

THIS IS NOT A SOLICITATION OF ACCEPTANCE OF THE PLAN. ACCEPTANCE MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT HAS BEEN SUBMITTED FOR APPROVAL, BUT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re: § Chapter 11  
§  
THRU, INC., § Case No. 17-31034  
§  
Debtor. §

**DISCLOSURE STATEMENT IN SUPPORT OF  
CHAPTER 11 PLAN OF REORGANIZATION**

**BRYAN CAVE LLP**

Keith M. Aurzada (TX Bar No. 24009880)  
Michael P. Cooley (TX Bar No. 24034388)  
2200 Ross Avenue, Suite 3300  
Dallas, Texas 75201  
(214) 721-8000 (Telephone)  
(214) 721-8100 (Facsimile)

*Proposed Attorneys for Thru, Inc.*

Dated: April 6, 2017

- Voting Record Date: \_\_\_\_\_, 2017.
- Voting Deadline: \_\_\_\_\_, 2017 at 5:00 p.m. prevailing Central time.
- Deadline to file and serve objections to plan confirmation: \_\_\_\_\_, 2017 at 5:00 p.m. prevailing Central time.
- Hearing on confirmation of Plan: \_\_\_\_\_, 2017 at \_\_\_\_\_ a.m. prevailing Central time.

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Thru, Inc., a Delaware corporation (the “*Debtor*”), as debtor in possession under chapter 11 of the Bankruptcy Code, hereby proposes and files this *Disclosure Statement in Support of Chapter 11 Plan of Reorganization* (the “*Disclosure Statement*”). The Disclosure Statement describes the Debtor’s *Chapter 11 Plan of Reorganization* (the “*Plan*”),<sup>1</sup> filed on April 6, 2017, which provides for the reorganization of the Debtor and the treatment of all Claims against and Interests in the Debtor. The Plan and Disclosure Statement have been filed in the Debtor’s Chapter 11 Case, which is currently pending in the United States Bankruptcy Court for the Northern District of Texas.

If you have a Claim against or Interest in the Debtor, you should read the Disclosure Statement and Plan carefully. The Debtor urged all holders of Claims in Impaired Classes receiving Ballots to accept the Plan.

This Disclosure Statement (and the other appendices hereto), the Plan, the accompanying forms of Ballot, if any, and the related materials delivered together herewith are being furnished by the Debtor to holders of Impaired Claims and Impaired Interests pursuant to § 1125<sup>2</sup> in connection with the solicitation by the Debtor of votes to accept or reject the Plan (and the transactions contemplated thereby), as described herein.

This Disclosure Statement is designed to provide adequate information to enable holders of Claims against and Interests in the Debtor to make an informed judgment on the Plan. All holders of Claims are hereby advised and encouraged to read this Disclosure Statement and the Plan in their entirety before voting to accept or reject the Plan. The Plan summary and statements made in this Disclosure Statement are qualified in their entirety by reference to the Plan, other Appendices annexed hereto and other documents referenced as filed with the Bankruptcy Court before or concurrently with the filing of this Disclosure Statement. Furthermore, the projected financial information contained herein has not been the subject of an audit. Subsequent to the date hereof, there can be no assurance that: (a) the information and representations contained herein will continue to be materially accurate; or (b) this Disclosure Statement contains all material information.

All holders of Impaired Claims who are entitled to vote on the Plan should read and consider carefully the matters described in this Disclosure Statement as a whole, including the Section entitled “Risk Factors,” prior to voting on the Plan. In making a decision to accept or reject the Plan, each holder of a Claim must rely on its own examination of the Debtor as described in this Disclosure Statement and the terms of the Plan, including the merits and risks involved. In addition, confirmation and consummation of the Plan are subject to conditions precedent that could lead to delays in consummation of the Plan. There can be no assurance that

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning given to them in the Plan.

<sup>2</sup> Unless otherwise specified, all section (§) references are to title 11 of the United States Code (the “*Bankruptcy Code*”).

each of these conditions will be satisfied or waived (as provided in the Plan) or that the Plan will be consummated. Even after the Effective Date, distributions under the Plan may be subject to substantial delays for holders of Claims that are Disputed.

This Disclosure Statement has been approved by order of the Bankruptcy Court as containing adequate information of a kind and in sufficient detail to enable holders of Claims to make an informed judgment with respect to voting to accept or reject the Plan. However, the Bankruptcy Court's approval of this Disclosure Statement does not constitute a recommendation or determination by the Bankruptcy Court with respect to the merits of the Plan.

With the exception of historical information, some matters discussed herein, including the projections and valuation analysis described herein are "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward looking statements are subject to risks, uncertainties and other factors which could cause actual results to differ materially from future results expressed or implied by such forward looking statements.

No party is authorized by the Debtor to give any information or make any representations with respect to the Plan other than that which is contained in this Disclosure Statement. No representations or information concerning the Debtor, its future business operations or the value of its assets have been authorized by the Debtor, other than as set forth herein. Any information or representations given to obtain your acceptance or rejection of the Plan which are different from or inconsistent with the information or representations contained herein and in the Plan should not be relied upon by any holders of Claims and Interests in voting on the Plan.

This Disclosure Statement has been prepared in accordance with § 1125 and not in accordance with federal or state securities laws or other applicable nonbankruptcy law. Entities holding or trading in or otherwise purchasing, selling or transferring Claims against, Interests in or securities of, the Debtor should evaluate this Disclosure Statement only in light of the purpose for which it was prepared.

This Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission (the "**Commission**") or by any state securities commission or similar public, governmental or regulatory authority, and neither such Commission nor any such authority has passed upon the accuracy or adequacy of the statements contained herein.

With respect to contested matters, adversary proceedings and other pending or threatened actions (whether or not pending), this Disclosure Statement and the information contained herein shall not be construed as an admission or stipulation by any entity, but rather as statements made in settlement negotiations governed by Federal Rule of Evidence 408 and any other rule or statute of similar import.

This Disclosure Statement shall neither be admissible in any other proceeding involving the Debtor or any other party nor be construed to be providing any legal, business, financial or tax advice. Each holder of a Claim should, therefore, consult with its own legal, business, financial and tax advisors as to any such matters concerning the solicitation, the Plan or the transactions contemplated thereby.

The terms of the Plan shall govern in the event of any inconsistency between the Plan and the summaries thereof contained in this Disclosure Statement.

This Disclosure Statement, the Plan (and the other appendices hereto), the accompanying forms of Ballot, if any, and the related materials delivered together herewith are being furnished by the Debtors to their respective holders of Impaired Claims and Impaired Interests pursuant to § 1125, in connection with the solicitation by the Debtors of votes to accept or reject the Plan (and the transactions contemplated thereby), as described herein.

**The Bankruptcy Court has scheduled the Confirmation Hearing to commence on \_\_\_\_\_, 2017, at \_\_\_\_\_ a.m. (prevailing Central time) before the Honorable Stacey G.C. Jernigan in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, located at 1100 Commerce Street, 14th Floor, Dallas, Texas. 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 adjournment of such hearing.**

**Objections to Confirmation of the Plan must be filed and served on or before \_\_\_\_\_, 2017, at 5:00 p.m. (prevailing Central time). Objections that are not timely filed and served may not be considered by the Bankruptcy Court.**

**To be counted, Ballots must be received by the Debtor's no later than 5:00 p.m. (prevailing Central time) on \_\_\_\_\_, 2017 at 5:00 p.m. (prevailing Central time).**

#### **INCORPORATION OF DOCUMENTS BY REFERENCE**

This Disclosure Statement incorporates by reference certain documents relating to the Debtors that are not presented herein or delivered herewith. The following documents are incorporated by reference herein in their entirety:

The Debtor's *Schedules of Assets and Liabilities* filed in the Chapter 11 Case, including all amendments thereto filed through the date of the approval of this Disclosure Statement.

The Debtor's *Statement of Financial Affairs* filed in the Chapter 11 Case, including all amendments thereto filed through the date of the approval of this Disclosure Statement.

The Debtor's Monthly Operating Reports, including all amendments thereto filed through the date of the approval of this Disclosure Statement.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein, or contained in this Disclosure Statement, shall be deemed to be modified or superseded for purposes of this Disclosure Statement to the extent that a statement contained herein modifies or supersedes such statement.

#### **AVAILABLE INFORMATION**

Certain documents filed in the Chapter 11 Case are available through the Bankruptcy Court at the following website: <http://www.txnb.uscourts.gov/>.

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## **I. INTRODUCTION AND SUMMARY**

The following introduction and summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information and financial statements and notes thereto appearing elsewhere in this Disclosure Statement. References herein to a “fiscal” year refer to the fiscal year of the Debtor ending the last day of December in the calendar year indicated. Capitalized terms used but not defined in the Disclosure Statement have the meanings assigned to them in the Plan.

### **A. Overview of Chapter 11**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11, a debtor in possession attempts to reorganize its business and financial affairs for the benefit of the debtor, its creditors, and other parties in interest. Formulation of a plan of reorganization is the principal purpose of a chapter 11 case. The chapter 11 plan sets forth the means for satisfying the Claims of creditors against and interests of equity security holders in the debtor.

The commencement of a chapter 11 case creates an estate comprising all the legal and equitable interests of the debtor in property as of the date the petition is filed. Unless the Bankruptcy Court orders the appointment of a trustee, a chapter 11 debtor may continue to operate its business and control the assets of its estate as a debtor in possession. The Debtor has so operated since the Petition Date.

The filing of a chapter 11 petition also triggers the automatic stay, which is set forth in § 362. The automatic stay essentially halts all attempts to collect pre-petition Claims from the debtor or to otherwise interfere with the debtor’s business or its estate.

### **B. The Solicitation**

On \_\_\_\_\_, 2015, the Debtors filed their Plan with the United States Bankruptcy Court for the Western District of Texas. The Debtors filed the Disclosure Statement with the Bankruptcy Court pursuant to § 1125 and in connection with the solicitation with respect to the Plan.

On \_\_\_\_\_, 2015, the Bankruptcy Court determined that this Disclosure Statement contains “adequate information” in accordance with § 1125. Pursuant to § 1125(a)(1), “adequate information” is defined as information of a kind, and in sufficient detail, as far as 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 or interests of the relevant class to make an informed judgment about the Plan.

The Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan before the Honorable \_\_\_\_\_, United States Bankruptcy Judge on \_\_\_\_\_, 2015 at \_\_\_\_\_ Central time. The hearing may be adjourned from time to time without further notice other than by announcement in the Bankruptcy Court on the scheduled date of such hearing. Any objections to Confirmation of the Plan must be in writing and must be filed with the Clerk of the Bankruptcy Court and served on the counsel listed below to ensure receipt by

them on or before \_\_\_\_\_, 2015 at 5:00 p.m. (prevailing Central time). Bankruptcy Rule 3007 governs the form of any such objection. Counsel on whom objections must be served are:

Counsel for the Debtors:

Bryan Cave LLP  
2200 Ross Avenue, Suite 3300  
Dallas, Texas 75201  
Attn: Michael P. Cooley

Office of the United States Trustee:

Office of the U.S. Trustee  
1100 Commerce Street, Room 976  
Dallas, Texas 75242  
Attn: Nancy Resnick

**C. Recommendation**

THE DEBTOR RECOMMENDS THAT EACH ENTITY ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN.

With respect to the Plan, the Debtor believes that: (i) the Plan provides the best possible result for the holders of Impaired Claims; (ii) with respect to each Impaired Class of Claims, the distributions under the Plan are greater than the amounts that would be received if the Debtor was to liquidate under Chapter 7 of the Bankruptcy Code; and (iii) acceptance of the Plan is in the best interest of holders of Impaired Claims.

In arriving at their conclusions, the Debtor considered (i) the limited alternatives available to the Debtor to restructure its debts, (ii) the estimated liquidation value, and (iii) the rights, in both payment and security position, of the Debtor's Creditors.

**D. Summary of the Plan**

The Plan contemplates the reorganization of the Debtor and the payment in full (over time) of all Creditors holding Allowed Claims.

**The Debtor believes the Plan treats all Classes of Creditors and Interest holders fairly and equitably, in observance of the absolute priority rule of § 1129(b)(2). The Debtor believes the Plan provides all Creditors and Interest holders with at least as much as they would receive in a Chapter 7 liquidation of the Debtor and provides all General Unsecured Creditors substantially more than they would receive in a Chapter 7 liquidation.**

Set forth in detail elsewhere in this Disclosure Statement is a description of the technical aspects of the classification of Claims and Interests, the relative allocations of property to holders of such Claims and Interests, the methodology as to how such property is to be distributed, the risks inherent in the proposed Plan, and the applicable bankruptcy and tax consequences of the

reorganization of the Debtor. The Plan is complex and is the product of lengthy discussions between the Debtors, Putnam, the Prepetition Lender, the Receiver and other parties in interest and is based upon the Debtor’s analysis of all Claims asserted or known as of the date hereof, an evaluation of the relative merits of potential conflicting Claims and a compromise between such Claims consistent with the goals of the Bankruptcy Code. The Debtor believes that the following broad overview of what Creditors and Interest holders will receive under the Plan will be helpful in your consideration of whether you wish to accept or reject the Plan. This summary does not purport to be complete and should only be relied upon for voting purposes when read in conjunction with the Plan and the Disclosure Statement in their entirety. In the event of any inconsistency between the Plan and the Plan Documents, on the one hand, and this Disclosure Statement, on the other hand, the Plan and the Plan Documents shall control and take precedence with respect to such inconsistency.

The following Table 1 sets forth a quick reference guide to the classification and treatment of Allowed Claims against and Allowed Interests in the Debtors. Table 1 is a summary only and is subject in all respects to the specific provisions of the Plan.

<b>Table 1</b>			
<b>Summary of Claims Against and Interests in the Debtor</b>			
Class	Claim or Interest	Amount	General Description
1	Priority Non-Tax Claims		Claims entitled to priority under § 507(a) that are not Administrative Expenses or Priority Tax Claims.
2	DIP Claims		Claims of the DIP Lenders arising under the DIP Facility.
3	Prepetition Lender Claims		Claims of the Prepetition Lenders arising under the Prepetition Facility.
4	Other Secured Claims		Secured Claims other than a Priority Tax Claim, a DIP Claim or a Prepetition Lender Claim.
5	General Unsecured Claims		Any Claim that is not a Secured Claim, Administrative Expense, Priority Claim, or Dropbox Claim.
6	Dropbox Claims		Any Claim asserted against the Debtor by Dropbox.
7	Interests		All issued and outstanding Interests in the Debtor as of the Petition Date.

Table 2 is a summary of estimated recoveries for the different Classes under the Plan and is subject in all respects to the Plan.

<b>Table 2</b>	
<b>Projected Treatment of Claims Against and Interests in the Debtor</b>	
If you have an Allowed Claim in this Class:	You are expected to receive this treatment:
Class 1 (Priority Non-Tax Claims)	Payment in full, without interest, as soon as practicable after the Effective Date.
Class 2 (DIP Claims)	On the Effective Date, the DIP Claims shall be paid in full from the proceeds of the Exit Facility.

<b>Table 2</b>	
<b>Projected Treatment of Claims Against and Interests in the Debtor</b>	
<b>If you have an Allowed Claim in this Class:</b>	<b>You are expected to receive this treatment:</b>
Class 3 (Prepetition Lender Claims)	On the Effective Date, the DIP Claims shall be paid in full from the proceeds of the Exit Facility.
Class 4 (Other Secured Claims)	At the election of the Reorganized Debtor, one of the alternative treatments set forth in Section 4.4 of the Plan.
Class 5 (General Unsecured Claims)	Payment in full, with interest at the federal judgment rate, in _____ equal monthly installments.
Class 6 (Dropbox Claims)	Payment in full, with interest at the federal judgment rate, in _____ equal monthly installments.
Class 7 (Interest)	On the Effective Date, all Interests shall be revested in Thru, LLC, as the sole shareholder of the Reorganized Debtor.

**The Debtor believes that the Plan treats the respective Classes of Creditors and Interest holders of each Debtor fairly and equitably in observance of the absolute priority rule of § 1129(b)(2). The Debtor believes that the Plan provides each Creditor and Interest holder of each Debtor with at least as much as it would receive if the corresponding Debtor were liquidated under Chapter 7 of the Bankruptcy Code, and provides each General Unsecured Creditor substantially more than it would receive if the corresponding Debtor were liquidated under Chapter 7 of the Bankruptcy Code.**

#### **E. Voting Eligibility and Procedures**

Table 3 provides a summary of the voting eligibility of Creditors and Interest holders in each Class under the Plan, based on whether or not those Claims and Interests are Impaired or not Impaired.

<b>Table 3</b>			
<b>Voting Eligibility Under the Plan</b>			
<b>Class</b>	<b>Description</b>	<b>Impairment</b>	<b>Entitled to vote?</b>
1	Priority Non-Tax Claims	Not Impaired	NO
2	DIP Claims	Impaired	YES
3	Prepetition Lender Claims	Impaired	YES
4	Other Secured Claims	Impaired	YES
5	General Unsecured Unsecured Claims	Impaired	YES
6	Dropbox Claims	Impaired	YES
7	Interests	Impaired	YES

Some Creditors might hold Impaired Claims in more than one Class and must vote separately for each Class. If you hold Claims in more than one Class, or Claims against more

than one Debtor, you must cast a separate vote based on each individual Claim against each individual Debtor.

Please do not return any other documentation with your Ballot. For further information on casting a Ballot to vote on the Plan, please see Article XII of this Disclosure Statement.

**F. Votes Required for Acceptance; Confirmation**

The Bankruptcy Code defines acceptance of a plan by an Impaired Class of Claims as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number, of the Claims of that Class which actually cast ballots. The vote of a holder of a Claim may be disregarded if the Bankruptcy Court determines, after notice and hearing, that the acceptance or rejection was not solicited or procured in good faith.

In addition to this voting requirement, § 1129 requires that the Plan be accepted by each holder of a Claim in an Impaired class or that the Plan be found by the Bankruptcy Court to provide the holder with at least as much value on account of its Claim as it would receive on a liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. If the Plan is not accepted by one or more Classes of Impaired Claims, the Debtors may nevertheless ask the Court to confirm the Plan despite such lack of acceptance if the Court finds that the Plan does not discriminate unfairly and is “fair and equitable” with respect to any such non-accepting Impaired Class. Refer to Section XII.D of the Disclosure Statement for a detailed discussion of the procedures by which the Plan may be confirmed based upon the votes of Impaired Creditors.

Section 1129(b) provides that upon request of the proponent of the Plan, the Bankruptcy Court shall confirm the Plan despite the lack of acceptance by an Impaired Class or Classes if the Bankruptcy Court finds that (a) the Plan does not discriminate unfairly with respect to each non-accepting Impaired Class, (b) the Plan is “fair and equitable” with respect to each non-accepting Impaired Class, (c) at least one Impaired Class has accepted the Plan (without counting acceptances by insiders) and (d) the Plan satisfies the requirements set forth in § 1129(a) other than § 1129(a)(8). In general, § 1129(b) permits Confirmation notwithstanding non-acceptance by an Impaired Class if that Class and all more junior Classes are treated in accordance with the “absolute priority” rule, which requires that the dissenting Class be paid in full before a junior Class may receive anything under a Plan.

Confirmation of the Plan will make the Plan binding upon the Debtors and all holders of Claims against and Interests in the Debtors and other parties in interest regardless of whether they have accepted the Plan, and such holders of Claims and Interests will be prohibited from receiving payment from, or seeking recourse against, any assets that are distributed to other holders of Claims or Interests under the confirmed Plan. In addition, Confirmation of the Plan will enjoin Creditors and Interest holders from taking a wide variety of actions on account of a debt, Claim, liability, interest or right that arose prior to the Confirmation Date. As of the Effective Date of the Plan, Confirmation will also operate as a discharge of all Claims against and Interests in the Debtors to the full extent authorized by § 1141(d). Section 1141(d) provides generally that, except as otherwise provided in the Plan or order confirming the Plan, Confirmation of the Plan (i) discharges the Debtors from any debt that arose before the date of such confirmation, including a debt of a kind specified under specified sections of the

Bankruptcy Code (such as rejection damages Claims), whether or not a proof of Claim based on such debt is filed or deemed filed, whether or not such Claim is Allowed, and whether or not the holder of such Claim has accepted the Plan, and (ii) terminates all rights and interests of Interest holders as provided for in the Plan.

#### **G. Effective Date of the Plan**

The Plan will not be consummated immediately upon Confirmation, but only upon the Effective Date. The Effective Date will not occur unless the conditions to the occurrence of the Effective Date are satisfied (or waived to the extent permitted by, and in accordance with the terms of, the Plan). The Confirmation Order may be vacated if the conditions to the Effective Date are not timely met or waived.

Because of the conditions to the occurrence of the Effective Date provided in the Plan, a delay will occur between Confirmation of the Plan and the Effective Date. There is no assurance that the conditions to the Effective Date will be fulfilled, or that any waivable condition that is not fulfilled will in fact be waived. The Plan provides that it is a condition to the occurrence of the Effective Date of the Plan that each of the conditions set forth in Section 10.1 of the Plan has been satisfied or waived. **In the event any conditions to the Effective Date cannot be fulfilled or waived, the Effective Date will not occur.**

The implementation of the Plan involves certain risks. For a discussion of these risks, see Article XII, entitled "CERTAIN FACTORS TO BE CONSIDERED PRIOR TO VOTING."

The Debtor currently believes that all conditions to the occurrence of the Effective Date of the Plan will be satisfied, and that the Effective Date of the Plan is likely to occur by July \_\_\_\_, 2017.

#### **H. Sources of Information**

Except as otherwise expressly indicated, the portions of this Disclosure Statement describing the Debtor, its business, and the Plan have been prepared from information furnished by the Debtors.

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified, and neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with it shall, under any circumstances, create an implication that there has been no change in the facts set forth herein since the date of this Disclosure Statement.

No statements concerning the Debtor, the value of its property, or the value of any benefit offered to the holder of a Claim or Interest in connection with the Plan should be relied on other than as set forth in this Disclosure Statement. In arriving at a decision, parties should not rely on any representation or inducement made to secure their acceptance or rejection that is contrary to information contained in this Disclosure Statement. Any such additional representations or inducements should be reported immediately to counsel for the Debtor, Michael P. Cooley; Bryan Cave LLP; 2200 Ross Avenue, Suite 3300, Dallas, Texas 75201; Telephone: (214) 721-8054; Email: [michael.cooley@bryancave.com](mailto:michael.cooley@bryancave.com).

## II. BACKGROUND

### A. General Information Regarding the Debtors

#### 1. Corporate Structure

The Debtor provides enterprise file sharing and collaboration to help organizations exchange large files and content securely across the globe.

The Debtor, Thru, Inc. is a Delaware corporation, and is 100% owned by Thru, LLC, a Nevada limited liability company.

#### 2. Prepetition Financing

Prior to the Petition Date, the Debtor was generally current on most of its trade payables as of the Petition Date and, according to its books and records, had only fifteen Creditors on the Petition Date, excluding the Prepetition Lenders, Dropbox, and employee payroll.

To pay certain of the expenses associated with the Dropbox Lawsuit and supplement the working capital needs of the Debtor's business, the Debtor borrowed \$615,000 from the Lee Harrison, Eliza Jayne McCoy, and Roderic Holliday-Smith (collectively, the "**Prepetition Lenders**") under the terms of a promissory note (the "**Lender Note**") signed by the Debtor in favor of the Prepetition Lenders on February 22, 2017.<sup>3</sup> The Lender Note bears interest at the rate of 5% per annum and matures February 21, 2018, and the Debtor's obligations under the Lender Note are secured by first priority liens on substantially all the Debtor's assets as set forth in a Security Agreement, dated February 17, 2017 and recorded UCC-1 financing statements.

Subsequent to the initial funding of the Lender Note but prior to the Petition Date, the Prepetition Lenders provided the Debtor with two additional advances: on March 16, 2017 in the amount of \$100,000, and on March 21, 2017 in the amount of \$150,000. The repayment of the two additional advances is similarly governed by the terms of the Lender Note and accompanying security documents.

### B. Events Leading to Chapter 11 Filing

In 2015, a trademark dispute arose between the Debtor and Dropbox, Inc. ("**Dropbox**") over the use of the term "Dropbox." The Debtor challenged Dropbox before the Trademark Trial and Appeal Board, following which Dropbox sued the Debtor for declaratory relief in the United States District Court for the Northern District of California. The Debtor counterclaimed, and Dropbox prevailed on the Debtor's counterclaim on summary judgment. On March 8, 2017, the court awarded Dropbox a judgment for legal fees and costs in the amount of approximately \$2.3 million (the "**Fee Award**") under the "exceptional case" standard.

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<sup>3</sup> Mr. Harrison is the CEO and a director of the Debtor. All three Prepetition Lenders are members of Thru, LLC, the sole shareholder of the Debtor.

The Debtor believes that both the underlying judgment and the Fee Award were reached in error and has appealed both rulings to the United States Court of Appeals for the Ninth Circuit. Those appeals are still pending. Nevertheless, a monetary judgment of that size created an immediate crisis for the Debtor, which faced the immediate possibility that Dropbox could have the means to dismantle the Debtor's business through collection efforts and gain an undisputed right to the Dropbox name and mark, which the Debtor has used continuously since 2004.

To preserve the value of the Debtor for the benefit of all its Creditors and Interest holders and to preserve an otherwise successful ongoing business enterprise for the benefit of its customers, employees, and owners, the Debtor filed a voluntary chapter 11 petition for relief on March 22, 2017.

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

#### **A. Continuation of Business; Stay of Litigation**

On March 22, 2017, the Debtor commenced its Chapter 11 Case. Since the Petition Date, the Debtor has continued to operate as debtor in possession under the authority granted to them by §§ 1107 and 1108 and subject to the supervision of the Bankruptcy Court. The Debtor is authorized to operate in the ordinary course of business. Transactions out of the ordinary course of business must receive prior Bankruptcy Court approval. In addition, the Bankruptcy Court has supervised the Debtor's employment of attorneys and other professionals.

An immediate effect of the commencement of the Chapter 11 Case was the imposition of the automatic stay under § 362. With limited exceptions, the automatic stay enjoins the commencement or continuation of all collection efforts by creditors, the enforcement of liens against the Debtors and litigation against the Debtor. This injunction remains in effect unless modified or lifted by order of the Bankruptcy Court.

#### **B. Significant Events During the Chapter 11 Case**

##### **1. First Day Motions**

On the Petition Date, the Debtor submitted numerous so-called "*First Day Motions*" seeking various relief in the first few weeks of the Chapter 11 Case. Among the more notable First Day Motions, the Debtor filed motions seeking authority: (i) to maintain the Debtor's existing bank accounts and cash management system; (ii) to pay the prepetition Claims of "critical vendors"; (iii) to pay certain outstanding claims to utility providers and provide adequate protection to such providers;; and (iv) to use cash collateral (as defined in § 363(a)) and grant adequate protection to the Prepetition Lenders for the use of such cash collateral.

##### **2. 341 Meeting**

A formal meeting of creditors pursuant to § 341 has been scheduled to take place April 18, 2017 in Dallas, Texas. Creditors and parties in interest will receive separate notice of the time and place for this meeting should they wish to attend.

### 3. Claims Process and Bar Date

The Debtors filed their *Schedules of Assets and Liabilities* and *Statements of Financial Affairs* on April 5, 2017.

The Debtor will review all Claims filed and develop and analyze a database of all Claims asserted against it. Each proof of Claim and proof of Interest will be analyzed to determine whether to object to the allowance of such Claims or Interests.

The Claims asserted against the Debtor may be in excess of the total amount of Allowed Claims estimated by the Debtors in connection with the development of the Plan because, among other things, certain Claims: (i) are filed in duplicate; (ii) consist of amendments to previously filed Claims; (iii) assert Claims in excess of the amount actually owed; (iv) do not allege an obligation of the Debtor or have been erroneously asserted against the Debtor; (v) assert contingent Claims against the Debtor; (vi) were filed after the Bar Date or (vii) include postpetition interest and other disallowable charges. The Debtor intends to file objections to, among others, those Claims falling into the foregoing categories.

There is inherent uncertainty as to the amount of Claims in certain Classes that may ultimately become Allowed Claims. For example, Creditors may assert Claims not presently reflected on the Debtors books and records, and the outcome of certain pending litigation could also impact the magnitude of total Claims asserted against the Debtor's Estate.

### 4. Operation of the Debtor

The Debtor is operating substantially in accordance with its budget, which was approved by the Prepetition Lenders, and anticipates that it will continue to meet all of its obligations incurred during the course of the Chapter 11 Case.

## IV. THE PLAN

### A. Overall Structure of the Plan

A summary description of the principal provisions of the Plan and the treatment of Classes of Allowed Claims and Interests is set out below. This summary is qualified in its entirety by the Plan, and in the event of any discrepancy between this summary and the terms of the Plan, the Plan will control.

The Plan constitutes a chapter 11 plan of reorganization for the Debtor, and provides for all Creditors to be paid from the revenue generated by the Debtor's business from and after the Effective Date and from the proceeds of the Exit Facility to be provided by the Debtor's existing Prepetition Lenders and DIP Lenders.

Except for Administrative Claims and Priority Tax Claims, all Claims against and Interests in the Debtor are placed in Classes as described below. In accordance with § 1123(a)(1), the Debtor has not classified Administrative Claims or Priority Tax Claims, as described below.

## **B. Administrative and Priority Tax Claims Against the Debtor**

As provided in § 1123(a)(1), Administrative Claims and Priority Tax Claims shall not be classified for the purposes of voting or receiving Distributions under the Plan. Rather, all such Claims shall be treated separately as unclassified Claims in accordance with the terms set forth in Article III of the Plan and described below.

### 1. Administrative Expenses

#### *(a) General*

The Responsible Person shall pay each Holder of an Allowed Administrative Claim against any Debtor (excluding Professional Fee Claims) the full amount of such Allowed Administrative Claim, without interest, in Cash, within ten (10) days after the later to occur of (i) the Effective Date and (ii) the date such Claim becomes an Allowed Claim. All Administrative Claims against the Debtor which are not due and payable on or before the Effective Date shall be paid in the ordinary course of business when due in the ordinary course. Notwithstanding anything herein to the contrary, a Holder of an Allowed Administrative Claim against any Debtor may be paid on such other date or dates and upon such other terms as may be agreed upon by such Holder and the Responsible Person. Allowed Administrative Claims must be paid in full or fully reserved for in Cash pending allowance by the Bankruptcy Court before any Distribution may be made to any other Holder of an Allowed Claim.

#### *(b) Statutory Fees*

All outstanding fees payable to the Office of the United States Trustee under 28 U.S.C. §1930 that have not been paid as of the Effective Date shall be paid by the Responsible Person no later than thirty (30) days after the Effective Date or when due in the ordinary course.

#### *(c) Bar Date for Administrative Expenses*

Each Holder of an Administrative Claim other than the DIP Lenders must file an Administrative Expense Request requesting payment of such Administrative Claim with the Bankruptcy Court by no later than the Administrative Expense Request Deadline for all Administrative Claims that are not subject to the Bar Date Order; *provided, however*, that any such Administrative Expense Request need not be filed with a hearing date; and *provided, further*, that the foregoing requirement to file an Administrative Claim Request shall not apply to Holders of Administrative Claims arising under §§ 503(b)(1)(B) or (C). Nothing herein extends a Bar Date established in the Bar Date Order.

#### *(d) Professional Fee Claims*

The Responsible Person shall pay Professionals who are entitled to reimbursement or allowance of fees and expenses pursuant to §§ 327-330 and 503(b)(2)-(b)(6), in Cash, in the amount awarded to such Professionals by interim fee application order or Final Order of the Bankruptcy Court, as soon as practicable after the Effective Date in accordance with the terms of any order entered by the Bankruptcy Court governing the payment of fees and expenses during the course of the Chapter 11 Case or in accordance with any trial Order issued by the Bankruptcy

Court, but in any event within five (5) Business Days of the Bankruptcy Court’s approval of such fees and expenses following the Effective Date.

Any final application for allowance of a Professional Fee Claim for services rendered and costs incurred through the Effective Date must be filed with the Bankruptcy Court and served on counsel for the Reorganized Debtor and Responsible Person at the addresses listed in Section 11.15 of the Plan and on the Office of the United States Trustee so that it is received no later than thirty (30) days after the Effective Date, unless otherwise extended by agreement of the Claimant and the Responsible Person, or such Professional Fee Claim shall be forever barred and shall not be enforceable against the Debtor and its Estate, and their successors and assigns. Allowed Professional Fee Claims must be paid in full or reserved in full in Cash pending allowance by the Bankruptcy Court prior to any payment to Holders of Allowed Claims.

**2. Priority Tax Claims**

The Responsible Person shall pay, at the Responsible Person’s discretion, each Holder of an Allowed Priority Tax Claim, if any, against any Debtor in full in Cash within ten (10) days after the later to occur of (i) the Effective Date and (ii) the date such Claim becomes an Allowed Claim. All Allowed Priority Tax Claims against the Debtor which are not due and payable on or before the Effective Date shall be paid in the ordinary course of business in accordance with the terms thereof. The Responsible Person can prepay any Allowed Priority Tax Claim at any time after the Effective Date without any penalty or charge.

Holders of Allowed Priority Tax Claims will not be entitled to receive any payment on account of any penalty arising with respect to or in connection with such Claims. Any Claim for any such penalty, or demand for any such penalty, will be deemed disallowed by confirmation of the Plan.

**C. Classification and Treatment of Claims and Interests Against Debtors**

The following tables (i) designate the classes of Claims against, and Interests in, the Debtors, and (ii) specify which of those classes are (a) Impaired or not Impaired by the Plan, (b) entitled to vote to accept or reject the Plan in accordance with § 1126, or (c) deemed to reject the Plan.

<b>CLASS</b>	<b>STATUS</b>	<b>ENTITLED TO VOTE</b>
Class 1: Priority Non-Tax Claims	Unimpaired	No
Class 2: Prepetition Lender Claims	Impaired	Yes
Class 3: Other Secured Claims	Impaired	Yes
Class 4: General Unsecured Claims	Impaired	Yes
Class 5: Dropbox Claims	Impaired	Yes
Class 6: Interests	Impaired	Yes

**D. Treatment Of Claims And Interests**

The categories of Claims and Interests listed below classify Claims and Interests in or against the Debtor for all purposes, including voting, Confirmation, and Distribution, pursuant to

the Plan and pursuant to §§ 1122 and 1123(a)(1). A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed and has not been paid or otherwise satisfied prior to the Effective Date.

As more specifically set forth in, and without any way limiting, Article IV of the Plan, the Distribution to a Holder provided in this Article IV is in full settlement, release and discharge of each such Holder's Claim or Interest.

1. Treatment of Allowed Class 1 Claims (Priority Claims)

(a) Class 1 consists of all Priority Claims.

(b) Unless otherwise agreed by the holder of an Allowed Priority Non-Tax Claim and the Debtor or Reorganized Debtor, each holder of an Allowed Priority Non-Tax Claim against the Debtor shall receive a Cash distribution equal to 100% of the amount of such Allowed Priority Non-Tax Claim on or as soon as practicable after the later of (i) the Effective Date and (ii) the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim

(c) Class 1 is Unimpaired. Holders of Allowed Class 1 Claims, if any, shall be deemed to have accepted the Plan, and votes to accept or reject the Plan will not be solicited from holders of Class 1 Claims.

2. Treatment of Allowed Class 2 Claims (DIP Claims)

(a) Class 2 consists of all DIP Claims. All DIP Claims are deemed Allowed in their entirety for all purposes under the Plan.

(b) On the Effective Date, the Allowed DIP Claims shall be indefeasibly paid in full in Cash from the proceeds of the Exit Facility.

(c) Upon the indefeasible payment in full of the DIP Claims as set forth above, all Liens and security interests granted to secure such obligations shall be terminated and of no further force or effect.

(d) Class 2 is Impaired. Therefore, Holders of Allowed Class 2 Claims are entitled to vote to accept or reject the Plan.

3. Treatment of Allowed Class 3 Claims (Prepetition Lender Claims)

(a) Class 3 consists of all Prepetition Lender Claims. All Prepetition Lender Claims are deemed Allowed in their entirety for all purposes under the Plan.

(b) On the Effective Date, the Allowed Prepetition Lender Claims shall be indefeasibly paid in full in Cash from the proceeds of the Exit Facility.

(c) Upon the indefeasible payment in full of the Prepetition Lender Claims as set forth above, all Liens and security interests granted to secure such obligations shall be terminated and of no further force or effect.

(d) Class 3 is Impaired. Therefore, Holders of Allowed Class 3 Claims are entitled to vote to accept or reject the Plan.

4. Treatment of Allowed Class 4 Claims (Other Secured Claims)

(a) Class 4 consists of all Other Secured Claims. The Debtor believes there are no Class 3 Claims. To the extent there are Holders of more than one Class 3 Claim, each such Claim shall be deemed to be classified in a separate sub-class of Class 3, and each such sub-class shall be deemed to be a separate Class under the Plan.

(b) At the option of the Debtor or Reorganized Debtor, as applicable, for each Allowed Other Secured Claim, on the Effective Date, either (i) the legal, equitable and contractual rights to which such Claim entitles the holder thereof shall be left unaltered, (ii) the Allowed Other Secured Claim shall be left Unimpaired in the manner described in § 1124(2), (iii) the holder of such Allowed Other Secured Claim shall receive or retain the Collateral securing such Claim, or (iv) the holder of such Allowed Other Secured Claim shall receive Cash on the Effective Date in an amount equal to the value of the Collateral securing the Allowed Other Secured Claim. To the extent the value of the Collateral is less than the amount of such Allowed Other Secured Claim, the deficiency created thereby shall be treated as a General Unsecured Claim under Class 5.

(c) Class 4 is Impaired. Therefore, Holders of Allowed Class 3 Claims, if any, are entitled to vote to accept or reject the Plan.

5. Treatment of Allowed Class 5 Claims (General Unsecured Claims)

(a) Class 4 consists of all General Unsecured Claims.

(b) In full and final satisfaction of Allowed Class 5 Claims, each Holder of an Allowed Class 5 Claim shall be paid in full in Cash in \_\_\_\_\_ (\_\_\_\_) equal monthly installments. The first payment shall be made on the first business day of the first calendar month to commence after the Effective Date, and each subsequent payment shall be made on the first business day of each calendar month thereafter until all Allowed Class 4 Claims are paid in full. Until paid in full under the terms of Section 4.4 of the Plan, interest shall accrue and be payable on the outstanding balance of the Allowed Class 4 Claims at the federal judgment rate.

(c) Class 5 is Impaired. Therefore, Holders of Allowed Class 4 Claims, if any, are entitled to vote to accept or reject the Plan.

6. Treatment of Allowed Class 6 Claims (Dropbox Claims)

(a) Class 6 Claims consists of all Dropbox Claims. The Dropbox Claim shall be an Allowed Claim in the amount of the Fee Award or such other amount, if any,

that is awarded to Dropbox at the conclusion of the Dropbox Lawsuit. As permitted under Bankruptcy Rule 3018(a), the Dropbox Claim shall be estimated, but not Allowed, in the amount of \$2,297,432.09 for the purpose of voting on the Plan and evaluating the feasibility of the Plan.

(b) In full and final satisfaction of Allowed Class 6 Claims, Dropbox shall be paid in full in Cash in \_\_\_\_\_ (\_\_\_\_) equal monthly installments. The first payment shall be made on the first business day of the first calendar month to commence after the Effective Date, and each subsequent payment shall be made on the first business day of each calendar month thereafter until all Allowed Class 6 Claims are paid in full. Until paid in full under the terms of Section 4.5 of the Plan, interest shall accrue and be payable on the outstanding balance of the Allowed Class 4 Claims at the federal judgment rate.

(c) During the pendency of the Dropbox Lawsuit and until the Fee Award has become a Final Order, all payments made under Section 4.6 of the Plan shall be deposited into an escrow account (the “*Dropbox Escrow*”). Until the Fee Award becomes a Final Order (such final determination, the “*Final Fee Award*”), the payments shall be calculated based on the original amount of the Fee Award, which is \$2,297,432.09. When the Fee Award becomes a Final Order, the Dropbox Claim shall be deemed an Allowed Claim in the amount of the Fee Award and a Disallowed Claim to the extent of any portion of the Dropbox Claim that exceeds the amount of the Final Fee Award. As soon as reasonably practicable, but in no event later than ten (10) days after the entry of a Final Fee Award,

(i) funds shall be released from the Dropbox Escrow to Dropbox in an amount not to exceed the Allowed Dropbox Claim;

(ii) the remaining balance, if any, in the Dropbox Escrow shall be remitted to the Reorganized Debtor; and

(iii) any monthly payments remaining to be made under Section 4.6 of the Plan shall be recalculated based on the remaining balance of the Allowed Dropbox Claim after remittance of the Dropbox Escrow funds as provided in Section 4.5(c)(i) of the Plan.

(d) For the avoidance of doubt, if the Final Fee Award is \$0.00, no funds shall be remitted to Dropbox under Section 4.6 of the Plan.

(e) Class 6 is Impaired. Therefore, Holders of Allowed Class 6 Claims are entitled to vote to accept or reject the Plan.

7. Treatment of Allowed Class 7 Interests (Interests)

(a) Class 7 consists of all Interests.

(b) On the Effective Date, all Interests shall revert unaltered in Thru, LLC, as the sole shareholder of the Reorganized Debtor.

(c) Class 7 is Impaired. Therefore, Holders of Allowed Class 7 Claims are entitled to vote to accept or reject the Plan.

## **V. ACCEPTANCE OR REJECTION OF THE PLAN**

### **A. Impaired Classes of Claims Entitled to Vote**

Except as otherwise provided in an order of the Bankruptcy Court pertaining to solicitation of votes on the Plan, Classes 2, 3, 4, 5, 6, and 7 are Impaired under the Plan and, pursuant to § 1126(c), entitled to vote to accept or reject the Plan.

### **B. Classes Deemed to Accept the Plan**

Class 1 is not Impaired under the Plan. Pursuant to § 1126(f), Holders of Claims in Class 1 are therefore conclusively presumed to have accepted the Plan, and the votes of Holders of Claims in Classes 1 will therefore not be solicited.

### **C. Nonconsensual Confirmation**

To the extent necessary, the Debtors intend to request that the Bankruptcy Court confirm the Plan under § 1129(b) as described in Article XII.D. below.

## **VI. MEANS FOR IMPLEMENTATION**

### **A. Reorganized Debtor**

From and after the Effective Date, the Reorganized Debtor will exist as a separate corporation, with all of the powers of such corporate entity under applicable law. Notwithstanding anything herein to the contrary, the Reorganized Debtor may change its corporate status or business form on or after the Effective Date as determined by its board of directors. From and after the Effective Date, the Debtor, as Reorganized Debtor, shall continue to operate its business subject to all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules.

### **B. Funding of the Plan**

All consideration necessary for the payment or tender of Distributions under the Plan and the funding of the Administrative Budget will be derived from (i) Cash on hand on the Effective Date, (ii) net income generated by the Reorganized Debtor from operations, and (iii) Cash Proceeds received from the DIP Lenders or the Prepetition Lenders under the Exit Facility.

To the extent not otherwise provided for herein or ordered by the Court, the Responsible Person shall estimate appropriate reserves of Cash to be set aside in order to pay or reserve for Disputed Claims. Without limitation, these reserves shall include funds for the Professional Fee Claims, Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, Disputed Claims and all amounts due pursuant to 28 U.S.C. §1930.

Notwithstanding any contrary provision contained herein, the Responsible Person shall not be obligated to physically segregate and maintain separate accounts for reserves or for the Distribution Fund. Separate reserves and funds may be merely bookkeeping entries or

accounting methodologies, which may be revised from time to time, to enable the Responsible Person to determine reserves and amounts to be paid to parties in interest.

**C. Exit Facility**

On the Effective Date, the Reorganized Debtor shall enter into the Exit Facility with the Exit Lenders. The Confirmation Order shall specifically approve the Exit Facility (including the transactions contemplated therein) and authorize the Reorganized Debtor to enter into and execute such loan and security documents as are necessary and appropriate to consummate the Exit Facility. The Reorganized Debtor may use the Exit Facility for any purpose permitted therein, including the repayment of the Allowed DIP Claims and the Allowed Prepetition Claims and the funding of other obligations under the Plan.

**D. Trustee Fees**

Notwithstanding the reorganization provided for herein, the Debtor shall remain responsible for the payment of quarterly fees pursuant to 28 U.S.C. §1930 to the Office of the United States Trustee until such time as a particular case is closed pursuant to a Final Decree or other order of the Bankruptcy Court, dismissed or converted to Cash under another chapter of the Bankruptcy Code.

**E. Causes of Action**

On the Effective Date, all Causes of Action, including all Avoidance Actions, shall revert in and be retained by the Reorganized Debtor. Pursuant to § 1123, the Reorganized Debtor shall be authorized to commence and continue all Causes of Action on behalf of the Debtor or its Estate (except for any Cause of Action that may be released pursuant to the Plan). The authorization shall be approved without limitation, notwithstanding any other applicable law that could restrict any such transfer or authorization, all of which shall be determined by the Bankruptcy Court in the Confirmation Order to be void as against public policy.

The Reorganized Debtor shall succeed, on the Effective Date, in all respects to all of the rights, privileges and immunities of the Debtor, including the attorney-client privileges and any other evidentiary privileges of the Debtor.

Nothing in the Plan or the Confirmation Order shall limit, impair, or otherwise restrict the right of the Reorganized Debtor to bring any Cause of Action, except for those actions otherwise released pursuant to the Plan, including the failure of the Plan to identify or describe any such potential Claim or Cause of Action with specificity. No Person may rely on the absence of a specific reference in the Plan or Disclosure Statement to any Cause of Action against them as an indication that the Debtor or Reorganized Debtor will not pursue such Cause of Action. Except as otherwise specifically released pursuant to the Confirmation Order, it is the Reorganized Debtor's intent not to waive any Cause of Action.

Except to the extent a Cause of Action or Avoidance Action against a Person is expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or pursuant to a Bankruptcy Court order, the Reorganized Debtor expressly reserves all Causes of Action for later adjudication. 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 or Avoidance Actions upon, after, or as a consequence of the Confirmation Order. In accordance with § 1123(b)(3), all Causes of Action and Avoidance Actions that a Debtor may hold against a Person shall vest in the Responsible Person pursuant to the terms of the Plan.

**F. Appointment and Term of the Responsible Person**

The initial Responsible Person shall be the Reorganized Debtor. To the extent that the Responsible Person becomes incapacitated or is otherwise unable or unwilling to assume and carry out his duties under the Plan, a Responsible Person shall be selected by the Reorganized Debtor. The Responsible Person will not receive any compensation for its services in that capacity.

**G. Duties of the Responsible Person**

In addition to the duties as set forth elsewhere in the Plan, the Responsible Person shall have the following duties:

(a) to file any and all reports, pleadings and other documents necessary to carry out the provisions of the Plan;

(b) to make any and all Distributions required or permitted to be made under the Plan and establish such accounts as may be necessary or appropriate for the maintenance of the Distribution Fund;

(c) to request the entry of a Final Decree;

(d) to determine reserve amounts for Post-Confirmation Expenses and Disputed Claims; and

(e) to take any and all other actions necessary or appropriate to implement the Plan and the liquidation of the Debtor in accordance with applicable law.

In connection with the execution of his duties under the Plan, the Responsible Person shall be authorized:

(f) to execute such documents and to take such other actions as are necessary to effectuate the Plan and perform his duties as responsible person of and for the Estate;

(g) to retain and pay professionals or other Persons to assist the Responsible Person in the discharge of its duties;

(h) to object to the allowance of, and settle, any Disputed Claim;

(i) to employ such other procedures, not inconsistent with the Plan, necessary for the Responsible Person to perform his duties hereunder.

The Responsible Person shall be deemed the Estates' representative in accordance with the provisions of the Bankruptcy Code, including § 1123, and shall have all powers, authority and responsibilities specified in the Plan, including the powers of a trustee under §§ 108 and 704 and Bankruptcy Rules 1106 and 2004, to the extent not inconsistent with the Plan.

#### **H. Discharge of Debtor's Professionals**

On the Effective Date, the Debtor's Professionals shall be released and discharged from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms; (ii) applications for Professional Fee Claims; (iii) requests for compensation and reimbursement of expenses pursuant to § 503(b) for making a substantial contribution in the Chapter 11 Case; and (iv) any pending motion, or any motion or other action seeking enforcement or implementation of the provisions of the Plan or the Confirmation Order. For the avoidance of doubt, nothing contained herein shall prohibit the Debtor or the Responsible Person from engaging any of the Debtor's Professionals for the purpose of rendering services to the Reorganized Debtor or the Responsible Person, as applicable, on and after the Effective Date, and any such fees and expenses incurred in connection with such post-Effective Date services may be paid by the Debtor or Responsible Person, as applicable, without further order of the Bankruptcy Court.

#### **I. Employee Matters**

Upon the Effective Date, the terms and conditions of employment of all existing management and employees of the Debtor shall remain unchanged. To the extent not earlier assumed in accordance with their terms, all employee programs, including any retirement plans or agreements and health benefits and disability plans are deemed assumed as of the Effective Date in accordance with their terms with no further action required by the Debtor or the Responsible Person, and to the extent any of such employee programs constitute distinct executory contracts with individual employees or otherwise, such contracts are deemed assumed.

#### **J. Corporate Action**

On the Effective Date, the matters under the Plan involving or requiring corporate or limited liability company action of the Debtor, including actions requiring a vote or other approval of the board of directors, partners, members or shareholders, as applicable, and execution of all documentation incident to the Plan, notwithstanding any otherwise applicable non-bankruptcy law or the organizational documents of the Debtor, shall be deemed to have been authorized by virtue of the entry of the Confirmation Order and to have occurred and be in effect from and after the Effective Date without any further action by the Bankruptcy Court or the officers, directors, members or shareholders, as applicable, of the Debtor.

#### **K. Saturday, Sunday or Legal Holiday**

If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day.

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

### **A. Treatment of Remaining Executory Contracts**

On the Effective Date, the Debtor shall assume each Executory Contract identified on the Assumed Contracts Schedule and shall reject each Executory Contract identified on the Rejected Contracts Schedule. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such assumption or rejection, as applicable, in accordance with the provisions of §§ 365 and 1123 as of the Effective Date.

### **B. Assumption and Cure of Executory Contracts**

The Assumed Contracts Schedule, which will be filed as part of the Plan Supplement, shall identify Executory Contracts to be assumed by the Debtor on the Effective Date. The Debtor reserves the right to amend the Assumed Contracts Schedule at any time up to three (3) Business Days before the Confirmation Hearing to delete any Executory Contract listed therein or, with the consent of the affected counterparty, to add any Executory Contract to the Assumed Contracts Schedule. The Debtor will provide notice of any amendment to the Assumed Contracts Schedule to each party to an Executory Contract added or removed.

The Assumed Contracts Schedule shall include a designation of the Cure Amount, if any, proposed by the Debtor to be paid in connection with the assumption and assignment of each Executory Contract listed therein. The Cure Amounts identified in the Assumed Contracts Schedule are the only amounts necessary to be paid to cure any and all outstanding defaults under the Executory Contracts identified therein, and no other defaults exist under said contract or lease. The Debtor believes that any Executory Contract that is listed on the Assumed Contracts Schedule and does not list a corresponding Cure Amount may be assumed by the Debtor without the payment of any monetary cure amount.

On the Effective Date, each Executory Contract that is identified in the Assumed Contracts Schedule shall be deemed assumed in accordance with the provisions and requirements of §§ 365 and 1123, and all defaults, if any, shall be deemed cured by the payment of the Cure Amount, if any, corresponding to such Executory Contract. All Cure Amounts to be paid in connection with the Executory Contracts to be assumed and assigned pursuant to the Plan shall be paid by the Reorganized Debtor not more than ten (10) days after the occurrence of the Effective Date.

Except as provided elsewhere in the Plan, any Person objecting to the proposed assumption or assignment of an Executory Contract, including on the basis of any objection to (i) the amount of the proposed Cure Amount, if any, to be paid in connection with such assumption, (ii) the ability of the Debtor or Reorganized Debtor to provide “adequate assurance of future performance” of such Executory Contract (within the meaning of § 365), or (iii) any other matter pertaining to the assumption of such Executory Contract, shall file an serve such objection on or before the deadline for the filing of objections to Confirmation of the Plan. To the extent any such objection is filed, the hearing on such objection shall be scheduled for the same date as the Confirmation Hearing. Failure to timely file an objection to the proposed assumption of an Executory Contract, including any proposed Cure Amount associated

therewith, shall constitute consent to the assumption of such Executory Contract, including the Cure Amount, if any, payable in connection therewith, and an acknowledgment that such assumption and assignment satisfies all requirements of §§ 365(b), (c) and (f).

If any Person files an objection to the proposed assumption or assignment of an Executory Contract, the Debtor reserves the right to delete such contract or lease from the Assumed Contracts Schedule and declare such contract or lease to be rejected pursuant to Section 7.1 of the Plan.

**C. Effect of Assumption and Assignment**

Each Executory Contract assumed or assumed and assigned pursuant to this Article VII (or pursuant to Bankruptcy Court order) shall remain in full force and effect and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as modified by the provisions of the Plan, or any order of the Bankruptcy Court authorizing and providing for its assumption. To the extent applicable, all Executory Contracts assumed during the Chapter 11 Case (a) shall be deemed modified as needed such that the transactions contemplated by the Plan shall not be a “change of control,” however such term may be defined in the relevant Executory Contract; and (b) shall not constitute a breach of any anti-alienation provision thereof.

The Plan shall not affect any Executory Contract that was assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Confirmation Date.

**D. Rejection Damages Bar Date**

Except to the extent another bar date applies pursuant to an order of the Bankruptcy Court, any Proof of Claim asserting a Claim arising from the rejection of an Executory Contract identified on the Rejected Contracts Schedule must be served on the Reorganized Debtor at the following applicable address:

c/o Bryan Cave LLP  
2200 Ross Avenue, Suite 3300  
Dallas, TX 75201  
(214) 721-8054  
Attn: Michael P. Cooley, Esq.

within thirty (30) days from the entry of the Confirmation Order, or such Claim shall be forever barred and shall not be entitled to a Distribution or be enforceable against the Debtor, its Estate, or any of its successors or assigns. Any Claim arising from the rejection of an Executory Contract shall be treated as a Class 5 General Unsecured Claim. Nothing in the Plan extends or modifies the Bar Date, except as specifically provided herein.

**E. Contracts Entered Into on or After the Petition Date**

On the Effective Date, all contracts, leases, and other agreements entered into by the Debtor on or after the Petition Date, which agreements have not been terminated in accordance with their terms on or before the Confirmation Date, shall revert in, and remain in full force and

effect as against, the Reorganized Debtor and the other parties to such contracts, leases and other agreements.

## **VIII. DISPUTED CLAIMS; DISTRIBUTIONS**

### **A. General Provisions Concerning Distributions**

The Responsible Person shall make all Distributions required to be made to Holders of Allowed Claims under the Plan. At the written request of the Responsible Person, any creditor holding multiple Allowed Claims shall provide the Responsible Person a single address to which any Distributions shall be sent.

In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day.

The Reorganized Debtor and the Responsible Person may, but are not required to, setoff against or recoup from any Claim and the payments to be made pursuant to the Plan in respect of such Allowed Claim, any Claims or Causes of Action of any nature whatsoever that the Reorganized Debtor or the Responsible Person may have against the Claimant, but neither the failure to do so nor the allowance of any Disputed Claim hereunder shall constitute a waiver or release by the Reorganized Debtor or the Responsible Person of any such Claim or Cause of Action against such Claimant.

### **B. Distributions on Account of Disputed Claims**

No Distribution will be made on account of a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. In determining the amount of Distributions to be made under the Plan to the Holders of Allowed Claims, the appropriate Distributions shall be made as if all the Disputed Claims as of such Distribution Date were Allowed Claims in the full amount claimed by the holders thereof, unless otherwise ordered or estimated by the Bankruptcy Court.

### **C. Time and Manner of Distributions**

The Responsible Person shall make all Distributions under the Plan on account of Allowed Claims within ten (10) days after the later to occur of (i) the Effective Date and (ii) the date such Claim becomes an Allowed Claim, except as otherwise ordered by the Bankruptcy Court or as otherwise set forth herein. Amounts withheld may be placed in an interest-bearing account, which interest shall be used by the Responsible Person to fund ongoing expenses and costs relating to such reserves, including taxes in respect of Disputed Claims, if any.

At the option of the Responsible Person, any Cash Distributions under the Plan may be made either in Cash, by check drawn on a domestic bank, by wire transfer. Notwithstanding any other provisions of the Plan to the contrary, no payment of fractional cents will be made under the Plan. Cash will be issued to Holders entitled to receive a Distribution of Cash in whole cents (rounded to the nearest whole cent when and as necessary).

**D. Delivery of Distributions**

Except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be made by the Responsible Person (i) at the addresses set forth on the Proofs of Claim filed by such Holder (or at the last known addresses of such Holder if no motion requesting payment or Proof of Claim is filed or the Debtor or the Responsible Person have been notified in writing of a change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the Responsible Person after the date of any related Proof of Claim, or (iii) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Responsible Person has not received a written notice of a change of address.

**E. Undeliverable Distributions**

If a Distribution to a Holder of a Claim is returned as undeliverable, no further Distributions to such Holder of a Claim shall be made unless and until the Responsible Person is notified of the then-current address of such Holder, at which time (subject to the terms of the penultimate sentence of Section 8.4 of the Plan) all missed Distributions shall be made to such Holder without interest. Amounts in respect of undeliverable Distributions shall be returned to the Responsible Person until such Distributions are Claimed. All funds or other undeliverable Distributions returned to the Responsible Person in respect of any Claim and not Claimed within four (4) months of return shall be forfeited and remain with and vest in the Distribution Fund for Distribution to other Holders of Allowed Claims. Any unclaimed funds held in Distribution Fund and aggregating less than \$10,000 is entered may be donated to a charity selected by the Responsible Person without further order of the Court upon entry of a Final Decree.

**F. Amendments to Claims; Claims Filed After the Confirmation Date**

Except as otherwise provided in the Plan, after the Confirmation Date, a Claim may not be filed or amended without the authorization of the Bankruptcy Court and, even with such Bankruptcy Court authorization, may be amended by the Holder of such Claim solely to decrease, but not to increase, the face amount of such Claim. Except as otherwise provided in the Plan, any new or amended Claim Filed after the Confirmation Date shall be deemed Disallowed in full and expunged without any further action by the Court or any other party.

**H. Procedures for Treating and Resolving Disputed and Contingent Claims**

1. No Distributions Pending Allowance

Except for the Dropbox Claim, no payment or Distribution will be made with respect to any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, determined by a Final Order, and the Disputed Claim has become an Allowed Claim. Any Proof of Claim filed with all of the dollar amounts listed as contingent, unknown or otherwise containing unliquidated amounts shall be deemed to be a Disputed Claim and shall be treated as such for Distribution purposes in accordance with the terms of this paragraph.

2. Claims Estimation

The Debtor and the Responsible Person, as applicable, may request estimation or liquidation of any Disputed Claim that is contingent or unliquidated pursuant to § 502(c).

**I. Setoffs and Recoupment**

The Responsible Person may, pursuant to §§ 502(d), 553, and 558 or applicable non-bankruptcy law, but shall not be required to, setoff against or recoup from any Claim on which payments are to be made pursuant to the Plan, any Claims or Causes of Action of any nature whatsoever that any Debtor or its Estate may have against the Holder of such Claim; *provided, however*, that neither the failure to effect such offset or recoupment nor the allowance of any Claim shall constitute a waiver or release by the Debtor of any setoff or recoupment the Debtor may have against the Holder of such Claim, nor of any other Claim or Cause of Action.

**J. Allowance and Disallowance of Claims Subject to § 502**

Allowance and disallowance of Claims shall be in all respects subject to the provisions of § 502, including subsections (b), (d), (e), (g), (h) and (i) thereof.

**K. Cancellation of Instruments and Agreements**

Except for the Prepetition Facility, upon the occurrence of the Effective Date, except as otherwise provided herein, all promissory notes, shares, certificates, instruments, indentures, stock or agreements evidencing, giving rise to or governing any Claim or Interest shall be deemed canceled and annulled without further act or action under any applicable agreement, law, regulation, order or rule; the obligations of the Debtor under such promissory notes, share certificates, instruments, indentures or agreements shall be discharged and the Holders thereof shall have no rights against the Debtor, the Responsible Person or the Estate; and such promissory notes, share certificates, instruments, indentures or agreements shall evidence no such rights, except the right to receive the Distributions provided for in the Plan.

**L. No Interest on Claims**

Unless otherwise specifically provided for in the Plan, the Confirmation Order or a post-petition agreement in writing between the Debtor and a Holder of a Claim that has been approved by an order of the Bankruptcy Court, post-petition interest shall not accrue or be paid on any Claim, and no Holder of a Claim shall be entitled to receive any Distribution on account of interest accruing on or after the Petition Date, nor shall any interest accrue on and after the Effective Date on account of any Disputed Claim that subsequently becomes Allowed and paid under the terms of the Plan after the Effective Date.

**M. Withholding Taxes**

The Responsible Person shall be entitled to deduct any federal, state or local withholding taxes from any payments under the Plan. As a condition to making any Distribution under the Plan, the Responsible Person may require that the Holder of an Allowed Claim provide such Holder's taxpayer identification number and such other information and certification as the

Responsible Person may deem necessary to comply with applicable tax reporting and withholding laws.

**N. Reports**

From the Effective Date, until a Final Decree is entered, the Responsible Person shall submit quarterly reports to the United States Trustee setting forth all receipts and disbursements as required by the United States Trustee guidelines.

**IX. EFFECT OF CONFIRMATION**

**A. Vesting of Assets**

On the Effective Date, pursuant to §§ 1141(b) and (c), all property of the Estate shall vest in the Reorganized Debtor free and clear of all Claims, Liens, encumbrances, charges and other interests, including any Tax Liens or Claims, except as otherwise expressly provided in the Plan or the Exit Facility. From and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules or the Local Bankruptcy Rules, subject to the terms and conditions of the Plan.

**B. Binding Effect**

On and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against or Interest in any Debtor, including such Holder's respective successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under the Plan, whether or not such Holder has accepted the Plan and whether or not such Holder is entitled to a Distribution under the Plan.

**C. Discharge of Claims and Termination of Interests.**

Except as otherwise provided herein or in the Confirmation Order, the rights afforded in the Plan and the payments and distributions to be made hereunder shall discharge all existing debts and Claims and terminate all Interests of any kind, nature, or description whatsoever against or in the Debtor or any of its assets or properties to the fullest extent permitted by § 1141. Except as provided in the Plan, upon the occurrence of the Effective Date, all existing Claims against and Interests in the Debtor, shall be, and shall be deemed to be, discharged and terminated, and all holders of Claims and Interests shall be precluded and enjoined from asserting against the Debtor, the Reorganized Debtor, the Responsible Person, or their successors or assigns, or any of their assets or properties, any other or further Claim or Interest based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a Proof of Claim or proof of Interest and whether or not the respective facts or legal bases were known or existed prior to the Effective Date.

**D. Release and Discharge of Debtor**

Upon the occurrence of the Effective Date and in consideration of the distributions to be made hereunder, except as otherwise expressly provided herein, each holder (as well as any trustees and agents on behalf of each Holder) of a Claim or Interest and any affiliate of such Holder shall be deemed to have forever waived, released, and discharged the Debtor, to the fullest extent permitted by § 1141, of and from any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such persons shall be forever precluded and enjoined, pursuant to § 524, from prosecuting or asserting any such discharged Claim against or terminated Interest in the Debtor.

**E. Injunction**

Except as otherwise expressly provided in the Plan or in the Confirmation Order and except in connection with the enforcement of the terms of the Plan (including the payment of Distributions hereunder) or any documents provided for or contemplated in the Plan, all entities who have held, hold or may hold Claims against or Interests in the Debtor or the Estate that arose prior to the Effective Date are permanently enjoined from: (a) commencing or continuing in any manner, directly or indirectly, any action or other proceeding of any kind against any Protected Party or any property of any Protected Party with respect to any such Claim or Interest; (b) the enforcement, attachment, collection or recovery by any manner or means, directly or indirectly, of any judgment, award, decree or order against any Protected Party or any property of any Protected Party with respect to any such Claim or Interest; (c) creating, perfecting or enforcing, directly or indirectly, any lien or encumbrance of any kind against any Protected Party or any property of any Protected Party with respect to any such Claim or Interest; (d) effecting, directly or indirectly, any setoff or recoupment of any kind against any obligation due to any Protected Party or any property of any Protected Party with respect to any such Claim or Interest, unless approved by the Bankruptcy Court; and (e) any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan with respect to such Claim or Interest. Nothing contained in Section 9.5 of the Plan shall prohibit the Holder of a Claim or Interest with respect to which a Proof of Claim was timely filed from litigating its right to seek to have such Claim or Interest declared an Allowed Claim or Interest and paid in accordance with the Distribution provisions of the Plan, or enjoin or prohibit the interpretation or enforcement by the Holder of such Claim or Interest of any of the obligations of the Debtor or the Responsible Person under the Plan.

**F. Term of Injunctions or Stays**

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under §§ 105 or 362, the Plan or otherwise, and extant on the Confirmation Date, shall remain in full force and effect until the entry of the Final Decree.

**G. Exculpation**

Neither the Debtor nor any of its present officers, directors, employees, agents, advisors, or affiliates, nor any of its Professionals (collectively, the “*Exculpated Persons*”), shall have or incur any liability to any Entity for any act taken or omission made in good faith in connection

with or related to formulating, negotiating, implementing, confirming or consummating the Plan, the Disclosure Statement or any Plan Document. The Exculpated Persons shall have no liability to the Debtor, any Creditor, Interest holder, any other party in interest in the Chapter 11 Case or any other Entity for actions taken or not taken under the Plan, in connection herewith or with respect thereto, or arising out of their administration of the Plan or the property to be distributed under the Plan, in good faith, including failure to obtain Confirmation or to satisfy any condition or conditions, or refusal to waive any condition or conditions, to the occurrence of the Effective Date, and in all respects such Exculpated Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

Each party to which this section applies shall be deemed to have granted the releases set forth in this section notwithstanding that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such party expressly waives any and all rights that it may have under any statute or common law principle, which would limit the effect of such releases to those Claims or Causes of Action actually known or suspected to exist at the time of execution of the release.

Notwithstanding anything set forth in Section 9.7 or elsewhere in the Plan, nothing contained in Section 9.7 or elsewhere in the Plan shall operate to release or exculpate any Entity from or against its obligations under the Plan.

#### **H. Reservation of Causes of Action/Reservation of Rights**

Unless otherwise set forth herein, nothing contained in the Plan shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action or Avoidance Actions that the Debtor, the Responsible Person or the Estate may have or may choose to assert against any Person.

### **X. CONDITIONS PRECEDENT**

#### **A. Conditions Precedent to Effective Date**

The Plan shall not become effective unless and until each of the following conditions shall have been satisfied in full in accordance with the provisions specified below:

(a) The Confirmation Order shall be in form and substance acceptable to the Debtors and Putnam in their absolute discretion;

(b) The Confirmation Order shall have been entered by the Bankruptcy Court and shall not be subject to any stay of effectiveness; the Confirmation Date shall have occurred and no request for revocation of the Confirmation Order under § 1144 shall have been made, or, if made, shall remain pending;

(c) Each of the Plan Documents, including the loan and security agreements comprising the Exit Facility shall have been executed in accordance with its terms; and

(d) Funding of the Exit Facility shall have occurred or shall occur contemporaneously with the occurrence of the Effective Date.

**B. Revocation, Withdrawal or Non-Consummation of Plan**

If, after the Confirmation Order is entered, each of the conditions precedent to the Effective Date have not been satisfied or duly waived on or by ninety (90) days after the Confirmation Date, then upon motion by the Debtor, the Confirmation Order may be vacated by the Bankruptcy Court; *provided, however*, that notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions precedent to the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting the relief requested in such motion. A condition precedent to the Effective Date may only be waived by a writing executed by the Debtor. If the Confirmation Order is vacated pursuant to Section 10.2 of the Plan, the Plan shall be null and void in all respects, and nothing contained in the Plan shall (i) constitute a waiver or release of any Claims against or Interests in the Debtor, (ii) prejudice in any manner the rights of the Holder of any Claim against or Interest in the Debtor, (iii) prejudice in any manner the rights of the Debtor in the Chapter 11 Case, or (iv) constitute a release, indemnification or exculpation by the Debtor, the Estate or any other party pursuant to the Plan.

**XI. ADMINISTRATIVE PROVISIONS**

**A. Retention of Jurisdiction by the Bankruptcy Court**

The Plan shall not in any way limit the Bankruptcy Court's post-confirmation jurisdiction as provided under the Bankruptcy Code. Pursuant to §§ 105(a) and 1142, the Bankruptcy Court shall retain and have exclusive jurisdiction (to the extent granted by applicable law, including any provisions permitting mandatory or discretionary withdrawal of such jurisdiction) over any matter arising out of or related to the Chapter 11 Case and the Plan, including the following:

- (a) all matters relating to the assumption or rejection or the assumption and assignment of Executory Contracts, or Claims or disputes relating thereto;
- (b) all matters relating to the ownership of a Claim or Interest;
- (c) all matters relating to the Distribution to holders of Allowed Claims and to the determination of Claims;
- (d) any and all matters involving the Responsible Person;
- (e) all matters relating to or arising in connection with the allowance or estimation of Claims filed, both before and after the Confirmation Date, including any objections to the classification of any Claim;
- (f) to enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified and/or vacated;

(g) all matters relating to the construction and implementation of the Plan and the provisions thereof, and to hear and determine all requests for orders in aid of execution, implementation or consummation of the Plan;

(h) all matters relating to disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

(i) to consider any modifications of the Plan, to cure any defect or omission or to reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

(j) all applications for allowance of compensation and reimbursement of Professional Fee Claims;

(k) to hear and determine all motions or requests for the payment of Claims entitled to priority under § 507(a)(2), including compensation and reimbursement of expenses of parties entitled thereto;

(l) all Causes of Action, Avoidance Actions and other suits and adversary proceedings to recover assets for the Reorganized Debtor or Responsible Person, as successor-in-interest to the Debtor, and to adjudicate any and all other Causes of Action, Avoidance Actions, suits, adversary proceedings, motions, applications and contested matters that may be commenced or maintained pursuant to the Chapter 11 Case or the Plan, proceedings to adjudicate the allowance of Disputed Claims, and all controversies and issues arising from or relating to any of the foregoing;

(m) all matters concerning state, local and federal taxes in accordance with §§ 346, 505 and 1146;

(n) any other matter not inconsistent with the Bankruptcy Code;

(o) all disputes involving the existence, nature or scope of the Debtor's discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

(p) to enter the Final Decree closing the Chapter 11 Case; and

(q) to enforce all orders previously entered by the Bankruptcy Court.

## **B. Payment of Statutory Fees**

All fees incurred pursuant to 28 U.S.C. §1930 on or prior to the Effective Date shall be paid on or before the Effective Date consistent with the requirements of 28 U.S.C. § 1930 and Section 3.1(b) of the Plan. All fees incurred pursuant to 28 U.S.C. §1930 after the Effective Date

shall be paid by the Responsible Person from the Distribution Fund consistent with the requirements of 28 U.S.C. § 1930.

**C. Headings**

The headings of the articles, paragraphs and sections of the Plan are inserted for convenience only and shall not affect the interpretation hereof.

**D. Binding Effect of Plan**

Except as otherwise provided in § 1141(d)(3) on and after the Effective Date, the provisions of the Plan shall bind any Holder of a Claim against, or Interest in, the Debtor, the Estate, the Responsible Person and their respective successors or assigns, whether or not the Claim or Interest of such Holders is Impaired under the Plan and whether or not such Holder has accepted the Plan. The rights, benefits and obligations of any entity named or referred to in the Plan, whose actions may be required to effectuate the terms of the Plan, shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor or assign of such entity (including the Responsible Person and any trustee appointed for the Debtor under chapters 7 or 11 of the Bankruptcy Code).

**E. Final Order**

Except as otherwise expressly provided in the Plan, any requirement in the Plan for a Final Order may be waived by the Debtors, with the prior written consent of Putnam, and upon written notice to the Bankruptcy Court, provided that the Effective Date shall occur within 48 hours of the effectiveness of such waiver. No such waiver shall prejudice the right of any party in interest to seek a stay pending appeal of any order that is not a Final Order.

**F. Withholding and Reporting Requirements**

In connection with the Plan and all instruments issued in connection herewith and Distributions hereunder, the Responsible Person shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements.

Notwithstanding the above, each holder of an Allowed Claim or Interest that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution. Any party issuing any instrument or making any Distribution under the Plan has the right, but not the obligation, to not make a Distribution until such Holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

**G. Tax Exemption and Expedited Tax Determination**

Pursuant to § 1146, any and all transfers of real or personal property owned by the Debtors shall be free of any and all state and local stamp taxes and similar taxes pursuant to § 1146(a).

The Debtor and Responsible Person are authorized to request an expedited determination of taxes under § 505(b) for any or all returns filed for, on or behalf of, the Debtors for any or all taxable periods (or portions thereof) ending after the Petition Date through and including the Effective Date.

#### **H. Governing Law**

Except to the extent a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless specifically stated, the rights, duties and obligations arising under the Plan, any agreements, documents and instruments executed in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreements shall control), and corporate and limited liability company governance matters shall be governed by, and construed and enforced in accordance with the laws of the applicable State of formation, without giving effect to conflicts of law principles.

#### **I. Plan Supplement**

The Plan Supplement and the documents contained therein shall be in form, scope and substance satisfactory to the Debtors and Putnam and shall be filed with the Bankruptcy Court no later than ten (10) days before the deadline for voting to accept or reject the Plan, provided that the documents included therein may thereafter be amended and supplemented prior to execution, so long as no such amendment or supplement materially affects the rights of holders of Claims or Interests, and provided further that amendment of the Assumed Contracts Schedule shall be governed by Section 7.2 of the Plan. The Plan Supplement and the documents contained therein are incorporated into and made a part of the Plan as if set forth in full herein.

#### **J. Severability**

After the Effective Date, should the Bankruptcy Court or any other court of competent jurisdiction determine that any provision in the Plan is either illegal on its face or illegal as applied to any Claim, such provisions shall be unenforceable either as to all Holders of Claims or as to the Holder of such Claim as to which the provision is illegal, respectively. Such a determination of unenforceability shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan.

#### **K. Revocation**

The Debtors and Putnam reserve the right to revoke and withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan, then the Plan shall be null and void and, in such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other Person or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtors, or be deemed an admission by the Debtors.

**L. Substantial Consummation**

On the Effective Date, for purposes of § 1127(b) and other applicable sections of the Bankruptcy Code, the Plan shall be deemed to be substantially consummated as such term is defined in § 1101.

**M. Conflict**

In the event and to the extent any provision of the Plan is inconsistent with any provision of the Disclosure Statement, the provisions of the Plan shall control and take precedence. The terms of the Confirmation Order shall govern in the event of any inconsistency with the Plan or the summary of the Plan set forth in the Disclosure Statement.

**N. Amendments and Modifications**

The Debtors and Putnam jointly may agree to alter, amend or modify the Plan under § 1127(a) at any time prior to the Confirmation Hearing. After the Confirmation Date and prior to “substantial consummation” (as such term is defined in § 1101(2) and Section 11.12 of the Plan), any Debtor or the Responsible Person may institute proceedings in the Bankruptcy Court pursuant to § 1127(b) to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan, by the filing of a motion on notice to those parties set forth in Bankruptcy Rule 2002, and the solicitation of all Creditors and other parties-in-interest shall not be required. Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not adversely affect in a material way the treatment of Holders of Claims or Interests.

**O. Notices**

Any notices to the Reorganized Debtor or the Responsible Person required under the Plan or any notices or requests by parties in interest under or in connection with the Plan shall be in writing and served either by (i) certified mail, return receipt requested, postage prepaid, (ii) hand delivery, or (iii) reputable overnight delivery service, all charges prepaid, and shall be deemed to have been given when received by:

Bryan Cave LLP  
2200 Ross Avenue, Suite 3300  
Dallas, TX 75201  
Telephone: (214) 721-8000  
Attn: Michael P. Cooley, Esq.

**P. Filing of Additional Documents**

On or before substantial consummation of the Plan, and without the need for any further order or authority, the Debtors may file with the Bankruptcy Court such agreements or other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**Q. Direction to a Party**

From and after the Effective Date, the Debtors or the Responsible Person may apply to the Bankruptcy Court for the entry of an order directing any Person to execute or deliver or to join in the execution or delivery of any instrument or document reasonably necessary or reasonably appropriate to effect a transfer of properties dealt with by the Plan, and to perform any other act (including the satisfaction of any lien or security interest) that is reasonably necessary or reasonably appropriate for the consummation of the Plan.

**R. Successors and Assigns**

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

**S. Waiver of Subrogation**

Notwithstanding any provision of the Plan to the contrary, all Holders of Claims shall be deemed to have waived any and all subrogation rights which they may have with respect to the Distributions made pursuant to the Plan, and the Confirmation Order shall permanently enjoin, effective as of the Effective Date, all Holders of Claims from enforcing or attempting to enforce any such rights against any Person receiving Distributions under the Plan.

**XII. CONFIRMATION OF THE PLAN**

The following is a brief summary of the confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult their own advisors.

**A. Voting Procedures and Requirements**

The Debtor is providing copies of this Disclosure Statement, Ballots and, where appropriate, summary Ballots, to all known holders of Impaired Claims who are entitled to vote on the Plan.

Pursuant to the provisions of the Bankruptcy Code, only Classes of Claims and Interests in the Debtors that are “Impaired” under the terms and provisions of the Plan and entitled to receive a Distribution thereunder are entitled to vote to accept or reject the Plan. Accordingly, Classes of Claims or Interests that are not Impaired are *not* entitled to vote on the Plan. In addition, Classes of Claims or Interests that are not entitled to a Distribution are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

**If you hold an Impaired Claim against any Debtor, you are entitled to vote on the Plan. If you hold multiple Impaired Claims against one or more Debtors, you are entitled to cast a vote on account of each such Claim. Some Creditors may therefore be entitled to cast more than one Ballot.**

Under the Plan, the Claims in Class 1 are not Impaired and are deemed to have accepted the Plan. The Claims in Classes 2 through 6 are Impaired. Therefore, Classes 2, 3, 4, 5, and 6 are entitled to vote to accept or reject the Plan.

Any holders of Claims that hold Claims in more than one Impaired Class must vote separately for each Class. Such holders will receive a separate Ballot for all their Claims in each Class and should complete and sign each Ballot separately. The following voting procedures (the “**Voting Procedures**”) have been established with respect to the amount and classification of Claims and Interests, and the determination of the validity of Ballots submitted, for voting purposes:

1. With respect to a Claim as to which a proof of Claim has not been timely filed (*i.e.*, was not filed or was filed after the Bar Date set by the Bankruptcy Court for the filing of a Claim of that type), the voting amount of such Claim (subject to any applicable limitations set forth below) shall be equal to the amount listed, if any, in respect of such Claim in the applicable Debtor’s Schedules to the extent such Claim is not listed as contingent, unliquidated, undetermined or disputed. Such Claim shall be placed in the appropriate Class based upon the applicable Debtor’s records and the classification scheme set forth in the Plan.

2. With respect to a proof of Claim which, according to the Clerk of the Bankruptcy Court’s records, was not timely filed (*i.e.*, was filed after the applicable Bar Date) and is not subject to the provisions of the immediately preceding paragraph, such Claim shall be provisionally disallowed for voting purposes.

3. With respect to a liquidated, non-contingent, undisputed Claim as to which a proof of Claim has been timely filed and as to which an objection has not been filed, the amount and classification of such Claim shall be that specified in such proof of Claim, subject to any applicable limitations set forth below.

4. With respect to a proof of Claim which is the subject of an objection filed by a Debtor, the Claim represented by such proof of Claim shall be provisionally disallowed for voting purposes, except to the extent and in the manner that (i) that Debtor indicates in its objection the extent to which such Claim should be allowed; or (ii) the Bankruptcy Court otherwise orders.

5. A timely filed proof of Claim that is designated as wholly unliquidated or contingent shall be accorded one vote and assigned a value of one dollar for purposes of § 1126(c), unless the Claim is disputed as set forth in the immediately preceding paragraph.

6. With respect to a Claim that has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, the amount and classification of such Claim shall be that set by the Bankruptcy Court.

7. With respect to a Claim any portion of which is unliquidated, contingent or disputed, the holder of the Claim shall be entitled to vote that portion of the Claim that is liquidated, non-contingent and undisputed, subject to any limitations set forth herein and unless otherwise ordered by the Bankruptcy Court.

8. Holders of Claims shall not be entitled to vote Claims to the extent such Claims duplicate or have been superseded by other Claims of such holders of Claims.

9. Each Claim shall be entitled to vote only once.

10. Whenever a holder of a Claim submits more than one Ballot voting the same Claim or Interest prior to the deadline for submission of Ballots, the first of such Ballots filed (and only such Ballot) shall be counted in accordance with the Voting Procedures unless either (i) the applicable Debtor consents to the filing and counting of a superseding Ballot, or (ii) the Bankruptcy Court, after notice and a hearing, orders otherwise.

11. The authority of the signatory of each Ballot to complete and execute such Ballot shall be presumed.

12. A holder of a Claim must vote all of its Claim within a particular Class under the Plan either to accept or reject the Plan and may not split its vote. Accordingly, a Ballot (or multiple Ballots with respect to separate Claims within a single Class) that partially rejects and partially accepts the Plan or that indicates both a vote for and against the Plan will not be counted.

13. Any Ballot which is executed and returned, but does not indicate an acceptance or rejection of the applicable Plan, shall be deemed to be an acceptance of the Plan.

14. Any Ballot that is not signed will not be counted.

15. For the purpose of voting on the Plan, the Debtors will be deemed to be in constructive receipt of any Ballot timely delivered to any address designated for the receipt of Ballots cast in connection with the Plan.

16. Any Ballot received by the Debtors after the end of the voting period shall not be accepted or used by the Debtors in connection with the Debtor's request for Confirmation of the Plan unless the Debtors, in their sole discretion, consent to the counting of such Ballot or the Bankruptcy Court orders such Ballot to be counted.

17. All Ballots must be cast using the Ballots distributed to the holders of Claims. Votes cast in any manner other than by using such Ballots will not be counted.

**IN ORDER TO BE COUNTED, EXCEPT TO THE EXTENT THE DEBTORS SO DETERMINE OR AS PERMITTED BY THE BANKRUPTCY COURT PURSUANT TO BANKRUPTCY RULE 3018, BALLOTS MUST BE SIGNED AND RETURNED SO THAT THEY ARE RECEIVED NO LATER THAN 5:00 P.M. CENTRAL TIME, ON \_\_\_\_\_, 2017 AT THE FOLLOWING ADDRESS:**

Bryan Cave LLP  
2200 Ross Avenue, Suite 3300  
Dallas, TX 75201  
Attn: Michael P. Cooley, Esq.

As mentioned above, if your Ballot is not signed and returned as described, it will not be counted. If your Ballot is damaged or lost, or if you do not receive a Ballot, you may request a replacement by addressing a written request to counsel for the Debtors at the foregoing address. Please follow the directions contained on the Ballot carefully.

The process of soliciting acceptance of the Plan must be fair and open without outside influence in the form of representations, inducements or duress of any kind. To the extent that you believe solicitation of your vote from any party is being sought outside of the judicially-approved and statutorily-defined disclosure requirements and Voting Procedures, please contact counsel for the Debtors.

## **B. Acceptance**

Acceptance of the Plan requires that each Impaired Class of Claims or Interests (as classified therein) accepts the Plan, with certain exceptions hereinafter discussed below. Thus, acceptance of the Plan requires acceptance by each of the Impaired Classes.

Classes of Claims and Interests that are not Impaired under the Plan are deemed to have accepted the Plan. Acceptances of the Plan are being solicited only from those persons who hold Claims or Interests of Impaired Classes.

The Bankruptcy Code defines acceptance of a Plan by a Class of Claims as acceptance by the holders of at least two-thirds (2/3) in dollar amount and a majority in number of Claims of that class, but for that purpose, only those Claims, the holders of which actually vote to accept or reject a Plan, are counted.

## **C. Confirmation of the Plan**

In order to confirm the Plan, § 1129 requires the Bankruptcy Court to make a series of determinations concerning the Plan, including, without limitation: (a) that the Plan has classified Claims and Interests in a permissible manner; (b) that the contents of the Plan comply with the technical requirements of the Bankruptcy Code; (c) that the Debtor has proposed the Plan in good faith; and (d) that the Debtor has made disclosures concerning the Plan which are adequate and include information concerning all payments made or promised in connection with the Plan and the Chapter 11 Case. The Debtor believes that all of these conditions have been or will be met.

The Bankruptcy Code requires that, unless the “cramdown” provisions of the Bankruptcy Code (as discussed below) are utilized, as a condition precedent to confirmation, the Plan be accepted by the requisite votes of each Class of Claims and Interests voting as separate Classes. Therefore, the Bankruptcy Court must find, in order to confirm the Plan, that the Plan has been duly accepted. In addition, the Bankruptcy Court must find that the Plan is feasible and that the Plan is in the “best interests” of all holders of Claims and Interests. Thus, even if holders of Claims of the Debtor was to accept the Plan by the requisite number of votes, the Bankruptcy Court would be required to make independent findings respecting the Plan’s feasibility and whether the Plan is in the best interests of holders of Claims and Interests before it can confirm the Plan.

## 1. The Best Interests Test

Whether or not the Plan is accepted by each Impaired Class of Claims entitled to vote on the Plan, in order to confirm the Plan the Bankruptcy Court must, pursuant to § 1129(a)(7), independently determine that the Plan is in the best interests of each holder of an Impaired Claim or Interest that has not voted to accept the Plan. This requirement is satisfied if the Plan provides each non-accepting holder of a Claim or Interest in such Impaired Class a recovery on account of such holder's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the Distribution each such holder would receive in a liquidation of the Debtor under Chapter 7 of the Bankruptcy Code.

To determine the value that holders of Impaired Claims and Interests would receive if the Debtor was liquidated under Chapter 7, the Bankruptcy Court must determine the aggregate dollar amount that would be generated from the liquidation of the Debtor's assets if the Debtor's Chapter 11 Case was converted to a Chapter 7 liquidation case and the Debtor's assets were liquidated by a Chapter 7 trustee (the "*Liquidation Value*"). The Liquidation Value would consist of the net proceeds from the disposition of the Debtor's assets, augmented by Cash held by the Debtors and reduced by certain increased costs and Claims that arise in a Chapter 7 liquidation case that do not arise in a Chapter 11 reorganization case. In addition, the dividend to holders of General Unsecured Claims in a Chapter 7 proceeding would be materially affected by the outcome of any litigation instituted by a Chapter 7 trustee. For further information on the Debtor's liquidation analysis, see Appendix 1 hereto. Based on the Liquidation Values discussed more fully in Appendix 1 hereto, the Debtor believes that the Plan provides substantially greater recoveries to Creditors than they would receive in a Chapter 7 liquidation and, therefore, satisfies § 1129(a)(7).

## 2. Feasibility

Even if the Plan is accepted by each Class of Claims voting on the Plan, and even if the Bankruptcy Court determines that the Plan satisfies the "best interests" test, the Bankruptcy Code requires that, in order for the Plan to be confirmed by the Bankruptcy Court, it must be demonstrated that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor. For purposes of determining whether the Plan meets this requirement, the Debtor has analyzed its ability to meet its obligations under the Plan. Based on the funds proposed to be available for distribution under the Plan, the Debtor believes that the Debtors will be able to make all payments required to be made pursuant to the Plan.

## D. Non-Acceptance and Cramdown

Pursuant to § 1129(b), the Bankruptcy Court may confirm a Plan despite the non-acceptance of the Plan by an Impaired Class. This procedure is commonly referred to as a "cramdown". Section 1129(b) provides that upon request of the proponent of the Plan, the Bankruptcy Court shall confirm the Plan despite the lack of acceptance by an Impaired Class or Classes if the Bankruptcy Court finds that (a) the Plan does not discriminate unfairly with respect to each non-accepting Impaired Class, (b) the Plan is "fair and equitable" with respect to each non-accepting Impaired Class, (c) at least one Impaired Class has accepted the Plan (without

counting acceptances by insiders) and (d) the Plan satisfies the requirements set forth in § 1129(a) other than § 1129(a)(8). In general, § 1129(b) permits Confirmation notwithstanding non-acceptance by an Impaired Class if that Class and all more junior Classes are treated in accordance with the “absolute priority” rule, which requires that the dissenting Class be paid in full before a junior Class may receive anything under a Plan.

1. The Plan Is Fair and Equitable

The Bankruptcy Code establishes different “fair and equitable” tests for holders of Secured Claims, Unsecured Claims and Interests. As to the dissenting Class, the test sets different standards, depending on the type of Claims or Interests in such Class.

(a) *Secured Claims*

With respect to a Class of Secured Claims that does not accept a Plan, the Debtors must demonstrate to the Bankruptcy Court that either (i) the holders of such Secured Claims will retain the liens securing such Claims and will receive on account of such Claim deferred Cash payments totaling at least the Allowed amount of such Claim, of a value, as of the Effective Date, of at least the value of such holder’s interest in such property, or (ii) the holders of such Claims will realize the indubitable equivalent of such Claims under the Plan.

(b) *Unsecured Claims*

With respect to a Class of Unsecured Claims that does not accept the Plan, the Debtors must demonstrate to the Bankruptcy Court that either (i) each holder of an Unsecured Claim of the dissenting Class receives or retains under the Plan property of a value equal to the Allowed amount of its Unsecured Claim or (ii) the holders of Claims or Interests that are junior to the Claims of the holders of such Unsecured Claims will not receive or retain any property under the Plan.

(c) *Interests*

With respect to a Class of Interests that does not accept the Plan, the Debtors must demonstrate to the Bankruptcy Court that (i) each holder of an Interest of the dissenting Class receives or retains on account of such Interest property of a value equal to the greatest of the Allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled or the value of such Interest or (ii) the holders of any Interest that is junior to the Interests of such Class will not receive or retain any property under the Plan. The Debtor believes the Plan is fair and equitable with respect to each Class.

2. No Unfair Discrimination

A Chapter 11 Plan “does not discriminate unfairly” with respect to a nonaccepting Class if the value of the Cash and/or securities to be distributed to the nonaccepting Class is equal or otherwise fair when compared to the value of Distributions to other Classes whose legal rights are the same as those of the nonaccepting Class. Since all similarly situated holders of Claims or Interests are classified together and all Claims or Interests in a given Class are treated identically, the Debtor believes the Plan does not unfairly discriminate against any Class.

## **E. Confirmation Hearing**

Section 1128(a) requires the Bankruptcy Court, after notice, to hold a confirmation hearing (the “*Confirmation Hearing*”). Section 1128(b) provides that any party in interest may object to Confirmation of the Plan. Notice of the Confirmation Hearing will be provided to all holders of Claims and Interests and other parties in interest (the “*Confirmation Notice*”). 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 adjournment thereof. Objections to Confirmation of a Plan must be made in writing, specifying in detail the name and address of the person or Entity objecting, the grounds for the objection, and the nature and amount of the Claim or Interest held by the objector. Objections must be filed with the Bankruptcy Court, together with proof of service, and served upon the parties so designated in the Confirmation Notice, on or before the time and date designated in the Confirmation Notice as being the last date for serving and filing objections to Confirmation of a Plan. Objections to Confirmation of a Plan are governed by Bankruptcy Rule 9014 and the local rules of the Bankruptcy Court.

## **XII. CERTAIN FACTORS TO BE CONSIDERED PRIOR TO VOTING**

### **A. Certain Bankruptcy Considerations**

1. Undue Delay in Confirmation May Significantly Disrupt the Operations of the Debtor.

The impact that a continued prolonging of the Chapter 11 Case may have on operations of the Debtor cannot be accurately predicted or quantified. Since the filing of the Chapter 11 Case, the Debtor has suffered certain disruptions in operations.

2. The Continuation of the Chapter 11 Case, Particularly if the Plan is Not Approved or Confirmed in the Time Frame Currently Contemplated, Could Further Adversely Affect the Debtor’s Operations and Relationships With the Debtor’s Customers, Vendors, and Employees.

If confirmation and consummation do not occur expeditiously, the Chapter 11 Case could result in, among other things, increased costs, professional fees, and similar expenses. Prolonged Chapter 11 Case may also make it more difficult to retain and attract management and other key personnel, and would require senior management to spend a significant amount of time and effort dealing with the Debtor’s financial reorganization instead of focusing on the operation of the Debtor’s businesses.

3. The Debtor May Not be Able to Obtain Confirmation or Consummation

The Debtor cannot ensure that it will receive the requisite acceptances to confirm the Plan. Even if the Debtor receives the requisite acceptances, the Debtor cannot ensure that the Bankruptcy Court will confirm the Plan. A non-accepting creditor or Interest holder might challenge the adequacy of the Disclosure Statement or the solicitation procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were

appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met. As previously discussed, § 1129 sets forth the requirements for confirmation of a plan of reorganization and requires, among other things: a finding by a bankruptcy court that the plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting classes; confirmation is not likely to be followed by a liquidation or a need for further financial reorganization; and the value of distributions to non-accepting holders of Claims and interests within a particular class under the plan will not be less than the value of distributions such holders would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. While there can be no assurance that these requirements will be met, the Debtor believes that the Plan complies with § 1129.

4. Confirmation and Consummation are also Subject to Certain Conditions Described in Section XII.

If the Plan is not confirmed, it is unclear what Distributions holders of Allowed Claims or Interests ultimately would receive. If a feasible plan is not confirmed, it is possible that the Debtor would have to liquidate its assets, in which case, as set forth in the liquidation analysis, it is likely that holders of Claims and Interests would receive substantially less favorable treatment than they would receive under the Plan.

5. Parties in Interest May Object to the Debtor’s Classification of Claims.

Section 1122 provides that a plan of reorganization may place a class or an interest in a particular class only if such Claim or interest is substantially similar to the other Claims or interests in such class. The Debtor believes that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there is no assurance that the Bankruptcy Court will necessarily hold that the Claims classification scheme complies with the Bankruptcy Code.

6. The Debtor May Object to the Amount, or the Secured or Priority Status, of a Claim and Procedures for Contingent and Unliquidated Claims.

The Debtor reserves the right to object to the amount, or the secured or priority status, of any Claim or Interest. The estimates set forth in the Disclosure Statement cannot be relied on by any creditor or equity holder whose Claim or Interest is subject to an objection. Any such holder of a Claim or Interest may not receive its specified share of the estimated distributions described in the Disclosure Statement. Moreover, notwithstanding any language in any holder’s proof of Claim or otherwise, the holder of a contingent or unliquidated Claim shall not be entitled to receive or recover any amount in excess of the amount stated in the holder’s proof of Claim, if any, as of the Distribution Record Date, or if the proof of Claim provides no monetary value of such holders’ Claim on the Distribution Record Date, then the amount the Debtors elect to withhold on account of such Claim.

**B. Business Risks**

Although the Debtor believes that the Chapter 11 Case, commenced in order to implement the orderly reorganization of the Debtor will not be materially disruptive to its business operations, the Debtor cannot be certain that this will be the case. The Plan is designed

to minimize the length of the bankruptcy proceeding; however, it is impossible to predict with certainty the amount of time that the Debtor may spend in bankruptcy or to assure parties in interest that the Plan will be confirmed.

Even if the Plan is confirmed on a timely basis, for the duration of the Chapter 11 Case, the Debtor's ability to execute its business strategy will be subject to the risks and uncertainties associated with bankruptcy. These risks include:

- the Debtor's ability to obtain approval of the Bankruptcy Court with respect to motions filed in the Chapter 11 Case from time to time;
- the Debtor's ability to maintain contracts that are critical to its operations; and
- the Debtor's ability to obtain Creditor, Interest Holder and Bankruptcy Court approval for, and then to consummate, the Plan and emerge from bankruptcy.

The Debtor will also be subject to risks and uncertainties with respect to the actions and decisions of the Creditors and other third parties who have interests in the Chapter 11 Case that may be inconsistent with the Debtor's restructuring.

These risks and uncertainties could affect the Debtor's business in various ways. For example, negative events or publicity associated with the Chapter 11 Case could adversely affect the Debtor's operations and financial condition. In addition, pursuant to the Bankruptcy Code, the Debtor need approval of the Bankruptcy Court for transactions outside the ordinary course of business, which may limit their ability to respond timely to certain events or take advantage of certain opportunities. Because of the risks and uncertainties associated with the Chapter 11 Case, the Debtor cannot predict or quantify the ultimate impact that events occurring during the reorganization process will have on their business, financial condition and results of operations.

### **XIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

The following discussion summarizes certain federal income tax consequences of the Plan to the Debtors and holders of Claims and Interests that are individual citizens or residents of the United States or corporations that are created or organized in or under the laws of the United States or any political subdivision thereof. The analysis contained herein is based upon the Internal Revenue Code of 1986, as amended (the "*Tax Code*"), the Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rulings and pronouncements of the Internal Revenue Service ("*IRS*") as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated hereafter could alter or modify the analysis and conclusions set forth below. Any such changes or interpretations may be retroactive and could affect significantly the federal income tax consequences discussed below. This summary does not address the federal income tax consequences to any holders of Claims or Interests that will either be satisfied in full under the Plan or will receive no recovery under the Plan. Finally, this summary does not address foreign, state or local tax law, or any estate or gift tax consequences of the Plan, nor does it purport to address the federal income tax consequences of the Plan to special classes of taxpayers (such as taxpayers who are not United States domestic corporations or citizens or residents of the United States, S corporations, banks, mutual funds, insurance companies, financial institutions,

regulated investment companies, broker-dealers, small business investment companies, persons that hold Claims or Interests as part of a straddle or conversion transaction and tax-exempt organizations).

Due to the complexity of the transactions described herein and in the Plan, the lack of applicable legal precedent and the possibility of changes in law, differences in the nature of the Claims, differences in the Claimants' methods of accounting (including Claimants within the same class) and the potential for disputes as to legal and factual matters, the tax consequences described herein are subject to significant uncertainties. No rulings or determinations by the IRS have been obtained or sought by the Debtors with respect to the Plan and no opinion of counsel has been obtained with respect to the tax aspects of the Plan.

**THE TAX CONSEQUENCES TO HOLDERS OF CLAIMS AND INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE APPLICABLE TAX LAW. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE ANY OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FOREIGN, FEDERAL, STATE OR LOCAL TAX CONSEQUENCES OF THE PLAN.**

**A. Federal Income Tax Consequences to Creditors**

The federal income tax consequences of the Plan to a Creditor will depend upon several factors, including but not limited to: (i) whether the Creditor's Claim (or portion thereof) constitutes a Claim for principal or interest; (ii) the type of consideration received by the Creditor in exchange for the Claim; (iii) whether the Creditor is a resident of the United States for tax purposes (or falls into any of the special classes of taxpayers excluded from this discussion as noted above); (iv) whether the Creditor has taken a bad debt deduction or worthless security deduction with respect to his Claim; and (v) whether the Creditor receives Distributions under the Plan in more than one taxable year. **CREDITORS ARE STRONGLY ADVISED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT OF THEIR RESPECTIVE CLAIMS UNDER THE PLAN.**

**B. Federal Income Tax Consequences to Interest Holders**

**INTEREST HOLDERS ARE STRONGLY ADVISED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT OF THEIR INTERESTS UNDER THE PLAN.**

**C. Federal Income Tax Consequences to Debtor**

Generally, a taxpayer recognizes cancellation of indebtedness ("*COD*") income upon satisfaction of its outstanding indebtedness for less than its adjusted issue price. The amount of COD income is, in general, the excess of (i) the adjusted issue price of the indebtedness satisfied,

over (ii) the issue price of any new indebtedness issued by the taxpayer, the amount of Cash and the fair market value of any other consideration (including stock of the taxpayer) given in exchange for the indebtedness satisfied.

However, COD income is not included in gross income to a Debtor if the discharge occurs in a Title 11 case or the discharge occurs when the Debtor is insolvent (except with respect to certain discharged intercompany debt that is treated as both income and an offsetting loss to the group). Rather the Debtor generally must, after determining its tax for the taxable year of discharge, reduce its net operating losses (“*NOL(s)*”) and any capital loss carryovers first and then, as of the first day of the next taxable year, reduce the tax basis of its assets by the amount of COD income excluded from gross income by this exception.

#### **D. Withholding and Reporting**

The Debtor will withhold all amounts required by law to be withheld from payments to Claimants and holders of Interests. In addition, such holders may be required to provide certain tax information to the Debtor as a condition of receiving Distributions under the Plan.

#### **E. Importance of Obtaining Professional Tax Assistance**

The foregoing is intended to be a summary only and not a substitute for consultation with a tax professional. The federal, state, local and foreign tax consequences of the Plan are complex and, in some respects, uncertain. Such consequences may also vary based upon the individual circumstances of each holder of a Claim or Interest. Accordingly, each holder of a Claim or Interest is strongly urged to consult with its own tax advisor regarding the federal, state, local and foreign tax consequences of the Plan.

**THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF CERTAIN OF THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.**

**THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN MANY RESPECTS, UNCERTAIN. THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND, AS SUCH, DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR CREDITOR OR HOLDER OF INTERESTS IN THE DEBTORS. ALL CREDITORS AND HOLDERS OF INTERESTS IN THE DEBTOR IS STRONGLY URGED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES OF THE PLAN THAT ARE RELEVANT TO THEIR PARTICULAR CIRCUMSTANCES.**

#### XIV. MISCELLANEOUS PROVISIONS

##### A. Additional Documents

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors and all holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

##### B. Payment of Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930(a), as determined by the Bankruptcy Court at a hearing pursuant to § 1128, shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Case are converted, dismissed, or closed, whichever occurs first.

##### C. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

##### D. Successors and Assigns

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

#### XV. RECOMMENDATION AND CONCLUSION

The Debtor recommends the Plan because it provides for greater distributions to the holders of Claims and Interests than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than confirmation could result in extensive delays and increased administrative expenses resulting in smaller distributions to the holders of Claims and Interests. **Accordingly, the Debtor recommends that Holders of Claims and Interests entitled to vote on the Plan support confirmation and vote to accept the Plan.**

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Dated: April 6, 2017  
Dallas, Texas

Respectfully submitted,

THRU, INC.

By:   
Name: Lee Harrison  
Title: CEO

**FILED BY:**

**BRYAN CAVE LLP**

*/s/ Michael P. Cooley*

Keith M. Aurzada (TX Bar No. 24009880)  
Michael P. Cooley (TX Bar No. 24034388)  
2200 Ross Avenue, Suite 3300  
Dallas, Texas 75201  
(214) 721-8000 (Telephone)  
(214) 721-8100 (Facsimile)  
keith.aurzada@bryancave.com  
michael.cooley@bryancave.com

***Proposed Attorneys for Thru, Inc.***