



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed April 26, 2016

  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re

Energy & Exploration Partners, Inc., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 15-44931 (RFN)

(Jointly Administered)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
CONFIRMING THE DEBTORS' THIRD AMENDED JOINT PLAN OF  
REORGANIZATION WITH TECHNICAL AND CONFIRMATION MODIFICATIONS**

Energy & Exploration Partners, Inc. ("ENXP") and its affiliated debtors and debtors in possession (collectively, the "Debtors"), having:

<sup>1</sup> The Debtors in these chapter 11 cases are: Energy & Exploration Partners, Inc. (9466); Energy & Exploration Partners, LLC (8621); Energy & Exploration Partners Operating GP, LLC (4266); and Energy & Exploration Partners Operating, LP (4049). The Debtors' main corporate and mailing address for purposes of these chapter 11 cases is: Energy & Exploration Partners, 420 Throckmorton St., Suite 1200, Fort Worth, TX 76102.

- a. commenced on December 7, 2015 (the “Petition Date”), these chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);
- b. continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- c. filed on February 10, 2016 the *Debtors’ Joint Plan of Reorganization* [Dkt. No. 369] and the *Debtors’ Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code* [Dkt. No. 376];
- d. filed on March 15, 2016 the *Debtors’ First Amended Joint Plan of Reorganization* [Dkt. No. 514] and the *Debtors’ First Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code* [Dkt. No. 515];
- e. filed on March 18, 2016 revisions to the *Debtors’ First Amended Joint Plan of Reorganization* [Dkt. No. 531] and revisions to *Debtors’ First Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code* [Dkt. No. 530];
- f. filed on March 21, 2016 the solicitation versions of *Debtors’ First Amended Joint Plan of Reorganization*, dated as of March 21, 2016 [Dkt. No. 550] and the *Debtors’ First Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code* [Dkt. 550] (as may be amended, modified or supplemented from time to time, the “Disclosure Statement”);
- g. filed on April 21, 2016 the *Debtors’ Second Amended Joint Plan of Reorganization* [Dkt No. 706];
- h. filed on April 25, 2016 the *Debtors’ Third Amended Joint Plan of Reorganization with Technical and Confirmation Modifications* [Dkt. No. 733] (as may be amended, modified, or supplemented from time to time, the “Plan”);<sup>2</sup>
- i. obtained approval of the Ballots for voting on the Plan transmitted to Holders of Claims in Class 3, Class 4, and Class 5 in accordance with that certain *Order (A) Approving the Disclosure Statement, (B) Approving the Solicitation Procedures, (C) Approving the Form of Ballots and Notices in Connection Therewith, (D) Establishing the Plan Confirmation Schedule, and (E) Granting Related Relief*, dated March 18, 2016 [Dkt. No. 537] (the “Disclosure Statement Order”);
- j. caused, beginning on March 21, 2016 (the “Solicitation Date”), solicitation materials and notice of the deadline for objecting to confirmation of the Plan to be

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<sup>2</sup> All capitalized terms used and not otherwise defined in this Confirmation Order shall have the meanings ascribed to them in the Plan.

distributed consistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the Disclosure Statement Order, as evidenced by, among other things, the *Affidavit of Solicitation Materials* filed by Prime Clerk LLC on April 1, 2016 [Dkt. No. 600] (the “Solicitation Affidavit”);

- k. filed on March 22, 2016, notice of the Confirmation Hearing (the “Confirmation Hearing Notice”) which was published in *USA Today National Edition*, *Centerville News*, the *Fort Worth Star-Telegram*, *Platt’s Gas Daily*, *Houston Chronicle*, *Navasota Examiner*, *Huntsville Item*, and *The Madisonville Meteor*, as evidenced by, among other things, the *Affidavit of Publication* filed by Prime Clerk LLC [Dkt. No. 624];
- l. filed on April 19, 2016 the *Declaration of Christina Pullo of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Debtors’ First Amended Joint Plan of Reorganization* [Dkt. No. 692];
- m. filed on April 19, 2016 the *Debtors’ Memorandum of Law in Support of Confirmation of the Debtors’ First Amended Joint Plan of Reorganization* [Dkt. No. 693];
- n. filed on April 20, 2016 the *Declaration of John R. Castellano, Interim Chief Financial Officer of Energy & Exploration Partners, Inc., in Support of Confirmation of the Debtors’ First Amended Joint Plan of Reorganization* [Dkt. No. [697];

And this Bankruptcy Court having:

- a. set April 21, 2016 at 9:30 a.m. (prevailing Central Time) as the date and time for the commencement of the Confirmation Hearing;
- b. reviewed the Plan, the Disclosure Statement, the Confirmation Brief, the Castellano Declaration, the Voting Declaration, and all pleadings, exhibits, statements, responses, and comments regarding Confirmation, including all objections, statements, and reservations of rights filed by parties in interest on the docket of these Chapter 11 Cases;
- c. held the Confirmation Hearing;
- d. heard the statements, arguments, and objections made by counsel in respect of Confirmation;
- e. considered all oral representations, testimony, documents, filings, and other evidence regarding Confirmation;

- f. overruled any and all objections to the Plan and to Confirmation and all statements and reservations of rights not consensually resolved or withdrawn unless otherwise indicated; and
- g. taken judicial notice of all papers and pleadings filed in these Chapter 11 Cases and all evidence proffered or adduced and all arguments made at the hearings held before the Court during the pendency of these Chapter 11 Cases.

NOW, THEREFORE, the Bankruptcy Court having found that notice of the Confirmation Hearing and the opportunity for any party in interest to object to Confirmation having been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby; and the record of these Chapter 11 Cases and the legal and factual bases set forth in the documents filed in support of Confirmation and presented at the Confirmation Hearing including, but not limited to, the Castellano Declaration, establish just cause for the relief granted in this Confirmation Order; and after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact, conclusions of law and order:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED AND ORDERED THAT:

A. Findings and Conclusions. The findings and conclusions set forth in this Confirmation Order and in the record of the Confirmation Hearing constitute this Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

### **Jurisdiction and Venue**

B. Exclusive Jurisdiction; Venue; Core Proceeding. The Bankruptcy Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this Bankruptcy Court is proper under 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A), (L), (N) and (O) and this Bankruptcy Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

C. Judicial Notice. The Bankruptcy Court takes judicial notice of the docket in these Chapter 11 Cases maintained by the clerk of the Bankruptcy Court, including, without limitation, all pleadings and other documents filed, all orders entered, and evidence and arguments made, proffered, and adduced at the hearings held before the Bankruptcy Court during the pendency of these Chapter 11 Cases.

D. Retention of Jurisdiction. The Bankruptcy Court finds and concludes that the Bankruptcy Court's retention of jurisdiction as set forth in Article XI of the Plan is consistent with 28 U.S.C. §§ 157 and 1334.

### **Notice, Solicitation and Acceptance**

E. Adequate Notice of Confirmation Hearing. In accordance with Bankruptcy Rules 2002, 3019 and 9019 and the Disclosure Statement Order, the Bankruptcy Court finds and concludes that (a) proper, timely and adequate notice of the time for filing objections to the Plan was provided, and (b) proper, timely and adequate notice of the Confirmation Hearing was provided to all Holders of Claims and Interests. No other or further notice of the Confirmation Hearing is necessary or required.

F. Adequate Information. The Bankruptcy Court finds and concludes that the solicitation of acceptances of the Plan was conducted after disclosure of “adequate information” as defined in Bankruptcy Code § 1125(a) and in accordance with the Disclosure Statement Order.

G. Good Faith Solicitation (11 U.S.C. § 1125(e)). The Bankruptcy Court finds and concludes that the Debtors have solicited acceptances of the Plan in good faith and in compliance with the Bankruptcy Code. The Disclosure Statement, the Plan, the Ballots, the Disclosure Statement Order, and the notice of the Confirmation Hearing were transmitted and served in compliance with the Disclosure Statement Order, the Bankruptcy Rules, and the Local Rules for the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”). Such transmittal and service were adequate and sufficient and no other or further notice shall be required. The Debtors and each of their agents, directors, officers, employees, financial advisors, attorneys, and other professionals are deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the solicitation of the Plan, and, therefore, are not and shall not, on account of such issuance or solicitation, be liable at any time for the violation of any law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or the distribution or dissemination of any information contained in the Plan, the Disclosure Statement, and any and all related documents. The Debtors have complied with the Disclosure Statement Order in all respects.

H. Voting. As evidenced by the Voting Declaration, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the Disclosure Statement Order.

I. Plan Supplement. On April 1, 2016, the Debtors filed the *Notice of Filing of Plan Supplement* [Dkt. No. 601] (as amended, modified or supplemented from time to time, the “Plan Supplement”) which included, among other things, substantially final forms of (i) the Debtors’ Retained Causes of Action; (ii) the Assigned Estate Claims; (iii) the schedule of assumed executory contracts and unexpired leases, including cure costs; (iv) the schedule of rejected executory contracts and unexpired leases; (v) the Creditor Trust Agreement; (vi) the Third Amended and Restated Limited Liability Company Agreement of Energy & Exploration Partners, LLC; (vii) the material terms of the Exit Facility; (viii) the material terms of the New Term Loan; (ix) the Reorganized ENXP Equity/Governance Term Sheet; (x) information on the Management Incentive Plan; (xi) the Backstop Commitment Letter; and (xii) the Noteholder Warrant. The Debtors filed the *Notice of Filing of Amended Exhibits to Plan Supplement* on April 15, 2016 (*see* Dkt. No. 671) and the *Notice of Filing of Amended and Additional Exhibits to Plan Supplement* on April 21, 2016 (*see* Dkt. No. 710), which amended the Plan Supplement and included modifications to the material terms of the Exit Facility, the material terms of the New Term Loan, the Reorganized ENXP Equity/Governance Term Sheet, the Debtors’ Retained Causes of Action, the Assigned Estate Claims, the schedule of assumed executory contracts and unexpired leases, including cure costs, and the schedule of rejected executory contracts and unexpired leases, as well as provided the executed Backstop Commitment Letter and a list of the officers of the Reorganized Debtors. All such materials comply with the Plan, and the filing and notice of such documents is good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws and regulations, and no other or further notice is or shall be required.

J. Bankruptcy Rule 3016(a). In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtors as the proponents of the Plan.

**Compliance with Bankruptcy Code § 1129**

K. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). In accordance with Bankruptcy Code § 1129(a)(1), the Bankruptcy Court finds and concludes that the Plan complies with the applicable provisions of the Bankruptcy Code:

(a) Compliance with 11 U.S.C. §§ 1122, 1123(a). In accordance with Bankruptcy Code §§ 1122(a) and 1123(a), the Bankruptcy Court finds and concludes that the Plan, in addition to Administrative Expense Claims, DIP Facility Claims, and Priority Tax Claims, which need not be classified, classifies eight Classes of Claims and Interests for the Debtors. The Claims and Interests allocated to each Class are substantially similar to other Claims and Interests, as applicable, in each such Class, and such Classes do not unfairly discriminate among Holders of Claims and Interests. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Interest under the Plan.

(i) Specified Unimpaired Classes – 11 U.S.C. § 1123(a)(2). Article III of the Plan specifies that Class 1 (Other Priority Claims), Class 2 (Other Secured Claims) and Class 6 (Convenience Claims) are unimpaired under the Plan, thereby satisfying Bankruptcy Code § 1123(a)(2).

(ii) Specified Treatment of Impaired Classes – 11 U.S.C. § 1123(a)(3). Article III of the Plan designates Class 3 (Prepetition Secured Claims), Class 4 (Convertible Notes Claims) and Class 5 (General Unsecured Claims) as impaired, and Article IV of the Plan specifies the treatment of Claims in such Classes, thereby satisfying Bankruptcy Code § 1123(a)(3).

(iii) No Discrimination – 11 U.S.C. § 1123(a)(4). The Plan provides the same treatment for each Claim or Interest of a particular Class, unless the Holder of a particular Claim or Interest agreed to less favorable treatment of its respective Claim or Interest, thereby satisfying Bankruptcy Code § 1123(a)(4).

(iv) Implementation of the Plan – 11 U.S.C. § 1123(a)(5). The Plan and the various documents and agreements referred to therein or set forth in the Plan Supplement provide adequate and proper means for the Plan's implementation, including, without limitation, (i) the issuance of the New Common Interests and Noteholder Warrants; (ii) the procedures for the Rights Offering for participation in the Exit Facility, (iii) execution of the Exit Facility and the New Term Loan; (iii) the cancellation of certain indebtedness, agreements and existing securities; (iv) the dissolution of ENXP and the vesting of its assets in Reorganized ENXP LLC; (vi) the retention of certain Causes of Action; (vii) the creation of the Creditor Trust and the transfer of the Creditor Trust Assets; and (viii) the appointment of a new board of managers, thereby satisfying Bankruptcy Code § 1123(a)(5).

(v) Nonvoting Equity Securities – 11 U.S.C. § 1123(a)(6). The Organizational Documents of the Reorganized Debtors shall prohibit the issuance of nonvoting equity securities, thereby satisfying Bankruptcy Code § 1123(a)(6), and shall authorize the issuance of Reorganized ENXP LLC New Common Interests. The Noteholder Warrants shall not be considered nonvoting equity securities. The Organizational Documents of the Reorganized Debtors satisfy the provisions of the Bankruptcy Code.

(vi) Selection of Officers and Directors – 11 U.S.C. § 1123(a)(7). The Reorganized ENXP Equity/Governance Term Sheet provided in the Plan Supplement contains provisions with respect to the selection of a board of managers and officers of the Reorganized ENXP, LLC that is consistent with the interests of creditors, equity security holders, and public policy, thereby satisfying Bankruptcy Code § 1123(a)(7).

(b) Compliance with 11 U.S.C. § 1123(b). As permitted by Bankruptcy Code § 1123(b), the Plan: (a) impairs the rights of the Holders of Classes of Claims and Interests; (b) provides procedures for the assumption or rejection of executory contracts and unexpired leases pursuant to Bankruptcy Code § 365(b); (c) provides for the settlement or adjustment of Claims or Interests belonging to the Debtors or their Estates; (d) incorporates procedures for resolving disputed, contingent and unliquidated Claims; (e) contains procedures for making distributions to Allowed Claims; (f) releases certain Claims and Causes of Action against the Released Persons; (g) enjoins certain acts by Holders of Claims or Interests; (h) exculpates the Released Persons from certain Claims and Causes of Action; (i) provides for Reorganized ENXP LLC's issuance of securities; and (j) includes other appropriate provisions not inconsistent with the applicable provisions of the Bankruptcy Code. The failure to specifically address a provision of the Bankruptcy Code in this Confirmation Order shall not diminish or impair the effectiveness of this Confirmation Order.

(c) The Debtors Are Not Individuals – 11 U.S.C. §1123(c). The Debtors are not individuals and, accordingly, Bankruptcy Code § 1123(c) is inapplicable to these Chapter 11 Cases.

(d) Cure of Defaults – 11 U.S.C. §1123(d). Section 7.02 of the Plan provides for the satisfaction of Cure Costs associated with each executory contract and unexpired leases to be assumed pursuant to the Plan in accordance with Bankruptcy Code § 365(b)(1). All Cure Costs will be determined in accordance with the underlying agreements and applicable bankruptcy and nonbankruptcy law. Thus, the Plan complies with Bankruptcy Code § 1123(d).

L. Debtors' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). In accordance with Bankruptcy Code § 1129(a)(2), the Bankruptcy Court finds and concludes that the Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code § 1129(a)(2). Specifically:

(a) The Debtors are proper debtors under Bankruptcy Code § 109;

(b) The Debtors have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of this Court; and

(c) The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order in transmitting the Plan, the Disclosure Statement, the Ballots and all related documents and notices, and in soliciting and tabulating votes on the Plan.

M. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). In accordance with Bankruptcy Code § 1129(a)(3), the Debtors have proposed the Plan (including the RSA and all other agreements, documents and instruments necessary to effectuate the Plan) in good faith and not by any means forbidden by law, and the Debtors have acted, and are presently acting, in good faith in conjunction with all aspects of the Plan. All transactions contemplated by the Plan were negotiated and consummated at arms' length, without collusion, and in good faith and represent the culmination of months of extensive negotiations and discussions among the Debtors, their creditor constituencies and other parties in interest. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the facts and records of these Chapter 11 Cases and the totality of the circumstances surrounding the formulation of the Plan and the solicitation of the Plan, the Disclosure Statement and the hearing thereon and the record of the Confirmation Hearing and other proceedings held in these Chapter 11 Cases. The Debtors filed these Chapter 11 Cases and proposed the Plan with legitimate and honest purposes including, among other things, (1) facilitating the successful balance sheet restructuring of the Debtors; (2) maximizing recoveries to Holders of Allowed Claims; and (3) aiding the reorganization of the Debtors and their Estates through the issuance of new securities pursuant to Bankruptcy Code § 1145. Furthermore, the Plan's classification, indemnification, exculpation, release, settlement and injunction provisions, including without limitation Sections 12.01, 12.02, 12.03, 12.04, 12.05 and 12.06 of the Plan, have been negotiated in good faith and at arms' length, consistent with Bankruptcy Code §§ 105, 1123(b)(3)(A), 1123(b)(6), 1129, and 1142.

N. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). In accordance with Bankruptcy Code § 1129(a)(4), the Bankruptcy Court finds and concludes that all payments made or to be made by the Debtors or by a Person acquiring property under the Plan, for services or for costs and expenses in, or in connection with, these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, have been approved by, or are subject to approval of, the Bankruptcy Court as reasonable, unless otherwise ordered by the Bankruptcy Court. The Court retains jurisdiction to hear and determine all applications for Professional fees and Professional Fee Claims incurred on or before the Effective Date.

O. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have disclosed the selection process of the initial members of the board of managers of Reorganized ENXP LLC, to the extent such information is available, and the appointment to, or continuance in, such offices of such persons is consistent with the interests of Holders of Claims against and Interests in the Debtors and with public policy. Upon and following the Effective Date, the board of managers of Reorganized ENXP LLC shall be comprised of the individuals announced on the record at the Confirmation Hearing and such additional directors as may be designated consistent with the terms of the Plan and the RSA. Except as otherwise provided in the Plan Supplement, the officers of the Debtors immediately before the Effective Date shall serve as the initial officers of the Debtor on or after the Effective Date in accordance with their pre-Effective Date employment terms or agreements and applicable non-bankruptcy law. After the Effective Date, the selection of officers of Reorganized ENXP LLC shall be as provided in the Governance Documents. The identity of any insider that will be employed or retained by the Reorganized Debtors and the nature of such insider's compensation has also been disclosed, to the extent applicable.

P. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for any rate change that requires regulatory approval. Thus, Bankruptcy Code § 1129(a)(6) is not applicable to this Case.

Q. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). In accordance with Bankruptcy Code § 1129(a)(7), the Bankruptcy Court finds and concludes that with respect to Impaired Classes of Claims or Interests (i.e., Classes 3, 4, 5, 7 and 8), each Holder of a Claim or Interest has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such Holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

R. Acceptance or Rejection of Certain Classes (11 U.S.C. § 1129(a)(8)). In accordance with Bankruptcy Code § 1129(a)(8), the Bankruptcy Court finds and concludes that: (1) Class 1 (Other Priority Claims), Class 2 (Other Secured Claims) and Class 6 (Convenience Claims) are Unimpaired under the Plan, and pursuant to Bankruptcy Code § 1126(f), are conclusively presumed to have accepted the Plan; (2) Class 3 (Prepetition Secured Claims), Class 4 (Convertible Notes Claims) and Class 5 (General Unsecured Claims) are Impaired Classes that have accepted the Plan in accordance with Bankruptcy Code § 1126(c) and (d); and (3) Class 7 (Preferred Stock) and Class 8 (Interests) are Impaired Classes that are deemed to have rejected the Plan. Although Bankruptcy Code § 1129(a)(8) has not been satisfied with respect to Class 7 and Class 8, the Plan is nevertheless confirmable because the Plan satisfies Bankruptcy Code § 1129(b) with respect to such Classes.

S. Treatment of Administrative and Priority Claims (11 U.S.C. § 1129(a)(9)). The Bankruptcy Court finds and concludes that the Plan's treatment of Administrative Expense

Claims (including but not limited to Professional Fee Claims, Cure Costs and substantial contribution claims), DIP Facility Claims and Priority Tax Claims pursuant to Article II of the Plan, satisfies the requirements set forth in Bankruptcy Code § 1129(a)(9)(A), (C), and (D) of the Bankruptcy Code, as applicable. The treatment of Other Priority Claims pursuant to Section 4.01 of the Plan satisfies the requirements of Bankruptcy Code § 1129(a)(9)(B). The Debtors have sufficient Cash from the Exit Facility to pay Allowed Administrative Expense Claims, Allowed DIP Facility Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims and Allowed Other Secured Claims.

T. Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)). In accordance with Bankruptcy Code § 1129(a)(10), the Bankruptcy Court finds and concludes that Class 3 (Prepetition Secured Claims), Class 4 (Convertible Notes Claims) and Class 5 (General Unsecured Claims) voted to accept the Plan by the requisite majorities, determined without including acceptances of the Plan by any insider. Accordingly, the requirements of Bankruptcy Code § 1129(a)(10) have been satisfied.

U. Feasibility (11 U.S.C. § 1129(a)(11)). The Disclosure Statement and the other evidence proffered or adduced at the Confirmation Hearing with respect to feasibility is persuasive and credible, has not been controverted by other evidence, and establishes that the Plan is feasible and that there is a reasonable prospect of the Reorganized Debtors being able to meet their financial obligations in the ordinary course and that Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtors, thereby satisfying the requirements of Bankruptcy Code § 1129(a)(11).

V. Payment of Statutory Fees (11 U.S.C. § 1129(a)(12)). In accordance with Bankruptcy Code § 1129(a)(12), the Bankruptcy Court finds and concludes that, to the extent

that fees payable to the United States Trustee under 28 U.S.C. § 1930 have not been paid, the Plan provides for the payment of all such fees on the Effective Date and thereafter as may be required.

W. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Plan provides for the continuation after the Effective Date of payment of all “retiree benefits,” as defined in Bankruptcy Code § 1114, in accordance with Bankruptcy Code § 1129(a)(13).

X. Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtors are not required to pay any domestic support obligations. Thus, Bankruptcy Code § 1129(a)(14) is not applicable.

Y. Individual Cases Subject to Objection by Unsecured Creditor (11 U.S.C. § 1129(a)(15)). The Debtors are not individuals. Thus, Bankruptcy Code § 1129(a)(15) is not applicable.

Z. Transfers of Property Pursuant to Non-Bankruptcy law (11 U.S.C. § 1129(a)(16)). The Debtors are moneyed businesses or commercial corporations. Thus, Bankruptcy Code § 1129(a)(16) is not applicable.

AA. Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). Class 7 (Preferred Stock) and Class 8 (Interests) are deemed to have rejected the Plan. Based on the Disclosure Statement and the evidence adduced or presented at the Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable with respect to Class 7 and Class 8 as required by Bankruptcy Code § 1129(b). Upon Confirmation of the Plan and the occurrence of the Effective Date, the Plan shall be binding upon the Holders of Interests in Class 7 (Preferred Stock) and Class 8 (Interests).

BB. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan filed in these Chapter 11 Cases, and accordingly, Bankruptcy Code § 1129(c) is inapplicable to these Chapter 11 Cases.

CC. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The Bankruptcy Court finds and concludes that the principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933, and there has been no objection filed by any governmental unit asserting such avoidance.

DD. Small Business Case – 11 U.S.C. § 1129(e). These Chapter 11 Cases are not a “small business case” as that term is defined in the Bankruptcy Code, and, accordingly, Bankruptcy Code § 1129(e) is inapplicable.

EE. Good Faith Solicitation – 11 U.S.C. § 1125(e). Based on the record before the Bankruptcy Court in these Chapter 11 Cases, the Debtors, and their respective officers, directors, members, managers, employees, equity holders, partners, Affiliates, advisors, attorneys, consultants, agents, professionals, representatives, or any of their successors or assigns have acted in “good faith” within the meaning of Bankruptcy Code § 1125(e) in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the Disclosure Statement Order in connection with all their respective activities relating to the solicitation of acceptances or rejections of the Plan and their participation in the activities described in Bankruptcy Code § 1125 and are entitled to the protections afforded by Bankruptcy Code § 1125(e) and the exculpation provisions set forth in Section 12.06 of the Plan.

FF. Based on the foregoing, the Debtors, as proponents of the Plan, have met their burden of proving the elements of Bankruptcy Code § 1129.

**Modifications to the Plan**

GG. The Bankruptcy Court finds and concludes that all modifications made to the Plan after solicitation of votes on the Plan had commenced, as reflected in this Confirmation Order, as set forth on the record at the Confirmation Hearing, or as reflected in the Plan, satisfy the requirements of Bankruptcy Code § 1127(a) and Bankruptcy Rule 3019, are not material or do not adversely affect the treatment and rights of the Holders of any Claims or Interests under the Plan who have not otherwise accepted such modifications. Accordingly, the Debtors have satisfied Bankruptcy Code § 1127(c) and Bankruptcy Rule 3019 with respect to the Plan, as modified; and Holders of Claims or Interests that have accepted or rejected the Plan (or are deemed to have accepted or rejected the Plan) are deemed to have accepted or rejected, as the case may be, the Plan as modified on the date of this Confirmation Order, pursuant to Bankruptcy Code § 1127(d) and Bankruptcy Rule 3019.

**Transactions Pursuant to the Plan**

HH. Bankruptcy Rule 9019 Settlements. The Bankruptcy Court finds and concludes that pursuant to Bankruptcy Rule 9019 and in consideration of the distributions and other benefits provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Impaired Claims against and Interests in the Debtors. Such compromises and settlements are made in exchange for consideration and are in the best interests of the Holders of Impaired Claims and Interests, are within the range of possible litigation outcomes, are fair, equitable, reasonable, and are integral elements of the restructuring and resolution of these Chapter 11 Cases in accordance with the Plan. The settlements provided in the Plan are approved and shall be implemented pursuant to the Plan.

II. Releases, Exculpation and Injunction. The Bankruptcy Court has jurisdiction under sections 1334 (a) and (b) of title 28 of the United States Code to approve the injunctions or

stays, injunctions against interference with the Plan, releases and exculpations set forth in the Plan, including but not limited to those set forth in Sections 12.01, 12.02, 12.03, 12.04, 12.05, and 12.06 of the Plan. Bankruptcy Code § 105(a) permits issuance of the injunction and approval of the releases set forth in the Plan, including those set forth in Article XII of the Plan if, as has been established here based upon the record in the Chapter 11 Cases and the evidence presented at the Confirmation Hearing, such provisions (1) were given in exchange for good and valuable consideration; (2) were integral to the RSA Creditor Parties agreeing to enter into the RSA and essential to the formulation and implementation of the Plan and the agreements among the various parties in interests set forth therein, all as provided in Bankruptcy Code § 1123; (3) confer substantial benefits on the Debtors and their Estates; (4) are fair, equitable and reasonable; and (5) are in the best interests of the Debtors, their Estates and parties in interest. The failure to effect the release provisions of the Plan would impair the Debtors' ability to confirm the Plan. Pursuant to Bankruptcy Code § 1123(b)(3) and Bankruptcy Rule 9019(a), the injunctions, releases and exculpations set forth in the Plan, including in Article XII of the Plan, and implemented by this Confirmation Order are fair, equitable, reasonable, and in the best interests of the Debtors, Reorganized Debtors, their Estates, creditors and equity holders. The releases of the Released Persons under the Plan are fair to holders of Claims and Interests, are necessary to the proposed reorganization, and are given in exchange for, and supported by, fair, sufficient and adequate consideration provided by each and all of the parties receiving such release. Further, the releases in the Plan do not relieve any Released Person from Claims or Causes of Action arising out of or relating to any act or omission of a Released Person that is a criminal act or constitutes intentional fraud. The exculpation granted under the Plan is reasonable in scope as the exculpation provision does not relieve any party from any Claim, obligation, Cause of Action

or liability for any Claim arising out of willful misconduct or gross negligence. The record at the Confirmation Hearing and these Chapter 11 Cases is sufficient to support the injunctions, releases and exculpations provided for in the Plan and the failure to implement the injunctions, exculpations and releases would seriously impair the Debtors' ability to confirm the Plan. Accordingly, based upon the record of the Chapter 11 Cases and the representations of the parties, the Bankruptcy Court finds that the injunctions, exculpations and releases set forth in the Plan are consistent with the Bankruptcy Code and applicable law.

JJ. Plan Provisions Valid and Binding. The Bankruptcy Court finds and concludes that, upon entry of this Confirmation Order, each term and provision of the Plan is valid, binding, and enforceable pursuant to its terms.

KK. Plan Documents Valid and Binding. The Bankruptcy Court finds and concludes that any and all documents necessary to implement the Plan, including those contained in the Plan Supplement, have been negotiated in good faith and at arms' length, and shall be, upon completion of documentation and execution, valid, binding, and enforceable agreements and not be in conflict with any federal or state law.

LL. Executory Contracts and Unexpired Leases. The Debtors have exercised their reasonable business judgment in determining whether to assume or reject executory contracts and unexpired leases pursuant to Section 7.01 of the Plan. Each assumption of an executory contract or unexpired lease pursuant to Section 7.01 of the Plan shall be legal, valid and binding, all to the same extent as if such assumption had been effectuated pursuant to an order of the Bankruptcy Court under Bankruptcy Code § 365 entered before entry of this Confirmation Order. Moreover, the Debtors shall cure, or provide adequate assurances that the Reorganized

Debtors will cure, defaults (if any) under or relating to each of the executory contracts and unexpired leases that are being assumed by the Reorganized Debtors pursuant to the Plan.

MM. Good Faith. The Debtors, Reorganized Debtors, the Creditors Committee, the RSA Creditor Parties, the DIP Lenders, the Indenture Trustee, the Administrative Agent under the Prepetition Secured Facility, the DIP Agent, and all of their respective members, officers, directors, agents, financial advisors, attorneys, employees, equity holders, partners, affiliates, and representatives will be acting in good faith if they proceed to (1) Consummate the Plan and the agreements, settlements, transactions, and transfers contemplated thereby and (2) take the actions authorized and directed by this Confirmation Order.

NN. Conditions Precedent to Confirmation Date. Entry of this Confirmation Order shall satisfy the applicable conditions to the Confirmation Date, as set forth in Section 9.01 of the Plan.

OO. Conditions Precedent to Effective Date. The conditions precedent to the Effective Date set forth in Section 9.02 of the Plan may be waived by the Debtors and the Requisite Consenting Lenders, without notice or order of the Bankruptcy Court.

PP. Objections. All parties have had a full and fair opportunity to litigate all issues raised, or which might have been raised, in the objections to the Plan and the objection have been fully and fairly litigated.

QQ. Compliance with Bankruptcy Rule 3016. In accordance with Bankruptcy Rule 3016, the Bankruptcy Court finds and concludes that the Plan and Disclosure Statement adequately describe in specific and conspicuous language all acts to be enjoined and identify the Persons that will be subject to the injunction.

RR. Retention of Jurisdiction. The Bankruptcy Court may, and upon the Effective Date shall, retain exclusive jurisdiction over all matters arising out of, and related to these Chapter 11 Cases, including the matters set forth in Article XI of the Plan and Bankruptcy Code § 1142.

### **Miscellaneous Provisions**

SS. All documents and agreements necessary to implement the Plan, including those contained in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arms'-length, are in the best interests of the Debtors, and shall, upon completion of documentation and execution, be valid, binding, and enforceable documents and agreements not in conflict with any federal, state, or local law.

TT. The Bankruptcy Court finds that Confirmation of the Plan is in the best interests of the Debtors, their Estates, Holders of Claims and Interests, and all other parties in interest.

### **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. Notice of the Confirmation Hearing. Notice of the Confirmation Hearing complied with the terms of the Disclosure Statement Order, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

2. Solicitation. The solicitation of votes on the Plan was done in good faith, complied with the Disclosure Statement Order, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Disclosure Statement Order, and

applicable non-bankruptcy law. The Debtors and each of their respective directors, officers, employees, agents, advisors, professionals, and attorneys have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer and issuance of any securities under the Plan, and therefore are not, and on account of such offer, issuance and solicitation will not be, liable at any time for any violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or the offer and issuance of any securities under the Plan.

3. Ballots. The forms of Ballots are in compliance with Bankruptcy Rule 3018(c).

4. Confirmation. The Plan, as attached to this Confirmation Order, and each of its provisions, as modified pursuant to Bankruptcy Code § 1127, **IS HEREBY APPROVED AND CONFIRMED** under Bankruptcy Code § 1129. The terms of the Plan, Plan Supplement and Plan Documents each as may be modified, are incorporated by reference into, and are an integral part of, the Plan and this Confirmation Order. The Plan complies with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules relating to and regarding confirmation.

5. Modifications to the Plan. The modifications to the Plan constitute technical changes and do not materially adversely affect or change the treatment of any Claims or Interests. Accordingly, pursuant to Bankruptcy Rule 3019 and in accordance with the Disclosure Statement Order, such modifications do not require additional disclosure under Bankruptcy Code § 1125 or re-solicitation of votes under Bankruptcy Code § 1126, nor do they require that holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. Holders of Claims or Interests who voted to accept the solicitation version of the Plan are deemed to accept the Plan as modified. Prior to the Effective Date, the Debtors

may make additional appropriate technical adjustments and modifications to the Plan and the documents contained in the Plan Supplement without further order or approval of the Bankruptcy Court.

6. Plan Supplement. The documents contained in the Plan Supplement (including (i) the Debtors' Retained Causes of Action; (ii) the Assigned Estate Claims; (iii) the schedule of assumed executory contracts and unexpired leases, including cure costs; (iv) the schedule of rejected executory contracts and unexpired leases; (v) the Creditor Trust Agreement; (vi) the Reorganized ENXP Limited Liability Company Agreement; (vii) the material terms of the Exit Facility; (viii) the material terms of the New Term Loan; (ix) the Reorganized ENXP Equity/Governance Term Sheet; (x) information on the Management Incentive Plan; (xi) the Backstop Commitment Letter; (xii) the Noteholder Warrant; and (xiii) the list of officers of the Reorganized Debtors) and the Exhibits to the Plan and any amendments, modifications and supplements thereto, and the execution, delivery and performance thereof by the Debtors, are authorized and approved.

7. Objections. All objections that have not been withdrawn, waived or settled, and all reservations of rights pertaining to Confirmation of the Plan included therein, are overruled on the merits for the reasons set forth herein and stated on the record of the Confirmation Hearing.

8. Binding Effect. The Plan, its provisions and this Confirmation Order shall be, and hereby are, binding upon and inure to the benefit of the Debtors, the RSA Creditor Parties, and all present and former Holders of Claims against or Interests in the Debtors, together with their respective successors and assigns, whether or not the Claims or Interests of such Holders are impaired under the Plan and whether or not such Holders, as applicable, have accepted the Plan.

9. Omission of Reference to Particular Plan Provisions. The failure to specifically describe or include any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Plan be approved and confirmed in its entirety.

10. Creditor Trust. On the Effective Date, the Creditor Trust and Creditor Trust Committee will be established pursuant to and in accordance with the terms of the Plan, including Section 5.16 thereof, and the Creditor Trust Agreement. Peter Kravitz is appointed as Creditor Trustee. The Creditor Trust Committee shall be comprised of (a) the following members selected by the Creditors Committee: Horizon Mud Co., Inc. and RR Donnelly; and (b) one member that shall be selected by the Ad Hoc Group of Lenders in advance of the Effective Date. The Creditor Trustee and Creditor Trust Committee shall have such powers, duties, and responsibilities as are provided for in the Plan and the Creditor Trust Agreement and shall be compensated in accordance with the Plan and the Creditor Trust Agreement.

11. Continued Existence and Vesting of Property. Except as otherwise provided in the Plan or this Confirmation Order, upon the Effective Date, (a) the Debtors shall continue to exist with all the powers of a corporation under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law, (b) all property of the Debtors (including, but not limited to, the Debtors' respective Interests in any non-Debtor subsidiary or Affiliate to the extent that any such non-Debtor subsidiary or Affiliate has not been dissolved, sold, or otherwise transferred under applicable law prior to the Effective Date other than the Creditor Trust Assets), wherever situated, shall vest in the Reorganized Debtors, and (c) the Creditor Trust Assets, consisting of the \$2,250,000 GUC Cash and the Assigned Estate Claims will be absolutely transferred and assigned to the Creditor Trust

free and clear of all Liens, encumbrances, or interests of any kind. The Reorganized Debtors may operate the Debtors' businesses, incur debt and other obligations in the ordinary course of business, and may otherwise use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Bankruptcy Court. After the Effective Date, all property retained by the Reorganized Debtors pursuant hereto shall be free and clear, except for (i) as is contemplated by or provided in the Plan or this Confirmation Order; (ii) the obligation to perform according to the Plan and this Confirmation Order; and (iii) the respective Claims, debts, Liens, security interests, encumbrances, and interests of those Holders of Allowed Claims in Class 2 whose Allowed Other Secured Claims the Debtors elect to Reinstate.

12. Plan Classification Controlling. The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of distributions to be made thereunder. The classifications set forth on the Ballots tendered to or returned by the Holders of Claims or Interests in connection with voting on the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Interests under the Plan for distribution purposes; (c) may not be relied upon by any Holder of a Claim or Interest as representing the actual classification of such Claim or Interest under the Plan for distribution purposes; and (d) shall not be binding on the Debtors.

13. DIP Facility Claims. On or as soon as practicable after the Effective Date, each holder of an Allowed DIP Facility Claim shall receive payment in full in Cash from the proceeds of the Exit Facility, as set forth under the Plan. Upon compliance with the preceding sentence, all Liens and security interests granted to secure the DIP Facility shall be deemed cancelled and

shall be of no further force and effect and each Allowed DIP Facility Claim shall be deemed to be fully satisfied, settled, released and compromised.

14. Implementation of the Plan. The Debtors and Reorganized Debtors may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of the Plan; (c) the filing of appropriate certificates of incorporation, merger, or consolidation with the appropriate governmental authorities pursuant to applicable law; and (d) all other actions that the Debtors or Reorganized Debtors determine are necessary or appropriate.

15. Authorization and Issuance of Plan Securities. The Debtors and Reorganized Debtors, as applicable, are authorized to issue all plan-related securities and documents, including, without limitation, the New Common Interests and the Noteholder Warrants, without the need for any further corporate action and all of the shares of New Common Interests and Noteholder Warrants and other securities issued pursuant to the Plan shall be duly authorized, validly issued, fully paid and non-assessable.

16. Exemption from Registration. The New Common Interests and the Noteholder Warrants (and the New Common Interests (if any) issued upon the exercise of such Noteholder Warrants) shall be exempt from registration under any federal (including the Securities Act),

state or local law, rule or regulation pursuant to Bankruptcy Code § 1145 or other applicable law requiring registration before the offering, issuance, distribution or sale of securities.

17. Exit Facility: Rights Offering. Entry of this Confirmation Order shall be deemed to constitute approval of the Rights Offering and Exit Facility (including all transactions contemplated thereby, and all actions to be taken, undertakings to be made and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities and expenses provided for therein) and the granting of security interests thereunder, and authorization for the Reorganized Debtors to enter into and perform under the Exit Facility Documentation and such other documents as may be required or appropriate.

(a) Exit Facility Documentation. The Exit Facility Documentation shall constitute legal, valid, binding, and authorized obligations of the Reorganized Debtors, enforceable in accordance with their terms. The financial accommodations to be extended pursuant to the Exit Facility Documentation are being extended, and shall be deemed to have been extended, in good faith, for legitimate business purposes, are reasonable, shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever, and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any other applicable non-bankruptcy law. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Facility Documentation (a) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documentation, (b) shall be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Exit Facility Documentation and Liens securing Allowed Other Secured Claims not discharged, paid or

satisfied in full as required under the Plan and (c) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect, or to evidence the perfection of, such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and this Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of this Confirmation Order, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties. To the extent that any holder of a Secured Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such holder, has filed or recorded publicly any Liens and/or security interests to secure such holder's Secured Claim, then as soon as practicable on or after the Effective Date such holder (or the agent for such holder) shall take any and all steps requested by the Reorganized Debtors that are necessary to cancel and/or extinguish such Liens and/or security interests.

18. New Term Loan. On or as soon as practicable after the Effective Date, the Reorganized Debtors are authorized, without the need for any further corporate or limited liability company action, to enter into the New Term Loan and any ancillary documents necessary or appropriate to satisfy the conditions to effectiveness of the Plan. The New Term

Loan shall be secured by Liens on substantially all of the Debtors' assets junior to the Liens securing the Exit Facility.

(a) New Term Loan Documentation. The New Term Loan Documentation shall constitute legal, valid, binding, and authorized obligations of the Reorganized Debtors, enforceable in accordance with their terms. The financial accommodations to be extended pursuant to the New Term Loan Documentation shall be deemed to have been extended, in good faith, for legitimate business purposes, shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever, and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any other applicable non-bankruptcy law. On the Effective Date, all of the Liens and security interests to be granted in accordance with the New Term Loan Documentation (a) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the New Term Loan Documentation, (b) shall be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the New Term Loan Documentation and (c) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect, or to evidence the perfection of, such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and this Confirmation Order (it being understood that perfection shall occur

automatically by virtue of the entry of this Confirmation Order, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

19. Compromise of Controversies and Settlement of Claims and Interests. Pursuant to Bankruptcy Code §§ 363 and 1123(b)(3) and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies relating to the contractual, legal and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest or any distribution to be made on account of such Allowed Claim or Interest. The entry of this Confirmation Order constitutes this Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by this Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and holders of Claims and Interests and is fair, equitable and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Code §§ 363 and 1123(b)(3) and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Bankruptcy Court, prior to the Effective Date, the Debtors and, after the Effective Date, the Reorganized Debtors or the Creditor Trust, as applicable under the terms of the Plan, may compromise and settle Claims against the Debtors or Reorganized Debtors.

20. Plan Distributions. The provisions of Article VI of the Plan, including, without limitation, the provisions governing distributions, are fair and reasonable and are approved. The Disbursing Agent shall make distributions pursuant to the procedures established by Article VI of the Plan.

21. Cancellation of Existing Securities and Agreements. Pursuant to Section 5.10 of the Plan, all notes, instruments, certificates evidencing debt to or interests in, the Debtors, including, without limitation, (i) the RSA, the Prepetition Secured Facility, the Convertible Notes Indenture, the Chesapeake Note, the Interim DIP Facility, the DIP Facility, and any other certificate, note, bond, indenture, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of any of the Debtors giving rise to any Claim (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligations of any Debtors that are specifically Reinstated pursuant to the Plan), (ii) all Preferred Stock, warrants for Preferred Stock and ENXP Common Stock and any certificate or other instrument or document directly or indirectly evidencing, convertible into, or creating any warrants, Preferred Stock or other Interest in ENXP (including the ENXP Common Stock) as of immediately prior to the Effective Date, (iii) all registration rights, preemptive rights, rights of first refusal, rights of first offer, co-sale rights, and other investor rights governing or relating to any of the indebtedness, obligations, Preferred Stock, ENXP Common Stock, or other items described in any of clauses (i) or (ii) above, and (iv) all obligations and liabilities arising under, related to, or in connection with, any of the items described in any of clauses (i)-(iii) above, in any such case, shall be cancelled and the obligations of the Debtors thereunder shall be discharged pursuant to the Plan.

22. Indenture Trustee Fees.

(a) Subject only to the Debtors' obligations under section 503 of the Bankruptcy Code, the Debtors or Reorganized Debtors, as applicable, shall pay in Cash all reasonable and documented Indenture Trustee Fees incurred through the Effective Date in an amount of up to \$175,000 without application or approval by the Bankruptcy Court and without

any reduction to recoveries of the Holders of Convertible Notes Claims. For the avoidance of doubt, the Indenture Trustee Fees shall not be subject to challenge by the Ad Hoc Group of Lenders, the DIP Lenders, or the Creditors Committee.

(b) The Indenture Trustee shall provide reasonably detailed invoices to the Debtors no later than five (5) days prior to the Effective Date (subject to redaction to preserve attorney-client privilege). If the Debtors reasonably dispute any requested Indenture Trustee Fees, the Debtors or Reorganized Debtors, as applicable, shall (i) pay the undisputed portion of the Indenture Trustee Fees, and (ii) notify the Indenture Trustee of such dispute. Upon such notification, if the dispute is not otherwise resolved, the Indenture Trustee may file a motion with the Bankruptcy Court to enforce payment by the Reorganized Debtors of Indenture Trustee Fees up to \$175,000.

(c) For the avoidance of doubt, nothing herein shall be deemed to impair, waive, discharge or negatively impact the Indenture Trustee's rights to exercise its Indenture Trustee Charging Lien against distributions to holders of the Convertible Notes, and no distribution shall be made to holders of the Convertible Notes until any disputed portion of the Indenture Trustee Fees has been fully and finally resolved.

23. Issuance of New Common Interests. Reorganized ENXP LLC is authorized to issue or cause to be issued the New Common Interests, including options and/or other equity awards, if any, reserved under the Management Incentive Plan in accordance with the terms of the Plan and the Organizational Documents, without the need for any further corporate or member action. All of the New Common Interests issuable under the Plan, including options and/or other equity awards, if any, reserved under the Management Incentive Plan, when so issued, shall be duly authorized, validly issued, fully paid, and non-assessable and deemed not to

have been issued in violation of any preemptive rights, rights of first refusal, or similar rights or any applicable law. Any claimant's acceptance of the New Common Interests shall be deemed as its agreement to be bound by the terms and conditions of the Third Amended and Restated Limited Liability Company Agreement of Energy & Exploration Partners, LLC.

24. Issuance of Noteholder Warrants. Reorganized ENXP LLC is authorized to issue the Noteholder Warrants without the need for any further corporate or member action. All of the Noteholder Warrants issuable under the Plan, when so issued, shall be duly authorized, validly issued, fully paid, and non-assessable, and deemed not to have been issued in violation of any preemptive rights, rights of first refusal, or similar rights or any applicable law.

25. Dissolution of ENXP. ENXP shall be deemed dissolved for all purposes on the Effective Date without the necessity of any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith; *provided, however*, that the Debtors shall file with the Office of the Secretary of State for its state of incorporation a certificate of dissolution which may be executed by an officer of the Debtors without the need for approval of the Debtors' board of directors or shareholders. From and after the Effective Date, the Debtors and Reorganized Debtors shall not be required to file any document or take any other action to withdraw ENXP's business operations from any states in which it previously conducted business. All property of ENXP's Estate to be retained under the Plan shall be transferred on the Effective Date, without the necessity of any other or further action, to Reorganized ENXP LLC or such other Reorganized Debtor as determined by the Reorganized Debtors.

26. Reorganized Debtors Board of Managers. Pursuant to Section 5.20 of the Plan and the modified Reorganized ENXP Equity/Governance Term Sheet contained in the Plan Supplement, upon and following the Effective Date, the Reorganized Debtors shall have a seven

(7) person board of managers (each a “Manager”) consisting of (a) one Manager appointed by each of (i) affiliates of Ares Management, L.P., (ii) affiliates of GoldenTree Asset Management, LP, (iii) affiliates of Sankaty Advisors, LLC, (iv) affiliates of GoldenTree Asset Management, LP and Sankaty Advisors, LLC, collectively; (v) holders of a majority of the then-outstanding membership interests in Reorganized ENXP, LLC, and (vi) holders of a majority of the then-outstanding membership interests in Reorganized ENXP, LLC, excluding the membership interests held by Sankaty Advisors, LLC, Ares Management, L.P., and GoldenTree Asset Management, LP, and (b) the then-current Chief Executive Officer of Reorganized ENXP, LLC. The process for the selection of the Board of the Reorganized Debtors has been identified in the Plan Supplement in accordance with Bankruptcy Code § 1129(a)(5). On the Effective Date, the terms of the current members of the Debtor’s board of directors shall expire.

27. Officers of the Reorganized Debtors. Except as otherwise provided in the Plan Supplement, the officers of the Debtors immediately prior to the Effective Date shall serve as the initial officers of the Reorganized Debtors on or after the Effective Date in accordance with any employment terms and agreement with the Debtors and applicable non-bankruptcy law. After the Effective Date, the selection of officers of the Reorganized Debtors shall be as provided in the Governance Documents.

28. Other Transactions. In the discretion of the Debtors or the Reorganized Debtors, as applicable, whether prior to or after the Effective Date, the Debtors or Reorganized Debtors may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Restructuring Transactions under and in connection with the Plan and/or the Exit Facility, including, without limitation: the execution and delivery of all appropriate agreements or other documents of merger,

consolidation, restructuring, conversion, disposition, transfer, dissolution or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law, including, without limitation: (a) the New Term Loan and the Exit Facility; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (c) rejection or assumption, as applicable, of executory contracts and unexpired leases; (d) the filing and/or execution of appropriate limited liability company agreements, certificates or articles of incorporation or organization, reincorporation, merger, consolidation, conversion or dissolution pursuant to applicable state law; (e) the consummation of the transactions contemplated by the Exit Facility Documentation and the execution thereof; (f) the issuance of the New Common Interests and the Noteholder Warrants; and (g) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

29. In addition, the board of managers of Reorganized ENXP LLC may consider implementing a holding company structure, and, if approved by the board, Reorganized ENXP LLC shall hereby be authorized (without further order of the Bankruptcy Court and without need of a member vote) to take all actions as may be necessary or appropriate to implement a holding company structure – such that all of the equity of Reorganized ENXP LLC would be held by a new holding company and the holders of New Common Interests and Noteholder Warrants would receive in exchange therefore like interests in the new holding company – to be effective after the Effective Date as determined by the board of directors. If approved by the board of managers of Reorganized ENXP LLC, the imposition of the holding company shall be

implemented substantially as follows: A new Delaware limited liability company shall be formed by Reorganized ENXP LLC (as incorporator) and shall elect to be treated as a corporation for U.S. federal income tax purposes. Such company shall then form a new subsidiary limited liability company to be wholly-owned by it (which would not elect to be treated as a corporation for U.S. federal income tax purposes). Reorganized ENXP LLC would then merge with and into such new subsidiary limited liability company (with such new subsidiary surviving), pursuant to which the holders of New Common Interests and Noteholder Warrants would receive in exchange like interests in the Delaware parent limited liability company. Immediately thereafter, the subsidiary would change its name to Energy & Exploration Partners, LLC. The board of managers of Reorganized ENXP LLC may establish the Effective Date as the record date for such merger, and may treat the record holders of New Common Interests and Noteholder Warrants as the holders of record for purposes of such merger. In such a case, the Debtors, the Reorganized Debtors, the Creditor Trustee and the parties to such merger, as applicable, shall have no obligation to recognize the transfer of any New Common Interests or Noteholder Warrants occurring thereafter, and will be entitled for all purposes to recognize and deal only with the recipient of any New Common Interests or Noteholder Warrants as reflected on the transfer ledgers, transfer books, registers or other records maintained by Reorganized ENXP LLC or its designated transfer agents.

30. Cancellation of Liens. Upon the occurrence of the Effective Date, and except as otherwise provided in the Plan (including if an Allowed Other Secured Claim has not been discharged, paid or satisfied in full as required under the Plan), any Lien securing any Secured 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 the Debtors (including any Cash Collateral)

held by such holder and to take such actions as may be requested by the Debtors or Reorganized Debtors, to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases as may be required by the Debtors or Reorganized Debtors.

31. Exemption from Certain Transfer Taxes. Pursuant to Bankruptcy Code § 1146, (a) the issuance, transfer, or exchange of any securities, instruments or documents (including the New Common Interests and Noteholder Warrants) and (b) the making or delivery of any deed or other instrument of transfer under, pursuant to, in furtherance of, or in connection with the Plan, including, without limitation, this Confirmation Order, any deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan or the reinvesting, transfer or sale of any personal property of the Debtors pursuant to, in implementation of or as contemplated by the Plan (whether to the Reorganized Debtors or otherwise), shall not be subject to any document recording tax, stamp tax, conveyance fee or other similar tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, sales tax, use tax, or other similar tax or governmental assessment. Consistent with the foregoing, each official for any county, city or governmental unit in which any instrument under the Plan is to be recorded shall, pursuant to this Confirmation Order, be ordered and directed to accept such interests without requiring the payment of any filing fees, documentary stamp tax, deed stamps, stamp tax, intangible tax or similar tax.

32. Dissolution of Creditors Committee. The Creditors Committee shall be automatically dissolved on the Effective Date and, on or as soon as practicable after the Effective Date, each member (including each officer, director, employee or agent thereof) of the Creditors Committee and each Creditors Committee Professional, shall be released and discharged from all rights, duties, responsibilities and obligations arising from, or related to, the Debtors, their

membership on the Creditors Committee, the Plan or these Chapter 11 Cases, except with respect to any matters concerning any Administrative Expense Claims held or asserted by a Creditors Committee Professional.

33. Assumption/Rejection of Executory Contracts and Unexpired Leases. Pursuant to Article VII of the Plan, all of the Debtors' executory contracts and unexpired leases not expressly rejected, including those identified on the Assumed Contract Schedule (as may be altered, amended, modified or supplemented in the Plan Supplement) are deemed to be assumed pursuant to the Plan. The executory contracts and unexpired leases included on the Rejected Contract Schedule are deemed rejected as of the Effective Date as set forth in Article VII of the Plan.

34. Payments Related to Assumption of Contracts and Leases. Cure Costs related to any executory contract and unexpired lease to be assumed pursuant to the Plan shall be satisfied under Bankruptcy Code § 365(b)(1), by the Debtors from Available Cash upon assumption thereof unless is otherwise ordered by the Bankruptcy Court. Any objection by a counterparty to the amount of any Cure Cost must be filed, served, and actually received by the Debtors on or before the fourteenth (14th) day after the Effective Date as set forth in Section 7.01 of the Plan. Any counterparty to an executory contract or unexpired lease that fails to timely object to the cure amount will be deemed to have assented to such matters and shall be forever barred, stopped and enjoined from asserting such objection against the Debtors or Reorganized Debtors. Notwithstanding the foregoing, in the event of a dispute regarding: (1) the amount of any Cure Cost, (2) the ability of the Reorganized Debtors to provide "adequate assurance of future performance" (within the meaning of Bankruptcy Code § 365) under the contract or lease to be assumed, or (3) any other matter pertaining to assumption (each, an "Assumption Dispute"), the Cure Costs required by Bankruptcy Code § 365(b)(1) shall be made following the entry of a

Final Order resolving the Assumption Dispute and approving the assumption; *provided, however,* that in the event the Debtors or Reorganized Debtors and the applicable non-Debtor party involved in any Assumption Dispute or any dispute regarding Cure Costs cannot consensually resolve such dispute, the Debtors or the Reorganized Debtors, as applicable, may reject the executory contract at issue pursuant to Bankruptcy Code § 365 rather than paying the disputed Cure Cost, by presenting a proposed order to the Bankruptcy Court for such rejection, without any other or further notice. In the event any executory contract is so rejected, the non-Debtor party thereto shall be entitled to file a Proof of Claim in accordance with the Bar Date Order, which Claim shall be classified pursuant to the Plan, but shall not be entitled to any other or further Claim or relief from either the Debtors or the Reorganized Debtors. Assumption of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any claims or defaults, subject to satisfaction of the Cure Costs, whether monetary or nonmonetary, including defaults of provisions restricting the change of control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time before the effective date of assumption. Any Proofs of Claim filed with respect to any executory contract or unexpired lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order or approval of the Bankruptcy Court or any other entity; except that Claim No. 296 by Halcón and its affiliates is preserved and shall not be deemed disallowed or expunged, notwithstanding the foregoing.

35. Claims Based on Rejection of Executory Contracts. Unless otherwise provided by a Bankruptcy Court order, any Proof of Claim asserting a Claim arising from the rejection of an executory contract or unexpired lease pursuant to the Plan or otherwise must be filed no later

than fourteen (14) days after this Confirmation Order is entered granting the rejection. Any Proof of Claim arising from the rejection of an executory contract or unexpired lease that is not timely filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against the Debtors or Reorganized Debtors without the need for any objection by any Person or further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the executory contract or unexpired lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of executory contracts or unexpired leases shall be included in Class 5 (General Unsecured Claims) and shall be treated in accordance with the Plan; *provided, however*, that if the Holder of an Allowed Claim for rejection damages has an unavoidable security interest in any Collateral to secure obligations under such rejected executory contract or unexpired lease, the Allowed Claim for rejection damages shall be treated as an Other Secured Claim to the extent of the value of such Holder's interest in the Collateral, with the deficiency, if any, treated as a General Unsecured Claim.

36. Disputed, Contingent and Unliquidated Claims. Any Disputed, contingent or unliquidated Claim shall be resolved in accordance with the procedures set forth in Article VIII of the Plan. As soon as practicable, but no later than the Claims Objection Deadline, the Debtors, and after the Effective Date, the Reorganized Debtors, or the Creditor Trustee, as applicable and permitted under the Plan, shall have the exclusive authority to file and prosecute objections to Claims and requests for estimation of Claims. The Debtors, and after the Effective Date, the Reorganized Debtors, or the Creditor Trustee, as applicable, shall have the exclusive authority to settle, compromise or otherwise resolve or withdraw any objections to any Disputed Claim without approval of the Bankruptcy Court. All of the objection, estimation and resolution

procedures contained in Article VIII of the Plan are cumulative and are not necessarily exclusive of one another.

37. Management Incentive Plan. The board of managers of the Reorganized Debtors is authorized to implement and determine (but shall not be deemed to have implemented and determined) the terms and conditions of the Management Incentive Plan in accordance with Section 5.21 of the Plan. In no instance shall the implementation of the Management Incentive Plan create or be deemed to give rise to an Allowed Administrative Expense Claim, or any other Claim in these Chapter 11 Cases. Any payments made on account of the Management Incentive Plan may be made only by the Reorganized Debtors after the Effective Date and from post-Effective Date funds and in the sole discretion of the board of managers of the Reorganized Debtors.

38. Automatic Reduction of Claims. Notwithstanding the contents of the Bankruptcy Schedules or the Bankruptcy SOFAs, Claims listed therein as undisputed, liquidated and not contingent shall be reduced by the amount, if any, that was paid by the Debtors before the Effective Date, including pursuant to orders of the Bankruptcy Court. To the extent such payments are not reflected in the Bankruptcy Schedules or the Bankruptcy SOFAs, such Bankruptcy Schedules and Bankruptcy SOFA will be deemed amended and reduced to reflect that such payments were made. Nothing in the Plan shall preclude the Debtors from paying Claims that the Debtors were authorized to pay pursuant to any Final Order entered by the Bankruptcy Court before the Effective Date.

39. Automatic Disallowance of Late Proofs of Claim. All Proofs of Claim that were filed after the applicable Bar Date will automatically be treated as Disallowed without the need for any further order of the Bankruptcy Court.

40. Bar Date for Administrative Expense Claims. All Administrative Expense Claims, including substantial contribution claims shall be filed no later than thirty (30) days after the Effective Date (the “Administrative Expense Claims Bar Date”). Pursuant to Section 2.04 of the Plan, the Debtors will provide notice to the Holders of Administrative Expense Claims of the Administrative Expense Claims Bar Date. Holders of asserted Administrative Expense Claims, other than Professional Fee Claims and Claims for U.S. Trustee fees under 28 U.S.C. § 1930 must submit proofs of Administrative Expense Claims on or before the Administrative Claims Bar Date or forever be barred from doing so. The Reorganized Debtors shall have sixty (60) days (or such longer period as may be allowed by order of the Bankruptcy Court) following the Administrative Expense Claims Bar Date to review and object to such Administrative Expense Claims before a hearing for determination of allowance of such Administrative Expense Claims.

41. Professional Fees. All final requests for compensation or reimbursement of Professional fees pursuant to Bankruptcy Code §§ 327, 328, 330, 331, 363, 503(b) or 1103 or pursuant to the Interim DIP Order or Final DIP Order (the “Professional Fee Claims”) for services rendered by the Professionals prior to the Effective Date (other than substantial contribution claims under Bankruptcy Code § 503(b)(4)) must be filed with the Bankruptcy Court and served on the Reorganized Debtors and their counsel no later than thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court (the “Fee Application Deadline”). Objections to applications of such Professionals must be filed with the Bankruptcy Court and served on the Debtors and the Reorganized Debtors and their counsel and the requesting Professional no later than twenty (20) days (or such longer period as may be allowed by order of the Bankruptcy Court) after the date on which the applicable application for compensation or reimbursement was served. **Notwithstanding anything to the contrary in the**

**Order Establishing Procedures for Interim Compensation and Reimbursement of Professional Expenses [Dkt. No. 268], Professionals shall have until the Fee Application Deadline to file their final fee applications, with the hearing thereon to be held within forty-five (45) days after the Fee Application Deadline or as otherwise ordered by the Bankruptcy Court.**

Professional fee claims for reasonable pre- and postpetition fees and expenses of Akin Gump Strauss Hauer & Feld LLP and Centerview Partners, Inc., as advisors to the Ad Hoc Group of Noteholders, up to an aggregate amount of \$2.1 million are hereby approved.

42. Payment of Statutory Fees. All fees payable pursuant to 28 U.S.C. §1930(a) shall be paid by the Debtors or Reorganized Debtors, as applicable, for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or a final decree is issued, whichever occurs first. The Reorganized Debtors shall continue to file quarterly-post confirmation operating reports in accordance with the United States Trustee's Region 6 *Guidelines for Chapter 11 Cases*.

43. Releases by the Debtors, their Estates and the Reorganized Debtors. Except as otherwise expressly provided in this Confirmation Order (including the Retained Causes of Action and Assigned Estate Claims to be preserved and contained in the Plan Supplement) and except for the right to enforce the Plan and the Plan Documents that remain in effect after the Effective Date, as of the Effective Date, for good and valuable consideration, including the services of the Released Persons to facilitate the reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, to the fullest extent permissible under applicable law, all Released Persons are deemed released and discharged by the Debtors and their Estates and the Reorganized Debtors, from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative

Claims, asserted or assertable on behalf of the Debtors or the Reorganized Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, their Estates, the Reorganized Debtors, or their respective Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Reorganized Debtors, these Chapter 11 Cases, the Debtors' restructuring, the DIP Facility, the RSA and related agreements, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Persons, the restructuring of Claims and Interests before or during these Chapter 11 Cases, the negotiation, formulation or preparation of the Plan and Disclosure Statement, or related agreements, instruments or other documents, any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Confirmation Date, other than Retained Causes of Action in the Plan Supplement, Assigned Estate Claims, Claims or liabilities arising out of or relating to any act or omission of a Released Person or a former officer or director of the Debtors that constitutes willful misconduct (including fraud) or gross negligence. The foregoing release under Section 12.05(a) of the Plan shall not apply to any express contractual or financial obligations or any right or obligations arising under or that is part of the Plan or any agreements entered into pursuant to, in connection with, or contemplated by the Plan.

44. Releases by Holders of Claims and Interests and Other Released Persons. Except as otherwise provided in the Plan or Confirmation Order, as of the Effective Date, each Holder of a Claim or an Interest that voted in favor of the Plan or has not opted out of the releases as provided on the Ballot, whether such Holder of a Claim or an Interest votes to reject the Plan,

and each Released Person shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Debtors, the Reorganized Debtors, and the Released Persons from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative Claims, asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, these Chapter 11 Cases, the Debtors' restructuring, the Interim DIP Facility, the DIP Facility, the RSA and related agreements, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Persons, the restructuring of Claims and Interests before or during these Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement or related agreements, instruments or other documents, any other act or omission, transaction, agreement, event or other occurrence relating to the Debtors taking place on or before the Confirmation Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Person that constitutes willful misconduct (including fraud), gross negligence or criminal liability. Notwithstanding anything to the contrary in the foregoing, the release in Section 12.05(b) of the Plan does not release any post-Effective Date obligations of any party under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

45. No Waiver of Plan Section 12.05 Releases. Notwithstanding anything to the contrary contained in section 12.05 of the Plan, the releases set forth therein shall not, and shall

not be deemed to, limit, abridge or otherwise affect the rights of the Debtors, the Reorganized Debtors, or the Creditor Trustee to enforce, sue on, settle or compromise the rights, claims and other matters expressly retained by the Debtors, the Reorganized Debtors or the Creditor Trust pursuant to the Plan or this Confirmation Order.

46. Plan Section 12.05 Releases Integral to Plan. Each of the releases provided in section 12.05 of the Plan is an integral part of the Plan and is essential to its implementation. Each of the Released Persons shall have the right to independently seek the enforcement of such releases.

47. Injunction.

(a) In General. From and after the Effective Date, all Persons are permanently enjoined from commencing or continuing in any manner, any Cause of Action released or to be released pursuant to the Plan or this Confirmation Order.

(b) Released Persons. From and after the Effective Date, to the extent of the releases and exculpation granted in section 12.05 and section 12.06 of the Plan, the releasing persons shall be permanently enjoined from commencing or continuing in any manner against the Released Persons and/or their assets and properties, as the case may be, any suit, Cause of Action or other proceeding, on account of or respecting any Claim, demand, liability, obligation, debt, right, Cause of Action, interest or remedy released or to be released pursuant to section 12.05 of the Plan or this Confirmation Order.

(c) Injunction. Except as provided in the Plan or this Confirmation Order, as of the Effective Date, (I) all Persons that hold, have held, or may hold a Claim or any other obligation, suit, judgment, damages, debt, right, remedy, Cause of Action or liability of any nature whatsoever, or any Interest or other right of a Holder of an equity security or other

ownership interest, relating to the Debtors or Reorganized Debtors or any of their respective assets, property and Estates, that is released pursuant to Section 12.05 of the Plan, (II) all other parties in interest, and (III) each of the Related Persons of each of the foregoing entities, are, and shall be, permanently, forever and completely stayed, restrained, prohibited, barred and enjoined from taking any of the following actions, whether directly or indirectly, derivatively or otherwise, on account of or based on the subject matter of such discharged claims or other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities, and of all interests or other rights of a Holder of an equity security or other ownership interest: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including, without limitation, any judicial, arbitral, administrative or other proceeding) in any forum; (b) enforcing, attaching (including, without limitation, any prejudgment attachment), collecting, or in any way seeking to recover any judgment, award, decree, or other order; (c) creating, perfecting or in any way enforcing in any manner, directly or indirectly, any lien; (d) setting off, seeking reimbursement or contributions from, or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability or obligation owed to any Person discharged under Section 12.05 of the Plan; and (e) commencing or continuing in any manner, in any place of any judicial, arbitration or administrative proceeding in any forum, that does not comply with or is inconsistent with the provisions of the Plan or this Confirmation Order.

(d) Complete Satisfaction. The rights afforded in the Plan and the treatment of all Claims and Interests herein shall be in exchange for and in complete satisfaction of all Claims and Interests of any nature whatsoever, including any interest accrued on claims from and after the Petition Date, against the Debtors or any of their assets, property or Estates. On the Effective

Date, except as otherwise expressly provided for in the Plan, all such Claims and Interests against the Debtors shall be fully released, discharged and cancelled.

(e) Bankruptcy Rule 3016 Compliance. The Debtors' compliance with the formal requirements of Bankruptcy Rule 3016(e) shall not constitute an admission that the Plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code.

(f) Integral to Plan. Each of the injunctions provided in section 12.05 of the Plan is an integral part of the Plan and is essential to its implementation. Each of the Released Persons and any other Persons protected by the injunctions set forth in section 12.05 of the Plan shall have the right to independently seek the enforcement of such injunctions.

48. Exculpation. The Released Persons shall not be liable for any Cause of Action arising in connection with or out of the administration of these Chapter 11 Cases, the planning of these Chapter 11 Cases, the formulation, negotiation or implementation of the Plan, the good faith solicitation of acceptances of the Plan in accordance with Bankruptcy Code § 1125(e), pursuit of Confirmation of the Plan, the Consummation of the Plan, or the administration of the Plan, except for gross negligence or willful misconduct as determined by a Final Order of the Bankruptcy Court. All Holders of Claims and Interests are enjoined from asserting or prosecuting any Claim or Cause of Action against any Released Person for which such party has been exculpated from liability pursuant to the preceding sentence.

49. Survival of Debtors' Indemnification Obligations. Except with respect to the Excluded Parties, any obligations of the Debtors pursuant to their corporate charters, bylaws, other organization documents, employment agreements or other agreements to indemnify current officers, directors, agents or employees that were employed or otherwise retained by the Debtors as of the day immediately prior to the Confirmation Hearing with respect to all present and future

actions, suits, and proceedings against the Debtors or Reorganized Debtors or such directors, officers, agents and/or employees, based upon any act or omission for or on behalf of the Debtors shall not be discharged or impaired by Confirmation of the Plan provided that neither the Debtors nor Reorganized Debtors shall indemnify directors of the Debtors for any Claims or Causes of Action arising out of or relating to any act or omission that is a criminal act or constitutes intentional fraud. All such obligations shall be deemed and treated as executory contracts to be assumed by the Debtors under the Plan and shall continue as obligations of the Reorganized Debtors unless any such obligation is specifically rejected by order of the Bankruptcy Court.

50. Discharge of Claims and Termination of Interests. Except as otherwise provided in the Plan, effective as of the Effective Date: (a) the rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their assets, property or Estates; (b) the Plan shall bind all Holders of Claims and Interests, notwithstanding whether any such Holders failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under sections 502(g), 502(h) or 502(i) of the Bankruptcy Code; and (d) all entities shall be precluded from asserting against the Debtors, Reorganized Debtors, their Estates, successors, assigns, and their assets and properties, any other claims or interests based upon any document, instruments or any act or omission, transaction or other activity of any kind or nature that occurred before the Effective Date.

51. Binding Release Provisions. All release provisions embodied in the Plan, including but not limited to those contained in section 12.05 of the Plan, are approved and shall be effective and binding on all Persons, to the extent provided in the Plan and this Confirmation Order.

52. Term of Injunctions or Stays. Unless otherwise provided, all injunctions or stays arising under or entered into during these Chapter 11 Cases under section 105 or 363 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay. For the avoidance of doubt, the *Order Approving Notification and Hearing Procedures for Certain Transfers of Equity Securities, Exercises of Warrants and Worthless Stock Deductions with respect to Equity Securities*, entered by the Bankruptcy Court on March 18, 2016 [Dkt. No. 536] (the "Trading Order"), shall remain enforceable beyond the Effective Date with respect to persons having "Beneficial Ownership" of ENXP Common Stock pursuant to the terms thereof. The Trading Order has no applicability or effect with respect to the trading of New Common Interests on or after the Effective Date.

53. Setoffs. Except for any Claim that is Allowed in an amount set forth in the Plan, the Debtors, the Reorganized Debtors, or Creditor Trustee (but only with respect to the Assigned Estate Claims) may, but shall not be required to, set off against any Claims and the payments or distributions to be made pursuant to the Plan in respect of such Claims, any and all debts, liabilities and claims of every type and nature whatsoever that the Debtors may have against the Holder of any such Claim. If the Debtors or Creditor Trustee do not setoff their claims, no waiver or release by the Debtors of any such claims shall be deemed to have occurred, and all such claims shall be reserved for and retained by the Reorganized Debtors.

54. Recoupment. Except as provided in the Plan and/or this Confirmation Order, or to the extent provided by the Bankruptcy Court's order at Dkt. No. 581 (the Debtors reserve all rights with respect thereto), any Holder of a Claim or Interest shall not be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors or Reorganized Debtors, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

55. Retention of Causes of Action/Reservation of Rights. Except as otherwise provided in the Plan or the Plan Supplement, the Reorganized Debtors shall retain all Causes of Action (other than the Assigned Estate Claims, which shall vest in the Creditor Trust), if any, of the Debtors, including, but not limited to, those provided in the Plan Supplement. Nothing contained in the Plan or this Confirmation Order shall be deemed a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense of any Debtor that is not specifically waived or relinquished by the Plan. The Reorganized Debtors, and, with respect to the Assigned Estate Claims, the Creditor Trustee, shall have, retain, reserve, and be entitled to assert, all such Claims, Causes of Action, rights of setoff, and other legal or equitable defenses that any Debtor had immediately before the Effective Date as fully as if these Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any Claim that are not specifically waived or relinquished by the Plan may be asserted after the Effective Date to the same extent as if these Chapter 11 Cases had not been commenced. No Person may rely on the absence of a specific reference in the Plan or Disclosure Statement to any Cause of Action against them as any indication that the Debtors, the

Reorganized Debtors, or the Creditor Trustee, as applicable, will not pursue any and all available Causes of Action against such Person. The Debtors, the Reorganized Debtors, or the Creditor Trustee, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, subject to the terms of the Plan and this Confirmation Order. From and after the Effective Date, the Reorganized Debtors and, with respect to the Assigned Estate Actions, the Creditor Trustee, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any Cause of Action and to decline to do any of the foregoing without further notice to or action, order, or approval of the Bankruptcy Court. The Reorganized Debtors and the Creditor Trustee, as applicable, shall be deemed representatives of the Estates for the purpose of prosecuting any Claim or Cause of Action and any objection to Claims pursuant to 11 U.S.C. § 1123(b)(3)(B).

56. Plan Modifications and Clarifications. The Plan, as originally filed and distributed for solicitation, was modified by certain non-material changes, none of which adversely affected the treatment and rights of the Holders of any Claim or Interest under the Plan.

57. Retention of Jurisdiction. The Court shall, and hereby does, retain jurisdiction of these Chapter 11 Cases for all of the purposes set forth in Article XI of the Plan and for the purposes provided in §§ 1127(b) and 1142 of the Bankruptcy Code and Bankruptcy Rule 3020(d).

58. Effect of Confirmation; Discharge. Pursuant to Bankruptcy Code § 1141(d), and except as otherwise specifically provided in the Plan and/or this Confirmation Order, the Plan 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, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment or a termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in Bankruptcy Code §§ 502(g), 502(h), or 502(i), in each case whether or not: (a) a Proof of Claim or Interest based upon such debt, right, Claim, or Interest is filed or deemed filed pursuant to Bankruptcy Code § 501; (b) a Claim or Interest based upon such Claim, debt, right, or Interest is Allowed pursuant to Bankruptcy Code § 502; or (c) the Holder of such a Claim or Interest has accepted the Plan. Subject to the terms of the Plan and/or this Confirmation Order, any default by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of these Chapter 11 Cases shall be deemed satisfied on the Effective Date. Subject to the terms of the Plan, this Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring. Subject to the terms of the Plan, this Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtors, their Estates, the Reorganized Debtors and all successors thereto. As

provided in Bankruptcy Code § 524, subject to the terms of the Plan and/or this Confirmation Order such discharge shall void any judgment against the Debtors, their Estates, the Reorganized Debtors or any successors thereto at any time obtained to the extent it relates to a Claim or Interest discharged, and operates as an injunction against the prosecution of any action against the Reorganized Debtors or their property and assets to the extent it relates to a discharged Claim or Interest.

59. Governmental Approvals Not Required. Except as set forth in the Plan, this Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any state or any other governmental authority with respect to (i) the implementation or Consummation of the Plan and (ii) any related documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement, any related documents, instruments or agreements related thereto, and any amendments or modifications to any of the foregoing.

60. Order Effective and Enforceable Immediately. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 6006(d) and 7062, this Confirmation Order shall be effective and enforceable immediately upon entry. Pursuant to Bankruptcy Code § 1141 and the other applicable provisions of the Bankruptcy Code, on or after entry of this Confirmation Order and subject to the occurrence of the Effective Date, the terms of the Plan (including all documents and agreements executed pursuant thereto and in connection therewith), the Plan Supplement, and this Confirmation Order shall be immediately effective and enforceable and shall bind the Debtors, the Released Persons, all holders of Claims or Interests of the Debtors (irrespective of whether such Claims or Interests are impaired under the Plan or whether the holders of such Claims or Interests are accepted or are deemed to have accepted the Plan), any other person giving,

acquiring or receiving property under the Plan, any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors, any other party in interest in the Chapter 11 Case, and the respective heirs, executors, administrators, successors, or assigns, if any, of any of the foregoing. On the Effective Date, all settlements, compromises and releases (including, without limitation, the releases set forth in Article XII of the Plan), waivers, discharges, exculpations and injunctions set forth in the Plan shall be effective and binding on Persons who may have had standing to assert any settled, compromised, released, waived, discharged, exculpated or enjoined Causes of Action after the Effective Date. The Debtors are authorized to consummate the Plan and the transactions contemplated thereby immediately upon, or concurrently with, satisfaction of the conditions set forth in the Plan.

61. Substantial Consummation. The Plan shall be deemed to be substantially consummated on the Effective Date.

62. Notice of this Confirmation Order and Effective Date. On or before fourteen (14) Business Days after the entry of this Confirmation Order, pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(e), the Debtors shall give notice of entry of this Confirmation Order (the “Notice of Confirmation”) by delivering such Notice of Confirmation to all creditors and interest holders, the U.S. Trustee and other parties in interest by electronic mail if addresses are available or otherwise by first-class mail, postage prepaid. The Debtors shall also post the Notice of Confirmation on the website maintained by the Balloting Agent at <https://cases.primeclerk.com/ENXP>. Such notice is adequate under the circumstances and no other or further notice is necessary. Within five (5) Business Days after the Effective Date, the Debtors shall file on the docket of the Bankruptcy Court a *Notice of Effective Date* stating that (i) all conditions to the occurrence of the Effective Date have been satisfied or waived with the

consent of the Requisite Majority Consenting Secured Lenders; (ii) the Effective Date has occurred and specifying the date thereof for all purposes under the Plan; and (iii) setting forth the name, address and telephone number for the Reorganized Debtors; *provided, however*, that failure to file such notice shall not affect the effectiveness of the Plan or the rights and substantive obligations of any Person hereunder.

63. Notice of Subsequent Pleadings. Except as otherwise may be provided in the Plan or herein, notice of all subsequent pleadings in the Chapter 11 Cases after the Effective Date shall be limited to the following parties: (a) the Reorganized Debtors and their counsel; (b) the United States Trustee; (c) counsel for the Ad Hoc Group of Lenders; (d) counsel to the Creditor Trustee; (e) any party known to be directly affected by the relief sought therein; and (f) any party that specifically requests additional notice in writing to the Debtors or the Reorganized Debtors, as applicable.

64. Insurance. Effective as of the Effective Date, the Reorganized Debtors shall be deemed to have assumed all insurance policies (including all D&O liability insurance policies and tail coverage liability insurance) pursuant to section 365(a) of the Bankruptcy Code. Entry of this Confirmation constitutes the Bankruptcy Court's approval of the Reorganized Debtors' assumption of each such insurance policy. Nothing in the Plan, the Plan Documents, the Plan Supplement or this Confirmation Order shall (a) alter, modify or otherwise amend the terms and conditions of (or the coverage provided by) any of the insurance policies or agreements, (b) limit the Reorganized Debtors from asserting a right or claim to the proceeds of any insurance policy or agreement that insures any Debtor, was issued to any Debtor or was assumed by the Reorganized Debtors by operation of the Plan or (c) impair, alter, waive, release, modify or amend any of the Debtors' or Reorganized Debtors' legal, equitable or contractual rights,

remedies, claims, counterclaims, defense or Causes of Action in connection with any of such insurance policies or agreements.

65. Order as Recording Instrument. Notice of entry of this Confirmation Order (i) shall have the effect of an order of the Court, (ii) shall constitute sufficient notice of the entry of this Confirmation Order to filing and recording officers, and (iii) shall be a recordable instrument notwithstanding any contrary provision of nonbankruptcy law. The Court specifically retains jurisdiction to enforce the foregoing direction, by contempt or otherwise.

66. Authorized to Consummate. The Debtors are authorized to consummate the Plan at any time after entry of this Confirmation Order subject to the satisfaction or waiver (by the required parties) of the conditions precedent to Consummation set forth in Section 9.02 of the Plan.

67. Non-Occurrence of Effective Date and Failure to Consummate the Plan. Pursuant to section 9.05 of the Plan, if the Plan fails to be confirmed or become effective, then (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Class of Claims) unless otherwise agreed to by the Debtors and any counterparty to such settlement or compromise, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors or any other Person; (ii) prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors; or (iii) constitute an admission of any sort by the Debtors or any other Person.

### **Resolutions**

68. Nothing in the Confirmation Order or the Plan shall effect a release of any Claim by the United States Government or any of its agencies or any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatsoever, including, without limitation, any Claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in the Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person.

69. Certain Administrative Tax Claims. Notwithstanding any other provision of the Plan or this Confirmation Order, ad valorem, franchise, state employment and severance taxing authorities (the “Taxing Authorities”) that hold Administrative Expense Claims for 2016 property, franchise, state employment and natural gas taxes (the “2016 Taxes”) shall not be required to file an Administrative Expense Claim or a request for payment of the 2016 Taxes. The 2016 Taxes shall be paid in the ordinary course of business. The Taxing Authorities shall retain any statutory liens that secure the 2016 Taxes as well as the state law statutory priority of those tax liens. The Debtors and the Taxing Authorities holding Administrative Expense Claims for the 2016 Taxes reserve all of their rights with respect to the 2016 Taxes, including all state

law collection rights, and may exercise those rights without further order of the Bankruptcy Court.

70. EnerQuest Oil & Gas, LLC and Chieftain Energy, LLC. Notwithstanding inclusion of that certain Sublease of Oil, Gas and Mineral Leases dated March 1, 2013, between EnerQuest and Chieftain as sublessors and Energy and Exploration Partners, LLC as sublessee (the “Sublease”) on the Debtors’ Schedule of Assumed Contracts and Unexpired Leases, all contract parties to the Sublease expressly reserve their rights as to whether such Sublease is, in fact, executory and subject to the provisions of Section 365 of the Bankruptcy Code and inclusion of the Sublease on such Schedule of Assumed Contracts and Unexpired leases shall not be determinative of the issue of whether the Sublease is or is not executory. Further, nothing contained in the Plan or the Confirmation Order shall be deemed to reinstate any ownership interests or rights of the Debtors or Reorganized Debtors under the Sublease to the extent any such interests or rights terminated prior to the Effective Date of the Plan pursuant to the terms of the Sublease. The Debtors, Reorganized Debtors, EnerQuest and Chieftain reserve all of their rights with respect to such Sublease, including without limitation, the right to net or offset amounts due to or from the various counterparties to the Sublease and related ancillary agreements.

71. Harold Metzler. Mr. Metzler and the Debtors preserve and reserve all of their rights as to whether the surface use agreement and the oil and gas lease between the parties are integrated transactions, which will be resolved by separate order of the Bankruptcy Court. Notwithstanding anything in the Plan or the Confirmation Order, the Debtors’ ability to designate either agreement for assumption or rejection shall be extended until the Bankruptcy Court determines by final order the severability of the two agreements. Mr. Metzler preserves

and reserves all rights to object to the Debtors' rejection of the surface use agreement under section 365 of the Bankruptcy Code. The Debtors, Reorganized Debtors, and Mr. Metzler preserve and reserve all of their rights with respect to the surface use agreement and oil and gas lease.

72. Texas Comptroller of Public Accounts and Texas Workforce Commission. With reference to the objection to the Plan filed by the Texas Comptroller of Public Accounts (the "Comptroller") and Texas Workforce Commission ("TWC") [Dkt. No. 661], and notwithstanding any contrary provision contained in the Plan or other provision of this Confirmation Order, nothing in the Plan or Confirmation Order shall prejudice the Comptroller or TWC from exercising setoff rights against the Debtors or Reorganized Debtors to the extent permitted by 11 U.S.C. § 553 or seeking interest on account of its claims as permitted by applicable non-bankruptcy law, subject to the Debtors' and Reorganized Debtors' right to dispute such actions.

73. MD America Energy, LLC.

(a) MD America Energy, LLC ("MDAE") and the Debtors are parties to that certain Operating Agreement dated March 1, 2013 (the "JOA"), by and between Woodbine Acquisition, LLC ("Woodbine") and Debtor Energy Exploration Partners ("ENXP"). MDAE is the successor in interest to Woodbine under the JOA. Pursuant to the JOA, MDAE is operating one well known as Benelli 1H (the "JOA Well"), and remitting a non-operating royalty share, net of expenses, to the Debtors on account of such JOA Well.

(b) Upon the occurrence of the Effective Date, the Debtors shall be deemed to have assumed the JOA pursuant to 11 U.S.C. §365, and shall likewise be deemed to have provided adequate assurance of future performance pursuant to §365. Notwithstanding anything

to the contrary contained in the Plan, this Confirmation Order or the Second Notice to Counterparties to Executory Contracts and Unexpired Leases Potentially Being Assumed under the Plan (the "Cure Notice"), (i) all amounts due and owing in connection with the operation of the JOA Well are fully paid through MDAE's billing statement of March 25, 2016 (the "March Statement"), (ii) no cure payments are required in connection with the assumption of the JOA, (iii) all amounts and obligations accruing subsequent to the March Statement in connection with the operation of the JOA Well shall be billed and paid in the ordinary course, (iv) MDAE shall continue to operate the JOA Well in the ordinary course, and to remit the non-operating royalty share to the Debtors, consistent with the pre-confirmation course of dealing between the parties, and (v) MDAE shall not be required to file any response or objection to the Cure Notice.

(c) Pursuant to this Confirmation Order, the four (4) claims filed by MDAE against each of the Debtors (Claim Nos. 353, 354, 394 and 418) are hereby withdrawn with prejudice.

74. EOG Resources, Inc. Nothing herein shall alter the rights of the Debtors, Reorganized Debtors and EOG Resources, Inc., including the right of recoupment, if any, with respect to (i) that certain Joint Operating Agreement dated May 1, 2014 as amended, modified and supplemented concerning properties located in Madison and Leon Counties, Texas commonly referred to as the Grove Unit as more fully described in the joint operating agreement (the "EOG JOA") and (ii) that Model Form Recording Supplement to Operating Agreement and Financing Statement filed in the real property records of Madison County, Texas (Doc. 86809, Bk. OR, Vol. 1337, Pg 222) and Leon County, Texas (Doc. 00405435, Bk. OR, Vol. 1599, Pg. 334).

75. Class 2 Objectors & Cactus Parties.

(a) “Class 2 Objectors” shall include HC Oilfield Services, LLC, LTW Services, LP, KD Timmons, Inc., TKO Rentals & Services, LLC, Jet Specialty, Inc., and Diversified Lenders, Inc.

(b) “Cactus Parties” shall include Cactus Pipe & Supply, LLC and Cactus Wellhead, LLC.

(c) Debtors shall not sell property to which a timely filed statutory Lien of the Class 2 Objectors and Cactus Parties has attached (Section 56.003 of the Texas Property Code) or remove such property from the land on which it was to be used and currently located without the consent of the Lienholder or order of the Bankruptcy Court, pending a final determination on the priority of such Liens. Unless otherwise ordered by the Bankruptcy Court or agreed to by the applicable Lienholders, in the event property is sold to which a timely filed statutory Lien of the Class 2 Objectors and Cactus Parties has attached then the Lien shall attach to the sales proceeds without the necessity of any further action by the Lienholder to perfect its Lien in the sales proceeds, and the sales proceeds shall be placed in escrow pending a final determination of the priority of such Lien.

(d) With respect to any Allowed Claims in Class 2 of the Cactus Parties, such Allowed Claims shall be satisfied by payment in Cash or return of the applicable Collateral. The Cactus Parties reserve their rights to (i) object to the post-Effective Date rate of interest set forth in Section 4.02 of the Plan and (ii) contest the return of their Collateral as treating them as Unimpaired under section 1124 of the Bankruptcy Code.

76. Trinity River Midstream, LLC. The Debtors and Trinity River Midstream, LLC (“Trinity Midstream”) are in discussions regarding a new gas gathering, processing and marketing agreement (“New GGPMA”) and a mutual waiver and release of claims that will

include certain claims and causes of action described in the Debtors' Plan Supplement (the "Mutual Release"). To provide the parties with an opportunity to finalize their agreement on the terms of the New GGPMA and the Mutual Release, the Debtors and Trinity Midstream have agreed to resolve Trinity Midstream's objections to confirmation of the Debtors' Plan (including, as set forth in Docket No. 663) as follows:

(a) The Debtors will amend the Plan Supplement "Schedule of Assumed Executory Contracts and Unexpired Leases, including Cure Costs" (the "Assumed Contract List") to include the Gas Gathering, Processing and Marketing Agreement dated November 7, 2012 (the "Original GGPMA") in its entirety. The cure amount associated with assumption of the Original GGPMA shall be listed as "TBD," in the Assumed Contract List and the Debtors shall include a footnote substantially similar to section C hereof.

(b) In the event the parties enter into the New GGPMA within 7 days of the date hereof, the Debtors will amend the Assumed Contract List to include the New GGPMA with a cure cost of \$0. The Original GGPMA will be added to the Plan Supplement "Schedule of Rejected Executory Contracts and Unexpired Leases" and all rejection damage claims related thereto shall be waived. The parties may extend the 7-day day period set forth herein by mutual agreement.

(c) The parties' rights with respect to assumption, rejection or severance of the Original GGPMA shall be fully reserved and resolved by separate order of the Bankruptcy Court after notice and a hearing in the event the New GGPMA is not executed. The rights reserved include but are not limited to arguments related to the amount required to cure monetary defaults under the Original GGPMA pursuant to section 365 of the Bankruptcy Code, whether or not the provisions of the Original GGPMA may be severed and assumed and rejected separately,

and whether the Debtors may reject the Original GGPMA, and/or may reject it outside of an adversary proceeding, notwithstanding allegations that it contains covenants running with the land.

(d) Nothing in the Plan or the Confirmation Order shall affect any right of Trinity Midstream to recoupment under the Original GGPMA to the extent permitted by the Bankruptcy Court's order entered at docket number 638 (the "Recoupment Rights") notwithstanding section 12.07 of the Plan. Trinity Midstream shall not exercise any recoupment rights during the 7-day period set forth herein and any extensions thereof.

(e) All applicable periods under the Plan for assumption and rejection of contracts shall be tolled and extended to the extent necessary to effectuate the provisions of this settlement.

(f) Claims referenced against Canyon Midstream Partners, LLC & Trinity River Midstream, LLC and their affiliates in the Plan Supplement "Retained Causes of Action" are not being transferred to the Creditor Trust and the Debtors shall not amend the Plan Supplement "Retained Causes of Action" with respect to such claims during the 7-day period set forth herein and any extensions thereof.

#### **Miscellaneous**

77. Order Nonseverable. The provisions of this Confirmation Order are nonseverable and mutually dependent. This 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 is (i) valid and enforceable pursuant to its terms and (ii) integral to the Plan and may not be deleted or modified without the consent of the Debtors or Reorganized Debtors, as the case may be.

78. Effectiveness of All Actions. All actions authorized to be taken pursuant to the Plan shall be effective on, prior to, or after the Effective Date, pursuant to this Confirmation Order, without further application to, or order of the Court, or further action by the respective officers, directors, managers, members, or holders of equity interests of the Debtors or Reorganized Debtors and with the effect that such actions had been taken by unanimous action of such officers, directors, managers, members or holders of equity interests.

79. Conflicts between Confirmation Order and Plan. To the extent any inconsistency between the provisions of the Plan and this Confirmation Order exists, the terms and provisions contained in this Confirmation Order shall govern.

80. Captions and Headings. Captions and headings herein are inserted for convenience of reference only and are not intended to be a part of, or to affect the interpretation of, this Confirmation Order.

81. Governing Law. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of the State of Texas, without giving effect to the principles of conflicts of law thereof, shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of each such agreement shall control).

82. Final Order. This Confirmation Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof.

###END OF ORDER###

Respectfully Submitted,

**BRACEWELL LLP**

*/s/ William A. (Trey) Wood III*

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**EXHIBIT 1**

**DEBTORS' THIRD AMENDED JOINT PLAN OF REORGANIZATION  
WITH TECHNICAL AND CONFIRMATION MODIFICATIONS**

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COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re

Energy & Exploration Partners, Inc., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 15-44931 (RFN)

(Jointly Administered)

**DEBTORS' THIRD AMENDED JOINT PLAN OF  
REORGANIZATION WITH TECHNICAL AND CONFIRMATION MODIFICATIONS**

**DATED: April 25, 2016**

<sup>1</sup> The Debtors in these chapter 11 cases are: Energy & Exploration Partners, Inc. (9466); Energy & Exploration Partners, LLC (8621); Energy & Exploration Partners Operating GP, LLC (4266); and Energy & Exploration Partners Operating, LP (4049). The Debtors' main corporate and mailing address for purposes of these chapter 11 cases is: Energy & Exploration Partners, 420 Throckmorton St., Suite 1200, Fort Worth, TX 76102.

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## INTRODUCTION

Energy & Exploration Partners, Inc. (“ENXP”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”), filed for bankruptcy protection on December 7, 2015 (the “Petition Date”). The Debtors propose the following Joint Plan of Reorganization for the resolution of outstanding creditor Claims against, and Interests in, the Debtors. As evidenced by that certain RSA (as hereinafter defined), the Plan is supported by holders of approximately 93.8% of the Prepetition Secured Claims (as hereinafter defined) and holders of approximately 78.8% of the Convertible Notes Claims (as hereinafter defined). The Plan is also supported by the Official Committee of Unsecured Creditors, which is a fiduciary for Holders of General Unsecured Claims. The Debtors are proponents of this Plan within the meaning of Bankruptcy Code § 1129 (as hereinafter defined). Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against and Interests in each Debtor pursuant to the Bankruptcy Code. Unless otherwise indicated in a particular Class, the classification of Claims and Interests set forth in Article IV shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. The Debtors seek to consummate the restructuring on the Effective Date of the Plan.

Reference is made to the Disclosure Statement (as hereinafter defined) for a discussion of the Debtors’ history, business, property, results of operations and projections of future operations, as well as a summary and description of this Plan and certain related matters. No materials other than the Disclosure Statement, this Plan and any exhibits and schedules attached hereto or thereto or referenced herein or therein have been authorized by the Debtors for use in soliciting acceptances or rejections of this Plan.

**ALL HOLDERS OF CLAIMS OR INTERESTS ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT CAREFULLY AND IN THEIR ENTIRETY BEFORE VOTING ON THIS PLAN.**

This Plan represents a compromise and settlement entered into by the Debtors and the RSA Creditor Parties pursuant to the term of the RSA, which the Debtors and RSA Creditor Parties entered into on February 10, 2016. The RSA was the result of good faith, arms’-length negotiations among holders of Prepetition Secured Claims and crossholders of both Prepetition Secured Claims and Convertible Notes Claims. Advisors for the Debtors and the RSA Creditor Parties also negotiated with the Creditors Committee on the terms of the Plan, leading to certain enhanced recoveries for unsecured creditors than originally provided under the RSA. These compromises allowed for a distribution of value that is in the best interests of all constituents that would not have been available without the settlements embodied in the Plan. The compromises represent the best opportunity for the Debtors to reorganize under a chapter 11 plan as a going concern, continue their day-to-day operations substantially as currently conducted, and exit chapter 11 with a new and more manageable capital structure in this challenging commodity price environment. If the parties are unable to confirm this Plan, it is likely the Debtors would either be forced to sell their assets pursuant to section 363 of the Bankruptcy Code or convert these chapter 11 cases into chapter 7 cases—outcomes that would most certainly be value destructive when compared to the compromises set forth in the Plan.

## ARTICLE I

### DEFINED TERMS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

#### Section 1.01 Scope of Defined Terms; Rules of Construction

For purposes of this Plan, except as expressly defined elsewhere in this Plan or unless the context otherwise requires, all capitalized terms used herein shall have the meanings ascribed to them in Article I of this Plan. Any term used but not defined herein that is defined in the Bankruptcy Code or the Bankruptcy Rules, as the case may be, shall have the meaning ascribed in the Bankruptcy Code or the Bankruptcy Rules. Whenever the context requires, such terms shall include the plural as well as the singular. The masculine gender shall include the feminine, and the feminine gender shall include the masculine.

#### Section 1.02 Defined Terms

(1) **Ad Hoc Group of Lenders** means the Ad Hoc Group of Term Loan Lenders pursuant to the Prepetition Secured Facility.

(2) **Administrative Expense Claim(s)** means a Claim(s) for costs and expenses of administration pursuant to Bankruptcy Code §§ 503(b), 507(a)(2), 507(b), or 1114(e)(2), including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the businesses of the Debtors (such as wages, salaries, or commissions for services, and payments for goods and other services and leased premises); (b) all fees and charges assessed against the Estate pursuant to section 1930 of chapter 123 of Title 28 of the United States Code; (c) all Allowed Professional Fee Claims; (d) any Cure Costs; and (e) all Allowed Claims for compensation or expense reimbursement for making a substantial contribution in these Chapter 11 Cases pursuant to Bankruptcy Code §§ 503(b)(3), (4), and (5) approved by the Bankruptcy Court.

(3) **Administrative Expense Claims Bar Date** has the meaning set forth in Section 2.04 of this Plan unless the Bankruptcy Court orders otherwise.

(4) **Affiliate** has the meaning set forth in Bankruptcy Code § 101(2). For purposes of this Plan and the definition of Related Persons, an Affiliate of a Person shall also include another Person controlling, controlled by or under common control with such first Person. For the purposes of this definition, “control” means, when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

(5) **Allowed** means with reference to any Claim or Interest: any Claim or Interest or any portion thereof (a) as to which no objection to allowance has been interposed on or before the later of (i) the Claim Objection Deadline or (ii) the expiration of such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or is listed on the Bankruptcy Schedules as liquidated, non-contingent and undisputed; (b) as to which any objection to its allowance has been settled, waived through payment or withdrawn, as permitted herein, or denied by a Final Order; (c) as to which liability of the Debtors and the amount thereof have been determined and expressly allowed by a Final Order; (d) as to which the liability of the Debtors and the amount thereof are determined and expressly allowed by Final

Order of a court of competent jurisdiction other than the Bankruptcy Court; or (e) that is expressly deemed allowed in a liquidated amount in this Plan; *provided, however*, that with respect to an Administrative Expense Claim, “Allowed Administrative Expense Claim” means an Administrative Expense Claim as to which a timely request for payment has been made in accordance with Section 2.03 of this Plan (if such written request is required) or other Administrative Expense Claim, in each case as to which the Debtors (1) have not interposed a timely objection or (2) have interposed a timely objection and such objection has been settled, waived through payment or withdrawn, as permitted herein, or denied by a Final Order; *provided, however*, that an “Allowed Claim” shall not include any Claim subject to disallowance in accordance with section 502(d) of the Bankruptcy Code.

(6) **Assigned Avoidance Actions** means the Avoidance Actions to be transferred on the Effective Date to the Creditor Trust as set forth in the Plan Supplement including, but not limited to, (i) Avoidance Actions related to prepayment penalties paid by the Debtors prepetition on their funded debt, (ii) Avoidance Actions related to the Fort Trinidad transaction, and (iii) all Assigned Preference Actions; *provided, however*, that no causes of action may be brought against any Released Persons, or their Related Persons.

(7) **Assigned Estate Claims** means the (i) Assigned Avoidance Actions and (ii) direct or derivative claims or causes of action against any Excluded Party, including but not limited to, for breach of fiduciary duty or aiding and abetting breach of fiduciary duty, or under and pursuant to any D&O or fiduciary insurance policies (including for bad faith) maintained by the Debtors.

(8) **Assigned Preference Actions** means all of the Estates’ claims for preferential transfers not otherwise designated as excluded by the Debtors and Ad Hoc Group of Lenders in the Plan Supplement or otherwise.

(9) **Assumption Dispute** has the meaning set forth in Section 7.02.

(10) **Avoidance Actions** means any and all actual or potential claims or Causes of Action to avoid a transfer of property or an obligation incurred by the Debtors pursuant to any applicable section of the Bankruptcy Code, including §§ 544, 545, 547, 548, 550, 551, 553(b), and 724(a).

(11) **Backstop Commitment Letter** means that certain commitment letter, to be included in the Plan Supplement, between the Debtors and the “Backstop Parties” signatory thereunder (as may be amended, supplemented, or modified from time to time, solely in accordance with the terms thereof).

(12) **Backstop Parties** means those Holders of Prepetition Secured Claims that have entered into the Backstop Commitment Letter to backstop the Rights Offering.

(13) **Ballot** means the document for accepting or rejecting this Plan, in the form approved by the Bankruptcy Court.

(14) **Balloting Agent** means Prime Clerk LLC, employed and retained by the Debtors pursuant to an order of the Bankruptcy Court [Dkt. No. 149].

(15) **Bankruptcy Code** means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the Petition Date as heretofore or hereafter amended.

(16) **Bankruptcy Court** means the United States Bankruptcy Court for the Northern District of Texas.

(17) **Bankruptcy Rules** means, collectively, the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, as applicable to these Chapter 11 Cases or proceedings therein, and the Local Rules of the Bankruptcy Court, as applicable to these Chapter 11 Cases or proceedings therein, as the case may be.

(18) **Bankruptcy Schedules** means the schedules of assets and liabilities, lists of executory contracts and unexpired leases, and related information filed by the Debtors pursuant to Bankruptcy Code § 521 and Bankruptcy Rule 1007(b), as such schedules may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

(19) **Bankruptcy SOFA** means the statements of financial affairs and related financial information filed by the Debtors pursuant to Bankruptcy Code § 521 and Bankruptcy Rule 1007(b), as such statements may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

(20) **Bar Date(s)** means the applicable date(s) designated by the Bankruptcy Court as the last date for filing Proofs of Claim in these Chapter 11 Cases.

(21) **Bar Date Order** means that order entered February 8, 2016 setting the applicable Bar Dates for: (a) Claims that arose against the Debtors prior to the Petition Date; (b) Claims of governmental units that arose against the Debtors prior to the Petition Date; (c) Claims related to orders rejecting certain executory contracts and unexpired leases; and (d) Claims arising from amendments (if any) to the Debtors' Schedules.

(22) **Business Day** means any day, excluding Saturdays, Sundays or "legal holidays" (as defined in Bankruptcy Rule 9006(a)), on which commercial banks are open for business in Texas.

(23) **Cash** means legal currency of the United States of America or equivalents thereof, including bank deposits and checks.

(24) **Cash Equivalents** means any item or asset of the Debtors readily converted to Cash, such as bank accounts, marketable securities, treasury bills, certificate of deposit, commercial paper maturing less than one year from date of issue, or other liquid investments.

(25) **Causes of Action** means all actions, causes of action, liabilities, obligations, rights, suits, damages, judgments, remedies, demands, setoffs, defenses, recoupments, crossclaims, counterclaims, third-party claims, indemnity claims, contribution claims, or any other claims whatsoever, whether known or unknown, matured or unmatured, fixed or contingent, liquidated or unliquidated, disputed or undisputed, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon any act or omission or other event occurring before the Petition Date or during the course of these Chapter 11 Cases, including through the Effective Date.

(26) **Chapter 11 Cases** means the voluntary cases that are jointly administered as case number 15-44931 (RFN) under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Texas.

(27) **Chesapeake Note** means the Subordinated Unsecured Note in the amount of \$23.3 million, due October 8, 2018, by and between Chesapeake Exploration L.L.C. and ENXP.

(28) **Chesapeake Note Claim** means any Claim arising from or related to the Chesapeake Note.

(29) **Claim** means a claim, whether or not asserted or Allowed, as defined in Bankruptcy Code § 101(5).

(30) **Claim Objection Deadline** means the first Business Day, which is at least 120 days after the Effective Date, or such later date as may be established by the Bankruptcy Court in accordance with Section 8.02(b) of this Plan.

(31) **Class** means a category of Claims or Interests as set forth in Article III below pursuant to Bankruptcy Code § 1122.

(32) **Class A Interests** means the class A interests in the Creditor Trust to be distributed *pro rata* among Holders of Allowed General Unsecured Claims that are not Deficiency Claims.

(33) **Class B Interests** means the class B interests in the Creditor Trust to be distributed *pro rata* among Holders of Deficiency Claims.

(34) **Collateral** means any property or interest in property of the Debtors' Estates subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

(35) **Confirmation** means entry by the Bankruptcy Court of the Confirmation Order on the docket of these Chapter 11 Cases.

(36) **Confirmation Date** means the date on which the Confirmation Order is entered on the docket in these Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

(37) **Confirmation Hearing** means the hearing(s) held by the Bankruptcy Court to consider Confirmation of this Plan pursuant to Bankruptcy Code § 1129, as such hearing may be continued from time to time.

(38) **Confirmation Order** means the order entered by the Bankruptcy Court confirming this Plan pursuant to Bankruptcy Code § 1129.

(39) **Consenting Noteholders** means the Noteholders that are signatories to the RSA holding approximately seventy-eight percent (78%) in principal amount outstanding of the Convertible Notes Claims, in their capacity as such.

(40) **Consenting Secured Lenders** means the Prepetition Secured Lenders that are signatories to the RSA holding approximately ninety-three percent (93%) in principal amount outstanding of the Prepetition Secured Claims, in their capacity as such.

(41) **Consummation** means the occurrence of the Effective Date.

(42) **Convenience Claim** means a General Unsecured Claim included in a separate class of the type referred to in section 1122(b) of the Bankruptcy Code, either: (a) because such

General Unsecured Claim is in an amount equal to or less than \$1,000; or (b) the holder of a General Unsecured Claim in excess of \$1,000 has agreed by an irrevocable written election to reduce the amount of its General Unsecured Claim to \$1,000.

(43) **Convertible Notes Claim** means any Claim, arising under or in connection with the debt securities issued under the Convertible Notes Indenture, including any Claims arising pursuant to section 510(b) of the Bankruptcy Code.

(44) **Convertible Notes Indenture** means that certain *Indenture* dated July 22, 2014 governing certain 8.0% convertible subordinated notes due 2019, between the signatories thereto and U.S. Bank, National Association as trustee (\$375,000,000 original principal amount), and all other documents and instruments relating thereto, as amended, supplemented, modified, or restated.

(45) **Creditor** means any Person who holds a Claim against the Debtors.

(46) **Creditor Trust** means the trust established under Section 5.16 hereof.

(47) **Creditor Trust Agreement** means that certain agreement setting forth the terms and conditions governing the Creditor Trust, in substantially the form included in the Plan Supplement and in form and substance acceptable to the Debtors, the Creditors Committee, and the Requisite Majority Consenting Secured Lenders.

(48) **Creditor Trust Beneficiaries** means the Holders of Allowed General Unsecured Claims, in their capacity as beneficiaries of the Creditor Trust, and their permitted assignees and transferees in accordance with the Creditor Trust Agreement.

(49) **Creditor Trust Assets** means, collectively, (a) the Assigned Estate Claims and the proceeds thereof and (b) the GUC Cash.

(50) **Creditor Trust Expenses** means all actual and necessary fees, costs, expenses and obligations reasonably incurred by or owed to the Creditor Trustee and his or her agents, employees, attorneys, advisors and other professionals in administering this Plan and the Creditor Trust.

(51) **Creditor Trustee** means the Person selected by the Creditors Committee and designated in the Creditor Trust Agreement to administer the Creditor Trust upon the Effective Date, whose identity shall be disclosed in the Plan Supplement.

(52) **Creditors Committee** means the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases.

(53) **Cure Cost Objection Deadline** shall have the meaning set forth in Section 7.01 herein.

(54) **Cure Costs** means all costs required of the Debtors to cure any and all monetary defaults including pecuniary losses, pursuant to Bankruptcy Code § 365, arising under any executory contract and unexpired lease to be assumed by the Debtors and vested in the Reorganized Debtors.

(55) **Debtors** means, collectively, ENXP, ENXP LLC, Energy & Exploration Partners Operating GP, LLC, and Energy & Exploration Partners Operating, LP.

(56) **Deficiency Claims** means the aggregate amount of claims of the Prepetition Secured Lenders under the Prepetition Secured Facility less the aggregate amount of Prepetition Secured Claims.

(57) **Definitive Documentation** means the definitive documents and agreements governing the Restructuring Transactions, including, but not limited to, every order entered by the Bankruptcy Court, and every pleading, motion, proposed order, or document filed by the Debtors at any point prior to termination of the RSA related to the Restructuring Transactions.

(58) **DIP Facility** means that certain \$40 million debtor in possession financing facility, dated February 2, 2016, approved by the DIP Order, as amended, supplemented and restated.

(59) **DIP Facility Claim** means any Claim derived from, based upon, relating to or arising from the DIP Facility, including interest and fees.

(60) **DIP Lenders** means the lenders party to the DIP Facility, in their capacity as such.

(61) **DIP Order** means that certain order of the Bankruptcy Court dated January 29, 2016 [Dkt. No. 305], approving the DIP Facility.

(62) **Disallowed** means all or such part of a Claim (i) that is disallowed by a Final Order of the Bankruptcy Court or other court of competent jurisdiction or (ii) proof of which was required to be filed but as to which a Proof of Claim was not timely or properly filed; unless Allowed by the Final Order of the Bankruptcy Court or other court of competent jurisdiction.

(63) **Disbursing Agent** means the Reorganized Debtors or the Entity or Entities selected by the Debtors or Reorganized Debtors to make or facilitate distributions pursuant to the Plan; *provided, however*, with respect to General Unsecured Claims, the Creditor Trustee or any entity selected by the Creditor Trustee shall be the Disbursing Agent for the Creditor Trust.

(64) **Disclosure Statement** means the *First Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code* dated as of March 21, 2016, as the same may be amended, modified or supplemented from time to time, including all exhibits and schedules thereto, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

(65) **Disputed** means, in reference to a Claim, any Claim or Interest not otherwise Allowed or Disallowed pursuant to this Plan or an order of the Bankruptcy Court (a) which has been Scheduled, or hereafter is listed on the Bankruptcy Schedules as unliquidated, contingent, or disputed, and which has not been resolved by written agreement of the parties; (b) proof of which was timely and properly filed and which has been or hereafter is listed on the Bankruptcy Schedules as unliquidated, disputed, or contingent; (c) that is disputed in accordance with the provisions of this Plan; or (d) as to which the Debtors or Reorganized Debtors, and, after the Effective Date, the Creditor Trust, as applicable, have interposed a timely objection in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court, or is otherwise disputed by the Debtors, Reorganized Debtors or the Creditor Trust, as applicable in accordance with applicable law, which objection or dispute has not been withdrawn or determined by a Final Order; *provided, however*, that for purposes of determining whether a particular Claim is a Disputed Claim before the expiration of any period of limitation fixed for the interposition by the Debtors, Reorganized Debtors or Creditor Trust of objections to the allowance of Claims, any Claim that is not an Allowed Claim shall be deemed Disputed.

(66) **Distribution Date** means the date(s), occurring as soon as practicable after the Effective Date, upon which distributions are made pursuant to the terms of this Plan to Holders of Allowed Administrative Expense Claims, DIP Facility Claims, Priority Tax Claims and other Allowed Claims in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims) Class 3 (Prepetition Secured Claims), Class 4 (Convertible Notes Claims), Class 5 (General Unsecured Claims) and Class 6 (Convenience Claims); *provided, however*, that should such Allowed Claims be paid in the ordinary course of business, the Distribution Date shall be the date such Allowed Claim becomes payable under the terms of any contract or agreement or applicable non-bankruptcy law.

(67) **Distribution Record Date** means the record date which is set forth in Section 6.11 of this Plan.

(68) **Effective Date** means the first Business Day on which all conditions precedent set forth in Section 9.02 of this Plan have been satisfied or waived as permitted hereunder.

(69) **Effective Date Funding Amount** has the meaning set forth in Section 5.08(2).

(70) **Election Form** means the form that a Holder of Prepetition Secured Claims shall complete by the Subscription Deadline to elect to participate in the Rights Offering.

(71) **Entity** has the meaning set forth in Bankruptcy Code § 101(15).

(72) **ENXP** means Energy & Exploration Partners, Inc.

(73) **ENXP Common Stock** means the authorized, issued and outstanding shares of common stock of ENXP as of the Petition Date, and any options, warrants, or rights, contractual or otherwise, to acquire any shares of such stock.

(74) **ENXP Group** means (i) the affiliated group of corporations, within the meaning of section 1504 of the Tax Code, of which ENXP is the common parent and (ii) any other group of corporations filing consolidated, combined or unitary tax returns for state or local tax purposes of which ENXP is the common parent.

(75) **ENXP LLC** means Energy & Exploration Partners, LLC, which for U.S. federal income tax purposes is taxable as a corporation.

(76) **Estates** means, collectively, the estates created for the Debtors in their Chapter 11 Cases pursuant to Bankruptcy Code § 541.

(77) **Exchange Act** means the Securities Exchange Act of 1934, as amended.

(78) **Excluded Party and collectively, Excluded Parties** means (i) any former employees, officers or directors of the Debtors who were not employed by the Debtors as of the Petition Date or during the Chapter 11 Cases, but not John Richards, the Debtors' former Chief Operating Officer, (ii) any professionals, representatives, or similar Persons who were not retained or working with the Debtors as of the Petition Date or during the Chapter 11 Cases, (iii) Apollo Investment Corporation and its Related Funds, and (iv) the Debtors' insurance carriers in respect of any obligations in connection with actions filed against the Debtors and their current and former officers and directors, if any, or otherwise as required under the relevant insurance policies.

(79) **Exhibit** means an exhibit annexed either to this Plan, the Plan Documents, or the Disclosure Statement or filed as part of the Plan Supplement.

(80) **Exit Facility** means that certain delayed-draw term loan in the amount of \$90 million (\$65 million of which is expected to be funded upon the Effective Date) to be provided to the Reorganized Debtors.

(81) **Exit Facility Documentation** means, collectively, the Exit Facility and each other agreement, security agreement, pledge agreement, collateral assignment, mortgage, control agreement, guarantee, certificate, document or instrument executed and/or delivered in connection with the foregoing, whether or not specifically mentioned herein or therein, as the same may be modified, supplemented or replaced from time to time, and which shall be in form and substance consistent with the RSA and otherwise satisfactory to the Debtors and the Requisite Supermajority Consenting Secured Lenders.

(82) **Exit Facility Lender** means any lenders party to the Exit Facility on the Effective Date.

(83) **Final Order** means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court, which has not been reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument or rehearing shall then be pending, or (b) if an appeal, writ of certiorari, new trial, reargument or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired, or (c) as to which an appeal, writ of certiorari, motion for re-argument or rehearing has been filed or sought and such order shall not have been stayed *provided, however*, that no order or judgment shall fail to be a "Final Order" solely because of the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code or under Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 has been or may be filed with respect to such order or judgment.

(84) **General Unsecured Claim** means any Claim that is not an Administrative Expense Claim, 503(b)(9) Claim, Priority Tax Claim, Other Priority Claim, Other Secured Claim, Prepetition Secured Claim, Convertible Notes Claim, or Intercompany Claim; for the avoidance of doubt, General Unsecured Claims include the Deficiency Claims of the Prepetition Secured Lenders, the Chesapeake Note Claim against ENXP and Junior Statutory Lien Claims against a Debtor.

(85) **Group Tax Returns** has the meaning set forth in Section 5.28.

(86) **GUC Cash** means \$2,250,000 to be transferred by the Debtors to the Creditor Trust on the Effective Date which shall be utilized by the Creditor Trustee to (a) administer the Creditor Trust Assets for the benefit of Holders of Allowed General Unsecured Claims and pay all Creditor Trust Expenses; and (b) to fund distributions to Holders of Class A Interests.

(87) **Holder** means the beneficial holder of any Claim or Interest.

(88) **Impaired** means, when used with reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of Bankruptcy Code § 1124.

(89) **Indenture Trustee** means US National Bank Association, or any successor thereto, as trustee under the Convertible Notes Indenture.

(90) **Indenture Trustee Charging Lien** means any Lien or other priority in payment to which the Indenture Trustee is entitled, pursuant to the Convertible Notes Indenture, against distributions to be made to the Holders of Convertible Notes Claims, for payment of any Indenture Trustee Fees.

(91) **Indenture Trustee Fees** means the reasonable compensation, fees, expenses, disbursements and claims for indemnity, subrogation, and contribution including, without limitation, attorneys' fees, financial advisors' fees, agents' fees, expenses and disbursements, incurred by or owed to the Indenture Trustee, pursuant to Sections 7.06 and 6.10 of the Convertible Notes Indenture, whether prior to or after the Petition Date, and whether prior to or after the consummation of the Plan, under the Indenture.

(92) **Initial Request** has the meaning set forth in Section 5.27.

(93) **Intercompany Claim** means any Claim by a Debtor against another Debtor.

(94) **Intercompany Interest** means any Interest held by any Debtor in any other Debtor.

(95) **Interest(s)** means the interest of any holder of equity securities in the Debtors represented by any issued and outstanding common stock or interests, preferred stock or interests, or other instrument evidencing a present ownership interest in the Debtors before the Effective Date (including before the Petition Date), whether or not transferable, any restricted stock units, calls, rights, puts, awards, commitments, repurchase rights, unvested or unexercised options, warrants, unvested common interests, unvested preferred interests or any other agreements of any character related to the common stock or preferred stock interests of the Debtors, obligating the Debtors to issue, transfer, purchase, redeem, or sell any interests or other equity securities, any rights under any equity incentive plans, voting agreements and registration rights agreements regarding equity securities of the Debtors, any claims arising from the rescission of a purchase, sale or other acquisition of any outstanding common stock interests or preferred stock interests or other equity securities (or any right, claim, or interest in and to any common stock interests, preferred stock interests or other equity securities) of the Debtors, any claims for the payment of any distributions with respect to any common stock or preferred stock interests of the Debtors, and any claims for damages or any other relief arising from the purchase, sale, or other acquisition of the Debtors' outstanding common stock interests, preferred stock interests or other equity securities, however evidenced, including, without limitation, the ENXP Common Stock and any warrants for Preferred Stock.

(96) **Interim DIP Order** means that certain order of the Bankruptcy Court dated December 10, 2015 [Dkt. No. 72, as amended by Dkt. No. 74], approving the interim DIP facility.

(97) **Junior Statutory Lien** means any statutory Lien (including, without limitation, mechanic's and materialman's liens and mineral liens) against the Debtors' property that has been perfected (a) under section 546 of the Bankruptcy Code or (b) prior to the Petition Date, under applicable non-bankruptcy law, other than a Senior Statutory Lien.

(98) **Junior Statutory Lien Claim** means any Claim secured by a Junior Statutory Lien.

(99) **Lien** means a charge against or interest in property to secure payment of a debt or performance of an obligation.

(100) **Management Incentive Plan** has the meaning set forth in Section 5.21.

(101) **New Common Interests** means membership interests in Reorganized ENXP LLC.

(102) **New Shareholders Agreement** means that certain shareholders' agreement that will govern matters related to the governance of the Reorganized Debtors, a draft of which shall be included in the Plan Supplement and which shall be in form and substance satisfactory to the Requisite Supermajority Consenting Secured Lenders, in consultation with the Debtors.

(103) **New Term Loan** means that certain \$40 million new secured term loan on terms to be determined by the Requisite Consenting Lenders, in consultation with the Debtors.

(104) **New Term Loan Documentation** means, collectively, the New Term Loan and each other agreement, security agreement, pledge agreement, collateral assignment, mortgage, control agreement, guarantee, certificate, document or instrument executed and/or delivered in connection with the foregoing, whether or not specifically mentioned herein or therein, as the same may be modified, supplemented or replaced from time to time, and which shall be in form and substance consistent with the RSA and otherwise satisfactory to the Debtors and Requisite Consenting Lenders.

(105) **Noteholders** means the Holders of the Convertible Notes Claims.

(106) **Noteholder Warrants** has the meaning set forth in Section 4.04.

(107) **Organizational Documents** means the new company governance documents related to the Reorganized Debtors, including, but not limited to, articles of organization, limited liability company agreements, operating agreements, the New Shareholders Agreement, or other organizational documents, which shall be consistent with the provisions of this Plan, the RSA and the Bankruptcy Code, and shall include, among other things (and only to the extent required by section 1123(a)(6) of the Bankruptcy Code), provisions prohibiting the issuance of non-voting equity securities. The Organizational Documents shall be in form and substance acceptable to the Requisite Majority Consenting Secured Lenders, in consultation with the Debtors, and in substantially the form included in the Plan Supplement.

(108) **Other Priority Claim** means any Claim other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in payment as specified in Bankruptcy Code § 507(a).

(109) **Other Secured Claim** means any Secured Claim against the Debtors other than the DIP Facility Claims, that is secured by a Lien senior to the Liens under the Prepetition Secured Facility, including, without limitation, Senior Statutory Lien Claims.

(110) **Participant** means each Holder of Prepetition Secured Claims that is participating in the Rights Offering.

(111) **Per Interest Price** has the meaning set forth in Section 5.08(2).

(112) **Person** means an individual, corporation, general or limited partnership, limited liability company, trust, liquidating trust, incorporated or unincorporated association, joint

venture, joint stock company, government (or an agency or political subdivision thereof) or other entity of any kind.

(113) **Petition Date** means December 7, 2015, the date on which the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

(114) **Plan** means this *Third Amended Joint Plan of Reorganization with Technical and Confirmation Modifications*, including any Exhibits and all supplements, appendices and schedules thereto, either in its present form or as the same may be altered, amended, modified or supplemented from time to time as permitted herein and in accordance with the provisions of the Bankruptcy Code and the terms hereof.

(115) **Plan Distribution** means the payment or distribution under this Plan of Cash, assets, securities or instruments evidencing an obligation under this Plan or other property of any nature to any Holder of an Allowed Claim.

(116) **Plan Documents** means all documents, forms, lists and agreements contemplated under this Plan (including, but not limited to the Plan Supplement) to effectuate the terms and conditions hereof.

(117) **Plan Supplement** means any supplement to this Plan, and the compilation of Plan Documents and forms of documents and Exhibits to this Plan, as amended, modified or supplemented from time to time, to be filed by the Debtors as permitted herein on, before or after the Plan Supplement Filing Date, in form and substance satisfactory to the Requisite Consenting Lenders, except as otherwise provided herein.

(118) **Plan Supplement Filing Date** means the date not later than fourteen (14) days before the Voting Deadline, which date may be modified by agreement between the Debtors and the Requisite Majority Consenting Secured Lenders.

(119) **Post-Petition Interest** means, unless otherwise provided herein, simple interest per annum at the Federal Judgment Rate, based on a three hundred sixty (360)-day year for the period from the Petition Date to, but excluding, the Effective Date.

(120) **Preferred Stock** means any preferred stock issued by ENXP, including the Series A Preferred Shares and Series B Preferred Shares.

(121) **Prepetition Secured Facility** means that certain *Senior Term Loan Agreement*, dated as of July 22, 2014 by and among ENXP LLC, certain Debtors as guarantors, the Prepetition Secured Lenders and Credit Suisse AG Cayman Islands Branch as administrative and collateral agent, and all other documents and instruments relating thereto, including any guaranties, pledge agreements, or security agreements, as amended, supplemented, modified or restated.

(122) **Prepetition Secured Claim** means a Claim of any Prepetition Secured Lender (i) arising under or in connection with the Prepetition Secured Facility and all documents relating thereto, or arising under or in connection with any guaranty of the obligations under the Prepetition Secured Facility or (ii) constituting a priority claim under or in connection with the adequate protection provisions under the DIP Order.

(123) **Prepetition Secured Lenders** means the lenders party to the Prepetition Secured Facility.

(124) **Priority Tax Claim** means a Claim that is entitled to priority pursuant to Bankruptcy Code § 507(a)(8).

(125) **Privilege** means all attorney-client privileges, work product protections and other immunities or protections from disclosure held by the Debtors.

(126) **Professional** means any professional (a) employed in these Chapter 11 Cases pursuant to Bankruptcy Code §§ 327, 328 or 1103 and to be compensated for services rendered pursuant to Bankruptcy Code §§ 327, 328, 329, 330 or 331 or (b) seeking compensation and reimbursement pursuant to Bankruptcy Code § 503(b)(4).

(127) **Professional Fee Claim** means a Claim of a Professional for compensation or reimbursement of expenses relating to services after the Petition Date through the Effective Date.

(128) **Proof of Claim** means the proof of claim that must be filed by a Holder of a Claim by the date(s) designated by the Bankruptcy Court as the Bar Date.

(129) **Reinstated** means, with respect to Claims and Interests, the treatment provided for in § 1124 of the Bankruptcy Code.

(130) **Related Funds** means, with respect to any Consenting Secured Lender, Consenting Noteholder, or DIP Lender that is a fund or commingled investment vehicle that invests in bank loans, any other fund that invests in bank loans and is managed or advised by the same investment advisor as such Consenting Secured Lender, Consenting Noteholder, or DIP Lender or by an Affiliate of such investment advisor.

(131) **Related Persons** means, with respect to any Person, such Person's predecessors, successors and assigns (whether by operation of law or otherwise) and their respective present and former Affiliates and Related Funds, and each of their respective current and former members, partners, equity-holders, officers, directors, employees, managers, shareholders, partners, financial advisors, attorneys, accountants, investment bankers, consultants, agents and professionals, each acting in such capacity, and any Person claiming by or through any of them (including their respective officers, directors, managers, shareholders, partners, employees, members and professionals); provided, that the Related Person shall not include any Excluded Party.

(132) **Released Persons** means the Debtors, Reorganized Debtors, Consenting Secured Lenders, the Consenting Noteholders, the DIP Lenders, the Prepetition Agent, the DIP Agent, the Creditors Committee and its respective members in their capacity as such, and any of their Related Persons (each solely in its capacity as such and only with respect to those claims being released in the Plan against the Released Persons); provided, that the Released Persons shall not include any Excluded Party.

(133) **Reorganized Debtors** means the Debtors from and after the Effective Date.

(134) **Reorganized ENXP LLC** means ENXP LLC, on and after the Effective Date, as reorganized under and pursuant to the Plan.

(135) **Retained Causes of Action** means those Causes of Action listed in **Exhibit A** to the *Notice of Filing of Plan Supplement* [Dkt. No. 601], as may be amended, supplemented or modified from time to time.

(136) **Requisite Backstop Parties** means the holders of a majority of the commitments under the Backstop Commitment Letter.

(137) **Requisite Consenting Lenders** means (a) with respect to all terms and provisions of the RSA and/or the Definitive Documentation other than those described in (b), the Requisite Majority Consenting Secured Lenders; (b) with respect to provisions of the RSA and/or the Definitive Documentation related to (i) the debt capital structure of the Reorganized Debtors upon the Effective Date, including the terms of any Exit Facility or the New Term Loan, other than the amount of the New Term Loan; (ii) the composition, compensation, and other employment terms of the management of the Reorganized Debtors; (iii) the composition of the board of managers of the Reorganized Debtors; (iv) the Organizational Documents of the Reorganized Debtors; or (v) the Noteholder Warrants, other than the percentage of equity of the Reorganized Debtors distributable pursuant to such Noteholder Warrants, the equity value at which such Noteholder Warrants are struck, or the expiration date of such Noteholder Warrants, the Requisite Supermajority Consenting Secured Lenders.

(138) **Requisite Consenting Noteholders** means the Consenting Noteholders holding a majority of the Convertible Notes Claims held in the aggregate by the Consenting Noteholders as of the RSA Effective Date.

(139) **Requisite Majority Consenting Secured Lenders** means the Consenting Secured Lenders holding a majority of the Prepetition Secured Claims held in the aggregate by the Consenting Secured Lenders as of the RSA Effective Date.

(140) **Requisite Supermajority Consenting Secured Lenders** means (i) the Consenting Secured Lenders holding two-thirds (66.67%) of the Prepetition Secured Claims held in the aggregate by the Consenting Secured Lenders as of the RSA Effective Date and (ii) at least three of (A) Ares Management, LLC, (B) Highbridge Principal Strategies, LLC, (C) Sankaty Advisors, LLC, and (D) GoldenTree Asset Management, LP, or as otherwise required under the provisions of Section 5 of the RSA.

(141) **Restructuring Transactions** means one or more transactions pursuant to section 1123(a)(5)(D) of the Bankruptcy Code to occur on or before the Effective Date or as soon as reasonably practicable thereafter, that may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan, as further described in Section 5.07 of this Plan.

(142) **Rights** means the non-transferable, non-certificated rights distributed to Participants to purchase Rights Offering Interests in connection with the Rights Offering, the Plan and the Rights Offering Procedures.

(143) **Rights Offering** means the offering of Rights to Participants to fund the Exit Facility and purchase, as of the Effective Date, their *pro rata* share of 80% of the New Common Interests at the Per Interest Price, all in accordance with the terms of this Plan, the Backstop Commitment Letter, the Rights Offering Procedures, and the Exit Facility Documentation.

(144) **Rights Offering Procedures** means the procedures for conducting the Rights Offering, including the exhibits and annexes thereto and all amendments, supplements, changes, and modifications thereto, all of which must be satisfactory to the Debtors and the Requisite Consenting Lenders.

(145) **Rights Offering Proceeds** means gross cash proceeds to be provided to the Reorganized Debtors from the Rights Offering of \$90 million.

(146) **Rights Offering Interests** means, with respect to each Participant participating in the Rights Offering, a *pro rata* share of (a) the Exit Facility and (b) 80% of the New Common Interests, subject to dilution from the Management Incentive Plan and conversion of the Noteholder Warrants.

(147) **RSA** means that certain Restructuring Support Agreement dated February 9, 2016 (as amended on March 18, 2016), between the RSA Creditor Parties and the Debtors, which incorporates by reference that certain plan term sheet among the Debtors and the RSA Creditor Parties, as may be amended, supplemented or modified from time to time.

(148) **RSA Creditor Parties** means, collectively, the Consenting Secured Lenders, the Consenting Noteholders and the Creditors Committee.

(149) **RSA Effective Date** means February 9, 2016.

(150) **Scheduled** means, with respect to any Claim or Interest, the status and amount, if any, of such Claim or Interest as set forth in the Bankruptcy Schedules.

(151) **Secured** means, when referring to a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to Bankruptcy Code § 553, to the extent of the value of the Creditor's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Bankruptcy Code § 506(a); or (b) Allowed pursuant to this Plan as a Secured Claim.

(152) **Securities Act** means the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa, as now in effect or hereafter amended.

(153) **Senior Statutory Lien** means any statutory Lien (including mechanic's and materialman's liens and mineral liens) against the Debtors' property that has been perfected (a) under section 546 of the Bankruptcy Code or (b) prior to the Petition Date, under applicable non-bankruptcy law, in each case that is determined by Final Order to be senior to the Liens securing the Prepetition Secured Facility.

(154) **Senior Statutory Lien Claim** means any Claim secured by a Senior Statutory Lien.

(155) **Subscription Agent** means Prime Clerk LLC.

(156) **Subscription Deadline** means April 21, 2016 at 4:00 p.m. (prevailing Central Time), the date and time by which a Holder of Prepetition Secured Claims must deliver an Election Form by which it will choose to participate in the Rights Offering.

(157) **Supermajority Matters** means those matters specified in Section 4(b) of the RSA as being subject to the Requisite Supermajority Consenting Secured Lenders' review or consent, as applicable.

(158) **Unclaimed Property** has the meaning set forth in Section 6.03 of this Plan.

(159) **Unimpaired** means a Claim or Interest that is not Impaired.

(160) **Voting Deadline** means the date by which a Creditor must deliver a Ballot to accept or reject this Plan as set forth in the order of the Bankruptcy Court approving the instructions and procedures relating to the solicitation of votes with respect to this Plan.

### **Section 1.03 Rules of Interpretation**

For purposes of this Plan, (i) except as provided in Article X, any reference in this Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions, means that such document shall be substantially in such form or substantially on such terms and conditions; (ii) except as provided in Article X, any reference in this Plan to an existing document or exhibit filed or to be filed with the Bankruptcy Court, means such document or exhibit as it may have been or may be amended, modified, or supplemented as permitted herein; (iii) unless otherwise specified, all references in this Plan to Sections, Articles, Schedules, and Exhibits are references to Sections, Articles, Schedules, and Exhibits of or to this Plan; (iv) the words “herein,” “hereto,” and “hereof” refer to this Plan in its entirety rather than to a particular portion of this Plan; (v) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; and (vi) the rules of construction set forth in Bankruptcy Code § 102 and in the Bankruptcy Rules shall apply.

### **Section 1.04 Computation of Time**

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

### **Section 1.05 Reference to Monetary Figures**

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

### **Section 1.06 Reference to the Debtors or the Reorganized Debtors**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Debtors shall mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

### **Section 1.07 Exhibits and Plan Supplement**

All Exhibits, all Plan Documents, as well as the Plan Supplement, are incorporated into and are a part of this Plan as if set forth in full herein, and, to the extent not annexed hereto, such Exhibits and Plan Supplement shall be timely filed with the Clerk of the Bankruptcy Court on or before the Plan Supplement Filing Date. Holders of Claims and Interests may obtain a copy of the filed Exhibits and the Plan Supplement upon written request to the Debtors’ counsel. Upon their filing, the Exhibits and the Plan Supplement may be inspected in the office of the clerk of the Bankruptcy Court or at the Bankruptcy Court’s website at <http://www.txnb.uscourts.gov> or at the Balloting Agent’s website for this Case at <https://cases.primeclerk.com/ENXP>. The documents contained in the Exhibits and Plan Supplement shall be in form and substance satisfactory to the Requisite Consenting Lenders, except as otherwise provided herein, and shall

be approved by the Bankruptcy Court pursuant to the Confirmation Order. The Debtors explicitly reserve the right to modify or make additions to or subtractions from any Exhibit to this Plan or the Plan Supplement and to amend, modify or supplement any Exhibit to this Plan before the Confirmation Date, subject to the terms of the RSA, as amended by the settlement with the Creditors Committee.

### **Section 1.08 Deemed Acts**

Whenever an act or event is expressed under this Plan to have been deemed done or to have occurred, it shall be deemed to have been done or to have occurred without any further act by any party, by virtue of this Plan and the Confirmation Order.

## **ARTICLE II**

### **UNCLASSIFIED CLAIMS (NOT ENTITLED TO VOTE ON THIS PLAN)**

In accordance with Bankruptcy Code § 1123(a)(1), Administrative Expense Claims, DIP Facility Claims and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article IV hereof. These unclassified Claims are treated as follows:

#### **Section 2.01 Administrative Expense Claims**

Each Holder of an Allowed Administrative Expense Claim, on or as soon as practicable after the Effective Date, shall receive from its respective Debtor, in full satisfaction, release, settlement, and discharge of such Allowed Administrative Expense Claim, (i) payment in full in Cash, (ii) other treatment consistent with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code or (iii) such other terms as agreed to among the Debtors and the Holders thereof, subject to the consent of the Requisite Majority Consenting Secured Lenders.

Notwithstanding the foregoing, Allowed Administrative Expense Claims that arise in the ordinary course of the Debtors' businesses shall be paid in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing or other documents relating to such Claims. Professional Fee Claims (as defined herein) shall be paid by the Reorganized Debtors promptly after being approved by the Bankruptcy Court, or in the case of Professional Fee Claims owed pursuant to the DIP Order or Interim DIP Order, pursuant to the terms of such orders.

#### **Section 2.02 DIP Facility Claims**

Each Holder of an Allowed DIP Facility Claim, on or as soon as practicable after the Effective Date, shall receive, in full satisfaction, release, settlement, and discharge of such Allowed DIP Facility Claims, payment in full in Cash from the proceeds of the Exit Facility.

### **Section 2.03 Priority Tax Claims**

Each Holder of an Allowed Priority Tax Claim, on or as soon as practicable after the Effective Date, shall receive from its respective Debtor, in full satisfaction, release, and discharge thereof, (i) payment in full in Cash, (ii) other treatment consistent with sections 1129(a)(9)(C) or 1129(a)(9)(D) of the Bankruptcy Code or (iii) such other terms as agreed to among the Debtors and the Holders thereof, subject to the consent of the Requisite Majority Consenting Secured Lenders.

### **Section 2.04 Bar Dates for Certain Claims**

(a) Administrative Expense Claims; Substantial Contribution Claims. The Bar Date for filing of all Administrative Expense Claims, including substantial contribution claims will be the date that is thirty (30) days after the Effective Date (such date, the “Administrative Expense Claims Bar Date”). Holders of asserted Administrative Expense Claims, other than Professional Fee Claims and claims for U.S. Trustee fees under 28 U.S.C. § 1930 must submit proofs of Administrative Expense Claims on or before such Administrative Expense Claims Bar Date or forever be barred from doing so. Within five (5) days of the Effective Date, the Reorganized Debtors shall serve and file on the docket of the Bankruptcy Court, a notice setting forth the Administrative Expense Claims Bar Date. The Reorganized Debtors shall have sixty (60) days (or such longer period as may be allowed by order of the Bankruptcy Court) following the Administrative Expense Claims Bar Date to review and object to such Administrative Expense Claims before a hearing for determination of allowance of such Administrative Expense Claims.

(b) Administrative Ordinary Course Liabilities. Holders of Administrative Expense Claims that are based on liabilities incurred and paid by the Debtors in the ordinary course of the Debtors’ businesses (other than Claims of governmental units for taxes) on and after the Petition Date shall not be required to file any request for payment of such Administrative Expense Claims. For the avoidance of doubt, Holders of Administrative Expense Claims pursuant to Bankruptcy Code § 503(b)(9) are required to file a Proof of Claim on or before the General Bar Date (as defined in the Bar Date Order).

(c) Administrative Tax Claims. All requests for payment of Administrative Expense Claims by a Governmental Unit for taxes for any tax year or period, all or any portion of which occurs or falls within the period from and including the Petition Date through and including the Effective Date, and for which no bar date has otherwise been previously established, must be filed and served on the Debtors and the Reorganized Debtors and any other party specifically requesting a copy in writing on or before the later of (a) thirty (30) days after the Effective Date; and (b) one hundred and twenty (120) days following the filing of the tax return for such taxes for such tax year or period with the applicable governmental unit. Within five (5) days of the Effective Date, the Reorganized Debtors shall serve, and file on the docket of the Bankruptcy Court, a notice setting forth such applicable Bar Date. Any Holder of any such Claim that is required to file a request for payment of such taxes and does not file and properly serve such a claim by the applicable Bar Date shall be forever barred from asserting any such claim against the Debtors, the Reorganized Debtors, the Disbursing Agent or their property, regardless of whether any such Claim is deemed to arise on or before the Effective Date. Any interested party desiring to object to an Administrative Tax Claim must file and serve its objection on counsel to

the Debtors and the Reorganized Debtors and the relevant taxing authority no later than ninety (90) days after the taxing authority files and serves its Claim.

(d) Professional Fee Claims.

(i) All final requests for compensation or reimbursement of Professional fees pursuant to Bankruptcy Code §§ 327, 328, 330, 331, 363, 503(b) or 1103 or pursuant to the Interim DIP Order or Final DIP Order (the “Professional Fee Claims”) for services rendered to or on behalf of the Debtors before the Effective Date (other than substantial contribution claims under Bankruptcy Code § 503(b)(4)) must be filed with the Bankruptcy Court and served on the Reorganized Debtors and their counsel no later than thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to applications of such Professionals or other entities for compensation or reimbursement of expenses must be filed with the Bankruptcy Court and served on the Debtors and the Reorganized Debtors and their counsel and the requesting Professional or other entity no later than twenty (20) days (or such longer period as may be allowed by order of the Bankruptcy Court) after the date on which the applicable application for compensation or reimbursement was served.

(ii) Professional fee claims for reasonable pre- and postpetition fees and expenses of Akin, Gump, Strauss, Hauer & Feld LLP and Centerview Partners, Inc., as advisors to the Ad Hoc Group of Noteholders, up to an aggregate amount of \$2.1 million, shall be payable by the Debtors upon the Effective Date, provided that the Plan is supported by GoldenTree Asset Management.

(iii) The fees and expenses of the Creditors Committee legal Professionals from March 14, 2016 until such time as the Creditors Committee is dissolved shall be subject to a cap of (a) \$200,000 for the fees and expenses of Arent Fox LLP, and (b) \$15,000 for the fees and expenses of Cole Schotz P.C. The “Monthly Fixed Fee” (as such term is defined in the Application to Employ FTI Consulting, Inc., as Financial Advisor to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to December 16, 2015, Pursuant to 11 U.S.C. Sections 328(a) and 1103(a) [Dkt. No. 180]) of FTI Consulting shall be prorated for the month containing the Effective Date, as calculated from the first of such month through and including the Effective Date.

**Section 2.05 Payment of Statutory Fees**

All fees payable pursuant to 28 U.S.C. §1930(a) shall be paid by the Debtors or Reorganized Debtors, as applicable, for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or a final decree is issued, whichever occurs first. The Reorganized Debtors shall continue to file quarterly-post confirmation operating reports in accordance with the United States Trustee’s Region 6 Guidelines for Chapter 11 Cases.

**ARTICLE III**

**CLASSIFICATION OF CLAIMS AND INTERESTS AND ACCEPTANCE REQUIREMENTS**

**Section 3.01 Introduction**

The categories of Claims and Interests set forth herein classify Claims and Interests for all purposes, including for purposes of voting, confirmation, and distribution pursuant to this

Plan and Bankruptcy Code §§ 1122 and 1123(a)(1). A Claim or Interest shall be deemed classified in a particular Class only to the extent that it qualifies within the description of such Class, and shall be deemed classified in other Classes to the extent that any portion of such Claim or Interest qualifies within the description of such other Classes. Notwithstanding anything to the contrary in this Plan, a Claim or Interest shall be deemed classified in a Class only to the extent that such Claim or Interest has not been paid, released, or otherwise settled before the Effective Date.

All Claims (except for Administrative Expense Claims, DIP Facility Claims and Priority Tax Claims, which are not classified pursuant to Bankruptcy Code § 1123(a)(1)) are classified in Section 4.01 through Section 4.08 in this Plan.

**Section 3.02 Voting; Presumptions**

(a) Acceptance by Impaired Classes. Each Impaired Class of Claims that will (or may) receive or retain property or any interest in property under this Plan shall be entitled to vote to accept or reject this Plan. An Impaired Class of Claims shall have accepted this Plan if (i) the Holders (other than any Holder designated under Bankruptcy Code § 1126(e)) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept this Plan and (ii) the Holders (other than any Holder designated under Bankruptcy Code § 1126(e)) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept this Plan.

(b) Voting Presumptions. Claims in Unimpaired Classes are conclusively deemed to have accepted this Plan pursuant to Bankruptcy Code § 1126(f) and, therefore, are not entitled to vote to accept or reject this Plan. Claims and Interests in Classes that do not entitle the Holders thereof to receive or retain any property under this Plan are conclusively deemed to have rejected this Plan pursuant to Bankruptcy Code § 1126(g) and, therefore, are not entitled to vote to accept or reject this Plan.

**Section 3.03 Cram Down – Nonconsensual Confirmation**

If any Impaired Class of Claims or Interests entitled to vote shall not accept the Plan by the requisite statutory majority provided in Bankruptcy Code § 1126(c) or 1126(d), the Debtors shall request Confirmation of the Plan under Bankruptcy Code § 1129(b). In that event, the Debtors reserve the right to modify the Plan to the extent, if any, that Confirmation pursuant to Bankruptcy Code § 1129(b) requires modification or any other reason in their sole discretion.

**Section 3.04 Identification of Claims and Interests**

The following table designates the Classes of Claims against, and Interests in, the Debtors and specifies which of those Classes and Interests are (a) Impaired or Unimpaired by this Plan; (b) entitled to vote to accept or reject this Plan in accordance with Bankruptcy Code § 1126; and (c) deemed to accept or reject this Plan.

Class	Type of Allowed Claim or Interest	Impairment	Entitled to Vote
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Class	Type of Allowed Claim or Interest	Impairment	Entitled to Vote
<b>Unclassified Claims</b>			
--	Administrative Expense Claims	Unclassified	Not entitled to vote on the Plan
--	DIP Facility Claims	Unclassified	Not entitled to vote on the Plan
--	Priority Tax Claims	Unclassified	Not entitled to vote on the Plan
<b>Classified Claims</b>			
1	Other Priority Claims	Unimpaired	Not entitled to vote; deemed to accept the Plan
2	Other Secured Claims	Unimpaired	Not entitled to vote; deemed to accept the Plan
3	Prepetition Secured Claims	Impaired	Entitled to vote on the Plan
4	Convertible Notes Claims	Impaired	Entitled to vote on the Plan
5	General Unsecured Claims	Impaired	Entitled to vote on the Plan
6	Convenience Claims	Unimpaired	Not entitled to vote; deemed to accept the Plan
7	Preferred Stock	Impaired	Not entitled to vote; deemed to reject the Plan
8	Interests	Impaired	Not entitled to vote; deemed to reject the Plan

## ARTICLE IV

### TREATMENT OF CLAIMS AND INTERESTS

#### Section 4.01 Other Priority Claims

Classification: Class 1 consists of Other Priority Claims against the Debtors.

Treatment: Each holder of an Allowed Claim in Class 1, on or as soon as practicable after the Effective Date, shall receive from its respective Debtor, in full satisfaction, release, settlement, and discharge of such Claims, (i) payment in full in Cash, plus Post-Petition Interest, if applicable, (ii) other treatment consistent with sections 1129(a)(9)(C) and 1129(a)(9)(D) of the Bankruptcy Code or (iii) such other less favorable terms agreed to among the Debtors and Holders thereof, subject to the consent of the Requisite Supermajority Consenting Secured Lenders.

Voting: Claims in Class 1 are Unimpaired. Each Holder of an Allowed Other Priority Claim shall be conclusively deemed to have accepted the Plan (and have consented to the

releases in Article XII) pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, shall not be entitled to vote to accept or reject the Plan.

#### **Section 4.02 Other Secured Claims**

Classification: Class 2 consists of Allowed Other Secured Claims against the Debtors.

Treatment: Each Holder of an Allowed Claim in Class 2, on or as soon as practicable after the Effective Date, shall receive from its respective Debtor, in full satisfaction, release, settlement, and discharge of such Claim, at the option of the Debtors, in consultation with the Requisite Supermajority Consenting Secured Lenders, (i) payment in full in Cash, plus Post-Petition Interest to the extent required under section 506(b) of the Bankruptcy Code, at the contract rate through the Effective Date and thereafter at the Federal Judgment Rate between the Effective Date and the Distribution Date, (ii) be Reinstated or receive such other treatment sufficient to render the Holder of such Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code or (iii) the return of the applicable collateral in satisfaction of the Allowed amount of such Secured Claim.

Timely filed statutory Liens will be preserved until a final determination on the priority of such Liens. Upon the Court's determination of priority, any Liens determined to be Junior Statutory Liens will be automatically released and discharged pursuant to the Plan without the need for any further action by the Debtors or Reorganized Debtors. The Liens securing the Allowed Class 2 Other Secured Claims are preserved and will be released and discharged only after the Allowed Other Secured Claims secured by such Liens are paid, satisfied or discharged in full as required under the Plan or as otherwise permitted under applicable non-bankruptcy law. Senior Statutory Lienholders shall retain all rights and remedies under Chapter 56 of the Texas Property Code and other applicable nonbankruptcy law if Debtors fail to comply with the requirements under the Plan.

Voting: Claims in Class 2 are Unimpaired. Each Holder of an Allowed Other Secured Claim shall be conclusively deemed to have accepted the Plan (and to have consented to the releases in Article XII) pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, shall not be entitled to vote to accept or reject the Plan.

#### **Section 4.03 Prepetition Secured Claims**

Classification: Class 3 consists of Prepetition Secured Claims against the Debtors.

Treatment: In accordance with the inter-creditor settlement set forth in the RSA, each holder of an Allowed Claim in Class 3, on or as soon as practicable after the Effective Date, shall receive, in full satisfaction, release, settlement, and discharge of such Claims, its *pro rata* share of (i) the New Term Loan, (ii) 20% of the New Common Interests, which shall be subject to dilution by the Management Incentive Plan, if any, and/or the Noteholder Warrants (when exercised) and (iii) the option to participate in the Rights Offering.

Voting: Claims in Class 3 are Impaired. Each Holder of an Allowed Prepetition Secured Claim shall be entitled to vote to accept or reject the Plan.

#### **Section 4.04 Convertible Notes Claims**

Classification: Class 4 consists of Convertible Notes Claims against ENXP Allowed in the amount of \$375.0 million.

Treatment: In accordance with the inter-creditor settlement set forth in the RSA, each Holder of an Allowed Claim in Class 4, on or as soon as practicable after the Effective Date, shall receive, in full satisfaction, release, settlement, and discharge of such Claims, subject to dilution by the Management Incentive Plan, if any, its *pro rata* share of (i) warrants exercisable into 0.7% of the New Common Interests, which warrants shall be struck assuming a cashless exercise, at an equity value equal to \$195.0 million less the aggregate principal amount of debt outstanding as of the Effective Date, and will be exercisable at any time from the Effective Date until the seven (7) year anniversary thereof (the “Noteholder Warrants”).

Voting: Claims in Class 4 are Impaired. Each Holder of an Allowed Convertible Notes Claim shall be entitled to vote to accept or reject the Plan.

#### **Section 4.05 General Unsecured Claims**

Classification: Class 5 consists of all Allowed General Unsecured Claims against the Debtors.

Treatment: In accordance with the inter-creditor settlement set forth in the RSA, (a) each Holder of an Allowed Claim in Class 5 that is not a Deficiency Claim, on or as soon as practicable after the Effective Date, shall receive, in full satisfaction, release, settlement, and discharge of such Claim, its *pro rata* share of Class A Interests in the Creditor Trust and (b) each Holder of a Deficiency Claim, on or as soon as practicable after the Effective Date, shall receive, in full satisfaction, release, settlement, and discharge of such Claim, its *pro rata* share of Class B Interests in the Creditor Trust. On the Effective Date, the GUC Cash in the amount of \$2,250,000 and the Assigned Estate Claims will be transferred and assigned, free and clear of all Liens, claims, encumbrances and interests, to the Creditor Trust for the benefit of the Creditor Trust Beneficiaries.

The Creditor Trust will be established for the primary purpose of (a) pursuing the Assigned Estate Claims and distributing the net proceeds thereof to Reorganized ENXP LLC and to the Holders of Class A Interests and Class B Interests as set forth in the Creditor Trust Agreement and (b) distributing any GUC Cash that is not used for administration of the Creditor Trust, to the holders of Class A Interests, with no objective to continue or engage in the conduct of a trade or business. Net proceeds generated from the Assigned Estate Claims shall be payable by the Creditor Trust as follows: (i) the first \$1,000,000 will be paid to Reorganized ENXP LLC, (ii) then, *pro rata* to holders of Class A Interests, until such holders recover an aggregate of 15% of the Allowed amount of their Claims from the Creditor Trust Assets, and (iii) thereafter, on a *pro rata* basis, to all holders of Class A Interests and Class B Interests. For the avoidance of doubt, all GUC Cash to be distributed to Holders of General Unsecured Claims pursuant to the Creditor Trust Agreement shall only be distributed to the Holders of Class A Interests.

General Unsecured Claims do not include Intercompany Claims. On the Effective Date, or as soon as practicable thereafter, all Intercompany Claims between and among the Debtors shall be Reinstated or compromised by the Reorganized Debtors, as applicable, consistent with the Reorganized Debtors' business plan, and subject to the consent of the Requisite Majority Consenting Secured Lenders.

Voting: Claims in Class 5 are Impaired. Each Holder of an Allowed General Unsecured Claim shall be entitled to vote to accept or reject the Plan.

#### **Section 4.06 Convenience Claims**

Classification: Class 6 consists of (a) Allowed Convenience Claims against the Debtors in the amount of \$1,000 or less or (b) an Allowed General Unsecured Claims in excess of \$1,000 that have agreed by an irrevocable written election to reduce the amount of such Allowed General Unsecured Claims to \$1,000.

Treatment: Each Holder of an Allowed Claim in Class 6, on or as soon as practicable after the Effective Date, shall receive from its respective Debtor, in full satisfaction, release, settlement, and discharge of such Claim, payment in full in Cash in the amount of its Allowed Convenience Claim.

Voting: Claims in Class 6 are Unimpaired. Each Holder of an Allowed Convenience Claim shall be conclusively deemed to have accepted the Plan (and to have consented to the releases in Article XII) pursuant to section 1126(f) of the Bankruptcy Code, and, therefore, shall not be entitled to vote to accept or reject the Plan.

#### **Section 4.07 Preferred Stock**

Classification: Class 7 consists of all Preferred Stock of ENXP (including warrants to purchase such Preferred Stock).

Treatment: On the Effective Date, all existing Preferred Stock (and all warrants to purchase such Preferred Stock) shall be extinguished and owners thereof shall receive no distribution on account of such Preferred Stock.

Voting: Interests in Class 7 are Impaired. Each holder of Allowed Preferred Stock shall be deemed to reject the Plan under section 1126(g) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject the Plan.

#### **Section 4.08 Interests**

Classification: Class 8 consists of all Allowed Interests in ENXP Common Stock.

Treatment: On the Effective Date, all existing shares of stock, options, warrants, and equity interests in ENXP shall be extinguished and owners thereof shall receive no distribution on account of such stock, options, warrants, or equity interests.

For the avoidance of doubt, all Intercompany Interests (other than the ENXP Common Stock) shall be retained or Reinstated by the Reorganized Debtors as of the Effective Date and shall not be extinguished for purposes of maintaining the Debtors' corporate structure only.

Voting: Interests in Class 8 are Impaired. Each holder of an Allowed Interest shall be deemed to reject the Plan under section 1126(g) of the Bankruptcy Code and therefore shall not be entitled to vote to accept or reject the Plan.

## **ARTICLE V**

### **MEANS FOR IMPLEMENTATION OF THE PLAN AND POST EFFECTIVE DATE GOVERNANCE**

#### **Section 5.01 Date of Plan Distributions on Account of Allowed Claims**

Except as otherwise specifically provided herein, any distributions and delivery to be made under the Plan shall be made on the 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.

#### **Section 5.02 Sources of Cash for Plan Distributions**

Except as otherwise specifically provided herein or in the Confirmation Order, all Cash required for the payments to be made hereunder shall be obtained from the Reorganized Debtors and the Exit Facility.

#### **Section 5.03 Operations between the Confirmation Date and the Effective Date**

During the period from the Confirmation Date through and until the Effective Date, the Debtors may continue to operate their businesses as debtors in possession, subject to all applicable orders of the Bankruptcy Court, the Bankruptcy Code, and any limitations set forth herein or in the Confirmation Order.

#### **Section 5.04 Issuance of New Common Interests**

On or as soon as practicable after the Effective Date, Reorganized ENXP LLC is authorized to issue or cause to be issued the New Common Interests, including options and/or other equity awards, if any, reserved under the Management Incentive Plan in accordance with the terms of this Plan and the Organizational Documents, without the need for any further corporate or member action. All of the New Common Interests issuable under the Plan, including options and/or other equity awards, if any, reserved under the Management Incentive Plan, when so issued, shall be duly authorized, validly issued, fully paid, and non-assessable, and deemed not to have been issued in violation of any preemptive rights, rights of first refusal, or similar rights or any applicable law. For the avoidance of doubt, any claimant's acceptance of

the New Common Interests shall be deemed as its agreement to be bound to the terms and conditions of the New Shareholders Agreement.

Upon issuance, (i) the New Common Interests shall not be registered under the Securities Act, and shall not be listed for public trading on any securities exchange, and (ii) none of the Reorganized Debtors will be a reporting company under the Exchange Act. The distribution of New Common Interests pursuant to the Plan may be made by delivery of one or more certificates representing such New Common Interests as described herein, by means of book-entry registration on the books of the transfer agent for shares of New Common Interests or by means of book-entry exchange through the facilities of a transfer agent satisfactory to the Debtors and the Requisite Majority Consenting Secured Lenders in accordance with the customary practices of such agent, as and to the extent practicable.

### **Section 5.05 Issuance of Noteholder Warrants**

On or as soon as practicable after the Effective Date, Reorganized ENXP LLC is authorized to issue the Noteholder Warrants without the need for any further corporate or member action. All of the Noteholder Warrants issuable under the Plan, when so issued, shall be duly authorized, validly issued, fully paid, and non-assessable, and deemed not to have been issued in violation of any preemptive rights, rights of first refusal, or similar rights or any applicable law.

Upon such issuance, (i) the Noteholder Warrants shall not be registered under the Securities Act and shall not be listed for public trading on any securities exchange and (ii) none of the Reorganized Debtors will be a reporting company under the Exchange Act. The distribution of Noteholder Warrants pursuant to the Plan may be made by delivery of one or more certificates representing such Noteholder Warrants as described herein, by means of book-entry registration on the books of the transfer agent for Noteholder Warrants or by means of book-entry exchange through the facilities of a transfer agent satisfactory to the Debtors and the Requisite Majority Consenting Secured Lenders in accordance with the customary practices of such agent, as and to the extent practicable.

### **Section 5.06 Exemption from Registration**

Pursuant to section 1145 of the Bankruptcy Code, the issuance of any securities under this Plan, including the New Common Interests and the Noteholder Warrants, shall be exempt from, among other things, the registration and prospectus delivery requirements of Section 5 of the Securities Act, and any other applicable securities laws under section 1145 of the Bankruptcy Code, or such other exemption as may be available from any applicable registration requirements.

### **Section 5.07 Restructuring Transactions**

On or as soon as practicable after the Effective Date, the Reorganized Debtors are authorized, without further order of the Bankruptcy Court, to take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Restructuring Transactions under and in connection with this Plan and/or the Exit Facility, including, without limitation: the execution and delivery of all

appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution or liquidation containing terms that are consistent with the terms of this Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree, including, without limitation, (a) the New Term Loan and the Exit Facility; (b) appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of this Plan and having other terms for which the applicable parties agree; (c) rejection or assumption, as applicable, of executory contracts and unexpired leases; (d) the filing and/or execution of appropriate limited liability company agreements, certificates or articles of incorporation or organization, reincorporation, merger, consolidation, conversion or dissolution pursuant to applicable state law; (e) the consummation of the transactions contemplated by the Exit Facility Documentation and the execution thereof; (f) the issuance of New Common Interests and the Noteholder Warrants; and (g) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

In addition, the board of managers of Reorganized ENXP LLC may consider implementing a holding company structure, and, if approved by the board, Reorganized ENXP LLC shall hereby be authorized (without further order of the Bankruptcy Court and without need of a member vote) to take all actions as may be necessary or appropriate to implement a holding company structure – such that all of the equity of Reorganized ENXP LLC would be held by a new holding company and the holders of New Common Interests and Noteholder Warrants would receive in exchange therefore like interests in the new holding company – to be effective after the Effective Date as determined by the board of directors. If approved by the board of managers of Reorganized ENXP LLC, the imposition of the holding company shall be implemented substantially as follows: A new Delaware limited liability company shall be formed by Reorganized ENXP LLC (as incorporator) and shall elect to be treated as a corporation for U.S. federal income tax purposes. Such company shall then form a new subsidiary limited liability company to be wholly-owned by it (which would not elect to be treated as a corporation for U.S. federal income tax purposes). Reorganized ENXP LLC would then merge with and into such new subsidiary limited liability company (with such new subsidiary surviving), pursuant to which the holders of New Common Interests and Noteholder Warrants would receive in exchange like interests in the Delaware parent limited liability company. Immediately thereafter, the subsidiary would change its name to Energy & Exploration Partners, LLC. The board of managers of Reorganized ENXP LLC may establish the Effective Date as the record date for such merger, and may treat the record holders of New Common Interests and Noteholder Warrants as the holders of record for purposes of such merger. In such a case, the Debtors, the Reorganized Debtors, the Creditor Trustee and the parties to such merger, as applicable, shall have no obligation to recognize the transfer of any New Common Interests or Noteholder Warrants occurring thereafter, and will be entitled for all purposes to recognize and deal only with the recipient of any New Common Interests or Noteholder Warrants as reflected on the transfer ledgers, transfer books, registers or other records maintained by Reorganized ENXP LLC or its designated transfer agents.

### **Section 5.08 Exit Facility: Rights Offering**

The Debtors shall conduct a Rights Offering and offer Rights to Prepetition Secured Lenders to fund the Exit Facility. The Rights Offering shall be made available to each holder of Prepetition Secured Claims. The Backstop Parties shall backstop the Rights Offering, subject to certain terms and conditions to be included in the Backstop Commitment Letter (to be included in the Plan Supplement).

Each holder of an Allowed Prepetition Secured Claim shall be offered the Rights, pursuant to the Rights Offering Procedures, in conjunction with voting on the Plan. The Rights shall entitle the holder thereof to purchase contemporaneously with the Effective Date, a *pro rata* share of (a) the Exit Facility, which will be secured by first priority liens on substantially all of the Debtors' assets and otherwise be on terms set forth in the Exit Facility Documentation and (b) 80% of the New Common Interests, subject to dilution from the Management Incentive Plan and the Noteholder Warrants (when exercised). The Rights Offering Proceeds shall be utilized by the Debtors and Reorganized Debtors to repay the DIP Facility Claims and fund working capital needs post-Effective Date. Notwithstanding anything contained herein or the Rights Offering Procedures to the contrary, the Debtors may, with the consent of the Requisite Backstop Parties, modify the Rights Offering Procedures or adopt additional procedures. The closing of the Rights Offering is conditioned on consummation of the Plan. Amounts held by the Subscription Agent with respect to the Rights Offering prior to the Effective Date shall not be entitled to any interest on account of such amounts.

#### (1) Election Form

In accordance with the terms of the Rights Offering Procedures, the Debtors shall deliver an Election Form to each Prepetition Secured Lender that is a holder of a Prepetition Secured Claim as of March 18, 2016 to determine which such holders desire to participate in the Rights Offering. Each Participant in the Rights Offering shall be provided the opportunity to participate in the Rights Offering on a *pro rata* basis in an amount commensurate with such Participant's aggregate principal outstanding Prepetition Secured Claims held as of the Confirmation Date. Any Prepetition Secured Lender that is a holder of a Prepetition Secured Claim that does not return a validly completed Election Form by the Subscription Deadline shall not be entitled to participate in the Rights Offering; *provided, however*, that the Backstop Parties shall not be required to return an Election Form and, *provided, further*, that the obligations of the Backstop Parties to backstop the Rights Offering shall be governed by the Backstop Commitment Letter.

#### (2) Issuance of Rights

The exercise price per Right ("Per Interest Price") shall be \$100,000, and shall entitle such Participant to purchase \$100,000 of principal amount of the Exit Facility and 0.088888889% of the New Common Interests being offered in the Rights Offering; *provided, however*, that such Participant shall only be required to fund on the Effective Date the portion of the Per Interest Price that represents the aggregate amount of the Exit Facility to be drawn at the Effective Date (the "Effective Date Funding Amount"), currently estimated to be \$65,000,000, and the remainder of such Per Interest Price shall be committed under the Exit Facility in accordance with the terms thereof, and any funds delivered by a Participant in connection with

the Rights Offering in excess of the Effective Date Funding Amount will be returned to such Participant at the closing of the Rights Offering. Fractional shares of New Common Interests shall not be issued in connection with the Rights Offering and any such fractional shares will be rounded up or down to the nearest whole number, as determined by the Debtors.

(3) Transfer Restrictions and Revocation

The Rights shall not be assignable or detachable, and shall not be transferable other than in connection with the transfer of the corresponding Claims. After a Right has been exercised, the underlying Claim corresponding to the Right will cease to be transferable. In addition, once a Participant has properly exercised its Rights, such exercise cannot be revoked, rescinded or annulled for any reason unless the Effective Date has not occurred on or before forty-five (45) days following the Subscription Deadline, at which time any Participant may revoke the exercise of all, but not less than all, of the Rights it has exercised by delivery of a revocation notice pursuant to the Rights Offering Procedures.

(4) Issuance of New Common Interests and Rights to Participate in Rights Offering

On the Effective Date, Reorganized ENXP LLC shall provide the Rights Offering Interests in exchange for payment therefor, to those Participants that, in accordance with the Plan and the Rights Offering Procedures, validly exercised their respective Rights to participate in the Rights Offering.

(5) Refund of Payments

If the Rights Offering is terminated, including by termination of the Backstop Commitment Letter, or the Plan is not confirmed by an order of the Bankruptcy Court by April 26, 2016 (or such later date for Confirmation as agreed by the Requisite Supermajority Consenting Secured Lenders), any payment made by a Participant pursuant to the Rights Offering shall be refunded as soon as practicable thereafter, without interest or deduction. If a Participant participating in the Rights Offering has made an overpayment, including in connection with the Effective Date Funding Amount, the amount of such overpayment shall be refunded as soon as practicable following the Effective Date, without interest or deduction.

(6) Rights Offering Dates

The Rights Offering shall be commenced and completed in accordance with the dates set forth in the Rights Offering Procedures; *provided, however*, that the Debtors may modify such dates and deadlines consistent with the Rights Offering Procedures and subject to the consent of the Requisite Backstop Parties. For the avoidance of doubt, nothing herein constitutes an offer of Rights Offering Interests.

(7) Exit Facility

Confirmation of the Plan shall be deemed to constitute approval of the Rights Offering and Exit Facility (including all transactions contemplated thereby, such as any supplementation or additional syndication of the Exit Facility, and all actions to be taken, undertakings to be made and obligations to be incurred by the Reorganized Debtors in connection therewith, including the

payment of all fees, indemnities and expenses provided for therein) and the granting of security interests thereunder, and authorization for the Reorganized Debtors to enter into and perform under the Exit Facility Documentation and such other documents as may be required or appropriate.

The Exit Facility Documentation shall constitute legal, valid, binding, and authorized obligations of the Reorganized Debtors, enforceable in accordance with their terms. The financial accommodations to be extended pursuant to the Exit Facility Documentation are being extended, and shall be deemed to have been extended, in good faith, for legitimate business purposes, are reasonable, shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever, and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any other applicable non-bankruptcy law. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Facility Documentation (a) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documentation, (b) shall be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Exit Facility Documentation and (c) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the Persons or Entities granting such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect, or to evidence the perfection of, such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties. To the extent that any holder of a Secured Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such holder, has filed or recorded publicly any Liens and/or security interests to secure such holder's Secured Claim, then as soon as practicable on or after the Effective Date such holder (or the agent for such holder) shall take any and all steps requested by the Reorganized Debtors that are necessary to cancel and/or extinguish such Liens and/or security interests.

#### **Section 5.09 New Term Loan**

On or as soon as practicable after the Effective Date, Reorganized Debtors are authorized, without the need for any further corporate or limited liability company action, to enter into the New Term Loan and any ancillary documents necessary or appropriate to satisfy the conditions to effectiveness of the Plan. The New Term Loan will be secured by Liens on substantially all of the Debtors' assets junior to the Liens securing the Exit Facility.

The New Term Loan Documentation shall constitute legal, valid, binding, and authorized obligations of the Reorganized Debtors, enforceable in accordance with their terms.

The financial accommodations to be extended pursuant to the New Term Loan Documentation shall be deemed to have been extended, in good faith, for legitimate business purposes, shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever, and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any other applicable non-bankruptcy law. On the Effective Date, all of the Liens and security interests to be granted in accordance with the New Term Loan Documentation (a) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the New Term Loan Documentation, (b) shall be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the New Term Loan Documentation and (c) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the Persons or Entities granting such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect, or to evidence the perfection of, such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties. To the extent that any holder of a Secured Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such holder, has filed or recorded publicly any Liens and/or security interests to secure such holder's Secured Claim, then as soon as practicable on or after the Effective Date such holder (or the agent for such holder) shall take any and all steps requested by the Debtors or the Reorganized Debtors that are necessary to cancel and/or extinguish such Liens and/or security interests.

#### **Section 5.10 Cancellation of Certain Indebtedness, Agreements, and Existing Securities**

On or as soon as practicable after the Effective Date, except for the purposes of evidencing a right to a distribution under this Plan, and except as otherwise specifically provided for in the Plan, (i) the RSA, the Prepetition Secured Facility, the Convertible Notes Indenture, the Chesapeake Note, the Interim DIP Facility, the DIP Facility, and any other certificate, note, bond, indenture, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of any of the Debtors giving rise to any Claim (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligations of any Debtors that are specifically Reinstated pursuant to the Plan), (ii) all Preferred Stock, warrants for Preferred Stock and ENXP Common Stock and any certificate or other instrument or document directly or indirectly evidencing, convertible into, or creating any warrants, Preferred Stock or other Interest in ENXP (including the ENXP Common Stock) as of immediately prior to the Effective Date, (iii) all registration rights, preemptive rights, rights of first refusal, rights of first offer, co-sale rights, and other investor rights governing or relating to any of the indebtedness, obligations, Preferred Stock, ENXP Common Stock, or other items

described in any of clauses (i) or (ii) above, and (iv) all obligations and liabilities arising under, related to, or in connection with, any of the items described in any of clauses (i)-(iii) above, in any such case, shall be deemed automatically extinguished, cancelled and of no further force and effect, without any further act, or action under any applicable agreement, law, regulation, order or rule, and the Debtors and the Reorganized Debtors shall not have any continuing obligations thereunder or with respect thereto; and the obligations of any of the Debtors and the Reorganized Debtors pursuant, relating, or pertaining to any agreements, indentures, purchase agreements, certificates of incorporation, certificates of formation, by-laws, limited liability company agreements or similar documents governing or evidencing any of the items described in clauses (i)-(iv) above shall be released and discharged; and the holder of or parties to, or beneficiaries of, any of the items described in clauses (i)-(iv) above, will have no rights arising from or relating to, and will not be entitled to the benefits of, any such items or the cancellation thereof, except the rights expressly provided for pursuant to this Plan. For the avoidance of doubt, nothing in this Section 5.10 shall affect the discharge of or result in any obligation, liability, or expense of the Debtors or the Reorganized Debtors, or affect the discharge of Claims, Preferred Stock or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any additional obligation, expense, or liability of the Debtors or the Reorganized Debtors; *provided, further*, that nothing in this Section 5.10 shall effect a cancellation of any New Common Interests or Intercompany Interests (other than the ENXP Common Stock).

In addition to the foregoing, the Convertible Notes Indenture shall continue in effect after the Effective Date to (i) allow the Disbursing Agent to make distributions to the Holders of Convertible Notes Claims as expressly provided for in the Plan; (ii) allow the Indenture Trustee to make distributions to the Holders of Convertible Notes Claims as expressly provided for in the Plan; (iii) permit the Indenture Trustee to assert its rights under Section 7.06 of the Convertible Notes Indenture; and (v) permit the Indenture Trustee to appear before the Bankruptcy Court after the Effective Date for matters arising under and related to the Confirmation Order.\

Subject only to the Debtors' obligations under section 503 of the Bankruptcy Code, the Debtors or Reorganized Debtors, as applicable, shall pay in Cash all reasonable and documented Indenture Trustee Fees incurred through the Effective Date in an amount of up to \$175,000 without application or approval by the Bankruptcy Court and without any reduction to recoveries of the Holders of Convertible Notes Claims. For the avoidance of doubt, the Indenture Trustee Fees shall not be subject to challenge by the Ad Hoc Group of Lenders, the DIP Lenders, or the Creditors Committee.

The Indenture Trustee shall provide reasonably detailed invoices to the Debtors no later than five (5) days prior to the Effective Date (subject to redaction to preserve attorney-client privilege). If the Debtors reasonably dispute any requested Indenture Trustee Fees, the Debtors or Reorganized Debtors, as applicable, shall (i) pay the undisputed portion of the Indenture Trustee Fees, and (ii) notify the Indenture Trustee of such dispute. Upon such notification, if the dispute is not otherwise resolved, the Indenture Trustee may file a motion with the Bankruptcy Court to enforce payment by the Reorganized Debtors of Indenture Trustee Fees up to \$175,000.

For the avoidance of doubt, nothing herein shall be deemed to impair, waive, discharge or negatively impact the Indenture Trustee's rights to exercise its Indenture Trustee Charging Lien against distributions to holders of the Convertible Notes, and no distribution shall be made to

holders of the Convertible Notes until any disputed portion of the Indenture Trustee Fees has been fully and finally resolved.

Upon the payment or other satisfaction of an Allowed Other Secured Claim, the Holder of such Allowed Other Secured Claim shall deliver to the Debtors or Reorganized Debtors (as applicable) any collateral or other property of the Debtors held by such Holder, and any termination statements, instruments of satisfactions, or releases of all security interests with respect to its Allowed Other Secured Claim that may be required in order to terminate any related financing statements, mortgages, mechanic's liens or *lis pendens*.

#### **Section 5.11 Intercompany Claims**

No separate distributions shall be made hereunder on account of prepetition Intercompany Claims, and such Claims may be Reinstated, extinguished or compromised (by distribution, contribution, or otherwise) in the discretion of the Reorganized Debtors, consistent with their business plan, on or after the Effective Date.

#### **Section 5.12 Intercompany Interests**

Subject to the transactions contemplated in the Plan, the Intercompany Interests (other than ENXP Common Stock) shall be retained or Reinstated as of the Effective Date and shall continue in place, solely for the purpose of maintaining the existing corporate structure of the Debtors and the Reorganized Debtors.

#### **Section 5.13 Dissolution of ENXP; Continued Corporate Existence and Vesting of Assets**

ENXP shall have no assets or operations, and shall liquidate as soon as practicable following the Effective Date without the necessity of any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith; *provided, however*, that the Debtors will file with the Office of the Secretary of State for its state of incorporation a certificate of dissolution which may be executed by an officer of the Debtors without the need for approval of the Debtors' board of directors or shareholders. From and after the Effective Date, the Debtors and Reorganized Debtors shall not be required to file any document, or take any other action, to withdraw ENXP's business operations from any states in which it previously conducted business. All property of ENXP's Estate to be retained under the Plan shall be transferred on the Effective Date, without the necessity of any other or further action, to Reorganized ENXP LLC or such other Reorganized Debtor as determined by the Reorganized Debtors.

Except as otherwise provided herein, each Debtor (other than ENXP following its liquidation) will, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, with all of the powers of such legal entity, in accordance with the applicable laws of the respective jurisdictions in which it is incorporated or organized and pursuant to such Reorganized Debtor's Organizational Documents and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable law. On or after the Effective Date, each Reorganized Debtor, in its sole and exclusive discretion, may take such action as permitted by applicable law and such Reorganized Debtor's Organizational

Documents, as such Reorganized Debtor may determine is reasonable and appropriate, including, but not limited to, causing: (i) a Reorganized Debtor to be merged into another Reorganized Debtor, or its subsidiary and/or Affiliate; (ii) a Reorganized Debtor to be dissolved; (iii) the legal name of a Reorganized Debtor to be changed; (iv) a Reorganized Debtor to reorganize under the laws of another jurisdiction; or (v) the closure of a Reorganized Debtor's case on the Effective Date or any time thereafter.

Except as otherwise provided herein, on the Effective Date, all property of each Debtor's Estate, including any property held or acquired by each Debtor or Reorganized Debtor under the Plan or otherwise, will vest in such Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, Interests, and other equity interests, except for the Liens and Claims established under the Plan; *provided that* nothing in this Article V shall limit the ability under the Bankruptcy Code of any party-in-interest to object to any Claim prior to the Claim Objection Deadline unless otherwise ordered by the Bankruptcy Court; *provided, further, however,* that the Debtors and the Reorganized Debtors waive and release any Causes of Action against any of the Released Persons and their Related Persons as provided for in Article XII hereof.

On and after the Effective Date, each Reorganized Debtor may operate its business and may use, acquire, and dispose of property and maintain, prosecute, abandon, compromise, settle or otherwise dispose any Claims or Causes of Action (other than the Assigned Estate Claims) without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, subject only to those restrictions expressly imposed by the Plan or the Confirmation Order as well as the documents and instruments executed and delivered in connection therewith, including the documents, exhibits, instruments, and other materials comprising the Plan Supplement. Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur from and after the Effective Date for disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to, or the approval of, the Bankruptcy Court.

#### **Section 5.14 Retention of Causes of Action**

As of the Effective Date, all Causes of Action, except the Assigned Estate Claims, shall vest exclusively in the Reorganized Debtors; *provided, however,* that the Debtors and Reorganized Debtors waive and release any Causes of Action against any of the Released Persons as provided for in Article XII hereof.

#### **Section 5.15 Preservation of Causes of Action**

In accordance with section 1123(b) of the Bankruptcy Code, and except as expressly provided in Article XII herein, the Reorganized Debtors shall retain all Causes of Action (other than the Assigned Estate Claims, which shall vest in the Creditor Trust), if any, of the Debtors, including, but not limited to, those provided in the Plan Supplement. Nothing contained in this Plan or the Confirmation Order shall be deemed a waiver or relinquishment of any claim, Cause of Action, right of setoff, or other legal or equitable defense of any Debtor that is not specifically waived or relinquished by this Plan. The Reorganized Debtors, and, with respect to the Assigned Estate Claims, the Creditor Trustee shall have, retain, reserve, and be entitled to assert, all such

claims, Causes of Action, rights of setoff, and other legal or equitable defenses that any Debtor had immediately before the Effective Date as fully as if these Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any claim that are not specifically waived or relinquished by this Plan may be asserted after the Effective Date to the same extent as if these Chapter 11 Cases had not been commenced. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors, the Reorganized Debtors, or Creditor Trustee, as applicable, will not pursue any and all available Causes of Action against such Person. The Debtors, the Reorganized Debtors, or the Creditor Trustee, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, subject to the terms of the Plan. From and after the Effective Date, the Reorganized Debtors and, with respect to the Assigned Estate Actions, the Creditor Trustee, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any Cause of Action and to decline to do any of the foregoing without further notice to or action, order, or approval of the Bankruptcy Court. The Reorganized Debtors are deemed representatives of the Estates for the purpose of prosecuting any Claim or Cause of Action and any objections to Claims pursuant to 11 U.S.C. § 1123(b)(3)(B).

#### **Section 5.16 Creditor Trust**

The Creditor Trust shall be established pursuant to this Plan and become effective for the benefit of the Creditor Trust Beneficiaries on the Effective Date, for the primary purpose of (i) pursuing the Assigned Estate Claims and distributing any net proceeds therefrom, (ii) claims administration with respect to General Unsecured Claims and (iii) distributing the GUC Cash pursuant to this Plan and the Creditor Trust Agreement, with no objective to continue or engage in the conduct of a trade or business. The Plan and the Creditor Trust Agreement shall govern the management and administration of the Creditor Trust and the respective rights, powers, and obligations of the Creditor Trustee and the Creditor Trust Beneficiaries, including the Creditor Trustee's power to take the reasonable actions necessary or appropriate to fulfill the purpose of the Plan, including (a) filing, prosecuting, settling or otherwise resolving any objection to General Unsecured Claims; (b) retaining and paying professionals as necessary to fulfill its duties under the Plan; (c) evaluating, filing, litigating, settling, or otherwise pursuing any Assigned Estate Claims; (d) abandoning any property of the Creditor Trust that cannot be sold or distributed economically; (e) making interim and final distributions of the Creditor Trust Assets; (f) winding up the affairs of the Creditor Trust and dissolving it under applicable law; and (g) such other responsibilities as may be vested in the Creditor Trustee pursuant to the Plan, the Creditor Trust Agreement or a Bankruptcy Court order as may be necessary and proper to carry out the provisions of the Creditor Trust Agreement, but only to the extent consistent with this Plan. The Creditor Trust Agreement will be binding on all Creditor Trust Beneficiaries who shall be deemed to have executed the Creditor Trust Agreement as of the Effective Date.

On the Effective Date, the Creditor Trust Assets, consisting of the \$2,250,000 GUC Cash and the Assigned Estate Claims will be absolutely transferred and assigned to the Creditor Trust free and clear of all Liens, encumbrances, or interests of any kind. The Creditor Trustee, in the exercise of its reasonable discretion and in accordance with the Creditor Trust Agreement, shall not be obligated to pursue any Assigned Estate Claims.

In accordance with section 1123(b) of the Bankruptcy Code, the Creditor Trust shall retain and may enforce all of the Debtors' rights to commence and pursue, as appropriate, any and all of the Assigned Estate Claims, and the Creditor Trust's rights to commence, prosecute, or settle such Assigned Estate Claims shall be preserved notwithstanding the occurrence of the Effective Date. The Creditor Trust may pursue such Assigned Estate Claims, as appropriate, in accordance with the Creditor Trust Agreement. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Assigned Estate Claim as any indication that the Creditor Trust will not pursue any and all Assigned Estate Claims. The Creditor Trust expressly reserves all rights to prosecute any and all Assigned Estate Claims against any Entity.

A three (3) member creditor oversight board will be formed with two (2) members selected by the Creditors Committee and one (1) member selected by the Ad Hoc Group of Lenders. All other Creditor Trust governance issues shall be determined by the Creditors Committee in consultation with the Ad Hoc Group of Lenders and the Debtors, and be included in the Creditor Trust Agreement, to be included in the Plan Supplement.

The Reorganized Debtors shall provide reasonable and timely cooperation to effectuate the provisions of the Plan as the Creditor Trustee might otherwise reasonably request. To the extent necessary for the Creditor Trustee to act in accordance with the terms of the Plan and the Creditor Trust Agreement, all Privileges shall be extended to the Creditor Trustee, or shall remain with the Reorganized Debtors, as applicable, without waiver or release. The Creditor Trustee shall be the beneficiary of all Privileges and be entitled to assert all Privileges, but only to the extent such Privileges relate to the Assigned Estate Claims. No Privilege shall be waived by disclosure to the Creditor Trustee of the Debtors' documents, information or communications subject to attorney-client privileges, work product protections or immunities or protections from disclosure held by the Debtor. For the avoidance of doubt, the Creditor Trustee shall not have any rights or ability to waive any privilege of the Reorganized Debtors, either intentionally or inadvertently.

As of the Effective Date and thereafter, and to the fullest extent permitted by applicable law, the Creditor Trustee and his/her professionals, acting in such capacity, shall not have nor incur any liability for any claim, cause of action, or other assertion of liability solely for any act taken or omitted in connection with, related to, or arising out of the performance of any act, duty, responsibility or omission arising under the Plan; *provided, however*, that the foregoing shall not affect the liability of the Creditor Trustee or his/her professionals that otherwise would result from any act or omission to the extent that such act or omission is determined by a Final Order to have constituted actual fraud, willful misconduct, or gross negligence.

As further described in the Creditor Trust Agreement, the Creditor Trust shall establish two classes of interests for distribution of the proceeds of the Creditor Trust Assets, Class A Interests and Class B Interests. Class A Interests will be distributed to holders of General Unsecured Claims that are not Deficiency Claims. Holders of Deficiency Claims will receive Class B Interests of the Creditor Trust. Net proceeds from the Assigned Estate Claims shall be payable by the Creditor Trust as follows: (i) the first \$1,000,000 will be paid to Reorganized ENXP LLC, (ii) then, *pro rata* to holders of Class A Interests, until such holders recover an aggregate of 15% of the Allowed amount of their claims from the Creditor Trust Assets, and (iii)

thereafter, on a *pro rata* basis, to all holders of Class A Interests and Class B Interests. For the avoidance of doubt, any GUC Cash to be distributed to holders of General Unsecured Claims pursuant to the Creditor Trust Agreement shall only be distributed to the Holders of Class A Interests.

The Creditor Trust shall be structured to qualify as a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d) and in compliance with Revenue Procedure 94-45, 1994-2 C.B. 684, and, thus, as a “grantor trust” within the meaning of Sections 671 through 679 of the Tax Code to the holders of General Unsecured Claims, consistent with the terms of the Plan; *provided, however*, that the Creditor Trustee shall elect under Treasury Regulations Section 1.468B-9(c)(2)(ii) to treat the Creditor Trust Disputed Claims Reserve as a “disputed ownership fund.” Accordingly, other than the portion of the Creditor Trust Assets comprising the Creditor Trust Disputed Claims Reserve, holders of Allowed General Unsecured Claims shall be treated for U.S. federal income tax purposes, (i) as direct recipients of an undivided interest in the assets transferred to the Creditor Trust and as having immediately contributed such assets to the Creditor Trust, and (ii) thereafter, as the grantors and deemed owners of the Creditor Trust and thus, the direct owners of an undivided interest in the assets held by the Creditor Trust. All parties (including the Creditor Trustee and holders of General Unsecured Claims) shall report consistent with the valuation of the assets transferred to the Creditor Trust as established by ENXP LLC, Reorganized, ENXP LLC, or its designee. The Creditor Trustee shall be responsible for filing information on behalf of the Creditor Trust as grantor trust pursuant to Treasury Regulation Section 1.671-4(a) or as a disputed ownership fund (as applicable).

The Creditor Trust Assets shall not be transferable or assignable except by will, intestate succession or operation of law; *provided, however*, that a Holder of such interests may abandon such interests back to the Creditor Trust at its sole discretion.

#### **Section 5.17 Claims Incurred After the Effective Date**

Claims incurred by the Debtors after the Effective Date may be paid by the Reorganized Debtors in the ordinary course of business and without application for or Bankruptcy Court approval, subject to any agreements with such Holders of a Claim and applicable law.

#### **Section 5.18 Corporate Action**

Each of the matters provided for by the Plan involving the corporate or limited liability company structure of the Debtors or the Reorganized Debtors, and any action under the Plan to be taken by or required of the Debtors or of the Reorganized Debtors, whether taken prior to or as of the Effective Date, including, without limitation, (a) the adoption and filing of the Organizational Documents for each of the Reorganized Debtors; (b) the authorization, issuance, and distribution of New Common Interests, Noteholder Warrants and any other securities and instruments; (c) the adoption, assumption, assignment, or rejection, as applicable, of Executory Contracts; (d) implementation of the Management Incentive Plan; (e) the selection of officers or directors/managers, and (f) the entry into the New Term Loan, Exit Facility, and the execution and delivery of Definitive Documentation with respect thereto, and implementation of the Restructuring Transactions shall each be authorized and approved in all respects, without any

requirement of further action by any of the Debtors' or Reorganized Debtors' boards of directors or managers, as applicable, or security holders.

The Debtors, the Reorganized Debtors, and the Disbursing Agent, as applicable, shall be authorized to execute, deliver, file, and record such documents (including the Plan Documents), contracts, instruments, releases and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan, without the necessity of any further Bankruptcy Court, corporate, board or security holder approval or action. In addition, the selection of the Persons who will serve as the initial directors, officers and managers of the Reorganized Debtors as of the Effective Date shall be deemed to have occurred and be effective on and after the Effective Date without any requirement of further action by the Debtors' board of directors, board of managers, or stockholders of the applicable Debtor or Reorganized Debtor.

The authorizations and approvals contemplated by this Section 5.18 shall be effective notwithstanding any requirements under non-bankruptcy law.

### **Section 5.19 Organizational Documents**

On the Effective Date, the Organizational Documents of the Debtors shall be deemed amended and restated in substantially the form set forth in the Plan Supplement, and in form and substance acceptable to the Requisite Supermajority Consenting Secured Lenders, in consultation with the Debtors, without any further action by the directors or stockholders of the Debtors or the Reorganized Debtors. The amended and restated Organizational Documents will, among other things, contain appropriate provisions prohibiting the issuance of nonvoting equity securities to the extent required by § 1123(a)(6) of the Bankruptcy Code. On the Effective Date, or as soon as practicable thereafter, the Debtors or the Reorganized Debtors will, if required by applicable state law, file with the Secretary of State of the appropriate jurisdiction the amended and restated Organizational Documents. After the Effective Date, the Reorganized Debtors may amend and/or restate their respective Organizational Documents and other constituent documents as permitted by the laws of their respective states of formation and their respective Organizational Documents.

### **Section 5.20 Board of Managers of Reorganized Debtors**

On the Effective Date, the Reorganized Debtors will be managed by and under the direction of a new board of managers or other governing body, as may be constituted from time to time pursuant to the Organizational Documents of the Reorganized Debtors and applicable non-bankruptcy law.

Subject to any consent rights granted to the members of the Reorganized Debtors, the board of managers of the Reorganized Debtors shall have full power and authority to manage the business and affairs of the Reorganized Debtors.

### **Section 5.21 Management Incentive Plan**

After the Effective Date, a management incentive plan shall be adopted by the Reorganized Debtors (the “Management Incentive Plan”). The Management Incentive Plan shall provide some combination of Cash, options, and/or other equity-based compensation to the management of Reorganized ENXP LLC as set forth in the Plan Supplement, which amount shall not exceed 10% of the New Common Interests of Reorganized ENXP LLC, and shall dilute all of the New Common Interests (including New Common Interests distributed as part of the Rights Offering and the New Common Interests to be issued upon the exercise of the Noteholder Warrants, if any) contemplated to be issued by the Plan. The maximum total aggregate amount of the New Common Interests of Reorganized ENXP LLC that may be distributed to management under the Management Incentive Plan may not be increased absent the consent of the Requisite Supermajority Consenting Secured Lenders.

### **Section 5.22 Employee Benefit Plans**

As, and subject to the occurrence, of the Effective Date, all employee compensation and benefit plans, policies and programs of the Debtors applicable generally to their employees, including agreements and programs subject to section 1114 of the Bankruptcy Code, as in effect on the Effective Date, including, without limitation, all savings plans, retirement plans, health care plans, disability plans, severance benefit plans, incentive plans, and life, accidental death, and dismemberment insurance plans and workers’ compensation programs, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed under the Plan by the Reorganized Debtors, and the Debtors’ obligations under such agreements and programs shall survive the Effective Date of the Plan, without prejudice to the Reorganized Debtors’ rights under applicable non-bankruptcy law to modify, amend, or terminate the foregoing arrangements, except for (i) such executory contracts or plans specifically rejected pursuant to the Plan (to the extent such rejection does not violate section 1114 of the Bankruptcy Code) and (ii) such executory contracts or plans that have previously been terminated or rejected, pursuant to a Final Order, or specifically waived by the beneficiaries of such plans, contracts or programs.

### **Section 5.23 Exclusivity Period**

The Debtors shall retain the exclusive right to amend or modify this Plan, and to solicit acceptances of any amendments to or modifications of this Plan, through and until the earlier of (i) the Effective Date or (ii) the expiration of the Debtors’ exclusive period to solicit acceptances of this Plan under Bankruptcy Code § 1121(d).

### **Section 5.24 Effectuating Documents**

The chairman of the board of directors, board of managers, president, chief financial officer, manager, or any other appropriate officer of the Debtors or, after the Effective Date, the Reorganized Debtors shall be 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 this Plan. The secretary of the Debtors, or, after the Effective Date, of the Reorganized Debtors shall be authorized to certify or attest to any of the foregoing actions.

### **Section 5.25 Exemption from Certain Transfer Taxes**

Pursuant to Bankruptcy Code § 1146(a), the issuance, transfer, or exchange of a security (including the New Common Interests and Noteholder Warrants), or the making or delivery of an instrument of transfer, including any transfers effected under this Plan, from the Debtors to the Reorganized Debtors, or any other Person or Entity pursuant to the Plan, as applicable, may not be taxed under any law imposing a stamp tax or similar tax, and the sale and/or 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.

### **Section 5.26 Dissolution of Creditors Committee**

The Creditors Committee shall be automatically dissolved on the Effective Date and, on or as soon as practicable after the Effective Date, each member (including each officer, director, employee or agent thereof) of the Creditors Committee and each Creditors Committee Professional shall be released and discharged from all rights, duties, responsibilities and obligations arising from, or related to, the Debtors, their membership on the Creditors Committee, the Plan or these Chapter 11 Cases, except with respect to any matters concerning any Administrative Expense Claims held or asserted by a Creditors Committee Professional.

### **Section 5.27 Withholding and Reporting Requirements**

In connection with the Plan and all instruments issued in connection therewith and distributions thereon, the Reorganized Debtors and the Disbursing Agent shall comply with all withholding and reporting requirements imposed by any United States federal, state, local, or non-U.S. taxing authority and all distributions hereunder shall be subject to any such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors and the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distributions to be made under the Plan to generate sufficient funds to pay applicable withholding taxes and withholding distributions pending receipt of information necessary or appropriate to facilitate such distributions.

With respect to any Person from whom a tax identification number, certified tax identification number or other tax information required by law has not been received by the Disbursing Agent within thirty (30) days from the date of such request (the “Initial Request”), the Disbursing Agent may, at its option, withhold the amount required to such Person and decline to make such distribution until the information is received. Failure of any Person to provide the information requested within six months of the Initial Request shall result in the forfeit of the affected distribution and the treatment of said distribution as Unclaimed Property, pursuant to Section 6.03 of this Plan.

### **Section 5.28 Determination of Tax Filings and Taxes**

For all taxable periods ending on or prior to, or including, the Effective Date, ENXP LLC shall prepare and file (or cause to be prepared and filed) on behalf of the ENXP Group, all group

tax returns, reports, certificates, forms or similar statements or documents (collectively, “Group Tax Returns”) and all separate tax returns of ENXP required to be filed or that ENXP LLC otherwise deems appropriate, including the filing of amended Group Tax Returns or requests for refunds. ENXP shall not file or amend any tax returns for ENXP itself or the ENXP Group for any taxable periods (or portions thereof) described in the first sentence of this Section 5.28 without ENXP LLC’s prior written consent.

ENXP LLC is hereby appointed, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, to handle tax matters, including without limitation, the filing of all tax returns, and the handling of tax audits and proceedings, of the ENXP Group. Without limiting the generality of the foregoing, if requested by ENXP LLC, ENXP shall promptly execute or cause to be executed and filed any tax returns or other tax filings of ENXP or the ENXP Group submitted by ENXP LLC to ENXP for execution or filing. Moreover, ENXP shall execute on or prior to the Effective Date a power of attorney authorizing ENXP LLC to correspond, sign, collect, negotiate, settle and administer tax payments and Group Tax Returns.

Each of the Debtors shall cooperate fully with each other regarding the implementation of this Section 5.28 (including the execution of appropriate powers of attorney) and shall make available to the other as reasonably requested all information, records and documents relating to taxes governed by this Section 5.28 until the expiration of the applicable statute of limitations or extension thereof or at the conclusion of all audits, appeals or litigation with respect to such taxes.

ENXP LLC shall have the right to request an expedited determination of the tax liability, if any, of the Reorganized Debtors (including ENXP) under section 505(b) of the Bankruptcy Code with respect to any tax returns filed, or to be filed, for any and all taxable periods ending after the Commencement Date through the Effective Date.

If ENXP receives written notice from a taxing authority of any pending examination, claim, settlement, proposed adjustment or related matters with respect to taxes, it shall promptly notify ENXP LLC in writing. ENXP LLC shall have the sole right, at its expense, to control, conduct, compromise and settle any tax contest, audit or administrative or court proceeding relating to any liability for taxes of ENXP and the ENXP Group. With respect to any such proceeding and with respect to the preparation and filing of any tax returns of ENXP or the ENXP Group, ENXP LLC may act in its own self-interest and in the interest of its subsidiaries and affiliates, without regard to any adverse consequences to ENXP.

To the extent permitted by law, ENXP shall designate ENXP LLC as the “substitute agent” (within the meaning of Treasury Regulation Section 1.1502-77) for the ENXP Group in accordance with Treasury Regulation Section 1.1502-77, as amended or supplemented, and any comparable provision under state or local law, with respect to all taxable periods ending on or before, or including, the Effective Date.

ENXP LLC shall be entitled to the entire amount of any refunds and credits (including interest thereon) with respect to or otherwise relating to any taxes of the ENXP Group, including for any taxable period ending on or prior to, or including, the Effective Date. ENXP shall promptly notify ENXP LLC of the receipt of any such refunds or credits and shall transfer any

such refunds to ENXP LLC by wire transfer or otherwise in accordance with written instructions provided by ENXP LLC.

## **ARTICLE VI**

### **PROVISIONS GOVERNING DISTRIBUTIONS GENERALLY**

#### **Section 6.01 Disbursing Agent**

(a) Plan Distributions. Except as otherwise provided herein, all distributions under the Plan, including the distribution of the New Common Interests and the Noteholder Warrants shall be made by the Disbursing Agent(s) on the Effective Date or as soon as practicable thereafter. To the extent the Disbursing Agent is the Reorganized Debtors or the Creditor Trustee (in respect of the Creditor Trust Assets), the Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

#### **Section 6.02 Method of Cash Distributions**

Any Cash payment to be made pursuant to this Plan may be made by Cash, draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law at the option of and in the sole discretion of the Debtors, the Reorganized Debtors or Creditor Trustee, as applicable.

#### **Section 6.03 Delivery of Distributions**

Plan Distributions shall be made by the Disbursing Agent (a) at the Holder's last known address, or (b) at the address in any written notice of address change delivered to the Disbursing Agent. If any Holder's Plan Distribution is returned as undeliverable, no further Plan Distributions to such Holder shall be made, unless and until the Disbursing Agent is notified of such Holder's then current address, at which time all missed Plan Distributions shall be made to such Holder without interest. Amounts in respect of undeliverable Plan Distributions made through the Disbursing Agent shall be returned to the Reorganized Debtors or Creditor Trustee, as applicable, until such Plan Distributions are claimed. All claims for undeliverable Plan Distributions must be made on or before the first anniversary of the Effective Date, after which date all Cash in respect of such forfeited Plan Distributions, including interest accrued thereon (the "Unclaimed Property"), if any, shall revert to the Reorganized Debtors, *provided, however*, that all Unclaimed distributions in respect of Creditor Trust Assets shall be returned to the Creditor Trust to be distributed in accordance with the terms of the Creditor Trust Agreement.

#### **Section 6.04 Failure to Negotiate Checks**

Checks issued in respect of distributions under this Plan shall be null and void if not negotiated within sixty (60) days after the date of issuance. The Disbursing Agent shall hold any amounts returned in respect of such non-negotiated checks. The Holder of an Allowed Claim with respect to which such check originally was issued shall make requests for reissuance for any such check directly to the Disbursing Agent. All amounts represented by any voided check will be held until the later of one (1) year after (x) the Effective Date or (y) the date that a particular

Claim is Allowed by Final Order, and all requests for reissuance by the Holder of the Allowed Claim in respect of a voided check are required to be made before such date. Thereafter, all such amounts shall be deemed to be Unclaimed Property, and all Claims in respect of void checks and the underlying distributions shall be forever barred, estopped and enjoined from assertion in any manner against the Reorganized Debtors, Creditor Trust and the Disbursing Agent, as applicable.

#### **Section 6.05 Fractional Dollars**

Notwithstanding any other provision of this Plan, Cash distributions of fractions of dollars will not be made; rather, whenever any payment of a fraction of a dollar would be called for, the actual payment made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded up.

#### **Section 6.06 Allocation of Payments**

In the case of distributions with respect to holders of Claims in Classes 3 through 6 pursuant to the Plan, the amount of any Cash and the fair market value of any other consideration received by the Holder of such Claim will be allocable first to the principal amount of such Claim (as determined for federal income tax purposes) and then, to the extent of any excess, the remainder of the Claim.

#### **Section 6.07 De Minimis Distributions**

No Cash payment of less than twenty-five (\$25.00) dollars shall be made to the Holder of any Claim or Interest on account of its Allowed Claim or Allowed Interest.

#### **Section 6.08 Setoffs**

Except for any Claim that is Allowed in an amount set forth in this Plan, the Debtors, the Reorganized Debtors, or Creditor Trustee (but only with respect to the Assigned Estate Claims) may, but shall not be required to, set off against any Claims and the payments or distributions to be made pursuant to this Plan in respect of such Claims, any and all debts, liabilities and claims of every type and nature whatsoever that the Debtors may have against the Holder of any such Claim. If the Debtors or Creditor Trustee do not setoff their claims, no waiver or release by the Debtors of any such claims shall be deemed to have occurred, and all such claims shall be reserved for and retained by the Reorganized Debtors.

#### **Section 6.09 Unclaimed Distributions of New Common Interests or Noteholder Warrants**

Any Distribution of New Common Interests or Noteholder Warrants under the Plan that is unclaimed after six months after it has been delivered (or attempted to be delivered) shall be retained by the Reorganized Debtors, notwithstanding any state or other escheat or similar laws to the contrary, and the entitlement by the Holder of such Allowed Claim to such Distribution or any subsequent Distribution on account of such Allowed Claim shall be extinguished and forever barred.

### **Section 6.10 Fractional New Common Interests**

Notwithstanding any other provision in the Plan to the contrary, no fractional units of New Common Interests or Noteholder Warrants shall be issued or distributed under the Plan. Whenever any Distribution of a fraction of a unit of New Common Interests or Noteholder Warrants would otherwise be required under the Plan, the actual Distribution shall reflect a rounding of such fraction to the nearest whole unit (up or down), with half units or less being rounded down and fractions in excess of a half of a unit being rounded up. No consideration will be provided in lieu of fractional units that are rounded down. Fractional units that are not distributed in accordance with this Section 6.10 shall be cancelled.

### **Section 6.11 Distribution Record Date**

Except with respect to public securities, the Distribution Record Date shall be the date of the entry of the Confirmation Order. On such date, all transfer ledgers, transfer books, registers and any other records maintained by the designated transfer agents with respect to ownership of any Claims or Interests will be closed and, for purposes of this Plan, there shall be no further changes in the record holders of such Claims or Interests. The Debtors, the Reorganized Debtors, or Creditor Trustee, as applicable, shall have no obligation to recognize the transfer of any Claims or Interests occurring after the Distribution Record Date, and will be entitled for all purposes to recognize and deal only with the Holder of any Claim or Interests as of the close of business on the Distribution Record Date, as reflected on such ledgers, books, registers or records.

## **ARTICLE VII**

### **EXECUTORY CONTRACTS, UNEXPIRED LEASES, AND OTHER AGREEMENTS**

#### **Section 7.01 Assumption/Rejection**

All executory contracts and unexpired leases not expressly rejected shall be deemed assumed pursuant to the Plan. The Plan Supplement shall contain (a) a schedule of executory contracts and unexpired leases to be assumed by the Debtors, including proposed Cure Costs (the “Assumed Contract Schedule”); and (b) a schedule of executory contracts and unexpired leases to be rejected by the Debtors as of the Effective Date (the “Rejected Contract Schedule”), determined by the Debtors in consultation with the Requisite Majority Consenting Secured Lenders.

Counterparties to the contracts on the Assumed Contract Schedule shall have until the fourteenth (14<sup>th</sup>) day after the Effective Date (the “Cure Cost Objection Deadline”) to file an objection with the Bankruptcy Court with respect to the proposed Cure Costs or be forever barred from seeking any amounts exceeding the amounts on the Assumed Contract Schedule from the Debtors or the Reorganized Debtors and from filing any statutory lien against the Reorganized Debtors or their properties for such amounts. Unless there is a dispute as to Cure Costs, on the fourteenth (14<sup>th</sup>) day after the Effective Date, the executory contracts and unexpired leases identified in the Assumed Contract Schedule shall be assumed by the Debtors and vest in and be fully enforceable by the Reorganized Debtors or an Affiliate of the

Reorganized Debtors, as designated by the Reorganized Debtors. Additionally, on the fourteenth (14<sup>th</sup>) day after the Effective Date, and to the extent permitted by applicable law, all of the Debtors' executory contracts and unexpired leases that are not listed on the Rejected Contract Schedule will be assumed irrespective of whether they are listed on the Assumed Contract Schedule. All executory contracts and unexpired leases identified on the Rejected Contract Schedule shall be deemed rejected as of the Effective Date.

The Debtors shall notify all counterparties to contracts on the Assumed Contract Schedule and the Rejected Contract Schedule of the filing of such Schedules and shall provide notice of such Schedules on the Debtors' restructuring website available at <https://cases.primeclerk.com/ENXP>, and such notice shall be deemed good and sufficient notice for the purposes of section 365 of the Bankruptcy Code and otherwise.

Notwithstanding the foregoing, the Debtors may alter, amend, modify or supplement the list of executory contracts or unexpired leases identified in the Assumed Contract Schedule and/or the Rejected Contract Schedule at any time prior to the Effective Date by filing a revised Assumed Contract Schedule and/or Rejected Contract Schedule with the Bankruptcy Court. Counterparties to the contracts on the revised Assumed Contract Schedule shall have fourteen (14) days from the Effective Date to file an objection with the Bankruptcy Court with respect to the proposed Cure Costs or be forever barred from seeking any amounts exceeding the amounts on the revised Assumed Contract Schedule from the Debtors or the Reorganized Debtors.

The existing employment arrangements for the Debtors' management team will be replaced by new employment agreements on market terms for comparable transactions and comparably-sized companies with compensation no less than under the current employment arrangements and provided that such new employment agreements are acceptable to the Requisite Supermajority Consenting Secured Lenders. For the avoidance of doubt, any awards granted under the Management Incentive Program will be governed by such program and will not be subject to any provisions of the employment agreements.

#### **Section 7.02 Cure Costs**

The monetary amounts by which each of the executory contracts and unexpired leases is in default and shall be satisfied, pursuant to Bankruptcy Code § 365(b)(1), shall be the Cure Costs identified on the Assumed Contract Schedule; *provided, however*, if a counterparty to any of the executory contracts or unexpired leases identified on the Assumed Contract Schedule files with the Bankruptcy Court, and serves on the Debtors and their counsel, a written objection to the proposed Cure Cost prior to the Cure Cost Objection Deadline (as defined below), then the Cure Cost associated with such executory contract or unexpired lease will be determined as set forth below.

If an objection to a Cure Cost is timely filed with the Bankruptcy Court, then the Debtors or the Reorganized Debtors shall in good faith attempt to resolve the Cure Cost dispute. If the parties are unable to agree on a Cure Cost within ten (10) days after the filing of an objection, then the Debtors or the Reorganized Debtors, as applicable, may request that the Bankruptcy Court establish the applicable Cure Cost.

The Debtors shall satisfy the Cure Costs of assumed executory contracts and unexpired leases in Cash by the latest of (i) the Effective Date (or as soon thereafter as is practicable), (ii) in the event of a dispute regarding the Cure Cost, within thirty (30) days of the entry of an order of the Bankruptcy Court establishing such Cure Cost, or (iii) on such other terms as the parties to such executory contracts and unexpired leases may otherwise agree.

Notwithstanding the foregoing, in the event of a dispute regarding: (1) the ability of the Reorganized Debtors to provide “adequate assurance of future performance” (within the meaning of Bankruptcy Code § 365) under the contract or lease to be assumed or (2) any other matter pertaining to assumption (each, an “Assumption Dispute”), the Cure Costs required by Bankruptcy Code § 365(b)(1) shall be made following the entry of a Final Order resolving the Assumption Dispute and approving the assumption; *provided, however*, that in the event the Debtors or the Reorganized Debtors and the applicable non-Debtor party involved in any Assumption Dispute or any dispute regarding Cure Costs cannot otherwise consensually resolve such dispute, the Debtors or the Reorganized Debtors, as applicable, may reject the executory contract at issue pursuant to Bankruptcy Code § 365 rather than paying the disputed Cure Cost, by presenting a proposed order to the Bankruptcy Court for such rejection, without any other or further notice. In the event any executory contract is so rejected, the non-Debtor party thereto shall be entitled to file a Proof of Claim in accordance with the Bar Date Order, which Claim shall be classified pursuant to the Plan, but shall not be entitled to any other or further Claim or relief from either the Debtors or the Reorganized Debtors.

### **Section 7.03 Assumed Executory Contracts and Unexpired Leases**

Each executory contract and unexpired lease that is assumed will include (a) all amendments, modifications, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease; and (b) all executory contracts or unexpired leases and other rights appurtenant to the property, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises, and any other interests in real estate or rights in rem related to such premises, unless any of the foregoing agreements have been rejected pursuant to an order of the Bankruptcy Court or are the subject of a motion to reject filed on or before the Confirmation Date.

Amendments, modifications, supplements, and restatements to prepetition executory contracts and unexpired leases that have been executed by the Debtors during these Chapter 11 Cases shall not be deemed to alter the prepetition nature of the executory contract or unexpired lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

### **Section 7.04 Insurance Policies**

Notwithstanding anything in this Plan to the contrary, all of the Debtors’ insurance policies and any agreements, documents or instruments relating thereto, are treated as and deemed to be executory contracts under the Plan. On the Effective Date, the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments related thereto. Unless otherwise determined by the Bankruptcy Court prior to the Effective

Date, or agreed to by the parties thereto prior to the Effective Date, no payments shall be required to cure any defaults (if any) of the Debtors existing as of the Effective Date with respect to each such insurance policy or agreement, and to the extent that the Bankruptcy Court determines otherwise as to any such insurance policy or agreement, the Debtors' right to seek the rejection of such insurance policy or agreement or other available relief within thirty (30) days of such determination are fully reserved; *provided, however*, that the rights of any party that issues an insurance policy or agreement to object to such proposed rejection on any and all grounds are fully reserved. Nothing in the Plan, the Plan Documents, the Plan Supplement or the Confirmation Order, (a) alters, modifies or otherwise amends the terms and conditions of (or the coverage provided by) any of the insurance policies or agreements, (b) limits the Reorganized Debtors from asserting a right or claim to the proceeds of any insurance policy or agreement that insures any Debtor, was issued to any Debtor or was assumed by the Reorganized Debtors by operation of the Plan or (c) impairs, alters, waives, releases, modifies or amends any of the Debtors' or Reorganized Debtors' legal, equitable or contractual rights, remedies, claims, counterclaims, defenses or Causes of Action in connection with any such insurance policies or agreements.

#### **Section 7.05 Officers' and Directors' Indemnification Rights**

Notwithstanding any other provisions of the Plan, the obligations of the Debtors to indemnify their directors, officers, managers and employees who served in such capacity during these Chapter 11 Cases and as of the day immediately prior the Confirmation Hearing, against any obligations, liabilities, costs or expenses pursuant to the articles of incorporation, bylaws or other organizational documents of the Debtors, applicable state law, specific agreement (including any employment agreement), or any combination of the foregoing, shall survive the Effective Date in all respects and be assumed by the Reorganized Debtors; *provided*, that notwithstanding anything in such documents or agreements to the contrary, the Reorganized Debtors will not indemnify (a) officers or directors of the Debtors or the Reorganized Debtors for any Claim or Cause of Action arising out of or relating to any act or omission of willful misconduct, gross negligence or fraud, or that is found to be a criminal act or (b) any Excluded Party.

Subsequent to the Effective Date, the Reorganized Debtors shall not terminate or otherwise reduce existing insurance coverage of any director or officer insurance policies (including any tail policy) in effect during these Chapter 11 Cases. To the extent permitted under applicable law, current directors and officers shall receive first access to available insurance and shall be indemnified by the Reorganized Debtors to the extent of such insurance.

#### **Section 7.06 Claims Based on Rejection of Executory Contracts and Unexpired Leases**

Unless otherwise provided by a Bankruptcy Court order, any Proofs of Claim asserting Claims arising from the rejection of the Debtors' executory contracts and unexpired leases pursuant to this Plan or otherwise must be filed no later than fourteen (14) days after the Confirmation Order is entered granting the rejection. Any Proofs of Claim arising from the rejection of the Debtors' executory contracts or unexpired leases that are not timely filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against the

Debtors or the Reorganized Debtors without the need for any objection by any Person or further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the executory contract or unexpired lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Bankruptcy Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors' executory contracts and unexpired leases shall be classified as General Unsecured Claims and shall be treated in accordance with the particular provisions of this Plan for such Claims; *provided, however*, that if the Holder of an Allowed Claim for rejection damages has an unavoidable security interest in any Collateral to secure obligations under such rejected executory contract or unexpired lease, the Allowed Claim for rejection damages shall be treated as an Other Secured Claim to the extent of the value of such Holder's interest in the Collateral, with the deficiency, if any, treated as a General Unsecured Claim.

#### **Section 7.07 Reservation of Rights**

Nothing contained in this Plan shall constitute an admission by the Debtors that any particular contract is in fact an executory contract or unexpired lease or that the Debtors have any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Reorganized Debtors, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter and to provide appropriate treatment of such contract or lease.

#### **Section 7.08 Assignment**

Any executory contract to be held by any of the Debtors or the Reorganized Debtors and assumed hereunder or otherwise in these Chapter 11 Cases, if not expressly assigned to a third party previously in these Chapter 11 Cases, will be deemed assigned to the applicable Reorganized Debtor pursuant to section 365 of the Bankruptcy Code. If an objection to a proposed assumption, assumption and assignment, or Cure Claim is not resolved in favor of the Debtors before the Effective Date, the applicable executory contract may be designated by the Debtors (with the consent of the Requisite Majority Consenting Secured Lenders) or the Reorganized Debtors for rejection within five (5) days of the entry of the order of the Bankruptcy Court resolving the matter against the Debtors. Such rejection shall be deemed effective as of the Effective Date.

#### **Section 7.09 Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request by the Debtors to extend the deadline for assuming or rejecting unexpired leases pursuant to Bankruptcy Code § 365(d)(4).

## ARTICLE VIII

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

#### **Section 8.01 Expunging of Certain Claims**

Except as otherwise provided by a Bankruptcy Court order, all Claims marked or otherwise Scheduled as contingent, unliquidated or disputed on the Bankruptcy Schedules and for which no Proof of Claim has been timely filed, shall be deemed Disallowed Claims and such Claims shall be expunged as of the Effective Date without the necessity of filing a claim objection and without further notice to, or action, order or approval of the Bankruptcy Court.

#### **Section 8.02 Objections to Claims**

(a) Authority. The Debtors, and after the Effective Date, the Reorganized Debtors or the Creditor Trustee, as applicable, shall have authority to file objections to any Claim, and to withdraw any objections to any Claim that they may file. After the Effective Date, the Creditor Trustee shall have the authority to file objections to all General Unsecured Claim other than those related to Retained Causes of Action in the Plan Supplement and the Debtors or Reorganized Debtors shall have the authority to file objections to all other Proofs of Claim. The Debtors, and after the Effective Date, the Reorganized Debtors or the Creditor Trustee, as applicable depending on which Person brought the objection, shall have authority to settle, compromise, or litigate to judgment any objections to any Claim; provided, however, that any settlements by the Debtors or Reorganized Debtors that will result in an Allowed General Unsecured Claim shall be subject to approval by the Creditor Trustee, such approval not to be unreasonably withheld. Except as set forth above, after the Effective Date, the Reorganized Debtors or the Creditor Trustee, as applicable, also shall have the right to resolve any Disputed Claim outside the Bankruptcy Court under applicable governing law.

(b) Objection Deadline. As soon as practicable, but no later than the Claim Objection Deadline, the Debtors, and after the Effective Date, the Reorganized Debtors or Creditor Trustee, as applicable, may file objections with the Bankruptcy Court and serve such objections on the Creditors holding the Claims to which such objections are made. Nothing contained herein, however, shall limit the right of the Reorganized Debtors or the Creditor Trustee, as applicable, to object to Claims, if any, filed or amended after the Claim Objection Deadline. The Claim Objection Deadline may be extended by the Bankruptcy Court upon motion by the Reorganized Debtors or the Creditor Trustee, as applicable.

#### **Section 8.03 Estimation of Claims**

The Debtors, the Reorganized Debtors or the Creditor Trustee, as applicable, as the case may be, may at any time request that the Bankruptcy Court estimate, subject to 28 U.S.C. § 157, any Disputed Claim pursuant to § 502(e) of the Bankruptcy Code regardless of whether the Debtors or the Reorganized Debtors have previously objected to such Claim. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during proceedings concerning any objection to such Claim. In the event that the Bankruptcy Court estimates any

Disputed Claim, such estimated amount may constitute either (a) the Allowed amount of such Claim, (b) the estimate to be used by the Debtors in calculating potential Plan Distributions under the Plan, or (c) a maximum limitation on such Claim, as determined by the Bankruptcy Court. In the case of Claims arising from personal injury tort or wrongful death actions, the Bankruptcy Court may estimate such Claims for the purpose of confirming the Plan. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors, the Reorganized Debtors or the Creditor Trustee, as applicable, may elect to object to ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

#### **Section 8.04 No Distributions Pending Allowance**

Notwithstanding any other provision of this Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim.

#### **Section 8.05 Distributions After Allowance**

The Disbursing Agent shall make payments and distributions to each Holder of a Disputed Claim that has become an Allowed Claim in accordance with the provisions of this Plan governing the class of Claims to which such Holder belongs. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing all or part of any Disputed Claim becomes a Final Order, the Disbursing Agent shall distribute to the Holder of such Claim the distribution (if any) that would have been made to such Holder on the Distribution Date had such Allowed Claim been allowed on the Distribution Date.

#### **Section 8.06 Reduction of Claims**

Notwithstanding the contents of the Bankruptcy Schedules or the Bankruptcy SOFAs, Claims listed therein as undisputed, liquidated and not contingent shall be reduced by the amount, if any, that was paid by the Debtors before the Effective Date, including pursuant to orders of the Bankruptcy Court. To the extent such payments are not reflected in the Bankruptcy Schedules or the Bankruptcy SOFAs, such Bankruptcy Schedules and Bankruptcy SOFA will be deemed amended and reduced to reflect that such payments were made. Nothing in this Plan shall preclude the Debtors from paying Claims that the Debtors were authorized to pay pursuant to any Final Order entered by the Bankruptcy Court before the Effective Date.

### **ARTICLE IX**

#### **CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THIS PLAN**

##### **Section 9.01 Conditions Precedent to Confirmation**

The following are conditions precedent to the occurrence of Confirmation, each of which must be satisfied or waived:

(a) The Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the Requisite Consenting Lenders, in consultation with the Debtors, approving the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code, and such order shall have become a Final Order;

(b) The Plan and all documents contained in the Plan Supplement, including any exhibits, schedules, amendments, modifications or supplements thereto, shall have been filed in substantially final form and in form and substance reasonably acceptable to the Requisite Consenting Lenders, in consultation with the Debtors and the Creditors Committee, but solely to the extent a document implicates the Creditor Trust or the treatment of Class 5 Claims or Class 6 Claims; and

(c) The Confirmation Order shall include, to the fullest extent permitted by applicable law, a finding of fact that the Reorganized Debtors, Creditors Committee, the Consenting Secured Lenders, the Consenting Noteholders, and their respective Related Persons acted in good faith within the meaning of and with respect to all of the actions described in Bankruptcy Code § 1125(e) and are therefore not liable for the violation of any applicable law, rule, or regulation governing such actions.

#### **Section 9.02 Conditions Precedent to the Effective Date of the Plan**

The following are conditions precedent to the Effective Date of the Plan, each of which must be satisfied or waived in accordance with Section 9.04 below:

(a) The RSA shall have been approved pursuant to a Final Order of the Bankruptcy Court and shall not have been terminated in accordance with its terms;

(b) The Debtors shall have negotiated, executed and delivered the Definitive Documentation with respect to the Plan and the Plan Supplement, in form and substance acceptable to the Debtors and the Requisite Consenting Lenders and otherwise consistent with the terms and conditions of the RSA;

(c) The Confirmation Order shall have been entered in form and substance reasonably acceptable to the Requisite Consenting Lenders, in consultation with the Debtors and Creditors Committee and such order shall have become a Final Order;

(d) On or simultaneously with the occurrence of the Effective Date, the Debtors shall have closed on the Exit Facility, which Exit Facility shall be in form and substance acceptable to the Debtors and the Requisite Supermajority Consenting Secured Lenders; and

(e) There shall not be in effect any (i) order entered by any court of any competent jurisdiction; (ii) order, opinion, ruling or other decision entered by any administrative or governmental entity or (iii) applicable law, staying, restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by the Plan.

### **Section 9.03 Substantial Consummation**

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

### **Section 9.04 Waiver of Conditions**

Each of the conditions set forth in Section 9.01 or Section 9.02 hereof may be waived in whole or in part by written agreement of the Debtors and the Requisite Consenting Lenders, with notice to the Creditors Committee. The failure to satisfy or waive any condition to Confirmation or the Effective Date may be asserted by the Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied.

### **Section 9.05 Revocation, Withdrawal, or Non-Consummation**

The Debtors reserve the right to revoke or withdraw this Plan at any time before the Confirmation Date and to file subsequent plans of reorganization. If the Debtors revoke or withdraw this Plan, or if Confirmation or Consummation of this Plan does not occur, then (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan (including the fixing, allowance or limiting to an amount certain of any Claim or Interests or Class of Claims or Interests), unless otherwise agreed to by the Debtors and any counterparty to such settlement or compromise, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (iii) nothing contained in this Plan, and no acts taken in preparation for Consummation of this Plan, shall (a) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors or any other Person, (b) prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors, or (c) constitute an admission of any sort by the Debtors or any other Person.

## **ARTICLE X**

### **AMENDMENTS AND MODIFICATIONS**

The Debtors may alter, amend, or modify the Plan, the Plan Documents, or any Exhibits thereto under Bankruptcy Code § 1127(a) at any time before the Confirmation Date; *provided, however,* that if any amendment, modification or supplement to the Plan (including the Plan Supplement or a modification described in this Article X of the Plan) or any Exhibit hereto or thereto is made without the prior written consent of the Requisite Consenting Lenders or Creditors Committee (solely with respect to the treatment of Class 5, Class 6 and the Creditor Trust), then pursuant to the RSA, the Requisite Consenting Lenders or Creditors Committee, if applicable, shall have no obligation to support, or take any actions in support of, the Plan and may exercise any remedies thereunder. After the Confirmation Date and before “substantial consummation” of the Plan, as defined in Bankruptcy Code § 1101(2), the Debtors may, under Bankruptcy Code § 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan, so long as such proceedings do not materially adversely affect the treatment of

Holders of Claims or Interests under the Plan; *provided, however*, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

Notwithstanding the foregoing, all modifications made to the Plan after solicitation of votes on the Plan has commenced, as reflected in the Confirmation Order, as set forth on the record at the Confirmation Hearing, or as reflected in the Plan, satisfy the requirements of Bankruptcy Code § 1127(a) and Bankruptcy Rule 3019, are not material or do not adversely affect the treatment and rights of the Holders of any Claims or Interests under the Plan who have not otherwise accepted such modifications. Accordingly, the Debtors have satisfied Bankruptcy Code § 1127(c) and Bankruptcy Rule 3019 with respect to the Plan, as modified; and Holders of Claims or Interests that have accepted or rejected the Plan (or are deemed to have accepted or rejected the Plan) are deemed to have accepted or rejected, as the case may be, the Plan as modified on the date of the Confirmation Order, pursuant to Bankruptcy Code § 1127(d) and Bankruptcy Rule 3019.

## **ARTICLE XI**

### **RETENTION OF JURISDICTION**

Under Bankruptcy Code §§ 105(a) and 1142, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, these Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

A. allow, disallow, determine, liquidate, classify, estimate or establish the priority or Secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim and the resolution of any objections to the Secured or unsecured status, priority, amount or allowance of Claims or Interests;

B. hear and determine all applications for compensation and reimbursement of expenses of Professionals under Bankruptcy Code §§ 327, 328, 330, 331, 503(b), 1103 or 1129(a)(4); *provided, however*, that from and after the Effective Date, the payment of fees and expenses of Professionals retained by the Reorganized Debtors shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court except as otherwise set forth in this Plan;

C. hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which the Debtors are a party or with respect to which the Debtors may be liable, including, if necessary, the nature or amount of any required cure or the liquidating of any claims arising therefrom;

D. hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, these Chapter 11 Cases;

E. enter and enforce such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of this Plan and all contracts,

instruments, releases, and other agreements or documents created in connection with this Plan, the Disclosure Statement, and/or the Confirmation Order;

F. hear and determine disputes arising in connection with the interpretation, implementation, Consummation, or enforcement of this Plan, including disputes arising under agreements, documents or instruments executed in connection with this Plan;

G. consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

H. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with implementation, Consummation, or enforcement of this Plan, and/or the Confirmation Order;

I. enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

J. hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, and/or the Confirmation Order or any other contract, instrument, release, or other agreement or document created in connection with this Plan, the Disclosure Statement, and/or the Confirmation Order;

K. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with these Chapter 11 Cases or pursuant to the Plan;

L. recover all assets of the Debtors and property of their Estates, wherever located;

M. hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code §§ 346, 505, and 1146;

N. hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge or any releases granted in this Plan;

O. hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

P. enter an order or final decree concluding or closing these Chapter 11 Cases; and

Q. enforce all orders previously entered by the Bankruptcy Court.

## **ARTICLE XII**

### **EFFECT OF THIS PLAN ON CLAIMS AND INTERESTS**

#### **Section 12.01 Compromise and Settlements**

Except for any Avoidance Actions (including the Assigned Estate Claims) and Causes of Action of the Debtors that are being retained by the Reorganizing Debtors pursuant to Section 5.14 herein, pursuant to Bankruptcy Code § 363 and Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under this Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies resolved pursuant to this Plan, including, without limitation, all Claims arising before the Petition Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to or in connection with the business or affairs of, or transactions with, the Debtors. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in this Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, their Estates, Creditors, Holders of Interests and other parties in interest, and are fair, equitable and within the range of reasonableness.

#### **Section 12.02 Satisfaction of Claims**

The rights afforded in this Plan and the treatment of all Claims and Interests herein shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever against the Debtors or their Estates, assets, properties, or interests in property. Except as otherwise provided in this Plan and/or the Confirmation Order, on the Effective Date, all Claims against and Interests in the Debtors shall be satisfied, discharged, and released in full. None of the Debtors, Reorganized Debtors or their Affiliates, shall be responsible for any pre-Effective Date obligations of the Debtors, except those expressly assumed by the Debtors or the Reorganized Debtors, as applicable. Except as otherwise provided in this Plan and/or the Confirmation Order, all Persons and Entities shall be precluded and forever barred from asserting against the Debtors, Reorganized Debtors and their Affiliates, their respective successors or assigns, or their Estates, assets, properties, or interests in property any event, occurrence, condition, thing, or other or further Claims or Causes of Action based upon any act, omission, transaction, or other activity of any kind or nature that occurred or came into existence before the Effective Date, whether or not the facts of or legal bases therefore were known or existed before the Effective Date.

#### **Section 12.03 Term of Injunction or Stays**

Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 363 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay. For the avoidance of doubt, the *Order Approving Notification and Hearing Procedures for Certain Transfers of Equity Securities, Exercises of Warrants and Worthless Stock Deductions with*

*respect to Equity Securities*, entered by the Bankruptcy Court on March 18, 2016 [Dkt. No. 536] (the “Trading Order”), shall remain enforceable beyond the Effective Date with respect to persons having “Beneficial Ownership” of ENXP Common Stock pursuant to the terms thereof. The Trading Order has no applicability or effect with respect to the trading of New Common Interests on or after the Effective Date.

#### **Section 12.04 Discharge of Liabilities**

**PURSUANT TO BANKRUPTCY CODE § 1141(D), AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS PLAN AND/OR THE CONFIRMATION ORDER, THE PLAN DISTRIBUTIONS, RIGHTS, AND TREATMENT THAT ARE PROVIDED IN THIS PLAN SHALL BE IN COMPLETE SATISFACTION, DISCHARGE, AND RELEASE, EFFECTIVE AS OF THE EFFECTIVE DATE, OF ALL CLAIMS, INTERESTS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS OR INTERESTS FROM AND AFTER THE PETITION DATE, WHETHER KNOWN OR UNKNOWN, AGAINST, LIABILITIES OF, LIENS ON, OBLIGATIONS OF, RIGHTS AGAINST, AND INTERESTS IN, THE DEBTORS OR ANY OF THEIR ASSETS OR PROPERTIES, REGARDLESS OF WHETHER ANY PROPERTY SHALL HAVE BEEN DISTRIBUTED OR RETAINED PURSUANT TO THIS PLAN ON ACCOUNT OF SUCH CLAIMS AND INTERESTS, INCLUDING DEMANDS, LIABILITIES, AND CAUSES OF ACTION THAT AROSE BEFORE THE EFFECTIVE DATE, ANY LIABILITY (INCLUDING WITHDRAWAL LIABILITY) TO THE EXTENT SUCH CLAIMS OR INTERESTS RELATE TO SERVICES PERFORMED BY EMPLOYEES OF THE DEBTORS BEFORE THE EFFECTIVE DATE AND THAT ARISE FROM A TERMINATION OF EMPLOYMENT OR A TERMINATION OF ANY EMPLOYEE OR RETIREE BENEFIT PROGRAM, REGARDLESS OF WHETHER SUCH TERMINATION OCCURRED BEFORE OR AFTER THE EFFECTIVE DATE, ANY CONTINGENT OR NON-CONTINGENT LIABILITY ON ACCOUNT OF REPRESENTATIONS OR WARRANTIES ISSUED ON OR BEFORE THE EFFECTIVE DATE, AND ALL DEBTS OF THE KIND SPECIFIED IN BANKRUPTCY CODE §§ 502(G), 502(H), OR 502(I), IN EACH CASE WHETHER OR NOT: (A) A PROOF OF CLAIM OR INTEREST BASED UPON SUCH DEBT, RIGHT, CLAIM, OR INTEREST IS FILED OR DEEMED FILED PURSUANT TO BANKRUPTCY CODE § 501; (B) A CLAIM OR INTEREST BASED UPON SUCH CLAIM, DEBT, RIGHT, OR INTEREST IS ALLOWED PURSUANT TO BANKRUPTCY CODE § 502; OR (C) THE HOLDER OF SUCH A CLAIM OR INTEREST HAS ACCEPTED THIS PLAN. SUBJECT TO THE TERMS OF THIS PLAN AND/OR THE CONFIRMATION ORDER, ANY DEFAULT BY THE DEBTORS OR THEIR AFFILIATES WITH RESPECT TO ANY CLAIM OR INTEREST THAT EXISTED IMMEDIATELY BEFORE OR ON ACCOUNT OF THE FILING OF THESE CHAPTER 11 CASES SHALL BE DEEMED SATISFIED ON THE EFFECTIVE DATE. SUBJECT TO THE TERMS OF THIS PLAN, THE CONFIRMATION ORDER SHALL BE A JUDICIAL DETERMINATION OF THE DISCHARGE OF ALL CLAIMS AND INTERESTS SUBJECT TO THE EFFECTIVE DATE OCCURRING. SUBJECT TO THE TERMS OF THIS PLAN, THE CONFIRMATION ORDER SHALL BE A JUDICIAL DETERMINATION OF**

**DISCHARGE OF ALL LIABILITIES OF THE DEBTORS, THEIR ESTATES, THE REORGANIZED DEBTORS AND ALL SUCCESSORS THERETO. AS PROVIDED IN BANKRUPTCY CODE § 524, SUBJECT TO THE TERMS OF THIS PLAN AND/OR THE CONFIRMATION ORDER SUCH DISCHARGE SHALL VOID ANY JUDGMENT AGAINST THE DEBTORS, THEIR ESTATES, THE REORGANIZED DEBTORS OR ANY SUCCESSORS THERETO AT ANY TIME OBTAINED TO THE EXTENT IT RELATES TO A CLAIM OR INTEREST DISCHARGED, AND OPERATES AS AN INJUNCTION AGAINST THE PROSECUTION OF ANY ACTION AGAINST THE REORGANIZED DEBTORS OR THEIR PROPERTY AND ASSETS TO THE EXTENT IT RELATES TO A DISCHARGED CLAIM OR INTEREST.**

**Section 12.05 Releases**

(a) **Releases by the Debtors, their Estates and the Reorganized Debtors.** PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE, AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER (INCLUDING THE RETAINED CAUSES OF ACTION AND ASSIGNED ESTATE CLAIMS TO BE PRESERVED AND CONTAINED IN THE PLAN SUPPLEMENT), FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE SERVICE OF THE PARTIES RELEASED HEREIN TO FACILITATE THE EXPEDITIOUS REORGANIZATION OF THE DEBTORS AND THE IMPLEMENTATION OF THE RESTRUCTURING CONTEMPLATED BY THE PLAN, ON AND AFTER THE EFFECTIVE DATE, ALL RELEASED PERSONS ARE DEEMED RELEASED AND DISCHARGED BY THE DEBTORS AND THEIR ESTATES AND THE REORGANIZED DEBTORS, FROM ANY AND ALL CLAIMS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS OR THE REORGANIZED DEBTORS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, THAT THE DEBTORS, THEIR ESTATES, THE REORGANIZED DEBTORS, OR THEIR RESPECTIVE AFFILIATES WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER ENTITY, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE REORGANIZED DEBTORS, THESE CHAPTER 11 CASES, THE DEBTORS' RESTRUCTURING, THE DIP FACILITY, THE RSA AND RELATED AGREEMENTS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PERSONS, THE RESTRUCTURING OF CLAIMS AND INTERESTS BEFORE OR DURING THESE CHAPTER 11 CASES, THE NEGOTIATION, FORMULATION OR PREPARATION OF THE PLAN AND DISCLOSURE STATEMENT, OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS, ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT,

EVENT OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE CONFIRMATION DATE, OTHER THAN RETAINED CAUSES OF ACTION, ASSIGNED ESTATE CLAIMS, CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION OF A RELEASED PERSON OR A FORMER OFFICER OR DIRECTOR OF THE DEBTORS THAT CONSTITUTES WILLFUL MISCONDUCT (INCLUDING FRAUD) OR GROSS NEGLIGENCE. THE FOREGOING RELEASE SHALL NOT APPLY TO ANY EXPRESS CONTRACTUAL OR FINANCIAL OBLIGATIONS OR ANY RIGHT OR OBLIGATIONS ARISING UNDER OR THAT IS PART OF THE PLAN OR ANY AGREEMENTS ENTERED INTO PURSUANT TO, IN CONNECTION WITH, OR CONTEMPLATED BY THE PLAN.

(b) Releases by Holders of Claims and Interests and Other Released Persons. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR CONFIRMATION ORDER, AS OF THE EFFECTIVE DATE, EACH HOLDER OF A CLAIM OR AN INTEREST THAT VOTED IN FAVOR OF THE PLAN OR HAS NOT OPTED OUT OF THE RELEASES AS PROVIDED ON THE BALLOT, WHETHER SUCH HOLDER OF A CLAIM OR AN INTEREST VOTES TO REJECT THE PLAN, AND EACH RELEASED PERSON SHALL BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND FOREVER, RELEASED AND DISCHARGED THE DEBTORS, THE REORGANIZED DEBTORS, AND THE RELEASED PERSONS FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED ON BEHALF OF THE DEBTORS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, THAT SUCH ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY), BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THESE CHAPTER 11 CASES, THE DEBTORS' RESTRUCTURING, THE INTERIM DIP FACILITY, THE DIP FACILITY, THE RSA AND RELATED AGREEMENTS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PERSONS, THE RESTRUCTURING OF CLAIMS AND INTERESTS BEFORE OR DURING THESE CHAPTER 11 CASES, THE NEGOTIATION, FORMULATION OR PREPARATION OF THE PLAN, THE DISCLOSURE STATEMENT, THE PLAN SUPPLEMENT OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS, ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT OR OTHER OCCURRENCE RELATING TO THE DEBTORS TAKING PLACE ON OR BEFORE THE CONFIRMATION DATE, OTHER THAN CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION OF A RELEASED PERSON THAT CONSTITUTES WILLFUL MISCONDUCT (INCLUDING FRAUD), GROSS NEGLIGENCE OR CRIMINAL LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE RELEASE SET FORTH ABOVE DOES NOT RELEASE ANY POST-EFFECTIVE DATE OBLIGATIONS OF ANY PARTY

**UNDER THE PLAN OR ANY DOCUMENT, INSTRUMENT OR AGREEMENT (INCLUDING THOSE SET FORTH IN THE PLAN SUPPLEMENT) EXECUTED TO IMPLEMENT THE PLAN.**

**(c) Injunction Related to Releases. EXCEPT AS PROVIDED IN THIS PLAN AND/OR THE CONFIRMATION ORDER, AS OF THE EFFECTIVE DATE, (I) ALL PERSONS THAT HOLD, HAVE HELD, OR MAY HOLD A CLAIM OR ANY OTHER OBLIGATION, SUIT, JUDGMENT, DAMAGES, DEBT, RIGHT, REMEDY, CAUSE OF ACTION OR LIABILITY OF ANY NATURE WHATSOEVER, OR ANY INTEREST OR OTHER RIGHT OF A HOLDER OF AN EQUITY SECURITY OR OTHER OWNERSHIP INTEREST, RELATING TO THE DEBTORS OR THE REORGANIZED DEBTORS OR ANY OF THEIR RESPECTIVE ASSETS, PROPERTY AND ESTATES, THAT IS RELEASED PURSUANT TO THIS SECTION 12.05 OF THIS PLAN, (II) ALL OTHER PARTIES IN INTEREST, AND (III) EACH OF THE RELATED PERSONS OF EACH OF THE FOREGOING ENTITIES, ARE, AND SHALL BE, PERMANENTLY, FOREVER AND COMPLETELY STAYED, RESTRAINED, PROHIBITED, BARRED AND ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS, WHETHER DIRECTLY OR INDIRECTLY, DERIVATIVELY OR OTHERWISE, ON ACCOUNT OF OR BASED ON THE SUBJECT MATTER OF SUCH DISCHARGED CLAIMS OR OTHER OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEBTS, RIGHTS, REMEDIES, CAUSES OF ACTION OR LIABILITIES, AND OF ALL INTERESTS OR OTHER RIGHTS OF A HOLDER OF AN EQUITY SECURITY OR OTHER OWNERSHIP INTEREST: (I) COMMENCING, CONDUCTING OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY SUIT, ACTION OR OTHER PROCEEDING (INCLUDING, WITHOUT LIMITATION, ANY JUDICIAL, ARBITRAL, ADMINISTRATIVE OR OTHER PROCEEDING) IN ANY FORUM; (II) ENFORCING, ATTACHING (INCLUDING, WITHOUT LIMITATION, ANY PREJUDGMENT ATTACHMENT), COLLECTING, OR IN ANY WAY SEEKING TO RECOVER ANY JUDGMENT, AWARD, DECREE, OR OTHER ORDER; (III) CREATING, PERFECTING OR IN ANY WAY ENFORCING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY LIEN; (IV) SETTING OFF, SEEKING REIMBURSEMENT OR CONTRIBUTIONS FROM, OR SUBROGATION AGAINST, OR OTHERWISE RECOUPING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY AMOUNT AGAINST ANY LIABILITY OR OBLIGATION OWED TO ANY PERSON DISCHARGED UNDER THIS SECTION 12.05; AND (V) COMMENCING OR CONTINUING IN ANY MANNER, IN ANY PLACE OF ANY JUDICIAL, ARBITRATION OR ADMINISTRATIVE PROCEEDING IN ANY FORUM, THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THIS PLAN AND/OR THE CONFIRMATION ORDER.**

**(d) No Waiver. Notwithstanding anything to the contrary contained in this Section 12.05, the releases and injunctions set forth in this Section 12.05 shall not, and shall not be deemed to, limit, abridge or otherwise affect the rights of the Debtors or the Reorganized Debtors to enforce, sue on, settle or compromise the rights, claims and other matters expressly retained by the Debtors, the Reorganized Debtors or the Creditor Trust pursuant to this Plan and/or the Confirmation Order.**

(e) **Bankruptcy Rule 3016 Compliance.** The Debtors' compliance with the formal requirements of Bankruptcy Rule 3016(c) shall not constitute an admission that this Plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code.

(f) **Integral to Plan.** Each of the injunctions provided in this Section 12.05 is an integral part of this Plan and is essential to its implementation. Each party released under this Section 12.05 and any other Persons protected by the injunctions set forth in this Section 12.05 shall have the right to independently seek the enforcement of such injunctions.

#### **Section 12.06 Exculpation**

**THE RELEASED PERSONS SHALL NOT BE LIABLE FOR ANY CAUSE OF ACTION ARISING IN CONNECTION WITH OR OUT OF THE ADMINISTRATION OF THESE CHAPTER 11 CASES, THE PLANNING OF THESE CHAPTER 11 CASES, THE FORMULATION, NEGOTIATION OR IMPLEMENTATION OF THIS PLAN, THE GOOD FAITH SOLICITATION OF ACCEPTANCES OF THIS PLAN IN ACCORDANCE WITH BANKRUPTCY CODE § 1125(E), PURSUIT OF CONFIRMATION OF THIS PLAN, THE CONSUMMATION OF THIS PLAN, OR THE ADMINISTRATION OF THIS PLAN, EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS DETERMINED BY A FINAL ORDER OF THE BANKRUPTCY COURT. ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENJOINED FROM ASSERTING OR PROSECUTING ANY CLAIM OR CAUSE OF ACTION AGAINST ANY RELEASED PERSON FOR WHICH SUCH PARTY HAS BEEN EXCULPATED FROM LIABILITY PURSUANT TO THE PRECEDING SENTENCE.**

#### **Section 12.07 Recoupment**

Except as provided in this Plan and/or the Confirmation Order, any Holder of a Claim or Interest shall not be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

#### **Section 12.08 Release of Liens**

Except as otherwise provided in this Plan or in any contract, instrument, release, or other agreement or document created pursuant to this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to this Plan and, in the case of a Secured Claim, satisfaction of the portion of the Secured Claim that is Allowed as of the Effective Date as set forth in this Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors' Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns.

### **Section 12.09 Good Faith**

As of the Confirmation Date, the Debtors shall be deemed to have solicited acceptances or rejections of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

### **Section 12.10 Protection against Discriminatory Treatment**

Consistent with § 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including governmental units, shall not discriminate against the Reorganized Debtors or deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors or another Entity with whom such Reorganized Debtors have been associated, solely because the Debtors have been debtors under chapter 11, have been insolvent before the commencement of these Chapter 11 Cases (or during these Chapter 11 Cases but before the Debtors are granted or denied a discharge) or have not paid a debt that is dischargeable in these Chapter 11 Cases.

### **Section 12.11 Rights of Defendants and Avoidance Actions**

All rights, if any, of a defendant to assert a Claim arising from relief granted in an Avoidance Action (including the Assigned Avoidance Actions), together with the Reorganized Debtors' right to oppose such Claim are fully preserved. Any such Claim that is Allowed shall be entitled to treatment and distribution under this Plan as a General Unsecured Claim or an Other Secured Claim, but only to the extent that any statutory Lien securing such Claim under applicable nonbankruptcy law is determined by a Final Order to be a Senior Statutory Lien.

## **ARTICLE XIII**

### **MISCELLANEOUS PROVISIONS**

#### **Section 13.01 Severability of Plan Provisions**

If, before Confirmation, any term or provision of this 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 this 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 this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

### **Section 13.02 Successors and Assigns**

The rights, benefits and obligations of any Person named or referred to in this Plan, including any Holder of a Claim, shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

### **Section 13.03 Binding Effect**

This Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims against and Interests in the Debtors, their respective successors and assigns and all other parties-in-interest in these Chapter 11 Cases.

### **Section 13.04 Notices**

Any notice, request, or demand required or permitted to be made or provided under this Plan to or upon the Debtors, the Reorganized Debtors, or the RSA Creditor Parties shall be (i) in writing; (ii) served by (a) certified mail, return receipt requested, (b) hand delivery, (c) overnight delivery service, (d) first class mail, or (e) facsimile transmission; and (iii) deemed to have been duly given or made when actually delivered or, in the case of facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtors or Reorganized Debtors, as applicable:

Energy & Exploration Partners  
420 Throckmorton St., Suite 1200  
Fort Worth, Texas 76102  
Attn: Tom McNutt  
Facsimile: (817) 332-5001

With a copy to (which shall not constitute notice):

BRACEWELL LLP  
1251 Avenue of the Americas  
New York, New York 10020  
Attn: Jennifer Feldsher  
Facsimile: (212) 508-6101

-and-

BRACEWELL LLP  
711 Louisiana, Suite 2300  
Houston, TX 77002  
Attn: William A. (Trey) Wood III  
Facsimile: (713) 221-1212

If to the Consenting Secured Lenders:

Weil, Gotshal & Manges LLP

767 Fifth Avenue  
New York, NY 10153  
Attn: Matthew S. Barr and Charles M. Persons  
Facsimile: (212) 310-8007

If to the Consenting Noteholders

Akin Gump Strauss Hauer & Feld LLP  
Bank of America Tower  
One Bryant Park  
New York, NY 10036  
Attn: Ira Dizengoff  
Facsimile: (212) 872-1002

-and-

Akin Gump Strauss Hauer & Feld LLP  
Robert S. Strauss Building  
1333 New Hampshire Avenue, N.W.  
Washington, DC 20036  
Attn: Scott Alberino  
Facsimile: (202) 887-4288

If to the Creditors Committee

Arent Fox LLP  
1675 Broadway  
New York, NY 10019  
Attn: Robert M. Hirsh and George P. Angelich  
Facsimile: (212) 484-3990

**Section 13.05 Term of Injunctions or Stay**

Unless otherwise provided in this Plan and/or Confirmation Order, all injunctions or stays provided for in these Chapter 11 Cases under Bankruptcy Code §§ 105 or 362 or otherwise, and in existence on the Confirmation Date (excluding any injunctions or stays contained in this Plan or Confirmation Order and in any order of the Bankruptcy Court concerning preservation of any net operating losses), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in this Plan and/or Confirmation Order shall remain in full force and effect in accordance with their terms.

**Section 13.06 No Admissions**

Notwithstanding anything herein to the contrary, nothing in this Plan shall be deemed as an admission by the Debtors with respect to any matter set forth herein, including liability on any Claim.

### **Section 13.07 Notice of the Effective Date**

Within five (5) Business Days after the Effective Date, the Debtors shall file on the docket of the Bankruptcy Court a *Notice of Effective Date* stating that (i) all conditions to the occurrence of the Effective Date have been satisfied or waived with the consent of the Requisite Majority Consenting Secured Lenders; (ii) the Effective Date has occurred and specifying the date thereof for all purposes under this Plan; and (iii) setting forth the name, address and telephone number for the Reorganized Debtors.

### **Section 13.08 Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of the State of Texas, without giving effect to the principles of conflicts of law thereof, shall govern the construction and implementation of this Plan and any agreements, documents, and instruments executed in connection with this Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control) as well as corporate governance matters with respect to the Debtors; *provided, however*, that corporate governance matters relating to the Debtors, the Reorganized Debtors, or their Affiliates as applicable, not organized under Texas law shall be governed by the laws of the state of organization of such entity.

### **Section 13.09 Plan Documents**

The Plan Documents are incorporated herein and are a part of this Plan as set forth in full herein.

### **Section 13.10 Entire Agreement**

This Plan and the Plan Documents set forth the entire agreement and understanding among the parties-in-interest relating to the subject matter hereof and supersede all prior discussions and documents.

## **ARTICLE XIV**

### **CONFIRMATION REQUEST**

The Debtors request Confirmation of this Plan under Bankruptcy Code § 1129. If any Impaired Class does not accept this Plan pursuant to Bankruptcy Code § 1126, the Debtors request Confirmation pursuant to Bankruptcy Code § 1129(b). In that event, the Debtors reserve the right to modify this Plan to the extent (if any) that Confirmation of this Plan under Bankruptcy Code § 1129(b) requires modification.

Dated: April 25, 2016

Energy & Exploration Partners, Inc.

By: /s/ John R. Castellano

Name: John R. Castellano

Title: Interim Chief Financial Officer