

**THIS PROPOSED COMBINED DISCLOSURE STATEMENT AND PLAN HAS NOT BEEN APPROVED UNDER § 1125(b) OF THE BANKRUPTCY CODE BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION FOR USE IN CONNECTION WITH THE SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN OF LIQUIDATION DESCRIBED HEREIN. ACCORDINGLY, THE FILING AND DISSEMINATION OF THIS PROPOSED COMBINED DISCLOSURE STATEMENT AND PLAN ARE NOT INTENDED AND SHOULD NOT IN ANY WAY BE CONSTRUED AS A SOLICITATION OF VOTES ON THE PLAN, NOR SHOULD THE INFORMATION CONTAINED HEREIN BE RELIED UPON FOR ANY PURPOSE BEFORE A DETERMINATION BY THE BANKRUPTCY COURT THAT THE PROPOSED DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION.**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE: §  
§  
US DATAWORKS, INC., § CASE NO. 17-32765  
§  
DEBTOR. § (CHAPTER 11)**

**US DATAWORK'S COMBINED DISCLOSURE STATEMENT AND PLAN OF  
LIQUIDATION DATED OCTOBER 2, 2017**

**ARTICLE I – INTRODUCTION**

**A. *General Information Concerning the Combined DSP.***

**The Debtor submits this Combined Disclosure Statement and Plan of Liquidation under Section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 to all of the Debtor's known Creditors. The purpose of this combined Disclosure Statement and Plan of Liquidation is to disclose adequate information to enable Creditors who are entitled to vote to arrive at a reasonably informed decision in exercising their rights to vote on the Plan of Liquidation proposed by the Debtor (collectively the "Combined DSP"). All section references in this Combined DSP are to the Bankruptcy Code, unless otherwise indicated.**

**The Debtor has promulgated its Combined DSP consistent with the provisions of the Bankruptcy Code. The purpose of the Combined DSP is to provide the maximum recovery to each Class of Claims and Equity Interest considering the assets and anticipated funds available for distribution to Creditors and the Equity Interest Holder(s). The Debtor**

believes that the Combined DSP permits the maximum recovery for all Classes of Claims and Equity Interests.

This Introduction is not intended to replace a careful review and analysis of the Combined DSP, including the specific treatment of Claims and Equity Interest under the Combined DSP. It is submitted as an aid and supplement to your review of the Combined DSP to explain the terms of the Combined DSP. Every effort has been made to fully explain various aspects of the Combined DSP as they affect Creditors and Equity Interest Holders. If any questions arise, the Debtor urges you to contact counsel for the Debtor and they will attempt to resolve your questions. You may wish to consult with your own counsel.

*B. Disclaimer*

**NO SOLICITATION OF VOTES HAS BEEN OR MAY BE MADE EXCEPT PURSUANT TO THIS COMBINED DSP AND § 1125 OF THE BANKRUPTCY CODE, AND NO PERSON HAS BEEN AUTHORIZED TO USE ANY INFORMATION CONCERNING THE DEBTOR TO SOLICIT ACCEPTANCES OR REJECTIONS OF THE COMBINED DSP OTHER THAN THE INFORMATION CONTAINED IN THIS COMBINED DSP. CREDITORS AND EQUITY INTEREST HOLDERS SHOULD NOT RELY ON ANY INFORMATION RELATING TO THE DEBTOR OTHER THAN THAT CONTAINED IN THIS COMBINED DSP AND THE EXHIBITS ATTACHED.**

**EXCEPT AS SET FORTH IN THIS COMBINED DSP AND THE ATTACHED EXHIBITS, NO REPRESENTATION CONCERNING THE DEBTOR, THEIR ASSETS, PAST OR FUTURE OPERATIONS, OR THE COMBINED DSP IS AUTHORIZED, NOR ARE ANY SUCH REPRESENTATIONS TO BE RELIED UPON IN ARRIVING AT A DECISION WITH RESPECT TO THE COMBINED DSP. ANY REPRESENTATIONS MADE TO SECURE ACCEPTANCE OR REJECTION OF THE COMBINED DSP OTHER THAN AS CONTAINED IN THIS COMBINED DSP SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR, WAYNE KITCHENS, HUGHES WATTERS ASKANASE, L.L.P., TOTAL PLAZA, 1201 LOUISIANA, 28<sup>TH</sup> FLOOR, HOUSTON, TEXAS 77002; (713) 759-0818 (PHONE).**

**UNLESS ANOTHER TIME IS SPECIFIED, THE STATEMENTS CONTAINED IN THIS COMBINED DSP ARE MADE AS OF THE DATE HEREOF.**

**WHILE THE INFORMATION PROVIDED HEREIN IS BELIEVED RELIABLE, THE DEBTOR HAS NOT UNDERTAKEN TO VERIFY OR INVESTIGATE SUCH INFORMATION, AND MAKE NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION.**

**DISTRIBUTION OF THIS COMBINED DSP SHOULD NOT BE CONSTRUED AS ANY REPRESENTATION OR WARRANTY AT ALL, EITHER EXPRESSED OR IMPLIED, BY THE DEBTOR, OR THEIR RESPECTIVE PROFESSIONAL CONSULTANTS**

**THAT THE COMBINED DSP IS FREE FROM RISK, THAT THE ACCEPTANCE OF THE COMBINED DSP WILL RESULT IN A RISK-FREE RESTRUCTURING OF THE DEBTOR' OBLIGATIONS OR THAT THE OBLIGATIONS OF THE DEBTOR AS RESTRUCTURED BY THE COMBINED DSP WILL BE FULLY PERFORMED IN THE FUTURE WITHOUT RISK OF FURTHER DEFAULT.**

**THE APPROVAL BY THE BANKRUPTCY COURT OF THIS COMBINED DSP DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE COMBINED DSP OR A GUARANTEE OF THE ACCURACY OR THE COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**THIS COMBINED DSP ATTACHED SHOULD BE READ IN ITS ENTIRETY BEFORE VOTING ON THE COMBINED DSP. FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND EQUITY INTEREST, THE TERMS OF THE COMBINED DSP ARE SUMMARIZED HEREIN, BUT ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE COMBINED DSP, WHICH CONTROLS IN CASE OF ANY INCONSISTENCY.**

*C. Answers to Commonly Asked Questions.*

**As part of the Debtor' efforts to inform Creditors regarding the Combined DSP and the plan confirmation process, the following summary provides answers to questions, which parties who receive a disclosure statement often ask.**

**THE FOLLOWING SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE COMBINED DSP, WHICH CONTROLS IN CASE OF ANY INCONSISTENCY.**

**1. Who is the Debtor?**

The Debtor is engaged primarily in the business of developing, marketing and supporting payment processing software for on-premise and cloud computing customers.

The Debtor is a Nevada C Corporation.

**2. What is a Chapter 11 bankruptcy?**

**Chapter 11 is the principal Reorganization Liquidation chapter of the Bankruptcy Code that allows financially distressed businesses and individuals to reorganize or liquidate their debts. The commencement of a Chapter 11 case creates an estate containing all the legal and equitable interests of the debtor in property as of the date the petition is filed. Sections 1101, 1107 and 1108 of the Bankruptcy Code provide that a debtor may continue to operate the debtor's business as a debtor-in-possession. When a Chapter 11 bankruptcy case is filed, creditors are prohibited from attempting to collect debts or enforce liens**

against the debtor or its assets without first obtaining approval from the Bankruptcy Court.

3. If the Combined DSP governs how my claim is treated, what is the disclosure statement portion?

The Bankruptcy Code requires that a debtor solicit acceptances and rejections of a proposed plan from creditors and interest holders whose claims and interests are impaired before the Bankruptcy Court can confirm the plan. Before a debtor may solicit acceptances of a plan, however, the Bankruptcy Court must approve a disclosure statement and determine that the disclosure statement contains adequate information to allow creditors and shareholders to make an informed judgment about the plan. The disclosure statement and the plan are formally distributed after the Bankruptcy Court approves the disclosure statement. At that time, creditors and interest holders also receive a voting ballot. Inasmuch as Debtor is proposing a relatively simple plan of liquidation, the Disclosure Statement and Plan have been combined into one document.

4. Has this Combined DSP been approved by the Bankruptcy Court?

Yes. On [REDACTED], the Bankruptcy Court approved this Combined DSP as containing adequate information. "Adequate information" means information of a kind, and in sufficient detail, as far as is practicable considering the nature and history of the Debtor and the condition of its books and records to enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant classes to make an informed judgment whether to vote to accept or reject the Combined DSP. The Bankruptcy Court's approval of this Combined DSP does not constitute an endorsement of any of the representations contained in the Combined DSP.

5. How do I determine how my Claim or Interest is classified?

To determine the classification of your Claim, you must first determine the nature of that claim or interest. Under the Combined DSP, claims and interests are classified into a series of Classes. The pertinent sections of the Disclosure Statement and Combined DSP disclose, among other things, the members of each particular Class, the size of each Class, what you will receive from your Claim or Equity Interest if the Combined DSP is confirmed, and when you will receive such consideration if the Combined DSP is confirmed. *If you have filed a timely Proof of Claim to which no Claim Objection is filed, or your claim is scheduled, and not scheduled as disputed, un-liquidated or contingent, your claim will be allowed without further action. You should carefully examine the Court's claim register. If your Claim is not listed or if it is listed in a manner that is incorrect, you may be required to take immediate legal action to protect your rights. You may wish to consult an attorney to protect your rights.* **The Debtor reserves the right to amend its Schedules.**

**6. Why is confirmation of the Combined DSP important?**

The Bankruptcy Court's confirmation of the Combined DSP is a condition to the Debtor' right to carry out treatment of creditors and shareholders under the Combined DSP. Unless the Combined DSP is confirmed, and the other conditions to confirmation or to the effectiveness of the Combined DSP are satisfied, the Debtor are legally prohibited from satisfying Claims or Equity Interests as provided in the Combined DSP.

**7. What is necessary to confirm the Combined DSP?**

At least one class of impaired Claims or Interests must vote to accept the Combined DSP. Acceptance by a class of claims means that at least two-thirds in the total dollar amount and more than one-half in number of the allowed claims actually voting in the class vote in favor of the plan. Because only those claims or interests who vote on a plan will be counted for purposes of determining acceptance or rejection of a plan by an impaired class, a plan can be approved with the affirmative vote of members of an impaired class who own less than two-thirds in amount and one-half in number of the claims. Besides acceptance of the plan by each class of impaired creditors or interests, a bankruptcy court also must find that a plan meets a number of statutory tests before it may confirm the plan. These requirements and statutory tests generally are designed to protect the interests of holders of impaired claims or interests that do not vote to accept a plan but who will nonetheless be bound by a plan's provisions if a Bankruptcy Court confirms a plan. If one or more classes vote to reject a plan, the Debtor may still request that the Bankruptcy Court confirm a plan under Section 1129(b). To confirm a plan not accepted by all classes, the Debtor must demonstrate that the plan does not discriminate unfairly, and is fair and equitable with respect to each class of claims or interests that is impaired there under, and that has not accepted, the plan. This method of confirming a plan is commonly called a "cramdown". In addition to the statutory requirements imposed by the Bankruptcy Code, the Combined DSP itself also provides for certain conditions that must be satisfied as conditions to confirmation.

**8. Is there a Creditors' Committee in this case?**

No.

**9. When is the deadline for returning my ballot?**

No later than 5:00 p.m., Houston Time, on                     , 2017 ("Voting Deadline").

**IT IS IMPORTANT THAT ALL IMPAIRED CREDITORS VOTE ON THE COMBINED DSP. THE DEBTOR BELIEVE THAT THE COMBINED DSP PROVIDES**

**THE BEST POSSIBLE RECOVERY TO CREDITORS. THEREFORE, THE DEBTOR BELIEVE THAT ACCEPTANCE OF THE COMBINED DSP IS IN THE BEST INTEREST OF CREDITORS AND RECOMMENDS THAT ALL IMPAIRED CREDITORS VOTE TO ACCEPT THE COMBINED DSP.**

**10. Voting Instructions**

Ballots. Ballots will be distributed only to holders of Claims which are impaired. To determine whether your claim is impaired please refer to the Articles IV, V, VI and VII of the Combined DSP. To be counted, ballots must be marked, noting acceptance or rejection of the Plan, and provide address and claim information requested on the ballot form, **AND RETURNED SO AS TO BE RECEIVED NO LATER THAN 5:00 P.M., HOUSTON TIME, [REDACTED], 2017, AT THE FOLLOWING ADDRESS:**

**HUGHES WATTERS ASKANASE, L.L.P.  
C/O: WAYNE KITCHENS  
1201 LOUISIANA, 28<sup>TH</sup> FLOOR  
HOUSTON, TEXAS 77002  
[wkitchens@hwa.com](mailto:wkitchens@hwa.com)  
Fax: (713)759-6834**

Ballots which are not properly completed or which are received after the deadline provided above shall not be counted in computing the vote on the Combined DSP.

**ARTICLE II – OVERVIEW OF THE COMBINED DSP**

**An overview of the Combined DSP is set forth below. This overview is qualified in its entirety by reference to the Combined DSP, a copy of which is attached as Exhibit A to the Disclosure Statement. If the Court confirms the Combined DSP, and in the absence of any applicable stay, and all other conditions set forth in the Combined DSP are satisfied, the Combined DSP will take effect on the Effective Date – i.e. on or before the twenty-first (21st) day following the date upon which the Confirmation Order becomes a Final Order.**

**As demonstrated in the attached Combined DSP, the Debtor propose full and complete satisfaction of all indebtedness owed by the Debtor through the Combined DSP.**

**ARTICLE II**  
**SUMMARY**

This Combined DSP under Chapter 11 of the Bankruptcy Code (the “*Code*”) proposes to pay creditors of US Dataworks, Inc. (the “*Debtor*”) from the proceeds of the sale of substantially all of the Debtor’s assets as described herein. This Combined DSP provides for 1 class of unsecured claims; and 1 class of equity security holders. Unsecured creditors holding allowed

claims will receive distributions, which the proponent of this Combined DSP has valued at approximately 12 cents on the dollar. This Combined DSP also provides for the payment of administrative claims. The Combines DSP also contains a class of secured creditors (Class 3) and a class of priority creditors (Class 2).

Equity interests will be completely extinguished (Class 5).

All creditors and equity security holders should refer to Articles a through b of this Combines DSP for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Combined DSP and the rights of creditors and equity security holders begins in Article III. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)**

### **ARTICLE III DISCLOSURE STATEMENT**

The filing and adjudication of the Combined DSP is a core proceeding under 28 USC § 157(b). Since this is a core proceeding, the Bankruptcy Court has constitutional authority to enter final orders regarding the Combined DSP. Further, to the extent that the Bankruptcy Court determines that it does not have authority to enter a final judgment or order on a portion of or all of the Combined DSP, the Debtor requests that the Bankruptcy Court issue a report and recommendation for a judgment to the United States District Court for the Southern District of Texas, Houston Division.

### **PROCEDURAL BACKGROUND**

1. On May 1, 2017 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for



the Southern District of Texas, Houston Division (the “**Bankruptcy Court**”), thereby commencing the above-styled bankruptcy case (the “**Case**”).

2. The Debtor continued to operate its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code until approximately July 6, 2017. On that date, the Bankruptcy Court approved the sale of substantially all of the Debtor’s assets to The Bankers Bank (“**TBB**”), an Oklahoma banking corporation. In connection with the Bankruptcy Case, the U.S. Trustee did not appoint any official committee in this Case. No request has been made for the appointment of a trustee or an examiner.

#### DEBTOR’S BACKGROUND

##### **A.** The Debtor’s Corporate Structure

3. US Dataworks, Inc., is a Nevada C corporation, that developed, marketed, and supported payment processing software for on-premise customers and on-demand cloud-computing service customers within multiple market segments. Its customer base included financial institutions as well as credit card companies, government institutions, banker’s banks, business process outsourcers, and high-volume merchants in the United States. The Debtor is headquartered in Sugar Land, Texas.

4. The Debtor’s board of directors currently consists of two (2) directors – John Penrod and Joe Saporito. Mr. Penrod is also the Debtor’s CEO. Mr. Saporito is the CAO for Rackspace Managed Hosting. Mr. John Penrod has been with the Debtor since 2010 and also serves as its President.

##### **B.** The Debtor’s Origins

5. The Debtor was originally incorporated under the laws of the state of Colorado as JLQ, Inc. in December of 1994. In October of 1997, JLQ, Inc. changed its name to New World



Publishing. In May of 1999, New World Publishing acquired Communications Television, Inc., a California corporation, and changed the focus of its business to that of an internet marketing and technology infrastructure Debtor, specializing in supporting cost effective business-to-business and business-to-consumer revenue based marketing initiatives.

6. In October of 1999, New World Publishing changed its name to Sonicport.com, Inc. and in February of 2000, it re-incorporated under the laws of the state of Nevada. In February of 2001, Sonciport.com changed its name to Sonicport, Inc.

7. In April of 2001, Sonicport, Inc. acquired a Delaware corporation known as US Dataworks, Inc. (“**DWD**”). In conjunction with this acquisition, Sonicport, Inc. refocused its business and concentrated on developing electronic check processing software.

8. In March of 2002, Sonicport, Inc. changed its name to US Dataworks, Inc. and in May of 2002, the Debtor merged DWD into Dataworks.

**C. The Debtor’s Equity Structure**

9. In July of 2013, the Debtor became a non-reporting public entity. The Debtor’s stock is publicly traded on the pink sheets under the ticker symbol “UDWK”. The Debtor has one series of common stock issued and outstanding, designated as Common Stock, and one series of preferred stock issued and outstanding, designated Series B Convertible Preferred Stock.

10. Based on information provided by the Debtor’s transfer agent, American Stock Transfer & Trust Debtor (“**ASTTC**”), as of the December 31, 2016, there were 109,933 shares of Preferred Stock and 38,764,144 shares of Common Stock outstanding and entitled to vote.

Share Type	# Share Holders Of Record	# Shares
Preferred	5	109,933
Common Stock	216	38,764,144

The top thirty (30) shareholders hold slightly more than fifty percent (50%) of all outstanding shares and the top twenty (20) shareholders hold approximately thirty-seven percent (37%) of all outstanding shares. The Debtor's stock has very low trading volumes and low stock prices.

**D. Business Operations and the Debtor's Products**

11. Debtor developed a software product called Clearingworks. Clearingworks was entirely developed and was entirely owned by the Debtor. However, Clearingworks incorporates some external partner software to deliver certain specific functionality – primarily A2IA software for image analysis and data extraction.

12. The Debtor's (and via the sale and purchase of substantially all of the Debtor's assets, TBB's) clients use Clearingworks to process incoming accounts receivable payments. Clearingworks allows for the automation of receiving incoming payments, creating deposit files, and posting them to the clients' A/R systems thereby reducing the difficulties and costs associated with payment processing. Clearingworks is a payment processing system with proven, enterprise-class payment, deposit, returns processing, and powerful payment analytic tools, which is currently delivered in two environments: (i) a Cloud delivery model and (ii) an on-premise installed solution.

13. Clearingworks is an integrated, multi-channel payment platform designed to reduce operational costs by streamlining the payments from all channels into one fast and convenient platform. Payment channels include Web payments, telephone payments, mailed-in payments, and walk-in payments. Clearingworks quickly converts incoming payments into working capital by consolidating deposits into the lowest cost deposit channel. This includes routing to a specific banking relationship and converting check payments into fully electronic deposits. Clearingworks provides functionality and reduces the time spent processing returned

items by automating both return matching and the processing of resubmissions and return fees. This improves the ability to collect returned items and the consistency of fee assessment. Clearingworks also provides reporting capabilities that (i) assist in tracking payment status, (ii) produce detailed analytic information, and (iii) offers the visibility to monitor payment progress across multiple payment channels.

**E. The Debtor's Customers and Strategic Business Relationships**

14. The Debtor marketed primarily to banks and business process outsourcers that sought to provide the types of services that Clearingworks offers to their corporate clients. Debtor has a small customer base (16 customers). However, that small customer base accounts for Debtor processing payments for approximately four hundred (400) commercial entities.

15. From time to time, the Debtor partnered with various businesses in connection with its sales and marketing efforts, including entering into reseller agreements with certain value-added partners, which allowed them to sell Clearingworks solutions and other products and services. Significant business partners included bankers' banks that provide Clearingworks to their customers, who are banks.

**F. Government Regulation Applicable to the Debtor's Business**

16. As a processor of Automated Clearing House ("ACH") payments, Debtor had to comply with federal laws governing the processing of electronic transactions. The Debtor is in compliance with all such federal laws and works closely with NACHA, the association that manages the development, administration, and governance of the ACH Network, the backbone for the electronic movement of money and data, to ensure its systems remain compliant with all applicable laws and regulations, as well as NACHA guidelines.

**G. The Debtor's Employees**

17. As of December 31, 2016, Debtor had twelve (12) full-time and one (1) part-time employees. Since the TBB acquisition, the Debtor's currently has 3 part-time employees, who are providing the necessary skill and information to effectuate this plan of liquidation.

**H. Debtor's Assets, Liabilities, and Financial Performance**  
Assets & Liabilities

18. Debtor's primary assets were Clearingworks and the customer contracts that have been executed to license and support Clearingworks. As explained above, the software source code was developed entirely by Debtor and was its intellectual property until the TBB acquisition. At the time of the TBB acquisition, Debtor had contracts with sixteen (16) customers that represent approximately \$2,000,000.00 in annual revenues. As of the Petition Date, the Debtor had approximately \$2,675,986.08 in assets and approximately \$3,689,654.38 and \$296,341.65 in secured and unsecured debt, respectively. As of the date of this Combined DSP, the Debtor assets consist of approximately \$1,242,000.00 and approximately \$3,677,000.00 in secured, unsecured, priority, and administrative debt.

19. For the fiscal year ending March 31, 2015, Debtor had \$3.6 million in revenue, which resulted in EBITDA of approximately \$906,000 and net income of approximately \$566,000.

20. For the fiscal year ending March 31, 2016, Debtor had \$2.8 million in revenue, which resulted in EBITDA of approximately \$276,000 and net income of approximately \$181,500.

21. For the fiscal year ending March 31, 2017, Debtor had revenue of \$2,077,598, with EBITDA of approximately \$(58,681) and net income of approximately \$(724,226). The reduction in revenue from fiscal year 2016 to fiscal year 2017 was primarily attributable to the Company's largest customer (by volume) electing to end its maintenance contract.

## EVENTS PRECIPITATING THE CHAPTER 11 FILING

### The Unexpected Death of the Debtor's CEO and Chairman

22. Beginning in the early 2000's, the Debtor was led by Chuck Ramey, who served as both CEO and Chairman. As far back as fiscal year ending March 31, 2009 and continuing through fiscal year ending March 31, 2014, the Debtor operated at a net loss, with losses ranging from approximately \$600,000.00 to as much as \$1,300,000.00 per fiscal year. Mr. Ramey utilized his own resources to cover the Debtor's operating losses – either by making loans to the Debtor or through un-reimbursed expense submissions. Unfortunately, Mr. Ramey passed away unexpectedly in March of 2014. Immediately after Mr. Ramey passed away, Mr. Penrod took over as the as CEO for the Debtor.

#### I. Efforts Undertaken to Eliminate the Debtor's Operating Losses

23. For the fiscal year ending March 31, 2014, the Debtor posted \$3,500,000.00 in gross revenues, \$1,300,000.00 in losses, and actual cash losses of approximately \$250,000.00. Knowing that these continued operating losses were unsustainable, especially without Mr. Ramey to serve as a backstop, the Debtor immediately undertook steps to reduce its expenses. The Debtor, among other things, reduced headcount, sub-let a portion of its office space, and worked to restructure its outstanding debt.

24. As a result of negotiations with the Prepetition Unperfected Secured Creditors, the Debtor eliminated more than \$1,000,000.00 in debt and accrued interest, extended the maturity dates of its debt, and lowered the interest rates on its debt from more than ten percent (10%), in some instances, to rates below six percent (6%). In exchange, the Debtor agreed to make monthly interest payments of approximately \$11,000.00 and to pay certain "restructuring fees". The Debtor's current balance on these obligations is approximately \$2,900,000.00(?).

25. For the fiscal year ending March 31, 2015, the Debtor showed signs of improvement by generating \$3,600,00.00 in gross revenues, \$906,000.00 in EBITDA, and \$566,000.00 in net income. However, the Debtor experienced a setback for fiscal year ending March 31, 2016, generating \$2,800,00.00 in gross revenues, \$276,000.00 in EBITDA, and \$181,000.00 in net income (before Goodwill impairment).

26. In addition to these expense reduction measures, the Debtor also seriously pursued strategies to raise capital and/or sell the Debtor. However, the Debtor's attempts to raise capital were not successful for a variety of reasons, but primarily because, the Debtor (i) is a small public entity, (ii) has high debt, and (iii) lacks sales traction (*i.e.*, the Debtor had not been adding new accounts). Likewise, to that point, no one had expressed interest in purchasing the Debtor.

27. The Debtor's financial situation was further complicated in October of 2015, when its historically largest client (by revenue) decided to exercise its option to discontinue the Debtor's maintenance and support services. This event resulted in a reduction of the Debtor's monthly revenues by approximately \$100,000.00.

28. While the loss in revenue presented significant challenges, the Debtor's management believed that the lost revenue could be overcome with the addition of new clients, which was anticipated to occur reasonable quickly. Moreover, it was anticipated that by adding these new clients, the Debtor would only experience a small and "manageable" short-fall in revenues and that any such small short-fall could be overcome by raising capital. Unfortunately, several of the anticipated new clients delayed the roll-out of their use of Clearingworks and/or the execution of their contracts by several months, which further complicated issues.

**J. The Debtor's Contemplation of a Chapter 11 bankruptcy Case**

29. Despite the Debtor's best efforts, it had been unable to overcome the impact of lost revenue, which when combined with impending debt maturity put the Debtor at risk of becoming insolvent and being forced to cease operations. In January of 2016, faced with the possibility of insolvency and the cessation of all operations, the Debtor began investigating the possibility of using a chapter 11 bankruptcy case in order to restructure its balance sheet and/or sell the Debtor. In April of 2016, the Debtor ceased servicing its debt.

30. At the same time, approximately fifty (50) potential investors and/or buyers were approached about the possibility of investing in and/or purchasing the Debtor through a chapter 11 proceeding or otherwise. In April of 2016, the Debtor had an initial call with one of its largest customers, The Bankers Bank ("**TBB**"). TBB expressed interest in purchasing Debtor's operations through a chapter 11 bankruptcy case. Since that initial expression of interest, the Debtor and TBB (the "**Parties**") have worked to reach an agreement with respect to such a sale.

31. Also in the spring of 2016, the Debtor engaged bankruptcy counsel to provide guidance and counsel regarding, among other things: (i) a potential bankruptcy filing; (ii) the potential sale of its assets to TBB through the bankruptcy process; and (iii) its efforts to negotiate an asset purchase agreement. In October of 2016, TBB tendered a letter of intent outlining the structure and terms of their intended offer. In late November of 2016, the terms of a formal asset purchase agreement were completed and it was executed.

**K. The Debtor's Need for Capital Prior to Its Bankruptcy Filing**

32. In the period leading up to the filing of its chapter 11 bankruptcy petition, the Debtor found itself facing a liquidity crisis. Faced with shortfalls in cash flow and some unexpected expenses, the Debtor turned to TBB to provide financing to pay off the Debtor's burdensome factoring arrangement and fund its operations through the chapter 11 process.



33. As explained above, TBB agreed to extend a loan to the Debtor for the operating capital needed to ensure that the Debtor's operations were not interrupted in the weeks leading up to its chapter 11 filing. Prior to the Petition Date, TBB agreed to advance up to \$550,000.00 of the face value of the TBB Note with the understanding that the Debtor would seek authority from the Bankruptcy Court to obtain debtor-in-possession ("**DIP**") financing with respect to any further advances by TBB, which would be secured by post-petition priority priming liens against all of the Debtor's property.

**L. The Debtor's Need for Capital During the Pendency of the Case**

34. Without the prospect of DIP financing and the interim relief sought by the Debtor, there would undoubtedly be a complete stoppage of support for existing contracts and an inability to complete current projects, a prospect that the Debtor and the Estate simply cannot withstand. Moreover, such a result would likely decimate the Debtor's going concern value and eliminate any chance of a successful chapter 11 case.

35. Debtor believes that the proposed financing and other relief sought today will enable the Debtor and its stakeholders to implement an orderly Liquidation through its chapter 11 bankruptcy case. The proposed financing will also allow the Debtor to meet some of its immediate cash needs for operations generally as well as provide funding to keep current projects alive thereby preserving its going concern value for the benefit of its Estate.

36. In sum, the Debtor sought chapter 11 protection in order to protect and preserve its assets and ongoing operations, and to allow it to bring in additional cash through post-petition financing in order to continue operations and affect an orderly restructuring. The Debtor has determined in the prudent exercise of its business judgment that the commencement of the

chapter 11 case and the proposed DIP financing is the best alternative to ensure that maximum value can be preserved and realized for the benefit of its Estate constituents.

Pre-Petition debt structure

The Subordinated Debt

The Carlson Debt:

37. On or about June 25, 2015, the Debtor and Ivan and Jackie Carlson (collectively, “**Carlson**”) entered into that certain Note and Warrant Amendment and Reinvestment Agreement (the “**2015 Carlson Agreement**”). The 2015 Carlson Agreement amended those certain 12% Senior Subordinated Convertible Notes issued in favor of Carlson on or about August 4, 2011 in the amount of \$100,000.00 (the “**2011 Carlson Note**”), as subsequently amended and supplemented, and on or about August 7, 2012 in the amount of \$50,000.00 (the “**2012 Carlson Note**” and together with the 2011 Carlson Note, the “**Carlson Notes**”), as subsequently amended and supplemented. The 2015 Carlson Agreement, among other things, extended the maturity dates and reduced the interest rates of the Carlson Notes.

38. The Carlson Notes granted Carlson a security interest (the “**Carlson Security Interest**”) in most, if not all, of the Debtor’s assets to guarantee the payment of the Carlson Notes. However, the 2011 Carlson Notes states that such security interest is subject to certain subordination agreements. Likewise, the 2012 Carlson Note also states that the Carlson Security Interest is subject to certain subordination agreements.

39. On or about October 27, 2011, that certain UCC Financing Statement (Document Number 2011028610-0) (the “**Senior Subordinated Financing Statement**”) was filed with the Nevada Secretary of State evidencing the security interests of the “**Holders of those Certain US Dataworks, (sic) Inc. 12% Senior Subordinated Notes Due August 1, 2012**” (the “**Secured**

**Parties**”). The Senior Subordinated Financing Statement purports to cover virtually all, if not all, of the Debtor’s assets. However, the Senior Subordinated Financing Statement lapsed in the fall of 2016 and has not been renewed. Thus, the Carlson Security Interest is an unperfected security interest; to the extent it was ever perfected. As of the Petition Date, the outstanding balance due and owing to Carlson was approximately \$157,000.00 (the “**Carlson Debt**”).

The Reck Debt:

40. On or about July 17, 2015, the Debtor and Richard A. Reck (“**Reck**”) entered into that certain Note and Warrant Amendment and Reinvestment Agreement (the “**2015 Reck Agreement**”). The 2015 Reck Agreement amended that certain 12% Senior Subordinated Convertible Note issued in favor of Reck on or about August 20, 2012 in the amount of \$50,000.00 (the “**2012 Reck Note**”), thereby, among other things, extending its maturity date and reducing the interest rate.

41. The 2012 Reck Note granted Reck a security interest (the “**Reck Security Interest**”) in virtually, if not all, of the Debtor’s assets to guarantee the payment of the 2012 Reck Note. However, the 2012 Reck Note states that such security interest is subject to certain subordination agreements.

42. On or about October 27, 2011, the Senior Subordinated Financing Statement was filed with the Nevada Secretary of State evidencing the security interests of the Secured Parties. The Senior Subordinated Financing Statement purports to cover virtually all, if not all, of the Debtor’s assets. However, the Senior Subordinated Financing Statement lapsed in the fall of 2016 and has not been renewed. Thus, the Reck Security Interest is now an unperfected security interest; to the extent it was ever perfected. As of the Petition Date, the outstanding balance due and owing to Reck was approximately \$52,333.36 (the “**Reck Debt**”).

The Nicholson Debt:

43. On or about March 26, 2015, the Debtor and John L. Nicholson, M.D. (“**Nicholson**”), a former director of the Debtor, entered into that certain Note Modification Agreement (the “**2015 Nicholson Agreement**”). The 2015 Nicholson Agreement amended that certain Refinancing Secured Note issued in favor of Nicholson on or about August 13, 2008 in the principal amount of \$2,995,000.00, as subsequently amended and/or modified (the “**2008 Nicholson Refinancing Note**”), by, among other things, extending the maturity date, reducing the principal balance in exchange for the issuance of stock, reducing the interest rate of the note, and reducing the accrued interest balance.

44. The 2008 Nicholson Refinancing Note in conjunction with that certain note purchase agreement and security agreement both dated August 11, 2008, granted Nicholson a security interest (the “**Nicholson Security Interest**”) as to all assets of the Debtor in order to guarantee the payment of the 2008 Nicholson Refinancing Note. However, the 2015 Nicholson Agreement expressly acknowledges and reaffirms the agreements to subordinate the Debtor’s obligations to Nicholson to certain of the Debtor’s other obligations, including, but not limited to, the Debtor’s obligations to Carlson, Kimberly R. Rice, and Reck.

45. On or about October 27, 2011, the Senior Subordinated Financing Statement was filed with the Nevada Secretary of State evidencing the security interests of the Secured Parties. The Senior Subordinated Financing Statement purports to cover virtually all, if not all, of the Debtor’s assets. However, the Senior Subordinated Financing Statement lapsed in the fall of 2016 and has not been renewed. Thus, the Nicholson Security Interest is an unperfected security interest; to the extent it was ever perfected. As of the Petition Date, the outstanding balance due and owing to Nicholson was approximately \$2,057,000.00 (the “**Nicholson Debt**”).

The Ramey Debt:

46. On or about July 16, 2015, the Debtor and Frances F. Ramey, as successor in interest to Charles E. Ramey, a former director of the Debtor (collectively, “**Ramey**” and together with Carlson, Reck, and Nicholson, the “**Prepetition Unperfected Secured Creditors**”), entered into that certain Note Modification Agreement (the “**2015 Ramey Agreement**”). The 2015 Ramey Agreement amended that certain Refinancing Secured Note issued in favor of Ramey on or about August 13, 2008 in the principal amount of \$708,500.00, as subsequently amended and/or modified (the “2008 Ramey Refinancing Note”), by, among other things, extending the maturity date, reducing the principal balance in exchange for the issuance of stock, reducing the interest rate of the note, and reducing the accrued interest balance.

47. The 2008 Ramey Refinancing Note in conjunction with that certain note purchase agreement, granted Nicholson a security interest (the “**Ramey Security Interest**”) as to certain of the Debtor’s assets in order to guarantee the payment of the 2008 Ramey Refinancing Note. However, the 2015 Ramey Agreement expressly acknowledges and reaffirms the agreements to subordinate the Debtor’s obligations to Ramey to certain of the Debtor’s other obligations.

48. On or about October 27, 2011, the Senior Subordinated Financing Statement was filed with the Nevada Secretary of State evidencing the security interests of the “**Holders of those Certain US Dataworks, (sic) Inc. 12% Senior Subordinated Notes Due August 1, 2012**”. The Senior Subordinated Financing Statement purports to cover virtually all, if not all, of the Debtor’s assets. However, the Senior Subordinated Financing Statement lapsed in the fall of 2016 and has not been renewed. Thus, the Ramey Security Interest is an unperfected security interest; to the extent it was ever perfected. As of the Petition Date, the outstanding balance due

and owing to Ramey was approximately \$795,200.00 (the “**Ramey Debt**” and together with the Carlson Debt, Reck Debt, and Nicholson Debt, the “**Subordinated Debt**”).

The TBB Note

49. Post-petition on January 26, 2017, the Company and TBB entered into a first lien Promissory Note (“the **TBB Note**”) and security agreement (the “**TBB Security Agreement**”), pursuant to which TBB agreed to advance Debtor up to \$550,000.00 to be utilized for working capital. The TBB Note’s maturity date was July 31, 2017 and bears interest at a rate of six percent (6%) per annum.

50. In order to secure the TBB Note, the Debtor granted TBB a security interest in and liens on all of its assets. In conjunction with the Debtor granting the TBB Note and TBB Security Agreement, each of the Prepetition Unperfected Secured Creditors executed a debt subordination agreement (the “**TBB Subordination Agreements**”) thereby agreeing to subordinate the Company’s obligations to them to those owed to TBB. Accordingly, TBB maintained a first lien priority (the “**TBB Prepetition Liens**”) position with respect to all of the Company’s assets.

51. In late November of 2016, Debtor and TBB entered into an asset purchase agreement, which contemplated the purchase of Debtor assets by TBB free and clear in the context of a chapter 11 bankruptcy case to be filed by Debtor. In order to facilitate Debtor’s ability to maintain business operations during the period leading up to the filing of its chapter 11 bankruptcy case (*i.e.*, prior to the Petition Date), TBB advanced \$334,743.37 to the Company under the terms of the TBB Note. As of the Petition Date, the outstanding balance of the TBB Note was \$549,743.38 (the “**Perfected Secured Obligations**”).

52. On July 6, 2017, the Bankruptcy Court granted Debtor's Motion to sell substantially all of its assets to TBB. The order confirming such sale was entered on July 10, 2017. See Docket Nos. 43 and 57. The final sales price was \$1,790,000.00. After payment of the Perfected Secured Obligations, Debtor, as of the date of filing this Combined DSP, has approximately \$1,242,000.00 on hand to fund the Combined DSP and payments to creditors.

## **ARTICLE VII – CONFIRMATION OF THE COMBINED DSP**

### **A. *Solicitation of Acceptances.***

53. As a condition precedent to confirmation of this Combined DSP of reorganization, Section 1125 of the Bankruptcy Code requires that there be post-petition disclosure in the form of a disclosure statement, which provides "adequate information" to creditors whose claims the Debtor has scheduled or who have filed a Proof of Claim against the Debtor. This Combined DSP is intended to assist creditors in evaluating the Combined DSP and in determining whether to accept the Combined DSP. Under the Bankruptcy Code, your acceptance of the Combined DSP may not be solicited unless you receive a copy of this Combined DSP prior to or concurrent with such solicitation.

### **B. *Persons Entitled to Vote on Combined DSP.***

54. Only the votes of classes of creditors which are impaired under the Combined DSP are counted in connection with confirmation of the Combined DSP. Generally, and subject to the specific provisions of Section 1124 of the Bankruptcy Code, this includes creditors who, under the Combined DSP, may receive less than full payment of their claims.

55. In determining acceptance of the Combined DSP, votes will only be counted by creditors whose claims are duly scheduled by the Debtor as undisputed, non-contingent and



liquidated, or who, prior to the hearing on confirmation have filed with the Court a Proof of Claim which has not been disallowed or suspended prior to the tabulation of votes on the Combined DSP. The Ballot form, which you will receive, does not constitute a Proof of Claim. If you are in any way uncertain of whether your claim has been correctly scheduled, you should check the Debtor's Schedules, which are on file with the Bankruptcy Clerk. The Clerk of the Bankruptcy Court will not generally provide you with this information by telephone.

*C. Hearing on Confirmation of Combined DSP.*

56. The Bankruptcy Court will set a hearing to determine whether the Combined DSP has been accepted by the requisite number of creditors and whether the other requirements for confirmation of the Combined DSP have been satisfied. Each creditor will receive, either with the Combined DSP or separately, the Bankruptcy Court's Notice of Hearing on Confirmation of the Combined DSP.

*D. Acceptance Necessary for Confirmation.*

57. At the scheduled hearing, the Bankruptcy Court must determine, among other things, whether Debtor's Combined DSP has been accepted by each impaired class. Pursuant to Section 1126 of the Bankruptcy Code, an impaired class is determined to have accepted a Combined DSP if at least two-thirds in monetary amount and more than one-half in number of the allowed claimants, who are class members and have voted on the Combined DSP, have voted for acceptance of the Combined DSP. Further, unless there is unanimous acceptance of the Combined DSP by an impaired class, the Court must also determine that, under the Combined DSP, class members will receive property of value, as of the effective date of the Combined DSP, that is not less than the amount that such class members would receive or retain if the

Debtors were liquidated under Chapter 7 of the Bankruptcy Code. As a creditor, your vote is important.

The Debtor urges as many creditors as possible fill in and return the Ballot form to the Debtor's counsel.

*E. Confirmation of the Combined DSP without Necessary Acceptance.*

58. In the event that any impaired class of Claims does not accept the Debtor's Combined DSP, the Bankruptcy Court may still confirm the Debtor's Combined DSP at the request of the Debtor if, as to each impaired class which has not accepted the Debtor's Combined DSP, such Combined DSP "does not discriminate unfairly" and is "fair and equitable." A Combined DSP of liquidation does not discriminate unfairly within the meaning of the Bankruptcy Code if no class receives more than it is legally entitled to receive for its Claims. "Fair and equitable" has different meanings for Secured Claims and Unsecured Claims.

59. With respect to Secured Claims, "fair and equitable" means either: (i) the impaired Secured Creditor retains its liens to the extent of its Allowed Claim and receives deferred cash payments at least equal to the allowed amount of its Claim with a present value as of the Combined DSP's Effective Date at least equal to the value of such Secured Creditor's interest in the property securing its liens; or (ii) property subject to the lien of the impaired Secured Creditor is sold free and clear of that lien, with that lien attaching to the proceeds of the sale, and such lien proceeds must be treated in accordance with clauses (i) and (ii) hereof, or (iii) the impaired Secured Creditor realizes the "indubitable equivalent" of its claim under the Combined DSP.

60. With respect to Unsecured Claims, "fair and equitable" means either (i) each impaired Unsecured Creditor receives or retains property of a value equal to the amount of its

Allowed Claim; or (ii) the holders of the Claims that are junior to the Claims of the dissenting class will not receive any property under the Combined DSP.

61. In the event one or more classes of impaired Claims rejects the Debtor's Combined DSP, the Bankruptcy Court will determine at the hearing for confirmation of such Combined DSP whether it is fair and equitable and does not discriminate unfairly against any rejecting impaired class of Claims. If the Bankruptcy Court determines that such Combined DSP is fair and equitable and does not discriminate unfairly against any rejecting impaired class of Claims, the Bankruptcy Court can confirm the Combined DSP over the objection of any impaired class. The Debtor intends to request the Court to "cramdown" its Combined DSP if necessary.

#### **ARTICLE VIII – ALTERNATIVES TO THE COMBINED DSP AND CONSEQUENCES OF REJECTION**

62. Debtor believes that the Combined DSP, is the most realistic alternative available to the creditors of the Estate. The Debtor believes believe that through the implementation of this Combined DSP creditors will realize a maximum return on their debt.

63. Should the proposed Combined DSP not be accepted by the creditors of the Estates, three (3) different consequences are possible:

1. The Bankruptcy Court could allow additional time to the Debtor, or a creditor, to formulate a different Combined DSP under Chapter 11;
2. The proceedings could be converted to a Chapter 7 liquidation proceeding;  
or
2. The Bankruptcy Court could dismiss this proceeding.

64. The most remote possibility is dismissal. If dismissal were to occur, the Debtor would no longer have the protection of the Bankruptcy Court and relevant statutes. As a result of dismissal, each creditor would be free to seek judgments against the Debtor, and in turn, execute

against substantially all of Debtor's property in satisfaction of its judgment. This would likely result in a race to the Courthouse which would leave most creditors without any payment whatsoever on their claims.

65. As to the first and second alternatives, the Debtor is unable to predict whether they would be given additional time to formulate a different Combined DSP. More probable, the Court would continue the Chapter 11 for a short period of time, during which any party in interest would be allowed to propose a Combined DSP.

66. The Debtor has no present proposition for any alternative to the Combined DSP; however, it is possible that an alternative plan could be formulated at a later date. This Combined DSP will only discuss in detail the effect of a conversion of the case from a Chapter 11 liquidation proceeding to a liquidation proceeding under Chapter 7.

67. A straight bankruptcy proceeding, known as a Chapter 7 proceeding, is a liquidation of a debtor by an impartial trustee. In a Chapter 7 bankruptcy, the amount to be received by the unsecured creditors depends on the net proceeds available after all assets of the debtor have been reduced to cash and secured creditors and administrative priorities have been paid in full. The conversion of this case to Chapter 7 would probably result in the Secured Creditors foreclosing on Debtor's collateral. Should this case be converted to a Chapter 7, the present priority structure would change to the extent that the Chapter 11 administrative priority claims would have a priority lower than those priority claims generated by the Chapter 7 case, such as the trustee's fees. Conversion to Chapter 7 would create an additional layer of priority claims, and, in the Debtor's opinion, result in a much longer timeframe for creditors to received payment on their claims, and for substantially increased administrative expenses, due to the fact

that a Chapter 7 trustee would need to familiarize him- or herself with the facts of the case, as would his or her attorneys and accountants.

#### **ARTICLE IX – SUMMARY OF THE COMBINED DSP**

Any capitalized terms not defined in this Combined DSP shall have the meaning ascribed to such defined terms in the Bankruptcy Code and/or Bankruptcy Rules.

The Combined DSP proffered by Debtor proposes to satisfy i) all allowed secured claims as agreed to by each secured creditor; ii) all administrative claims will be paid under the terms of the Combined DSP from the funds on hand at confirmation (the “Distributable Proceeds”); and iii) all allowed unsecured claims of Debtor will be paid pro rata based on the treatment proposed in for each class.

Satisfaction of Debtor’s claims will be paid out of the Distributable Proceeds, which are derived from the disbursement of their sales proceeds received from TBB as referenced herein.

All expenses of administration shall be paid out of the Debtor’s Distributable Proceeds. Note that certain expenses are subject to Court approval. The Court will retain jurisdiction over the estate until substantial consummation has occurred. All of Debtor’s obligations for taxes (if any) will be satisfied under Section 1129(a)(9)(c) from the Distributable Proceeds of the Debtor.

The claims are to be classified as follows:

**Class 1 – Debtor’s Administrative Claims.** Class 1 shall consist of the Allowed Administrative Claims of any person or entity entitled to priority under § 507(a)(2) against Debtor. The class shall include (i) the claims of professionals retained by Debtor with respect to professional services rendered during the Chapter 11 case, and (ii) claims incurred by Debtor after the Petition Date in, or arising from, the ordinary course of business of the Debtor (“*Debtor Administrative Claims*”). Debtor Administrative Claims

are to be paid in Cash, in full, up to the amount of the Allowed Claim, on the Effective Date, after the Claim becomes an Allowed Claim, but in no event sooner than the time that the Confirmation Order becomes a Final Order or fourteen (14) days after the date of a Final Order determining the amount of each Claim for Administrative Expense, whichever is later, or on such terms as may be agreed between Debtor and holders of such claims. Class 1 is not impaired.

**Class 2 – Debtor’s Priority Tax Claims.** Class 2 shall consist of the Allowed Tax Claims against Debtor of any person or entity entitled thereto under § 507(a)(8) of the Code. Allowed Claims of taxing authorities will be paid in full on the Effective Date. Class 2 is not impaired.

**Class 3 – Secured Claims of Reck, Carlson, Nicholson, and Ramey.** Class 3 shall be paid in accordance with the schedule set forth in **Exhibit “1”** attached hereto. Class 3 is impaired.

**Class 4 - Unsecured Claims.** Class 4 shall be paid in accordance with the schedule set forth in Exhibit 1 attached hereto. Class 4 is impaired.

**Class 5 – Equity Interests.** All equity interest in the Debtor will be cancelled. There will be no distribution whatsoever to equity interests. Class 5 is impaired.

#### **ARTICLE X – IMPLEMENTATION AND EXECUTION OF THE COMBINED DSP**

A. Assets of the Debtor.

67. Pursuant to the provisions of Sections 1141(b) and 1141(c) of the Bankruptcy Code, all assets of the Debtor will vest in the Debtor on the Effective Date.

B. Business Operations and Financial Affairs of the Debtor.

68. Upon the Effective Date (as hereinafter defined) of this Combined DSP, the Debtor shall begin wind-down procedures and payment of claims as outlined herein.

C. Management.

69. John Penrod, with assistance from Randall Frapart, will manage the liquidation of the Debtor and payment of claims as outlined herein. The Debtor shall act as its own Disbursing Agent, and shall conduct its business affairs to the extent necessary to consummate and to make distributions required under its plan, to carry out pending or to institute new litigation, specifically including, but not limited to, all claims retained by the respective Debtor, to avoid any transfers as permitted under Sections 546, 547, 548, 549 or 550 of the Bankruptcy Code, or to refrain therefrom at its sole discretion, to effectuate the return or recovery of property pursuant to Section 542 of the Bankruptcy Code, to make final reports and accounting as required by the Code and the laws of the State of Texas and to conduct all aspects of its respective business affairs until the assets of its Estate are liquidated as outlined herein. Upon confirmation, the Debtor's management shall be empowered to execute any and all necessary documents to effectuate consummation of the Combined DSP. The Debtor, if and to the extent necessary, will seek such orders, judgments, injunctions, regulatory approvals, and rulings that may be required to carry out and further the intentions and purposes, and give full effect to the provisions, of this Combined DSP.

D. Effective Date, Distribution Date, Post-Confirmation Duties and Responsibilities, Post-Confirmation Professionals, Distributions

70. The Effective Date shall be fourteen (14) days after entry of the order confirming the Combined DSP, unless stayed as set forth in the Bankruptcy Code and/or the Bankruptcy Rules.

71. The Distribution Date shall be at least fourteen (14) days after the Effective Date.



72. As of the Effective Date, Debtor and its professionals shall be responsible for the following duties under the Combined DSP: (1) Claims analysis; (2) Claims objections; (3) Claims settlement; (4) avoidance litigation; (5) post confirmation litigation on any contested matters or adversary proceedings; (6) compliance with any post confirmation requirements of the U.S. Trustee (**INCLUDING PAYMENT OF ALL REQUIRED U.S. TRUSTEE FEES**) or the Bankruptcy Court; (7) appearances on behalf of the Debtor on any post confirmation matter brought before the Bankruptcy Court or any other court with appropriate jurisdiction and in that regard, to answer any complaint or accept service of process relating to any legal proceedings implemented against the post confirmation Debtor; (8) filing the final report to the Bankruptcy Court and closing the Estate; and (9) providing such other related services as may be reasonably requested.

73. The fees and expenses of each Debtor's post-confirmation professionals will be paid from the reserve described in Exhibit 1 attached hereto. All professionals retained by the Debtor shall submit invoices to the Debtor on a monthly basis. The Debtor will pay such invoices within 30 days of their receipt. Any disputes regarding such fees and expenses that are not amicably resolved by the Debtor and the relevant party shall be submitted to the Bankruptcy Court for a final determination.

E. Distributions.

Except as otherwise provided in this Joint Plan, on the Distribution Date (as herein defined), the Debtor, serving as Disbursing Agent shall distribute the amounts outlined herein to the holders of Classes 1, 2, 3 and 4 Claims for the Debtor.

F. Unclaimed Distributions and Uncashed Checks.

All claims for undeliverable distributions must be made on or before the later of the first anniversary of the Effective Date of this Joint Plan, or the ninetieth (90th) day following date on which such Claim is Allowed. After such date, all unclaimed distributions will revert to the Debtor, and the Claim of any holder with respect to such distribution will be discharged and forever barred. Checks issued in respect of Allowed Claims will be null and void if not negotiated within six (6) months after the date of issuance thereof. In no event shall any funds escheat to the State of Texas.

G. Preservation of Claims. All claims or causes of action owned by any Debtor or their respective Estate are expressly preserved, and are unaffected by plan confirmation.

H. Objection to Allowance of Claims / Interests.

Only the Debtor may prosecute objections to the allowance of any Claim or interest not specifically allowed under such Debtor's respective plan. Upon Confirmation of the Combined DSP, all Claims and interests set forth within the Schedules of Assets and Liabilities, as liquidated, non-contingent and/or non-disputed, are deemed "Allowed Claims" unless the Debtor, within thirty (30) days thereafter, has filed an objection thereto. The Debtor may file objections to any and all Claims or interests, whether or not scheduled as disputed, unliquidated or contingent on the Claims schedule, at any time prior to the expiration of thirty (30) days after the Effective Date. If, within the time so specified, no objection is filed to the allowance of any

Claim or interest duly scheduled or otherwise proved, such Claim or interest shall be deemed allowed in the amount which is proved and the holder of such Claim or interest shall be entitled to obtain distribution thereon. The expense of prosecuting Claims or interest objections shall be borne by the Estate, except as otherwise awarded by the Court. The Debtors shall have the right to enter into any settlement with respect to any Claim for an amount less than \$20,000.00 without further approval by the Court. **NOTE: AT PRESENT, DEBTOR DOES NOT ANTICIPATE FILING ANY CLAIM OBJECTIONS.**

- I. Any preference or fraudulent transfer claims held by each Estate shall be retained by the Debtor.

All claims for return of preference payments or for fraudulent transfers pursuant to § 544, § 547, § 548, § 549 and/or § 550 of the Code, all claims existing against officers and directors of the Debtor, all claims against third parties on account of an indebtedness, and other claims of the Debtor, to the extent not specifically compromised and released pursuant to the Combined DSP, are hereby preserved and retained for enforcement by the Debtor subsequent to the Effective Date. The payments made during the preference period are detailed on Debtor's Statement of Financial Affairs in response to Question 3. No claim of the Debtor shall be waived, compromised, settled, relieved or relinquished solely as a result of plan confirmation. All claims held by the Estate shall be prosecuted by the Debtor. All decisions with respect to the prosecution and/or settlement of such claims shall be made by the Debtor. All costs associated with prosecuting such claims shall be paid by the Debtor. **NOTE: AT PRESENT, DEBTOR DOES NOT ANTICIPATE FILING ANY AVOIDANCE ACTIONS OR OTHER CHAPTER 5 CAUSES OF ACTION.**

J. Conditions Precedent.

Confirmation and implementation of this Combined DSP is conditioned upon a Confirmation Order that has been entered by the Bankruptcy Court.

K. Administrative Closing.

Upon substantial consummation of this Combined DSP, the Debtor shall take all actions necessary to close this Chapter 11 case.

**ARTICLE XI – FEDERAL INCOME TAX CONSEQUENCES**

**THE FOLLOWING DISCUSSION IS A SUMMARY OF CERTAIN SIGNIFICANT FEDERAL INCOME TAX CONSEQUENCES OF THE COMBINED DSP TO THE DEBTOR AND TO HOLDERS OF CLAIMS AND EQUITY INTERESTS AND IS BASED ON THE INTERNAL REVENUE CODE OF 1986 (TITLE 26, UNITED STATES CODE), AS AMENDED TO THE DATE HEREOF (THE “TAX CODE”), TREASURY REGULATIONS PROMULGATED AND PROPOSED THEREUNDER, JUDICIAL DECISIONS AND PUBLISHED ADMINISTRATIVE RULES AND PRONOUNCEMENTS OF THE IRS AS IN EFFECT ON THE DATE HEREOF. CHANGES IN SUCH RULES OR NEW INTERPRETATIONS THEREOF COULD SIGNIFICANTLY AFFECT THE TAX CONSEQUENCES DESCRIBED BELOW. NO RULINGS HAVE BEEN REQUESTED FROM THE IRS. MOREOVER, NO LEGAL OPINIONS HAVE BEEN REQUESTED FROM COUNSEL WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE COMBINED DSP.**

**THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES OF THE COMBINED DSP TO THE HOLDERS OF CLAIMS AND EQUITY INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. IN ADDITION, THIS DISCUSSION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTORS OR THE HOLDERS OF ALLOWED CLAIMS OR EQUITY INTERESTS (SUCH AS HOLDERS WHO DO NOT ACQUIRE THEIR CLAIM ON ORIGINAL ISSUE), NOR DOES THE DISCUSSION DEAL WITH TAX ISSUES PECULIAR TO CERTAIN TYPES OF TAX PAYERS (SUCH AS DEALERS IN SECURITIES, S CORPORATIONS, LIFE INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, TAX-EXEMPT ORGANIZATIONS AND FOREIGN TAXPAYERS). NO ASPECT OF FOREIGN, STATE, LOCAL OR ESTATE AND GIFT TAXATION IS ADDRESSED.**

**THE FOLLOWING SUMMARY IS, THEREFORE, NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR EQUITY INTEREST. HOLDERS OF CLAIMS OR EQUITY INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES PECULIAR TO THEM UNDER THE COMBINED DSP. THE**

**DEBTORS ASSUME NO RESPONSIBILITY FOR THE TAX EFFECT THAT CONFIRMATION AND RECEIPT OF ANY DISTRIBUTION UNDER THE COMBINED DSP MAY HAVE ON ANY GIVEN CREDITOR OR OTHER PARTY IN INTEREST.**

No administrative rulings will be sought from the Internal Revenue Service (hereinafter “**IRS**”) with respect to any of the federal income tax aspects of the Combined DSP. Consequently, there can be no assurance that the treatment described in this Disclosure Statement will be accepted by the IRS. No opinion of counsel has either been sought or obtained with respect to the federal income tax aspects of the Combined DSP.

**A. IRS Circular 230 Disclosure**

**THIS COMBINED DSP IS WRITTEN TO SUPPORT THE PROMOTION OR THE MARKETING OF TRANSACTIONS DISCUSSED HEREIN. TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, THE DEBTOR IS INFORMING YOU THAT THIS COMBINED DSP IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES THAT MAY BE IMPOSED ON SUCH TAXPAYER UNDER THE TAX CODE. TAXPAYERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**B. Consequences to Holders of Claims**

**1. Realization and Recognition of Gain or Loss in General**

The federal income tax consequences of the implementation of the Combined DSP to a Holder of a Claim will depend, among other things, upon the origin of the Holder’s Claim, when the Holder’s Claim becomes an Allowed Claim, when the Holder received payment in respect of such Claim, whether the Holder reports income using the accrual or cash method of accounting, whether the Holder has taken a bad debt deduction or worthless security deduction with respect to such claim, whether the Claimant receives consideration in more than one tax year of the Claimant, whether the Claimant is a resident of the United States, whether all the consideration received by the Claimant is deemed to be received by that Claimant in an integrated transaction and whether the Holder’s Claim constitutes a “security” for federal income tax purposes.

Generally, a Holder of an Allowed Claim will realize gain or loss on the exchange under the Combined DSP of its Allowed Claim for stock and other property (such as Cash and new debt instruments), in an amount equal to the difference between (i) the sum of the amount of any Cash and the issue price of any debt instrument (other than any consideration attributable to a Claim for accrued but unpaid interest), and (ii) the adjusted basis of the Allowed Claim exchanged therefore (other than basis attributable to accrued but unpaid interest previously included in the Holder’s taxable income). The treatment of accrued but unpaid interest and amounts allocable thereto varies depending on the nature of the Holder’s claim, such as (i) the nature and origin of the Claim; (ii) the tax status of the holder of the Claim; (iii) whether the

holder is a financial institution; (iv) whether the Claim is a capital asset in the hands of the holder; (v) whether the Claim has been held for more than one (1) year; (vi) the extent to which the holder previously claimed a loss, bad debt deduction or charge to a reserve for bad debts with respect to the Claim, and is discussed below.

Whether or not such realized gain or loss will be recognized (*i.e.*, taken into account) for federal income tax purposes will depend in part upon whether such exchange qualifies as a recapitalization or other ‘reorganization’ as defined in the Tax Code, which may in turn depend upon whether the Claim exchanged is classified as a ‘security’ for federal income tax purposes. The term ‘security’ is not defined in the Tax Code or in the Treasury Regulations. One of the most significant factors considered in determining whether a particular debt instrument is a security is the original term thereof. In general, the longer the term of an instrument, the greater the likelihood that it will be considered a security. As a general rule, a debt instrument having an original term of 10 years or more will be classified as a security, and a debt instrument having an original term of fewer than five years will not. Debt instruments having a term of at least five years but less than 10 years are likely to be treated as securities, but may not be, depending upon their resemblance to ordinary promissory notes, whether they are publicly traded, whether the instruments are secured, the financial condition of the debtor at the time the debt instruments are issued, and other factors. Each Holder of an Allowed Claim should consult his or her own tax advisor to determine whether his or her Allowed Claim constitutes a security for federal income tax purposes.

## **2. Accrued Interest**

The Debtors intend to take the position that all payments in respect of Allowed Claims will be first allocated to the principal amount of the Allowed Claim, with any excess allocated to accrued unpaid interest. However, there is no assurance that such allocation would be respected by the IRS for federal income tax purposes. In general, to the extent any amount received by a Holder of an Allowed Claim is received in satisfaction of accrued interest during its holding period, such amount will be taxable to the Holder as interest income (if not previously included in the Holder’s gross income). Conversely, a Holder generally will recognize a deductible loss to the extent any accrued interest claimed was previously included in gross income and is not paid in full. Each Holder of an Allowed Claim is urged to consult its tax advisor regarding the allocation of consideration and deductibility of unpaid interest for tax purposes.

A Holder, who, under its accounting method, was not previously required to include in income, accrued but unpaid interest attributable to its existing Claims, and who exchanges its interest Claim for cash, or other property, pursuant to the Combined DSP will be treated as receiving ordinary interest income to the extent of any consideration so received allocable to such interest, regardless of whether that Holder realizes an overall gain or loss as a result of the exchange of its existing Claims.

## **3. Withholding**

All distributions to Holders of claims under the Combined DSP are subject to any applicable withholding. Under federal income tax law, interests, dividends, and other reportable

payments may, under certain circumstances, be subject to “backup withholding” at a 28% rate. Backup withholding generally applies if the Holder (a) fails to furnish its social security number or other taxpayer identification number (“*TIN*”), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

***C. Consequences to Debtor - Discharge of Indebtedness Income Generally***

In general, the discharge of a debt obligation by a debtor for an amount less than the adjusted issue price (generally, the amount received upon incurring the obligation plus the amount of any previously amortized original issue discount and less the amount of any previously amortized bond issue premium) gives rise to cancellation of indebtedness (“*COD*”) income which must be included in a debtor’s income for federal income tax purposes, unless, in accordance with section 108(e)(2) of the Tax Code, payment of the liability would have given rise to a deduction. **HOWEVER**, the Debtor is not seeking a discharge in this bankruptcy proceeding, as this is a plan of liquidation. Thus, this section is inapplicable.

**ARTICLE XII – EXHIBITS TO DISCLOSURE STATEMENT**

EXHIBIT 1 – Debtor’s Summary of Assets, Liabilities, Source of Funds, Use of Funds and Class Treatments

**ARTICLE XII – CONCLUSION**

**The Debtor believes that the Combined DSP will provide an opportunity for creditors of the Debtor to receive more than would be received if the case was liquidated in a case under Chapter 7 of the Bankruptcy Code. Accordingly, the Debtor urges you to vote in favor of the Joint Plan.**

**Signed this 2nd day of October, 2017.**

US Dataworks Inc.

By: \_\_\_\_\_  
John Penrod  
President



*/s/ Wayne Kitchens*

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