

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:  
  
National Bank of Anguilla (Private Banking  
& Trust) Ltd.,  
  
Debtor.

Chapter 11

Case No. 16-11806 (MG)

**DISCLOSURE STATEMENT PURSUANT TO SECTION 1125  
OF THE BANKRUPTCY CODE FOR THE MODIFIED LIQUIDATING PLAN OF  
REORGANIZATION OF THE DEBTOR AND DEBTOR IN POSSESSION**

[This is not a solicitation of acceptance or rejection of the plan. Acceptances or rejections may not be solicited until a disclosure statement has been approved by the Court. This disclosure statement is being submitted for approval but has not been approved by the Court.]

October 18, 2018

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**DISCLOSURE STATEMENT DATED OCTOBER 18, 2018  
SOLICITATION OF VOTES WITH RESPECT TO THE MODIFIED LIQUIDATING  
PLAN OF REORGANIZATION OF DEBTOR AND DEBTOR IN POSSESSION**

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National Bank of Anguilla (Private Banking & Trust) Ltd. (the “Debtor”), believes that the Modified Liquidating Plan of Reorganization of Debtor and Debtor in Possession attached as Exhibit A (together with all exhibits attached thereto or referenced therein, as the same may be amended, modified or supplemented, the “Plan”)<sup>1</sup> to this Disclosure Statement for the Plan (together with all exhibits attached thereto or referenced therein, as the same may be amended, modified or supplemented, this “Disclosure Statement”) is in the best interests of Creditors and Interest holders. All Creditors and Interest holders entitled to vote thereon are urged to vote in favor of the Plan. A summary of the voting instructions is set forth beginning on page 15 of this Disclosure Statement. More detailed instructions are contained on the ballots distributed to Creditors or Interest holders entitled to vote on the Plan. To be counted, your ballot must be duly completed, executed and received by 5:00 p.m. (Eastern) on [ \_\_\_\_\_, 2018] (the “Voting Deadline”), unless extended.

The effectiveness of the proposed Plan is subject to material conditions precedent, some of which may not be satisfied. See Section IV.H. There is no assurance that these conditions will be satisfied.

No person is authorized by the Debtor in connection with the Plan or the solicitation of acceptances of the Plan to give any information or to make any representation other than as contained in this Disclosure Statement and the exhibits attached hereto or incorporated by reference or referred to herein and, if given or made, such information or representation may not be relied upon as having been authorized the Debtor. Although the Debtor will make available to Creditors and Interest holders entitled to vote on acceptance of the Plan such additional information as may be required by applicable law prior to the Voting Deadline, the delivery of this Disclosure Statement will not under any circumstances imply that the information herein is correct as of any time after the date hereof.

**All Creditors and Interest holders entitled to vote on the Plan are encouraged to read and carefully consider this entire Disclosure Statement, including the Plan attached as Exhibit A and the Risk Factors described in Article X, prior to submitting ballots in response to this solicitation.**

The summaries of the Plan and other documents contained in this Disclosure Statement are qualified by reference to the Plan itself, the exhibits thereto and documents described therein as being Filed prior to approval of the Disclosure Statement. All Exhibits hereto are incorporated into, and are a part of, this Disclosure Statement as if set forth in full herein. In the event that any inconsistency or conflict exists between this Disclosure Statement and the Plan,

<sup>1</sup> All capitalized terms used in this Disclosure Statement and not otherwise defined herein shall have the meanings given to them in the annexed Glossary.

the terms of the Plan will control. Except as otherwise indicated, the Debtor will File all exhibits to the Plan with the Bankruptcy Court and make them available for review no later than ten days before the Confirmation Hearing. The Debtor also will serve the exhibits to the Plan via first class mail on the parties on the general service list being maintained in the Chapter 11 Case on or before ten days before the Confirmation Hearing.

No representations concerning the Debtor, its financial condition or any aspect of the Plan are authorized by the Debtor other than as set forth in this Disclosure Statement.

The financial information contained herein, unless otherwise indicated, is unaudited. In addition, the information contained herein may be incomplete. The Debtor and its Professionals are unable to warrant that the information contained herein is without any inaccuracy. Great effort, however, has been made to ensure that all such information is fairly presented.

The Debtor, the Administrator, and the Professionals representing the Debtor have relied upon information previously prepared by the Debtor in connection with the preparation of this Disclosure Statement and have not independently verified the factual information contained herein. The contents of this Disclosure Statement should not be construed as legal, business or tax advice. You should consult with your own legal counsel and accountant as to legal, tax, and related matters concerning your Claim or Interest.

The statements contained in this Disclosure Statement are made as of the date hereof, and there can be no assurance that the statements contained herein will be correct at any time after the date hereof.

The information contained in this Disclosure Statement, including the information regarding the history, business and operations of the Debtor, the financial information regarding the Debtor and the liquidation analysis relating to the Debtor, is included for purposes of soliciting votes on the Plan. As to contested matters, adversary proceedings, and other actions or threatened actions, this Disclosure Statement shall not constitute or be construed as an admission of any fact, liability, stipulation, or waiver, but rather as a statement made without prejudice solely for settlement purposes, with full reservation of rights. This Disclosure Statement shall not be used against the Debtor for any litigation purpose whatsoever. This Disclosure Statement shall not be construed to be conclusive advice on the tax, securities law, or other legal effects of the Plan as to holders of Claims against or Interests in the Debtor.

### **FORWARD-LOOKING STATEMENTS**

**This Disclosure Statement contains forward-looking statements based primarily on the current expectations of the Debtor and projections about future events and financial trends affecting the financial condition of the Debtor's Assets. The words "believe," "may," "estimate," "continue," "anticipate," "intend," "expect" and similar words or expressions identify these forward-looking statements. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described below under the caption "Risk Factors" in Article X. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated**

**in the forward looking statements. The Debtor does not undertake any obligation to update or revise publicly any forward looking statements, whether as a result of new information, future events or otherwise.**

**This Disclosure Statement has not been approved or disapproved by the United States Securities and Exchange Commission (the "SEC"), any state securities commission or any securities exchange or association. None of the SEC, any state securities commission or any securities exchange or association passed upon the accuracy or adequacy of the statements contained herein.**

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## I. INTRODUCTION

The Debtor is seeking approval of the Plan, a copy of which is attached as Exhibit A. This Disclosure Statement is submitted by the Debtor in connection with the solicitation of votes on the Plan.

Pursuant to 11 U.S.C. § 1528, the Plan only affects the Recovery Actions and the other Assets of the Debtor located “within the territorial jurisdiction of the United States” and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527 of the Bankruptcy Code, to other assets of the Debtor that are within the jurisdiction of the Bankruptcy Court under sections 541(a) of the Bankruptcy Code, and 1334(e) of title 28 of the United States Code, to the extent that such other assets are not subject to the jurisdiction and control of the Anguillian Proceeding. Similarly, the Claim resolution process provided for in Article VII of the Plan is solely with respect to Claims asserted in this Chapter 11 Case (as those terms are hereinafter defined), and nothing in the Plan shall alter or affect (i) a Creditor’s right to assert claims in the Anguillian Proceeding (as hereinafter defined) or (ii) the right of the Administrator (as hereinafter defined) to contest, challenge or compromise any claim(s) that may be filed in the Anguillian Proceeding. The Plan proposes that the Debtor’s Assets will vest in a Litigation Trust and the proceeds from the liquidation of the Litigation Trust Assets will be distributed to Holders of Allowed Claims pursuant to the terms of the Plan. The Debtor believes that the recovery to Creditors and Interest holders under the Plan will equal or exceed the recovery to Creditors and Interest holders under any other feasible reorganization or liquidation alternative. Creditors and Interest holders should thoroughly review both the Plan and the Disclosure Statement before deciding whether to accept or reject the Plan. No materials, other than the Disclosure Statement and the exhibits and schedules attached thereto or referenced therein, have been approved by the Debtor for use in soliciting acceptances or rejections of the Plan.

The purpose of the Disclosure Statement is to provide adequate information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the Debtor and the condition of the Debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of Claims against and Interests in the Debtor to make an informed judgment about the Plan.

This Disclosure Statement is submitted pursuant to section 1125 of the Bankruptcy Code to holders of Claims against or Interests in the Debtor in connection with (i) the solicitation of acceptances of the Plan, and (ii) the hearing to consider confirmation of the Plan, scheduled for **TBD, at \_\_:\_\_.m. (Eastern).**

Attached as exhibits to this Disclosure Statement are copies of the following:

- The Plan (Exhibit A);
- The Hypothetical Liquidation Analysis (Exhibit B) (the “Liquidation Analysis”).

If you did not receive copies of the exhibits to the Disclosure Statement, you may obtain the exhibits free of charge by contacting the Debtor’s counsel in writing as follows: James C.



McCarroll, Esquire, Reed Smith LLP, 599 Lexington Avenue, New York, NY 10022-7650 (Facsimile: 212-521-5450) or Kurt F. Gwynne, Esquire, Reed Smith LLP, 1201 Market Street, Suite 1500, Wilmington, Delaware 19801 (Facsimile: 302-778-7575). Copies are also available on the Bankruptcy Court's website (<http://www.nysb.uscourts.gov>) and the website of Epiq Bankruptcy Solutions, LLC, ("Epiq") the Debtor's Bankruptcy Court-approved noticing agent, (<http://dm.epiq11.com/NBA>).

On [\_\_\_\_\_, 2018], after notice and a hearing, the Bankruptcy Court entered an order approving this Disclosure Statement (the "Disclosure Statement Order") as containing adequate information of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of holders of Claims against and Interests in the Debtor to make an informed judgment as to whether to accept or reject the Plan. Approval of the Disclosure Statement does not constitute a determination by the Bankruptcy Court as to the fairness or merits of the Plan.

The Disclosure Statement Order sets forth in detail the deadlines, procedures, and instructions for, among other things, (a) voting to accept or reject the Plan, (b) filing objections to Confirmation of the Plan, (c) the voting record date, and (d) the tabulation of votes. In addition, detailed voting instructions accompany each ballot. Each holder of a Claim or Interest entitled to vote on the Plan should read the Disclosure Statement, the Plan, the Disclosure Statement Order, and the instructions accompanying the ballots in their entirety before voting on the Plan.

## II. SUMMARY OF THE CHAPTER 11 PLAN

**Pursuant to the Disclosure Statement Order, this Disclosure Statement has been approved as containing "adequate information" for Creditors and Interest holders of the Debtor in accordance with section 1125 of the Bankruptcy Code. The Bankruptcy Code defines "adequate information" as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and the history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan . . . ." 11 U.S.C. § 1125(a)(1).**

The Debtor believes that the Plan is in the best interests of Creditors and Interest holders. All Creditors or Interest holders entitled to vote are urged to vote in favor of the Plan by no later than the Voting Deadline.

### A. Summary of Classification and Treatment Under the Plan

Administrative Claims (which are, generally, Claims arising during the Chapter 11 Case) are unclassified under the Plan.<sup>2</sup> Allowed Administrative Claims will be paid in full on the

<sup>2</sup> Priority Tax Claims also are unclassified Claims pursuant to section 1123(a)(1) of the Bankruptcy Code. The Debtor, however, does not believe that it owes any priority Tax Claims.

Effective Date or as soon thereafter as is practicable from the Assets or funds made available by the Administrator to pay the allowed Administrative Claims. Holders of Administrative Claims are not entitled to vote on the Plan.

A summary of the treatment of various classes of Claims and Interests of the Debtor is set forth in the tables below.<sup>3</sup> Except to the extent that the Plan provides otherwise, a Claim or Interest that is properly includable in more than one Class is classified in a particular Class only to the extent that it qualifies with the description of that Class, and is placed in a different Class to the extent it qualifies with the description of such different Class. The Classes of Claims and Interests are summarized as follows:

**1. Classification/Treatment of Claims and Interests Under Plan**

The classification and treatment of Claims and Interests are summarized below:

<b>Class/Interest</b>	<b>Status/Entitled to Vote?</b>	<b>Estimated Total Amount of Claims / Interests</b>	<b>Estimated Recovery Solely from "Assets"</b>
Unsecured Claims (Class 1)	Impaired; Entitled to Vote	\$35,840,000	\$0.00 to \$25,363,888 potential recovery from Recovery Actions, which are contested litigation claims
Interests (Class 2)	Impaired; Entitled to Vote	N/A	\$0.00

For purposes of computations of Claim amounts, administrative and other expenses and similar computational purposes, the Effective Date is assumed to occur on or about December 27, 2018. There can be no assurance, however, if or when the Effective Date will actually occur.

**B. Overview of a Chapter 11**

The Bankruptcy Case was brought under Chapter 11 of the Bankruptcy Code. Unless otherwise ordered by a bankruptcy court, a Chapter 11 debtor continues to manage its affairs as a "debtor-in-possession" and as a fiduciary to the creditors of its estate.

<sup>3</sup> As this table merely provides a summary of the classification and treatment of Claims and Interests under the Plan, reference should be made to the entire Disclosure Statement and the Plan for a complete description of the classification and treatment of Claims and Interests.

The commencement of a Chapter 11 case creates an estate comprising all of the legal and equitable interests that the debtor has in property as of the date the bankruptcy petition is filed. In light of the pending Anguillian Proceeding, which is a foreign main proceeding, the Chapter 11 Case affects only the Recovery Actions and the other Assets of the Debtor located within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527 of the Bankruptcy Code, to other assets of the Debtor that are within the jurisdiction of the Bankruptcy Court under sections 541(a) of the Bankruptcy Code, and 1334(e) of title 28 of the United States Code, to the extent that such other assets are not subject to the jurisdiction and control of the Anguillian Proceeding. As explained below, the Adversary Proceeding (as defined at Section IV.E) has been stayed pending disposition of the Anguillian Litigation. Similarly, the Claim resolution process provided for in Article VII of the Plan is solely with respect to Claims asserted in this Chapter 11 Case, and nothing in the Plan shall alter or affect (i) a Creditor's right to assert claims in the Anguillian Proceeding or (ii) the right of the Administrator to contest, challenge or compromise any claim(s) that may be filed in the Anguillian Proceeding. The filing of a Chapter 11 petition triggers the "automatic stay" provisions of section 362 of the Bankruptcy Code. The "automatic stay" prohibits creditors and other parties from undertaking any action to collect a pre-petition debt, claim, or obligation from the debtor or otherwise to interfere with its property or financial affairs. Unless the bankruptcy court orders otherwise, the automatic stay remains in full force and effect until a plan of reorganization is confirmed. At that time, the plan may provide for a stay or injunction pending the liquidation of assets pursuant to the plan.

The Bankruptcy Code authorizes the formation of certain official committees from interested creditors or equity security holders. In this Chapter 11 Case, no official committee was formed. A committee of depositors has been established in the Anguillian Proceeding.

### **C. Plan of Reorganization**

Although Chapter 11 of the Bankruptcy Code is titled "Reorganization" the Bankruptcy Code permits a debtor to liquidate its business and wind up its affairs under Chapter 11. Accordingly, the primary objective of a Chapter 11 case is the formation, confirmation and implementation of a plan of reorganization or liquidation. A plan may either be consensual or non-consensual. A plan sets forth, among other things, the proposed treatment of claims against and equity interests in the debtor. The confirmation process and the conditions for confirming either a consensual or non-consensual plan are more fully described in Section IV.G below. The Plan proposes that the Debtor's Assets will vest in a Litigation Trust and the proceeds from the liquidation of the Litigation Trust Assets will be distributed to Holders of Allowed Claims pursuant to the terms of the Plan.

After a plan is filed, the holders of claims against or interests in a debtor who will receive distributions under the plan and whose claims or interests are proposed to be "impaired" by the plan are permitted to vote to accept or reject the plan. Generally, under the Bankruptcy Code, a claim or interest is "impaired" if the plan alters the legal, equitable or contractual rights to which the holder of that claim or interest is entitled. Creditors or equity holders who are "unimpaired" are deemed to accept a plan and, therefore, do not vote. Creditors or equity holders that receive no distribution under a plan are deemed to reject a plan and, therefore, do not vote.

Section 1125 of the Bankruptcy Code requires that, prior to soliciting acceptances of the proposed plan, the debtor must prepare a disclosure statement. The disclosure statement must contain adequate information about the debtor, its assets and liabilities and the plan of reorganization or liquidation to enable a hypothetical, reasonable investor to make an informed judgment about the plan. This Disclosure Statement is presented to Creditors and Interest holders to satisfy section 1125 of the Bankruptcy Code.

#### **D. Confirmation of a Plan of Reorganization**

The Bankruptcy Code requires that the plan establish various classes of claims and interests. The Bankruptcy Code further requires that each of the claims or interests in a class must be substantially similar to the other claims or interests in that class. Under the Bankruptcy Code, a class of claims will have accepted the plan if the plan has been accepted by creditors that hold at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the allowed claims of such class that actually vote on the plan. A class of interests will have accepted the plan if the plan has been accepted by interest holders that hold at least two-thirds (2/3) in amount of the allowed interests of such class that actually vote on the plan. Thus, Chapter 11 does not require that each holder of a claim or interest vote in favor of the plan in order for the Bankruptcy Court to confirm the plan.

Confirmation of a plan, which is the vehicle for satisfying the rights of holders of claims against and equity interests in a debtor, is the ultimate goal of a chapter 11 case. Although referred to as a plan of reorganization or plan of liquidation, a plan may provide anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of assets. In either event, upon confirmation of the plan, it becomes binding on the debtor and all of its creditors and stakeholders, and the obligations owed by the debtor to those parties are compromised and exchanged for the treatment specified in the plan. In this Chapter 11 Case, the Plan contemplates a liquidation of the Assets and is, therefore, referred to as a "plan of liquidation." The primary objective of the Plan is to maximize the value of the Assets for the benefit of all Creditors and Interest holders on a fair and equitable basis in accordance with the priorities established by the Bankruptcy Code. The Plan provides for, among other things: (a) the vesting of the Assets, including, without limitation, the Recovery Actions, in the Litigation Trust on the Effective Date of the Plan; and (b) liquidation of the Litigation Trust Assets for the benefit of the Debtor's Creditors as set forth in the Plan. In order to confirm the Plan, the Bankruptcy Court must determine that the Plan satisfies the requirements of section 1129 of the Bankruptcy Code, including the voting requirements described above. In addition, section 1129 requires, among other things, that the Plan be "feasible" and in the "best interests" of each of the Creditors and Interest holders. In determining the "feasibility" of the Plan, the Bankruptcy Court must find that there is a reasonable probability that the Debtor will be able to perform its obligations under the Plan without further liquidation that is not contemplated by the Plan. The "best interests" test generally requires that the value of the consideration to be distributed to the Creditors and Interest holders under the Plan must not be less than what they would receive if the Debtor's assets were to be liquidated under a hypothetical liquidation pursuant to Chapter 7 of the Bankruptcy Code. The Debtor believes that the Plan satisfies these requirements.

Even though a Creditor or Interest holder may choose not to vote or may choose to vote against the Plan, such Creditor or Interest holder will be bound by the terms and treatment set forth in the Plan if the Plan is confirmed by the Bankruptcy Court. Likewise, those holders of Claims and Interests that are not entitled to vote on the Plan will nonetheless be bound by the terms and treatment set forth in the Plan if the Plan is confirmed by the Bankruptcy Court.

If the Plan is not accepted by a Class of Claims or Interests entitled to vote on the Plan, the Debtor will seek confirmation of the Plan under the so-called “cramdown” provisions of the Bankruptcy Code. Pursuant to section 1129(b) of the Bankruptcy Code, the Debtor may “cramdown” the Plan on non-accepting Classes of Claims and Interests if the Plan complies with all of the requirements of section 1129(a) (except section 1129(a)(8), which requires acceptance by all impaired Classes), and the Debtor establishes, among other things, that (i) the Plan is accepted by at least one impaired Class of Creditors or Interests, (ii) the Plan is “fair and equitable,” and (iii) the Plan does not “unfairly discriminate.” For a more complete description of the “cramdown” requirements, see Section IV.H of this Disclosure Statement.

#### **E. Summary of Classes and Treatment of Claims and Interests**

The estimated percentage recovery for each Class under the Plan is provided in the table below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims have not been classified.

As of September 30, 2018, the Debtor owes approximately \$451,977.00 to its retained Professionals for services rendered from the inception of the Chapter 11 Case. A portion of that amount represents the 20% holdback of Professionals’ fees pursuant to the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, entered by the Bankruptcy Court on August 8, 2016 [Dkt. No. 58]. The Debtor estimates that from October 19, 2018 through the Effective Date of the Plan, the Debtor will incur an additional \$50,000 in fees and other costs to its Professionals and other third-party vendors.

For a discussion of certain additional matters related to Administrative Claims, see Section XI.A. The Debtor’s estimate of recoveries for holders of Claims and Interests in Classes 1 and 2 under the Plan are based on, among other things, its estimate of the Administrative Claims and the aggregate of allowed Claims; *however*, there can be no assurance that the Debtor’s estimate of the likely aggregate allowed amount of such Claims will prove to be accurate.

The estimated amounts of Claims shown in the table above are based upon the Debtor’s review of its books and records as reflected in the Debtor’s Schedules, Filed Proofs of Claim and may be subject to revision.

In determining the “Estimated Recovery” in the table above, the Debtor has assumed that the Plan is consummated as described therein. The actual recovery on account of Claims and Interests depends upon the net recovery, if any, in the Recovery Actions. The Recovery Actions are vigorously contested causes of action against ECCB, NCBA, NBA (as those terms are defined below) and other potential defendants.

For a discussion of various factors that could materially affect the amount of Cash and other assets available for the Reorganized Debtor to distribute to the Administrator, see Articles II, VI and X, and the Liquidation Analysis attached hereto as Exhibit B. In addition, the Debtor's estimates for recoveries by holders of Claims and Interests are based on the Debtor's current view of the likely amount of Claims incurred by the Debtor through Confirmation of the Plan. There can be no guaranty that the Debtor's estimates of Claims will prove to be accurate.

The Plan divides holders of Claims against and Interests in the Debtor into two (2) separate Classes as follows:

**1. Unsecured Claims (Class 1) are impaired.** Class 1 is comprised of Unsecured Claims against the Debtor. Except to the extent that a Holder of an Allowed Class 1 Claim agrees to less favorable treatment, each Holder of an Allowed Class 1 Claim shall receive as soon as reasonably practicable after the Effective Date and the liquidation of the Assets, from time to time thereafter in accordance with Section VI.A of the Plan, its Pro Rata Share of Debtor's Available Cash until each Holder receives up to one hundred percent (100%) of its Allowed Claim, inclusive of distributions, if any, made to a Holder of an Allowed Class 1 Claim in the Anguillian Proceeding. No Holder of an Allowed Class 1 Claim shall be entitled to interest on its Claim for the period following the Petition Date unless the Debtor is proven to be solvent. If the Debtor is proven to be solvent, each such Holder shall be entitled to its Pro Rata Share of interest payment at the simple rate of 0.55% per annum (which is provided in 28 U.S.C. § 1961 as of the Petition Date). For purposes of voting on the Plan, the Debtor believes that the Class 1 Claims will total \$35,840,000. Class 1 is entitled to vote.

**2. Interests (Class 2) are impaired.** Class 2 is comprised of Interests in the Debtor. After the payment in full of or reserve for Allowed Claims in Class 1, whether through Distributions made pursuant to the Plan and/or through distributions, if any, made to a Holder of an Allowed Class 1 Claim in the Anguillian Proceeding, Holders of Allowed Interests in Class 2 shall receive their Pro Rata Share of Debtor's Available Cash. Class 2 is entitled to vote.

### **III. EVENTS PRECEDING THE CHAPTER 11 CASE**

Below is a description of the Debtor and a recitation of the significant events and factual circumstances surrounding the commencement of the Bankruptcy Case. Copies of all filings with the Bankruptcy Court are on file with the Bankruptcy Court and available on its website (<http://www.nysb.uscourts.gov>) and the website of Epiq Bankruptcy Solutions, LLC, the Debtor's Bankruptcy Court-approved noticing agent, (<http://dm.epiq11.com/NBA>).

#### **A. Nature of the Debtor's Business and its Capital Structure**

The Debtor is a commercial offshore bank (that is, a bank that operates within Anguilla authorized only to accept deposits and remit withdrawals in non-Eastern Caribbean currency to persons who are generally not residents of Anguilla), incorporated and licensed under the Trust Companies and Offshore Banking Act of Anguilla, with its headquarters located at the Conrad W Fleming Corporate Building on St. Mary's Road in The Valley, Anguilla. The Debtor was established to provide such "off-shore" banking services. The National Bank of Anguilla Ltd. ("NBA") is the sole shareholder of the Debtor, holding all 42,037 shares issued by the Debtor.

NBA was incorporated pursuant to the laws of Anguilla as a privately-owned company. The National Commercial Bank of Anguilla Ltd. ("NCBA") is the successor in interest to NBA.

The Debtor has no business operations and no longer has any employees. Upon information and belief, (a) the Debtor has no secured creditors, and (b) the Debtor's only material Creditors are its depositors. The Debtor believes that it has five hundred ninety six (596) known depositors with a positive account balance.

## **B. Circumstances Leading to the Debtor's Filing for Relief Under Chapter 11**

### **1. Upstreaming of the Debtor's Deposits**

On August 12, 2013, the Eastern Caribbean Central Bank (the "ECCB"), which was the regulator of NBA (but not the Debtor), placed the affairs of NBA into conservatorship pursuant to the Eastern Caribbean Central Bank Agreement Act. As of August 12, 2013, the Debtor's affairs were conducted in accordance with instructions given by, and under the management control of, individuals appointed from time to time by the ECCB as conservators of NBA (collectively, the "Conservator Directors"). The Conservator Directors included Messrs. Martin Dinning, Hudson Carr, Shawn Williams, and Robert Miller.

On or about August 15, 2013, the ECCB or Mr. Dinning, as Conservator Director then acting on behalf of NBA, dismissed the appointed directors of the Debtor. Thereafter, the Debtor had no *de jure* directors and acted solely in accordance with the instructions of, and under the management control of, the Conservator Directors acting from time to time. From and after August 12, 2013, based upon his review of the Debtor's financial statements provided by the Debtor's regulator, the Financial Services Commission in Anguilla ("FSC"), the Administrator believes that the Debtor was insolvent on a balance sheet test. Based upon the Administrator's review of financial statements for NBA, and his understanding of its financial position, the Administrator also believes that NBA was balance sheet and cash flow insolvent, dependent upon the Debtor for its liquidity (at least in part), and unable to settle the large amount NBA owed to the Debtor.

The Conservator Directors (acting on behalf of the Debtor) procured or permitted the deposit with, or the payment or other transfer to, NBA of (i) all monies denominated in U.S. Dollars deposited by the Debtor's depositors and (ii) the proceeds of all assets of the Debtor realized or collected, also denominated in U.S. Dollars (together, the "Funds") – in all approximately \$175 million in U.S. dollars. Upon information and belief, the Funds were deposited into one or more accounts in the United States at Bank of America.

On April 22, 2016, the ECCB appointed a receiver to NBA and, on that date (at 4:00 p.m. local time), NBA ceased banking operations in Anguilla. According to a press release issued by the ECCB, NBA's banking operations were transferred on April 22, 2016, to a newly established bank, NCBA, which is wholly-owned by the Government of Anguilla. None of NBA, NCBA, the ECCB, and the Conservator Directors has provided meaningful responses to the Administrator's queries relating to the transfer of the Funds to NBA (while NBA was insolvent). In addition, despite repeated requests by the Administrator, there has been no indication made that NBA or NCBA will repay any of the Funds. To the contrary, the Administrator understands

that NCBA has made no provision for repayment to the Debtor or its depositors. Further, NBA is in receivership and remains insolvent.

## 2. The Anguillian Administration

The Debtor failed to provide the FSC on or before April 30, 2015 with audited accounts of its banking business for the financial year ended October 31, 2014, thereby violating section 30(2) of Trust Companies and Offshore Banking Act, R.S.A. c. T60. Therefore, upon the application of the FSC, the Anguillian Court entered an Order, dated February 22, 2016, (the "First Administration Order") thereby placing the operations of the Debtor (and another offshore bank, the Caribbean Commercial Investment Bank Ltd.) under administration pursuant to section 31(2)(b) of the Financial Services Commission Act, R.S.A. c. F28 (the "FSC Act") and appointing William Tacon as Administrator.

As the court-appointed Administrator of the Debtor, Mr. Tacon has complete control of the management of the Debtor pursuant to section 31(2)(b) of the FSC Act and has been authorized to, among other things:

- act in Anguilla or any foreign jurisdiction where he believes assets and property of the Debtor may be located and to commence or continue, without further order of the Anguillian Court, any proceeding or action in a foreign jurisdiction for the purpose of fulfilling his duties and obligations under the First Administration Order; and
- to seek the assistance of any court of a foreign jurisdiction in the carrying out of the provisions of the First Administration Order, including without limitation, an order of examination of persons believed to be knowledgeable of the affairs, assets and property of the Debtor and to assist the Administrator in the recovery of the assets and property of the Debtor.

At the close of business on April 25, 2016, the Debtor ceased accepting new deposits.

By an Order dated May 19, 2016, the Anguillian Court expressly conferred upon the Administrator the powers of a liquidator under the Companies Act, as permitted by section 31(3) of the FSC Act. In order to preserve the Assets and maximize the amounts available to pay its creditors, the Administrator commenced proceedings under the Bankruptcy Code, as discussed below.

## 3. The Debtor's Chapter 15 and Chapter 11 Cases

On May 26, 2016, the Administrator Filed in the Bankruptcy Court, *inter alia*, a *Verified Chapter 15 Petition for Recognition of a Foreign Proceeding* for recognition of the Anguillian Proceeding as a "foreign main proceeding," thereby commencing the Chapter 15 Case #16-11529(MG). By an *Order Granting Verified Petition for Recognition of Foreign Proceeding under Chapter 15 and Motion in Support of Verified Petition and for Related Relief* (the "Recognition Order"), the Bankruptcy Court recognized (a) the Anguillian Proceeding as a "foreign main proceeding" and (b) the Administrator as the Debtor's foreign representative. The Recognition Order provides, *inter alia*, that the Administrator is entitled to conduct discovery,



examine witnesses, seek and take evidence, and obtain information concerning the Debtor's assets, affairs, rights, obligations, or liabilities pursuant to section 1521(a)(4) of the Bankruptcy Code.

Based on the Recognition Order and 11 U.S.C. § 1528, the Administrator was authorized to file a Chapter 11 petition on behalf of the Debtor. On June 22, 2016, the Debtor filed a voluntary petition commencing the Chapter 11 Case.

**4. The Related Anguillian Proceedings**

**a. The Anguilla Initial Proceeding**

On May 6, 2016, the Debtor brought suit in the Anguillian Court against NBA and NCBA asserting that the Conservator Directors and ECCB breached their fiduciary duties in their capacity as *de facto* directors of the Debtor by transferring the Funds to NBA (the "Anguilla Initial Proceeding"). More specifically, the Debtor alleges that during their control, and while NBA was insolvent, the Conservator Directors "procured or permitted the payment to ... NBA ... of all monies received by [the Debtor] ... from depositors, and the proceeds of all assets of [the Debtor] ... realized or collected during the Relevant Period," in the amount of US\$174,959,675.75. The Debtor did not have an operating account. Thus, the Debtor contends that, generally, the "upstreamed" Funds were deposited directly into accounts in the United States in the name of NBA and that NBA received and held the Funds in trust for the Debtor, remained the Debtor's assets, and the Debtor was entitled to the return of the funds and/or their traceable proceeds. The Debtor therefore seeks declaratory, equitable and monetary relief aimed at restoring the wrongfully upstreamed funds and other transferred assets.

Because NBA was in receivership at the commencement of the Anguilla Initial Proceeding, a stay was in effect as to all legal proceedings against NBA under section 143(c) of the Banking Act 2015 (the "Banking Act"). The Debtor therefore required leave of the Anguillian Court to sue NBA. The Debtor did not seek leave before initiating the action, and sought leave retrospectively. The Anguillian Court refused to lift the stay and the Debtor's application was dismissed on August 24, 2016 (the "Leave Order").

The principal reason stated by the Anguillian Court for the dismissal was the Debtor's failure to join the Conservator Directors as parties. According to the Anguillian Court, the Debtor's claims "raise[d] serious questions about the source of the powers under which the conservators of the defendants (appointed by ECCB) sought to exercise the powers they are alleged to have exercised over the claimants who are offshore banks regulated by the [FSC] rather than the ECCB." Although the Debtor alleged that the Conservator Directors breached their fiduciary duties to them and sought a remedy against them in the form of a declaration that they had breached their fiduciary duties, the Anguillian Court noted that the Debtor did not name the Conservator Directors as parties. The Anguillian Court found that "it [did] not appear . . . that the claimants [could] rightfully seek or obtain a declaration against them that they acted in breach of the fiduciary duty" and without their presence, "the claim has very poor prospects of success." The Anguillian Court concluded that the Conservator Directors were necessary parties.

The Anguillian Court explained that the dismissal of the Debtor's application was also justified by the Conservator Directors' possible immunity. The defendants argued that the Conservator Directors were immune from suit under Article 5F of the ECCB Act.9. The Anguillian Court stated that Article 5F only provided immunity for acts done by the Conservator Directors in good faith and without negligence, and explained that the Debtor's Statement of Claim failed to specifically plead bad faith or negligence necessary to remove their claim from the immunity under Article 5F.

The defendants to the Initial Anguilla Proceeding also argued that the Conservator Directors were employees of ECCB, and therefore immune from suit under Article 50(7)(i).10 The Anguillian Court, however, questioned whether Article 50(7) covered the Conservator Directors. The immunity was not absolute, and in light of the "constitutional concept of proportionality," the Anguillian Court had to decide whether the immunity was inapplicable because the "the reliefs being sought fall outside that section on the basis that it constitutes a civil right." Based on these considerations, the Anguillian Court found that these issues "do not lend themselves to the court exercising its power without giving the parties an opportunity to be heard and further detailed analysis." The Debtor appealed from the Leave Order and such appeal was heard by the Eastern Caribbean Supreme Court in the Court of Appeal (the "Court of Appeal") on April 30, 2018. On July 11, 2018, the Court of Appeal issued its judgment allowing the Debtor's appeal and setting aside the Anguillian Court's judgment. The Court of Appeal ruled that the statutory stay barring the Debtor from asserting its proprietary claim against NBA is lifted to permit the Debtor to assert its claims, notwithstanding the fact that the Conservator Directors are not named defendants in the Anguilla Initial Proceeding. On August 28, 2018, the Debtor, through its Anguillian counsel, filed an amendment to the claim in the Anguilla Initial Proceeding, naming as defendants the ECCB and the Conservator Directors.

**b. The Satay Action**

On June 28, 2016, fifty-one of the Debtor's depositors (the "Satay Claimants") brought an action in the Anguillian Court (the "Satay Action") against Conservator Directors Martin Dinning, Hudson Carr, Shawn Williams, and Robert Miller, and ECCB (the "Satay Defendants"). Their statement of claim (the "Satay Statement of Claim") is premised on the same set of facts as asserted in the Complaint in the Adversary Proceeding (as those terms are defined below) and the "Statement of Claim" in the Anguilla Initial Proceeding, but asserted claims belonging to the Debtor's depositors rather than the Debtor. In the Satay Statement of Claim, the Satay Claimants asserted that they opened bank accounts with the Debtor and that ECCB placed NBA in conservatorship on August 12, 2013 pursuant to its emergency powers under the ECCB Act, and appointed the four individual defendants as Conservator Directors of NBA. The Satay Claimants alleged that as a result of the assumption of control over NBA by the Conservator Directors, the Conservator Directors became *de facto* directors of the Debtor and breached their duties to the Satay Claimants by, *inter alia*, failing to ensure the safety and security of their deposits and the Debtor's property. The Satay Claimants further contended that Conservator Martin Dinning misrepresented that their deposits were safe and that they could continue to trade with their accounts. As a result, the Satay Claimants claimed that they could not access their funds deposited with the Debtor, and under the "Resolution Plan" of 2016, the assets of the Debtor, including the Satay Claimants' deposits, were transferred to the newly constituted NCBA in breach of the Anguillian Constitution and the European Convention on

Human Rights. The Satay Claimants further alleged that the Satay Defendants knowingly assisted the Government of Anguilla in depriving the Satay Claimants of their money. The Satay Claimants sought a money judgment in the sum of approximately US\$13 million<sup>4</sup> together with interest from August 2013 in accordance with the terms of their accounts. The Debtor is not a party to the Satay Action.

The Satay Defendants filed an application on August 12, 2016 seeking a declaration that the Anguillian Court lacked jurisdiction based on the Satay Defendants' statutory immunity. The Satay Defendants contended that ECCB was immune from suit under Article 50(2) of the ECCB Act, and that the individual defendants were immune from suit pursuant to one or more of ECCB Act Articles 50(7), and/or 5B(1)(vii). The crux of the individual defendants' position was that they acted under the mandate of ECCB to stabilize the Anguillian banking system, and that their actions included the management and control of the Debtor. On the other hand, the Satay Claimants claimed that the defendants to that action acted without authority in managing and controlling the Debtor and that they were therefore not entitled to immunity.

On February 22, 2017, the Anguillian Court issued the Satay Judgment and held that the Satay Defendants had acted *ultra vires*. Although ECCB could, under appropriate circumstances, exercise control over the financial institutions it regulated (e.g., NBA), the Anguillian Court found that it could only "investigate the affairs" of the affiliated financial institutions, here, the NBA. The Anguillian Court found that ECCB and the individual defendants had exceeded their powers with respect to the Debtor, including by hiring and laying off the Debtor's officers and employees and replacing them with the Conservator Directors, and by sending letters to the Debtor's depositors regarding the restrictions on their withdrawals and the revisions of the interest rates on their deposits. Since the Satay Defendants did not possess the authority to act as they did with respect to the Debtor, the Anguillian Court concluded that immunity under Article 50 did not apply. The Anguillian Court further found that the applicability of Article 5F, which immunizes acts taken in good faith and without negligence, could only be determined "after a full ventilation of the facts of the case." The Satay Defendants' jurisdictional objection was therefore refused, and they were directed to serve their defense. ECCB and the Conservator Directors applied for leave to appeal from the Satay Judgment, and their application was granted on April 11, 2017. The appeal was heard on April 30, 2018 and the Anguillian Court has taken the matter under advisement.

**c. Application for Judicial Review**

On March 10, 2017, the Debtor filed an application for leave to apply for judicial review (the "Judicial Review Application" and, together with the Anguilla Initial Proceeding and the Satay Action, the "Anguillian Litigation") against the Chief Minister of Anguilla, the Attorney General of Anguilla in his official capacity as a legal representative of the Government of Anguilla, Gary Moving, the receiver of NBA and ECCB. The Judicial Review Application alleged that as part of a "Resolution Plan," in or around April 2016, ECCB and the Receiver agreed to transfer certain of NBA's liabilities (including its liabilities for deposits up to EC\$2.8

<sup>4</sup> This sum also includes damages sought by depositors in the Caribbean Commercial Investment Bank Ltd., which depositors are also plaintiffs in the Satay Action.

million) and an equal amount of assets to NCBA. At around the same time, the House of Assembly in Anguilla granted the Government of Anguilla money to fund a trust (the “Trust”) to protect NBA’s large depositors, defined as those depositors whose deposits exceeded EC\$4 million. The intention was to fulfill the policy under which NCBA would assume NBA’s liability to their depositors up to EC\$2.8 million while the balance of the deposits would be protected by the Trust, thereby fully protecting NBA’s depositors.

The Judicial Review Application claimed, in substance, that the respondents unfairly discriminated against the Debtor by guarantying repayment of deposits of all *onshore* depositors but not of *offshore* depositors, who are non-residents of Anguilla. More specifically, the Judicial Review Application alleged that based on the upstreaming of the funds, the Debtor was a depositor of NBA and that, accordingly, the Debtor should have received similar protection for its deposits. Nevertheless, the liability for the Debtor’s deposits was not transferred to NCBA, and the Debtor was excluded from eligibility for payments from the Trust. As a result, and through the Judicial Review Application, the Debtor seeks judicial review of various actions and decisions (collectively, the “Decisions”) that resulted in this alleged discriminatory treatment, the cumulative effect of which excluded the Debtor’s deposits from the protection up to EC\$2.8 million per deposit and eligibility for protection under the Trust. Among other things, the Debtor argued that the respondents had discriminated against similarly situated creditors of NBA notwithstanding contrary expectations based on ECCB’s promises and assurances to the Debtor that it would protect its deposits. The Debtor also claimed that the defendants mistakenly considered the legally irrelevant fact that the Debtor’s depositors were non-Anguillian residents, and that they ignored the fact that the Debtor, as a depositor of NBA, was a domestic depositor. The Debtor therefore seeks (1) a declaration that the Decisions were unlawful and an order quashing the Decisions; (2) a declaration that ECCB and the Chief Minister must effect the transfer of the liability for the Debtor’s deposits in the sum of EC\$2.8 million per deposit to NCBA; and (3) a declaration that the Debtor’s deposits with NBA must receive the same treatment and protections under the Trust from the Chief Minister and the Receiver as NBA’s other, similarly situated, depositors.

The Debtor expressly requested ECCB’s consent for a stay of the Judicial Review Application until the final determination of the Adversary Proceeding (defined below), but consent was not granted. On May 25, 2017, the Anguillian Court dismissed ECCB’s and the Receiver’s application for an adjournment and ordered that they provide reasons for their opposition to a stay of the Judicial Review Application. The Attorney General, representing himself and the Government of Anguilla, did not oppose the stay of the Judicial Review. On June 14, 2017, the Anguillian Court stayed the Judicial Review, until the earlier of either a “final determination” in the Adversary Proceeding or a final settlement of the claims in the Adversary Proceeding. In light of the Bankruptcy Court’s issuance of the Memorandum Opinion (as defined below), on February 27, 2018, counsel for the Debtor wrote to the respondents to provide notice of Debtor’s intention to make an application to the Anguillian Court to lift the stay of the Judicial Review Application. The stay of the Judicial Review Application remains in place as of the date hereof. The Debtor and the Government of Anguilla, represented by the Attorney General of Anguilla, continue to engage in discussions to determine whether a resolution of the Judicial Review Application may be reached.

#### **IV. EVENTS DURING THE CHAPTER 11 CASE**

##### **A. Commencement of Chapter 11 Case**

On June 22, 2016, the Debtor commenced its reorganization case through the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. Bankruptcy Judge Martin Glenn presides over the Chapter 11 Case.

##### **B. Retention of Professionals for the Debtor**

The Debtor obtained Bankruptcy Court approval of the retention of (i) Reed Smith LLP as bankruptcy counsel; and (ii) Weinberg Zareh & Geyerhahn, LLP as conflicts counsel.

##### **C. Extension of Exclusive Periods**

The Debtor's exclusive right to File a chapter 11 plan was initially scheduled to expire on October 20, 2016. The Debtor requested multiple extensions of its exclusive filing and solicitation periods. By an Order dated September 28, 2017, the Bankruptcy Court extended the Debtor's exclusive period to File a chapter 11 plan to December 22, 2017, and the Debtor's exclusive period to solicit acceptances thereof until February 22, 2018.

##### **D. Rule 2004 Examination of Bank of America**

On June 28, 2016, the Bankruptcy Court entered an order pursuant to Bankruptcy Rule 2004 authorizing the Debtor to take the examination of Bank of America, N.A., including, without limitation, authorization to serve upon Bank of America a subpoena, document requests, and other necessary related process to obtain documents concerning the bank accounts into which the Debtor and the Administrator believe the Funds (as defined above) were deposited. The Debtor and its Professionals reviewed the bank records produced by Bank of America.

##### **E. The Adversary Proceeding**

On December 16, 2016, the Debtor commenced an adversary proceeding (the "Adversary Proceeding") by filing an Adversary Proceeding Complaint against NBA, NCBA and the ECCB (as amended on March 20, 2017, the "Complaint"; Adv. Proc. #16-01279). By the Complaint, the Debtor seeks, *inter alia*, to avoid and recover fraudulent transfers of the Debtor's property. The Complaint was served upon NCBA, ECCB, and NBA in compliance with Article 10 of the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters.

On April 27-28, 2017, NCBA, ECCB, and NBA each filed separate motions to dismiss the Complaint (collectively, the "Motions to Dismiss") based on alleged *forum non conveniens*, international comity, act of state doctrine, sovereign immunity, the lack of extraterritorial effect of the Bankruptcy Code and state law avoidance provisions, and failure to state a claim. The Debtor's responses to the Motions to Dismiss were filed on May 26, 2017 and the defendants' replies were filed on June 9, 2017. On October 19, 2017, the Bankruptcy Court entered an order directing that the parties submit supplemental briefing on certain issues by no later than October 24, 2017. On October 24, 2017, the parties submitted their respective briefs to the Bankruptcy

Court. On October 26, 2017, the Bankruptcy Court heard oral argument on the Motions to Dismiss and has taken the Motions to Dismiss under advisement.

On January 29, 2018, the Bankruptcy Court entered its *Memorandum Opinion and Order Granting Motions to Stay These Adversary Proceedings Based on Forum Non Conveniens and International Comity* (the “Memorandum Opinion”) [Dkt. No. 89]. In the Memorandum Opinion, the Bankruptcy Court concluded that, based on *forum non conveniens* and international comity, the disputes between the parties should be adjudicated in the first instance in the courts of Anguilla and, therefore, stayed the Adversary Proceeding. The Bankruptcy Court directed counsel for the parties to the Adversary Proceeding to file joint status reports with the Bankruptcy Court every ninety (90) days from the date of the Memorandum Opinion reporting on the status of proceedings in the Anguilla courts.

Upon the disposition of the Anguillian Litigation, the Debtor anticipates returning to the Bankruptcy Court to seek resolution of any of the claims in the Complaint that are not resolved by the Anguilla courts, to the extent the same are not precluded by recognition and enforcement of judgments in the Anguillian Litigation, and are not then dismissed for the additional reasons argued by the Defendants in the Motions to Dismiss.

#### **F. General Information Concerning Treatment of Claims and Interests**

The “cramdown” provisions of section 1129(b) of the Bankruptcy Code permit confirmation of a chapter 11 plan of reorganization or liquidation in certain circumstances even if the plan is not accepted by all impaired classes of claims and interests. The Debtor reserves the right to request Confirmation pursuant to the cramdown provisions of the Bankruptcy Code. Although the Debtor believes that, if necessary, the Plan could be confirmed under the cramdown provisions of the Bankruptcy Code, there is no assurance that the requirements of such provisions would be satisfied.

#### **G. Voting on and Confirmation of the Plan**

##### **1. Voting Procedures and Requirements**

Pursuant to the Bankruptcy Code, only classes of claims against or equity interests in a debtor that are “impaired” under the terms of a plan of liquidation or reorganization are entitled to vote to accept or reject a plan. Generally, a class is “impaired” if the legal, equitable or contractual rights attaching to the claims or interests of that class are modified other than by curing defaults and reinstating maturities. Classes of claims and equity interests that are not impaired are not entitled to vote on a plan and are conclusively presumed to have accepted the plan. Classes of claims and equity interests that receive no distributions under a plan are not entitled to vote on the plan and are deemed to have rejected the plan unless such class otherwise indicates acceptance. The classification of Claims and Interests under the Plan is summarized, together with an indication of whether each Class of Claims or Interests is impaired or unimpaired, in Article II above.

Voting on the Plan by each holder of an impaired Claim or Interest is important. If you hold Claims or Interests in more than one Class, if you hold multiple Unsecured Claims, or under

certain other circumstances, you may receive more than one ballot. You should complete, sign and return each ballot you receive.

Under the terms of the Plan, holders of Claims and Interests in Classes 1 and 2 are impaired and are entitled to vote on the Plan. If any of the voting Classes votes to reject the Plan, the Debtor reserves the right, in its sole discretion, to seek not to confirm the Plan. If any of the voting Classes votes to reject the Plan, (a) the Debtor may seek to satisfy the requirements for Confirmation of the Plan under the cramdown provisions of section 1129(b) of the Bankruptcy Code and, if required, may amend the Plan to conform to the standards of such section or (b) the Plan may be modified or withdrawn in its entirety.

Please carefully follow all of the instructions contained on the ballot or ballots provided to you with this Disclosure Statement if you are entitled to vote on the Plan. All ballots must be completed and returned in accordance with the instructions provided.

To be counted, your ballot or ballots must be received by the Voting Deadline of **5:00 p.m. (Eastern) on [\_\_\_\_\_], 2018**. It is of the utmost importance to the Debtor that you vote promptly to accept the Plan.

If you are entitled to vote and you did not receive a ballot, received a damaged ballot or lost your ballot, please contact Epiq by telephone at (646) 282-2500 or by email at [tabulation@epiqsystems.com](mailto:tabulation@epiqsystems.com) (please reference "PBT" in the subject line).

**Votes cannot be transmitted orally or by facsimile, except in the case of a master ballot submitted by a tabulation agent. Accordingly, you are urged to return your signed and completed ballot, by hand delivery, overnight service or regular U.S. mail, promptly, so that it is received by Epiq, on or before the Voting Deadline, pursuant to the instructions in the ballot.**

Holders of Claims and Interests entitled to vote may withdraw or modify their ballots by delivering (or having their nominee deliver) to Epiq prior to the Voting Deadline, a subsequent properly completed and duly executed ballot. After the Voting Deadline, withdrawals of or modifications to ballots will not be permitted (absent the Debtor's written agreement to such withdrawal or modification).

## **2. Confirmation Hearing**

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on whether the Debtor has fulfilled the confirmation requirements of section 1129 of the Bankruptcy Code. The Confirmation Hearing has been scheduled for **TBD at \_\_:\_\_.m. (Eastern)**. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing. Any objection to the Confirmation of the Plan must be made in writing and must specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim or Interest held by the objector. Any such objections must be Filed and served upon the persons designated in the Bankruptcy Rules or any notice of the Confirmation Hearing and in the manner and by the deadline described therein.

### **3. Confirmation**

To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of findings concerning the Plan and the Debtor, including that:

- the Plan has classified Claims and Interests in a permissible manner;
- the Plan complies with the applicable provisions of the Bankruptcy Code;
- the Debtor has complied with the applicable provisions of the Bankruptcy Code;
- the Debtor, as proponent of the Plan, has proposed the Plan in good faith and not by any means forbidden by law;
- adequate information has been disclosed to Creditors and Interest holders as required by section 1125 of the Bankruptcy Code;
- the Plan has been accepted by the requisite votes, except to the extent that cramdown is available under section 1129(b) of the Bankruptcy Code, of Creditors and Interest holders;
- the Plan is feasible;
- all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid, or the Plan provides for the payment of such fees on the Effective Date;
- the disclosures required under section 1129(a)(5) of the Bankruptcy Code concerning the identity and affiliations of persons who will serve as officers, directors and voting trustees of the successors to the Debtor have been made; and
- the Plan is in the “best interests” of each holder of Claims or Interests in an impaired Class by providing to Creditors or Interest holders on account of such Claims or Interests property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain in a hypothetical chapter 7 liquidation, unless each holder of a Claim or Interest in such Class has accepted the Plan.

### **4. Acceptance or Cramdown**

A plan is accepted by an impaired class of claims if holders of at least two-thirds in dollar amount and a majority in number of allowed claims of that class vote to accept the plan. A plan is accepted by an impaired class of interests if holders of at least two-thirds in amount of the allowed interests of that class vote to accept the plan. Only those holders of claims or interests who actually vote (and are entitled to vote) to accept or to reject a plan count in this tabulation.

In addition to this voting requirement, section 1129 of the Bankruptcy Code requires that a plan be accepted by each holder of a claim or interest in an impaired class or that the plan



otherwise be found by the Bankruptcy Court to be in the best interests of each holder of a claim or interest in an impaired class.

The Bankruptcy Code contains provisions for confirmation of a plan even if it is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted it. These so called “cramdown” provisions are set forth in section 1129(b) of the Bankruptcy Code. As indicated above, the Plan may be confirmed under the cramdown provisions if, in addition to satisfying the other requirements of section 1129 of the Bankruptcy Code, it (a) is “fair and equitable” and (b) “does not discriminate unfairly” with respect to each Class of Claims or Interests that is impaired under, and has not accepted, the Plan. The “fair and equitable” standard, also known as the “absolute priority rule,” requires, among other things, that, unless a dissenting class of unsecured claims or a class of interests with respect to a debtor receives full compensation for its allowed claims or allowed interests, no holder of allowed claims or allowed interests in any junior class may receive or retain any property on account of such claims or interests. The “fair and equitable” standard has also been interpreted to prohibit any class senior to a dissenting class from receiving under a plan more than 100% of the amount of their allowed claims or allowed interests. The Debtor believes that, if necessary, the Plan may be crammed down over the dissent of certain Classes of Claims or Interests, in view of the treatment proposed for such Classes.

The requirement that a plan not “discriminate unfairly” means, among other things, that a dissenting class must be treated substantially equally with respect to other classes of equal rank. The Debtor does not believe that the Plan unfairly discriminates against any Class that may not accept or otherwise consent to the Plan.

Any Classes of Claims or Interests that receive nothing under the Plan are deemed to be dissenting classes. As a result, in addition to any Class that does not vote to accept the Plan, the Debtor will, to the extent required, seek to use the “cramdown” provisions described above in respect to any such Claims and Interests.

## **5. Feasibility**

In connection with Confirmation of the Plan, the Bankruptcy Court would have to determine that the Plan is feasible pursuant to section 1129(a)(11) of the Bankruptcy Code, which requires that the Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor (unless such liquidation or reorganization is proposed by the Plan). Because the Debtor’s Plan proposes a liquidation of all of its Assets, for purposes of this test the Debtor believes that the Plan is feasible. A report setting forth the Debtor’s analysis in this regard is attached hereto as Exhibit B. Therefore, the Debtor believes that its liquidation pursuant to the Plan meets the feasibility requirement of the Bankruptcy Code.

## **6. Best Interests Test; Chapter 7 Liquidation Analysis**

Notwithstanding acceptance of the Plan by each impaired Class, to confirm the Plan, the Bankruptcy Court must determine that the Plan is in the best interests of each holder of a Claim or Interest in any such impaired Class that has not voted to accept the Plan. Accordingly, if an

impaired Class does not accept the Plan, the “best interests” test requires that the Bankruptcy Court find that the Plan provides to each member of such impaired Class a recovery on account of the member’s Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the distribution that each such member would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date.

To estimate what members of each impaired Class of Claims or Interests would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code, the Bankruptcy Court must first determine the aggregate dollar amount that would be available if the Chapter 11 Case was converted to a chapter 7 case under the Bankruptcy Code and the Assets were liquidated by a chapter 7 trustee (the “Liquidation Value”). The Liquidation Value of the Debtor would consist of the net proceeds from the disposition of the Assets of the Debtor plus any Cash held by the Debtor.

As the Chapter 11 Case is a liquidating case and the Plan is a liquidating plan, the Liquidation Value available to holders of Claims and Interests would be similar in many ways to the amounts expected to be available for distribution under the Plan. The Debtor’s costs of liquidation in a chapter 7 case would include the compensation of a trustee, as well as of counsel and of other professionals retained by the such trustee, asset disposition expenses, applicable Taxes, litigation costs, Claims arising from the operation of the Debtor during the pendency of the chapter 7 case and all unpaid Administrative Claims incurred by the Debtor during the Chapter 11 Case that are allowed in the chapter 7 case.

The information contained in the Liquidation Analysis attached as Exhibit B provides a summary of the potential Liquidation Values, assuming a chapter 7 liquidation in which a trustee appointed by the Bankruptcy Court would liquidate the Debtor’s Assets, of the Debtor’s interest in the Recovery Actions and Assets located within the territorial jurisdiction of the United States, and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527 of the Bankruptcy Code, to other assets of the Debtor that are within the jurisdiction of the Bankruptcy Court under sections 541(a) of the Bankruptcy Code, and 1334(e) of title 28 of the United States Code, to the extent that such other assets are not subject to the jurisdiction and control of the Anguillian Proceeding. The Debtor estimates that a chapter 7 trustee would incur approximately \$1 million more in costs of liquidation than would the Debtor under the Plan.

In summary, based upon the Liquidation Analysis, while liquidation under chapter 7 is not entirely different from the liquidation proposed by the Plan, the Debtor believes that chapter 7 liquidation of the Debtor would result in a potentially significant diminution in the value to be realized by holders of Claims and Interests, as compared to the proposed distributions under the Plan. The principal differences in estimated proceeds available for Unsecured Creditors and Interest holders in a chapter 7 liquidation from the distributions and recoveries estimated in the Plan are (a) estimated chapter 7 trustee fees, and (b) the time and expense the chapter 7 trustee’s professionals would incur in “getting up to speed.” The delay during which a chapter 7 trustee “gets up to speed” could affect negatively the value of the Assets. The Liquidation Analysis provides that, in a chapter 7 liquidation, holders of Claims and Interests would receive lower recoveries. In addition, the Debtor believes that it is better positioned to maximize the value of certain of its assets due to its (and the Administrator’s) familiarity with the Recovery Actions

and the related legal and factual issues. Although the Liquidation Analysis does not reflect any certainty in recoveries from litigation or the related expenses, the Debtor has already demonstrated an ability to effectively manage and prosecute significant claims and causes of action. Consequently, the Debtor believes that the Plan will provide a greater ultimate return to holders of Claims and Interests and provide greater certainty to such return as compared to a chapter 7 liquidation.

**7. Compliance with Applicable Provisions of the Bankruptcy Code**

Section 1129(a)(1) of the Bankruptcy Code requires that the Plan comply with the applicable provisions of the Bankruptcy Code. The Debtor has considered each of these issues in the development of the Plan, believes that the Plan complies with all provisions of the Bankruptcy Code and will File a brief in support of Confirmation of the Plan prior to the Confirmation Hearing.

**8. Alternatives to Confirmation and Consummation of the Plan**

While the Debtor has concluded that the Plan is the best alternative and will maximize recoveries by holders of Claims and Interests, if the Plan is not confirmed, the Debtor or any other party in interest in the Chapter 11 Case could attempt to formulate and propose a different plan or different plans of liquidation. Further, if no plan of liquidation under chapter 11 of the Bankruptcy Code can be confirmed, the Chapter 11 Case may be dismissed or converted to a chapter 7 case. In a liquidation case under chapter 7 of the Bankruptcy Code, a trustee would be appointed to liquidate the remaining assets of the Debtor and distribute proceeds to Creditors and Interest holders. The net proceeds of the liquidation would be distributed in accordance with the priorities established by the Bankruptcy Code. For further discussion of the potential impact on the Debtor of the conversion of the Chapter 11 Case to chapter 7 liquidation, see Section IV.G.6. The Debtor believes that Confirmation and consummation of the Plan is preferable to the available alternatives.

**H. Conditions Precedent to the Effective Date of the Plan**

**1. Conditions to the Effective Date**

The Effective Date will not occur, and the Plan will not be consummated unless and until the following conditions have been satisfied:

- The Confirmation Order shall have become a Final Order in full force and effect with no stay thereof then in effect, and shall be in form and substance reasonably acceptable to the Debtor, unless waived by the Debtor.
- The Plan and all exhibits thereto shall have been Filed and shall not have been materially amended, altered or modified from the forms confirmed by the Confirmation Order, unless such material amendment, alteration or modification has been made in accordance with Section XI.A of the Plan.
- All actions, documents and agreements necessary to implement the Plan shall have been effectuated or executed.

**2. Effect of Nonoccurrence of Conditions to the Effective Date**

If each of the conditions to the Effective Date is not satisfied within 60 days of the entry of the Confirmation Order, then upon motion by the Debtor, the Reorganized Debtor, or any party in interest made before the time that each of such conditions has been satisfied and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order may be vacated by the Bankruptcy Court; *provided, however*, that, notwithstanding the Filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is satisfied before the Bankruptcy Court enters an order granting such motion, unless the Confirmation Order is vacated as provided in section 1144 of the Bankruptcy Code. If the Confirmation Order is vacated pursuant to Section V.C, of the Plan then the Plan will be null and void in all respects.

**3. Request for Waiver of Stay of Confirmation Order**

The Plan will serve as a motion seeking a waiver of the stay of the Confirmation Order imposed by Bankruptcy Rule 3020(e). Any objection to this request for waiver shall be Filed with the Bankruptcy Court and served on the parties listed in Section XI.E of the Plan on or before the Voting Deadline, or such other date as may be fixed by the Bankruptcy Court. In the event any such objections are timely Filed, a hearing with respect thereto will occur at the Confirmation Hearing.

**4. Modification of the Plan**

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code, the Debtor reserves the right to alter, amend or modify the Plan before the Effective Date.

**5. Revocation of the Plan**

The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if Confirmation does not occur, then the Plan will be null and void in all respects, and nothing contained in the Plan will: (1) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor; (2) prejudice in any manner the rights of the Debtor or any other party in interest; or (3) constitute an admission by the Debtor or any other party in interest.

**V. MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. Corporate Existence**

The Debtor will continue to exist, as the Reorganized Debtor, unless and until it has been dissolved by the Administrator.

**B. Reports to be Filed by the Litigation Trustee**

In addition to any other reports that may be required by order of the Bankruptcy Court, until the Chapter 11 Case is closed, the Litigation Trustee shall, beginning with the first full calendar quarter following the occurrence of the Effective Date, File with the Bankruptcy Court

(and provide to any other party entitled to receive any such report pursuant to the Bankruptcy Code and the Bankruptcy Rules), no later than twenty (20) days after each quarter, a quarterly report regarding the administration of the Assets pursuant to the Plan or the Litigation Trust Agreement, the Distributions made by it and other matters relating to the implementation of the Plan.

**C. Fees and Expenses of the Litigation Trustee**

1. The Litigation Trustee's expenses shall be paid from the Litigation Trust Assets and such other funds as the Administrator shall make available.

2. In addition, the Litigation Trustee may employ, without further order of the Bankruptcy Court, professionals (including professionals previously employed by the Debtor) to assist in carrying out its duties hereunder and may reasonably compensate and reimburse the expenses of these professionals from the Litigation Trust Assets and such other funds as the Administrator shall make available, based upon the nature of the work performed by such professional, without further order of the Bankruptcy Court.

**D. Indemnification**

To the extent permitted by law, the Litigation Trust shall indemnify its professionals, the Administrator, and the Litigation Trustee, from all claims and causes of action, except to the extent such claims and causes of action are judicially determined by a Final Order to have resulted primarily from fraud, willful misconduct, gross negligence, or criminal conduct.

**E. Litigation Trust**

As further described herein and in Article V of the Plan, the Litigation Trust shall be established as of the Effective Date to (i) liquidate the Litigation Trust Assets and (ii) transfer, consistent with the terms of the Litigation Trust Agreement, Cash or Available Cash to the Disbursing Agent for Distribution under the Plan. The Litigation Trust shall be governed by the terms of the Litigation Trust Agreement.

**F. Preservation of Causes of Action**

**1. Preservation of Causes of Action**

Any and all claims and causes of action belonging to the Debtor, whether arising before or after the Petition Date, including, but not limited to, the Recovery Actions and any actions specifically described in the Debtor's Schedules or this Disclosure Statement, the Plan, regardless of whether claims and such causes of action arise under the Bankruptcy Code or whether they are located in the territorial jurisdiction of the United States, are preserved under the Plan.

In accordance with sections 1141(b) and 1123(b)(3) of the Bankruptcy Code, the Assets (including the Recovery Actions and any and (to the extent consistent with section 1528 of the Bankruptcy Code) other causes of action whether described herein or otherwise) that the Debtor may hold against any Entity shall on the Effective Date be transferred to the Litigation Trust, and

the Litigation Trustee and/or the Litigation Trust shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such causes of action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

**The Administrator or the Litigation Trustee, as applicable, may pursue all such causes of action. No Entity may rely on the absence of a specific reference in the Schedules, the Plan, Exhibit III.F.1 to the Plan, or in the Disclosure Statement, to any cause of action against it as any indication that the Administrator or the Litigation Trustee will not pursue any and all available causes of action against it. Unless any claims and causes of action against an Entity are expressly and unambiguously waived, relinquished, exculpated, released, compromised, or settled herein or in a Bankruptcy Court order, the Debtor, Reorganized Debtor, the Litigation Trustee, or the Administrator, as applicable, expressly reserve all causes of action, for later prosecution, settlement, or adjudication, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such causes of action upon, after, or a consequence of Confirmation, the Effective Date, or consummation of the Plan.**

#### **G. Exculpation**

To the extent permitted by section 1125(e) of the Bankruptcy Code, from and after the Effective Date, the Released Parties shall neither have nor incur any liability to any Person or Entity for any act taken or omitted, or to be taken, in connection with the Chapter 11 Case, the Debtor's related case under Chapter 15 of the Bankruptcy Code, the Debtor's post-petition liquidation activity, including the filing and prosecution of any claims or causes of action, and the formulation, preparation, dissemination, implementation, Confirmation or approval of the Plan, the exhibits to the Plan, the Disclosure Statement, or any other contract, instrument, release or other agreement or document provided in connection therewith; *provided, however*, that the foregoing provisions shall not affect the liability of any Entity that otherwise would result from any such act or omission to the extent that the act or omission is determined in a Final Order to have resulted from fraud, willful misconduct, gross negligence, or criminal conduct; *provided further, however*, that nothing herein shall limit the liability of the Released Parties pursuant to applicable disciplinary rules.

#### **H. General Releases by Holders of Claims or Interests**

Without limiting any other applicable provisions of or releases contained in the Plan or provided under the Bankruptcy Code, as of the Effective Date, in consideration for the consideration provided under the Plan, each Holder of a Claim or Interest that votes in favor of the Plan and opts into the release on such Holder's ballot, will be deemed to forever release, waive and discharge all Liabilities in any way relating to the Debtor, the Chapter 11 Case, the Estate, the Plan, the exhibits to the Plan or the Disclosure Statement that such Holder has, had or may have against any Released Party; *provided, however*, that the foregoing provisions shall not affect the liability of any Entity that otherwise would

result from any act or omission to the extent that the act or omission is determined in a Final Order to have resulted from fraud, willful misconduct, gross negligence, or criminal conduct

**I. Injunction**

The Confirmation Order will permanently enjoin the commencement or prosecution by any Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, liabilities, rights of contribution or rights of indemnification released pursuant to the Plan, including pursuant to the releases in Article III of the Plan.

**J. Effectuating Documents and Further Transactions; Exemption from Certain Transfer Taxes**

**1. Effectuating Documents and Further Transactions**

Prior to the Effective Date, the Debtor, and after the Effective Date, the Debtor or the Reorganized Debtor, or the Litigation Trustee, as appropriate, will be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan.

**2. Exemption From Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp Tax, real estate transfer Tax, mortgage recording Tax or similar Tax: (a) any transfer of Assets made by the Debtor or the Reorganized Debtor to the Litigation Trust; (b) any sales (including, without limitation, private or public foreclosure sales) of Litigation Trust Assets made by the Litigation Trustee to liquidate such Litigation Trust Assets and convert such assets into Cash; (c) any sales of Litigation Trust Assets made by the Litigation Trustee under section 363 of the Bankruptcy Code, to the extent that title to the Litigation Trust Assets being sold transfers after the Confirmation Date; and (d) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale, or assignments executed in connection with any of the foregoing or pursuant to the Plan.

**K. Substitution in Pending Legal Actions**

On the Effective Date, the Litigation Trust or the Litigation Trustee shall be deemed to be substituted as the party to any litigation in federal or state courts of the United States in which the Debtor is a party, including (but not limited to) pending contested matters or adversary proceedings in the Bankruptcy Court. The Litigation Trustee, the Litigation Trust, and its professionals, are not required to, but may take such steps as are appropriate to provide notice of such substitution.

## **VI. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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

#### **1. Rejection**

The Debtor does not believe it has any Executory Contracts or Unexpired Leases subject to assumption or rejection under section 365 of the Bankruptcy Code. To the extent, however, that the Debtor is a party to such an Executory Contract or Unexpired Lease, pursuant to section 365 of the Bankruptcy Code, the Debtor will be deemed to reject each Executory Contract or Unexpired Lease not previously assumed, assumed and assigned or rejected during the Chapter 11 Case or which is not the subject of a motion to assume or to assume and assign that is pending as of the Effective Date. Parties that desire to object to the rejection of a specific Executory Contract or Unexpired Lease must File an objection to the Plan by the deadline for filing objections to the Plan. For the avoidance of doubt, the term “Executory Contract or Unexpired Lease” shall only include those contracts or leases to which the Debtor is a party and that were made in the territorial jurisdiction of the United States.

#### **2. Notice of Rejection**

Service of the Plan constitutes notice of rejection to all known counterparties to Executory Contracts or Unexpired Leases that are to be rejected pursuant to the Plan.

#### **3. Bar Date for Rejection Damages**

In accordance with the Bar Date Order, and except as otherwise provided in a Final Order of the Bankruptcy Court approving the rejection of an Executory Contract or Unexpired Lease, Claims arising out of the rejection of an Executory Contract or Unexpired Lease must be Filed with the Bankruptcy Court on or before the thirtieth (30<sup>th</sup>) day after the Effective Date. Any Claims not Filed by that deadline will be forever barred from receiving a Distribution from the Debtor or the Litigation Trust on account of any Claim for rejection of such Executory Contract or Unexpired Lease. For the avoidance of doubt, the deadline for filing such rejection damages Claims is solely for purposes of the Chapter 11 Case.

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

Contracts and leases that the Debtor entered into after the Petition Date are not subject to assumption or rejection.

### **C. Pre-existing Obligations to the Debtor Under Executory Contracts and Unexpired Leases**

Rejection or repudiation of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtor under such Executory Contracts or Unexpired Lease. Notwithstanding any applicable non-bankruptcy law to the contrary, the Debtor expressly reserves and does not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnifications or continued maintenance previously purchased by the Debtor from



counterparties to rejected or repudiated Executory Contracts or Unexpired Leases, and any such rights shall vest in the Litigation Trust as of the Effective Date.

## **VII. LITIGATION TRUST**

### **A. Execution of Litigation Trust Agreement**

On the Effective Date, the Debtor and the Litigation Trustee shall execute the Litigation Trust Agreement and shall take all other necessary steps to establish the Litigation Trust, which shall be for the benefit of the Holders of Allowed Claims and Holders of Allowed Interests in the Chapter 11 Case.

### **B. Purpose of the Litigation Trust**

The Litigation Trust shall be established for the sole purpose of liquidating the Litigation Trust Assets and transferring Cash or Available Cash, subject to the terms of the Litigation Trust Agreement, to the Disbursing Agent for the benefit of Holders of Allowed Claims and Allowed Interests. The Litigation Trust shall have no objective to, and shall not, continue or engage in the conduct of a trade or business.

### **C. Litigation Trust Assets**

All Litigation Trust Assets shall be assigned and transferred by the Debtor directly to the Litigation Trust as provided by the Litigation Trust Agreement. Such assignment or transfer shall be exempt from any Tax to which the exemption under section 1146 of the Bankruptcy Code applies. The Litigation Trust Assets are held in *custodia legis*, until such times as the funds have actually been paid to or for the Holders or Allowed Claims or Allowed Interests.

### **D. Administration of the Litigation Trust**

The Litigation Trust shall be administered by the Litigation Trustee pursuant to the Litigation Trust Agreement and the Plan.

### **E. Termination of the Litigation Trust**

The Litigation Trust shall continue for a term of five (5) years from the Effective Date. The Litigation Trustee may extend such term (before or after its expiration) for one or more additional finite terms provided that the Litigation Trust does not become subject to the Securities Exchange Act of 1934 (as now in effect or hereafter amended) and provided further that the Bankruptcy Court approves an extension based upon a finding that an extension is necessary for the Litigation Trust to reduce all Litigation Trust Assets to Cash. Unless the Chapter 11 Case previously has been dismissed or closed, upon termination of the Litigation Trust, the Litigation Trustee shall advise the Bankruptcy Court in writing of its termination.

### **F. Transfer of Available Cash to the Disbursing Agent**

The Litigation Trustee shall transfer to the Disbursing Agent, when and as necessary to make Distributions, all Litigation Trust Assets constituting Available Cash.

## **VIII. PROVISIONS GOVERNING DISTRIBUTIONS**

### **A. Distributions for Claims Allowed as of the Effective Date**

Except as otherwise provided in Article VI of the Plan, as soon as reasonably practicable after the Effective Date and the liquidation of the Litigation Trust Assets, the Disbursing Agent shall make Distributions on behalf of the Debtor to each Holder of an Allowed Claim against or Interest in the Debtor to the extent provided for in the Plan.

All Distributions shall be made pursuant to the terms and conditions of the Plan and the Litigation Trust Agreement, and, where applicable, shall be subject to the Litigation Trust's defenses, including without limitation, rights of recoupment, setoff, or other deduction.

### **B. No Bond or Other Security for Any Purpose**

The Litigation Trustee, in its capacity as Disbursing Agent, or such Third Party Disbursing Agents as the Litigation Trustee may employ in its sole discretion, will make all Distributions required under the Plan. Each Disbursing Agent may serve without bond, and any Disbursing Agent may employ or contract with other entities to assist in or make the Distributions required by the Plan if approved by the Litigation Trustee.

In addition, notwithstanding any law to the contrary, the Litigation Trustee (including any successor) and the Disbursing Agent shall be exempt from giving any bond or other security in any jurisdiction, for any purpose.

### **C. Compensation and Reimbursement for Services Related to Distributions**

Each Third Party Disbursing Agent providing services related to Distributions pursuant to the Plan will receive from the Litigation Trustee, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses (including reasonable attorneys' fees and disbursements) incurred in connection with such services, to be paid as a Trust Expense.

### **D. Investment of Trust Accounts**

To assist in making Distributions under the Plan, the applicable Trust Accounts may be held in the name of the Litigation Trustee or in the name of one or more Third Party Disbursing Agents for the benefit of Holders of Allowed Claims and Allowed Interests under the Plan, or a secondary Trust Account may be created in the name of the Third Party Disbursing Agent for the purpose of making disbursements. The Litigation Trustee may invest, or direct the Third Party Disbursing Agents to invest, Cash in the Trust Accounts, subject to the limitations established by the Litigation Trust Agreement; provided, however, that should such Litigation Trustee determine, in its sole discretion, that the administrative costs associated with such investment may exceed the return on such investment, it may choose not to invest, and may direct the Third Party Disbursing Agent not to invest, such Cash. Distributions of Cash from accounts held by the Litigation Trustee or the Third Party Disbursing Agents will include a Pro Rata share of any interest or other proceeds, if any, from such investment of Cash, net of any Taxes payable by the Litigation Trust with respect thereto.

**E. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

**1. Delivery of Distributions**

Distributions to Holders of Allowed Claims and Allowed Interests will be made by a Disbursing Agent to the addresses (a) set forth on the respective Proofs of Claim Filed by Holders of such Claims or requests for payment of Administrative Claims, as applicable; (b) for a Claim transferee set forth in a valid and timely notice of transfer of Claim Filed with the Bankruptcy Court; (c) set forth in any written notice of address change Filed with the Bankruptcy Court or delivered to the Disbursing Agent after the date of Filing of any related Proof of Claim; (d) reflected in the Debtor's Schedules if no Proof of Claim has been Filed and the Disbursing Agent has not received a written notice of a change of address; or (e) set forth in the Debtor's books and records.

Unless a Holder of an Allowed Interest has provided written notice of a different address to the Debtor's stock transfer agent prior to the Distribution Record Date or the first Distribution Date, Distribution checks shall be mailed to such Holders at the addresses (if any) shown on the records of the stock transfer agent as of the Distribution Record Date or such other addresses set forth in the Debtor's books and records. This means that if your shares are held in the name of a third party, such as a broker or agent, the Distribution Check will be sent to the broker or agent identified on the records of the stock transfer agent as of the Distribution Record Date.

**2. Undeliverable or Unclaimed Distributions**

**a. Holding of Undeliverable or Unclaimed Distributions**

Subject to Section VI.E.2.c of the Plan, any Distributions returned to a Disbursing Agent or otherwise undeliverable will remain in the possession of the Disbursing Agent pursuant to Section VI.E.2.a of the Plan, until such time as a Distribution becomes deliverable. Any Disbursing Agent holding undeliverable Cash may invest such Cash in a manner consistent with the Litigation Trust Agreement. Any Distributions that remain unclaimed or any Distribution checks that are not cashed within one hundred and twenty (120) days following Distribution will be maintained in the applicable Trust Account for redistribution to other claimants entitled to Distribution from the Trust Account; provided, however, that the Disbursing Agent, in its sole discretion, may (but is not required to) seek to reissue or redeliver the Distribution to the original intended recipient.

**b. After Distributions Become Deliverable**

On each Distribution Date, the Disbursing Agent will make all Distributions that became deliverable to Holders of Allowed Claims and Allowed Interests after the most recent Distribution Date but prior to the Interim Distribution Bar Date.

**c. Failure to Claim Undeliverable or Unclaimed Distributions**

Any Holder of an Allowed Claim or Allowed Interest that does not assert its right to an undeliverable or unclaimed Distribution within one hundred twenty (120) following a Distribution will be forever barred from asserting any such claim against the Debtor, the

Disbursing Agent, the Litigation Trustee, the Litigation Trust, or their respective property (including, without limitation, the Trust Accounts). In such cases, unclaimed or undeliverable Distributions will be maintained in the applicable Trust Account for redistribution to other claimants entitled to Distribution from such Trust Account; provided, however, that the Disbursing Agent, in its sole discretion, may (but is not required to) seek to reissue or redeliver the Distribution to the original intended recipient.

**F. Distributions on Account of Allowed Claims and Allowed Interests**

**1. De Minimis Distributions**

On each Distribution Date prior to the Final Distribution Date, the Disbursing Agent shall not distribute cash to the Holder of an Allowed Claim or Allowed Interest if the amount of Cash to be distributed on account of such Claim or Interest is less than Twenty Five U.S. Dollars (\$25). Such amount shall be redistributed to other Holders of Allowed Claims or Allowed Interests, and the Holder of an Allowed Claim or Allowed Interest whose Distribution is *de minimis* will be forever barred from asserting its Claim or Interest for such Distribution against the Litigation Trust or the Litigation Trust Assets.

**G. Other Provisions Applicable to Distributions in All Classes**

**1. Post-petition Interest**

Unless required by the Bankruptcy Code with respect to Allowed Claims and as otherwise provided in the Plan, no interest will accrue on any Claims on and after the Petition Date. For the avoidance of doubt, if the Debtor is proven to be solvent, Holders of Allowed Class 1 Claims will receive their Pro Rata Share of interest as provided in the Plan.

**2. Compliance with Tax Requirements**

a. Each Disbursing Agent will comply with all Tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to the Plan will be subject to such withholding and reporting requirements. The Litigation Trustee and any Disbursing Agent will be authorized to take any actions that it determines, in its reasonable discretion, to be necessary or appropriate to comply with such withholding and reporting requirements.

b. Notwithstanding any other provision of the Plan or the Litigation Trust Agreement, each Entity receiving or deemed to receive a Distribution pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any Tax imposed on such Entity on account of such Distribution. The Litigation Trustee or Disbursing Agent may require that a Holder of a Claim or Interest provide a Form W-9 or applicable Form W-8 (or such other document as the Litigation Trustee or Disbursing Agent may require) as a condition to receipt of any Distribution. If a Holder of a Claim or Interest fails to provide a Form W-9 or applicable Form W-8 (or such other document as the Litigation Trustee or Disbursing Agent may require) within thirty (30) days after the Litigation Trustee's or Disbursing Agent's request therefor, such Holder (in the Litigation Trustee's or Disbursing Agent's sole discretion) may be deemed to waive its right to all Distributions made prior to the date such Holder provides the

Form W-9 or Form W-8, as applicable (or such other document as the Litigation Trustee or Disbursing Agent may require).

### **3. Allocation of Distributions**

All Distributions to a Holder of an Allowed Claim that has components of principal and interest will be deemed to apply first to the principal amount of such Claim until such principal amount is paid in full, and then the remaining portion of such Distributions, if any, will be deemed to apply to any applicable accrued interest included in such Claim to the extent interest is payable under the Plan.

### **H. Distribution Record Date**

1. As of the close of business on the Distribution Record Date, the Disbursing Agent will have no obligation to recognize the transfer or sale of any Claim or Interest that occurs after the close of business on the Distribution Record Date and will be entitled for all purposes herein to recognize and make Distributions only to those Holders who are Holders of such Claims or Interests as of the close of business on the Distribution Record Date.

2. Transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 for which a notice of transfer has been Filed on or prior to the Distribution Record Date will be treated as the Holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date. Neither the Litigation Trustee nor any Disbursing Agent will be required to recognize any transfers after the Distribution Record Date.

3. The Litigation Trustee and Disbursing Agent shall have the authority, but no obligation, to recognize transfers of Claims made after the deadlines set forth above in their respective sole and absolute discretion. Similarly, the Litigation Trustee and Disbursing Agent will have the authority, but no obligation, to recognize transfers of Interests made after the Distribution Record Date in their respective sole and absolute discretion.

### **I. Means of Cash Payments**

Except as otherwise specified in the Plan, Cash payments made pursuant to the Plan will be in U.S. currency by check or, at the option of the Litigation Trustee, by wire transfer, electronic funds or ACH; provided, however, that Cash payments to foreign Holders of Allowed Claims and Allowed Interests may be made, at the option of the Litigation Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

### **J. Disputed Claims Reserve**

On and after the Effective Date, until such time as all Disputed Claims have been compromised and settled or determined by Final Order and before making any Distributions, the Litigation Trustee shall, consistent with and subject to section 1123(a)(4) of the Bankruptcy Code, establish and maintain a Cash reserve equal to the Distributions to which Holders of Disputed Claims would be entitled under the Plan if such Disputed Claims were Allowed Claims

in the Filed amount of such Disputed Claims or such lesser amount as required by an order of the Bankruptcy Court (the “Disputed Claims Reserve Amount”).

On the first Distribution Date that is at least thirty (30) days (or such fewer days as may be determined by the Litigation Trustee in its sole discretion) after the date on which a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall remit to the Holder of such Allowed Claim any Distributions such Holder would have been entitled to under the Plan on account of such Allowed Claim had such Claim been Allowed as of the Effective Date.

If a Disputed Claim is disallowed by Final Order, the amount reserved on account of such Disputed Claim shall become Available Cash. To the extent that a Disputed Claim becomes an Allowed Claim in an amount less than the amount reserved with respect to such Claim, the difference between the amount reserved on account of such Disputed Claim and the amount actually distributed on account of such Disputed Claim shall become Available Cash.

Nothing in Section VI.J of the Plan shall preclude any Holder of a Disputed Claim from seeking, on notice to the Litigation Trustee, an order of the Bankruptcy Court to increase the amount reserved for such Holder’s Disputed Claim.

Unless otherwise ordered by the Bankruptcy Court, the Disputed Claims Reserve Amount shall not be used for Trust Expenses or any purpose other than as set forth in Section VI.J of the Plan.

**K. Surrender of Canceled Instruments or Securities**

The Litigation Trustee shall determine, in its sole discretion, if any requirement for surrendering canceled instruments or securities shall be applicable to the holders of canceled instruments or securities and, if so determined, shall advise in writing all known holders of canceled instruments or securities of such requirements and how they may comply with such requirements. Absent such written notice, holders of canceled instruments or securities need not surrender their canceled instruments in order to be entitled to Distributions under the Plan.

**L. Distributions Free and Clear**

Except as otherwise provided herein, any Distributions under the Plan shall be free and clear of any Liens, Claims and encumbrances, and no other Entity, including the Debtor, the Reorganized Debtor, the Litigation Trustee, or the Disbursing Agent shall have any interest (legal, beneficial or otherwise) in the Litigation Trust Assets distributed pursuant to the Plan. Except as expressly provided in the Litigation Trust Agreement with respect to taxes, payments under the Litigation Trust Agreement may not be assigned, alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.

**M. Setoffs**

Except with respect to claims of the Debtor expressly released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disbursing Agent, as instructed by the Litigation Trustee pursuant to section 558 of the Bankruptcy Code or applicable non-bankruptcy law, may set off or recoup

against any Allowed Claim and Allowed Interest or Distribution on account of an Allowed Claim or Allowed Interest (before any Distribution is made on account of such Claim or Interest) the claims, defenses, rights, and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Litigation Trust may hold against the Holder (or prior holder) of such Allowed Claim or Allowed Interest; provided, however, that neither the failure to effect a setoff, recoupment, or other deduction, nor the allowance of any Claim or Interest hereunder will constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Litigation Trust of any claims, rights and causes of action that the Debtor or the Litigation Trust may possess against such a Claim or Interest Holder, which are expressly preserved under Section III.F.1 of the Plan.

## **IX. Treatment of Disputed Claims and Disputed Interests**

### **A. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, no payments or Distributions will be made on account of a Disputed Claim or Disputed Interest until such Claim or Interest becomes an Allowed Claim or Allowed Interest. In lieu of Distributions under the Plan to Holders of Disputed Claims or Disputed Interests on the Effective Date, the Litigation Trust, in accordance with the Litigation Trust Agreement, will establish, as appropriate, Disputed Claims or Disputed Interests reserves, with such reserves held in the applicable Trust Accounts.

### **B. Objections to Claims**

#### **1. Authority to Prosecute**

The Litigation Trustee may object to Claims or Interests that the Litigation Trustee believes warrant the Filing of an objection prior to the Claims Objection Bar Date. After the Effective Date, only the Litigation Trustee will have the authority to File, settle, compromise, withdraw or litigate to judgment objections to Claims and Interests, including pursuant to any alternative dispute resolution or similar procedures approved by the Bankruptcy Court. After the Effective Date, the Litigation Trustee may settle or compromise any Disputed Claim or Disputed Interest or any objection or controversy relating to any Claim or Interest without notice, motion, or approval of the Bankruptcy Court.

#### **2. Debtor's Authority to Amend Schedules**

The Debtor and the Litigation Trustee, as applicable, will have the authority to amend the Schedules with respect to any Claim or Interest and to make Distributions based on such amended Schedules (if no Proof of Claim is timely Filed in response thereto) without approval of the Bankruptcy Court. If any such amendment to the Schedules reduces the amount of a Claim or Interest or changes the nature or priority of a Claim or Interest, the Debtor or the Litigation Trustee will provide the Holder of such Claim or Interest with notice of such amendment and such parties will have 30 days to File an objection to such amendment in the Bankruptcy Court.

**3. Request for Extension of Claims Objection Bar Date**

From time to time, and regardless of whether the Claims Objection Bar Date has expired, upon motion to the Bankruptcy Court, the Litigation Trustee may request, and the Bankruptcy Court may grant, extensions to the Claims Objection Bar Date generally or with respect to a specific list of Claims or Interests. Any extension granted by the Bankruptcy Court will not be considered to be a Plan modification under section 1127 of the Bankruptcy Code.

**C. Distributions on Account of Disputed Claim or Disputed Interest That Becomes Allowed**

On each Distribution Date, the Disbursing Agent will make all Distributions on account of any Disputed Claim and Disputed Interest that has become an Allowed Claim or Allowed Interest since the most recent Distribution Date. The timing and amount of such Distribution shall be determined in accordance with Article VI of the Plan.

**D. Claims Resolution Process Solely for Purposes of this Chapter 11 Case. No Effect on Claims Resolution Process in Anguillian Proceeding.**

The Bar Date, the Claims Objection Bar Date, and the Claim resolution process provided for in Article VII of the Plan is solely with respect to Claims asserted in this Chapter 11 Case. The allowance or disallowance of any Claim in this Chapter 11 Case shall not affect the allowance or disallowance of any claim in the Anguillian Proceeding.

Nothing in the Plan shall alter or affect (i) a Creditor's right to assert claims in the Anguillian Proceeding or (ii) the right of the Administrator (as hereinafter defined) to contest, challenge or compromise any claim(s) that may be filed in the Anguillian Proceeding. Nothing in the Plan shall establish any deadline for filing any claim in the Anguillian Proceeding or any deadline for filing any objection to such claim. The allowance or disallowance of claims in the Anguillian Proceeding is a matter to be addressed by the Administrator and the Anguillian Court presiding over the Anguillian Proceeding.

Notwithstanding the foregoing, nothing in the Plan shall be interpreted to authorize or allow a Creditor to obtain more than a full recovery on account of its Claim. Thus, any Distributions received on account of a Claim in this Chapter 11 Case may be taken into consideration when determining the allowed amount of a claim in the Anguillian Proceeding. Similarly, any Distributions received on account of a Claim in the Anguillian Proceeding may be taken into consideration when determining the allowed amount of a claim in this Chapter 11 Case.

**X. RISK FACTORS**

Prior to voting on the Plan, each holder of a Claim or Interest entitled to vote should consider carefully the risk factors described below, as well as all of the information contained in this Disclosure Statement, including the exhibits hereto. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation. See Article XII for a discussion of certain tax considerations.



**A. Risk of Non-Confirmation of the Plan**

Even if all impaired Classes accept or could be deemed to accept the Plan, the Plan may not be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code, which sets forth the requirements for Confirmation, requires, among other things: (1) that Confirmation not be followed by a need for further reorganization or liquidation not contemplated by the Plan (i.e., that the Plan is “feasible”); (2) that the value of distributions to dissenting holders not be less than the value of distributions to such holders if the Debtor was liquidated under chapter 7 of the Bankruptcy Code; and (3) that the Plan and the Debtor otherwise comply with the applicable provisions of the Bankruptcy Code. Although the Debtor believes that the Plan will meet all of the applicable requirements, there can be no assurance that the Bankruptcy Court will reach the same conclusion. See Section II.D for additional information regarding the requirements for Confirmation.

**B. Nonconsensual Confirmation**

Pursuant to the “cramdown” provisions of section 1129 of the Bankruptcy Code, the Bankruptcy Court can confirm the Plan at the Debtor’s request if, excluding the acceptance of any “insider,” at least one impaired Class of impaired Claims has accepted the Plan and the Bankruptcy Court determines that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each impaired Class that has not accepted the Plan.

The Debtor reserves the right to modify the terms of the Plan, as necessary, to seek Confirmation without the acceptance of all impaired Classes. Such modification could result in less favorable treatment than the treatment currently provided for in the Plan. Further, in the event an impaired Class of Claims or Interests fails to approve the Plan, the Debtor may determine, in its sole discretion, not to seek Confirmation of the Plan.

**C. Delays in Confirmation or Effective Date**

Any delay in Confirmation or the effectiveness of the Plan could result in, among other things, additional Administrative Claims. Additional Administrative Claims and any other negative effects of a delay in Confirmation or the effectiveness of the Plan could endanger the ultimate approval of the Plan by the Bankruptcy Court or reduce the potential Distributions to Holders of Allowed Claims (or Allowed Interests).

**D. Litigation Risks**

The ultimate amount of Available Cash available for distribution to Holders of Allowed Claims also will be affected by the success of the Reorganized Debtor in pursuing claims and causes of action, including without limitation, the Recovery Actions, which are vigorously contested. As discussed above, the Adversary Proceeding has been stayed pending resolution of the Anguillian Litigation. Upon the disposition of the Anguillian Litigation, the Debtor anticipates returning to the Bankruptcy Court to seek resolution of any of the claims in the Complaint that are not resolved by the Anguilla courts, to the extent the same are not precluded by recognition and enforcement of judgments in the Anguillian Litigation, and are not subject to dismissal for the additional reasons argued by the Defendants in the Motions to Dismiss before the Bankruptcy Court. Some of these defenses relate to whether the Bankruptcy Court has

jurisdiction over the claims asserted in the Complaint or one or more of the defendants in the Adversary Proceeding. If the Bankruptcy Court finds it does not have jurisdiction over some or all of the claims or parties, then some or all of the claims or the Adversary Proceeding, as the case may be, may be subject to dismissal. If the Bankruptcy Court finds that it does not have jurisdiction to hear some or all of the claims in the Complaint, or if the Reorganized Debtor is unsuccessful, in whole or in part, in pursuing the Recovery Actions, there will less (or no) Available Cash available for distribution to Holders of Allowed Claims.

## **XI. DISTRIBUTIONS UNDER THE PLAN**

### **A. Payment of Administrative Claims**

#### **1. Administrative Claims in General**

Subject to the applicable bar date provisions described below, unless otherwise agreed by the holder of an Administrative Claim and the Debtor or the Reorganized Debtor, or unless an order of the Bankruptcy Court provides otherwise, each holder of an allowed Administrative Claim will receive from the Debtor or the Reorganized Debtor, in full satisfaction of its Administrative Claim, Cash (from the Assets or other fund made available by the Administrator) equal to the amount of such allowed Administrative Claim either (i) on the Effective Date or (ii) if the Administrative Claim is not allowed as of the Effective Date, within 60 days after the date on which such Administrative Claim becomes an allowed Administrative Claim.

#### **2. Statutory Fees**

On or before the Effective Date, U.S. Trustee Fees, together with interest, if any, pursuant to 31 U.S.C. § 3717, will be paid by the Debtor in Cash equal to the amount of such Claims. U.S. Trustee Fees accruing after the Effective Date will be paid by the Reorganized Debtor until the closing of the Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

#### **3. Bar Dates for Administrative Claims**

##### **a. General Administrative Claim Bar Date Provisions**

Unless previously Filed, motions for payment of Administrative Claims must be Filed and served on the parties identified in Section XI.E of the Plan no later than 30 days after the Effective Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve a motion requesting payment of such Administrative Claims by the applicable bar date will be forever barred from asserting such Administrative Claims against the Debtor the Reorganized Debtor, the Litigation Trustee, or the Litigation Trust Assets, and such Administrative Claims will be deemed disallowed and extinguished as of the Effective Date. Objections to the requests for payment of post-petition Administrative Claims must be Filed and served on the parties identified in Section XI.E of the Plan and the requesting party within 120 days after the Effective Date.

**b. Bar Dates for Certain Administrative Claims**

*Professional Compensation.* Professionals or other entities asserting a Fee Claim (excluding ordinary course professionals, if any) for services rendered before the Effective Date must File and serve on the parties identified in Section XI.E of the Plan and such other entities who are designated by the Bankruptcy Rules, the Fee Order, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Fee Claim no later than 120 days after the Effective Date (or such later date as the Reorganized Debtor and such Professional may agree). Objections to any Fee Claim must be Filed and served on the parties identified in Section XI.E of the Plan and the requesting party by 14 days after the date upon which such Fee Claim is Filed or such date as a Professional and the United States Trustee may agree.

*Ordinary Course Administrative Liabilities.* Holders of Administrative Claims arising from Liabilities incurred by the Debtor in the ordinary course of its business on or after the Petition Date but prior to the Effective Date must, if not paid within 20 days of the Effective Date, File with the Bankruptcy Court and serve on the parties identified in Section XI.E of the Plan no later than 40 days after the Effective Date an application for allowance and payment of such Administrative Claims or the holder of such Claims shall be forever barred from asserting such Claims against the Debtor, the Reorganized Debtor, or the Litigation Trust Assets and such Administrative Claim will be deemed disallowed and extinguished as of the Effective Date.

**B. Payment of Priority Tax Claims**

The Debtor does not believe that it owes any priority Tax Claims.

**XII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF CONSUMMATION OF THE PLAN**

**A. General**

**A DESCRIPTION OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN IS PROVIDED BELOW. THE DESCRIPTION IS BASED ON THE INTERNAL REVENUE CODE, TREASURY REGULATIONS, JUDICIAL DECISIONS AND ADMINISTRATIVE DETERMINATIONS, ALL AS IN EFFECT ON THE DATE OF THIS DISCLOSURE STATEMENT AND ALL SUBJECT TO CHANGE, POSSIBLY WITH RETROACTIVE EFFECT. CHANGES IN ANY OF THESE AUTHORITIES OR IN THEIR INTERPRETATION COULD CAUSE THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO DIFFER MATERIALLY FROM THE CONSEQUENCES DESCRIBED BELOW.**

**THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND IN IMPORTANT RESPECTS UNCERTAIN. NO RULING HAS BEEN REQUESTED FROM THE INTERNAL REVENUE SERVICE (THE “IRS”); NO OPINION HAS BEEN REQUESTED FROM COUNSEL TO THE DEBTOR CONCERNING ANY TAX CONSEQUENCE OF THE PLAN; AND NO TAX OPINION IS GIVEN BY THIS DISCLOSURE STATEMENT.**

**THE DESCRIPTION THAT FOLLOWS DOES NOT COVER ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTOR OR HOLDERS OF CLAIMS OR INTERESTS. FOR EXAMPLE, THE DESCRIPTION DOES NOT ADDRESS ISSUES OF SPECIAL CONCERN TO CERTAIN TYPES OF TAXPAYERS, SUCH AS DEALERS IN SECURITIES, LIFE INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, AND TAX EXEMPT ORGANIZATIONS, AND NON-U.S. TAXPAYERS, NOR DOES IT ADDRESS U.S. FEDERAL INCOME TAX CONSEQUENCES TO HOLDERS OF INTERESTS IN THE DEBTOR. IN ADDITION, THE DESCRIPTION DOES NOT DISCUSS STATE, LOCAL, NON-U.S. OR NON-INCOME TAX CONSEQUENCES.**

**FOR THESE REASONS, THE DESCRIPTION THAT FOLLOWS IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND PROFESSIONAL TAX ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR INTEREST. HOLDERS OF CLAIMS OR INTERESTS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.**

**B. U.S. Federal Income Tax Consequences to the U.S. Holders of Claims or Interests**

For purposes of this discussion, a "U.S. Holder" is a Holder of an Allowed Claim or Allowed Interest that is: (1) an individual citizen or resident of the United States for U.S. federal income tax purposes; (2) a corporation (or other Entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia; (3) an estate, the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (4) a trust (a) if a court within the United States is able to exercise primary jurisdiction over the trust's administration and one or more United States persons have authority to control all substantial decisions of the trust or (b) that has a valid election in effect under applicable Treasury regulations to be treated as a United States person. The discussion below assumes that the U.S. Holders of Allowed Claims and Allowed Interest against the Debtor are treated as receiving property from the Debtor in satisfaction of their Allowed Claims or Allowed Interests, as applicable, and the Debtor intends to treat distributions under the Plan as such.

The U.S. federal income tax consequences of the Plan to a U.S. Holder will depend, in part, on the tax characterization of the exchanges of Allowed Claims for other property, whether the Allowed Claims relate to "tax securities" for U.S. federal income tax purposes, what type of consideration was received in exchange for an Allowed Claim or Allowed Interest, whether the U.S. Holder reports income on the accrual or cash basis, whether the U.S. Holder has taken a bad debt deduction or worthless security deduction with respect to an Allowed Claim or Allowed Interest and whether the U.S. Holder receives distributions under the Plan in more than one taxable year.

Each U.S. Holder generally will recognize gain or loss in an amount equal to the difference between the amount realized in respect of its Allowed Claim and its adjusted tax basis in such Claim. The amount realized for this purpose should generally equal the amount of Cash

and the fair market value of any other assets (net of any applicable Liabilities) received for U.S. federal income tax purposes under the Plan in respect of such U.S. Holder's Allowed Claim.

**C. Certain Other Tax Considerations for U.S. Holders of Claims**

**1. Accrued but Unpaid Interest**

In general, a U.S. Holder that was not previously required to include in taxable income any accrued but unpaid interest on the U.S. Holder's Allowed Claim may be required to include such amount as taxable interest income upon receipt of a distribution under the Plan. A U.S. Holder that was previously required to include in taxable income any accrued but unpaid interest on the U.S. Holder's Allowed Claim may be entitled to recognize a deductible loss to the extent that such interest is not satisfied under the Plan. The Plan provides that, to the extent applicable, all Distributions to a Holder of an Allowed Claim will apply first to the principal amount of such Allowed Claim until such principal amount is paid in full and then to any accrued but unpaid interest on such Allowed Claim. There is no assurance, however, that the IRS will respect this treatment and will not determine that all or a portion of amounts distributed to such U.S. Holder and attributable to principal under the Plan is properly allocable to interest. Each U.S. Holder of an Allowed Claim on which interest has accrued is urged to consult its tax advisor regarding the tax treatment of distributions under the Plan and the deductibility of any accrued but unpaid interest for U.S. federal income tax purposes.

**2. Post-Effective Date Distributions**

Because certain U.S. Holders of Allowed Claims may receive distributions subsequent to the Effective Date, the imputed interest provisions of the IRC may treat a portion of any post-Effective Date distribution as imputed interest. Imputed interest may, with respect to certain U.S. Holders, accrue over time using the constant interest method, in which event the U.S. Holder may, under some circumstances, be required to include imputed interest in income prior to receipt of a post-Effective Date distribution. Additionally, to the extent U.S. Holders may receive distributions in a taxable year or years following the year of the initial distribution, any loss and a portion of any gain realized by the Holder may be deferred. U.S. Holders should consult their tax advisors regarding the possible application of (or ability to elect out of) the "installment method" of reporting with respect to their Allowed Claims or Allowed Interest.

**3. Bad Debt Deduction and/or Worthless Securities Deduction**

A U.S. Holder who, under the Plan, receives, in respect of an Allowed Claim, an amount less than the U.S. Holder's tax basis in the Allowed Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under section 166(a) of the IRC or a worthless securities deduction under section 165 of the IRC. The rules governing the character, timing and amount of bad debt or worthless securities deductions place considerable emphasis on the facts and circumstances of the U.S. Holder, the obligor and the instrument with respect to which a deduction is claimed. U.S. Holders of Allowed Claims, therefore, should consult their tax advisors with respect to their ability to take such a deduction.

**4. Medicare Tax**

Certain U.S. Holders that are individuals, estates, or trusts are required to pay an additional 3.8 percent tax on, among other things, gains from the sale or other disposition of capital assets. U.S. Holders that are individuals, estates, or trusts should consult their tax advisors regarding the effect, if any, of this tax provision on their ownership and disposition of any consideration to be received under the Plan.

**5. Information Reporting and Backup Withholding**

A U.S. Holder may be subject to backup withholding, currently at the rate of 24%, with respect to any "reportable" payments received pursuant to the Plan unless (i) such U.S. Holder is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification number, certifies as to no loss of exemption from backup withholding and complies with applicable requirements of the backup withholding rules. A U.S. Holder who does not provide a correct taxpayer identification number may be subject to penalties imposed by the IRS. Amounts withheld under the backup withholding rules may be credited against a U.S. Holder's tax liability, and a U.S. Holder may obtain a refund of any excess amounts withheld under the backup holding rules by timely filing the appropriate claim for refund with the IRS.

The Litigation Trustee will report annually to each beneficiary, and to the IRS, such beneficiary's share of any income, gains and losses of the Litigation Trust during the calendar year to the extent required by law.

**D. Importance of Obtaining Professional Tax Assistance**

**THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES, INCLUDING WHETHER SUCH HOLDER IS SUBJECT TO TAXATION BY THE UNITED STATES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL AND NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

**XIII. ADDITIONAL INFORMATION**

Certain documents described or referred to in this Disclosure Statement have not been attached as exhibits because of the impracticability of furnishing copies of these documents to all recipients of this Disclosure Statement.

#### XIV. RECOMMENDATION AND CONCLUSION

For all of the reasons set forth in this Disclosure Statement, the Debtor believes that the Confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtor urges all holders of Claims and Interests in Classes entitled to vote on the Plan to vote to accept the Plan and to evidence their acceptance by duly completing and returning their ballots so that they will be received on or before the Voting Deadline.

Dated: October 18, 2018

NATIONAL BANK OF ANGUILLA (PRIVATE  
BANKING & TRUST) LTD.

By:                   /s/ William Tacon  
William Tacon, Administrator

Filed by:

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**Glossary of Terms Used in Disclosure Statement**

1. As used in this Disclosure Statement, capitalized terms have the meanings set forth below. Any term that is not otherwise defined herein, but that is defined in the Bankruptcy Code or the Bankruptcy Rules (as each such term is defined below), will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.
2. “Administrative Claim” means a Claim against the Debtor or its Estate arising on or after the Petition Date and prior to the Effective Date for a cost or expense of administration in the Chapter 11 Case that is entitled to priority or superpriority under sections 364(c)(1), 365, 503(b), 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (i) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Debtor’s Estate; and (ii) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under sections 330(a) or 331 of the Bankruptcy Code, including Fee Claims.
3. “Administrator” means William Tacon, in his capacity as administrator of the Debtor pursuant to an order of the Anguillian Court entered on February 22, 2016, or any successor administrator appointed by the Anguillian Court.
4. “Allowed [ ] Claim” means a Claim (a) listed by the Debtor on its Schedules other than as disputed, contingent or unliquidated and is not a Disputed Claim; (b) for which a Proof of Claim or request for payment of Administrative Claim (or similar request) has been Filed by the applicable Bar Date or otherwise has been deemed timely Filed under applicable law and that is not a Disputed Claim; (c) that is expressly allowed: (i) in any Stipulation Re: Claim or Interest executed by the Debtor or the Litigation Trust and the Claim Holder; (ii) in any contract, instrument or other agreement entered into in connection with the Plan and, if prior to the Effective Date, approved by the Bankruptcy Court; (iii) in a Final Order; or (iv) pursuant to the terms of the Plan; or (d) that the Reorganized Debtor or the Litigation Trustee determines as of the Claims Objection Bar Date (i) will not be subject to an objection or to an amendment to the Schedules and (ii) will be treated in accordance with the terms of the Plan.
5. “Allowed Interest” means, with reference to any Interest (a) an Interest registered in the stock register, membership interest register or any similar register or schedule maintained by or on behalf of the Debtor as of the Distribution Record Date that is not a Disputed Interest or (b) any Interest expressly deemed allowed by the Plan or by a Final Order and (c) that is not a disputed or subject to offset, recoupment or counterclaim by the Debtor, Reorganized Debtor, or the Litigation Trustee.
6. “Anguillian Court” means the Eastern Caribbean Supreme Court in the High Court of Justice Anguilla Circuit.
7. “Anguillian Proceeding” means the administration of the Debtor in Anguilla pursuant to the Financial Services Commission Act.



8. “Assets” means the Recovery Actions and all property of the Debtor’s Estate within the meaning of section 541(a) of the Bankruptcy Code to the extent such property is located “within the territorial jurisdiction of the United States” pursuant to section 1502(8) of the Bankruptcy Code, and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527 of the Bankruptcy Code, to other assets of the Debtor that are within the jurisdiction of the Bankruptcy Court under sections 541(a) of the Bankruptcy Code, and 1334(e) of title 28 of the United States Code, to the extent that such other assets are not subject to the jurisdiction and control of the Anguillian Proceeding.
9. “Available Cash” means all Cash held in the United States by or for the benefit of the Debtor on the Effective Date plus all Cash that the Administrator or the Litigation Trustee makes available to the Reorganized Debtor or the Litigation Trust, and all Cash realized by the Reorganized Debtor or the Litigation Trust after the Effective Date from the sale, collection or other disposition of Assets of the Estate, including, without limitation, the Recovery Actions, but excluding the amount of Cash for the Reorganized Debtor or the Litigation Trust (a) necessary to pay Holders of Allowed Administrative Claims in accordance with the Plan and (b) estimated and reserved by the Reorganized Debtor or Litigation Trust to (i) pay all U.S. Trustee Fees, (ii) fund the prosecution of the Recovery Actions through trial and (iii) fund and maintain any other post-petition reserves in connection with any agreements or otherwise.
10. “Bar Date” means a bar date established (solely for purposes of the Chapter 11 Case) by the Bar Date Order, other applicable order of the Bankruptcy Court, or the Plan.
11. “Bar Date Order” means the Bankruptcy Court’s Order establishing Bar Dates for Filing Proofs of Claim in the Chapter 11 Case and approving form and manner of notice thereof, which was entered by the Bankruptcy Court on [\_\_\_\_\_, 2018] [Dkt. # \_\_\_\_]
12. “Bankruptcy Code” means title 11 of the United States Code, as now in effect or hereafter amended, as applicable to this Chapter 11 Case.
13. “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York.
14. “Bankruptcy Rules” means, collectively, the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended, as applicable to this Chapter 11 Case.
15. “Business Day” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).
16. “Cash” means legal tender of the United States of America and equivalents thereof.
17. “Chapter 11 Case” means the case commenced under chapter 11 of the Bankruptcy Code by the Debtor in the Bankruptcy Court and designated Case No 16-11806 (MG).

18. “Claim” means a claim (as defined in section 101(5) of the Bankruptcy Code) against the Debtor.
19. “Claims Objection Bar Date” means, for each Claim, the latest of (a) 270 days after the Effective Date (or such later date as the Bankruptcy Court may approve upon request of the Litigation Trustee); (b) 90 days after the Filing and service upon the Litigation Trustee (and its counsel of record) of a Proof of Claim (or an amendment thereto) relating to such Claim; and (c) such other time as may be fixed by a Final Order or an agreement of the Litigation Trustee and the Entity asserting such Claim.
20. “Class” means a class of Claims or Interests, as described in Article II.
21. “Confirmation” means the entry of the Confirmation Order on the docket of the Bankruptcy Court.
22. “Confirmation Date” means the date on which the Bankruptcy Court enters the Confirmation Order on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.
23. “Confirmation Hearing” means the hearing held by the Bankruptcy Court on Confirmation of the Plan, as such hearing may be adjourned from time to time.
24. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.
25. “Creditor” means any Entity holding a Claim against the Debtor.
26. “Disbursing Agent” means the Litigation Trustee, in its capacity as disbursing agent, or any Third Party Disbursing Agent.
27. “Disputed Claim” means any Claim:
  - (a) if no Proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, (i) a Claim that is listed on the Debtor’s Schedules as disputed, contingent or unliquidated or (ii) a Claim that is not listed on the Debtor’s Schedules;
  - (b) prior to and on the Claims Objection Bar Date, if a Proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, all Claims that have not been expressly Allowed (i) in any Stipulation Re: Claim or Interest executed by the Debtor, the Reorganized Debtor or the Litigation Trustee and Claim Holder; (ii) in any contract, instrument or other agreement entered into in connection with the Plan and, if prior to the Effective Date, approved by the Bankruptcy Court; (iii) in a Final Order; or (iv) pursuant to the terms of the Plan; or
  - (c) after the Claims Objection Bar Date, if a Proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under

applicable law, such Claims for which the Debtor, the Reorganized Debtor, or the Litigation Trustee have Filed an objection in the Bankruptcy Court, and such objection has not been resolved in its entirety by a Final Order or withdrawn (and for which there is no agreement with the Claim Holder to treat the Claim as a Disputed Claim for a period of time after the Claims Objection Bar Date).

Notwithstanding the above, if a Claim is an Allowed Claim under the definition set forth herein, it shall not also be considered to be a Disputed Claim.

28. “Disputed Interest” means any Interest of the Debtor (until it is Allowed): (a) as to which an objection, request for estimation in accordance with section 502(c) of the Bankruptcy Code, request for subordination pursuant to section 510 of the Bankruptcy Code, or adversary proceeding has been Filed and which objection, request for estimation, request for subordination or adversary proceeding has not been withdrawn, overruled, or otherwise disposed of by a Final Order of the Bankruptcy Court, (b) to which the Debtor, the Reorganized Debtor, or the Litigation Trustee intends to assert such an objection, request for estimation, request for subordination, or adversary proceeding.
29. “Disclosure Statement” has the meaning provided in the Introduction to the Plan.
30. “Distribution” means, as the context requires: (i) the Available Cash or other property or consideration to be provided under the Plan to the Holders of Allowed Claims and Allowed Interests; or (ii) the payment, transfer, or delivery of Available Cash or other property to Creditors and Interest Holders pursuant to the Plan.
31. “Distribution Date” means, from time to time, a date selected by the Litigation Trustee, in its discretion, in accordance with the terms of the Plan and the Litigation Trust Agreement to make Distributions on account of Allowed Claims and Allowed Interests.
32. “Distribution Record Date” means the close of business on the Confirmation Date.
33. “Effective Date” means a day, as determined by the Debtor, that is the Business Day as soon as reasonably practicable after all conditions to the Effective Date in Section IX.B have been met or waived.
34. “Entity” has the meaning ascribed to it in section 101(15) of the Bankruptcy Code.
35. “Estate” means the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.
36. “Executory Contract or Unexpired Lease” means a contract or lease to which the Debtor is a party that is subject to assumption, assumption and assignment or rejection under section 365 of the Bankruptcy Code, including any modifications, amendments, addenda or supplements thereto, and any ancillary agreements related thereto. For the avoidance of doubt, Executory Contract or Unexpired Lease as defined and used in the Plan shall only include those contracts or leases to which the Debtor is a party and that were made in the territorial jurisdiction of the United States.

37. “Face Amount” means (a) if a Proof of Claim has been filed: (i) if only a liquidated amount is provided on the proof of Claim, the full stated amount claimed by the Holder of such Claim in any Proof of Claim filed by the applicable Bar Date, (ii) if a portion of the Claim is unliquidated, an amount proposed by the Reorganized Debtor or the Litigation Trustee in their reasonable estimation if they were unsuccessful in litigating the Claims to a Final Order, such amount to not be less than the liquidated amount of the Claim, in each case, however, if a party requests that the amount of the Claim be estimated for purposes of calculating Distributions, the Face Amount shall be the amount so estimated by the Bankruptcy Court; or (b) if a Proof of Claim has not been filed: (i) the amount set forth in the Schedules, if such amount is liquidated; or (ii) an amount reasonably estimated, in the sole discretion of the Reorganized Debtor or the Litigation Trustee, to account for Proofs of Claim not yet Filed that potentially could be Filed on or before an applicable Bar Date.
38. “Fee Claim” means a Claim under sections 328, 330(a), 331, 503 or 1103 of the Bankruptcy Code for compensation of a Professional for services rendered or expenses incurred in the Chapter 11 Case.
39. “Fee Order” means any order establishing procedures for interim compensation and reimbursement of expenses of Professionals that may be entered by the Bankruptcy Court.
40. “File,” “Filed” or “Filing” means file, filed or filing with the clerk of the Bankruptcy Court or its authorized designee in the Chapter 11 Case.
41. “Final Distribution Date” for a particular Class of Claims means the Distribution Date upon which final Distributions to claimants in the Class are to be made.
42. “Final Order” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction, that has been docketed and has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move, under Bankruptcy Rule 9023, Rule 59 of the Federal Rules of Civil Procedure, or similar rule, for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied or resulted in no modification of such order.
43. “Holder” means an Entity holding a Claim or Interest, as the context requires.
44. “Interest” means the ownership of the 42,037 shares in the Debtor, and the rights of any Entity to purchase or demand the issuance of any of such ownership or equity interest, including: (a) redemption, conversion, exchange, voting, participation and dividend rights (including any rights in respect of accrued and unpaid dividends); (b) liquidation preferences; (c) stock options and warrants; and (d) restricted stock units.

45. “Interim Distribution Bar Date” is the date, if any, selected by the Litigation Trustee (in its discretion and without notice) prior to each Distribution Date for which any Claims that become Allowed Claims or any Interests that become Allowed Interests prior to such date will be entitled to receive a Distribution on the Distribution Date.
46. “Liabilities” means any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity or otherwise, that are based in whole or in part on any act, event, injury, omission, transaction, agreement, employment, exposure or other occurrence taking place or entered into on or prior to the Effective Date.
47. “Liens” means any mortgage, pledge, deed of trust, assessment, security interest, lease, lien, adverse claim, levy, charge or other encumbrance of any kind, including any “lien” as defined in section 101(37) of the Bankruptcy Code, or a conditional sale contract, title retention contract or other contract to give any of the foregoing.
48. “Litigation Trust” means the trust created as of the Effective Date in accordance with the terms of the Litigation Trust Agreement and the provisions of Article V of the Plan.
49. “Litigation Trust Agreement” means the trust agreement, to be dated prior to or as of the Effective Date, between the Debtor and the Litigation Trustee, governing the Litigation Trust, which shall be substantially in the form of Exhibit I.A.49 to the Plan.
50. “Litigation Trust Assets” means the Recovery Actions and the assets of the Debtor assigned and transferred by the Debtor directly to the Litigation Trust under the Litigation Trust Agreement.
51. “Litigation Trustee” means William Tacon or such other person or entity appointed pursuant to the terms of the Litigation Trust Agreement to administer the Litigation Trust.
52. “Petition Date” means June 22, 2016, the date on which the Debtor Filed the voluntary petition for relief commencing the Chapter 11 Case.
53. “Plan” means this liquidating plan or reorganization, as may be modified or amended, and including the exhibit(s) to the Plan, as may be modified or amended.
54. “Professional” means any professional employed in the Chapter 11 Case pursuant to sections 327, 328, 363 or 1103 of the Bankruptcy Code or any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.
55. “Proof of Claim” means a proof of claim Filed against Debtor in this Chapter 11 Case.
56. “Pro Rata Share” means, when used with reference to a Distribution of property to Holders of Allowed Claims or Allowed Interests in a particular Class or other specified group of Claims or Interests pursuant to Article II, proportionately so that with respect to a particular Allowed Claim or Allowed Interest in such Class or in such group, the ratio

of (a)(i) the amount of property to be distributed on account of such Claim or Interest to (ii) the amount of such Claim or Interest, is the same as the ratio of (b)(i) the amount of property to be distributed on account of all Allowed Claims or Allowed Interests in such Class or group of Claims or Interests to (ii) the amount of all Allowed Claims or Allowed Interests, as the case may be, in such Class or group of Claims or Interests. Absent an Order of the Bankruptcy Court to the contrary, until all Disputed Claims in a Class are resolved, Disputed Claims shall be treated as Allowed Claims in their Face Amount for purposes of calculating Pro Rata Distribution of property to Holders of Allowed Claims in such Class. Disputed Interests also shall be treated as Allowed Interests for purposes of calculating Pro Rata Distribution of property to Holders of Allowed Interests in such Class.

57. “Recovery Actions” means, collectively and individually, all claims and causes of action held that are Assets, including, without limitation, claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, and any other avoidance or similar action under the Bankruptcy Code or similar state or foreign law, and the proceeds thereof, whether received by judgment, settlement or otherwise.
58. “Released Parties” means, collectively and individually, the Debtor, the Administrator, and, in their respective capacity as counsel or financial advisor to the Debtor, FTI Consulting, Inc., Reed Smith LLP, and Weinberg Zareh Malkin Price LLP, and each of their respective partners, members, employees, and agents, in their capacities as such.
59. “Reorganized Debtor” means the Debtor on and after the Effective Date.
60. “Schedules” means the schedules of Assets and Liabilities and the statements of financial affairs Filed by the Debtor on or about August 8, 2016, as required by section 521 of the Bankruptcy Code, as the same may have been thereafter, or may be, amended, modified or supplemented.
61. “Stipulation Re: Claim or Interest” means a stipulation or other agreement between the Debtor or the Litigation Trustee and a Holder of a Claim or Interest, or an agreed order of the Bankruptcy Court, establishing the amount and nature of a Claim or Interest; any such stipulation or other agreement between the Litigation Trustee and a Holder of a Claim or Interest executed after the Effective Date will not be subject to approval of the Bankruptcy Court.
62. “Tax” means: (a) any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state, local or foreign taxing authority; or (b) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other entity.

63. “Third Party Disbursing Agent” means one or more Entities retained by the Litigation Trustee, in its sole discretion, to make Distributions required under the Plan.
64. “Trust Accounts” means the bank accounts to be held in the name of the Litigation Trustee that are created pursuant to the Litigation Trust Agreement and any subaccounts thereof.
65. “Trust Expense” means the reasonable and necessary fees, costs and expenses incurred by the Litigation Trustee or its professionals pursuant to, and otherwise in connection with, the Litigation Trustee’s performance of its duties under this Litigation Trust Agreement.
66. “Unsecured Claim” means any Claim that is unpaid as of the Effective Date that is not an Administrative Claim.
67. “U.S. Trustee Fees” means the fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930.
68. “Voting Deadline” means November 6, 2018 at 5:00 p.m. (Eastern), which is the deadline for submitting ballots to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code.

# **EXHIBIT A**

## **(PLAN)**



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

National Bank of Anguilla (Private Banking  
& Trust) Ltd.,

Debtor.

Chapter 11

Case No. 16-11806 (MG)

**MODIFIED LIQUIDATING PLAN OF REORGANIZATION OF THE  
DEBTOR AND DEBTOR IN POSSESSION**

October 18, 2018

**REED SMITH LLP**

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in Possession*

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**TABLE OF EXHIBITS<sup>1</sup>**

Exhibit I.A.49	Litigation Trust Agreement
Exhibit III.F.1	Nonexclusive List of Retained Causes of Action

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<sup>1</sup> To the extent (if any) not filed with the Plan, the Debtor will File the exhibits to this Plan no later than 10 days before the Confirmation Hearing. All exhibits will be available on the Bankruptcy Court's website (<http://www.nysb.uscourts.gov>) and the website of Epiq Bankruptcy Solutions, LLC, the Debtor's Bankruptcy Court-approved noticing agent, (<http://dm.epiq11.com/NBA>) once they are Filed. The Debtor reserves the right to modify, amend, supplement, restate or withdraw any exhibits to the Plan after they are Filed and shall promptly make copies of those available upon request.

## INTRODUCTION

National Bank of Anguilla (Private Banking & Trust) Ltd. (the “Debtor”), Debtor in this Chapter 11 Case proposes the following Modified Liquidating Plan of Reorganization (together with all exhibits attached hereto or referenced herein, as the same may be amended, modified or supplemented the “Plan”) for the distribution of the proceeds of the Assets (as hereinafter defined). Pursuant to 11 U.S.C. § 1528, this Plan only relates to Assets of the Debtor located in the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527 of the Bankruptcy Code, to other assets of the Debtor that are within the jurisdiction of the Bankruptcy Court under sections 541(a) of the Bankruptcy Code, and 1334(e) of title 28 of the United States Code, to the extent that such other assets are not subject to the jurisdiction and control of the Anguillian Proceeding. Similarly, the Claim resolution process provided for in Article VII is solely with respect to Claims asserted in this Chapter 11 Case (as those terms are hereinafter defined), and nothing in this Plan shall alter or affect (i) a Creditor’s right to assert claims in the Anguillian Proceeding (as hereinafter defined) or (ii) the right of the Administrator (as hereinafter defined) to contest, challenge or compromise any claim(s) that may be filed in the Anguillian Proceeding. The Debtor is the proponent of the Plan within the meaning of 11 U.S.C. § 1129. Reference is made to the Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Plan dated October 18, 2018 (together with all exhibits attached thereto or referenced therein, as the same may be amended, modified or supplemented the “Disclosure Statement”) for a discussion of the Debtor’s history, business, Assets and Liabilities, and for a summary and analysis of the Plan.

ALL CREDITORS AND INTEREST HOLDERS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3019 AND IN THE PLAN, THE DEBTOR RESERVES THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THE PLAN PRIOR TO ITS SUBSTANTIAL CONSUMMATION.

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

### A. Defined Terms

1. As used in the Plan, capitalized terms have the meanings set forth below. Any term that is not otherwise defined herein, but that is defined in the Bankruptcy Code or the Bankruptcy Rules (as each such term is defined below), will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.
2. “Administrative Claim” means a Claim against the Debtor or its Estate arising on or after the Petition Date and prior to the Effective Date for a cost or expense of administration in the Chapter 11 Case that is entitled to priority or superpriority under sections 364(c)(1), 365, 503(b), 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (i) the actual and necessary costs and expenses incurred after the Petition Date of preserving the

Debtor's Estate; and (ii) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under sections 330(a) or 331 of the Bankruptcy Code, including Fee Claims.

3. "Administrator" means William Tacon, in his capacity as administrator of the Debtor pursuant to an order of the Anguillian Court entered on February 22, 2016, or any successor administrator appointed by the Anguillian Court.
4. "Allowed [ ] Claim" means a Claim (a) listed by the Debtor on its Schedules other than as disputed, contingent or unliquidated and is not a Disputed Claim; (b) for which a Proof of Claim or request for payment of Administrative Claim (or similar request) has been Filed by the applicable Bar Date or otherwise has been deemed timely Filed under applicable law and that is not a Disputed Claim; (c) that is expressly allowed: (i) in any Stipulation Re: Claim or Interest executed by the Debtor or the Litigation Trust and the Claim Holder; (ii) in any contract, instrument or other agreement entered into in connection with the Plan and, if prior to the Effective Date, approved by the Bankruptcy Court; (iii) in a Final Order; or (iv) pursuant to the terms of the Plan; or (d) that the Reorganized Debtor or the Litigation Trustee determines as of the Claims Objection Bar Date (i) will not be subject to an objection or to an amendment to the Schedules and (ii) will be treated in accordance with the terms of the Plan.
5. "Allowed Interest" means, with reference to any Interest (a) an Interest registered in the stock register, membership interest register or any similar register or schedule maintained by or on behalf of the Debtor as of the Distribution Record Date that is not a Disputed Interest or (b) any Interest expressly deemed allowed by the Plan or by a Final Order and (c) that is not a disputed or subject to offset, recoupment or counterclaim by the Debtor, Reorganized Debtor, or the Litigation Trustee.
6. "Anguillian Court" means the Eastern Caribbean Supreme Court in the High Court of Justice Anguilla Circuit.
7. "Anguillian Proceeding" means the administration of the Debtor in Anguilla pursuant to the Financial Services Commission Act.
8. "Assets" means the Recovery Actions and all property of the Debtor's Estate within the meaning of section 541(a) of the Bankruptcy Code to the extent such property is located "within the territorial jurisdiction of the United States" pursuant to section 1502(8) of the Bankruptcy Code, and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527 of the Bankruptcy Code, to other assets of the Debtor that are within the jurisdiction of the Bankruptcy Court under sections 541(a) of the Bankruptcy Code, and 1334(e) of title 28 of the United States Code, to the extent that such other assets are not subject to the jurisdiction and control of the Anguillian Proceeding.
9. "Available Cash" means all Cash held in the United States by or for the benefit of the Debtor on the Effective Date plus all Cash that the Administrator or the Litigation Trustee makes available to the Reorganized Debtor or the Litigation Trust, and all Cash

realized by the Reorganized Debtor or the Litigation Trust after the Effective Date from the sale, collection or other disposition of Assets of the Estate, including, without limitation, the Recovery Actions, but excluding the amount of Cash for the Reorganized Debtor or the Litigation Trust (a) necessary to pay Holders of Allowed Administrative Claims in accordance with this Plan and (b) estimated and reserved by the Reorganized Debtor or Litigation Trust to (i) pay all U.S. Trustee Fees, (ii) fund the prosecution of the Recovery Actions through trial and (iii) fund and maintain any other post-petition reserves in connection with any agreements or otherwise.

10. “Bar Date” means a bar date established (solely for purposes of the Chapter 11 Case) by the Bar Date Order, other applicable order of the Bankruptcy Court, or this Plan.
11. “Bar Date Order” means the Bankruptcy Court’s Order establishing Bar Dates for Filing Proofs of Claim in the Chapter 11 Case and approving form and manner of notice thereof, which was entered by the Bankruptcy Court on [\_\_\_\_\_, 2018] [Dkt. # \_\_\_\_]
12. “Bankruptcy Code” means title 11 of the United States Code, as now in effect or hereafter amended, as applicable to this Chapter 11 Case.
13. “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York.
14. “Bankruptcy Rules” means, collectively, the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended, as applicable to this Chapter 11 Case.
15. “Business Day” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).
16. “Cash” means legal tender of the United States of America and equivalents thereof.
17. “Chapter 11 Case” means the case commenced under chapter 11 of the Bankruptcy Code by the Debtor in the Bankruptcy Court and designated Case No 16-11806 (MG).
18. “Claim” means a claim (as defined in section 101(5) of the Bankruptcy Code) against the Debtor.
19. “Claims Objection Bar Date” means, for each Claim, the latest of (a) 270 days after the Effective Date (or such later date as the Bankruptcy Court may approve upon request of the Litigation Trustee); (b) 90 days after the Filing and service upon the Litigation Trustee (and its counsel of record) of a Proof of Claim (or an amendment thereto) relating to such Claim; and (c) such other time as may be fixed by a Final Order or an agreement of the Litigation Trustee and the Entity asserting such Claim.
20. “Class” means a class of Claims or Interests, as described in Article II.
21. “Confirmation” means the entry of the Confirmation Order on the docket of the Bankruptcy Court.



22. “Confirmation Date” means the date on which the Bankruptcy Court enters the Confirmation Order on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.
23. “Confirmation Hearing” means the hearing held by the Bankruptcy Court on Confirmation of the Plan, as such hearing may be adjourned from time to time.
24. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.
25. “Creditor” means any Entity holding a Claim against the Debtor.
26. “Disbursing Agent” means the Litigation Trustee, in its capacity as disbursing agent, or any Third Party Disbursing Agent.
27. “Disputed Claim” means any Claim:
  - a. if no Proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, (i) a Claim that is listed on the Debtor’s Schedules as disputed, contingent or unliquidated or (ii) a Claim that is not listed on the Debtor’s Schedules;
  - b. prior to and on the Claims Objection Bar Date, if a Proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, all Claims that have not been expressly Allowed (i) in any Stipulation Re: Claim or Interest executed by the Debtor, the Reorganized Debtor or the Litigation Trustee and Claim Holder; (ii) in any contract, instrument or other agreement entered into in connection with the Plan and, if prior to the Effective Date, approved by the Bankruptcy Court; (iii) in a Final Order; or (iv) pursuant to the terms of the Plan; or
  - c. after the Claims Objection Bar Date, if a Proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, such Claims for which the Debtor, the Reorganized Debtor, or the Litigation Trustee have Filed an objection in the Bankruptcy Court, and such objection has not been resolved in its entirety by a Final Order or withdrawn (and for which there is no agreement with the Claim Holder to treat the Claim as a Disputed Claim for a period of time after the Claims Objection Bar Date).

Notwithstanding the above, if a Claim is an Allowed Claim under the definition set forth herein, it shall not also be considered to be a Disputed Claim.

28. “Disputed Interest” means any Interest of the Debtor (until it is Allowed): (a) as to which an objection, request for estimation in accordance with section 502(c) of the Bankruptcy Code, request for subordination pursuant to section 510 of the Bankruptcy Code, or adversary proceeding has been Filed and which objection, request for estimation, request for subordination or adversary proceeding has not been withdrawn, overruled, or otherwise disposed of by a Final Order of the Bankruptcy Court, (b) to which the Debtor,

the Reorganized Debtor, or the Litigation Trustee intends to assert such an objection, request for estimation, request for subordination, or adversary proceeding.

29. “Disclosure Statement” has the meaning provided in the Introduction to this Plan.
30. “Distribution” means, as the context requires: (i) the Available Cash or other property or consideration to be provided under this Plan to the Holders of Allowed Claims and Allowed Interests; or (ii) the payment, transfer, or delivery of Available Cash or other property to Creditors and Interest Holders pursuant to this Plan.
31. “Distribution Date” means, from time to time, a date selected by the Litigation Trustee, in its discretion, in accordance with the terms of the Plan and the Litigation Trust Agreement to make Distributions on account of Allowed Claims and Allowed Interests.
32. “Distribution Record Date” means the close of business on the Confirmation Date.
33. “Effective Date” means a day, as determined by the Debtor, that is the Business Day as soon as reasonably practicable after all conditions to the Effective Date in Section IX.B have been met or waived.
34. “Entity” has the meaning ascribed to it in section 101(15) of the Bankruptcy Code.
35. “Estate” means the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.
36. “Executory Contract or Unexpired Lease” means a contract or lease to which the Debtor is a party that is subject to assumption, assumption and assignment or rejection under section 365 of the Bankruptcy Code, including any modifications, amendments, addenda or supplements thereto, and any ancillary agreements related thereto. For the avoidance of doubt, Executory Contract or Unexpired Lease as defined and used in this Plan shall only include those contracts or leases to which the Debtor is a party and that were made in the territorial jurisdiction of the United States.
37. “Face Amount” means (a) if a Proof of Claim has been filed: (i) if only a liquidated amount is provided on the proof of Claim, the full stated amount claimed by the Holder of such Claim in any Proof of Claim filed by the applicable Bar Date, (ii) if a portion of the Claim is unliquidated, an amount proposed by the Reorganized Debtor or the Litigation Trustee in their reasonable estimation if they were unsuccessful in litigating the Claims to a Final Order, such amount to not be less than the liquidated amount of the Claim, in each case, however, if a party requests that the amount of the Claim be estimated for purposes of calculating Distributions, the Face Amount shall be the amount so estimated by the Bankruptcy Court; or (b) if a Proof of Claim has not been filed: (i) the amount set forth in the Schedules, if such amount is liquidated; or (ii) an amount reasonably estimated, in the sole discretion of the Reorganized Debtor or the Litigation Trustee, to account for Proofs of Claim not yet Filed that potentially could be Filed on or before an applicable Bar Date.

38. “Fee Claim” means a Claim under sections 328, 330(a), 331, 503 or 1103 of the Bankruptcy Code for compensation of a Professional for services rendered or expenses incurred in the Chapter 11 Case.
39. “Fee Order” means any order establishing procedures for interim compensation and reimbursement of expenses of Professionals that may be entered by the Bankruptcy Court.
40. “File,” “Filed” or “Filing” means file, filed or filing with the clerk of the Bankruptcy Court or its authorized designee in the Chapter 11 Case.
41. “Final Distribution Date” for a particular Class of Claims means the Distribution Date upon which final Distributions to claimants in the Class are to be made.
42. “Final Order” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction, that has been docketed and has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move, under Bankruptcy Rule 9023, Rule 59 of the Federal Rules of Civil Procedure, or similar rule, for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied or resulted in no modification of such order.
43. “Holder” means an Entity holding a Claim or Interest, as the context requires.
44. “Interest” means the ownership of the 42,037 shares in the Debtor, and the rights of any Entity to purchase or demand the issuance of any of such ownership or equity interest, including: (a) redemption, conversion, exchange, voting, participation and dividend rights (including any rights in respect of accrued and unpaid dividends); (b) liquidation preferences; (c) stock options and warrants; and (d) restricted stock units.
45. “Interim Distribution Bar Date” is the date, if any, selected by the Litigation Trustee (in its discretion and without notice) prior to each Distribution Date for which any Claims that become Allowed Claims or any Interests that become Allowed Interests prior to such date will be entitled to receive a Distribution on the Distribution Date.
46. “Liabilities” means any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity or otherwise, that are based in whole or in part on any act, event, injury, omission, transaction, agreement, employment, exposure or other occurrence taking place or entered into on or prior to the Effective Date.
47. “Liens” means any mortgage, pledge, deed of trust, assessment, security interest, lease, lien, adverse claim, levy, charge or other encumbrance of any kind, including any “lien”

as defined in section 101(37) of the Bankruptcy Code, or a conditional sale contract, title retention contract or other contract to give any of the foregoing.

48. “Litigation Trust” means the trust created as of the Effective Date in accordance with the terms of the Litigation Trust Agreement and the provisions of Article V of this Plan.
49. “Litigation Trust Agreement” means the trust agreement, to be dated prior to or as of the Effective Date, between the Debtor and the Litigation Trustee, governing the Litigation Trust, which shall be substantially in the form of Exhibit I.A.49.
50. “Litigation Trust Assets” means the Recovery Actions and the assets of the Debtor assigned and transferred by the Debtor directly to the Litigation Trust under the Litigation Trust Agreement.
51. “Litigation Trustee” means William Tacon or such other person or entity appointed pursuant to the terms of the Litigation Trust Agreement to administer the Litigation Trust.
52. “Petition Date” means June 22, 2016, the date on which the Debtor Filed the voluntary petition for relief commencing the Chapter 11 Case.
53. “Plan” means this liquidating plan or reorganization, as may be modified or amended, and including the exhibit(s) to the Plan, as may be modified or amended.
54. “Professional” means any professional employed in the Chapter 11 Case pursuant to sections 327, 328, 363 or 1103 of the Bankruptcy Code or any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.
55. “Proof of Claim” means a proof of claim Filed against Debtor in this Chapter 11 Case.
56. “Pro Rata Share” means, when used with reference to a Distribution of property to Holders of Allowed Claims or Allowed Interests in a particular Class or other specified group of Claims or Interests pursuant to Article II, proportionately so that with respect to a particular Allowed Claim or Allowed Interest in such Class or in such group, the ratio of (a)(i) the amount of property to be distributed on account of such Claim or Interest to (ii) the amount of such Claim or Interest, is the same as the ratio of (b)(i) the amount of property to be distributed on account of all Allowed Claims or Allowed Interests in such Class or group of Claims or Interests to (ii) the amount of all Allowed Claims or Allowed Interests, as the case may be, in such Class or group of Claims or Interests. Absent an Order of the Bankruptcy Court to the contrary, until all Disputed Claims in a Class are resolved, Disputed Claims shall be treated as Allowed Claims in their Face Amount for purposes of calculating Pro Rata Distribution of property to Holders of Allowed Claims in such Class. Disputed Interests also shall be treated as Allowed Interests for purposes of calculating Pro Rata Distribution of property to Holders of Allowed Interests in such Class.
57. “Recovery Actions” means, collectively and individually, all claims and causes of action held that are Assets, including, without limitation, claims and causes of action under

sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code, and any other avoidance or similar action under the Bankruptcy Code or similar state or foreign law, and the proceeds thereof, whether received by judgment, settlement or otherwise.

58. “Released Parties” means, collectively and individually, the Debtor, the Administrator, and, in their respective capacity as counsel or financial advisor to the Debtor, FTI Consulting, Inc., Reed Smith LLP, and Weinberg Zareh Malkin Price LLP, and each of their respective partners, members, employees, and agents, in their capacities as such.
59. “Reorganized Debtor” means the Debtor on and after the Effective Date.
60. “Schedules” means the schedules of Assets and Liabilities and the statements of financial affairs Filed by the Debtor on or about August 8, 2016, as required by section 521 of the Bankruptcy Code, as the same may have been thereafter, or may be, amended, modified or supplemented.
61. “Stipulation Re: Claim or Interest” means a stipulation or other agreement between the Debtor or the Litigation Trustee and a Holder of a Claim or Interest, or an agreed order of the Bankruptcy Court, establishing the amount and nature of a Claim or Interest; any such stipulation or other agreement between the Litigation Trustee and a Holder of a Claim or Interest executed after the Effective Date will not be subject to approval of the Bankruptcy Court.
62. “Tax” means: (a) any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state, local or foreign taxing authority; or (b) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other entity.
63. “Third Party Disbursing Agent” means one or more Entities retained by the Litigation Trustee, in its sole discretion, to make Distributions required under this Plan.
64. “Trust Accounts” means the bank accounts to be held in the name of the Litigation Trustee that are created pursuant to the Litigation Trust Agreement and any subaccounts thereof.
65. “Trust Expense” means the reasonable and necessary fees, costs and expenses incurred by the Litigation Trustee or its professionals pursuant to, and otherwise in connection with, the Litigation Trustee’s performance of its duties under this Litigation Trust Agreement.
66. “Unsecured Claim” means any Claim that is unpaid as of the Effective Date that is not an Administrative Claim.

67. “U.S. Trustee Fees” means the fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930.
68. “Voting Deadline” means November 6, 2018 at 5:00 p.m. (Eastern), which is the deadline for submitting ballots to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code.

**B. Rules of Interpretation and Computation of Time**

**1. Rules of Interpretation**

For purposes of the Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) unless otherwise provided in the Plan, any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) unless the context indicates otherwise, any reference in the Plan to an existing document or exhibit Filed or to be Filed means such document or exhibit, as it may have been or may be amended, modified or supplemented pursuant to the Plan, Confirmation Order or otherwise; (d) any reference to an Entity as a Holder of a Claim or Interest includes that Entity’s successors, assigns and affiliates; (e) all references in the Plan to Sections, Articles and exhibits are references to Sections, Articles and exhibits of or to the Plan; (f) the words “herein,” “hereunder” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (g) 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 the Plan; (h) subject to the provisions of any contract, articles or certificates of incorporation, bylaws, codes of regulation, similar constituent documents, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the rights and obligations arising under the Plan will be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules; and (i) the rules of construction set forth in section 102 of the Bankruptcy Code will apply to the extent not inconsistent with any other provision of this Section I.B.1.

**2. Computation of Time**

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

**ARTICLE II  
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

All Claims and Interests, except Administrative Claims, are placed in Classes below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, as described in Section II.A, are unclassified Claims.<sup>2</sup> A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of

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<sup>2</sup> Priority Tax Claims also are unclassified Claims pursuant to section 1123(a)(1) of the Bankruptcy Code. The Debtor, however, does not believe that it owes any priority Tax Claims.

that Class and is classified in other Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Classes.

**A. Unclassified Claims**

**1. Payment of Administrative Claims**

**a. Administrative Claims in General**

Except as otherwise specified in this Section II.A.1, and subject to the Bar Date provisions herein, unless otherwise agreed by the Holder of an Administrative Claim and the Debtor or the Reorganized Debtor, or unless an order of the Bankruptcy Court provides otherwise, each Holder of an Allowed Administrative Claim will receive from the Debtor or the Reorganized Debtor, in full satisfaction of its Administrative Claim, Cash equal to the amount of such Allowed Administrative Claim either (i) on the Effective Date or (ii) if the Administrative Claim is not allowed as of the Effective Date, within 60 days after the date on which such Administrative Claim becomes an Allowed Administrative Claim.

**b. Statutory Fees**

On or before the Effective Date, U.S. Trustee Fees, together with interest, if any, pursuant to 31 U.S.C. § 3717, will be paid by the Debtor in Cash equal to the amount of such Claims. U.S. Trustee Fees accruing after the Effective Date will be paid by the Reorganized Debtor until the closing of the Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

**c. Bar Dates for Administrative Claims**

**i. General Administrative Claim Bar Date Provisions**

Unless previously Filed, motions for payment of Administrative Claims must be Filed and served on the parties identified in Section XI.E no later than 30 days after the Effective Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve a motion requesting payment of such Administrative Claims by the applicable Bar Date will be forever barred from asserting such Administrative Claims against the Debtor, the Reorganized Debtor, the Litigation Trust, or the Assets (or the proceeds thereof), and such Administrative Claims will be deemed disallowed and extinguished as of the Effective Date. Objections to the requests for payment of post-petition Administrative Claims must be Filed and served on the parties identified in Section XI.E and the requesting party within 120 days after the Effective Date.

**ii. Bar Dates for Certain Administrative Claims**

**A. Professional Compensation**

Professionals or other entities asserting a Fee Claim (excluding ordinary course professionals, if any) for services rendered before the Effective Date must File and serve on the parties identified in Section XI.E and such other entities who are designated by the Bankruptcy

Rules, the Fee Order, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Fee Claim no later than 120 days after the Effective Date (or such later date as the Reorganized Debtor and such Professional may agree). Objections to any Fee Claim must be Filed and served on the parties identified in Section XI.E and the requesting party by 14 days after the date upon which such Fee Claim is Filed or such date as a Professional and the United States Trustee may agree.

### **B. Ordinary Course Administrative Liabilities**

Holders of Administrative Claims arising from Liabilities incurred by the Debtor in the ordinary course of its business on or after the Petition Date but prior to the Effective Date must, if not paid within 20 days of the Effective Date, File with the Bankruptcy Court and serve on the parties identified in Section XI.E no later than 40 days after the Effective Date an application for allowance and payment of such Administrative Claims asserted or the Holder of such Claims shall be forever barred from asserting such Claims against the Debtor, the Reorganized Debtor, or the Assets (or the proceeds thereof) and such Administrative Claim will be deemed disallowed and extinguished as of the Effective Date.

### **B. Classified Claims and Interests**

#### **1. Claims and Interests**

- a. Unsecured Claims (Class 1) are impaired.** Class 1 is comprised of Unsecured Claims against the Debtor. Except to the extent that a Holder of an Allowed Class 1 Claim agrees to less favorable treatment, each Holder of an Allowed Class 1 Claim shall receive as soon as reasonably practicable after the Effective Date and the liquidation of the Assets, from time to time thereafter in accordance with Section VI.A of this Plan, its Pro Rata Share of Debtor's Available Cash until each Holder receives up to one hundred percent (100%) of its Allowed Claim, inclusive of distributions, if any, made to a Holder of an Allowed Class 1 Claim in the Anguillian Proceeding. No Holder of an Allowed Class 1 Claim shall be entitled to interest on its Claim for the period following the Petition Date unless the Debtor is proven to be solvent. If the Debtor is proven to be solvent, each such Holder shall be entitled to its Pro Rata Share of interest payment at the simple rate of 0.55% per annum (which is provided in 28 U.S.C. § 1961 as of the Petition Date).

Holders of Unsecured Claims in Class 1 are entitled to vote.

- b. Interests (Class 2) are impaired.** Class 2 is comprised of Interests in the Debtor. After the payment in full of or reserve for Allowed Claims in Class 1, whether through Distributions made pursuant to this Plan and/or through distributions, if any, made to a Holder of an Allowed Class 1 Claim in the Anguillian Proceeding, Holders of Allowed Interests in Class 2 shall receive their Pro Rata Share of Debtor's Available Cash.



Holders of Interests in Class 2 are entitled to vote.

**C. Cramdown**

The Debtor requests Confirmation of this Plan under section 1129(b) of the Bankruptcy Code with respect to any impaired Class that has not accepted or is deemed not to have accepted the Plan pursuant to section 1126 of the Bankruptcy Code.

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

**A. Corporate Existence**

The Debtor will continue to exist, as the Reorganized Debtor, unless and until it has been dissolved by the Administrator.

**B. Reports to be Filed by the Litigation Trustee**

In addition to any other reports that may be required by order of the Bankruptcy Court, until the Chapter 11 Case is closed, the Litigation Trustee shall, beginning with the first full calendar quarter following the occurrence of the Effective Date, file with the Bankruptcy Court (and provide to any other party entitled to receive any such report pursuant to the Bankruptcy Code and the Bankruptcy Rules), no later than twenty (20) days after each quarter, a quarterly report regarding the administration of the Assets pursuant to this Plan or the Litigation Trust Agreement, the Distributions made by it and other matters relating to the implementation of this Plan.

**C. Fees and Expenses of the Reorganized Debtor**

1. The Reorganized Debtor's expenses shall be paid from the Assets (and such other funds as the Litigation Trustee or the Administrator shall make available).
2. In addition, the Reorganized Debtor may employ, without further order of the Bankruptcy Court, professionals (including Professionals previously employed by the Debtor) to assist in carrying out its duties hereunder and may reasonably compensate and reimburse the expenses of these professionals from the Assets (and such other funds as the Litigation Trustee or Administrator shall make available), based upon the nature of the work performed by such professional, without further order of the Bankruptcy Court.

**D. Indemnification**

To the extent permitted by law, the Reorganized Debtor shall indemnify its professionals, the Administrator, and the Litigation Trustee, from all claims and causes of action, except to the extent such claims and causes of action are judicially determined by a Final Order to have resulted primarily from fraud, willful misconduct, gross negligence, or criminal conduct.

## **E. Litigation Trust**

As further described in Article V of this Plan, the Litigation Trust shall be established as of the Effective Date to (i) liquidate the Litigation Trust Assets and (ii) transfer, consistent with the terms of the Litigation Trust Agreement, Cash or Available Cash to the Disbursing Agent for Distribution under the Plan. The Litigation Trust shall be governed by the terms of the Litigation Trust Agreement.

## **F. Preservation of Causes of Action; Exculpation**

### **1. Preservation of Causes of Action**

The Debtor shall retain any and all claims and causes of action belonging to the Debtor, whether arising before or after the Petition Date, including, but not limited to, any actions specifically described in the Debtor's Schedules, the Disclosure Statement, the Plan, or Exhibit III.F.1 to the Plan, regardless of whether claims and such causes of action arise under the Bankruptcy Code or whether they are located in the territorial jurisdiction of the United States.

In accordance with sections 1141(b) and 1123(b)(3) of the Bankruptcy Code, the Assets (including any causes of action whether described herein or otherwise) that the Debtor may hold against any Entity shall on the Effective Date be transferred to the Litigation Trust, and the Litigation Trustee and/or the Litigation Trust shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such causes of action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

**The Administrator or the Litigation Trustee, as applicable, may pursue all such causes of action. No Entity may rely on the absence of a specific reference in the Schedules, the Plan, Exhibit III.F.1 to the Plan, or in the Disclosure Statement, to any cause of action against it as any indication that the Administrator or the Litigation Trustee will not pursue any and all available causes of action against it. Unless any claims and causes of action against an Entity are expressly and unambiguously waived, relinquished, exculpated, released, compromised, or settled herein or in a Bankruptcy Court order, the Debtor, Reorganized Debtor, the Litigation Trustee, or the Administrator, as applicable, expressly reserve all causes of action, for later prosecution, settlement, or adjudication, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such causes of action upon, after, or a consequence of Confirmation, the Effective Date, or consummation of the Plan.**

### **2. Exculpation**

**To the extent permitted by section 1125(e) of the Bankruptcy Code, from and after the Effective Date, the Released Parties shall neither have nor incur any liability to any Entity for any act taken or omitted, or to be taken, in connection with the Chapter 11 Case, the Debtor's related case under Chapter 15 of the Bankruptcy Code, the Debtor's**

post-petition liquidation activity, including the filing and prosecution of any claims or causes of action, and the formulation, preparation, dissemination, implementation, Confirmation or approval of the Plan, the exhibits to the Plan, the Disclosure Statement, or any other contract, instrument, release or other agreement or document provided in connection therewith; provided, however, that the foregoing provisions shall not affect the liability of any Entity that otherwise would result from any such act or omission to the extent that the act or omission is determined in a Final Order to have resulted from fraud, willful misconduct, gross negligence, or criminal conduct; *provided further, however*, that nothing herein shall limit the liability of the Released Parties pursuant to applicable disciplinary rules.

#### **G. General Releases by Holders of Claims or Interests**

Without limiting any other applicable provisions of or releases contained in the Plan or provided under the Bankruptcy Code, as of the Effective Date, in consideration for the consideration provided under the Plan, each Holder of a Claim or Interest that votes in favor of the Plan and opts into the release on such Holder's ballot, will be deemed to forever release, waive and discharge all Liabilities in any way relating to the Debtor, the Chapter 11 Case, the Estate, the Plan, the exhibits to the Plan or the Disclosure Statement that such Holder has, had or may have against any Released Party; *provided, however*, that the foregoing provisions shall not affect the liability of any Entity that otherwise would result from any act or omission to the extent that the act or omission is determined in a Final Order to have resulted from fraud, willful misconduct, gross negligence, or criminal conduct.

#### **H. Injunction Related to Releases**

The Confirmation Order will permanently enjoin the commencement or prosecution by any Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, liabilities, rights of contribution or rights of indemnification released pursuant to the Plan, including pursuant to the releases in this Article III.

#### **I. Effectuating Documents and Further Transactions; Exemption from Certain Transfer Taxes**

##### **1. Effectuating Documents and Further Transactions**

Prior to the Effective Date, the Administrator, and after the Effective Date, the Reorganized Debtor or the Litigation Trustee, as appropriate, will be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan.

##### **2. Exemption From Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp Tax, real estate transfer Tax, mortgage recording Tax or similar Tax:

(a) any transfer of Assets made by the Debtor or the Reorganized Debtor to the Litigation Trust; (b) any sales (including, without limitation, private or public foreclosure sales) of Litigation Trust Assets made by the Litigation Trustee to liquidate such Litigation Trust Assets and convert such assets into Cash; (c) any sales of Litigation Trust Assets made by the Litigation Trustee under section 363 of the Bankruptcy Code, to the extent that title to the Litigation Trust Assets being sold transfers after the Confirmation Date; and (d) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale, or assignments executed in connection with any of the foregoing or pursuant to the Plan.

#### **J. Substitution in Pending Legal Actions**

On the Effective Date, the Litigation Trust or the Litigation Trustee shall be deemed to be substituted as the party to any litigation in federal or state courts of the United States in which the Debtor is a party, including (but not limited to) pending contested matters or adversary proceedings in the Bankruptcy Court. The Litigation Trustee, the Litigation Trust, and its professionals, are not required to, but may take such steps as are appropriate to provide notice of such substitution.

### **ARTICLE IV TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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

##### **1. Rejection**

The Debtor does not believe it has any Executory Contracts or Unexpired Leases subject to assumption or rejection under section 365 of the Bankruptcy Code. To the extent, however, that the Debtor is a party to such an Executory Contract or Unexpired Lease, pursuant to section 365 of the Bankruptcy Code, the Debtor will be deemed to reject each Executory Contract or Unexpired Lease not previously assumed, assumed and assigned or rejected during the Chapter 11 Case or which is not the subject of a motion to assume or to assume and assign that is pending as of the Effective Date. Parties that desire to object to the rejection of a specific Executory Contract or Unexpired Lease must File an objection to the Plan by the deadline for filing objections to the Plan.

##### **2. Notice of Rejection**

Service of the Plan constitutes notice of rejection to all known counterparties to Executory Contracts or Unexpired Leases that are to be rejected pursuant to the Plan.

##### **3. Bar Date for Rejection Damages**

In accordance with the Bar Date Order, and except as otherwise provided in a Final Order of the Bankruptcy Court approving the rejection of an Executory Contract or Unexpired Lease, Claims arising out of the rejection of an Executory Contract or Unexpired

Lease must be Filed with the Bankruptcy Court on or before the thirtieth (30<sup>th</sup>) day after the Effective Date. Any Claims not Filed by that deadline will be forever barred from receiving a Distribution from the Debtor or the Litigation Trust on account of any Claim for rejection of such Executory Contract or Unexpired Lease. For the avoidance of doubt, the deadline for filing such rejection damages Claims is solely for purposes of the Chapter 11 Case.

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

Contracts and leases that the Debtor entered into after the Petition Date are not subject to assumption or rejection.

**C. Pre-existing Obligations to the Debtor Under Executory Contracts and Unexpired Leases**

Rejection or repudiation of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtor under such Executory Contracts or Unexpired Lease. Notwithstanding any applicable non-bankruptcy law to the contrary, the Debtor expressly reserves and does not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnifications or continued maintenance previously purchased by the Debtor from counterparties to rejected or repudiated Executory Contracts or Unexpired Leases, and any such rights shall vest in the Litigation Trust as of the Effective Date.

**ARTICLE V  
LITIGATION TRUST**

**A. Execution of Litigation Trust Agreement**

On the Effective Date, the Debtor and the Litigation Trustee shall execute the Litigation Trust Agreement and shall take all other necessary steps to establish the Litigation Trust, which shall be for the benefit of the Holders of Allowed Claims and Holders of Allowed Interests in the Chapter 11 Case.

**IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS SECTION V.A AND THE TERMS OF THE LITIGATION TRUST AGREEMENT, THE TERMS OF THIS SECTION V.A SHALL GOVERN TO THE EXTENT SUCH CONFLICT RELATES TO THE ESTABLISHMENT OF THE LITIGATION TRUST. IN THE EVENT OF AN INCONSISTENCY BETWEEN THIS PLAN AND THE LITIGATION TRUST AGREEMENT, THE LITIGATION TRUST AGREEMENT SHALL CONTROL TO THE EXTENT SUCH CONFLICT RELATES TO ANYTHING OTHER THAN THE ESTABLISHMENT OF THE LITIGATION TRUST.**

**B. Purpose of the Litigation Trust**

The Litigation Trust shall be established for the sole purpose of liquidating the Litigation Trust Assets and transferring Cash or Available Cash, subject to the terms of the Litigation Trust Agreement, to the Disbursing Agent for the benefit of Holders of Allowed

Claims and Allowed Interests. The Litigation Trust shall have no objective to, and shall not, continue or engage in the conduct of a trade or business.

**C. Litigation Trust Assets**

All Litigation Trust Assets shall be assigned and transferred by the Debtor directly to the Litigation Trust as provided by the Litigation Trust Agreement. Such assignment or transfer shall be exempt from any Tax to which the exemption under section 1146 of the Bankruptcy Code applies.

**D. Administration of the Litigation Trust**

The Litigation Trust shall be administered by the Litigation Trustee pursuant to the Litigation Trust Agreement and this Plan.

**E. Termination of the Litigation Trust**

The Litigation Trust shall continue for a term of five (5) years from the Effective Date. The Litigation Trustee may extend such term (before or after its expiration) for one or more additional finite terms provided that the Litigation Trust does not become subject to the Securities Exchange Act of 1934 (as now in effect or hereafter amended) and provided further that the Bankruptcy Court approves an extension based upon a finding that an extension is necessary for the Litigation Trust to reduce all Litigation Trust Assets to Cash. Unless the Chapter 11 Case previously has been dismissed or closed, upon termination of the Litigation Trust, the Litigation Trustee shall advise the Bankruptcy Court in writing of its termination.

**F. Transfer of Available Cash to the Disbursing Agent**

The Litigation Trustee shall transfer to the Disbursing Agent, when and as necessary to make Distributions, all Litigation Trust Assets constituting Available Cash.

**ARTICLE VI  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Distributions for Claims Allowed as of the Effective Date**

Except as otherwise provided in this Article VI, as soon as reasonably practicable after the Effective Date and the liquidation of the Assets, the Disbursing Agent shall make Distributions on behalf of the Debtor to each Holder of an Allowed Claim against or Interest in the Debtor to the extent provided for in this Plan.

All Distributions shall be made pursuant to the terms and conditions of this Plan and the Litigation Trust Agreement, and, where applicable, shall be subject to the Litigation Trustee's defenses, including without limitation, rights of recoupment, setoff or other deduction.

**B. Method of Distributions to Holders of Claims and Interests**

The Litigation Trustee, in its capacity as Disbursing Agent, or such Third Party Disbursing Agents as the Litigation Trustee may employ in its sole discretion, will make all Distributions required under the Plan. Each Disbursing Agent may serve without bond, and any Disbursing Agent may employ or contract with other entities to assist in or make the Distributions required by the Plan if approved by the Litigation Trustee.

**C. Compensation and Reimbursement for Services Related to Distributions**

Each Third Party Disbursing Agent providing services related to Distributions pursuant to the Plan will receive from the Litigation Trustee, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses (including reasonable attorneys' fees and disbursements) incurred in connection with such services, to be paid as a Trust Expense.

**D. Investment of Trust Accounts**

To assist in making Distributions under the Plan, the applicable Trust Accounts may be held in the name of the Litigation Trustee or in the name of one or more Third Party Disbursing Agents for the benefit of Holders of Allowed Claims and Allowed Interests under the Plan, or a secondary Trust Account may be created in the name of the Third Party Disbursing Agent for the purpose of making disbursements. The Litigation Trustee may invest, or direct the Third Party Disbursing Agents to invest, Cash in the Trust Accounts, subject to the limitations established by the Litigation Trust Agreement; provided, however, that should such Litigation Trustee determine, in its sole discretion, that the administrative costs associated with such investment may exceed the return on such investment, it may choose not to invest, and may direct the Third Party Disbursing Agent not to invest, such Cash. Distributions of Cash from accounts held by the Litigation Trustee or Third Party Disbursing Agents will include a Pro Rata share of any interest or other proceeds, if any, from such investment of Cash, net of any Taxes payable by the Litigation Trust with respect thereto.

**E. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

**1. Delivery of Distributions**

Distributions to Holders of Allowed Claims and Allowed Interests will be made by a Disbursing Agent to the addresses (a) set forth on the respective Proofs of Claim Filed by Holders of such Claims or request for payment of Administrative Claim, as applicable; (b) for a Claim transferee set forth in a valid and timely notice of transfer of Claim Filed with the Bankruptcy Court; (c) set forth in any written notice of address change Filed with the Bankruptcy Court or delivered to the Disbursing Agent after the date of Filing of any related Proof of Claim; (d) reflected in the Debtor's Schedules if no Proof of Claim has been Filed and the Disbursing Agent has not received a written notice of a change of address; or (e) set forth in the Debtor's books and records.

Unless a Holder of an Allowed Interest has provided written notice of a different address to the Debtor's stock transfer agent prior to the Distribution Record Date or the first

Distribution Date, Distribution checks shall be mailed to such Holders at the addresses (if any) shown on the records of the stock transfer agent as of the Distribution Record Date or such other addresses set forth in the Debtor's books and records. This means that if your shares are held in the name of a third party, such as a broker or agent, the Distribution Check will be sent to the broker or agent identified on the records of the stock transfer agent as of the Distribution Record Date.

**2. Undeliverable or Unclaimed Distributions**

**a. Holding of Undeliverable or Unclaimed Distributions**

Subject to Section VI.E.2.c, any Distributions returned to a Disbursing Agent or otherwise undeliverable will remain in the possession of the Disbursing Agent pursuant to this Section VI.E.2.a until such time as a Distribution becomes deliverable. Any Disbursing Agent holding undeliverable Cash may invest such Cash in a manner consistent with the Litigation Trust Agreement. Any Distributions that remain unclaimed or any Distribution checks that are not cashed within one hundred and twenty (120) days following Distribution will be maintained in the applicable Trust Account for redistribution to other claimants entitled to Distribution from the Trust Account; provided, however, that the Disbursing Agent, in its sole discretion, may (but is not required to) seek to reissue or redeliver the Distribution to the original intended recipient.

**b. After Distributions Become Deliverable**

On each Distribution Date, the Disbursing Agent will make all Distributions that became deliverable to Holders of Allowed Claims and Allowed Interests after the most recent Distribution Date but prior to the Interim Distribution Bar Date.

**c. Failure to Claim Undeliverable or Unclaimed Distributions**

Any Holder of an Allowed Claim or Allowed Interest that does not assert its right to an undeliverable or unclaimed Distribution within one hundred twenty (120) following a Distribution will be forever barred from asserting any such claim against the Debtor, the Disbursing Agent, the Litigation Trustee, the Litigation Trust, their respective property (including, without limitation, the Trust Accounts). In such cases, unclaimed or undeliverable Distributions will be maintained in the applicable Trust Account for redistribution to other claimants entitled to Distribution from such Trust Account; provided, however, that the Disbursing Agent, in its sole discretion, may (but is not required to) seek to reissue or redeliver the Distribution to the original intended recipient.

**F. Distributions on Account of Allowed Claims and Allowed Interests**

**1. De Minimis Distributions**

On each Distribution Date prior to the Final Distribution Date, the Disbursing Agent shall not distribute cash to the Holder of an Allowed Claim or Allowed Interest if the amount of Cash to be distributed on account of such Claim or Interest is less than Twenty Five U.S. Dollars (\$25). Such amount shall be redistributed to other Holders of Allowed Claims or Allowed Interests, and the Holder of an Allowed Claim or Allowed Interest whose Distribution



is *de minimis* will be forever barred from asserting its Claim or Interest for such Distribution against the Litigation Trust or the Trust Assets.

**G. Other Provisions Applicable to Distributions in All Classes**

**1. Post-petition Interest**

Unless required by the Bankruptcy Code with respect to Allowed Claims and as otherwise provided in this Plan, no interest will accrue on any Claims on and after the Petition Date. For the avoidance of doubt, if the Debtor is proven to be solvent, Holders of Allowed Class 1 Claims will receive their Pro Rata Share of interest as provided herein.

**2. Compliance with Tax Requirements**

a. Each Disbursing Agent will comply with all Tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to the Plan will be subject to such withholding and reporting requirements. The Litigation Trustee and any Disbursing Agent will be authorized to take any actions that it determines, in its reasonable discretion, to be necessary or appropriate to comply with such withholding and reporting requirements.

b. Notwithstanding any other provision of the Plan or the Litigation Trust Agreement, each Entity receiving or deemed to receive a Distribution pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any Tax imposed on such Entity on account of such Distribution. The Litigation Trustee or Disbursing Agent may require that a Holder of a Claim or Interest provide a Form W-9 or applicable Form W-8 (or such other document as the Litigation Trustee or Disbursing Agent may require) as a condition to receipt of any Distribution. If a Holder of a Claim or Interest fails to provide a Form W-9 or applicable Form W-8 (or such other document as the Litigation Trustee or Disbursing Agent may require) within thirty (30) days after the Litigation Trustee's or Disbursing Agent's request therefor, such Holder (in the Litigation Trustee's or Disbursing Agent's sole discretion) may be deemed to waive its right to all Distributions made prior to the date such Holder provides the Form W-9 or Form W-8, as applicable (or such other document as the Litigation Trustee or Disbursing Agent may require).

**3. Allocation of Distributions**

All Distributions to a Holder of an Allowed Claim that has components of principal and interest will be deemed to apply first to the principal amount of such Claim until such principal amount is paid in full, and then the remaining portion of such Distributions, if any, will be deemed to apply to any applicable accrued interest included in such Claim to the extent interest is payable under this Plan.

**H. Distribution Record Date**

1. As of the close of business on the Distribution Record Date, the Disbursing Agent will have no obligation to recognize the transfer or sale of any Claim or Interest that occurs after the close of business on the Distribution Record Date and will be entitled for all purposes herein

to recognize and make Distributions only to those Holders who are Holders of such Claims or Interests as of the close of business on the Distribution Record Date.

2. Transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 for which a notice of transfer has been Filed on or prior to the Distribution Record Date will be treated as the Holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date. Neither the Litigation Trustee nor any Disbursing Agent will be required to recognize any transfers after the Distribution Record Date.

3. The Litigation Trustee and Disbursing Agent shall have the authority, but no obligation, to recognize transfers of Claims made after the deadlines set forth above in their respective sole and absolute discretion. Similarly, the Litigation Trustee and Disbursing Agent will have the authority, but no obligation, to recognize transfers of Interests made after the Distribution Record Date in their respective sole and absolute discretion.

#### **I. Means of Cash Payments**

Except as otherwise specified herein, Cash payments made pursuant to the Plan will be in U.S. currency by check or, at the option of the Litigation Trustee, by wire transfer, electronic funds or ACH; provided, however, that Cash payments to foreign Holders of Allowed Claims and Allowed Interests may be made, at the option of the Litigation Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

#### **J. Disputed Claims Reserve**

On and after the Effective Date, until such time as all Disputed Claims have been compromised and settled or determined by Final Order and before making any Distributions, the Litigation Trustee shall, consistent with and subject to section 1123(a)(4) of the Bankruptcy Code, establish and maintain a Cash reserve equal to the Distributions to which Holders of Disputed Claims would be entitled under this Plan if such Disputed Claims were Allowed Claims in the Filed amount of such Disputed Claims or such lesser amount as required by an order of the Bankruptcy Court (the "Disputed Claims Reserve Amount").

On the first Distribution Date that is at least thirty (30) days (or such fewer days as may be determined by the Litigation Trustee in its sole discretion) after the date on which a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall remit to the Holder of such Allowed Claim any Distributions such Holder would have been entitled to under this Plan on account of such Allowed Claim had such Claim been Allowed as of the Effective Date.

If a Disputed Claim is disallowed by Final Order, the amount reserved on account of such Disputed Claim shall become Available Cash. To the extent that a Disputed Claim becomes an Allowed Claim in an amount less than the amount reserved with respect to such Claim, the difference between the amount reserved on account of such Disputed Claim and the amount actually distributed on account of such Disputed Claim shall become Available Cash.

Nothing in this Section VI.J shall preclude any Holder of a Disputed Claim from seeking, on notice to the Litigation Trustee, an order of the Bankruptcy Court to increase the amount reserved for such Holder's Disputed Claim.

Unless otherwise ordered by the Bankruptcy Court, the Disputed Claims Reserve Amount shall not be used for Trust Expenses or any purpose other than as set forth in this Section VI.J.

**K. Surrender of Canceled Instruments or Securities**

The Litigation Trustee shall determine, in its sole discretion, if any requirement for surrendering canceled instruments or securities shall be applicable to the holders of canceled instruments or securities and, if so determined, shall advise in writing all known holders of canceled instruments or securities of such requirements and how they may comply with such requirements. Absent such written notice, holders of canceled instruments or securities need not surrender their canceled instruments in order to be entitled to Distributions under the Plan.

**L. Distributions Free and Clear**

Except as otherwise provided herein, any Distributions under this Plan shall be free and clear of any Liens, Claims and encumbrances, and no other Entity, including the Debtor, the Reorganized Debtor, the Litigation Trustee, or the Disbursing Agent shall have any interest (legal, beneficial or otherwise) in Litigation Trust Assets distributed pursuant to this Plan.

**M. Setoffs**

Except with respect to claims of the Debtor expressly released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disbursing Agent, as instructed by the Litigation Trustee pursuant to section 558 of the Bankruptcy Code or applicable non-bankruptcy law, may set off or recoup against any Allowed Claim and Allowed Interest or Distribution on account of an Allowed Claim or Allowed Interest (before any Distribution is made on account of such Claim or Interest) the claims, defenses, rights, and causes of action of any nature that the Debtor or the Litigation Trust may hold against the Holder (or prior holder) of such Allowed Claim or Allowed Interest; provided, however, that neither the failure to effect a setoff, recoupment, or other deduction, nor the allowance of any Claim or Interest hereunder will constitute a waiver or release by the Debtor or the Litigation Trust of any claims, rights and causes of action that the Debtor or the Litigation Trust may possess against such a Claim or Interest Holder, which are expressly preserved under Section III.F.1.

**ARTICLE VII**  
**PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND DISPUTED INTERESTS**

**A. Treatment of Disputed Claims and Disputed Interests**

**1. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, no payments or Distributions will be made on account of a Disputed Claim or Disputed Interest until such Claim or Interest becomes an Allowed Claim or Allowed Interest. In lieu of Distributions under the Plan to Holders of Disputed Claims or Disputed Interests on the Effective Date, the Litigation Trust, in accordance with the Litigation Trust Agreement, will establish, as appropriate, Disputed Claims or Disputed Interests reserves, with such reserves held in the applicable Trust Accounts.

**B. Objections to Claims**

**1. Authority to Prosecute**

The Litigation Trustee may object to Claims or Interests that the Litigation Trustee believes warrant the Filing of an objection prior to the Claims Objection Bar Date. After the Effective Date, only the Litigation Trustee will have the authority to File, settle, compromise, withdraw or litigate to judgment objections to Claims and Interests, including pursuant to any alternative dispute resolution or similar procedures approved by the Bankruptcy Court. After the Effective Date, the Litigation Trustee may settle or compromise any Disputed Claim or Disputed Interest or any objection or controversy relating to any Claim or Interest without notice, motion, or approval of the Bankruptcy Court.

**2. Debtor's Authority to Amend Schedules**

The Debtor and the Litigation Trustee, as applicable, will have the authority to amend the Schedules with respect to any Claim or Interest and to make Distributions based on such amended Schedules (if no Proof of Claim is timely Filed in response thereto) without approval of the Bankruptcy Court. If any such amendment to the Schedules reduces the amount of a Claim or Interest or changes the nature or priority of a Claim or Interest, the Debtor or the Litigation Trustee will provide the Holder of such Claim or Interest with notice of such amendment and such parties will have 30 days to File an objection to such amendment in the Bankruptcy Court.

**3. Request for Extension of Claims Objection Bar Date**

From time to time, and regardless of whether the Claims Objection Bar Date has expired, upon motion to the Bankruptcy Court, the Litigation Trustee may request, and the Bankruptcy Court may grant, extensions to the Claims Objection Bar Date generally or with respect to a specific list of Claims or Interests. Any extension granted by the Bankruptcy Court will not be considered to be a Plan modification under section 1127 of the Bankruptcy Code.

**C. Distributions on Account of Disputed Claim or Disputed Interest That Becomes Allowed**

On each Distribution Date, the Disbursing Agent will make all Distributions on account of any Disputed Claim and Disputed Interest that has become an Allowed Claim or Allowed Interest since the most recent Distribution Date. The timing and amount of such Distribution shall be determined in accordance with Article VI above.

**D. Claims Resolution Process Solely for Purposes of this Chapter 11 Case. No Effect on Claims Resolution Process in Anguillian Proceeding.**

The Bar Date, the Claims Objection Bar Date, and the Claim resolution process provided for in this Article VII is solely with respect to Claims asserted in this Chapter 11 Case. The allowance or disallowance of any Claim in this Chapter 11 Case shall not affect the allowance or disallowance of any claim in the Anguillian Proceeding.

Nothing in this Plan shall alter or affect (i) a Creditor's right to assert claims in the Anguillian Proceeding or (ii) the right of the Administrator (as hereinafter defined) to contest, challenge or compromise any claim(s) that may be filed in the Anguillian Proceeding. Nothing in this Plan shall establish any deadline for filing any claim in the Anguillian Proceeding or any deadline for filing any objection to such claim. The allowance or disallowance of claims in the Anguillian Proceeding is a matter to be addressed by the Administrator and the Anguillian Court presiding over the Anguillian Proceeding.

Notwithstanding the foregoing, nothing in this Plan shall be interpreted to authorize or allow a Creditor to obtain more than a full recovery on account of its Claim. Thus, any Distributions received on account of a Claim in this Chapter 11 Case may be taken into consideration when determining the allowed amount of a claim in the Anguillian Proceeding. Similarly, any Distributions received on account of a Claim in the Anguillian Proceeding may be taken into consideration when determining the allowed amount of a claim in this Chapter 11 Case.

**ARTICLE VIII**

**ACCEPTANCE, CONFIRMATION, VOTING AND EFFECTIVE DATE OF THIS PLAN**

**A. Acceptance of this Plan**

This Plan is provided in connection with the solicitation of acceptances. The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number, of the allowed claims of that class that have actually voted to accept or reject a plan. The Bankruptcy Code defines acceptance of a plan by a class of interests as acceptance by holders of at least two-thirds in amount of the allowed interests of that class that have actually voted to accept or reject a plan.

If one or more impaired Classes rejects this Plan, the Debtor may, in its discretion, nevertheless seek Confirmation of the Plan if the Debtor believes that it will be able to meet the requirements of section 1129(b) of the Bankruptcy Code for Confirmation of the Plan (which are set forth below), despite lack of acceptance by all impaired Classes.

## **B. Confirmation**

### **1. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires a bankruptcy court, after notice, to hold a hearing on confirmation of a plan. Notice of the Confirmation Hearing respecting this Plan has been provided to all known Holders of Claims and Interests or their representatives. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Any objection to Confirmation of this Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of Claims or Interests held or asserted by the objector against the Debtor's Estate, and the basis for the objection and the specific grounds in support thereof. Such objection must be Filed with the Bankruptcy Court, with a copy forwarded directly to the Chambers of the Honorable Martin Glenn, United States Bankruptcy Court, together with proof of service thereof, and served upon the parties listed in Section XI.E of this Plan, so as to be received no later than the date and time designated in the notice of the Confirmation Hearing.

### **2. Confirmation Without Acceptance by All Impaired Classes**

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan, even if such plan has not been accepted by all impaired classes entitled to vote on such plan, provided that such plan has been accepted by at least one impaired class of claims. If any impaired Classes reject or are deemed to have rejected the Plan, the Debtor reserves the right to seek the application of the statutory requirements set forth in section 1129(b) of the Bankruptcy Code for Confirmation of the Plan despite the lack of acceptance by all impaired Classes.

Section 1129(b) of the Bankruptcy Code provides that notwithstanding the failure of an impaired class to accept a plan, the plan shall be confirmed, on request of the proponent of the plan, in a procedure commonly known as "cramdown," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or interests that is impaired under and has not accepted the plan.

The condition that a plan be "fair and equitable" with respect to a non-accepting class of unsecured claims includes the requirement that either (a) such class receive or retain under the plan property of a value as of the effective date of the plan equal to the allowed amount of such claim, or (b) if the class does not receive such amount, no class junior to the nonaccepting class will receive a distribution under the plan.

The condition that a plan be "fair and equitable" with respect to a non-accepting class of interests includes the requirements that either (a) the plan provides that each holder of an equity interest in such class receive or retain under the plan, on account of such equity interest, property of a value, as of the effective date of the plan, equal to the greater of (i) the allowed amount of any fixed liquidation preference to which such holder is entitled, (ii) any fixed redemption price to which such holder is entitled, or (iii) the value of such equity interest, or (b)

if the class does not receive such amount, no class of interests junior to the non-accepting class will receive a distribution under the plan.

If any impaired Class of Claims or Interests entitled to vote on this Plan does not accept this Plan by the requisite majority provided in section 1126(c) of the Bankruptcy Code, the Debtor reserves the right to amend this Plan in accordance with Section XI.A hereof or undertake to have the Bankruptcy Court confirm this Plan under section 1129(b) of the Bankruptcy Code or both. With respect to impaired Classes of Claims or Interests that are deemed to reject this Plan, the Debtor shall request that the Bankruptcy Court confirm this Plan pursuant to section 1129(b) of the Bankruptcy Code.

### **C. Voting**

#### **1. Voting of Claims and Interests**

Each Holder of an Allowed Claim or Allowed Interest in an impaired Class that is entitled to vote on this Plan pursuant to Article II of this Plan shall be entitled to vote separately to accept or reject this Plan as provided in an order entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject this Plan, or any other order or orders of the Bankruptcy Court.

#### **2. Elimination of Vacant Classes**

Any Class of Claims or Interests that does not include an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall, without further action, be eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan pursuant to section 1129(a)(8) of the Bankruptcy Code.

#### **3. Presumed Acceptance by Non-Voting Classes**

**IF A CLASS CONTAINS CLAIMS OR INTERESTS ELIGIBLE TO VOTE AND SUCH HOLDERS OF CLAIMS OR INTERESTS WERE GIVEN THE OPPORTUNITY TO VOTE TO ACCEPT OR REJECT THIS PLAN AND NOTIFIED THAT A FAILURE OF ANY HOLDER OF CLAIMS OR INTERESTS IN SUCH IMPAIRED CLASS TO VOTE TO ACCEPT OR REJECT THIS PLAN WOULD RESULT IN SUCH IMPAIRED CLASS OF CLAIMS OR INTERESTS BEING DEEMED TO HAVE ACCEPTED THIS PLAN, BUT NO HOLDER OF CLAIMS OR INTERESTS IN SUCH IMPAIRED CLASS OF CLAIMS OR INTERESTS VOTED TO ACCEPT OR REJECT THIS PLAN, THEN SUCH CLASS OF CLAIMS OR INTERESTS SHALL BE DEEMED TO HAVE ACCEPTED THIS PLAN.**

**ARTICLE IX  
CONDITIONS PRECEDENT TO CONFIRMATION  
AND CONSUMMATION OF THE PLAN; EFFECT OF CONFIRMATION**

**A. Conditions to Confirmation**

The Bankruptcy Court will not be requested to enter the Confirmation Order, unless and until the following condition has been satisfied:

1. The Plan will not have been materially amended, altered or modified unless such material amendment, alteration or modification has been made in accordance with Section XI.A hereof.

2. The proposed Confirmation Order shall be reasonably acceptable in form and substance to the Debtor.

3. Exhibits or schedules incorporated as part of this Plan are in form and substance reasonably acceptable to the Debtor.

**B. Conditions to the Effective Date**

The Effective Date will not occur, and the Plan will not be consummated unless and until the following conditions have been satisfied:

1. The Confirmation Order shall have become a Final Order in full force and effect with no stay thereof then in effect, and shall be in form and substance reasonably acceptable to the Debtor, unless waived by the Debtor.

2. The Plan and all exhibits thereto shall have been Filed and shall not have been materially amended, altered or modified from the forms confirmed by the Confirmation Order, unless such material amendment, alteration or modification has been made in accordance with Section XI.A hereof.

3. All actions, documents and agreements necessary to implement the Plan shall have been effectuated or executed.

**C. Effect of Nonoccurrence of Conditions to the Effective Date**

If each of the conditions to the Effective Date is not satisfied within 60 days of the entry of the Confirmation Order, then upon motion by the Debtor or any party in interest made before the time that each of such conditions has been satisfied and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order may be vacated by the Bankruptcy Court; provided, however, that, notwithstanding the Filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is satisfied before the Bankruptcy Court enters an order granting such motion, unless the order is vacated as provided in section 1144 of the Bankruptcy Code. If the Confirmation Order is vacated pursuant to this Section IX.C, then the Plan will be null and void in all respects.



**D. Request for Waiver of Stay of Confirmation Order**

This Plan will serve as a motion seeking a waiver of the stay of the Confirmation Order imposed by Bankruptcy Rule 3020(e). Any objection to this request for waiver shall be Filed with the Bankruptcy Court and served on the parties listed in Section XI.E on or before the Voting Deadline, or such other date as may be fixed by the Bankruptcy Court. In the event any such objections are timely Filed, a hearing with respect thereto will occur at the Confirmation Hearing.

**E. Compliance with Local Bankruptcy Rule 3022-1**

The Reorganized Debtor will comply with Rule 3022-1 of the Local Rules of the Bankruptcy Court.

**ARTICLE X  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain such jurisdiction over the Chapter 11 Case after the Effective Date to the full extent legally permissible, including jurisdiction to:

1. Allow, disallow, estimate, determine, liquidate, reduce, classify, re-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 Claim and the resolution of any objections to the amount, allowance, priority or classification of Claims or Interests;

2. Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;

3. Resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is a party or may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

4. Ensure that Distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan and the Litigation Trust Agreement;

5. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor or its Estate that may be pending on the Effective Date or brought thereafter (whether or not any of the foregoing are stayed as of the Effective Date or the closing of the Chapter 11 Case);

6. Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order, including the Litigation Trust Agreement;

7. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan, including the Litigation Trust Agreement, or any Entity's rights arising from or obligations incurred in connection with the Plan or such documents;

8. Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code; modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

9. Issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

10. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or Distributions pursuant to the Plan are enjoined or stayed;

11. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;

12. Enforce or clarify any orders previously entered by the Bankruptcy Court in the Chapter 11 Case;

13. Enter a final decree closing the Chapter 11 Case;

14. Determine matters concerning state, local and federal Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims and Disputed Interests for Taxes; and

15. Hear any other matter over which the Bankruptcy Court has jurisdiction.

**ARTICLE XI  
MISCELLANEOUS PROVISIONS**

**A. Modification of the Plan**

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code, the Debtor reserves the right to alter, amend or modify the Plan before the Effective Date.

**B. Revocation of the Plan**

The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if Confirmation does not occur, then the Plan will be null and void in all respects, and nothing contained in the Plan will:

- (1) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor;
- (2) prejudice in any manner the rights of the Debtor or any other party in interest; or
- (3) constitute an admission by the Debtor or any other party in interest.

**C. Severability of Plan Provisions**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**D. Successors and Assigns**

The rights, benefits and obligations of any Entity named or referred to in the Plan will be binding on, and will inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

**E. Service of Documents**

Any pleading, notice or other document required by the Plan or the Confirmation Order to be served on or delivered to counsel to the parties identified below must be sent by overnight delivery service, facsimile transmission, courier service or messenger (with a copy by email, as provided, which shall not constitute service or notice) to:

**1. Counsel to the Debtor**

James C. McCarroll  
Jordan W. Siev  
Kurt F. Gwynne (pro hac vice)  
REED SMITH LLP  
599 Lexington Avenue  
New York, NY 10022-7650  
Telephone: (212) 521-5400  
Facsimile: (212) 521-5450  
Email: jmccarroll@reedsmith.com  
jsiev@reedsmith.com  
kgwynne@reedsmith.com

**2. Administrator**

William Tacon  
c/o John Ayres  
FTI Consulting (BVI) Limited  
2<sup>nd</sup> Floor Forbes Hare Building  
Pasea Estate, Road Town, Tortola, BVI  
Email: john.ayres@fticonsulting.com

**3. United States Trustee**

Serene Nakano  
Trial Attorney  
U.S. Department of Justice  
Office of the U.S. Trustee  
Southern District of New York  
201 Varick Street, Room 1006  
New York, NY 10014-9998

**F. Waiver or Estoppel**

Each Holder of a Claim or Interest shall be deemed to have waived any right to assert any agreement made with the Debtor or its counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or an agreement executed by the Debtor and Filed before the Confirmation Date.

**G. Effect of Chapter 11 Plan**

Pursuant to section 1528 of the Bankruptcy Code, the effects of this Plan shall be restricted to the Recovery Actions, the Assets located within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527 of the Bankruptcy Code, to other Assets that are within the jurisdiction of the Bankruptcy Court under sections 541(a) of the Bankruptcy Code, and 1334(e)

of title 28 of the United States Code, to the extent that such other Assets are not subject to the jurisdiction and control of the Anguillian Proceeding.

**H. Entire Agreement**

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

**I. Plan Controls**

In the event and to the extent that any provision of this Plan is inconsistent with the provisions of the Disclosure Statement, the provisions of this Plan shall control and take precedence.

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Dated: October 18, 2018

NATIONAL BANK OF ANGUILLA (PRIVATE  
BANKING & TRUST) LTD.

By: /s/ William Tacon  
William Tacon, Administrator

# **EXHIBIT I.A.49**

## **(Litigation Trust Agreement)**

**LITIGATION TRUST AGREEMENT**

**dated as of [\_\_\_\_\_, 2018]**

**by and between**

**NATIONAL BANK OF ANGUILLA (PRIVATE BANKING & TRUST), LTD.  
as Settlor**

**and**

**WILLIAM TACON  
as Trustee**



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## LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement (the “Trust Agreement”), dated and effective as of [\_\_\_\_\_, 2018] (the “Effective Date”), by and between National Bank of Anguilla (Private Banking & Trust), Ltd. (the “Debtor”), as settlor, and William Tacon (the “Trustee”), as trustee, executed in connection with the *Modified Liquidating Plan of Reorganization of the Debtor and Debtor in Possession* filed on [\_\_\_\_\_, 2018] (as the same has been or may be amended, the “Plan”), as confirmed by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) pursuant to the confirmation order dated [\_\_\_\_\_, 2018], (the “Confirmation Order”), provides for the establishment of a liquidating trust evidenced hereby (the “Trust”) in accordance with the Plan. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

### RECITALS

WHEREAS, the Effective Date of the Plan is occurring on the date hereof.

WHEREAS, this Trust Agreement is executed to facilitate the implementation of the Plan and the retention and preservation of the Assets (the “Trust Assets”) by the Trustee for the benefit of the holders of Allowed Claims against and Allowed Interests in the Debtor who are entitled to receive Distributions from Available Cash under the Plan (the “Beneficiaries”) by establishing the Trust;

WHEREAS, the Trust is organized for the purposes set forth in the Plan, and the Trustee’s activities, powers and duties are those determined to be reasonably necessary to, and consistent with, accomplishment of these purposes;

WHEREAS, under the terms of the Plan and the Confirmation Order, effective as of the Effective Date, the Debtor on behalf of the Estate shall be deemed to have irrevocably assigned, granted, transferred, conveyed and delivered to the Trust, on behalf of and for the benefit of the Beneficiaries, control of, and all the rights, title and interests in and to, the Trust Assets with no reversionary interest therein in favor of the Debtor or Reorganized Debtor;

WHEREAS, the Trustee has agreed to act as Trustee of the Trust with the rights, powers, privileges and obligations specified in the Plan and this Trust Agreement; and

WHEREAS, the Trust is intended to be treated, for United States federal income tax purposes, as a “liquidating trust” within the meaning of Treasury Regulations § 301.7701-4(d), except to the extent otherwise provided in this Trust Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and agreements contained herein, the parties hereto agree as follows:

## ARTICLE I

### Establishment of the Litigation Trust

**Section 1.1 Creation and Name.** In accordance with the Plan, there is hereby created the CCIB Litigation Trust.

**Section 1.2 Declaration of Trust; Transfer of the Trust Assets and Privileges.** In consideration of the confirmation of the Plan under the Bankruptcy Code, the Debtor and the Trustee have executed this Trust Agreement and, effective on the Effective Date, the Debtor on behalf of the Estate hereby irrevocably assigns, transfers and conveys to the Trust (i) all the right, title and interests of the Debtor and the Estate in and to the Trust Assets, with no reversionary interest whatsoever therein of the Debtor, to hold in trust, whereupon title will irrevocably vest in the Trust, free and clear of Claims, Liens and Interests except to the extent provided in the Plan or in this Trust Agreement, under and subject to the terms and conditions set forth in this Trust Agreement and in the Plan for the benefit of the Beneficiaries and their successors and assigns permitted under the Plan and this Trust Agreement and (ii) without waiver, the Debtor's evidentiary privileges, including the attorney-client privilege, work-product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) associated with the Trust Assets<sup>1</sup>, and all of the books and records relating to the foregoing, in trust, and, consistent with section 1123(b)(3)(B) of the Bankruptcy Code, for the benefit of the Beneficiaries. The use and distribution of the Trust Assets shall be made in accordance with this Trust Agreement and the Plan. None of the foregoing assignments or transfers to the Trust will constitute a merger or consolidation of the Estate or any of the Trust Assets, each of which will retain his separateness following the assignment or transfer for all purposes herein, except as otherwise provided in the Plan and the Confirmation Order. The Trust Assets are held *in custodia legis* and (except as provided in section 7.2 below) shall not be subject to attachment, garnishment, levy, execution or other legal or equitable process until such times as the funds have actually been paid or otherwise distributed to or for the benefit of a Beneficiaries,

**Section 1.3 Purposes of Trust.** The Trust is organized for the primary purposes of (a) investigating, pursuing, litigating and, as applicable, settling or prosecuting the Recovery Actions in the Trustee's discretion, subject to any relevant provisions of this Trust Agreement, without Bankruptcy Court approval, (b) collecting, receiving, holding, maintaining, administering and liquidating the Trust Assets, (c) paying all reasonable and necessary fees, costs and expenses incurred by the Trustee or his professionals pursuant to, and otherwise in connection with the Trustee's performance of his duties under, this Trust Agreement (the "Trust Expenses"), and (d) transferring Available Cash to the Disbursing Agent for the benefit of the Beneficiaries as provided for in the Plan and this Trust Agreement (herein, the "Trust Purposes"). The Trust has no objective to, and shall not, engage in a trade or business; shall conduct his activities consistent with the Confirmation Order, the Plan, and this Trust Agreement; and shall terminate upon the completion of his liquidation and distribution duties. The Trust and the Trustee shall conduct all of their activities pursuant to and in accordance with

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<sup>1</sup> Absent the Trustee's written consent, no Beneficiary shall have access to any such privileged materials. In addition, nothing herein shall transfer any other Entity's attorney-client privilege, work-product privilege or other privilege or immunity to the Trust.

this Trust Agreement, the Confirmation Order, and the Plan. In furtherance of these objectives, the Trustee, in his business judgment, will make continuing efforts not to unduly prolong the duration of the Trust.

**Section 1.4 Trustee's Acceptance.** The Trustee hereby (a) accepts the responsibilities imposed on it by the Plan and this Trust Agreement and agrees to observe and perform under the Plan and this Trust Agreement, (b) acknowledges and accepts the creation of the Trust and the assignment and transfer of the Trust Assets to the Trust, subject to the provisions of the Confirmation Order, the Plan and this Trust Agreement, and (c) agrees to assume, undertake and effectuate the Trust Purposes on behalf of the Trust.

**Section 1.5 Appointment as Representative.** The Trust and the Trustee will each be a "representative" of the Estate under section 1123(b)(3)(B) of the Bankruptcy Code as provided in the Plan, and the Trustee will be the trustee of the Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), and, as such, the Trustee succeeds to all of the rights, powers and obligations of a trustee in bankruptcy with respect to collecting, maintaining, administering and liquidating the Trust Assets for the benefit of the Beneficiaries.

**Section 1.6 Relationship.** This Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Trustee or the Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Beneficiaries to the Trust shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Trust Agreement.

**Section 1.7 Vesting of Causes of Action.** Subject to the provisions of this Trust Agreement, on the Effective Date, the Trustee, in his own name as Trustee or in the name of the Trust, shall have the exclusive right to investigate, institute, prosecute, abandon, settle or compromise any Recovery Actions, subject to the provisions of this Trust Agreement and without further order of the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding filed or to be filed in the Chapter 11 Case. The Trustee and the Trust shall not be required to post any bond, security for costs, or other security for costs or expenses (including attorneys' fees and expenses) in the filing or prosecution of Recovery Actions on behalf of the Trustee or the Trust.

**Section 1.8 Assumption of Certain Liabilities.** Subject to the provisions of this Trust Agreement, the Plan, and the Confirmation Order, on the Effective Date, the Trustee, on behalf of the Debtor and the Trust, as applicable, shall assume the obligation to pay all Trust Expenses and to make periodic transfers of Available Cash, consistent with the terms of this Trust Agreement, to the Disbursing Agent for the benefit of the Beneficiaries.

**Section 1.9 Incorporation of the Plan and the Confirmation Order.** The principal purpose of this Trust Agreement is to aid in the implementation of the Plan, and the Trustee shall comply with the terms of the Plan and the Confirmation Order. To that end, the Trustee shall

have full power and authority to take any action consistent with the purpose and provisions of the Plan, the Confirmation Order and this Trust Agreement. To the extent that there is conflict between the provisions of this Trust Agreement and the provisions of the Plan or the Confirmation Order, each document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) this Trust Agreement; and (3) the Plan; *provided, however*, that in the event of any conflict between the terms of Article V of the Plan and the terms of this Trust Agreement, the terms of Article V of the Plan shall govern to the extent such conflict relates to the establishment of the Litigation Trust.

## ARTICLE II

### Funding of the Trust

**Section 2.1 Trust Funding.** On the Effective Date, the Trust shall be funded with the Trust Assets and, from time to time, by the proceeds of the Trust Assets, including recoveries from Recovery Actions. On or after the Effective Date, the Trustee may establish and fund from the Trust Assets one or more funds, reserves or accounts (or sub-accounts) within the Trust as determined by the Trustee, in his reasonable discretion, to be necessary, appropriate or desirable in carrying out the Trust Purposes and consistent with the Plan and this Trust Agreement.

**Section 2.2 Trust Expenses.** The Trust Expenses shall be paid in the ordinary course by the Trustee from the Trust Assets as set forth herein and in the Plan without further order of the Bankruptcy Court. The Trustee and his retained professionals shall have no personal liability in the event there are insufficient funds to pay Trust Expenses. The Trustee shall account for Trust Expenses.

## ARTICLE III

### Trust Assets

#### Section 3.1 Liquidation of the Trust Assets.

(a) The Trustee shall take such steps as the Trustee deems necessary to investigate, pursue, litigate, settle, compromise, transfer, sell, dispose of and/or abandon all or any of the Trust Assets to reduce the Trust Assets to Cash proceeds and to transfer all Trust Assets constituting Available Cash to the Disbursing Agent for the benefit of the Beneficiaries as required under the Plan and this Trust Agreement. The Trustee's actions with respect to disposition of the Trust Assets in all events, to the extent permitted by the Confirmation Order, the Plan, this Trust Agreement and other applicable law, shall be taken in a manner so as reasonably to maximize the value of the Trust Assets and the Distributions to the Beneficiaries.

(b) The Debtor's counsel shall provide to the Trustee (or such professionals designated by the Trustee) documents and other information gathered, and relevant work product developed, during the Chapter 11 Case in connection with the Debtor's investigation of potential Recovery Actions, provided that the provision of any such documents and information shall be without waiver of the Debtor's, the Trust's, or common interest party's, as the case may be,

evidentiary privileges, including the attorney-client privilege, work-product privilege or other privilege or immunity attaching to any such documents or information (whether written or oral).

**Section 3.2 Intervention.** On the Effective Date, and without having to obtain any further order of the Bankruptcy Court, the Trustee and/or the Trust are authorized to intervene or substitute as plaintiff, movant or additional party, as appropriate, in any Cause of Action where the subject matter of any such Cause of Action involves a Trust Asset.

**Section 3.3 Distribution of the Trust Assets.** The Trustee shall transfer, on a quarterly basis, all Trust Assets constituting Available Cash (subject to reduction as deemed necessary in the reasonable discretion of the Trustee for a reserve for Trust Expenses), in the following order of priority:

(a) First, to the extent any amounts due remain outstanding, to (i) the Trustee in accordance with Section 4.6(a) herein, and (ii) the Trustee's professionals in accordance with Section 4.6(a) herein; provided that any distributions made pursuant to this Section 3.3(a) shall be made in proportion to the total amounts due to each such party pursuant to this Section 3.3(a).

(b) Second, to the Disbursing Agent for distribution in accordance with and subject to the terms and conditions of the Plan and this Trust Agreement, including with respect to the Beneficiaries in accordance with their priorities under the Plan.

## ARTICLE IV

### General Powers, Rights and Obligations of the Trustee

**Section 4.1 Appointment of Trustee.** The Debtor shall appoint the Trustee, who shall serve as Trustee as of the Effective Date.

**Section 4.2 Legal Title.** The Trust shall hold legal title to the Trust Assets except that the Trustee may cause legal title or evidence of title to any of the Trust Assets to be held by any nominee or person on such terms, in such manner and with such power as the Trustee may determine advisable.

### Section 4.3 General Powers.

(a) Except as otherwise provided in the Confirmation Order, the Plan or in this Trust Agreement, and subject to the retained jurisdiction of the Bankruptcy Court as provided for herein, in the Plan or the Confirmation Order, but without prior or further authorization, the Trustee may control and exercise authority over the Trust Assets, over the acquisition, management and disposition thereof and over the management and conduct of the affairs of the Trust to the same extent as if the Trustee were the sole owner of the Trust Assets in his own right; provided, however, that such control and authority over the Trust Assets shall be subject to the provisions of Section 4.3(c) of this Trust Agreement. No Person dealing with the Trust shall be obligated to inquire into the Trustee's authority in connection with the acquisition, management or disposition of the Trust Assets. The Trustee shall execute all agreements and other documents in his capacity as Trustee.

(b) With respect to Trust Assets, the Trustee shall be deemed the Estate's representative in accordance with section 1123 of the Bankruptcy Code and shall have all the rights and powers set forth herein, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and the right to seek testimony and the production of documents pursuant to Bankruptcy Rule 2004, including, without limitation, the right to (1) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and this Trust Agreement; (2) investigate and, if appropriate, pursue, commence, litigate, prosecute, appeal, settle, abandon or compromise any Recovery Actions; (3) collect, receive, hold, maintain, invest, administer and liquidate the Trust Assets; (4) pay Trust Expenses pursuant to the Plan and this Trust Agreement; (5) retain, employ and compensate professionals and other agents; (6) file all federal, state and local tax returns and pay taxes of the Trust required to be filed by applicable law; and (7) otherwise implement the Plan and this Trust Agreement; all pursuant to the terms of the Plan and this Trust Agreement.

(c) In connection with the management and use of the Trust Assets, and except as otherwise expressly limited in this Trust Agreement, the Plan or the Confirmation Order, the Trustee shall have, in addition to any powers conferred on the Trustee by the Plan or any other provision of this Trust Agreement, the power to take any and all actions as are necessary or advisable to effectuate the purposes of the Trust (subject to the terms of the Plan and this Trust Agreement), including, without limitation, the power and authority:

(i) to accept and administer the Trust Assets assigned, transferred and provided to the Trust under this Trust Agreement and the Plan;

(ii) to engage in all acts that would constitute ordinary course of business in performing the obligations of a trustee under a trust of this type;

(iii) to establish the funds, reserves and accounts (and sub-accounts) within the Trust as deemed by the Trustee, in his sole discretion, as may be necessary, appropriate or desirable in carrying out the Trust Purposes and as consistent with the Plan and this Trust Agreement, including, without limitation, a reserve for future Trust Expenses; provided, however, that such funds, reserves and accounts (and sub-accounts) may be invested only in accordance with the investment guidelines prescribed in Section 4.9 of this Trust Agreement;

(iv) to sue and be sued (subject to the releases, exculpations and injunctions in the Plan and Confirmation Order) and participate, as a party or otherwise, in any judicial, administrative, arbitration or other proceeding;

(v) to delegate any or all of the discretionary power and authority herein conferred at any time with respect to all or any portion of the Trust to any one or more reputable individuals or to recognized institutional advisors or investment managers, in each case without liability for any action taken or omission made because of such delegation, except for such liability as is expressly provided for in this Trust Agreement;

(vi) to determine the manner of ascertainment of income and principal of the Trust Assets, and the apportionment of income and principal among such assets;



(vii) to perform such other acts and undertake such other conduct as the Trustee believes is necessary to carry out the purposes and intent of the Trust;

(viii) to sell, convey, transfer, assign, liquidate, collect, investigate or abandon Trust Assets, or any part thereof or any interest therein, on such terms and for such consideration as the Trustee deems desirable or appropriate;

(ix) to prosecute all Recovery Actions and such other suits as may be necessary, appropriate or incident to the purposes of the Trust, and raise defenses in connection with and settle any actions or claims, including counterclaims adverse to the Trust;

(x) to endorse the payment of notes or other obligations of any Person or to make contracts with respect thereto;

(xi) to remove all or any of the Trust Assets or the situs of administration of the Trust from one jurisdiction to another jurisdiction at any time or from time to time;

(xii) to borrow sums of money, at any time and from time to time, for periods of time and on terms and conditions from Persons or Entities (including any fiduciary hereunder) for purposes as may be deemed advisable, and secure such loans by the pledge or hypothecation of any property held under this Trust Agreement; and

(xiii) to purchase insurance indemnifying the Trustee and to indemnify (and purchase insurance indemnifying) the employees, agents and representatives of the Trust or the Trustee to the fullest extent that a corporation organized under the laws of the Trust's domicile is from time to time entitled to indemnify his directors, officers, employees, agents and representatives; provided, however that any such insurance shall not provide for the indemnification of such parties in cases of fraud, willful misconduct, gross negligence, or criminal conduct, as determined by Final Order of a court of competent jurisdiction;

(d) The Trustee shall not at any time, on behalf of the Trust or any Beneficiaries, enter into or engage in any trade or business, and the Trustee shall not use or dispose of any part of the Trust Assets in furtherance of any trade or business.

**Section 4.4 Retention of Attorneys, Accountants and Other Professionals.** The Trustee may retain the following professionals to aid in the performance of his responsibilities pursuant to the terms of the Plan and this Trust Agreement, including, without limitation, the litigation of Recovery Actions:

(a) The Trustee may retain such law firm(s) as the Trustee determines necessary to liquidate the Trust Assets and to perform such other functions as may be appropriate to carry out the primary purposes of the Trust.

(b) The Trustee may commit the Trust to and shall pay such law firm(s) reasonable compensation from the Trust Assets for services rendered and expenses incurred, which expenses may include, without limitation, the fees and expenses of Persons retained by such counsel to perform any services, including, without limitation, expert witnesses and

consultants. The Trustee may also engage such law firm(s) on an hourly rate or contingent fee basis (or some combination thereof) as permitted by applicable law.

(c) The Trustee may retain an independent public accounting firm to, if necessary, audit the financial books and records of the Trust, to prepare and file all federal, state and local tax returns and related tax forms on behalf of the Trust that the Trustee is obligated to prepare, provide and file pursuant to this Trust Agreement, including Article VII regarding Taxes, and to perform such other reviews and/or audits as the Trustee may deem advisable to carry out the primary purposes of the Trust. The Trustee may commit the Trust to and shall pay such accounting firm reasonable compensation from the Trust Assets for services rendered and expenses incurred.

(d) The Trustee may retain such accountants, experts, advisors, consultants, investigators, appraisers, auctioneers, claims and disbursing agents or other professionals as are advisable to carry out the purposes of the Trust.

(e) The Trustee may commit the Trust to and shall pay all such Persons reasonable compensation from the Trust Assets for services rendered and expenses incurred as Trust Expenses in accordance with the Plan and this Trust Agreement.

**Section 4.5 Co-Trustees or Separate Trustees.** In order to (and only to the extent necessary to) meet any legal requirements of any jurisdiction in which any of the Trust Assets may from time to time be located, the Trustee shall have the power to appoint one or more Persons either to act as co-trustee jointly with the Trustee of all or any part of the Trust Assets or to act as separate trustee of all or any part of the Trust Assets and to vest in such Person or Persons, in such capacity, such title to the Trust Assets or any part thereof solely to the extent required to meet any such legal requirements. Such co-trustee or separate trustee shall act under the supervision, and at the direction of, the Trustee.

**Section 4.6 Compensation of Trustee and his Professionals.**

(a) The Trustee (and any co-trustee or separate trustee that may be appointed pursuant to Section 4.5 above) shall be entitled to the reimbursement of reasonable and necessary expenses incurred while carrying out his or her duties as Trustee, co-trustee or separate trustee.

(b) On or before the last day of each month following the month for which compensation is sought, each of the Trustee's professionals seeking compensation shall deliver a monthly statement to the Trustee; provided, however, that failure of any of the professionals to deliver a monthly statement to the Trustee for any one or more months shall not waive or impair the right of such professionals to subsequently seek compensation for all or any number of such months in a later statement delivered to the Trustee. The Trustee will have twenty (20) days from the date such statement is received to review the statement and object to such statement by serving a written objection on such professional setting forth the precise nature of the objection and the amount at issue. At the expiration of the twenty (20) day period, the Trustee shall promptly pay out of the Trust Assets, to the extent available, 100% of the amounts requested, except for the portion of such fees and disbursements to which an objection has been made. The parties shall attempt consensually to resolve objections, if any, to any monthly statement. If the

parties are unable to reach a consensual resolution of any such objection, the party that received an objection to his fees may seek payment of such fees by filing a motion with the Bankruptcy Court following notice to the Trustee.

**Section 4.7 Standard of Care; Indemnification; Exculpation.** The Trustee shall perform the duties and obligations imposed on the Trustee by this Trust Agreement with reasonable diligence and care under the circumstances. The Trustee shall not be liable to the Trust, to any Beneficiary, to any holder of a Claim or to any other Person (or any predecessor or successor thereto) for any reason whatsoever, except for such of his own acts as shall constitute fraud, willful misconduct, gross negligence, or criminal conduct as determined by Final Order of a court with competent jurisdiction. Except as aforesaid, the Trustee shall, to the fullest extent permitted by applicable law, be defended, held harmless and indemnified from time to time from the Trust Assets (but not from or by the Beneficiaries or any of the parties released in the Plan) against any and all losses, claims, costs, expenses and liabilities to which the Trustee may be subject by reason of the Trustee's execution of the Trustee's duties under this Trust Agreement; provided, however, that the Trustee shall not be entitled to indemnification if and to the extent the Trustee is found by a Final Order of a court with competent jurisdiction to have committed fraud, willful misconduct, gross negligence, or criminal conduct. If the Trustee becomes involved in any action, proceeding or investigation in connection with any matter arising out of or in connection with the Plan, this Trust Agreement or the affairs of the Trust, the Trust shall periodically advance or otherwise reimburse on demand the Trustee's reasonable legal and other expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, expert fees, disbursements and related expenses) incurred in connection therewith, but the Trustee shall be required to repay promptly to the Trust the amount of any such advanced or reimbursed expenses to the extent that it is determined by Final Order of a court of competent jurisdiction that the Trustee engaged in fraud, willful misconduct, gross negligence, or criminal conduct in connection with the affairs of the Trust with respect to the specific matters as to which such expenses were incurred. The Trustee's members, stockholders, officers, employees, agents, independent contractors (if any), professionals, and any co-trustees or separate trustees appointed pursuant to Section 4.5 above, shall be likewise defended, held harmless and indemnified in the same manner and to the same extent. Without limiting the generality of the foregoing, the Trustee shall have no liability to any Beneficiary or holder of a Claim against the Reorganized Debtor on account of the Trustee's investment or non-investment of any Trust Assets or any losses with respect to any such investments of the Trust Assets, provided that such investments are made, or the Trustee's decision not to invest any Trust Assets in any case is made, in accordance with the terms of this Trust Agreement.

**Section 4.8 Reliance by Trustee.** The Trustee may rely, and shall be fully protected personally in acting, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Trustee has no reasonable belief to be other than genuine and to have been signed or presented other than by the proper party or parties or, in the case of facsimile transmissions, to have been sent other than by the proper party or parties, in each case without obligation to satisfy itself that the same was given in good faith and without responsibility for errors in delivery, transmission or receipt. In the absence of the Trustee's willful misconduct, gross negligence, willful disregard of the Trustee's duties or material breach of this Trust Agreement, the Trustee may rely as to the truth of statements and correctness of the facts and opinions expressed therein and shall be fully

protected personally in acting thereon. The Trustee may consult with legal counsel and shall be, in the absence of the Trustee's willful misconduct, gross negligence, willful disregard of the Trustee's duties or material breach of this Trust Agreement, fully protected in respect of any action taken or suffered by the Trustee in accordance with the opinion of legal counsel (whether or not written). The Trustee may at any time seek instructions from the Bankruptcy Court concerning the acquisition, management or disposition of the Trust Assets.

**Section 4.9 Investment Obligations.** If the Trustee determines (in its discretion) to invest the Trust Assets, the Trustee shall invest and reinvest the liquid Trust Assets consistent with the obligations of a trustee under section 345 of Bankruptcy Code. The Trustee shall not be liable in any way for any loss or other liability arising from any investment, or the sale or other disposition of any investment, made in accordance with this Section 4.9, except for any such loss or liability arising from the Trustee's gross negligence or willful misconduct. However, the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust, within the meaning of Treasury Regulation § 301.7701-4(d) may be permitted to hold, as set forth in IRS Revenue Procedure 94-45 and any successor guidance, pursuant to any amendment or addition to the Internal Revenue Code or to the Treasury Regulations or any modification in IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise. Any investment purchased with the Trust Assets shall be deemed a part of the Trust Assets. All interest distributions and proceeds received by the Trustee in respect to such investments shall be a part of the Trust Assets.

**Section 4.10 No Bond or Other Security Required.** Notwithstanding any law or rule to the contrary, the Trustee (including any successor Trustee under Section 4.13 hereof) shall not be required to give any bond, surety or other security in any jurisdiction for the performance of any of his duties, including, if necessary, litigation.

In addition, notwithstanding any law or rule to the contrary, the Trustee (including any successor) and the Disbursing Agent shall be exempt from giving any bond or other security in any jurisdiction, for any purpose.

**Section 4.11 Compliance with Tax Laws.** The Trustee shall comply with all tax laws and shall act in accordance with Article VII regarding income tax treatment, tax returns and payments, tax withholding and reporting, liability for taxes, valuation of the Trust Assets and section 1146(a) exemption and any other tax matters addressed in this Trust Agreement or in the Plan.

**Section 4.12 Compliance with Securities Laws.** If and to the extent required by applicable federal and/or state securities laws, the Trustee shall file with the SEC and other applicable federal and state governmental agencies the reports and other documents and take any other actions necessary to comply with such federal or state securities laws.

**Section 4.13 Resignation and Removal.**

(a) **Resignation.** The Trustee may resign and be discharged from any future obligations and liabilities hereunder by giving written notice thereof to the Bankruptcy Court at

least thirty (30) days prior to the effective date of such resignation. Such resignation shall become effective on the date specified in such notice.

(b) **Removal.** The Trustee may be removed at any time by order of the Bankruptcy Court upon motion by any party in interest, pursuant to the standard under applicable law for removal of a Chapter 7 trustee. Upon any such removal, such removed Trustee shall be entitled to any reimbursement and indemnification set forth in this Trust Agreement that remain due and owing to such Trustee at the time of such removal.

(c) **Appointment of a Successor Trustee.** If, at any time, the Trustee shall give notice of his intent to resign pursuant to Section 4.13(a) hereof or be removed or shall become incapable of acting, counsel to the Trustee shall provide notice thereof to the Bankruptcy Court. The Reorganized Debtor shall designate a successor Trustee to act under this Trust Agreement. If the Reorganized Debtor is unable to designate a successor, the Reorganized Debtor shall file a motion for the appointment of a successor trustee.

(d) **Acceptance of Appointment by Successor Trustee.** Any successor Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver counterparts thereof to the Bankruptcy Court. Thereupon, such successor Trustee shall, without any further act, become vested with all of the estates, properties, rights, powers, trusts and duties of his predecessor in the Trust hereunder with like effect as if originally named herein.

(e) **Trust Continuance.** The death, dissolution, resignation, incompetency or removal of the Trustee shall not operate to terminate the Trust created by this Trust Agreement or to revoke any existing agency created under the terms of this Trust Agreement or invalidate any action theretofore taken by the Trustee. In the event of the resignation or removal of the Trustee, such departing Trustee shall promptly (a) execute and deliver such documents, instruments and other writings as may be requested by the Bankruptcy Court or reasonably requested by a successor Trustee to effect the termination of such departing Trustee's capacity under this Trust Agreement and the conveyance of the Trust Assets then held by such departing Trustee to his successor, (b) deliver to the Bankruptcy Court or the successor Trustee all documents, instruments, records and other writings related to the Trust as may be in the possession of the Trustee, and (c) otherwise assist and cooperate in effecting the assumption of his obligations and functions by such successor Trustee.

#### **Section 4.14 Reporting; Books and Records.**

(a) **Quarterly Reports.** In addition to any other reports that may be required by order of the Bankruptcy Court, until the Chapter 11 Case is closed, the Trustee shall, beginning with the first full calendar quarter following the occurrence of the Effective Date, file with the Bankruptcy Court (and provide to any other party entitled to receive any such report pursuant to the Bankruptcy Code and the Bankruptcy Rules), no later than twenty (20) days after each quarter, a quarterly report regarding the administration of the Assets pursuant to the Plan or this Trust Agreement, Distributions made by it and other matters relating to the implementation of the Plan.

(b) Books and Records. The Trustee will maintain books and records containing a description of all property from time to time constituting the Trust Assets, taking into account any changes to the Trust Assets existing immediately prior to the Effective Date, and an accounting of all receipts and disbursements.

(c) Fiscal Year. The fiscal year of the Trust will be the calendar year.

## ARTICLE V

### Jurisdiction

**Section 5.1 Retention of Jurisdiction.** The Bankruptcy Court shall retain such jurisdiction as is legally permissible as set forth in this Trust Agreement, the Plan and in the Confirmation Order, including, but not limited to, jurisdiction to hear and determine disputes arising in connection with the interpretation, implementation, administration or enforcement of this Trust Agreement.

**Section 5.2 Aid and Recognition.** The Trust shall, as needed to effect the terms hereof, request the aid and recognition of the Bankruptcy Court, or any court or judicial, regulatory or administrative body located in the United States or any other nation or state.

## ARTICLE VI

### Termination

**Section 6.1 Termination.** The Trust shall continue for a term of five (5) years from the Effective Date. Notwithstanding the foregoing, the Trustee may extend such term for one or more additional finite term(s) provided that Trust does not become subject to the Securities Exchange Act of 1934, as amended (the "Exchange Act") and provided further that the Bankruptcy Court approves the extension(s) based upon a finding that the extension(s) is(are) necessary for the Trust to reduce all Trust Assets to Cash and to liquidate. The Trustee shall at all times endeavor to liquidate the Trust Assets expeditiously, and in no event shall the Trustee unduly prolong the duration of the Trust. Notwithstanding the foregoing, after the termination of the Trust, the Trustee shall have the power to exercise all the powers, authorities and discretions herein conferred solely for the purpose of winding up the affairs of the Trust. The Trustee shall retain the books, records and files that shall have been delivered to or created by the Trustee. Except as provided in section 7.2(a) below, at the Trustee's discretion, all of such records and documents may be destroyed at any time not less than two (2) years from the date (a) of an order of the Bankruptcy Court terminating the Trust or (b) upon which the Trust has fully administered the Trust Assets.

## ARTICLE VII

### Taxes

**Section 7.1 Income Tax Treatment.** For United States federal income tax purposes and any comparable provision of state or local law, the Debtor, the Reorganized Debtor, the Trustee and the Beneficiaries will treat the Trust as follows:

(a) Liquidating Trust. Except to the extent otherwise provided in this Trust Agreement, the Trust will be treated as a “liquidating trust” within the meaning of Treasury Regulations § 301.7701-4(d).

(b) Taxable Entity. All of the Trust Assets held in the Trust comprise a fund which is subject to competing or disputed claims and, accordingly, the Trustee may elect, in the Trust’s first taxable year, to treat such fund as a “disputed ownership fund” pursuant to Treasury Regulations section 1.468B-9(c)(2)(ii).

### **Section 7.2 Tax Returns and Payments.**

(a) The Trustee will be responsible for: (i) the preparation and timely filing of all required federal, state, local and foreign tax returns required under Treasury Regulations § 1.468B-9 and any other applicable law for the Trust; (ii) the timely payment of any taxes shown on such returns as owing by the Trust from the Trust Assets; and (iii) the preparation and timely distribution to the Disbursing Agent for the benefit of the Beneficiaries of any necessary federal, state, local or foreign information returns. The Trustee will retain all tax returns and supporting documentation until the expiration of the applicable statute of limitations. The Trustee may request an expedited determination of any tax matter of the Trust under section 505 of the Bankruptcy Code for which such determination may be requested thereunder.

**Section 7.3 Tax Withholding and Reporting; Liability for Taxes.** Pursuant to the Plan, to the extent applicable, the Trustee or the Disbursing Agent will comply with all applicable tax withholding and reporting requirements imposed on it or on the Trust by any governmental unit, and all Distributions pursuant to the Plan will be subject to applicable withholding and reporting requirements. The Trustee or Disbursing Agent will be authorized to take any actions that may be necessary or appropriate to comply with such tax withholding and reporting requirements, including liquidating a portion of the Distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes or establishing any other mechanism the Trustee or Disbursing Agent believes is reasonable and appropriate, including, without limitation, requiring Beneficiaries to submit appropriate tax and withholding certifications. To the extent any Beneficiary fails to submit appropriate tax and withholding certifications as required by the Trustee or Disbursing Agent, such Claim Holder’s Distribution may, in the Disbursing Agent’s reasonable discretion, be deemed undeliverable and be subject to the provisions of the Plan and this Trust Agreement with respect to undeliverable Distributions. Each Person or Entity receiving (or deemed to receive) a Distribution pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on it by any governmental unit on account of the Distribution, including income, withholding and other tax obligations.

**Section 7.4 Valuation of Trust Assets.** As soon as reasonably practicable after the Effective Date, the Trustee will determine the fair market value of the Trust Assets (other than Cash) as of the Effective Date, based on a good faith determination and the advice of any professional retained by the Trustee for such purpose, and the Reorganized Debtor and the Trust shall use such value consistently for all federal income tax purposes.

**Section 7.5 Section 1146(a) Exemption.** The parties to this Trust Agreement intend that, as provided in the Plan, pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp tax, real estate transfer tax, mortgage recording tax, filing fee, sales or use tax or similar tax: (a) the execution and implementation of this Trust Agreement, including the creation of the Trust and any transfers of the Trust Assets or other assets (if any) to, by or from the Trust, including the settlement or other disposition of the Trust Assets; or (b) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan and this Trust Agreement, including bills of sale or assignments, applications, certificates or statements executed or filed in connection with any of the foregoing or pursuant to the Plan.

## ARTICLE VIII

### Miscellaneous

**Section 8.1 Notices.** All notices, requests or other communications required or permitted to be made in accordance with this Trust Agreement shall be in writing and shall be delivered personally or by facsimile transmission or mailed by first class mail or by overnight delivery service:

If to the Trustee, at:

William Tacon  
c/o John Ayres  
FTI Consulting (BVI) Limited  
2<sup>nd</sup> Floor Forbes Hare Building  
Pasea Estate, Road Town, Tortola, BVI  
Email: john.ayres@fticonsulting.com

with copies to:

James C. McCarroll  
Kurt F. Gwynne  
REED SMITH LLP  
599 Lexington Avenue  
New York, NY 10022-7650  
Facsimile: (212) 521-5450  
Email: jmccarroll@reedsmith.com  
kgwynne@reedsmith.com



Notices sent out by facsimile transmission shall be deemed delivered when actually received, and notices sent by first-class mail shall be deemed delivered three (3) Business Days after mailing and notices sent by overnight delivery service shall be deemed delivered the next Business Day after mailing.

**Section 8.2 Investment Company Act.** The Trust is organized as a liquidating entity in the process of liquidation, and therefore should not be considered, and the Trust does not and will not hold itself out as, an “investment company” or an entity “controlled” by an “investment company”, as such terms are defined in the Investment Company Act of 1940, as amended (as now in effect or hereafter amended).

**Section 8.3 Counterparts.** This Trust Agreement may be executed in one or more counterparts (via facsimile, “pdf” or otherwise), each of which shall be deemed an original but which together shall constitute but one and the same instrument.

**Section 8.4 Governing Law.** This Trust Agreement shall be governed by, construed under and interpreted in accordance with the laws of the State of New York.

**Section 8.5 Headings.** Sections, subheadings and other headings used in this Trust Agreement are for convenience only and shall not affect the construction of this Trust Agreement.

**Section 8.6 Interpretative Provisions.**

(a) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural, unless the context otherwise requires.

(b) All references to the Debtor, the Reorganized Debtor, and the Trustee pursuant to the definitions set forth in the recitals hereto, or to any other Person herein, shall include their respective successors and assigns.

(c) The words “hereof,” “herein,” “hereunder,” “this Trust Agreement” and words of similar import when used in this Trust Agreement shall refer to this Trust Agreement as a whole and not any particular provision of this Trust Agreement and as this Trust Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(d) The word “including,” when used in this Trust Agreement, shall mean “including, without limitation.”

(e) The verbs “will” and “shall” have a mandatory connotation, indicating the parties’ respective obligations hereunder.

**Section 8.7 Severability.** Any provision of this Trust Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions of this Trust Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable any such provision in any other jurisdiction.

**Section 8.8 Amendments.** This Trust Agreement may be amended from time to time, in a manner that shall not be materially inconsistent with the terms of the Plan, by written instrument executed by the Trustee.

**Section 8.9 Beneficiaries.**

(a) Beneficial Interest. Ownership of a beneficial interest in the Trust will not be evidenced by any certificate, security or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee. No claimant will have a beneficial interests in the Trust Assets until such time as the claimant's related Claim against or Interest in the Debtor becomes an Allowed Claim or Allowed Interest, as applicable, pursuant to the Plan. Except as expressly provided in Article VII of this Trust Agreement, neither beneficial interest in the Trust nor payments under this Trust Agreement on account of such beneficial interests may be assigned, alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process. The ownership of a beneficial interest hereunder shall not entitle any Beneficiary to (i) any title in or to the Trust Assets as such (which title shall be vested in the Trust) or to any right to call for a partition or division of the Trust Assets or to require an accounting, or (ii) any voting rights with respect to the administration of the Trust and the actions of the Trustee in connection therewith.

(b) Exemption From Registration. The parties hereto intend that the rights of the Beneficiaries arising under the Trust will not be "securities" under applicable laws, but none of the parties hereto represents or warrants that such rights will not be securities or that their issuance under the Plan will be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemptions from registration provided by section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan.

(c) No Transfer of Beneficial Interests. Except as otherwise expressly provided in the Plan or this Trust Agreement, it is understood and agreed that the beneficial interests in the Trust will be non-transferable during the term of this Trust Agreement except with respect to a transfer by will or under the laws of descent and distribution. Such transfers will not be effective until appropriate written notification and proof thereof is submitted to the Trustee, and the Trustee may continue to pay all amounts to or for the benefit of the Beneficiaries until receipt of proper written notification and proof of any such transfer. The Trustee may rely upon such written proof without the requirement of any further investigation.

**Section 8.10 Successors.** This Trust Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns hereunder.

**Section 8.11 No Suits by Claimholders.** No Beneficiary shall have any right by virtue of any provision of this Trust Agreement to institute any action or proceeding in law or in equity against any party other than the Trustee on or under or with respect to the Trust Assets.

**Section 8.12 Irrevocability.** The Trust is irrevocable, but is subject to amendment as provided for herein.

*[Signature page follows.]*

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed by their respective officers thereunto duly authorized as of the date first above written.

By: \_\_\_\_\_  
*William Tacon, Administrator and  
Authorized Signor of the Debtor, settlor*

By: \_\_\_\_\_  
Name: William Tacon  
Title: Trustee

# **EXHIBIT III.F.1**

## **(Nonexclusive List of Retained Causes of Action)**

1. All of the Debtor's claims and causes of action asserted or to be asserted in *National Bank of Anguilla (Private Banking & Trust) Ltd. v. National Bank of Anguilla, Ltd., et al.*, Adv. Pro. No. 16-01279, pending in the Bankruptcy Court (the "Adversary Proceeding").
2. All of the Debtor's claims and causes of action against Eastern Caribbean Central Bank ("ECCB"), National Bank of Anguilla ("NBA"), the National Commercial Bank of Anguilla ("NCBA"), and the Conservator Directors (as that term is defined in the Adversary Proceeding).
3. All Recovery Actions.
4. All of the Debtor's claims and causes of action against any Entity relating to the transfer, whether prior to or after the Petition Date, of any property of the Debtor to the ECCB, NBA, NCBA, the Conservator Directors or any other Entity.

Note: All causes of action of the Debtor that are not located "within the territorial jurisdiction of the United States" also are retained and shall not be adversely affected by the Plan or entry of the Confirmation Order.

# **EXHIBIT B**

## **(HYPOTHETICAL LIQUIDATION ANALYSIS)**

**National Bank of Anguilla (Private Banking & Trust) Ltd. Hypothetical Liquidation Analysis**

18-Oct-18

Assets	Potential Chapter 11 Recovery <sup>1</sup>			Potential Chapter 7 Liquidation Recovery		
	Low	Mid	High	Low	Mid	High
Causes of Action Against NBA, NCBA, and ECCB <sup>2</sup>	\$0	\$13,786,223	\$27,572,446	\$0	\$13,786,223	\$27,572,446
<b>TOTAL ASSETS:</b>	\$0	\$13,786,223	\$27,572,446	\$0	\$13,786,223	\$27,572,446
<b>Less Costs:</b>						
Administrative Claims as of the Effective Date <sup>3</sup>	\$407,258	\$407,258	\$407,258	\$407,258	\$407,258	\$407,258
Reorganized Debtor's Professional Fees through trial <sup>4</sup>	\$1,800,000	\$1,800,000	\$1,800,000	\$2,800,000	\$2,800,000	\$2,800,000
U.S. Trustee's fees <sup>5</sup>	\$1,300	\$1,300	\$1,300	\$3,207,258	\$3,644,095	\$4,057,681
Chapter 7 Trustee Statutory Commission <sup>6</sup>						
Chapter 7 Legal Fees (Estimated) <sup>7</sup>						
<b>TOTAL COSTS:</b>	\$2,208,558	\$2,208,558	\$2,208,558	\$3,207,258	\$3,644,095	\$4,057,681
<b>AMOUNT AVAILABLE TO TURNOVER TO ADMINISTRATOR:</b>	<b>\$0</b>	<b>\$11,577,665</b>	<b>\$25,363,888</b>	<b>\$0</b>	<b>\$10,142,129</b>	<b>\$23,514,765</b>

Note 1: The analysis is presented in three columns; low, mid and high, which represents potential liquidation values of the Debtor's Assets. The amounts reported in the low column represent the least favorable outcome that would occur if the Debtor were unsuccessful in the assertion of all Recovery Actions. The amounts reported in the high column represent the most favorable outcome that would occur if the Debtor prevailed on all Recovery Actions and collected in full the amounts sought in the Recovery Actions.

Note 2: *National Bank of Anguilla (Private Banking & Trust) Ltd. v. National Bank of Anguilla Ltd., et al.*; Adv. Pro. No. 16-01279-mg.

Note 3: Administrative Claims as of the Effective Date including holdback and other amounts earned but not paid to the Debtor's Professionals through September 30, 2018 in the approximate amount of \$451,972 plus estimated professional fees and expenses through the Effective Date in the amount of \$50,000 minus the retainer (\$94,713.77) held by Reed Smith.

Note 4: Estimate of fees and expenses from the Effective Date through and including trial of the adversary proceeding identified in Note 2 including, without limitation, consulting and testifying expert costs.

Note 5: Assumes two (2) quarters post-Effective Date fees pursuant to 28 U.S.C. § 1930(a)(6) at \$650/quarter (i.e., disbursements greater than or equal to \$15,000, but less than \$75,000). The Debtor anticipates that the Reorganized Debtor will seek to have the Chapter 11 Case closed promptly, with the Bankruptcy Court retaining jurisdiction over the adversary proceeding identified in Note 2. In the event the Reorganized Debtor is unable to obtain an order closing the Chapter 11 Case, and assuming that the adversary proceeding continues for two (2) years, U.S. Trustee fees may total as follows: "Low" - \$15,600; "Mid" - \$26,650; "High" - \$33,650.

Note 6: The Chapter 7 trustee's fees are calculated pursuant to 11 U.S.C. § 326(a).

Note 7: This estimate assumes that the Chapter 7 Trustee's professional fees will be the same as those incurred by the Reorganized Debtor for prosecuting the adversary proceeding (\$1,800,000), plus approximately \$1,000,000 in aggregate fees and expenses for the Chapter 7 Trustee and its professionals to surmount what would be a relatively steep learning curve with respect to factual and legal issues, so that the Chapter 7 Trustee and its counsel obtain the knowledge currently possessed by the Administrator and the Debtor's Professionals with respect to the factual and legal issues involved in the Chapter 11 Case and the Recovery Actions.