfactory to the Reorganized Debtors and (b) deliver to the Reorganized Debtors such security or indemnity as may be required by the Reorganized Debtors to hold the Reorganized Debtors harmless from any damages, liabilities, or costs incurred in treating such Entity as the Holder of such Allowed Claim or Allowed Equity Interest. Such Holder shall, upon compliance with this Section 6.15, be deemed to have surrendered such instruments, securities, or other documentation for all purposes hereunder.

### **6.16 Legal Impediments**

If a legal impediment exists to the issuance or distribution of all or a portion of any voting equity securities under this Plan to any Holder of an Allowed Prepetition Third Lien Claim or an Allowed Equity Interest in Parent, or if Reorganized ETC is advised in writing by a Holder that a legal impediment exists to the unrestricted acquisition by that Holder of those securities, whether as a result of any legal requirement, condition, requirement to obtain any approvals, or otherwise, such securities shall be distributable to the Holder in accordance with this Plan, as though such legal impediment did not exist, *provided* that the Holder shall not exercise any voting rights with respect to these securities so long as such legal impediment exists. Pending the ultimate resolution of such legal impediment, such securities shall be deemed to be voted in the same proportionate amounts as the votes cast by those Holders who received their distributions of securities under the Plan free from any such legal impediment. When the applicable legal impediment to the acquisition of voting securities has been resolved to the reasonable satisfaction of Reorganized ETC, as evidenced by (a) delivery of written notice by the Holder to Reorganized ETC, which notice shall include a description of such resolution on which Reorganized ETC shall be entitled to rely and (b) a written response by Reorganized ETC to the Holder, confirming that such resolution is reasonably satisfactory to Reorganized ETC, the Holders of such securities shall automatically receive the right to vote in accordance with the terms and conditions of such securities. If the applicable legal impediment is not resolved to the reasonable satisfaction of Reorganized ETC, the Holders thereof may continue to hold such securities, *provided* that the securities shall continue to be deemed to be voted in the same proportionate amounts as the votes cast by those Holders who received their distributions of securities under the Plan free from any such legal impediment.

## **SECTION 7. PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND EQUITY INTERESTS**

### **7.1 No Proofs of Claim or Equity Interests Required**

Except as otherwise provided in the Plan or by order of the Bankruptcy Court, Holders of Claims or Equity Interests shall not be required to file proofs of Claims or Equity Interests in the Chapter 11 Cases.

**7.2 *Objections to Claims and Equity Interests; Requests for Estimation.***

(a) Subject to Section 1.6 above, the Debtors and the Reorganized Debtors shall (i) have the authority to file, settle, compromise, withdraw, or litigate to judgment objections to Claims and Equity Interests and (ii) be permitted to settle or compromise any Disputed Claim or Disputed Equity Interest without approval of the Bankruptcy Court.

(b) The Debtors and the Reorganized Debtors may, at any time, request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claims or Disputed Equity Interests pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor previously objected to such Claim or Equity Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim or Equity Interest at any time during litigation concerning any objection to such Claim or Equity Interest, including, without limitation, during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim or Equity Interest, the amount so estimated shall constitute either the Allowed amount of such Claim or Equity Interest or a maximum limitation on such Claim or Equity Interest, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim or Equity Interest, the Reorganized Debtors may pursue supplemental proceedings to object to the allowance of such Claim or Equity Interest. All of the aforementioned objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

(c) Any objections to Claims or Equity Interests or requests for estimation thereof shall be served and filed (i) in the case of Claims or Equity Interests known to the Debtors prior to the Effective Date, on or before the date that is the later of (x) one hundred twenty (120) days after the Effective Date and (y) such later date as may be fixed by the Bankruptcy Court; (ii) in the case of Claims arising from the rejection of executory contracts or unexpired leases pursuant to the Plan, on or before the date that is the later of (x) one hundred twenty (120) days after the date on which proof of such Claim is served and filed and (y) such later date as may be fixed by the Bankruptcy Court; and (iii) in the case of other Claims or Equity Interests not known to the Debtors prior to the Effective Date, on or before that date that is the later of (x) one hundred twenty (120) days after such Claim or Equity Interest is known to the Debtors and (y) such later date as may be fixed by the Bankruptcy Court.

**7.3 *No Distributions Pending Allowance.***

Notwithstanding any other provision to the contrary herein, no payments or distributions shall be made hereunder with respect to all or any portion of any Disputed Claim or Disputed Equity Interests unless and until all objections to such Disputed Claim or Disputed Equity Interest have been settled, withdrawn, or determined by Final Order, and such Disputed Claim or Disputed Equity Interest has become Allowed.

**7.4 *Payments and Distributions on Disputed Claims and Equity Interests.***

At such time as a Disputed Claim or Disputed Equity Interest becomes Allowed, the Disbursement Agent shall distribute to the Holder of such Allowed Claim or Allowed Equity Interest the property distributable to such Holder pursuant to Section 4 of the Plan. To the extent that all or a portion of a Disputed Claim or Disputed Equity Interest is Disallowed, the Holder of such Claim or Equity Interest shall not receive any distribution on account of the portion of such Claim or Equity Interest that is Disallowed. Notwithstanding any other provision of the Plan, no interest shall accrue or be Allowed on any Claim during the period after the Petition Date, except to the extent that section 506(b) of the Bankruptcy Code permits interest to accrue and be allowed on such Claim (including, for the avoidance of doubt, the Prepetition Second Lien Claims).

### **7.5 Preservation of Claims and Rights to Settle Claims.**

Except as otherwise provided in the Plan, or in any contract, instrument, or other agreement or document entered into in connection with this Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce, sue on, settle, compromise, otherwise resolve, discontinue, abandon, or dismiss all Claims, rights, Causes of Action, suits, and proceedings, including those described in the Plan Supplement (collectively, the “**Retained Actions**”), whether at law or in equity, whether known or unknown, that the Debtors or their Estates may hold against any Entity (other than Claims, rights, Causes of Action, suits, and proceedings released pursuant to Section 10.4 below), without the approval of the Bankruptcy Court. The Reorganized Debtors or their successor(s) may pursue such Retained Actions, as appropriate, in accordance with the best interests of the Reorganized Debtors or their successor(s) that hold such rights.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Retained Action against it as any indication that the Reorganized Debtors will not, or may not, pursue any and all available Retained Actions against it. The Reorganized Debtors expressly reserve all rights to prosecute any and all Retained Actions against any Entity. Unless any Retained Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Retained Actions for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches shall apply to such Retained Action upon, after, or as consequence of, confirmation or consummation of the Plan. For the avoidance of doubt, all Claims, Causes of Action, suits, and proceedings of the Debtors that are not Retained Actions are waived as of the Effective Date.

## **SECTION 8. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **8.1 Assumption of Contracts and Leases.**

Except as set forth in Section 8.5 below, and except for any executory contracts or unexpired leases that are (a) the subject of a motion to assume or reject pending on the Confirmation Date, which shall be assumed or rejected in accordance with the disposition of such motion or (b) identified in the Plan Supplement as executory contracts or unexpired leases



to be rejected pursuant to the Plan, all executory contracts and unexpired leases to which any of the Debtors is a party are hereby specifically assumed as of the Effective Date. Entry of the Confirmation Order shall constitute an order of the Bankruptcy Court under sections 365 and 1123(b) of the Bankruptcy Code approving such contract and lease assumptions as of the Effective Date and determining that “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) by the Reorganized Debtors has been demonstrated and no further adequate assurance is required. The pendency of any motion to assume or reject executory contracts or unexpired leases shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date. Each executory contract and unexpired lease assumed pursuant to this Section 8.1 or by any order of the Bankruptcy Court, which has not been assigned to a third party prior to the Confirmation Date, shall revert in, and be fully enforceable by, the applicable Reorganized Debtor(s) in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law.

Unless otherwise provided in the Plan, each executory contract and unexpired lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such executory contract or unexpired lease, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously terminated or is otherwise not in effect.

Modifications, amendments, supplements, and restatements to prepetition executory contracts or unexpired leases that have been executed by any of the Reorganized Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the executory contract or unexpired lease.

## **8.2 *Cure of Defaults.***

Any monetary amount by which any executory contract or unexpired lease to be assumed pursuant to the Plan is in default shall be satisfied, in accordance with section 365(b)(1) of the Bankruptcy Code, by payment of such amount in Cash on the Effective Date, or upon such other terms as the parties to such executory contract or unexpired lease may otherwise agree. If a dispute arises regarding (a) the amount of any cure payments required under section 365(b)(1) of the Bankruptcy Code; (b) the ability of any Reorganized Debtor or any assignee thereof to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (c) any other matter pertaining to assumption under section 365 of the Bankruptcy Code, the cure payments required under section 365(b)(1) of the Bankruptcy Code, if any, shall be made following the entry of a Final Order resolving such dispute and shall not prevent or delay implementation of the Plan or the occurrence of the Effective Date.

Assumption of any executory contract or unexpired lease pursuant to the Plan or otherwise, and payment of the applicable cure amount, shall result in the full release and satisfaction of any Claims or defaults, whether monetary or non-monetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at

any time prior to the effective date of assumption. Any proof of Claim filed with respect to an executory contract or unexpired lease that is assumed shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

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

All proofs of Claim with respect to Claims arising from the rejection of executory contracts or unexpired leases must be filed within thirty (30) days after the date of entry of an order of the Bankruptcy Court approving such rejection or the date of withdrawal of a motion to assume. Any Claim arising from the rejection of an executory contract or unexpired lease for which proof of such Claim is not filed within such time period shall be forever barred from assertion against any of the Debtors, the Estates, or the Reorganized Debtors or their property, unless otherwise ordered by the Bankruptcy Court. Any Allowed Claim arising from the rejection of executory contracts or unexpired leases for which proof of such Claim has been timely filed shall be, and shall be treated as, an Allowed General Unsecured Claim under the terms hereof, subject to any limitation under section 502(b) of the Bankruptcy Code or otherwise.

### **8.4 *Indemnification of Directors, Officers, and Employees.***

Any obligations of the Debtors pursuant to their certificates of incorporation, bylaws, or organizational documents, as applicable, or any other agreements entered into by any Debtor at any time prior to the Effective Date, to defend, indemnify, reimburse, or limit the liability of any current and former directors, officers, agents, managers, or employees with respect to all present and future actions, suits, and proceedings against the Debtors or such directors, officers, agents, managers, or employees, based upon any act or omission for or on behalf of the Debtors, irrespective of whether such indemnification is owed in connection with an event occurring before or after the Petition Date, shall not be discharged or impaired by confirmation of the Plan. Such obligations shall be deemed and treated as executory contracts to be assumed by the Debtors hereunder and assigned to the Reorganized Debtors pursuant to section 365 of the Bankruptcy Code and shall continue as obligations of the Reorganized Debtors.

The Reorganized Debtors shall include in their New Constituent Documents provisions that (a) eliminate the personal liability of the Reorganized Debtors' then-present and future directors and officers for post-emergence monetary damages resulting from breaches of their fiduciary duties to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized and (b) require such Reorganized Debtor, subject to appropriate procedures, to indemnify the Reorganized Debtors' directors, officers, and other key employees serving on or after the Effective Date for all Claims and actions to the fullest extent permitted.

### **8.5 *Compensation and Benefit Plans.***

On and after the Effective Date, the Reorganized Debtors shall (a) adopt and administer compensation plans, policies, and programs consistent in all material respects with the Incentive Compensation Term Sheet for those employees identified in the Incentive

Compensation Term Sheet and (b) except as set forth in Exhibit C to the Incentive Compensation Term Sheet and the related provisions of the Incentive Compensation Term Sheet, continue those existing employee compensation and benefit plans, policies, and programs set forth in the attached **Exhibit C**, subject to all rights reserved under those plans, policies, and programs and applicable law to modify or terminate such plans, policies, and programs. All existing employee compensation benefit plans, policies, and programs that are not set forth in (i) in **Exhibit C** or (ii) the Incentive Compensation Term Sheet, shall be deemed terminated as of the Effective Date, and the Reorganized Debtors shall have no continuing obligations with respect thereto. In addition, notwithstanding anything herein to the contrary, except for those executory contracts identified in the Plan Supplement as contracts to be assumed pursuant to this Section 8.5, all executory contracts related to compensation or benefits are hereby specifically rejected as of the Effective Date.

#### **8.6 Insurance Policies.**

All insurance policies (including all director and officer insurance policies) pursuant to which the Debtors have any obligations in effect as of the Effective Date shall be deemed and treated as executory contracts pursuant to the Plan and shall be assumed by the respective Debtors (and assigned to the Reorganized Debtors if necessary to continue such insurance policies in full force) pursuant to section 365 of the Bankruptcy Code and shall continue in full force and effect. All other insurance policies shall revert in the Reorganized Debtors.

#### **8.7 Act 9 Bonds.**

The Act 9 Lease, the Act 9 Indenture, and any other operative documents related to the Union Facility sale-leaseback arrangement shall be deemed and treated as executory contracts pursuant to the Plan and shall be assumed by the respective Debtors (and, if necessary, assigned to the Reorganized Debtors). The Debtors' obligations under such contracts shall survive confirmation of the Plan and shall be performed by the applicable Debtor or Reorganized Debtor in the ordinary course of business.

#### **8.8 Reservation of Rights.**

Nothing contained in the Plan shall constitute an admission by the Debtors that any agreement, contract, or lease is an executory contract or unexpired lease subject to Section 8 of the Plan, as applicable, or that the Debtors or Reorganized Debtors have any liability thereunder.

**8.9 *Contracts and Leases Entered Into After the Petition Date.***

Contracts and leases entered into after the Petition Date by any Debtor in the ordinary course of business or following approval pursuant to a Bankruptcy Court order, including any executory contracts and unexpired leases assumed by a Debtor, shall be performed by the applicable Debtor or Reorganized Debtor, as the case may be, liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed executory contracts and unexpired leases) shall survive and remain unaffected by entry of the Confirmation Order.

**SECTION 9. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

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

The Effective Date shall not occur and the Plan shall not become effective unless and until the following conditions have been satisfied in full or waived in accordance Section 9.2 of the Plan:

(a) Restructuring Support Agreement. The Plan Support Parties and the Debtors shall have complied materially with the covenants and other commitments in the Restructuring Support Agreement (or the failure to comply shall have been waived in accordance with the Restructuring Support Agreement), all conditions in the Restructuring Support Agreement shall have been satisfied or waived in accordance with the Restructuring Support Agreement, and all actions contemplated by the Restructuring Support Agreement and any exhibit thereto shall have been satisfied in their entirety (or the failure to satisfy or otherwise complete such actions shall have been cured or waived in accordance with the Restructuring Support Agreement).

(b) Entry of Confirmation Order. The Confirmation Order, in form and substance reasonably satisfactory to the Participating Prepetition Third Lien Lenders, shall have been entered on the docket for the Chapter 11 Cases and shall have become a Final Order in full force and effect.

(c) Execution and Delivery of Other Documents. All other actions and all agreements, instruments, or other documents necessary to implement the applicable Plan shall have been (i) effected or (ii) duly and validly executed and delivered by the parties thereto and all conditions to their effectiveness shall have been satisfied or waived.

(d) Regulatory Approvals. The Debtors shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions, or documents necessary to implement the Plan that are required by law, regulation, or order, including (after taking into account the provisions of Section 6.16 above) any approvals by the Federal Energy Regulatory Commission required in connection with the transfer of the ETC Equity Interests to Holders of Allowed Prepetition Third Lien Claims and Holders of Allowed Equity Interests in Parent.

(e) Consents. All authorizations, consents, and approvals determined by the Debtors to be necessary to implement the Plan shall have been obtained.

(f) Corporate Formalities. Prior to or simultaneous with the effectiveness of the Plan, the Reorganized ETC Certificate of Formation shall have been duly filed with the Delaware Secretary of State.

(g) Statutory Fees. All statutory fees and obligations then due and payable to the Office of the United States Trustee shall have been paid and satisfied in full.

(h) Other Acts. Any other actions the Debtors determine are necessary to implement the terms of the Plan shall have been taken.

## **9.2 Waiver of Conditions Precedent.**

Each of the conditions precedent in Section 9.1 of the Plan may be waived, in whole or in part, by the Debtors in writing, with the consent of the Participating Prepetition Third Lien Lenders, but without notice to any other third parties or order of the Bankruptcy Court or any other formal action.

## **9.3 Effect of Non-Occurrence of the Effective Date.**

If the Effective Date does not occur within ninety (90) days of entry of the Confirmation Order (subject to a 90-day extension with the consent of the Participating Prepetition Lenders, which consent shall not be unreasonably withheld, to accommodate any unforeseen delays other than regulatory issues; *provided, however*, that the Debtors shall have an automatic 90-day extension in order to receive any regulatory approvals necessary to implement the Plan), then (a) the Confirmation Order shall be of no further force or effect; (b) the Plan shall be null and void in all respects; (c) no distributions under the Plan shall be made; (d) the Debtors and all Holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date; and (e) nothing contained in the Plan or the Disclosure Statement shall (i) be deemed to constitute a waiver or release of (x) any Claims by any creditor or (y) any Claims against, or Equity Interests in, the Debtors, (ii) prejudice in any manner the rights of the Debtors, or (iii) constitute an admission, acknowledgment, offer, or undertaking by the Debtors in any respect.

## **SECTION 10. EFFECT OF CONFIRMATION**

### **10.1 Vesting of Assets; Continued Corporate Existence.**

On the Effective Date, except as otherwise provided in the Plan, pursuant to sections 1141(b) and 1141(c) of the Bankruptcy Code, all property of the Debtors' Estates shall vest in the Reorganized Debtors free and clear of all Claims, Liens, encumbrances, charges, and other interests. Except as otherwise provided in the Plan, each of the Debtors, as Reorganized Debtors, shall continue to exist on and after the Effective Date as a separate legal entity with all of the powers available to such legal entity under applicable law and pursuant to the applicable New Constituent Documents, without prejudice to any right to alter or terminate such existence

(whether by merger or otherwise) in accordance with such applicable law. On and after the Effective Date, the Reorganized Debtors shall be authorized to operate their respective businesses and to use, acquire, or dispose of assets, without supervision or approval by the Bankruptcy Court and free from any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

### **10.2 *Binding Effect.***

Subject to the occurrence of the Effective Date and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062, on and after the Confirmation Date, the provisions of the Plan shall be immediately effective and enforceable and deemed binding upon any Holder of a Claim against, or Equity Interest in, the Debtors, and such Holder's respective successors and assigns, (whether or not the Claim or Equity Interest of such Holder is Impaired under the Plan, whether or not such Holder has accepted the Plan, and whether or not such Holder is entitled to a distribution under the Plan), all Entities that are party, or subject, to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor counterparties to executory contracts, unexpired leases, and any other prepetition agreements.

### **10.3 *Discharge of Claims.***

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan (including with respect to Claims reinstated by the Plan), the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of all Claims against, and Equity Interests in, the Debtors, and Causes of Action of any nature whatsoever arising on or before the Effective Date, known or unknown, including, without limitation, any interest accrued or expenses incurred on such Claims from and after the Petition Date, against the Debtors, and liabilities of, Liens on, obligations of, and rights against, the Debtors or any of their assets or properties arising before the Effective Date, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests, in each case whether or not: (a) a proof of Claim or Equity Interest based upon such debt or right is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (b) a Claim or Equity Interest based upon such debt or right is Allowed pursuant to section 502 of the Bankruptcy Code; or (c) the Holder of such a Claim or Equity Interest has accepted the Plan. Any default by the Debtors with respect to any Claim that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. Except as otherwise specifically provided in the Plan (including with respect to Claims reinstated by the Plan), all Entities shall be precluded from asserting against the Debtors, the Reorganized Debtors, or their respective properties or interests in property, any other Claims based on any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date. Except with respect to Claims reinstated pursuant to the Plan, the Confirmation Order shall be a judicial determination of the discharge of all Claims arising before the Effective Date against the Debtors, subject to the occurrence of the Effective Date.

#### 10.4 *Releases.*

(a) **Releases by the Debtors.** Upon the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, in their individual capacities and as debtors in possession, shall be deemed forever to release, waive, and discharge the Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, remedies, actions, Causes of Action, and liabilities, whether for tort, fraud, contract, recharacterization, subordination, violations of federal or state securities laws (other than the rights of the Debtors or Reorganized Debtors to enforce the terms of the Plan and the contracts, instruments, releases, and other agreements or documents delivered in connection with the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then-existing or thereafter arising, at law, in equity or otherwise, based in whole or in part on any act, omission, transaction, event or other occurrence, or circumstances taking place on or before the Effective Date, in any way relating to (i) the Debtors or the Chapter 11 Cases; (ii) any investment by any Released Party in any of the Debtors; (iii) any action or omission of any Released Party with respect to any indebtedness under which any Debtor is or was a borrower or guarantor, or any common or preferred equity investment in the Debtors (including, without limitation, any action or omission of any Released Party with respect to the acquisition, holding, voting, or disposition of any such investment); (iv) any Released Party in any such Released Party's capacity as an officer, director, employee, or agent of, or advisor to, any Debtor; (v) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan; (vi) the business or contractual arrangements between any Debtor and any Released Party; (vii) the restructuring of Claims and Equity Interests before or during the Chapter 11 Cases; and (viii) the negotiation, formulation, preparation, or dissemination of the Prepetition Third Lien Credit Agreement, Prepetition Second Lien Credit Agreement, the New Second Lien Notes, the New Third Lien Facility, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Disclosure Statement, the Restructuring Support Agreement or related agreements, instruments, or other documents, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that is determined by a Final Order to have constituted willful misconduct, fraud, or gross negligence. The Reorganized Debtors shall be bound, to the same extent the Debtors are bound, by the releases and discharges set forth above.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Section 10.4(a) by the Debtors, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute its finding that each release described in this Section 10.4(a) is: (i) in exchange for the good and valuable consideration provided by the Released Parties, a good faith settlement and compromise of such Claims; (ii) in the best interests of the Debtors and all Holders of Equity Interests and Claims; (iii) fair, equitable, and reasonable; (iv) given and made after due notice and opportunity for hearing; and (v) a bar to any of the Releasing Parties asserting any Claim, Cause of Action, or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.

(b) **Releases by Holders of Claims and Holders of Equity Interests.**

Upon the Effective Date, to the maximum extent permitted by applicable law, each Releasing Party, in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan, and the Cash and other contracts, instruments, releases, agreements, or documents to be delivered in connection with the Plan, shall be deemed forever to release, waive, and discharge the Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, remedies, actions, Causes of Action, and liabilities, whether for tort, fraud, contract, recharacterization, subordination, violations of federal or state securities laws (other than the rights of the Releasing Parties to enforce the terms of the Plan and the contracts, instruments, releases, and other agreements or documents delivered in connection with the Plan and Claims reinstated pursuant to the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then-existing or thereafter arising, at law, in equity or otherwise, based in whole or in part on any act, omission, transaction, event or other occurrence, or circumstances taking place on or before the Effective Date, in any way relating to (i) the Debtors or the Chapter 11 Cases; (ii) any investment by any Released Party in any of the Debtors; (iii) any action or omission of any Released Party with respect to any indebtedness under which any Debtor is or was a borrower or guarantor, or any common or preferred equity investment in the Debtors (including, without limitation, any action or omission of any Released Party with respect to the acquisition, holding, voting, or disposition of any such investment); (iv) any Released Party in any such Released Party's capacity as an officer, director, employee, or agent of, or advisor to, any Debtor; (v) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan; (vi) the business or contractual arrangements between any Debtor and any Released Party; (vii) the restructuring of Claims and Equity Interests before or during the Chapter 11 Cases; and (viii) the negotiation, formulation, preparation, or dissemination of the Prepetition Third Lien Credit Agreement, Prepetition Second Lien Credit Agreement, the New Second Lien Notes, the New Third Lien Facility, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Disclosure Statement, the Restructuring Support Agreement or related agreements, instruments, or other documents, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that is determined by a Final Order to have constituted willful misconduct, fraud, or gross negligence.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Section 10.4(b), which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute its finding that each release described in Section 10.4(b) is: (i) in exchange for the good and valuable consideration provided by the Released Parties, a good faith settlement and compromise of such Claims and Equity Interests; (ii) in the best interests of the Debtors and all Holders of Claims and Equity Interests; (iii) fair, equitable, and reasonable; (iv) given and made after due notice and opportunity for hearing; and (v) a bar to any of the Releasing Parties asserting any Claim, Cause of Action, or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.



### 10.5 *Exculpation and Limitation of Liability.*

None of the Debtors, the Reorganized Debtors, the Plan Support Parties, or the direct or indirect affiliates, officers, directors, partners, employees, members, members of boards of managers, advisors, attorneys, financial advisors, accountants, investment bankers, or agents (whether current or former, in each case in his, her, or its capacity as such) of the Debtors or the Plan Support Parties shall have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or Equity Interest, or any other party in interest in the Chapter 11 Cases, or any of their respective agents, employees, representatives, financial advisors, attorneys or agents acting in such capacity, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to or arising out of, the Chapter 11 Cases, formulation, negotiation, preparation, dissemination, confirmation, solicitation, implementation, or administration of the Plan, the Plan Supplement, the Disclosure Statement, the Restructuring Support Agreement, the Prepetition Third Lien Credit Agreement, the Prepetition Second Lien Credit Agreement, the New Second Lien Notes, the New Third Lien Facility, any contract, instrument, release or other agreement or document created or entered into in connection with the Plan, or any other pre- or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors or confirming or consummating the Plan (including the issuance of any securities or the distribution of any property under the Plan); *provided, however*, that the foregoing provisions of this Section 10.5 shall have no effect on the liability of any Person or Entity that results from any such act or omission that is determined by a Final Order to have constituted willful misconduct, fraud, or gross negligence. Without limiting the generality of the foregoing, the Debtors and the Debtors' direct or indirect affiliates, officers, directors, partners, employees, members, members of boards of managers, advisors, attorneys, financial advisors, accountants, investment bankers, and agents (whether current or former, in each case in his, her, or its capacity as such) shall, in all respects, be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan. The exculpated parties have participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of the securities pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

### 10.6 *Injunction.*

(a) **General.** All Persons or Entities who have held, hold, or may hold Claims or Equity Interests (other than Claims that are reinstated under the Plan), and all other parties in interest in the Chapter 11 Cases, along with their respective current and former employees, agents, officers, directors, principals, and affiliates, are permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind, against the Debtors or the Reorganized Debtors, or in respect of any Claim or Cause of Action released or settled hereunder; (ii) enforcing, attaching, collecting, or recovering by any manner or means of any judgment, award, decree, or order against the Debtors or Reorganized Debtors; (iii)

creating, perfecting, or enforcing any encumbrance of any kind against the Debtors or Reorganized Debtors; or (iv) asserting any right of setoff, subrogation, or recoupment of any kind, against any obligation due from the Debtors or Reorganized Debtors, or against the property or interests in property of the Debtors or Reorganized Debtors, on account of such Claims or Equity Interests; *provided, however*, that nothing contained herein shall preclude such Entities from exercising their rights pursuant to and consistent with the terms hereof and the contracts, instruments, releases, and other agreements and documents delivered under or in connection with the Plan.

(b) **Injunction Against Interference With the Plan**. Upon entry of the Confirmation Order, all Holders of Claims and Equity Interests and their respective current and former employees, agents, officers, directors, principals, and affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan. Each Holder of an Allowed Claim or Allowed Equity Interest, by accepting, or being eligible to accept, distributions under or reinstatement of such Claim or Equity Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in this section of the Plan.

#### ***10.7 Term of Bankruptcy Injunction or Stays.***

All injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence as of the Confirmation Date, shall remain in full force and effect until the Effective Date.

#### ***10.8 Termination of Subordination Rights and Settlement of Related Claims.***

The classification and manner of satisfying all Claims and Equity Interests under the Plan takes into consideration all subordination rights, whether arising by contract or under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. All subordination rights that a Holder of a Claim or Equity Interest may have with respect to any distribution to be made under the Plan, shall be discharged and terminated, and all actions related to the enforcement of such subordination rights shall be enjoined permanently. Accordingly, distributions under the Plan to Holders of Allowed Claims shall not be subject to payment of a beneficiary of such terminated subordination rights, or to levy, garnishment, attachment, or other legal process by a beneficiary of such terminated subordination rights.

#### ***10.9 Reservation of Rights.***

The Plan shall have no force or effect unless and until the applicable Effective Date. Prior to the applicable Effective Date, none of the filing of the Plan, any statement or provision contained in the Plan, or action taken by the Debtors with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be, or shall be deemed to be, an admission or waiver of any rights of any Debtor or any other party with respect to any Claims or Equity Interests or any other matter.

## SECTION 11. RETENTION OF JURISDICTION

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code, and notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Plan, the Confirmation Order, and the Chapter 11 Cases, to the fullest extent permitted by law, including jurisdiction, to the extent applicable:

(a) To allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests;

(b) To resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtors are party to or with respect to which any Debtor or Reorganized Debtor may be liable, and hear, determine and, if necessary, liquidate, any Claims arising therefrom;

(c) To determine any and all motions, adversary proceedings, applications, contested matters, or other litigated matters pending on the Effective Date;

(d) To ensure that distributions to Holders of Allowed Claims or Allowed Equity Interests are accomplished pursuant to the terms of the Plan;

(e) To adjudicate any and all disputes arising from or relating to distributions under the Plan;

(f) To adjudicate any and all disputes regarding any elections made under the Plan;

(g) To enter, implement, or enforce such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan, and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Confirmation Order;

(h) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated, or distributions pursuant to the Plan are enjoined or stayed;

(i) To issue injunctions, enter, and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Entity with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(j) To modify the Plan before or after the Effective Date under section 1127 of the Bankruptcy Code or modify the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan or the

Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan, in each case, in accordance with the Restructuring Support Agreement;

(k) To hear and determine all applications for compensation and reimbursement of expenses of Professionals under sections 330, 331, and 503(b) of the Bankruptcy Code incurred prior to the Confirmation Date; *provided, however*, that, from and after the Confirmation Date, the payment of fees and expenses of the Reorganized Debtors, including fees and expenses of counsel, shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

(l) To hear and determine any rights, Claims, or Causes of Action held or reserved by, or accruing to, the Debtors or the Reorganized Debtors pursuant to the Bankruptcy Code, the Confirmation Order or, in the case of the Debtors, any other applicable law;

(m) To enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases;

(n) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Plan Documents, the Confirmation Order, any transactions contemplated thereby, or any agreement, instrument, or other document governing or relating to any of the foregoing, or the effect of the Plan under any agreement to which the Debtors, the Reorganized Debtors, or any affiliate thereof are party;

(o) To hear and determine any issue for which the Plan or a Plan Document requires a Final Order of the Bankruptcy Court;

(p) To issue such orders as may be necessary or appropriate to aid in execution of the Plan or to maintain the integrity of the Plan following consummation, to the extent authorized by section 1142 of the Bankruptcy Code;

(q) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

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

(s) To enter and enforce any order for the sale or transfer of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

(t) To hear and determine all disputes involving the existence, scope, and nature of the discharges, releases, or injunctions granted under the Plan and the Bankruptcy Code;

- (u) To hear and determine all disputes involving or in any manner implicating the exculpation or indemnification provisions contained in the Plan;
- (v) To hear and determine any matters arising under or related to sections 1141 and 1145 of the Bankruptcy Code;
- (w) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;
- (x) To recover all assets of the Debtors and property of the Debtors' Estates, wherever located; and
- (y) To enter a final decree closing the Chapter 11 Cases.

## **SECTION 12. MISCELLANEOUS PROVISIONS**

### **12.1 *Payment of Statutory Fees.***

On the Effective Date and thereafter, as may be required, the Debtors shall pay all fees payable, pursuant to section 1930 of title 28 of the United States Code, until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first; *provided* that in the event of a dispute regarding such fees, the fees in dispute shall be paid upon entry of a Final Order resolving such dispute. The Debtors shall pay all of the foregoing fees on a per-Debtor basis.

### **12.2 *Exemption from Securities Laws.***

To the maximum extent provided by section 1145(a) of the Bankruptcy Code and applicable non-bankruptcy law, the offer and sale under the Plan of the New Second Lien Series A Notes to the Holders of Allowed Prepetition Second Lien Claims and the offer and sale of the ETC Equity Interests from Parent to the Holders of Allowed Prepetition Third Lien Claims and the Holders of Allowed Equity Interests in Parent shall be exempt from registration under section 5 of the Securities Act and may be resold by Holders thereof without registration, unless the Holder is an "underwriter" (as defined in section 1145(b)(1) of the Bankruptcy Code) with respect to such securities, in each case, subject to the terms thereof, applicable securities laws, and the Reorganized ETC LLC Agreement, as applicable. To the extent that section 1145 is not available to exempt the securities issued under, or in connection with, the Plan, including, without limitation, the offer and sale under the Plan of the New Second Lien Series B Notes to the Holders of Allowed Prepetition Third Lien Claims, from registration under section 5 of the Securities Act, other provisions of the Securities Act, including, without limitation, section 4(a)(2), Regulation D or Regulation S of the Securities Act, and state securities laws, shall apply to exempt such issuance from the registration requirements of the Securities Act.

The Debtors are only soliciting votes for the offer and sale under the Plan of the New Second Lien Notes and the ETC Equity Interests from Eligible Holders (as defined below) of Allowed Prepetition Second Lien Claims, Allowed Prepetition Third Lien Claims, and Allowed Equity Interests in Parent. An Eligible Holder is (a) a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act), (b) an "accredited investor" (as defined in Rule

501(a) of Regulation D under the Securities Act), or (c) a person other than a “U.S. person” (as defined in Rule 902 under the Securities Act) (any of clause (a) to (c), an “**Eligible Holder**”). Holders of Allowed Prepetition Second Lien Claims, Allowed Prepetition Third Lien Claims, and Holders of Allowed Equity Interests in Parent may not vote on the Plan if they cannot certify to the Debtors that they are an Eligible Holder and shall be deemed to have rejected the Plan. **Each Holder of an Allowed Prepetition Second Lien Claim, Allowed Prepetition Third Lien Claim, or an Allowed Equity Interest in Parent that submits a ballot shall be deemed to have represented and agreed to the Debtors that it is an Eligible Holder. Accordingly, if a Holder of an Allowed Prepetition Third Lien Claim is not an Eligible Holder and not permitted to vote, such Holder shall also not have the ability to make a New Second Lien Debt Participation Election.**

### **12.3 Exemption from Certain Transfer Taxes.**

Pursuant to section 1146(a) of the Bankruptcy Code, any issuance, transfer, or exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any instrument of transfer from a Debtor to a Reorganized Debtor or any other Entity pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Without limiting the foregoing, any issuance, transfer, or exchange of a security or any making or delivery of an instrument of transfer pursuant to the Plan shall be exempt from the imposition and payment of any and all transfer taxes (including, without limitation, any and all stamp taxes or similar taxes and any interest, penalties and addition to the tax that may be required to be paid in connection with the consummation of the Plan and the Plan Documents) pursuant to sections 1146(a), 505(a), 106, and 1141 of the Bankruptcy Code. Unless the Bankruptcy Court orders otherwise, all sales, transfers, and assignments of owned and leased property approved by the Bankruptcy Court on or before the Effective Date shall be deemed to have been in furtherance of, or in connection with, the Plan.

### **12.4 Dissolution of Statutory Committees and Cessation of Fee and Expense Payment.**

All statutory committees appointed in the Chapter 11 Cases, if any, shall be dissolved on the Effective Date. Provided that all such fees and expenses payable as of the Effective Date have been paid in full, the Reorganized Debtors shall not be responsible for paying any fees and expenses incurred after the Effective Date by the professionals retained by any statutory committees, if any.

### **12.5 Substantial Consummation.**

On the applicable Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

**12.6 *Expedited Determination of Postpetition Taxes.***

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

**12.7 *Modification and Amendments.***

Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code, and in accordance with the Restructuring Support Agreement, alterations, amendments, or modifications of the Plan may be proposed in writing by the Debtors at any time prior to or after the Confirmation Date, but prior to the Effective Date. Holders of Claims and Equity Interests that have accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification complies with the requirements of this Section 12.7 and does not materially and adversely change the treatment of the Claim or Equity Interest of such Holder; *provided, however*, that any Holders of Claims or Equity Interests that were deemed to accept the Plan because such Claims or Equity Interests were Unimpaired shall continue to be deemed to accept the Plan only if, after giving effect to such amendment or modification, such Claims or Equity Interests continue to be Unimpaired.

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

**12.8 *Additional Documents.***

On or before the Effective Date, the Debtors may enter into any agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or Reorganized Debtors, as applicable, and all Holders of Claims or Equity Interests receiving distributions pursuant to the Plan and all other parties in interest may, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

**12.9 *Effectuating Documents and Further Transactions.***

On and after the Effective Date, the Reorganized Debtors and their respective officers and members of the boards of directors are authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, 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 the need for any approvals, authorizations, or consents, except for those expressly required pursuant to the Plan or the New Constituent Documents.

**12.10 *Plan Supplement.***

The Plan Supplement will include certain documents relating to the Plan and its consummation and implementation, including the form of the New Constituent Documents, the Amended Intercreditor Agreement, the New Second Lien Note Indenture, the New Third Lien Credit Agreement, the identity and affiliations of each of the new officers and directors, the identity of the initial New Second Lien Note Indenture Trustee, and a list of any executory contracts or unexpired leases to be rejected pursuant to the Plan. The Plan Supplement shall be filed with the Clerk of the Bankruptcy Court not later than ten (10) calendar days prior to the first date on which the Confirmation Hearing is scheduled to be held and may be altered, amended, modified, or supplemented by the Debtors prior to the Confirmation Hearing. Upon its filing with the Bankruptcy Court, the Plan Supplement may be accessed on the docket electronically maintained by the Clerk of the Bankruptcy Court (for a minor fee) or on the Voting Agent's website at <http://cases.primeclerk.com/entegra> (free of charge) or inspected in the office of the Clerk of the Bankruptcy Court during normal court hours.

#### **12.11 *Additional Intercompany Transactions.***

The Debtors and Reorganized Debtors, as applicable, are hereby authorized without the need for any further corporate action and without further action by the Holders of Claims or Equity Interests to (a) engage in intercompany transactions to transfer Cash for distribution pursuant to the Plan and (b) continue to engage in intercompany transactions (subject to applicable contractual limitations), including, without limitation, transactions relating to the incurrence of intercompany indebtedness.

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

Subject to the terms of the Restructuring Support Agreement, the Debtors reserve the right to revoke or withdraw the Plan at any time prior to the Effective Date. If the Debtors take such action, the Plan shall be deemed null and void in its entirety and of no force or effect, and any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Class of Claims), assumption of executory contracts or unexpired leases effected under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void. In such event, nothing contained in the Plan shall (a) constitute or be deemed to be a waiver or release of any Claim against, or Equity Interest in, any Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtors or any Entity in further proceedings involving the Debtors; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

#### **12.13 *Severability.***

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision 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 and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (a) valid and enforceable pursuant to its terms; (b) integral to the Plan; and (c) non-severable and mutually dependent.

**12.14 *Schedules and Exhibits Incorporated.***

All exhibits and schedules to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if fully set forth herein. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

**12.15 *Solicitation.***

The Debtors have, and upon the Confirmation Date shall be deemed to have, solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including, without limitation, section 1125(e) of the Bankruptcy Code, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation. The Debtors, the Reorganized Debtors, and each of their respective principals, members, partners, officers, directors, employees, agents, managers, representatives, advisors, attorneys, accountants, and professionals shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer, issuance, sale, and purchase of any securities offered or sold under the Plan, and therefore, are not, and on account of such offer, issuance, sale, solicitation, or purchase shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or the offer, issuance, sale, or purchase of any securities offered or sold under the Plan.

**12.16 *Governing Law.***

Except to the extent that the Bankruptcy Code or other federal law, rule, or regulation is applicable, or to the extent an exhibit, schedule, or supplement to the Plan provides otherwise, the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof that would require application of the law of another jurisdiction; *provided, however*, that corporate or entity governance matters relating to the Reorganized Debtors shall be governed by the laws of the state of incorporation or organization of the relevant Reorganized Debtor.

**12.17 *Compliance with Tax Requirements.***

In connection with the Plan and all instruments issued in connection herewith and distributed hereunder, any Entity issuing any instruments or making any distribution under the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Any Entity issuing any instruments or making any distribution under the Plan to a Holder of an Allowed Claim or Allowed Equity

Interest has the right, but not the obligation, to not make a distribution until such Holder has provided to such Entity the information necessary to comply with any withholding requirements of any such taxing authority, and any required withholdings (determined after taking into account all information provided by such Holder pursuant to this Section 12.17) shall reduce the distribution to such Holder.

**12.18 *Successors and Assigns.***

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign, affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of each Entity.

**12.19 *Closing of Chapter 11 Cases.***

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

**12.20 *Document Retention.***

On and after the Effective Date, the Reorganized Debtors may maintain documents in accordance with their current document retention policy, as may be altered, amended, modified, or supplemented by the Reorganized Debtors.

**12.21 *Conflicts.***

In the event of any conflict between the terms and provisions in the Plan (without reference to the Plan Supplement) and the terms and provisions in the Disclosure Statement, the Restructuring Support Agreement, the Plan Supplement, any other instrument or document created or executed pursuant to the Plan, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), the Plan (without reference to the Plan Supplement) shall govern and control.

**12.22 *Service of Documents.***

All notices, requests, and demands to or upon the Debtors, the Reorganized Debtors, or the Participating Prepetition Lenders to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

- (a) If to the Debtors or the Reorganized Debtors:

ENTEGRA POWER GROUP LLC  
100 South Ashley Drive, Suite 1400  
Tampa, Florida 33602

Attn: Michael R. Schuyler  
Jerry Coffey  
Telephone: (813) 301-4900  
Facsimile: (813) 301-4994

with copies to:

O'MELVENY & MYERS LLP  
Times Square Tower  
Seven Times Square  
New York, New York 10036  
Attn: George A. Davis, Esq.  
Richard Shutran, Esq.  
Telephone: (212) 326-2000  
Facsimile: (212) 326-2061

-and-

RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Attn: Mark D. Collins, Esq.  
Jason M. Madron, Esq.  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

(b) If to a Participating Prepetition Lender, to the address for such Participating Prepetition Lender provided on the signature page to the Restructuring Support Agreement.

with copies to:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036  
Attn: Kenneth S. Ziman, Esq.  
Telephone: (212) 735-3000  
Facsimile: (212) 735-2000

-and-

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
155 North Wacker Drive  
Suite 2700  
Chicago, Illinois 60606  
Attn: Ron Meisler, Esq.  
Telephone: (312) 407-0700  
Facsimile: (312) 407-0411

After the Effective Date, the Reorganized Debtors shall be authorized to send a notice to Entities specifying that, in order to continue to receive documents pursuant to Bankruptcy Rule 2002, such Entity must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtors shall be authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have filed such renewed requests.

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Dated: \_\_\_\_\_, September 4, 2014

Respectfully Submitted,

ENTEGRA POWER GROUP, LLC,

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President and Chief Executive Officer

ENTEGRA TC LLC

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President and Chief Executive Officer

EPG LLC

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President

UNION POWER PARTNERS, L.P.

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President

TRANS-UNION INTERSTATE PIPELINE, L.P.

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President

UPP FINANCE CO, LLC

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President

UNION POWER LLC

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President

TRANS-UNION PIPELINE LLC

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President

ENTEGRA POWER SERVICES LLC

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President

BASSO TP-2 INC.

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President

GILA RIVER ENERGY HOLDCO LLC

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President

UNION POWER EMPLOYEE COMPANY LLC

By: \_\_\_\_\_  
Name: Michael R. Schuyler  
Title: President

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Description	OMM_US-#72567923-v1-ENT_-_Modified_Plan
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	5
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	15

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Ignore Embedded Objects/Images	OFF
Compare at Character Level	OFF
Compare Numbers at Character Level	OFF
Show Moved Deletions	OFF
Show Changes to Spaces	OFF
Show Paragraph Changes	OFF
Ignore Case Changes	OFF
Ignore Text Boxes	OFF
Ignore Field Codes	OFF
Compare field contents as text	ON
Ignore Tables	OFF
Detect Changes to Images	OFF