

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM447890

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	RELEASE OF SECURITY INTEREST		
<b>CONVEYING PARTY DATA</b>			
Name	Formerly	Execution Date	Entity Type
Penn Imaging of Humble, LP		12/16/2015	Limited Partnership: TEXAS
Daniel B. Scherder		12/16/2015	INDIVIDUAL: UNITED STATES
Thomas A. Biebel		12/16/2015	INDIVIDUAL: UNITED STATES
Craig W. Kuhl		12/16/2015	INDIVIDUAL: UNITED STATES
City National Bank TTEE Arnold & Porter 401K/PSP FBO Fern O'Brian		12/16/2015	Trustee:
Valerie Wiener		12/16/2015	INDIVIDUAL:
Thomas B. Boguess Living Trust		12/16/2015	Trust:
Neil Galatz and Elaine Galatz, Trustees of Galatz 1977 Family Trust		12/16/2015	Trustee:
Joseph Mikrut		12/16/2015	INDIVIDUAL:
Christine L. Mikrut		12/16/2015	INDIVIDUAL:
Engbert Panman		12/16/2015	INDIVIDUAL: NETHERLANDS
David Lawrence Hutsell		12/16/2015	INDIVIDUAL: UNITED STATES
Randall G. Pence or Robin H. Pence, JTWROS		12/16/2015	Trust:
Equity Trust Company DBA/AKA/TA: DBA Sterling Trust Custodian FBO John Fenton Evans A/C 110494		12/16/2015	Trust Custodian: TEXAS
Luther D. Shank III		12/16/2015	INDIVIDUAL: UNITED STATES
Jeffrey H. Zapolsky		12/16/2015	INDIVIDUAL: UNITED STATES
Linda D. Range		12/16/2015	INDIVIDUAL: UNITED STATES
Craig S. Brightup		12/16/2015	INDIVIDUAL: UNITED STATES
Craig M. Range		12/16/2015	INDIVIDUAL: UNITED STATES
Aimee K. Range		12/16/2015	INDIVIDUAL: UNITED STATES
Randall G. Pence		12/16/2015	INDIVIDUAL: UNITED STATES
Julie R. Krieger		12/16/2015	INDIVIDUAL: UNITED STATES
Christopher R. Krieger		12/16/2015	INDIVIDUAL: UNITED STATES
Robin H. Pence		12/16/2015	INDIVIDUAL: UNITED STATES
Cesar A. Guerra Jr.		12/16/2015	INDIVIDUAL: UNITED STATES

OP \$40.00 3725383

**RECEIVING PARTY DATA**

<b>Name:</b>	Compressus Inc.
<b>Street Address:</b>	401 Congress Avenue
<b>Internal Address:</b>	Suite 2650
<b>City:</b>	Austin
<b>State/Country:</b>	TEXAS
<b>Postal Code:</b>	78732
<b>Entity Type:</b>	Corporation: DELAWARE

**PROPERTY NUMBERS Total: 1**

Property Type	Number	Word Mark
<b>Registration Number:</b>	3725383	COMPRESSUS

**CORRESPONDENCE DATA****Fax Number:** 5122874866

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.*

**Phone:** 512-656-7960**Email:** brian.spross@jonesspross.com**Correspondent Name:** Brian Spross**Address Line 1:** 1605 Lakecliff Hills Lane**Address Line 2:** Suite 100**Address Line 4:** Austin, TEXAS 78732**NAME OF SUBMITTER:** Brian Spross**SIGNATURE:** /brian spross/**DATE SIGNED:** 10/19/2017**Total Attachments: 109**

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Please see the following sections (highlighted by a red box) for conveyance language:

1. Paragraph 27 (entitled “Transfers by Debtor”) of *Order Granting Final Approval of Disclosure Statement and Confirming Second Amended Chapter 11 Plan of Reorganization of the Debtor Dated November 2, 2015*. This paragraph is found on page 28 of the PDF.
2. Section 10.2 (entitled “Vesting of Property of Debtor in Reorganized Debtor”) of *Second Amended Plan of Reorganization of the Debtor Dated November 2, 2015*. This section is found on page 67 of the PDF.
3. Section 11.1 (entitled “Discharge and Release”) of *Second Amended Plan of Reorganization of the Debtor Dated November 2, 2015*. This section is found on page 67 of the PDF.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

COMPRESSUS INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 15-10670 (KJC)

Related Dkt. Nos. 249 and 250

**ORDER GRANTING FINAL APPROVAL OF DISCLOSURE  
STATEMENT AND CONFIRMING SECOND AMENDED CHAPTER 11 PLAN  
OF REORGANIZATION OF THE DEBTOR DATED NOVEMBER 2, 2015**

The above-captioned debtor and debtor in possession (the “**Debtor**”) and Compressus AC, Inc. (“**Plan Sponsor**” and, together with the Debtor, the “**Proponents**”), having filed (i) the *Second Amended Plan of Reorganization of the Debtor Dated November 2, 2015* [Dkt. No. 249]; (ii) the *Notice of Plan Supplement to the Second Amended Plan of Reorganization of the Debtor Dated November 2, 2015* [Dkt. No. 282]; and (iii) the *Notice Of Filing Of (I) Second Amended Plan Of Reorganization Of The Debtor Dated November 2, 2015, As Modified; And (II) Redline Reflecting Technical Modifications To The Second Amended Plan Of Reorganization Of The Debtor Dated November 2, 2015 As Solicited* [Dkt. No. 309]; and (iv) *Notice Of Redline Reflecting Technical Modifications To The Form Of Distribution Trust Agreement Over The Version Filed With The Plan Supplement* [Dkt. No. 310] (collectively with all exhibits and any other modifications, amendments, or supplements thereto, the “**Plan**”);<sup>2</sup> the Court having entered, on November 3, 2015, the *Order (I) Conditionally Approving the Disclosure Statement;*

<sup>1</sup> The Debtor’s federal tax identification number is 52-230723. The Debtor’s address is 101 Constitution Avenue, NW, Suite 800, Washington, DC 20001.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to them in the Plan.

(II) *Scheduling a Plan Confirmation Hearing*; (III) *Approving Procedures and Deadlines Concerning Executory Contracts and Unexpired Leases*; (IV) *Approving Solicitation Packages and Procedures*; and (V) *Approving the Form of Ballot* [Dkt. No. 256] (the “**Solicitation Procedures Order**”), establishing, among other things, certain solicitation and voting tabulation procedures associated with the Plan; true and correct copies of the Plan being attached hereto as **Exhibit A**; the Court having conducted an evidentiary hearing to consider final approval of the Disclosure Statement (as defined below) and confirmation of the Plan on December 10, 2015 (the “**Confirmation Hearing**”); the Court having considered: (a) the witness testimony at the Confirmation Hearing as well as the declarations included among the exhibits admitted into evidence at the Confirmation Hearing, including (i) the *Declaration of Daniel B. Scherder in Support of Confirmation of the Second Amended Plan of Reorganization of Debtor* [Dkt. No. 297] (the “**Scherder Declaration**”) and (ii) the *Certification of Upshot Services LLC Regarding Tabulation of Votes in Connection with the Second Amended Plan of Reorganization of the Debtor Dated November 2, 2015* [Dkt. No. 294] (as amended by Dkt. No. 314, the “**Voting Declaration**”) and, together with the Scherder Declaration, the “**Declarations**”); (b) the arguments of counsel and all evidence proffered or adduced at the Hearing; (c) the objection to confirmation of the Plan (the “**Objection**”) asserted by the Internal Revenue Service [Dkt. No. 288]; (d) the resolution and settlement of all of the Objections to confirmation of the Plan; and (e) the additional filings made by the Debtor in support of the Plan, including the (i) *Proponents’ Memorandum of Law (I) in Support of (A) Confirmation of the Second Amended Plan of Reorganization of Debtor Dated November 2, 2015 and (B) Final Approval of the Disclosure Statement, and (II) in Response to Objections Thereto* [Dkt. No. 296] (the “**Confirmation Memorandum**”); (ii) *Notice of Filing of Proposed Order Granting Final Approval of*

*Disclosure Statement and Confirming Second Amended Chapter 11 Plan of Reorganization of the Debtor Dated November 2, 2015* [Dkt. No. 308]; (iii) *Notice of Filing of Exhibit B to the Second Amended Plan of Reorganization Regarding Schedule of Assumed Contracts and Unexpired Leases* [Dkt. No. 261]; (iv) series of Plan-related affidavits of service filed by Upshot Services LLC (“**Upshot Services**”), the Debtor’s claims, noticing, balloting, and solicitation agent in this Bankruptcy Case, including Dkt. No. 259 regarding service of the Solicitation Package (as defined below) (such affidavits collectively, the “**Upshot Service Affidavits**”); and (v) *Notice of Filing Form of Confirmation and Effective Date Notice in Connection with Second Amended Chapter 11 Plan of Reorganization of the Debtor Dated November 2, 2015* [Dkt. No. 315]; and the Court being familiar with the Plan, the Disclosure Statement and the relevant facts and circumstances concerning this Bankruptcy Case; the Court having taken judicial notice of the entire docket of this Bankruptcy Case and all pleadings and other documents filed, all orders entered, and evidence and arguments made, proffered, or adduced at the hearings held before the Court during this Bankruptcy Case; the Court having found that due and proper notice has been given with respect to the Confirmation Hearing and the deadlines and procedures for voting on the Plan and asserting objections to the Plan consistent with the Solicitation Procedures Order; the appearance of all interested parties having been duly noted in the record of the Hearing; and upon the record of the Hearing, and after due deliberation thereon, and sufficient cause appearing therefor;

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A. **Judicial Notice.** The Court takes judicial notice of the docket of the Bankruptcy Case maintained by the Clerk of the Court, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence admitted and arguments made at the hearings held before the Court during the pendency of the Bankruptcy Case.



B. Exclusive Jurisdiction; Core Proceeding; Venue. This Court has jurisdiction over the Bankruptcy Case and to confirm the Plan pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court and in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Chapter 11 Petition. On March 29, 2015 (the "Petition Date"), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor has operated its business and managed its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Bankruptcy Case.

D. Eligibility for Relief. The Debtor is a proper debtor under section 109 of the Bankruptcy Code and the Debtor is a proper proponent of the Plan under section 1121(a) of the Bankruptcy Code.

E. Transaction Oversight Committee. An official committee of unsecured creditors was not appointed in the Bankruptcy Case. Instead, a Transaction Oversight Committee was formed consisting of the Debtor, Patrick Raher (an investor of the Debtor), CME, a representative of the *ad hoc* committee of certain employees of the Debtor, and a representative of the Office of the United States Trustee (as an ex officio participant from time to time).

F. Notice, Transmittal, and Mailing of Solicitation Materials. As evidenced by the Upshot Service Affidavits, due, adequate, and sufficient notice of the Disclosure Statement, the Plan, and the Confirmation Hearing, together with all deadline for objecting to and voting to accept or reject the Plan, have been provided as required by the Solicitation Procedures Order. No other or further notice is necessary or shall be required.

G. Solicitation. Votes for acceptance and rejection of the Plan were solicited in good faith and in compliance with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, the Solicitation Procedures Order, all applicable provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations.

H. Disclosure Statement. The Disclosure Statement provides holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with section 1125 of the Bankruptcy Code. The Disclosure Statement also provides holders of Claims, holders of Equity Interests, and other entities with sufficient notice of the injunction, exculpation, and release provisions contained in Article XI of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

I. Vote Certification. All procedures used to tabulate the Ballots were fair and conducted in accordance with the Solicitation Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations. As evidenced by the Vote Certification, Classes 2, 3 4, and 5 voted to accept the Plan.

J. Plan Supplement. On November 24, 2015, the Debtor filed the Plan Supplement [Dkt. No. 282] (as subsequently amended), which included the (i) schedule of preserved and retained claims and causes of action by the Reorganized Debtor and the Distribution Trust; (ii) form of the Distribution Trust Agreement; (iii) the Distribution Trustee; (iv) form of stock purchase agreement between Compressus AC, Inc. and Compressus, Inc.; (v) form of amended and restated bylaws of Compressus, Inc.; (vi) form of amended and restated certificate of incorporation of Compressus, Inc.; (vii) form of amended and restated secured promissory note and security agreement; (viii) form of assignment and assumption; (ix) form of certificate of

merger of Compressus AC, Inc. and Compressus, Inc.; (x) form of agreement and plan of merger; and (xi) notice of section 1129(a)(5) disclosures.

K. All information and documents included in the Plan Supplement, and all amendments to the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. The Plan Supplement complies with the terms of the Plan, and the filing and notice of such documents provided due, adequate, and sufficient notice in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice is necessary or shall be required. Consistent with the terms of the Plan, the Debtor reserves its right to alter, amend, update, or modify the Plan Supplement before the Effective Date.

L. Modifications to the Plan. Subsequent to the deadline to distribute the Solicitation Packages (as such term is defined in the Solicitation Procedures Order), the Debtor made certain modifications to the Plan. All modifications to the Plan since the entry of the Solicitation Procedures Order are consistent with the provisions of the Bankruptcy Code, including sections 1122, 1123, 1125, and 1127 of the Bankruptcy Code, including any modifications disclosed on the record at the Confirmation Hearing. Except as provided for by law, contract, or previous order of the Bankruptcy Court, none of the modifications to the Plan made since the commencement of solicitation materially and adversely affects the treatment of any holder of a Claim or Equity Interest under the Plan. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code, none of the modifications require additional disclosure under section 1125 of the Bankruptcy Code or re-solicitation of votes under section 1126 of the Bankruptcy Code.

M. The filing of the Plan as modified and the disclosure of the Plan modifications on the record at or before the Confirmation Hearing constitute due, adequate, and sufficient notice of any and all of such modifications.

N. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of a Claim who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan modifications, unless otherwise agreed to by the holder of the Claim and Debtor. All modifications to the Plan made after the solicitation of the Plan are hereby approved, in accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. The Plan as modified shall constitute the Plan submitted for confirmation.

O. Bankruptcy Rule 3016. The Plan is dated and identifies its proponents in accordance with Bankruptcy Rule 3016(a). The filing of the Disclosure Statement on the docket of the Bankruptcy Case satisfied Bankruptcy Rule 3016(b).

**Compliance with Section 1129 of the Bankruptcy Code**

P. Burden of Proof. The Debtor has met its burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable standard.

Q. The Plan Complies With Section 1129(a) of the Bankruptcy Code. The evidentiary record at the Confirmation Hearing, the Declarations, the contents of the Plan and the Disclosure Statement, the Upshot Service Affidavits, the Confirmation Memorandum, and the Court's judicial notice of the complete record of this Bankruptcy Case support the findings of fact and conclusions of law set forth herein.

R. Section 1129(a)(1). The Plan complies with section 1129(a)(1) of the Bankruptcy Code, as the Plan complies with each applicable provision of the Bankruptcy Code. In particular, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code as follows:

1. In accordance with section 1122(a) of the Bankruptcy Code, (a) Article V of the Plan classifies Claims and Equity Interests into six (6) separate Classes reflecting the differing characteristics of those Claims and Equity Interests between Classes and the distinct legal rights of the holders of those Claims and Equity Interests in the separate Classes; and (b) the Claims and Equity Interests within each Class are substantially similar to the other Claims or Equity Interests within the same Class.
2. In accordance with section 1123(a)(1) of the Bankruptcy Code, Article V of the Plan properly classifies all Claims and Equity Interests that require classification. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such classification does not unfairly discriminate between holders of Claims and Equity Interests.
3. In accordance with section 1123(a)(2) of the Bankruptcy Code, Articles 5.1 and 5.3 of the Plan properly identify and describe that Class 1 is not impaired under the Plan.
4. In accordance with section 1123(a)(3) of the Bankruptcy Code, Articles 5.2, 5.4 and 5.5 properly identifies and describes that Classes 2, 3, 4, and 5 are impaired under the Plan.
5. In accordance with section 1123(a)(4) of the Bankruptcy Code, Article V of the Plan treats each Claim or Equity against the Debtor, in each respective Class, the same as each other Claim or Equity Interest in such Class.
6. In accordance with section 1123(a)(5) of the Bankruptcy Code, the Plan provides adequate means for its implementation, including, without limitation, (a) the vesting of assets of the Estate in the Reorganized Debtor (other than the Distribution Trust Assets); (b) the appointment and powers of the Distribution Trustee; (c) the establishment and funding of the Distribution Trust Account; (d) the preservation and retention of certain litigation claims and causes of action by the Distribution Trust, including the pursuit of the Distribution Trust Litigation Actions subject to the oversight of the Oversight Board and the Distribution Trust Agreement,

the Plan and this Confirmation Order; and (e) the distribution of the Distribution Trust Assets including, without limitation, the Avoidance Actions and the Distribution Trust Litigation Actions.

7. The charter documents included in the Plan Supplement conform to section 1123(a)(6) of the Bankruptcy Code's prohibition on the issuance of non-voting equity securities.
8. Pursuant to Article 6.3 of the Plan and in accordance with section 1123(a)(7) of the Bankruptcy Code, the members of the board of directors of the Debtor existing immediately before the Effective Date shall be deemed terminated and/or removed and the Plan Sponsor may nominate and elect new members of the board of directors. The members of the board of directors and officers of Reorganized Debtor will be selected in accordance with the charter documents in the Plan Supplement, provided that certain directors and officers have been selected and identified as set forth in the Plan Supplement.
9. Section 1123(a)(8) of the Bankruptcy Code is not applicable in this Bankruptcy Case because the Debtor is not an "individual."
10. Consistent with section 1123(b)(1) of the Bankruptcy Code, Article V of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Equity Interests.
11. Consistent with section 1123(b)(2) of the Bankruptcy Code, Article VIII of the Plan provides for the assumption or rejection of all of the executory contracts or unexpired leases of the Debtor that have not already been assumed or rejected in this Bankruptcy Case.
12. Consistent with section 1123(b)(3) of the Bankruptcy Code, (a) Articles 6.7 and 6.8 of the Plan and the Plan Supplement provide for the preservation, retention and pursuit of Rights of Action including, without limitation, the Distribution Trust Litigation Actions to be pursued by the Distribution Trustee in accordance with the Distribution Trust Agreement; and (b) Article XI of the Plan provides for the comprehensive settlement of claims and controversies relating to the rights that holders of Claims or Equity Interests may have with respect to any Allowed Claims or Equity Interests or any distributions made pursuant to the Plan on account of such Allowed Claims or Equity Interests.
13. Section 1123(b)(4) of the Bankruptcy Code is not applicable because the Plan implements a reorganization of the company.
14. Consistent with section 1123(b)(5) of the Bankruptcy Code, Article V of the Plan permissibly modifies the rights of holders of unsecured claims.

15. Consistent with section 1123(b)(6) of the Bankruptcy Code, the Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code, including, without limitation, (a) Article V, governing distributions on account of Allowed Claims; (b) Article VII, establishing procedures for resolving Disputed Claims and the Waterfall for distributions under the Distribution Trust Agreement; (c) Articles 6.7, 6.8 and XI of the Plan and the Plan Supplement providing for the preservation of certain causes of action, the comprehensive settlement of claims and controversies and related releases and injunctions against certain actions; and (d) Article XII, providing for the retention of jurisdiction by the Court over certain matters after the Effective Date.
16. Section 1123(c) of the Bankruptcy Code is not applicable in this Bankruptcy Case because the Debtor is not an “individual.”
17. In accordance with section 1123(d) of the Bankruptcy Code, Article VIII of the Plan provides for the payment of any Cure Amounts associated with the assumption of an executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.

S. Section 1129(a)(2). The Debtor has complied with all applicable provisions of the Bankruptcy Code with respect to the Plan and the solicitation of acceptances or rejections thereof. In particular, the Plan complies with the requirements of sections 1125 and 1126 of the Bankruptcy Code as follows:

1. On or before November 4, 2015, the Debtor, through Upshot Services, caused copies of the following materials to be transmitted to the known holders of Claims in Classes that were entitled to vote to accept or reject the Plan (collectively, the “Voting Parties”):
  - the Disclosure Statement;
  - the Plan;
  - Written notice of the (i) Court’s conditional approval of the Disclosure Statement; (ii) deadline to vote on the Plan; (iii) date of the combined hearing to consider final approval of the Disclosure Statement and confirmation of the Plan (the “Hearing”); (iv) deadline and procedures for filing objections to the approval of the Disclosure Statement and confirmation of the Plan; and (v) deadline for filing administrative claims established by the Plan (the “Combined Hearing Notice”);

- the Debtor's letter to the Voting Parties recommending that they vote to accept the Plan (the "**Support Letter**");
  - an appropriate form of ballot and a pre-addressed postage prepaid return envelope (collectively with the materials described in the preceding bullets, the "**Solicitation Package**").
2. As evidenced by the affidavit of publication filed on December 1, 2015 [Dkt. No. 287], the Debtor, through Upshot Services, caused to have published in the national edition of USA Today on November 10, 2015, notice of the Disclosure Statement, the Plan, the Confirmation Hearing, and the bar date for filing proofs of claim against the Debtor (the "**Publication Notice**").
  3. In compliance with the Solicitation Procedures Order, on November 4, 2015, the Debtor, through Upshot Services, caused copies of the *Notice of (I) Impaired Non-Voting Status and Conditional Approval of Disclosure Statement; (II) Hearing to Consider Confirmation of the Plan; (III) Deadline for Filing Objections to Confirmation of the Plan; (IV) Deadline for Voting on the Plan; and (V) Bar Date for Filing Administrative Claims Established by the Plan* ("**Notice of Impaired Non-Voting Status**") and *Notice of (I) Unimpaired Non-Voting Status and Conditional Approval of Disclosure Statement; (II) Hearing to Consider Confirmation of the Plan; (III) Deadline for Filing Objections to Confirmation of the Plan; (IV) Deadline for Voting on the Plan; and (V) Bar Date for Filing Administrative Claims Established by the Plan* ("**Notice of Non-Voting Status**") to be served on parties not entitled to vote, as applicable.
  4. In addition, in compliance with the Solicitation Procedures Order, copies of the Solicitation Procedures Order, the Plan, and the Disclosure Statement have been available upon request from Debtor's counsel and, free of charge, at [www.upshotservices.com/compressus](http://www.upshotservices.com/compressus) (the "**Upshot Services Website**") and the foregoing was set forth in the Combined Hearing Notice.
  5. On November 24, 2015, the Debtor filed the Plan Supplement and, through Upshot Services, made the Plan Supplement available on the Upshot Services Website.
  6. On November 6, 2015, the Debtor filed the *Notice of Filing of Exhibit B to the Second Amended Plan of Reorganization Regarding Schedule of Assumed Contracts and Unexpired Leases* [Dkt. No. 261] (the "**Schedule of Assumed Contracts and Leases**") and, through Upshot Services, served it on the counterparties identified therein.



7. The Combined Hearing Notice provided due and proper notice of the Hearing and of all relevant dates, deadlines, procedures, and other information relating to the Plan and/or the solicitation of votes thereon, including, without limitation, the Voting Deadline and the Objection Deadline (as such terms are defined in the Combined Hearing Notice), the time, date, and place of the Hearing and the provisions in the Plan concerning certain of the third party releases provided for in the Plan.
8. Based on the foregoing, all persons entitled to receive notice of the Disclosure Statement, the Plan, and the Hearing have received proper, timely, and adequate notice in accordance with the Solicitation Procedures Order, the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, and have had an opportunity to appear and be heard with respect thereto. As such, the Debtor is in compliance with section 1128 of the Bankruptcy Code and Bankruptcy Rules 2002(b) and 3017(d)-(f). No other or further notice is required.
9. Further, also based on the foregoing, the Proponents solicited votes with respect to the Plan in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Procedures Order.
10. Based upon the procedures approved in the Solicitation Procedures Order, Upshot Services has made a determination of the validity of, and tabulation with respect to, all acceptances and rejections of the Plan by holders of Claims entitled to vote on the Plan, including the amount and number of accepting and rejecting Claims in Class 2, 3, 4 and 5 under the Plan.
11. Exhibit A to the Voting Declaration sets forth the tabulation of votes and demonstrates that such tabulation was conducted in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Procedures Order.

T. Section 1129(a)(3). The Plan has been proposed by the Proponents in good faith and in the belief that the proposed reorganization and establishment of the Distribution Trust will maximize value for the Debtor's creditors. The Plan accomplishes the goals promoted by section 1129(a)(3) of the Bankruptcy Code by enabling the Debtor to reorganize as a going concern and enabling the Disbursing Agent and/or Distribution Trustee (as applicable) to make distributions pursuant to the Plan, on a fair and equitable basis, in accordance with the priorities established by the Bankruptcy Code. As set forth in the Scherder Declaration, the Plan is the

direct result of extensive good faith, arm's length negotiations between the Debtor and the Plan Sponsor, and thereby reflects substantial input from the principal constituencies having an interest in this Bankruptcy Case. The Plan has been proposed with the legitimate and honest purpose of implementing a reorganization of the Debtor and maximizing the value of the Estate to achieve the best interests of the Debtor's creditors. In so finding, the Court has considered the totality of the circumstances in this Bankruptcy Case. The support for the Plan by holders of Claims in Class 2, 3, 4 and 5 further demonstrates that the Plan was proposed in good faith. Finally, as described in greater detail below, the Plan's indemnification, exculpation, release, and injunction provisions are warranted, necessary, and appropriate, and are supported by sufficient consent and consideration under the circumstances of the Bankruptcy Case as a whole and are consistent with sections 105, 1123(b)(6), and 1129 of the Bankruptcy Code and applicable law in this Circuit.

U. Section 1129(a)(4). No payment for services or costs and expenses in connection with this Bankruptcy Case, or in connection with the Plan and incident to the Bankruptcy Case, has been or will be made by the Debtor other than payments that have been authorized by an order of the Court, including without limitation by the confirmation of the Plan by this Confirmation Order. The Court has previously authorized procedures for the interim payment of the fees and expenses incurred by Professionals pursuant to that certain order entered on May 18, 2015 [Dkt. No. 63]. Pursuant to Article 4.1(e) of the Plan, such Professionals' applications for allowance of final compensation and reimbursement of expenses must be filed and served no later than thirty (30) days after the Confirmation Hearing on the Plan. Such applications will be subject to review and approval by the Court.

V. Section 1129(a)(5). The identity and affiliations of the individuals that will serve as directors and officers of the Reorganized Debtor have been disclosed in the Plan Supplement, in satisfaction of section 1129(a)(5)(A)(i) of the Bankruptcy Code. Further, in accordance with section 1129(a)(5)(A)(ii) of the Bankruptcy Code, the appointment of the directors and officers to such offices is consistent with the interests of creditors and with public policy inasmuch as no objection to their appointment was received.

W. Moreover, the Plan Supplement disclosed that the Debtor's financial advisor was nominated as a candidate for the role of Distribution Trustee under the Distribution Trust, in satisfaction of section 1129(a)(5)(A)(i) of the Bankruptcy Code. The Transaction Oversight Committee is in the process of considering to appoint the Debtor's financial advisor or another nominee as the Distribution Trustee. Further, in accordance with section 1129(a)(5)(A)(ii) of the Bankruptcy Code, the process to appoint the Distribution Trustee by the Transaction Oversight Board is consistent with the interests of creditors and with public policy inasmuch as no objection has been received and the Transaction Oversight Committee will participate in the negotiation of the compensation of the Distribution Trustee.

X. Section 1129(a)(6). The Plan does not provide for any changes in rates that require regulatory approval of any governmental agency. As such, section 1129(a)(6) of the Bankruptcy Code is inapplicable in this Bankruptcy Case.

Y. Section 1129(a)(7). As set forth in Article VII.C of the Disclosure Statement, each holder of an impaired Claim or Equity Interest that has not accepted or is deemed not to have accepted the Plan will, on account of such Claim or Equity Interest, receive or retain property under the Plan having a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated under chapter 7 of the

Bankruptcy Code on the Effective Date. The Debtor has demonstrated that the Plan is in the best interests of its creditors.

Z. Section 1129(a)(8). As set forth in Article V of the Plan, there are six Classes of Claims and/or Equity Interests that either (i) voted to accept the Plan; (ii) are deemed to have accepted the Plan; or (iii) are impaired under the Plan and deemed to reject the Plan. The holders of Equity Interests in Class 6 shall neither receive nor retain any property under the Plan; therefore, Class 6 is the only Class to have rejected the Plan (because such Class is deemed to reject the Plan). Nevertheless, with respect to Class 6, the Plan is confirmable because it satisfies section 1129(b)(1) of the Bankruptcy Code with respect to such non-accepting Class of Equity Interests.

AA. Section 1129(a)(9). The Plan provides treatment for Allowed Administrative Claims (including the Allowed Administrative Claims of the Discounted Professionals as set forth in Article IV of the Plan), Allowed Priority Tax Claims and Allowed Priority Non-Tax Claims (Class 1) that is consistent with the requirements of section 1129(a)(9) of the Bankruptcy Code. As set forth in Articles IV and V of the Plan, and unless otherwise agreed to, each holder of an (i) Allowed Administrative Claim; (ii) Allowed Priority Tax Claim; and (iii) Allowed Non-Priority Tax Claim (Class 1) will receive full payment in Cash on account of such Claim within the prompt timeframe specified in the Plan with respect to such Claims.

BB. Section 1129(a)(10). The Plan has been accepted by Classes 2, 3, 4 and 5 without including the acceptance of the Plan by any insider.

CC. Section 1129(a)(11). As set forth in Article VII.D of the Plan, the Scherder Declaration, together with any additional evidence admitted at the Confirmation Hearing, the Plan is feasible and complies with section 1129(a)(11) of the Bankruptcy Code.

DD. Section 1129(a)(1 2). Article 4.1(d) of the Plan provides that the Debtor or the Distribution Trustee, as applicable, will pay all fees required under 28 U.S.C. § 1930(a) until the Bankruptcy Case is closed, converted, or dismissed. *See* Plan at Art. 4.1(c).

EE. Section 1129(a)(13). The Debtor does not owe retiree benefits (as that term is defined under section 1114 of the Bankruptcy Code). Thus, section 1129(a)(13) is inapplicable to the Plan.

FF. Sections 1129(a)(14)-(16). Sections 1129(a)(14)-(16) of the Bankruptcy Code apply to individuals or nonprofit entities and are not applicable to the this Bankruptcy Case.

GG. Section 1129(b). The Plan does not “discriminate unfairly” with respect to Class 6, which is impaired under the Plan and has not accepted the Plan (because such Class is deemed to reject the Plan). Equity Interest in Class 6 are not classified separately for the purpose of unfair discrimination because Class 6 comprises all of the Equity Interests in the Debtor that do not otherwise qualify as Converted Noteholder Claims in Class 5. The Plan is “fair and equitable” under section 1129(b) of the Bankruptcy Code with respect to Class 6 because no holder of an interest that is junior to the Equity Interests in Class 6 is receiving or retaining any property under the Plan on account of such interest.

HH. Section 1129(c). The Plan is the only plan that has been filed in the Bankruptcy Case and it is the only plan that has been found to satisfy the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

II. Section 1129(d). No party in interest, including but not limited to any governmental unit, has requested that the Court deny confirmation of the Plan on grounds that the principal purpose of the Plan is “the avoidance of taxes or the avoidance of the application of

section 5 of the Securities Act of 1933,” and the principal purpose of the Plan is not such avoidance. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

JJ. Section 1129(e). Because the Debtor is not a “small business debtor” under section 101(51D) of the Bankruptcy Code, section 1129(e) of the Bankruptcy Code is not applicable to the Bankruptcy Case.

**Means for Implementation of the Plan**

KK. Implementation. The various means for implementation of the Plan, as set forth in Articles VI and VII and other provisions of the Plan (collectively, the “**Implementation Provisions**”), have been designed and proposed in good faith. The Implementation Provisions are adequate and will promote the maximization of the value of the ultimate recoveries under the Plan in a fair and equitable manner in accordance with the Plan and the priorities established by the Bankruptcy Code. The Implementation Provisions are not intended to hinder, delay, or defraud any entity to which the Debtor is indebted on the Effective Date.

LL. Securities Exempt from Registration. The undertakings and obligations of the Debtor pursuant to the Plan, including its undertakings and/or obligations to make distributions of securities including (i) the issuance of the New Equity to the Plan Sponsor and CME in accordance with the Plan; and (ii) the issuance of Beneficial Interests in the Distribution Trust, shall in each case be exempt, pursuant to section 1145 of the Bankruptcy Code, from Section 5 of the Securities Act of 1933 and from any and all federal, state, or local laws requiring the registration of the offer, sale or other distribution of such securities by the Debtor to the maximum extent permitted by law.

MM. Executory Contracts and Unexpired Leases. The Debtor has filed and adequately served that certain Schedule of Assumed Contracts and Leases, which disclosed that the

Reorganized Debtor does not intend to assume any Executory Contracts, subject to any request for assumption of an Executory Contract that may be filed prior to the Effective Date of the Plan. As a result, pursuant to Article 8.2 of the Plan, all Executory Contracts are deemed rejected as of the Effective Date, subject to any request for assumption of an Executory Contract that may be filed prior to the Effective Date of the Plan.

NN. Injunctions, Releases, and Discharge. The Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code and sections 105, 524, and 1141 of the Bankruptcy Code to approve the provisions with respect to the releases, exoneration, and discharge/injunction set forth in Article XI of the Plan. The releases set forth in Article XI of the Plan represent a valid exercise of the Debtor's business judgment and accordingly are appropriate under section 1123(b)(3)(A) of the Bankruptcy Code. The releases set forth in Article XI of the Plan are deemed consented to by Creditors (i) who were entitled to vote on the Plan and either did not submit a ballot or submitted a ballot and did not elect to opt out of such releases, as permitted by the ballots, and (ii) who are unimpaired pursuant to the Plan and therefore deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code.

OO. Holders of Equity Interests who were deemed to reject the Plan and Creditors who submitted ballots that elected to opt out of such releases are deemed to have opted out of the releases set forth in Article 11.4 of the Plan. The exoneration provisions set forth in Article 11.3 of the Plan are appropriately tailored to protect the exculpated parties from inappropriate litigation and does not relieve any party of liability for criminal liability under applicable law, willful misconduct, gross negligence or bad faith under applicable law. The released parties pursuant to Article 11.4 have contributed substantial value to the Debtor and the formulation of the Plan. Such released parties' efforts in negotiating and ultimately formulating the Plan

enabled the Debtor to file the Plan. The discharge and release in Article 11.1 of the Plan and the injunction in Article 11.2 of the Plan each comply with section 524(e) of the Bankruptcy Code and are important to the overall objectives of the Plan to finally resolve all claims against the Debtor in the Bankruptcy Case. Based upon the record of this Bankruptcy Case and the evidence admitted at or prior to the Confirmation Hearing, this Court finds that the discharge, releases, injunctions, and exonerations set forth in Article XI of the Plan are consistent with the Bankruptcy Code and applicable law.

PP. Other Findings. To permit the Distribution Trustee to commence his or her duties as quickly as practicable, to promote prompt distributions under the Plan and/or Distribution Trust Agreement for the benefit of certain creditors as set forth in the Plan, and because a significant number of the Implementation Provisions are capable of being undertaken in short order, good cause exists to support the waiver of the stay imposed by Bankruptcy Rule 3020(e).

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:**

1. Confirmation. All requirements for confirmation of the Plan have been satisfied. The Plan is **CONFIRMED** in its entirety pursuant to section 1129 of the Bankruptcy Code. The terms of the Plan, exhibits to the Plan, the Plan Supplement and any other documents or exhibits filed in connection with the Plan and/or executed or to be executed in connection with the transactions contemplated by the Plan, and all amendments and modifications thereof, are expressly incorporated into, and form an integral part of, this Confirmation Order. A copy of the Plan in the form confirmed is attached hereto as Exhibit A.

2. Final Approval of Disclosure Statement. The Disclosure Statement is hereby **APPROVED**, on a final basis, pursuant to section 1125 of the Bankruptcy Code.



3. Objections. All Objections that have not been withdrawn or resolved prior to the entry of this Order are overruled in all respects for the reasons set forth in the record of the Confirmation Hearing, which record is incorporated herein, and all withdrawn objections, if any, are deemed withdrawn with prejudice.

4. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law set forth herein shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any of the following articles, sections or provisions constitute findings of fact or conclusions of law, they are adopted as such. All findings of fact and conclusions of law by the Bankruptcy Court at the Confirmation in relation to Confirmation are incorporated herein to the extent not inconsistent herewith. To the extent any of the prior findings of fact or conclusions of law constitute an order of by this Bankruptcy Court, they are adopted as such.

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

6. General Settlement of Claims and Equity Interests. As one element of, and in consideration for, an overall negotiated settlement of numerous disputed Claims and Equity Interests embodied in the Plan including, without limitation, the Converted Noteholder Claims in Class 5, pursuant to Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code and in consideration for the classification, Distributions, releases and other benefits provided under the Plan, the provisions of the Plan shall, upon consummation of the Plan, constitute a good faith compromise and settlement of all controversies resolved pursuant to the Plan, Claims and Equity Interests.

7. Implementation. The Debtor, the Plan Sponsor, the Reorganized Debtor, and the Distribution Trustee, are authorized and directed to take all actions necessary, appropriate, or desirable to enter into, implement, and consummate the contracts, instruments, releases, leases, agreements, or other documents created or executed in connection with the Plan Documents. Without further order or authorization of this Court, the Proponents, the Reorganized Debtor, the Distribution Trustee, and their successors are authorized and empowered to make all modifications to all Plan Documents that are consistent with the Plan. Execution versions of the Plan Documents, where applicable, shall constitute legal, valid, binding, and authorized obligations of the respective parties thereto, enforceable in accordance with their terms.

8. Effective Date. The Effective Date of the Plan shall occur on the date determined by the Debtor, after reasonable consultation with the Plan Sponsor, when the conditions set forth in Article 13.2 of the Plan have been satisfied or, if applicable, waived in accordance with the Plan.

9. Modifications or Alterations to Plan. To the extent the Plan has been modified, supplemented, or altered subsequent to solicitation, such modifications, supplements, and alterations constitute clarifications or technical changes, and do not materially adversely affect or change the treatment of any Claims or Equity Interests. Accordingly, pursuant to Bankruptcy Rule 3019, such modifications or alterations, if any, do not require additional disclosure under section 1125 of the Bankruptcy Code or re-solicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

10. Prior to the Effective Date, the Proponents may make additional appropriate technical adjustments and modifications to the Plan and the documents contained in the Plan

Supplement without further order or approval of the Bankruptcy Court; provided that such technical adjustments and modifications shall be consistent with this Confirmation Order and shall be satisfactory to the Debtor, the Plan Sponsor and CME.

11. Binding Effect of Plan. Subject to the occurrence of the Effective Date, the provisions of the Plan and this Confirmation Order shall be binding upon: (a) the Reorganized Debtor; (b) the Distribution Trustee and any professionals or other parties assisting and supporting the Distribution Trustee; (c) the Transaction Oversight Committee; (d) the Oversight Board and its members and advisors; (e) all Professionals and Ordinary Course Professionals; (f) any and all non-Debtor parties to judicial or administrative proceedings in which the Debtor is a party; (g) any and all holders of Claims or Equity Interests (irrespective of (i) whether such Claims or Equity Interests are impaired under the Plan, (ii) whether the holders of such Claims or Equity Interests accepted, rejected, or are deemed to have accepted or rejected the Plan or (iii) whether such Claims or Equity Interests have been asserted in a filed proof of claim, proof of interest, request for administrative expense payment or other pleading or filing); (h) any and all non-Debtor parties to executory contracts or unexpired leases with the Debtor; (i) any party that had received or may be deemed to have received notice of the Plan and the Hearing and/or the Confirmation Hearing; and (j) the respective heirs, executors, administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, guardians, successors or assigns, if any, of any of the foregoing. All settlements, compromises, releases, waivers, exonerations, and injunctions set forth in the Plan shall be, and hereby are, effective and binding on all Persons who may have had standing to assert any settled, released, exculpated, or enjoined causes of action, and no other Person or entity shall possess such standing to assert such causes of action after the Effective Date.

12. Plan Classification Controlling. The classification of Claims and Equity Interests for purposes of the Distributions to be made under the Plan shall be governed solely by the terms of the Plan, the Distribution Trust Agreement and/or this Confirmation Order. The classifications set forth on the Ballots returned by the Debtor's creditors in connection with voting on the Plan (a) were set forth on the Ballots for purposes of voting to accept or reject the Plan, (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Equity Interests under the Plan for distribution purposes, and (c) shall not be binding on the Debtor.

13. Subordinated Claims. Pursuant to the Plan including, without limitation, Article V of the Plan, the allowance, classification, and treatment of all Allowed Claims and Equity Interests and the respective distributions and treatments under Plan take into account and conform to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise, and any such rights shall be settled, compromised, and released pursuant to the Plan. Specifically, pursuant to section 510 of the Bankruptcy Code, the Distribution Trustee under the Distribution Trust and/or the Reorganized Debtors (as applicable) each reserve the right to re-classify any Allowed Claim in accordance with any contractual, legal, or equitable subordination relating thereto.

14. Solicitation of the Plan. The Debtor and its Professionals solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including, without limitation, Sections 1125(a) and (e) of the Bankruptcy Code, and any applicable nonbankruptcy law, rule or regulation governing the adequacy of disclosure in

connection with such solicitation. To the extent applicable, the Debtor and each of its respective directors, officers, employees, affiliates, agents, financial advisors, investment bankers, professionals, accountants, and attorneys have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer and issuance of any securities under the Plan, and therefore are not, and on account of such offer, issuance and solicitation will not be, liable at any time for any violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or the offer and issuance of any securities under the Plan.

15. Distributions. On and after the Effective Date, the Distributions on account of Allowed Claims in accordance with the Plan (including, without limitation, the Allowed Claims of the Discounted Professionals) and the resolution and treatment of Disputed Claims pursuant to Article VII of the Plan are authorized to occur and, without limitation on the other provisions of the Plan and this Confirmation Order concerning the powers, duties, and authority of the Disbursing Agent and/or Distribution Trustee (as applicable), such Disbursing Agent and/or Distribution Trustee shall be authorized to effectuate such Distributions, resolution, and treatment, solely in accordance with the Plan and the Distribution Trust Agreement.

16. Executory Contracts and Unexpired Leases. The executory contract and unexpired lease provisions of Article VIII of the Plan, including without limitation the deemed rejection of executory contracts and unexpired leases pursuant to Article 8.2 of the Plan, are specifically approved in all respects, are incorporated herein in their entirety, and are so ordered.

17. This Order shall constitute an order of the Court, pursuant to section 365 of the Bankruptcy Code, as of and conditioned on the occurrence of the Effective Date, approving (a) if any, the assumption of the executory contracts and unexpired leases specified in the Schedule of

Assumed Contracts and Unexpired Leases and (b) the rejection of all remaining executory contracts and unexpired leases of the Debtor. For the avoidance of doubt, all executory contracts entered into by the Debtor postpetition are also rejected.

18. Bar Date for Rejection Claims. Claims arising out of the rejection of an executory contract or unexpired lease pursuant to Article 8.2 of the Plan must be filed with the Court on or before thirty (30) days after the Effective Date (the “**Rejection Damages Bar Date**”). Any such Claims not timely filed shall be forever barred.

19. Preservation and Retention of Causes of Action. In accordance with section 1123(b) of the Bankruptcy Code and pursuant to the Plan including, without limitation, Articles 6.5(e), 6.7 and 6.8 of the Plan, and the Plan Supplement, on the Effective Date all Rights of Action shall vest in and be retained by the Reorganized Debtor, and all Distribution Trust Assets including, without limitation, all Rights of Action that are the Distribution Trust Litigation Actions shall be automatically conveyed and transferred to the Distribution Trust for prosecution by the Distribution Trustee as Distribution Trust Assets in accordance with the Distribution Trust Agreement, free and clear of all Liens, Claims, and encumbrances of any kind, except as otherwise provided in the Plan and/or the Distribution Trust Agreement.

20. Unless any Rights of Action are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, they shall be preserved and retained by the Reorganized Debtor notwithstanding the occurrence of the Effective Date, and the Reorganized Debtor may pursue, collect, enforce, commence, prosecute, or settle such Rights of Action in its discretion. The Reorganized Debtor, rather than the Distribution Trust, shall have the exclusive right to pursue,

collect, enforce, commence, prosecute, or settle any and all Rights of Action arising from or related to the Debtor's Intellectual Property.

21. Without limiting the foregoing and except for the Distribution Trust Litigation Actions, the right of the Reorganized Debtor to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a defendant or an interest party, against any entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, are preserved.

22. Notwithstanding the foregoing Paragraph 20 of this Confirmation Order, in accordance with section 1123(b) of the Bankruptcy Code, effective upon the occurrence of the Effective Date, the Reorganized Debtor shall immediately convey and transfer all Distribution Trust Litigation Actions to the Distribution Trust as set forth in the Plan and the Distribution Trust Agreement. The Distribution Trust's rights to commence, prosecute or settle such Distribution Trust Litigation Actions shall be preserved notwithstanding the occurrence of the Effective Date.

23. The Distribution Trust Litigation Actions consist of the Avoidance Actions and the D&O Actions. Avoidance Actions are defined under the Plan as any and all rights, claims, and causes of action arising under any provision of Chapter 5 of the Bankruptcy Code. Except for Avoidance Actions against counterparties to executory contracts and leases that are assumed by the Reorganized Debtor, all Avoidance Actions are retained by the Distribution Trust and include, without limitation, (a) preferential transfers (i) made on or within 90 days period prior to the Petition Date or (ii) with respect to insiders, between 90 days and one year prior to the Petition Date, and (b) fraudulent and/or constructively fraudulent transfers made or incurred on or within 2 years prior to the Petition Date.

24. The D&O Actions retained by the Distribution Trust are defined under the Plan to include all rights, claims and/or causes of action against the current and/or former officers and/or directors of Compresus, Inc. that arose prior to the commencement of the Bankruptcy Case. Such D&O Actions shall include, without limitation, all claims for any act, error, misstatement, misleading statement, omission, breach of duty and/or neglect, whether in contract or in tort, at law or in equity, or under any other theory of law.

25. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Distribution Trust Litigation Action against them as any indication that the Distribution Trust shall not pursue any and all available Distribution Trust Litigation Actions against them. The Distribution Trust expressly reserves all rights to prosecute any and all Distribution Trust Litigation Actions, except as otherwise expressly provided in the Plan. Unless any Distribution Trust Litigation Actions are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or by Final Order, the Distribution Trust expressly reserves all Distribution Trust Litigation Actions for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppels (judicial, equitable or otherwise) or laches, shall apply to such Distribution Trust Litigation Actions upon, after or as a consequence of the confirmation or the consummation of the Plan.

26. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the following shall not be subject to any stamp tax or other similar tax, real estate transfer tax, mortgage recording tax, filing fee, or similar tax: (a) any of the Implementation Provisions; (b) the issuance, transfer or exchange of notes, debt instruments and equity securities under or in connection with the Plan; (c) the creation, assignment, recordation or perfection of any lien,



pledge, other security interest or other instruments of transfer; (d) the making or assignment of any lease; (e) the creation, execution and delivery of any agreements or other documents creating or evidencing the formation of the Reorganized Debtor or the issuance or ownership of any interest in the Reorganized Debtor; or (f) the making or delivery of any deed or other instrument of transfer under the Plan in connection with the vesting of the Debtor's assets in the Reorganized Debtor or the Distribution Trustee and the Distribution Trust pursuant to or in connection with the Plan, including, without limitation, merger agreements, stock purchase agreement, agreements of consolidation, restructuring, disposition, liquidation or dissolution, and transfers of tangible property.

27. Transfers by Debtor. All transfers of property of the Debtor's estate shall be free and clear of all Liens, charges, Claims, encumbrances, and other interests, except as expressly provided in the Plan or this Confirmation Order.

28. Securities Exempt from Registration. To the maximum extent provided by section 1145 of the Bankruptcy Code and/or applicable non-bankruptcy law, the issuance under the Plan of the New Equity will be exempt from registration under the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder and any state or local law requiring registration prior to the offering, issuance, distribution, or sale of securities. The issuance of the New Equity to CME is in exchange for Claims against the Debtor within the meaning of section 1145(a)(1) of the Bankruptcy Code. Pursuant to section 1145(c) of the Bankruptcy Code, the resale of any equity and any other securities issuable pursuant to the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder and any state or local law requiring registration prior to the

offering, issuance, distribution, or sale of securities, except for any restrictions set forth in section 1145(b) of the Bankruptcy Code and any restriction contained in the Plan Documents.

29. Extinguishment of Claims and Equity Interests. Except as provided in the Plan, the rights afforded in and the payments and distributions to be made under the Plan shall terminate all Equity Interests and discharge all existing debts and Claims of any kind, nature or description whatsoever against or in the Debtor or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, upon the Effective Date, all existing Claims against and Equity Interests in the Debtor shall be, and shall be deemed to be, discharged and terminated, and all holders of such Claims and Equity Interests shall be precluded and enjoined from asserting against the Reorganized Debtor, its successors or assignees, or any of its assets or properties any other or further Claim or Equity 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 facts or legal bases therefor were known or existed prior to the Effective Date.

30. Discharge and Injunction. The discharge, release, and injunction contained in Article 11.1 and 11.2 of the Plan are approved and authorized in all respects.

31. Terms of Existing Injunctions or Stays. All injunctions or stays arising under or entered during the Bankruptcy Case under section 105 or 362 of the Bankruptcy Code, or otherwise, that are in existence on the Confirmation Date shall remain in full force and effect until the Effective Date, *provided, however*, that no such injunction or stay shall preclude enforcement of parties' rights under the Plan and the related documents.

32. Exoneration and Reliance. The exculpation and exoneration contained in Article 11.3 of the Plan is approved and authorized in all respects.

33. Releases. The releases contained in Article 11.4 of the Plan are approved and authorized in all respects.

34. Notwithstanding anything to the contrary in the injunctions, releases and discharge set forth in Article XI of the Plan, no D&O Actions are enjoined, released and/or discharged by the Plan, including specifically, nothing in the Plan or this Confirmation Order shall amend, abridge or otherwise impair any claimant's right to assert a claim against any current and/or former officer or director of Compressus that the claimant holds as his or her own personal property and that is not property of the Debtor's estate (an "Individual D&O Action"). No plaintiff, defendant or other party to an Individual D&O Action may bring any claim, counterclaim, cross-claim against any of the Protected Parties, which would require the Debtor, Reorganized Debtor, the Plan Sponsor, or the DIP Lender to be a party or liable in any lawsuit or proceeding. For the avoidance of doubt, no D&O Action shall result in any liability whatsoever to the Reorganized Debtor, the Plan Sponsor, or the DIP Lender.

35. In addition the retention of jurisdiction set forth in Article XII of the Plan, the Bankruptcy Court shall retain jurisdiction (to the maximum extent legally permissible) to determine disputes, if any, over whether one or more D&O Actions vested in the Distribution Trust as a Distribution Trust Asset constitutes property of the Debtor's Estate; provided, however, nothing herein shall require that any claimant be required to commence any Individual D&O Action in the Bankruptcy Court.

36. Limitation of Liability. The Protected Parties shall have all of the benefits and protections afforded under section 1125(e) of the Bankruptcy Code and applicable law.

37. No Successor Liability. Except as otherwise provided in the Plan, any agreement, instrument or document incorporated therein, or in this Confirmation Order, pursuant to section 1141 of the Bankruptcy Code and Articles 10.2 and XI of the Plan, the property of the Debtor's estate shall vest in the Reorganized Debtor (other than the Distribution Trust Assets, which shall be conveyed and transferred to the Distribution Trust pursuant to the Plan and/or this Confirmation Order), free and clear of all claims and interests of creditors and equity holders of the Debtor. Moreover, pursuant to section 1141(d) of the Bankruptcy Code, the effect of confirmation of the Plan shall be to discharge the Debtor from any debt that arose before the date of confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

38. The issuance of New Equity or transfer of assets through the Plan shall not result in the Reorganized Debtor (a) having any liability or responsibility for any Claim against or Equity Interest in the Debtor, the Debtor's estate, or Insider of the Debtor, or (b) having any liability or responsibility to the Debtor, each except as expressly set forth in the Plan. Without limiting the effect or scope of the foregoing and except as expressly set forth in the Plan, and to the fullest extent permitted by applicable laws, the issuance of the New Equity or transfer of assets contemplated in the Plan shall not subject the Reorganized Debtor, its respective properties or assets or respective affiliates, successors, or assigns to any liability for Claims against the Debtor's interests in such assets by reason of such issuance of New Equity or transfer of assets under any applicable laws, including, without limitation, any successor liability.

39. For the avoidance of doubt, the Reorganized Debtor shall assume no liabilities or fiduciary duties with respect to the Debtor's 401(k) plan in any respect whatsoever.

40. General Administrative Claim Bar Date Provisions. Unless previously filed or as otherwise governed by a bar date order or in another order of the Court, requests for payment of Administrative Claims must be filed with the Court and served on the parties identified in Article 4.1(e) of the Plan by the Administrative Claim Bar Date, which shall be 30 days after the Effective Date. Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims and that do not file and serve such a request by the Administrative Claim Bar Date shall be forever barred from asserting such Administrative Claims against, as applicable solely as provided under the Plan, the Debtor, the Estate, the Distribution Trust, or their respective property. Objections to any requests for payment of Administrative Claims must be asserted by the Claim Objection Deadline. In light of the notice of the Administrative Claims Bar Date provided to creditors and parties in interest in the Combined Hearing Notice, Notice of Impaired Non-Voting Status, and Notice of Non-Voting Status, no other or further notice of the Administrative Claim Bar Date is required.

41. Professional Compensation. As set forth in Article 4.1(e) of the Plan, all professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code for services rendered before the Effective Date (including, without limitation, any compensation requested by any professional or any other entity for making a substantial contribution in the Bankruptcy Case) shall file and serve on the Distribution Trust, the Reorganized Debtor, the U.S. Trustee and the Post-Confirmation Service List an application for final allowance of compensation and reimbursement of expenses no later than thirty (30) days after the Effective Date. Objections to applications of professionals for compensation or reimbursement of expenses must be filed and served on the Reorganized Debtor, the Distribution Trust, the U.S. Trustee, and the professionals

to whose application the objections are addressed no later than twenty-one (21) days after the date the application is filed, or the Bankruptcy Court may enter an order authorizing the fees without a hearing. Any professional fees and reimbursements or expenses incurred by the Reorganized Debtor subsequent to the Effective Date may be paid without application to the Bankruptcy Court.

42. Notwithstanding anything to the contrary under the Plan, the U.S. Trustee's right to object to Claims, including without limitation Administrative Claims, is expressly reserved.

43. 28 U.S.C. § 1930 Fees. Fees payable pursuant to 28 U.S.C. § 1930 constitute Administrative Claims under the Plan and shall be paid pursuant to section 4.1(d) of the Plan.

44. Internal Revenue Service Reservation of Rights. Notwithstanding any provision to the contrary in the Plan, the Plan Documents and/or this Confirmation Order, nothing shall: (1) affect the ability of the Internal Revenue Service ("**IRS**") to pursue any non-debtors to the extent allowed by applicable law for any liabilities that may be related to any federal tax liabilities owed by the Debtor or the Estate; (2) affect the rights of the IRS to assert setoff and recoupment and such rights are expressly preserved; (3) discharge any claim IRS may have under section 1141(d)(6) of the Bankruptcy Code; or (4) require the IRS to file an Administrative Claim in order to receive payment for any liability described in section 503(b) of the Bankruptcy Code. All Allowed Other Secured Claims held by the IRS, along with interest accruing at the rate and method set forth in 26 U.S.C. §§ 6621 and 6622, shall be paid pursuant to the Plan and applicable law and IRS shall retain its liens until such secured claims are paid in full. IRS administrative expense claims allowed pursuant to the Plan or section 503 of the Bankruptcy Code shall accrue interest and penalties as provided by non-bankruptcy law until paid in full.

45. In addition, nothing in the Plan, the Plan Documents and/or this Confirmation Order shall: (a) effect a release, discharge or otherwise preclude any claim whatsoever against the Debtor (or the Distribution Trust solely on account of any General Unsecured Claims) by or on behalf of the IRS relating to any liability arising out of any unfiled pre-petition tax return or any pending audit or audit which may be performed with respect to any pre-petition tax return; and (b) nothing shall enjoin the IRS from amending any claim against the Debtor (or the Distribution Trust solely on account of any General Unsecured Claims) with respect to any tax liability arising as a result of the filing of an unfiled return or a pending audit or audit which may be performed with respect to any pre-petition or administrative tax return. Further, any liability arising as a result of an unfiled return or final resolution of a pending audit or audit which may be performed with respect to any pre-petition tax return shall be paid under the Plan pursuant to and in accordance with sections 1129(a)(9)(A) and (C) of the Bankruptcy Code.

46. Appointment of Distribution Trustee. Gavin/Solmonese LLC is hereby appointed to serve as the Distribution Trustee on the terms set forth in this Confirmation Order, the Plan, and the Distribution Trust Agreement.

47. Appointment of the 401(k) Plan Administrator. As set forth in Article 8.7 of the Plan, upon the Effective Date, Stanley W. Mastil, CPA, CFF, of Gavin/Solmonese LLC, is appointed to serve as the administrator (the "Plan Administrator") of the Compressus, Inc. 401(k) Retirement Plan (the "401(k) Plan"). The Plan Administrator is authorized and directed to cause all appropriate or necessary documents related to the 401(k) Plan to be prepared or filed timely in connection with the winding down and termination of the 401(k) Plan. The Plan Administrator is authorized and directed to pay all costs and expenses he deems necessary or

advisable in connection with the winding down and the termination of the 401(k) Plan pursuant to the Allowed Additional Claims Process.

48. Authorization, Duties, and Powers of Distribution Trustee. The Distribution Trustee is hereby authorized to take any and all actions necessary or appropriate in furtherance of, and to implement, effectuate and consummate the Plan, this Confirmation Order, and the Implementation Provisions to the extent such actions or procedures pertain to the Distribution Trust, including, without limitation, all of the Implementation Provisions, procedures and undertakings specified in Article VII of the Plan and, further without limitation of the foregoing, all of the specified rights, duties, powers, options, and elections of the Distribution Trustee set forth in the Distribution Trust Agreement.

49. Oversight Board. Upon the Effective Date, the Oversight Board shall be deemed to be established in accordance with the Distribution Trust. The Oversight Board shall be a party in interest in the Bankruptcy Case and shall have the oversight rights and powers delineated in the Plan and Distribution Trust Agreement.

50. Compensation of Distribution Trustee. The compensation of the Distribution Trustee and the work of its professionals in support of the Distribution Trustee, as well as reimbursement of the Distribution Trustee's actual, reasonable, and necessary expenses incurred in connection with the performance of the Distribution Trustee's duties, pursuant to the terms set forth in the Distribution Trust Agreement, shall be paid solely from the Distribution Trust Operating Reserve without further order of the Court, subject to the terms and conditions of the Distribution Trust Agreement.

51. Directive in Furtherance of Plan. Each federal, state, commonwealth, local, foreign, or other governmental agency is hereby authorized to accept any and all documents,



mortgages and instruments necessary or appropriate to effectuate, implement, or consummate the transactions contemplated by the Plan and this Confirmation Order.

52. Binding Effect of Prior Orders and Agreements. Pursuant to section 1141 of the Bankruptcy Code, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Confirmation Order, all prior orders entered in the Bankruptcy Case, all documents and agreements executed by the Debtor as authorized and directed thereunder, and all motions or requests for relief by the Debtor pending before the Court as of the Effective Date shall be binding upon and shall inure to the benefit of the Reorganized Debtor and the Distribution Trustee.

53. Final Order. The stay of this Confirmation Order imposed by Bankruptcy Rule 3020(e) is hereby waived in accordance with Bankruptcy Rule 3020(e). This Confirmation Order is a final order, and the period in which an appeal must be filed shall commence immediately upon the entry hereof.

54. Effect of Reversal. If any or all of the provisions of this Order are hereafter reversed, modified, or vacated by subsequent order of this Court or any other court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Reorganized Debtor's or the Distribution Trustee's receipt of written notice of such order. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Confirmation Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan and *all related documents or any amendments or modifications* thereto.

55. Notice of Confirmation and Effective Date. Promptly following the occurrence of the Effective Date, pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c)(2), the Reorganized Debtor is directed to serve a notice of the entry of this Confirmation Order, the establishment hereunder of bar dates for certain Claims (including the Rejection Damages Bar Date) and the occurrence of the Effective Date, substantially in the form of **Exhibit B** attached hereto and incorporated herein by reference (the “**Confirmation and Effective Date Notice**”), on all parties that received the Combined Hearing Notice. The Reorganized Debtor is also directed to make copies of the Confirmation and Effective Date Notice available on the Upshot Services Website.

56. Insurance and Assignment to the Distribution Trust. Nothing in the Disclosure Statement, the Plan, or the Confirmation Order alters the rights and obligations of the Debtor and the Debtor’s insurers (and third party claims administrators) under applicable insurance policies (and the agreements related thereto) or modifies the coverage provided thereunder or the terms and conditions thereof. Any such rights and obligations shall be determined under the applicable insurance policies, any related agreement of the parties and applicable law.

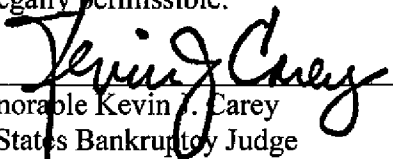
57. Upon the occurrence of the Effective Date, the D&O Policies shall be immediately conveyed and assignment by the Reorganized Debtor as part of the Distribution Trust Assets to the Distribution Trust.

58. Plan and Confirmation Order Govern. Without intending to modify any prior order of this Court (or any agreement, instrument, or document addressed by any prior order), in the event of an inconsistency between the Plan, on the one hand, and any other agreement, instrument, or document intended to implement the provisions of the Plan, on the other, the provisions of the Plan shall govern; *provided, further*, that, for the avoidance of doubt, in the

event of any inconsistency between the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall govern.

59. Jurisdiction. The assets and affairs of the Debtor shall remain subject to the jurisdiction of this Court until the Effective Date. Notwithstanding the entry of this Confirmation Order, from and after the Effective Date, the Court shall retain such jurisdiction over the Bankruptcy Case to the fullest extent that is legally permissible.

Dated: December 11, 2015

  
\_\_\_\_\_  
The Honorable Kevin J. Carey  
United States Bankruptcy Judge

**Exhibit A**

**[Plan]**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**IN RE:**

**COMPRESSUS INC.<sup>1</sup>**

**Debtor.**

§  
§  
§  
§  
§  
§

**CASE NO. 15-10670 (KJC)**

**Chapter 11**

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**SECOND AMENDED PLAN OF REORGANIZATION OF THE DEBTOR  
DATED NOVEMBER 2, 2015**

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Proponents of the Plan

SHEPPARD MULLIN RICHTER & HAMPTON, LLP  
Craig A. Wolfe, Esq.  
Malani J. Cademartori, Esq.  
30 Rockefeller Plaza, 39<sup>th</sup> Floor  
New York, NY 10112  
Email: cwolfe@sheppardmullin.com  
mcaudemartori@sheppardmullin.com  
-and-

HAYNES AND BOONE, LLP  
Charles A. Beckham, Jr. (TX Bar No. 02016600)  
1221 McKinney Street, Suite 2100  
Houston, Texas 77010  
Email: charles.beckham@haynesboone.com

-and-

GELLERT SCALI BUSENKELL & BROWN, LLC  
Michael Busenkell (DE 3933)  
Brya M. Keilson (DE 4643)  
913 N. Market Street, 10<sup>th</sup> Floor  
Wilmington, DE 19801  
Email: mbusenkell@gsbblaw.com  
bkeilson@gsbblaw.com

Trevor R. Hoffmann (NY Bar No. 24048806)  
30 Rockefeller Plaza, 26<sup>th</sup> Floor  
New York, NY 1011  
Email: trevor.hoffmann@haynesboone.com

COUNSEL TO PLAN SPONSOR

COUNSEL TO DEBTOR-IN-POSSESSION

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<sup>1</sup> The Debtor's federal tax identification number is 52-230723. The Debtor's address is 101 Constitution Avenue, NW, Suite 800, Washington, DC 20001.

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**EXHIBITS TO THE PLAN**

Glossary of Defined Terms.....Exhibit A  
Schedule of Assumed Contracts and Unexpired Leases..... Exhibit B

Compressus, Inc., the Debtor and Debtor-in-Possession in the above-referenced Bankruptcy Case, and Compressus AC, Inc., in its capacity as the Plan Sponsor, jointly propose the Plan of the Debtor dated November 2, 2015. Reference is made to the Disclosure Statement for a discussion of the Debtor's history, business, property and results of operations, and for a summary of the Plan and certain related matters.

All Creditors are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan. No materials, other than the Disclosure Statement and any exhibits and schedules attached thereto or referenced therein, have been approved by the Proponents for use in soliciting acceptances or rejections of the Plan.

For avoidance of doubt, the Plan applies and preserves the maximum jurisdiction possible under applicable U.S. law, including, without limitation, over the assets of the Debtor wherever located. The Plan is also consistent with and implements the decisions of the Bankruptcy Court that are described in the Disclosure Statement.

## **ARTICLE I SUMMARY OF THE PLAN**

An overview of the Plan is provided in the Disclosure Statement. Generally, the Plan provides for (1) the reorganization of the Debtor by retiring, cancelling, extinguishing and/or discharging the Debtor's prepetition equity interests and issuing New Equity to the Plan Sponsor and CME, and (2) the distribution of cash and rights to certain litigation recoveries to holders of Allowed Claims in Articles IV and V of the Plan in accordance with the priority scheme established by the Bankruptcy Code.

The reorganization of the Debtor and its estate described herein will be implemented via the (i) (a) issuance of fifty percent (50%) of the New Equity to the Plan Sponsor, in exchange for the consideration from the Plan Sponsor in the amount of \$5.1 million; and (b) as further described below, issuance of fifty percent (50%) of the New Equity, plus cash, to CME, on account of the CME Secured Claim; (ii) distribution of the Plan Sponsor consideration to pay the Debtor's postpetition financing facility; (iii) distribution of the Debtor's remaining cash and the remaining Plan Sponsor consideration to the creditors holding (a) Allowed Administrative Claims; (b) Allowed Priority Tax Claims; (c) Allowed Priority Non-Tax Claims; and (d) Allowed Secured Claims. The Plan also creates a Distribution Trust (as defined in the Plan) to pursue certain avoidance claims and causes of action for the benefit of certain deferred Allowed Administrative Claims (which include certain deferred Allowed Administrative Claims held by the Debtor's professionals), and holders of Allowed General Unsecured Claims and Allowed Converted Noteholder Claims.

## **ARTICLE II DEFINITIONS, RULES OF INTERPRETATION, AND CONSTRUCTION OF TERMS**

All capitalized terms not defined elsewhere in the Plan shall have the meanings assigned to them in the Glossary of Defined Terms attached as Exhibit A to the Plan. Any capitalized term used in the Plan that is not defined herein has the meaning ascribed to that term in the Bankruptcy Code and/or Bankruptcy Rules.

For purposes of the Plan, any reference in the Plan to an existing document or exhibit filed or to be filed means that document or exhibit as it may have been or may be amended, supplemented, or otherwise modified.

The words “herein,” “hereof” and “hereunder” and other words of similar import refer to the Plan as a whole and not to any particular section, subsection or clause contained in the Plan, unless the context requires otherwise. Whenever from the context it appears appropriate, each term stated in either the singular or the plural includes the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender include the masculine, feminine and the neuter. The section headings contained in the Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan.

Captions and headings to articles, sections and exhibits are inserted for convenience of reference only and are not intended to be part of or to affect the interpretation of the Plan.

The rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

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

### **ARTICLE III DESIGNATION OF CLAIMS AND INTERESTS**

#### **3.1 Summary**

Pursuant to section 1122 of the Bankruptcy Code, a Claim or Equity Interest is placed in a particular Class for purposes of voting on the Plan and receiving Distributions under the Plan only to the extent (i) the Claim or Equity Interest qualifies within the description of that Class; (ii) the Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class, and is classified in another Class or Classes to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such other Class or Classes; and (iii) the Claim or Equity Interest has not been paid, released, or otherwise compromised before the Effective Date. A Claim or Equity Interest which is not an Allowed Claim or Allowed Equity Interest, including a Disputed Claim, is not in any Class, and, notwithstanding anything to the contrary contained in the Plan, no Distribution shall be made on account of any Claim or Equity Interest which is not an Allowed Claim or Allowed Equity Interest. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Compensation Claims, and Priority Tax Claims are not classified under the Plan and are excluded from the Classes set forth in Article 3.2 below.

#### **3.2 Identification of Classes**

The following is a designation of the classes of Claims and Equity Interests under the Plan.

Class 1: Priority Non-Tax Claims

Class 2: CME Secured Claims

Class 3: Other Secured Claims  
Class 4: General Unsecured Claims  
Class 5: Converted Noteholder Claims  
Class 6: Equity Interests

### **3.3 Unimpaired Classes**

Class 1 is Unimpaired under the Plan, and therefore Class 1 is conclusively presumed to have accepted the Plan.

### **3.4 Impaired Classes/Entitled to Vote**

Classes 2, 3, 4 and 5 are Impaired under the Plan. Holders of Claims in Classes 2, 3, 4 and 5 are entitled to vote to accept or reject the Plan.

### **3.5 Impaired Classes/Not Entitled to Vote**

Holders of Allowed Equity Interests in Class 6 will not receive Distributions on account of such interests under the Plan. Under section 1126(g) of the Bankruptcy Code, Holders of Allowed Equity Interests in Class 6 are conclusively presumed to have rejected the Plan, and therefore the Proponents will not solicit their votes.

### **3.6 Elimination of Classes for Voting Purposes**

Except as modified by the Disclosure Statement Approval Order, any Class of Claims or Equity Interests that is not occupied as of the date of the commencement of the Confirmation Hearing by an Allowed Claim, an Allowed Equity Interest, or a Claim or Equity Interest temporarily allowed under Rule 3018 of the Bankruptcy Rules shall be deemed deleted from the Plan for purposes of voting on acceptance or rejection of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

### **3.7 Controversy Concerning Classification, Impairment or Voting Rights**

In the event a controversy or dispute should arise involving issues related to the classification, impairment or voting rights of any Creditor or Interest Holder under the Plan, whether before or after the Confirmation Date, the Bankruptcy Court may, after notice and a hearing, determine such controversy. Without limiting the foregoing, the Bankruptcy Court may estimate for voting purposes (i) the amount of any contingent or unliquidated Claim the fixing or liquidation of, as the case may be, would unduly delay the administration of the Bankruptcy Case and (ii) any right to payment arising from an equitable remedy for breach of performance.

**ARTICLE IV  
TREATMENT OF UNCLASSIFIED CLAIMS**

**4.1 Administrative Claims**

(a) Generally: Subject to the bar date provisions herein, unless otherwise agreed to by the holder of an Administrative Claim and the Proponents and/or the Reorganized Debtor, each holder of an Allowed Administrative Claim shall receive Cash in accordance with and pursuant to the Allowed Additional Claims Process, equal to the unpaid portion of such Allowed Administrative Claim within ten (10) days after the later of (a) the Effective Date, (b) the Allowance Date, or (c) such date as is mutually agreed upon by the Disbursing Agent and the holder of such Claim.

(b) Allowed DIP Claims: The DIP Claim is deemed to be an Allowed Claim, and the DIP Lender is not required to file or serve any request for payment on account of the DIP Claim. On the Effective Date, the DIP Lender, on account of being the holder of the Allowed DIP Claim, shall receive, from the Consideration, payment in Cash in the full amount of the Allowed DIP Claim. The DIP Lender and the Plan Sponsor may agree to forego exchanging actual cash pursuant to an agreement between them based on their sole judgment. In the event of such agreement, the amount of the Consideration will be reduced, dollar-for-dollar, in exchange for the DIP Lender consenting to waiving receipt of actual cash. On the Effective Date, all liens and interests granted under the DIP Order for the DIP Facility shall be deemed discharged, cancelled, and released and shall be of no further force and effect.

(c) Allowed Professionals Fees of the Discounted Professionals: The Allowed Administrative Claims of the Discounted Professionals shall receive payment of (i) Discounted Professionals Aggregate Plan Consideration; (ii) potential Distributions in accordance with the Debtor's Remaining Cash Payment Waterfall in Article 6.1 of the Plan; and (iii) the Discounted Professionals Fee Deferment in accordance with the Plan, the Waterfall and the Distribution Trust Agreement. All Distributions to the Discounted Professionals shall be allocated amongst the Discounted Professionals pursuant to a separately agreed-upon formula. The Discounted Professionals Aggregate Consideration shall be paid to each Discounted Professional on the later of the (i) Effective Date; (ii) Allowance Date of such Discounted Professional's Administrative Claim; or (iii) such date as is mutually agreed upon by the Disbursing Agent and the applicable Discounted Professional. Notwithstanding anything else to the contrary in the Plan, the award of fees and expenses to Professionals, including the Discounted Professionals, retained by the Debtor pursuant to Bankruptcy Court order in this Bankruptcy Case shall be pursuant to further orders of the Bankruptcy Court granting such Professionals' final fee applications.

(d) Payment of Statutory Fees: All fees payable pursuant to 28 U.S.C. § 1930 shall be paid in Cash equal to the amount of such Administrative Claim when due or no later than the Effective Date pursuant to the Allowed Additional Claims Process. Post-confirmation U.S. Trustee fees and post-confirmation reports shall be paid and filed as required by 28 U.S.C. § 1930 by the Distribution Trust until the Bankruptcy Case is closed, converted or dismissed, and failure to do either timely is a material default pursuant to section 1112 of the Bankruptcy Code.

(e) Bar Date for Administrative Claims:

General Provisions: Except as otherwise provided in this Article IV, requests for payment of Administrative Claims must be included within an application (setting forth the amount of, and basis for, such Administrative Claims, together with documentary evidence) and Filed and served on respective counsel for the Debtor and Plan Sponsor on or before the Administrative Claim Bar Date or by such earlier deadline governing a particular Administrative Claim contained in an order of the Bankruptcy Court entered before the Effective Date. Holders of Administrative Claims that are required to File a request for payment of such Claims and that do not File such requests by the applicable bar date specified in this section shall be forever barred from asserting such Claims against the Debtor or any of its property. Requests for payments of Administrative Claims included within a proof of claim are of no force and effect, and are disallowed in their entirety as of the Confirmation Date unless such Administrative Claim is subsequently Filed in a timely fashion as provided herein.

Professionals: All professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code for services rendered before the Effective Date (including, without limitation, any compensation requested by any professional or any other entity for making a substantial contribution in the Bankruptcy Case) shall File and serve on the Distribution Trust, the Reorganized Debtor, the U.S. Trustee and the Post-Confirmation Service List an application for final allowance of compensation and reimbursement of expenses no later than thirty (30) days after the Effective Date. Objections to applications of professionals for compensation or reimbursement of expenses must be filed and served on the Reorganized Debtor, the Distribution Trust, the U.S. Trustee, and the professionals to whose application the objections are addressed no later than twenty-one (21) days after the date the application is filed, or the Bankruptcy Court may enter an order authorizing the fees without a hearing. Any professional fees and reimbursements or expenses incurred by the Reorganized Debtor subsequent to the Effective Date may be paid without application to the Bankruptcy Court.

The U.S. Trustee shall not be required to file a proof of claim or otherwise file a request for the payment of fees under 28 U.S.C. § 1930.

Tax Claims: All requests for payment of Administrative Claims and other Claims by a Governmental Unit for taxes (and for interest and/or penalties related to such taxes) for any tax year or period, which accrued or was assessed within the period from and including the Petition Date through and including the Effective Date (“Post-Petition Tax Claims”) and for which no bar date has otherwise been previously established, must be Filed on or before the later of (i) forty-five (45) days following the Effective Date; and (ii) ninety (90) days following the filing with the applicable Governmental Unit of the tax return for such taxes for such tax year or period. Any holder of any Post-Petition Tax Claim that is required to File a request for payment of such taxes and does not File such a Claim by the applicable bar date shall be forever barred from asserting any such Post-Petition Tax Claim against the Debtor or its property, whether any such Post-Petition Tax Claim is deemed to arise prior to, on, or subsequent to the Effective Date. To the extent that the holder of a Post-Petition Tax Claim holds a lien to secure its Claim under

applicable state law, the holder of such Claim shall retain its lien until its Allowed Post-Petition Tax Claim has been paid in full.

#### **4.2 Allowed Priority Tax Claims**

Subject to payment pursuant to the Allowed Additional Claims Process, each Holder of an Allowed Priority Tax Claim against the Debtor shall receive in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim (i) Cash equal to the amount of such Allowed Priority Tax Claim; (ii) payment in full through the fifth anniversary of the Petition Date, plus interest; or (iii) such other less favorable treatment to the holders of an Allowed Priority Tax Claim as to which the Debtor, the Plan Sponsor and the holder of such Allowed Priority Tax Claims shall have agreed upon in writing.

#### **4.3 Ordinary Course Liabilities**

All Ordinary Course Liabilities are deemed to be Allowed Claims to the extent set forth in the Approved Budget, and holders of Administrative Claims on account of Ordinary Course Liabilities are not required to file or serve any request for payment in connection with such Ordinary Course Liabilities. The Debtor shall be obligated to pay each Ordinary Course Liability (other than the Allowed DIP Claim, which is provided for in Article 4.1(b)) accrued prior to the Effective Date from the proceeds of the DIP Facility pursuant to the payment terms and conditions of the particular transaction giving rise to the Ordinary Course Liability, and the Approved Budget; provided that any remaining unpaid Ordinary Course Liabilities accrued prior to the Effective Date shall be paid pursuant to the Additional Claims Allowance Process. The Reorganized Debtor shall pay each Ordinary Course Liability accrued after the Effective Date, pursuant to the payment terms and conditions of the particular transaction giving rise to the Ordinary Course Liability.

### **ARTICLE V CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

#### **5.1 Treatment of Allowed Priority Non-Tax Claims (Class 1)**

Each holder of an Allowed Priority Non-Tax Claim against the Debtor shall receive on the Effective Date, on account of and in full and complete settlement, release and discharge of, and in exchange for, such Allowed Priority Non-Tax Claim, its (a) Pro Rate Share of the Priority Non-Tax Amount and (b) Cash pursuant to the Allowed Additional Claims Process. Notwithstanding anything to the contrary in this Plan, each holder of an Allowed Priority Non-Tax Claim shall be paid in full on the Effective Date.

#### **5.2 Treatment of Allowed CME Secured Claim (Class 2)**

On the Effective Date, CME shall receive on account of the CME Secured Claim the CME Consideration Amount.

### **5.3 Treatment of Allowed Other Secured Claims (Class 3)**

On or as soon as practicable after the Effective Date, each holder of an Allowed Other Secured Claim, in full satisfaction of such Allowed Claim, shall receive one of the following alternative treatments, at the election of the Plan Sponsor: (a) payment under the Allowed Additional Claims Process; (b) the collateral securing such Other Secured Claim and any interest required to be paid pursuant to section 506(b) of the Bankruptcy Code; (c) the treatment described in section 1124(2) of the Bankruptcy Code; (d) such other treatment as the Plan Sponsor and/or the Reorganized Debtor and the applicable holder of the Allowed Other Secured Claim may agree; or (e) such other recovery necessary to satisfy section 1129 of the Bankruptcy Code.

### **5.4 Treatment of Allowed General Unsecured Claims (Class 4)**

Each holder of an Allowed General Unsecured Claim shall receive a first and final Distribution on the Final Distribution Date of its Pro Rata Share of the Final Class 4 Amount in accordance with the Waterfall in Article 7.6 of the Plan, and the Distribution Trust Agreement, in full and complete settlement, release and discharge of, and in exchange for, its Allowed General Unsecured Claim.

### **5.5 Treatment of Allowed Converted Noteholder Claims (Class 5)**

Each holder of an Allowed Converted Noteholder Claim shall receive a first and final Distribution on the Final Distribution Date of its Pro Rata Share of the Final Class 5 Amount in accordance with the Waterfall in Article 7.6 of the Plan, and the Distribution Trust Agreement, in full and complete settlement, release and discharge of, and in exchange for, its Allowed Converted Noteholder Claim.

If the separate classification of the Converted Noteholder Claims in Class 5 is not approved at the Confirmation Hearing, the Plan may still be confirmed by the merger of all Converted Noteholder Claims in Class 5 into Class 6 below. As noted, all Equity Interests in Class 6 are deemed to have rejected the Plan and therefore are not entitled to vote on the Plan.

### **5.6 Treatment of Allowed Equity Interests (Class 6)**

No Distributions will be made to holders of Allowed Equity Interests. On the Effective Date, all Allowed Equity Interests shall be deemed automatically cancelled, released, and extinguished without further action by the Debtor or the Reorganized Debtor, and the obligations of the Debtor and the Reorganized Debtor thereunder shall be discharged.

## **ARTICLE VI MEANS FOR IMPLEMENTATION OF THE PLAN**

### **6.1 Debtor's Remaining Cash Payment Waterfall**

Upon the Effective Date, the Debtor's Remaining Cash shall be Distributed in accordance with the following Debtor's Remaining Cash Payment Waterfall. Each subsection of this Article



6.1 of the Plan reflects a distribution priority for the Debtor's Remaining Cash.

(a) The Debtor's Remaining Cash shall first be used to pay (i) unpaid Ordinary Course Liabilities of the Debtor that accrued prior to the Effective; and (ii) unpaid and Allowed Administrative Claims other than the Allowed Administrative Claims of the Discounted Professionals;

(b) The next available proceeds from the Debtor's Remaining Cash shall be used to fund the Distribution Trust Operating Reserve Contribution or, as applicable, used to reimburse the payment of such Distribution Trust Operating Reserve Contribution by the Discounted Professionals from the Discounted Professionals Aggregate Plan Consideration on the Effective Date;

(c) The next available proceeds from the Debtor's Remaining Cash shall be used to pay the Estate DIP Interest Obligation or, as applicable, used to reimburse the payment of such Estate DIP Interest Obligation by the Discounted Professionals from the Discounted Professionals Aggregate Plan Consideration on the Effective Date;

(d) The next available proceeds from the Debtor's Remaining Cash shall be used to pay the remaining Allowed Administrative Claims of the Discounted Professionals; and

(e) All remaining proceeds from the Debtor's Remaining Cash will be deemed a Distribution Trust Asset; provided, however, that if the Debtor's Remaining Cash is insufficient to fully fund or satisfy subsections 6.1(b) and/or 6.1(c), such unpaid and/or unfunded portions of subsections 6.1(b) and/or 6.1(c) shall be paid from the Discounted Professionals Aggregate Plan Consideration.

## **6.2 Continued Corporate Existence**

Except as otherwise provided in the Plan, the Reorganized Debtor will continue to exist after the Effective Date as a corporate entity, with all of the powers of a corporation under applicable law in the jurisdiction in which the Debtor is incorporated and pursuant to its Charter Documents in effect before the Effective Date, as such documents are amended by or pursuant to the Plan.

Upon the Effective Date, and without any further action by the shareholders, directors, or officers of the Reorganized Debtor, the Reorganized Debtor's Charter Documents shall be deemed amended (a) to the extent necessary, to incorporate the provisions of the Plan, and (b) to prohibit the issuance by the Reorganized Debtor of nonvoting securities to the extent required under section 1123(a)(6) of the Bankruptcy Code, subject to further amendment of such Charter Documents as permitted by applicable law.

## **6.3 Management and Board of Directors**

The members of the board of directors of the Debtor existing immediately before the Effective Date shall be deemed terminated and/or removed without cause effective immediately prior to the Effective Date. The Plan Sponsor may nominate and elect new members for the

board of directors of the Reorganized Debtor in accordance with the Reorganized Debtor's bylaws.

#### **6.4 Arrangements with the Distribution Trustee**

By Plan Supplement Deadline, the Debtor shall file with the Bankruptcy Court a disclosure identifying the Distribution Trustee under the Distribution Trust. At the Confirmation Hearing, the Bankruptcy Court shall ratify such Distribution Trustee. All compensation for the Distribution Trustee shall be paid from the Distribution Trust Assets in accordance with the Distribution Trust Agreement. The approved person shall serve as the Distribution Trustee on execution of the Distribution Trust Agreement at the Closing.

#### **6.5 The Closing**

The Closing of the transactions required and contemplated under the Plan shall take place on the Effective Date at the offices of Haynes and Boone, LLP, 30 Rockefeller Plaza, 26<sup>th</sup> Floor, New York, New York 10112, or at such other place identified in a notice provided to those parties listed in Article 13.12 of the Plan. The Proponents may reschedule the Closing by making an announcement at the originally scheduled Closing of the new date for the Closing. A notice of the rescheduled Closing shall be filed with the Bankruptcy Court and served on the parties identified in Article 13.12 of the Plan within two (2) days after the originally scheduled Closing. All documents to be executed and delivered by any party as provided in this Article VI and all actions to be taken by any party to implement the Plan as provided herein shall be in form and substance satisfactory to the Proponents. The following actions shall occur at or before the Closing (unless otherwise specified), and shall be effective on the Effective Date:

(a) Execution of Documents and Corporate Action. The Debtor shall deliver all documents and perform all actions reasonably contemplated with respect to implementation of the Plan. The Chief Executive Officer, or his designee, is authorized (i) to execute on behalf of the Debtor, in a representative capacity and not individually, any documents or instruments after the Confirmation Date or at the Closing that may be necessary to consummate the Plan and (ii) to undertake any other action on behalf of the Debtor to consummate the Plan. Each of the matters provided for under the Plan involving the corporate structure of the Debtor or corporate action to be taken by or required of the Debtor will, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized, approved, and (to the extent taken before the Effective Date) ratified in all respects without any requirement of further action by stockholders, creditors, or directors of the Debtor.

(b) Cancellation of Equity Interests and Issuance of New Equity. On the Effective Date, all prepetition Equity Interests of the Debtor shall be retired, cancelled, extinguished and/or discharged in accordance with the terms of the Plan, and 1,000 shares of New Equity of the Reorganized Debtor shall be issued, 500 shares of New Equity will be issued to the Plan Sponsor, and 500 shares of New Equity will be issued to CME. The New Equity shall be free and clear of all Liens, Claims, and encumbrances of any kind, except as otherwise provided in the Plan.

(c) Funding of the Consideration. On the Effective Date, the Plan Sponsor shall contribute to the Debtor an amount of Cash equal to the Consideration in consideration of the Plan Sponsor's purchase of fifty percent (50%) of the New Equity. The Consideration is not subject to any financing contingency. The DIP Lender and the Plan Sponsor may agree to forego exchanging actual cash pursuant to an agreement between them based on their sole judgment. In exchange for such an agreement, the amount of the Consideration will be reduced, dollar-for-dollar, in exchange for the DIP Lender consenting to waiving receipt of actual cash. The Allowed Equity Interests shall be terminated and cancelled and the holders of the Allowed Equity Interests shall neither retain nor receive any property under the Plan. The Consideration shall be used to fund Distributions under the Plan.

(d) Execution and Ratification of the Distribution Trust Agreement. On the Effective Date, the Distribution Trust Agreement shall be executed by all parties thereto. The Distribution Trust Agreement shall be provided in the Plan Supplement. Each holder of a General Unsecured Claim in Class 4, Converted Noteholder Claim in Class 5, and the Discounted Professionals on account of the Discounted Professionals Fee Deferment, shall be deemed to have ratified and become bound by the terms and conditions of the Distribution Trust Agreement.

(e) Transfer of Distribution Trust Assets. All property of the Debtor constituting the Distribution Trust Assets shall, effective upon the occurrence of the Effective Date, be immediately conveyed and transferred by the Reorganized Debtor to the Distribution Trust, free and clear of all Liens, Claims, interests, and encumbrances, subject only to the Allowed General Unsecured Claims in Class 4 and Allowed Converted Noteholder Claims in Class 5, and the expenses of the Distribution Trust that expressly include the Allowed Claims of the Discounted Professionals on account of the Discounted Professionals Fee Deferment.

Notwithstanding anything to the contrary in this Plan, the Distribution Trust Assets shall only be available for Distribution under the Distribution Trust Agreement to holders of Allowed General Unsecured Claims in Class 4, Allowed Converted Noteholder Claims in Class 5, and the Allowed Administrative Claims of the Discounted Professionals on account of the Discounted Professionals Fee Deferment, in each case in accordance with the Waterfall in Article 7.6 of the Plan.

Further, notwithstanding anything to the contrary in this Plan, the Disbursing Agent shall administer the Allowed Additional Claims for the purpose of making Distributions to such Allowed Additional Claims under the Allowed Additional Claims Process.

## **6.6 Tax Treatment of the Distribution Trust**

The Distribution Trust established under the Plan is established for the purpose of satisfying the Discounted Professionals Fee Deferment, Allowed General Unsecured Claims in Class 4, and Allowed Converted Noteholder Claims in Class 5, pursuant to the Waterfall by liquidating the Distribution Trust Assets transferred to the Distribution Trust and performing related and incidental functions referenced in the Distribution Trust Agreement, and the Distribution Trust shall have no objective of continuing or engaging in any trade or business

except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the trust. No business activities will be conducted by the Distribution Trust other than those associated with or related to the liquidation of the Distribution Trust Assets. It is intended that the Distribution Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of the Treasury Regulations Section 301.7701-4(d). All parties and Beneficiaries shall treat the transfers in trust described herein as transfers to the Beneficiaries for all purposes of the Internal Revenue Code of 1986, as amended (including Sections 61(a)(12), 483, 1001, 1012, and 1274 thereof). All the parties and Beneficiaries shall treat the transfers in trust as if all the transferred assets, including all the Distribution Trust Assets, had been first transferred to the Beneficiaries and then transferred by the Beneficiaries to the Distribution Trust. The Beneficiaries shall be treated for all purposes of the Internal Revenue Code of 1986, as amended, as the grantors of the Distribution Trust and the owners of the Distribution Trust. The Distribution Trustee shall file returns for the Distribution Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) or (b). All parties, including the Beneficiaries and the Distribution Trustee, shall value the Distribution Trust Assets consistently, and such valuations shall be used for all federal income tax purposes. Beneficiaries may wish to consult with a tax professional regarding the tax consequences of holding a Beneficial Interest in or receiving a Distribution from the Distribution Trust.

#### **6.7 Right to Enforce, Compromise, or Adjust Distribution Trust Assets**

The Distribution Trustee shall have and retain the sole and full power, authority, and standing to prosecute, compromise, or otherwise resolve the Distribution Trust Litigation Actions assigned to the Distribution Trust, subject to the terms and conditions set forth in the Distribution Trust Agreement and the rights of the Oversight Board thereunder. All proceeds derived from the Distribution Trust Litigation Actions shall constitute Distribution Trust Assets.

Other than as set forth in this Plan, no Creditor or Person other than the Distribution Trustee may pursue the Distribution Trust Assets on or after the Effective Date.

#### **6.8 Preservation of Rights of Action**

The Reorganized Debtor shall retain and shall have the exclusive right to enforce any and all Rights of Action other than the Distribution Trust Litigation Actions. For the avoidance of doubt, the Reorganized Debtor shall retain and shall have the exclusive right to enforce any and all Rights of Action arising from or related to its Intellectual Property. Unless any Claims against a Person are expressly waived, relinquished, exculpated, released, compromised, conveyed and transferred to the Distribution Trust or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtor shall retain and may enforce all rights to commence and pursue any and all retained Rights of Action, whether arising before or after the Petition Date, and the Reorganized Debtor's rights to commence, prosecute or settle such Rights of Action shall be preserved notwithstanding the occurrence of the Effective Date.

**ARTICLE VII  
PROVISIONS GOVERNING RESOLUTION OF CLAIMS  
AND DISTRIBUTIONS OF PROPERTY UNDER THE PLAN**

**7.1 Right to Object to Claims**

The Distribution Trustee and/or the Reorganized Debtor shall have the authority, but not the obligation, to object to, litigate, and settle (in consultation with the Distribution Trustee or the Reorganized Debtor, as applicable), the amount, priority or the extent of any Administrative Claim, Secured Claim, Priority Tax Claim, and Priority Non-Tax Claim. The Distribution Trustee shall have the exclusive authority, but not the obligation, to object to, litigate and settle the amount, priority or the extent of General Unsecured Claims in Class 4, Converted Noteholder Claims in Class 5, and/or the Administrative Claims of the Discounted Professionals on account of the Discounted Professionals Fee Deferment that, in each instance, are subject to payment under the Distribution Trust. The Disbursing Agent shall have neither the authority or the obligation to object to Claims under the Plan.

Notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, except insofar as a Claim is Allowed under the Plan on and after the Effective Date, the Distribution Trustee and/or the Reorganized Debtor (as applicable) shall have the authority, but not the obligation, to: (1) file, withdraw or litigate to judgment objections to and requests for estimation of Claims; (2) in consultation with the Distribution Trustee or the Reorganized Debtor (as applicable) settle or compromise any Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court; and (3) administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court. The Distribution Trustee shall succeed to any pending objections to Claims filed by the Debtor prior to the Effective Date to the extent such Claims are subject to payment pursuant to and in accordance with the Distribution Trust, and shall have and retain any and all rights and defenses the Debtor had immediately prior to the Effective Date with respect to any such Disputed Claim, including the causes of action retained under the Plan.

The Reorganized Debtor shall provide commercially reasonable assistance and cooperation to the Distribution Trustee in connection with the (i) Distribution Trustee's prosecution of objections to Claims, including, without limitation, access to the books and records of the Debtor; and (ii) performance of the Distribution Trustee's obligations under the Distribution Trust Agreement.

**7.2 Deadline for Objecting to Claims**

Objections to Claims must be filed with the Bankruptcy Court, and a copy of the objection must be served on the subject Creditor before the expiration of the Claim Objection Deadline (unless such period is further extended by subsequent orders of the Bankruptcy Court); otherwise such Claims shall be deemed Allowed in accordance with section 502 of the Bankruptcy Code. The objection shall notify the Creditor of the deadline for responding to such objection.

### **7.3 Deadline for Responding to Claim Objections**

Within 30 days after service of an objection, or such other date as is indicated on such objection or the accompanying notice thereof, the Creditor whose Claim was objected to must File a written response to the objection with the Bankruptcy Court and serve a copy on the Distribution Trustee and the Reorganized Debtor. Failure to File a written response within the 30-day time period shall constitute a waiver and release of that portion of the subject Claim that was subject to the objection, and shall cause the Bankruptcy Court to enter a default judgment against the non-responding Creditor or granting the relief requested in the claim objection.

### **7.4 Right to Request Estimation of Claims**

Pursuant to section 502(c) of the Bankruptcy Code the Debtor, the Plan Sponsor, the Reorganized Debtor, and the Distribution Trustee may request estimation or liquidation of any Disputed Claim that is contingent or unliquidated or any Disputed Claim arising from a right to an equitable remedy or breach of performance.

### **7.5 Reserve for Disputed Claims**

On and after the Effective Date with respect to the Distribution Trustee under the Distribution Trust, and only after Distribution Trust Available Cash becomes available pursuant to the Waterfall to pay holders of certain Allowed Claims, the Distribution Trustee shall hold Cash in the Disputed Claims Reserve in an aggregate amount sufficient to pay to each holder of a Disputed Claim at the time Distributions are made pursuant to the Plan the amount of Cash that such holder would have been entitled to receive if such Claim had been an Allowed Claim on the Effective Date. Cash withheld and reserved for payments to holders of Disputed Claims shall be held by the Distribution Trustee and deposited in one or more segregated bank accounts to be used to satisfy such Claims as such Disputed Claims become Allowed Claims. If insufficient Cash is available at the time Distributions are to be made, the Distribution Trustee may make Distributions of Cash as long as there is an adequate reserve of non-Cash Assets that will be subsequently liquidated for the purpose of funding the Disputed Claims Reserve.

### **7.6 Distribution of the Distribution Trust Assets Under Waterfall**

(a) Waterfall. The Distribution Trust Assets shall be distributed by the Distribution Trustee under the Plan and the Distribution Trust Agreement in accordance with the following payment Waterfall. Each category expressly indicated as a “Tier” reflects a distribution priority for the remaining Distribution Trust Assets.

Tier 1: The (i) Distribution Trust Operating Reserve Contribution and (ii) first proceeds from the Distribution Trust Assets, shall each be used to satisfy the Distribution Trust Operating Expenses and/or fund the Distribution Trust Operating Reserve in accordance with the Plan and Distribution Trust Agreement.

Tier 2: The next available proceeds from the Distribution Trust Assets shall be used to make Distributions under the Distribution Trust as follows:

A. 75% shall be Distributed to satisfy the Discounted Professionals Fee Deferment and all accrued interest thereon in full.

B. 25% shall be Distributed to holders of Allowed General Unsecured Creditors and Allowed Converted Noteholder Claims in accordance with Article 7.6(b) of the Plan below.

Once the Discounted Professionals Fee Deferment and all accrued interest thereon is satisfied in full in accordance with Tier 2, the next available proceeds will be Distributed in accordance with Tier 3 below.

Tier 3: After satisfaction of the Discounted Professionals Fee Deferment in accordance with Tier 2 above, all remaining available proceeds from the Distribution Trust Assets shall be Distributed to holders of Allowed General Unsecured Claims and Allowed Converted Noteholder Claims in accordance with Article 7.6(b) of the Plan below.

(b) Allocation of Waterfall Distributions Class 4 and Class 5

Class 5 is a settlement class that consists of holders of Allowed Converted Noteholder Claims based on arguments raised by such holders that the conversion of their promissory notes to common stock during the Conversion Period should not have occurred and should be reversed. Converted Noteholder Claims would have been treated as general unsecured claims in Class 4 had the conversion not occurred, and would be treated as terminated equity in Class 6 had the Debtor not established Class 5 to settle the dispute. Class 5 provides a lesser recovery for holders of Converted Noteholder Claims compared to holders of Allowed General Unsecured Claims in Class 4 based on the Debtor's assessment of the parties' respective risks and costs of litigation through an economic formula set forth below. The formula results in a potential recovery for Class 5 that is estimated to be one-quarter of the potential recovery for Class 4. The settlement eliminates the risk that the Converted Noteholder Claims will substantially dilute any Class 4 recoveries and eliminates litigation costs, which can be used to augment Distributions to both Class 4 and Class 5 if the Distribution Trust is successful in liquidating the Distribution Trust Assets.

The allocation of proceeds available for Distribution to Class 4 and Class 5 under Tier 2 and 3 of the Waterfall shall be determined in accordance with the following formula:

**FORMULA**

- $x =$  aggregate of all Allowed General Unsecured Claims (Class 4) plus aggregate of all Allowed Converted Noteholder Claims (Class 5);
- Aggregate of all Allowed Class 4 Claims  $\div x = y\%$ ;
- Aggregate of all Allowed Class 5 Claims  $\div x = z\%$ ;
- $y\% + z\% = 100\%$ ;
- $y\%$  of total distributable under Tier 2 and 3 = Preliminary Class 4 amount;

- $z\%$  of total distributable under Tier 2 and 3 = Preliminary Class 5 amount;
- $55\%$  of Preliminary Class 5 Amount = Final Class 5 Amount;
- (Preliminary Class 5 amount - Final Class 5 Amount) + Preliminary Class 4 Amount = Final Class 4 Amount; and
- Final Class 4 Amount plus Final Class 5 Amount = Total Distribution to Class 4 and Class 5 under Tier 2 and 3 of Waterfall.
- Once all Allowed Class 4 Claims have been satisfied in full (without payment of accrued post-petition interest on such claims) pursuant to this allocation formula, such formula no longer applies and all additional proceeds from the Distribution Trust Assets under Tier 2 and/or Tier 3 of the Waterfall shall be Distributed to Allowed Class 5 Claims.

## **7.7 Distribution Procedures Regarding Allowed Claims**

### **(a) In General**

The Disbursing Agent shall make all Distributions required to be made under the Plan with respect to the (i) Discounted Professionals in connection with the Discounted Professionals Aggregate Consideration; (ii) CME Consideration Amount; and (iii) all Allowed Additional Claims under the Allowed Additional Claims Process.

The Distribution Trustee shall make all Distributions required to be made under the Distribution Trust in accordance with the Plan, Waterfall and the Distribution Trust Agreement solely with respect to the Discounted Professionals Fee Deferment, Allowed General Unsecured Claims, and Allowed Converted Noteholder Claims.

### **(b) Distributions on Allowed Claims Only**

Distributions by the Disbursing Agent and/or the Distribution Trustee shall be made only to the holders of Allowed Claims. Until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive a Distribution. For the avoidance of doubt, Ordinary Course Liabilities that accrue prior to the Effective Date but are unpaid as of the Effective Date shall be deemed to be Allowed Claims and shall be paid through the Allowed Additional Claims Process.

### **(c) Distribution Dates Under the Distribution Trust**

Unless otherwise provided herein, Distributions to be made under the Distribution Trust by the Distribution Trustee in accordance with the Plan and the Distribution Trust Agreement shall begin on the First Distribution Date. To the extent that there is Distribution Trust Available Cash available for Distribution in accordance with the Plan, Waterfall and the Distribution Trust Agreement subsequent to the First Distribution Date from, among other things, (i) the liquidation and conversion to Cash of the Distribution Trust Assets; (ii) funds no longer needed to be retained in respect of the Disputed Claims Reserve in accordance



with Article 7.5 of the Plan; (iii) funds no longer needed to be retained in respect of the Distribution Trust Operating Reserve; and/or (iv) the return of undeliverable, time-barred or unclaimed Distributions to holders of Allowed Claims, the Distribution Trustee shall, on each Subsequent Distribution Date, and the Final Distribution Date, Distribute to holders of Allowed Claims an amount of Cash in accordance with the Waterfall and the Distribution Trust Agreement so that after giving effect to the amounts required to be retained in respect of Disputed Claims in accordance with Article 7.5 of the Plan, holders of Allowed Claims shall have received in respect of such Allowed Claims the Distribution that such holders would have received under the Plan in respect of such Allowed Claims on the Effective Date if (x) such Cash had been available for Distribution on the Effective Date; (y) such Allowed Claims had been Allowed on the Effective Date in the amounts in which they are Allowed on the Subsequent Distribution Date or the Final Distribution Date, as the case may be; and (z) Claims or portions thereof that have become Disallowed subsequent to the Effective Date and on or before the Subsequent Distribution Date or the Final Distribution Date, as the case may be, had been Disallowed on the Effective Date.

Notwithstanding this Article 7.7(c) and the Waterfall, the Distribution Trustee is authorized, but not required, to make Distributions on a Subsequent Distribution Date if the amount of Distribution Trust Available Cash is less than \$10,000, and such undistributed amount may be held over to the next Subsequent Distribution Date (however this monetary threshold shall not apply in the case of the Final Distribution Date); provided, however, that in no event shall the foregoing impair the right of the Distribution Trustee, as overseen by the Oversight Board, to use excess funds to satisfy Distribution Trust Operating Expenses and/or fund the Distribution Trust Operating Reserve; provided further, however, that on the Final Distribution Date, the Distribution Trustee shall not be obligated to make such a Distribution to holders of Allowed Claims if, in the reasonable discretion of the Distribution Trustee, as overseen by the Oversight Board, there is insufficient Cash to make a cost-effective Distribution, taking into account the size of the Distribution to be made and the number of recipients of such a Distribution, in which event such funds shall be distributed by the Distribution Trustee to a reputable charitable organization of its, his or her choosing.

(d) Place and Manner of Payments of All Distributions

Except as otherwise specified in the Plan, and subject to Bankruptcy Rule 9010, all Distributions to any Creditor shall be made to the address of such holder as set forth in the Schedules of Assets and Liabilities, unless the Disbursing Agent and/or the Distribution Trustee, as applicable, have been notified in writing of a change of address, including by the filing of a proof of claim by such Creditor that contains an address for such holder different from the address reflected in the Schedules of Assets and Liabilities. The Disbursing Agent and/or the Distribution Trustee shall distribute any Cash by wire, check, or such other method as they deem appropriate under the circumstances. Before receiving any Distributions, all Creditors, at the request of the Disbursing Agent and/or the Distribution Trustee, as applicable, must provide written notification of their respective Federal Tax Identification Numbers or Social Security Numbers to the Disbursing Agent and the Distribution Trustee; otherwise, Distributions to any Creditors who have not provided their Federal Tax Identification Numbers or Social Security Numbers may be suspended.

(e) Undeliverable Distributions Under the Plan

If a Distribution made by the Disbursing Agent and/or the Distribution Trustee, as applicable, to any Creditor is returned as undeliverable, the Disbursing Agent and/or the Distribution Trustee shall use reasonable efforts to determine such Creditor's then current address. If the Disbursing Agent and/or the Distribution Trustee cannot determine, or is not notified of, a Creditor's then current address within six months after the Effective Date, the Distribution reserved for such Creditor shall be deemed an unclaimed Distribution, and Article 7.7(f) of the Plan shall be applicable thereto.

(f) Unclaimed Distributions Under the Plan

If the current address for a Creditor entitled to a Distribution under the Plan has not been determined within six months after the Effective Date or such Creditor has otherwise not been located or submitted a valid Federal Tax Identification Number or Social Security Number to the Disbursing Agent and the Distribution Trustee, as applicable, then such Creditor (i) shall no longer be a Creditor and (ii) shall be deemed to have released such Claim.

(g) De Minimis Distributions

The Disbursing Agent and/or the Distribution Trustee, as applicable, is not required in the exercise of its, his or her discretion to make a Distribution under the Plan, Waterfall and/or the Distribution Trust Agreement to a holder of an Allowed Claim if the amount of the Distribution is less than \$25.00. Any undistributed amount shall be held over to the next Subsequent Distribution Date (to the extent applicable).

(h) Withholding

The Disbursing Agent and/or the Distribution Trustee, as applicable, may at any time withhold from a Distribution under the Plan to any Person (except the Internal Revenue Service) amounts sufficient to pay any tax or other charge that has been or may be imposed on such Person with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution provided for in the Plan, whenever such withholding is determined by the Disbursing Agent and the Distribution Trustee, as applicable, (and in their sole discretion) to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. The Disbursing Agent and/or the Distribution Trustee (in the exercise of the Distribution Trustee's sole discretion and judgment), as applicable, may enter into agreements with taxing or other authorities for the payment of such amounts that may be withheld in accordance with the provisions of this Article of the Plan.

(i) Dissolution of the Distribution Trust

The Distribution Trustee and Distribution Trust shall be discharged or dissolved, as the case may be, at such time as all of the Distribution Trust Assets have been distributed pursuant to the Plan and the Distribution Trust Agreement in connection with the Final Distribution Date; provided, however, that in no event shall the Distribution Trust be dissolved later than three (3)

years from the creation of the Distribution Trust unless the Bankruptcy Court, upon motion within the six-month period prior to the third (3rd) anniversary (or within the six-month period prior to the end of an extension period), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable private letter ruling from the Internal Revenue Service or an opinion of counsel satisfactory to the Distribution Trustee that any further extension would not adversely affect the status of the trust as a liquidating trust for United States federal income tax purposes) is necessary to facilitate or complete the liquidation of the Distribution Trust Assets.

If at any time the Distribution Trustee determines, as overseen by the Oversight Board and in reliance upon such professionals as a Distribution Trustee may retain, that the expense of administering the Distribution Trust so as to make a final distribution to Distribution Trust Beneficiaries is likely to exceed the value of the assets remaining in the Distribution Trust, the Distribution Trustee may (i) reserve any amount necessary to dissolve the Distribution Trust; (ii) donate any balance to a charitable organization (a) described in section 501(c)(3) of the Internal Revenue Code, (b) exempt from United States federal income tax under section 501(a) of the Internal Revenue Code, (c) not a "private foundation," as defined in section 509(a) of the Internal Revenue Code, and (d) that is unrelated to the Debtor, the Distribution Trust, and any insider of the Distribution Trustee; and (iii) dissolve the Distribution Trust.

## **ARTICLE VIII EXECUTORY CONTRACTS**

### **8.1 Assumption of Executory Contracts**

On the Effective Date, all Executory Contracts identified on the Schedule of Assumed Contracts and Unexpired Leases, to be attached as Exhibit B, shall be deemed assumed by the Reorganized Debtor. The Plan Sponsor may amend the Schedule of Assumed Contracts and Unexpired Leases through the deadline to file the Plan Supplement. Entry of the Confirmation Order shall constitute approval of the assumption of such Executory Contracts under sections 365 and 1123 of the Bankruptcy Code.

### **8.2 Rejection of Executory Contracts**

All Executory Contracts not identified on the Schedule of Assumed Contracts and Unexpired Leases (or assumed by the Debtor previously) shall be deemed rejected on the Effective Date. Entry of the Confirmation Order shall constitute approval of such rejections under sections 365 and 1123 of the Bankruptcy Code.

### **8.3 Procedures Related to Assumption of Executory Contracts**

#### **(a) Establishment of Cure Claim Amounts**

The Cure Amounts associated with the assumption of the Executory Contracts pursuant to Article 8.1 of the Plan are specified in the Schedule of Assumed Contracts and Unexpired Leases. The Debtor shall serve counterparties to the Executory Contracts with a Notice of (I)

Possible Assumption of Contracts and Leases, (II) Fixing of Cure Amounts, and (III) Deadline to Object Thereto served by the Debtor, and are required to file Objections to Cure Amount, if any, by the Cure Amount Objection Bar Date.

Any Objection to Cure Amount including (i) an objection to the applicable Cure Amount (a "Cure Objection") and (ii) an objection to the adequate assurance of future performance (the "Adequate Assurance Objection") provided by the Plan Sponsor on behalf of the Reorganized Debtor must be in writing, filed with the Court, and be actually received by (a) the Debtor, (b) counsel to the Debtor, (c) counsel to the Plan Sponsor, (d) counsel to CME, (e) the U.S. Trustee and (f) counsel to the Committee, if any, no later than fourteen (14) days after the Notice of (I) Possible Assumption of Contracts and Leases, (II) Fixing of Cure Amounts, and (III) Deadline to Object Thereto is mailed to the affected party, as indicated by the date noted on such notice. The objection must set forth the specific default alleged under the applicable Assumed Contract or Unexpired Lease and claim a specific monetary amount that differs from the applicable Cure Amount, if any, and/or further information required of the Reorganized Debtor with respect to adequate assurance of future performance.

If no Objection to the Cure Amount is received by the Objection Deadline to an Assumed Contract or Lease, then the assumption of such Assumed Contract or Unexpired Lease shall be authorized pursuant to section 365 of the Bankruptcy Code and the applicable Cure Amount, if any, shall be binding upon the non-Debtor counterparty to such Assumed Contract or Lease for all purposes and shall constitute a final determination of the cure amount required to be paid to such Assumed Contract or Unexpired Lease counterparty in connection with the assumption of such Assumed Contract or Unexpired Lease, and the non-Debtor counterparty to such Assumed Contract or Unexpired Lease shall be deemed to have waived its right to object to, contest, condition, or otherwise restrict the assumption of such Assumed Contract or Unexpired Lease (including, without limitation, from asserting any additional cure or other amounts with respect to the Assumed Contract or Unexpired Lease arising prior to such assumption). Furthermore, upon the assumption of such Assumed Contract or Unexpired Lease, the Reorganized Debtor shall enjoy all of the Debtor's rights and benefits thereunder without the necessity of obtaining any party's written consent to the Debtor's assumption of such rights and benefits.

(b) Objection to Disputed Cure Amounts

The Plan Sponsor shall have the right to examine any Objection to Cure Amount filed by any party, and shall have the right to object to and contest the Disputed Cure Amount asserted therein.

If an objection to a Disputed Cure Amount has not been resolved by the Bankruptcy Court or agreement of the parties by the Effective Date, the Executory Contract related to such Disputed Cure Amount shall be deemed assumed by the Reorganized Debtor effective on the Effective Date; provided, however, the Reorganized Debtor may revoke an assumption of any such Executory Contract within ten (10) days after entry of an order by the Bankruptcy Court adjudicating the objection to the Disputed Cure Amount related to the Executory Contract by filing a notice of such revocation with the Bankruptcy Court and serving a copy on the party(ies)

whose Executory Contract is rejected. Any Executory Contract identified in a revocation notice shall be deemed rejected retroactively to the Effective Date.

(c) Payment of Cure Amounts

Within ten (10) Business Days after the Effective Date, the Reorganized Debtor shall pay, in Cash, all Cure Amounts related to Executory Contracts listed on the Schedule of Assumed Contracts and Unexpired Leases, other than Disputed Cure Amounts. Subject to the revocation rights described in Article 8.3(b) above, the Reorganized Debtor shall pay all Cure Amounts that are subject to an objection on the Effective Date within ten (10) days after entry of an order by the Bankruptcy Court resolving the objection or approving an agreement between the parties concerning the Cure Amount.

(d) No Admission of Liability

Neither the inclusion nor exclusion of any Executory Contract by the Proponents on the Schedule of Assumed Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Proponents that any such contract or unexpired lease is in fact an Executory Contract or that the Debtor has any liability thereunder.

(e) Reservation of Rights

Nothing in the Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, causes of action, or other rights of the Debtor under any executory or non-executory contract or any unexpired or expired lease, nor shall any provision of the Plan increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor under any such contract or lease.

#### **8.4 Rejection Claim Bar Date**

Each Claim resulting from the rejection of an Executory Contract pursuant to Article 8.2 of the Plan shall be filed with the Bankruptcy Court no later than the Rejection Claim Bar Date; provided, however, any party whose Executory Contract is rejected pursuant to a revocation notice pursuant to Article 8.3 above may file a rejection damage Claim arising out of such rejection within 30 days after the filing of the revocation notice with the Bankruptcy Court. Any Claim resulting from the rejection of an Executory Contract not filed by the applicable deadline shall be discharged and forever barred, and shall not be entitled to any Distributions under the Plan. The Distribution Trustee shall have the right to object to any rejection damage Claim.

#### **8.5 Indemnification Obligations**

Any obligation of the Debtor to indemnify, reimburse, or limit the liability of any Person, including any officer or director of the Debtor, or any agent, professional, financial advisor, or underwriter of any securities issued by the Debtor, relating to any acts or omissions occurring prior to the Effective Date, whether arising pursuant to charter, bylaws, contract or applicable state law, shall be deemed to be, and shall be treated as, an Executory Contract and (a) shall be deemed to be rejected, canceled, and discharged pursuant to the Plan as of the Effective Date and

(b) any and all Claims resulting from such obligations are subject to objection under section 502(e) of the Bankruptcy Code or other applicable grounds, including section 502(d) or violations of sections 327, 362, 363 or other requirements of the Bankruptcy Code, or, if any court of applicable jurisdiction rules to the contrary, such Claim shall be subject to estimation pursuant to section 502(c) of the Bankruptcy Code in the amount of \$0 or such other amount as the Bankruptcy Court shall determine. Notwithstanding any of the foregoing, nothing contained in the Plan impacts, impairs, or prejudices the rights of the Distribution Trustee to pursue the Distribution Trust Litigation Actions.

### **8.6 Treatment of Compensation and Benefit Programs**

The Plan Sponsor is evaluating the Debtor's employee benefit programs, and will determine if it intends to assume any specific program on or prior to the Confirmation Hearing.

The Reorganized Debtor will not assume any employment, severance, bonus, incentive, commission, compensation or similar agreement (or any agreement outside the ordinary course of business) with any employees, officers or directors. The Reorganized Debtor will reject the 401(k) plan, and the Debtor shall take all steps necessary prior to the Effective Date to effectuate termination of the 401(k) plan. The Reorganized Debtor will not assume the Employee Handbook, if any.

On the Effective Date, any and all equity based incentive plans or stock ownership plans of the Debtor entered into before the Effective Date, or other agreements or documents giving rise to equity interests, including the contingent cash components of any such plans, agreements, or documents, shall be immediately terminated without any action of the Debtor, the Reorganized Debtor or the Plan Sponsor. To the extent such plans, agreements or documents are considered to be executory contracts, such plans, agreements or documents shall be deemed to be, and shall be treated as though they are, executory contracts that are rejected pursuant to section 365 of the Bankruptcy Code under the Plan. Any Claims resulting from such rejection shall constitute subordinated claims pursuant to section 510(b) of the Bankruptcy Code, except that Claims for contingent cash components of any such plans, agreements or documents shall constitute General Unsecured Claims. From and after the Effective Date, all stock options and other equity awards outstanding or issued at such time, whether included in a contract, agreement or otherwise, will have no value, shall be cancelled and expire and thus will not entitle any holder thereof to purchase or otherwise acquire any equity interests in the Reorganized Debtor.

### **8.7 401(k) Plan Administrator**

On the Effective Date, the 401(k) Plan Administrator shall be responsible for winding down and terminating the Debtor's 401(k) plan. The reasonable professional fees and expenses incurred by the 401(k) Plan Administrator shall be paid pursuant to the Allowed Additional Claims Process without application to the Bankruptcy Court; provided, however, that the 401(k) Plan Administrator shall provide 10 days' prior written notice of the payment of each monthly invoice (the "Monthly Statement") to the Reorganized Debtor, the Distribution Trustee, CME and the U.S. Trustee (the "401(k) Notice Parties").

If no objection is served in writing on the 401(k) Plan Administrator setting forth the nature of the objection and the amount of fees or expenses at issue by any of the 401(k) Notice Parties prior to the expiration of the 10 day notice period, the Monthly Statement shall be paid by the Disbursing Agent. If an objection is timely served, the Disbursing Agent shall withhold payment of that portion of the Monthly Statement to which the objection is directed, and promptly pay the remainder of the fees and expenses. If an objection is resolved and the applicable 401(k) Notice Parties serves a statement indicating that its objection has been withdrawn on the 401(k) Plan Administrator and the other 401(k) Notice Parties, the Disbursing Agent shall promptly pay that portion of the Monthly Statement previously unpaid. All unresolved objections shall be preserved and presented to the Bankruptcy Court for determination.

All Claims (except for the Claims of the 401(k) Plan Administrator addressed in this Article 8.7) in connection with the rejection and/or termination of the Debtor's 401(k) plan, such Claims, to the extent such Claims become Allowed Claims (other than Allowed General Unsecured Claims), shall be paid as pursuant to the Allowed Additional Claims Process.

## **ARTICLE IX EFFECT OF REJECTION BY ONE OR MORE CLASSES**

### **9.1 Impaired Classes Entitled to Vote**

Each Impaired Class shall be entitled to vote separately to accept or reject the Plan. A holder of a Disputed Claim which has not been temporarily allowed for purposes of voting on the Plan may vote only such Disputed Claim in an amount equal to the portion, if any, of such Claim or Equity Interest shown as fixed, liquidated, and undisputed in the Debtor's Schedules of Assets and Liabilities.

### **9.2 Acceptance by Class**

A Class of Claims shall have accepted the Plan if the Plan is accepted by at least two thirds (2/3) in amount and more than one half (1/2) in number of the Allowed Claims of such Class that have voted to accept or reject the Plan.

### **9.3 Reservation of Cramdown Rights**

In the event that any Impaired Class shall fail to accept the Plan in accordance with section 1129(a) of the Bankruptcy Code, the Proponents reserve the right to request that the Bankruptcy Court confirm the Plan in accordance with the provisions of the section 1129(b) of the Bankruptcy Code.

**ARTICLE X  
EFFECT OF CONFIRMATION**

**10.1 Legally Binding Effect**

The provisions of the Plan shall bind all Creditors and Interest Holders, whether or not they accept the Plan and wherever located. On and after the Effective Date, all holders of Claims and Equity Interests shall be precluded and enjoined from asserting any Claim or Equity Interest against the Debtor or its assets or properties based on any transaction or other activity of any kind that occurred prior to the Confirmation Date except as permitted under the Plan.

**10.2 Vesting of Property of Debtor in Reorganized Debtor**

On the Effective Date, except as otherwise expressly provided in the Plan or Confirmation Order, all Estate Property, other than the Distribution Trust Assets, shall vest in the Reorganized Debtor free and clear of all Liens, Claims, and encumbrances of any kind, except as otherwise provided in the Plan.

**ARTICLE XI  
INJUNCTIONS, RELEASES, AND DISCHARGE**

**11.1 Discharge and Release**

Except as otherwise provided in the Plan and effective as of the Effective Date: (i) the rights afforded in the Plan and the treatment of all Claims and Equity Interest shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtor and its Estate, or against any of its assets and property or interests in assets and property; (ii) the Plan shall bind all holders of Claims and Equity Interests, notwithstanding whether any such holders failed to vote to accept or reject the plan, voted to accept the Plan or voted to reject the Plan; (iii) all Claims and Equity Interests against the Debtor and its Estate, or against any of its assets and property or interests in assets and property, shall be satisfied, discharged, and released in full, and the Debtor's liability with respect thereto shall be extinguished completely; and (iv) all Persons or entities shall be precluded from asserting against the Debtor or its Estate, assets and property, any other Claims or Equity Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date. The Reorganized Debtor shall not be responsible or liable for any duties, obligations, responsibilities, or liabilities of the Debtor except those expressly assumed by them in the Plan.

**11.2 Injunction**

Confirmation of the Plan shall have the effect of, among other things, permanently enjoining all Persons that have held, hold or may hold or have asserted, assert or may assert Claims against or Equity Interests in the Estate with respect to any such Claims or



Equity Interests from taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets or any of its or their property on account of such Claims or Equity Interests; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets, or any of its or their property on account of such Claims or Equity Interests; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets, or any of its or their property on account of such Claims or Equity Interests; (iv) assert any right of setoff, directly or indirectly, against any obligation due the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets, or any of its or their property, except with respect to a right of setoff asserted prior to the entry of the Confirmation Order, whether asserted in a Proof of Claim or otherwise, or as contemplated or allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan. Additionally, unless otherwise explicitly stated in the Plan, the injunction by this Article 11.2 shall prohibit the assertion against the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets of all Claims or Equity Interests, if any, related to the Debtor.

### 11.3 Exculpation

To the extent allowed by law, the Exculpated Parties shall not be liable, other than with respect to criminal liability under applicable law, fraud, gross negligence, willful misconduct, or bad faith under applicable law, to any holder of a Claim or Equity Interest or any other Person with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time after the Petition Date in connection with or related to the Bankruptcy Case, including without limitation, the (i) negotiation, formulation, development, proposal, disclosure, solicitation, confirmation or implementation of the sales process and the Plan and (ii) administration of the Plan and the property to be distributed under the Plan, and except with respect to criminal liability under applicable law, willful misconduct, gross negligence or bad faith under applicable law, all such Persons are permanently enjoined from initiating a suit against any Exculpated Parties with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time after the Petition Date in connection with or related to the Bankruptcy Case. Nothing in this Article 11.3 shall prevent the enforcement of the terms of the Plan.

#### 11.4 Additional Releases

To the extent allowed by applicable law, on, and as of, the Effective Date and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Protected Parties (acting in any capacity whatsoever) shall be forever released and discharged from any and all Claims, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities throughout the world under any law or court ruling through the Effective Date (including all Claims based on or arising out of facts or circumstances that existed as of or prior to the Plan in the Bankruptcy Case, including Claims based on negligence or strict liability, and further including any derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor, its Estate, or the Reorganized Debtor would have been legally entitled by applicable law to assert in its own right, whether individually or collectively) which the Debtor, its Estate, the Reorganized Debtor, Creditors, Equity Interests or other Persons receiving or who are entitled to receive Distributions under the Plan may have against any of them in any way related to the Bankruptcy Case or the Debtor (or its predecessors); provided, however, the releases provided for in this paragraph shall not extend to any claims by any Governmental Unit with respect to criminal liability under applicable law, willful misconduct or bad faith under applicable law, or *ultra vires* acts under applicable law; provided further, however, that the foregoing releases shall not operate to release claims, obligations, debts, rights, suits, damages, remedies, causes of action, and liabilities of any releasing party expressly set forth in and preserved by the Plan, the Plan supplement, or related documents. No compliance with or reliance on the applicable law or the orders of the Bankruptcy Court shall be deemed or permitted to be judged, declared, or ruled to be in any way wrongful, in bad faith, *ultra vires*, inequitable or otherwise subject to any sanction or punishment, all of which are preempted, superseded and negated by the Plan to the maximum extent permitted by applicable law.

Notwithstanding anything else to the contrary in the Plan, the (i) Debtor's current and/or former officers and directors are not released pursuant to this Article 11.4 of the Plan; and (ii) releases pursuant to this Article 11.4 of the Plan for Protected Parties that are also Exculpated Parties shall be subject to the exceptions in Article 11.3 of the Plan with respect to gross negligence or fraud arising after the Petition Date in connection with or related to the Bankruptcy Case.

A vote to accept the Plan, or failure to vote by a Creditor entitled to vote, constitutes an acceptance of all of the terms and provisions contained in the Plan, including, but not limited to, the grant of releases, injunctions, exculpation, exoneration and other limitations of liability in the Plan. If a Creditor votes to reject the Plan, the Creditor may nevertheless be deemed to be bound to the releases and be bound by the injunctions, exculpations, and other limitations of liability in the Plan to the maximum extent permitted by law.

Notwithstanding anything else in the Plan, a Creditor may elect NOT to grant the releases contained in Article 11.4 of the Plan with respect to the Protected Parties. The

**election to withhold consent is at the Creditor's option that must be exercised solely by checking the appropriate "opt-out" box in the Ballot.**

**Holders of Equity Interests in Class 6, which are deemed to reject the Plan and are therefore not entitled to vote on the Plan, shall not be bound by the releases in this Article 11.4 of the Plan.**

## **ARTICLE XII RETENTION OF JURISDICTION**

### **12.1 Exclusive Bankruptcy Court Jurisdiction**

Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court shall retain and have such jurisdiction over the Bankruptcy Case to the maximum extent as is legally permissible, including, without limitation, for the following purposes:

(a) To allow, disallow, determine, liquidate, classify or establish the priority or secured or unsecured status of or estimate any Right of Action, Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests;

(b) To ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

(c) To determine any and all applications or motions pending before the Bankruptcy Court on the Effective Date of the Plan, including without limitation any motions for the rejection, assumption or assumption and assignment of any Executory Contract;

(d) To consider and approve any modification of the Plan, remedy any defect or omission, or reconcile any inconsistency in the Plan, or any order of the Bankruptcy Court, including the Confirmation Order;

(e) To determine all controversies, suits and disputes that may arise in connection with the interpretation, enforcement or consummation of the Plan or any Plan Documents or any entity's obligations in connection with the Plan or any Plan Documents, or to defend any of the rights, benefits, Estate Property transferred, created, or otherwise provided or confirmed by the Plan or the Confirmation Order or to recover damages or other relief for violations thereof;

(f) To consider and act on the compromise and settlement of any claim or cause of action by or against the Debtor, the Reorganized Debtor or the Distribution Trust;

(g) To decide or resolve any and all applications, motions, adversary proceedings, contested or litigated matters, and any other matters, or grant or deny any

applications involving the Debtor that may be pending on the Effective Date or that may be brought by the Reorganized Debtor or the Distribution Trustee (as applicable), including claims arising under Chapter 5 of the Bankruptcy Code and claims arising under or related to the Distribution Trust Litigation Actions, or any other related proceedings by the Reorganized Debtor, and to enter and enforce any default judgment on any of the foregoing;

(h) To issue orders in aid of execution and implementation of the Plan or any Plan Documents to the extent authorized by section 1142 of the Bankruptcy Code or provided by the terms of the Plan;

(i) To decide issues concerning the federal or state tax liability of the Debtor which may arise in connection with the confirmation or consummation of the Plan or any Plan Documents;

(j) To interpret and enforce any orders entered by the Bankruptcy Court in the Bankruptcy Case; and

(k) To enter an order closing this Bankruptcy Case when all matters contemplating the use of such retained jurisdiction have been resolved and satisfied.

## **12.2 Limitation on Jurisdiction**

In no event shall the provisions of the Plan be deemed to confer in the Bankruptcy Court jurisdiction greater than that established by the provisions of 28 U.S.C. §§ 157 and 1334, as well as the applicable circumstances that continue jurisdiction for defense and enforcement of the Plan and Plan Documents. For the avoidance of doubt, however, such jurisdiction shall be deemed, by the entry of the Confirmation Order, to:

(a) Permit entry of a final judgment by the Bankruptcy Court in any core proceeding referenced in 28 U.S.C. § 157(b) and to hear and resolve such proceedings in accordance with 28 U.S.C. § 157(c) and any and all related proceedings, including, without limitation, (i) all proceedings concerning disputes with, or Rights of Action or Claims against, any Person that the Debtor or the Reorganized Debtor or its successors or assigns, may have, and (ii) any and all Rights of Action or other Claims against any Person for harm to or with respect to (x) any Estate Property, including any infringement of Intellectual Property or conversion of Estate Property, or (y) any Estate Property liened or transferred by the Debtor to any other Person;

(b) Include jurisdiction over the recovery of any Estate Property (or property transferred by the Debtor with Bankruptcy Court approval) from any Person wrongly asserting ownership, possession or control of the same, whether pursuant to sections 542, 543, 549, 550 of the Bankruptcy Code or otherwise, as well as to punish any violation of the automatic stay under section 362 of the Bankruptcy Code or any other legal rights of the Debtor under or related to the Bankruptcy Code; and

(c) Permit the taking of any default judgment against any Person who has submitted himself or herself to the jurisdiction of the Bankruptcy Court.

**ARTICLE XIII  
MISCELLANEOUS PROVISIONS**

**13.1 Conditions to Confirmation**

The Confirmation Order will not be effective unless (a) the amount, priority or extent of the administrative, priority or secured claims are satisfactory to the Plan Sponsor in its reasonable discretion, (b) the Confirmation Order shall be in form and substance acceptable to the Debtor and the Plan Sponsor, in their reasonable discretion, and shall provide for the Plan Sponsor to acquire the New Equity free and clear of all Liens, Claims, and encumbrances of any kind, except as otherwise provided in the Plan, and (c) the final version of the Plan, Plan Supplement, and any other documents, or schedules thereto, shall have been filed in form and substance acceptable to the Debtor and the Plan Sponsor, each in their reasonable discretion.

**13.2 Conditions to Effectiveness**

The Plan will not be effective unless (a) the conditions to confirmation above have been either satisfied, or waived, by the Plan Sponsor or the Debtor, as applicable, (b) the Confirmation Order has been entered by the Bankruptcy Court, and no stay or injunction is in effect with respect thereto, (c) Plan Sponsor and CME shall acquire the New Equity free and clear of all Liens, Claims, and encumbrances of any kind, except as otherwise provided in the Plan, and (d) no material adverse change or development shall have occurred with respect to the Debtor's Intellectual Property or capital structure.

**13.3 Exemption from Transfer Taxes**

The Plan and the Confirmation Order provide for (a) the issuance, transfer or exchange of notes, debt instruments and/or equity securities under or in connection with the Plan; (b) the creation, assignment, recordation or perfection of any lien, pledge, other security interest or other instruments of transfer; (c) the making or assignment of any lease; (d) the creation, execution and delivery of any agreements or other documents creating or evidencing the formation of the Reorganized Debtor or the issuance or ownership of any interest in the Reorganized Debtor; or (e) the making or delivery of any deed or other instrument of transfer under the Plan in connection with the vesting of the Debtor's assets in the Reorganized Debtor or the Distribution Trustee pursuant to or in connection with the Plan, including, without limitation, merger agreements, stock purchase agreement, agreements of consolidation, restructuring, disposition, liquidation or dissolution, and transfers of tangible property. Pursuant to section 1146 of the Bankruptcy Code and the Plan, any such act described or contemplated herein will not be subject to any stamp tax, transfer tax, filing or recording tax, or other similar tax.

**13.4 Securities Exemption**

Any rights issued under, pursuant to or in effecting the Plan, including, without limitation, the New Equity in the Reorganized Debtor or the Beneficial Interest in the Distribution Trust, and the offering and issuance thereof by any party, including without limitation the Proponents or the Estate, shall be exempt from Section 5 of the Securities Act of 1933, if applicable, and from any state or federal securities laws requiring registration for offer

or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security, and shall otherwise enjoy all exemptions available for Distributions of securities under a plan of reorganization in accordance with all applicable law, including without limitation section 1145 of the Bankruptcy Code. If the issuance of the New Equity does not qualify for an exemption under section 1145 of the Bankruptcy Code, the New Equity shall be issued in a manner, which qualifies for any other available exemption from registration, whether as a private placement under Rule 506 of the Securities Act, Section 4(2) of the Securities Act, and/or the safe harbor provisions promulgated thereunder.

### **13.5 Defects, Omissions and Amendments of the Plan**

The Proponents may, with the approval of the Bankruptcy Court and without notice to holders of Claims and Equity Interests, insofar as it does not materially and adversely affect holders of Claims and Equity Interests, correct any defect, omission, or inconsistency in the Plan in such a manner and to such extent necessary or desirable to expedite the execution of the Plan. The Proponents may propose amendments or alterations to the Plan before the Confirmation Hearing as provided in section 1127 of the Bankruptcy Code if, in the opinion of the Bankruptcy Court, the modification does not materially and adversely affect the interests of holders of Claims, so long as the Plan, as modified, complies with sections 1122 and 1123 of the Bankruptcy Code and the Debtor has complied with section 1125 of the Bankruptcy Code. The Proponents may propose amendments or alterations to the Plan after the Confirmation Date but prior to substantial consummation, in a manner that, in the opinion of the Bankruptcy Court, does not materially and adversely affect holders of Claims, so long as the Plan, as modified, complies with sections 1122 and 1123 of the Bankruptcy Code, the Proponents have complied with section 1125 of the Bankruptcy Code, and after notice and a hearing, the Bankruptcy Court confirms such Plan, as modified, under section 1129 of the Bankruptcy Code.

### **13.6 Withdrawal of Plan**

The Proponents reserve the right to withdraw the Plan at any time prior to the Confirmation Date. If the Proponents withdraw the Plan prior to the Confirmation Date, or if the Confirmation Date or the Effective Date does not occur, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute an admission, waiver or release of any claims by or against the Debtor or any other person, or to prejudice in any manner the rights of the Debtor, the Debtor's Estate, or any person in any further proceedings involving the Debtor.

### **13.7 Due Authorization By Creditors**

Each and every Creditor who elects to participate in the Distributions provided for herein warrants that the Creditor is authorized to accept in consideration of its Claim against the Debtor the Distributions provided for in the Plan, and that there are no outstanding commitments, agreements, or understandings, express or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by the Creditor under the Plan.

### **13.8 Filing of Additional Documentation**

By no later than five (5) business days prior to the Confirmation Hearing, the Debtor may file with the Bankruptcy Court such Plan Supplement, agreements and other documents as may be reasonably necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan or any Plan Document, which shall also constitute "Plan Documents."

### **13.9 Governing Law**

Except to the extent the Bankruptcy Code or the Bankruptcy Rules are applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of law thereof.

### **13.10 Successors and Assigns**

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

### **13.11 Transfer of Claims**

Any transfer of a claim shall be in accordance with Bankruptcy Rule 3001(e) and the terms of this Article 13.11. Notice of any such transfer shall be forwarded to the Debtor by registered or certified mail, as set forth in Article 13.12 hereof. Both the transferee and transferor shall execute any notice, and the signatures of the parties shall be acknowledged before a notary public. The notice must clearly describe the interest in the claim to be transferred. No transfer of a partial interest shall be allowed. All transfers must be of one hundred percent (100%) of the transferor's interest in the claim.

### **13.12 Notices**

Any notice required to be given under the Plan or any Plan Document shall be in writing. Any notice that is allowed or required hereunder except for a notice of change of address shall be considered complete on the earlier of (a) three (3) days following the date the notice is sent by United States mail, postage prepaid, or by overnight courier service, or in the case of mailing to a non-United States address, air mail, postage prepaid, or personally delivered; (b) the date the notice is actually received by the Persons on the Post-Confirmation Service List by facsimile or computer transmission; or (c) three (3) days following the date the notice is sent to those Persons on the Post-Confirmation Service List as it is adopted by the Bankruptcy Court at the hearing on confirmation of the Plan, as such list may be amended from time-to-time by written notice from the Persons on the Post-Confirmation Service List.

(a) If to the Debtor, at:

Compressus, Inc.

c/o Sheppard Mullin Richter & Hampton, LLP

Craig A. Wolfe, Esq.  
Malani J. Cademartori, Esq.  
30 Rockefeller Plaza, 39<sup>th</sup> Floor  
New York, NY 10112  
Email: cwolfe@sheppardmullin.com  
mcaudemartori@sheppardmullin.com

-and-

Gellert Scali Busenkell & Brown, LLC  
Michael Busenkell (DE 3933)  
Brya M. Keilson (DE 4643)  
913 N. Market Street, 10<sup>th</sup> Floor  
Wilmington, DE 19801  
Email: mbusenkell@gsbblaw.com  
bkeilson@gsbblaw.com

If to the Plan Sponsor, at:

Compressus AC, Inc.  
c/o Haynes and Boone, LLP  
1221 McKinney Street, Suite 2100  
Houston, Texas 77010  
Attention: Charles A. Beckham, Jr.  
Email: charles.beckham@haynesboone.com  
Fax: 713-236-5638

and

30 Rockefeller Plaza, 26<sup>th</sup> Floor  
New York, NY 10112  
Attention: Trevor R. Hoffmann  
Email: trevor.hoffmann@haynesboone.com  
Fax: 212-884-9558

If to the DIP Lender, at:

ESW Capital, LLC  
c/o Haynes and Boone, LLP  
1221 McKinney Street, Suite 2100  
Houston, Texas 77010  
Attention: Charles A. Beckham, Jr.  
Email: charles.beckham@haynesboone.com  
Fax: 713-236-5638



and

30 Rockefeller Plaza, 26th Floor  
New York, NY 10112  
Attention: Trevor R. Hoffmann  
Email: trevor.hoffmann@haynesboone.com  
Fax: 212-884-9558

If to the U.S. Trustee, at:

Office of the United States Trustee  
Andrew R. Vara, Acting United States Trustee, Region 3  
c/o Benjamin A. Hackman  
844 King Street, Room 2207  
Lockbox #35  
Wilmington, DE 19899-0035  
Fax: 302-573-6497

If to any Creditor or Interest Holder in his capacity as such, at his address or facsimile number as listed on the Post-Confirmation Service List.

### **13.13 U.S. Trustee Fees**

The Debtor shall pay all pre-confirmation quarterly fees owed to the U.S. Trustee on or before the Effective Date of the Plan. After confirmation, the Distribution Trustee shall file with the court and serve on the U.S. Trustee quarterly financial reports in a format prescribed by the U.S. Trustee, and the Distribution Trustee shall pay all post-confirmation quarterly fees to the U.S. Trustee when due until a final decree is entered or the case is converted or dismissed as provided in 28 U.S.C. § 1930(a)(6).

### **13.14 Implementation**

The Debtor, the Reorganized Debtor, the Plan Sponsor, CME, and the Distribution Trustee shall be authorized to perform all reasonable, necessary and authorized acts to consummate the terms and conditions of the Plan and the Plan Documents.

### **13.15 No Admissions**

Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission by the Debtor with respect to any matter set forth herein, including, without limitation, liability on any Claim or Equity Interest or the propriety of the classification of any Claim or Equity Interest.

**ARTICLE XIV  
SUBSTANTIAL CONSUMMATION**

**14.1 Substantial Consummation**

The Plan shall be deemed substantially consummated on the Effective Date.

**14.2 Final Decree**

On full consummation and performance of the Plan and Plan Documents, the Distribution Trustee may request the Bankruptcy Court to enter a final decree closing the Bankruptcy Case and such other orders that may be necessary and appropriate.

Dated: November 2, 2015

**Compressus, Inc.**

*/s/ Dan Scherder*

Dan Scherder

Chief Executive Officer

**Debtor and Debtor-in-Possession and Proponent**

**Compressus AC, Inc.**

*/s/ Andrew Price*

Andrew Price

Chief Financial Officer

401 Congress Ave., Suite 2650

Austin, Texas 78701

**Plan Sponsor and Proponent**

**Exhibit A**

**Glossary of Defined Terms**

“401(k) Notice Parties” shall have the meaning set forth in Article 8.7 of the Plan.

“401(k) Plan Administrator” means, on the Effective Date, Stanley W. Mastil, CPA, CFF, of Gavin/Solmonese LLC, for the purpose of winding down and terminating the Debtor’s 401(k) plan to the extent not terminated prior to the Effective Date.

“Administrative Claim” means any cost or expense of administration of the Bankruptcy Case incurred on or before the Effective Date entitled to priority under section 507(a)(2) and allowed under section 503(b) of the Bankruptcy Code, including without limitation, any actual and necessary expenses of preserving the Debtor’s estate, including wages, salaries or commissions for services rendered after the commencement of the Bankruptcy Case, certain taxes, fines and penalties, any actual and necessary postpetition expenses of operating the business of the Debtor, certain postpetition indebtedness or obligations incurred by or assessed against the Debtor in connection with the conduct of its business, or for the acquisition or lease of property, or for providing of services to the Debtor, including all allowances of compensation or reimbursement of expenses to the extent allowed by the Bankruptcy Court under the Bankruptcy Code, and any fees or charges assessed against the Debtor’s Estate under Chapter 123, Title 28, United States Code. Professional Compensation Claims shall only be Allowed for duly employed Professionals in the Bankruptcy Case in accordance with applicable law. For the avoidance of doubt, the DIP Claim shall be deemed to be an Allowed Administrative Claim for all purposes hereunder.

“Administrative Claim Bar Date” means the first Business Day that is thirty (30) days after the Confirmation Hearing.

“Allowance Date” means the date that a Claim or Equity Interest becomes an Allowed Claim or Allowed Equity Interest.

“Allowed Additional Claim(s)” means Allowed Claim(s) that exist if there are (i) any Allowed Administrative Claims (including Ordinary Course Liabilities and Allowed Administrative Tax Claims, but not including any fees to be paid pursuant to Article 13.13 of the Plan) that are in addition to the Discounted Professionals Aggregate Plan Consideration; (ii) Allowed Other Secured Claims; (iii) Allowed Priority Non-Tax Claims in excess of the Priority Non-Tax Amount (\$249,500); (iv) Allowed Priority Tax Claims in excess of \$0; or (v) Allowed Post-Petition Tax Claims (as defined in Article 4.1(e) of the Plan). All Allowed Additional Claims shall be paid solely through the Allowed Additional Claims Process.

“Allowed Additional Claims Process” means, except as provided in the Plan and this definition, payment of Allowed Additional Claims (subject to the priority scheme of the Bankruptcy Code) solely from the following sources, in order of priority: (i) the Debtor’s Remaining Cash Payment Waterfall pursuant to Article 6.1(a) of the Plan; (ii) the Segregated

Discounted Professionals Cash Reserve and, (iii) the Segregated CME Cash Reserve; provided, however, if items (i)-(iii) of the foregoing do not satisfy all Allowed Additional Claims in full, the remaining unpaid portions of such Allowed Additional Claims shall be satisfied solely by the Reorganized Debtor. Notwithstanding anything in the Plan to the contrary, all (i) Allowed Claims (except for Allowed General Unsecured Claims) in connection with the rejection and/or termination of the Debtor's 401(k) plan shall be paid pursuant to the Allowed Additional Claims Process; and (ii) reasonable fees and expenses of the 401(k) Plan Administrator as approved by the 401(k) Notice Parties under Article 8.7 of the Plan shall be paid pursuant to the Allowed Additional Claims Process.

"Allowed Claim" means, with respect to any Claim, a Claim (a) allowable under 11 U.S.C. §§ 502(a), 503(b) or 507(a) and 11 U.S.C. §§ 327, 328, 329, 330, and 331, for which a proof of claim or application was filed on or before, as applicable, the General Bar Date, the Governmental Unit Bar Date, the Administrative Claim Bar Date, the Rejection Claim Bar Date, or the Claims of Professionals and/or Discounted Professionals on or before the deadline set forth in Article IV of the Plan, and as to which no objection or other challenge to the allowance thereof has been timely Filed, or if an objection or challenge has been timely Filed, such Claim is allowed by a Final Order; or (b) for which a proof of claim is not filed and that has been listed in the Schedules of Assets and Liabilities and is not listed as disputed, contingent, or unliquidated; or (c) that is allowed pursuant to section 502(c) of the Bankruptcy Code; or (d) that is an Ordinary Course Liability. For purposes of determining the amount of an Allowed Claim (other than a Claim specifically Allowed under the Plan), there shall be deducted therefrom an amount equal to the amount of any claim that the Debtor may hold against the Creditor under 11 U.S.C. § 553. Notwithstanding anything to the contrary in the Plan, (i) the Debtor may, in its discretion, treat a Claim as an Allowed Claim to the extent it is allowed by an Order that is not a Final Order; and (ii) a Claim that has been estimated for purposes of allowance in accordance with section 502(c) of the Bankruptcy Code pursuant to a Final Order shall be deemed an Allowed Claim. For purposes of the Distribution Trust, all references in the Plan or the Distribution Trust Agreement to "Allowed Claims" means only the Allowed Claims of General Unsecured Creditors in Class 4, Allowed Claims of Converted Noteholders in Class 5, and the Allowed Administrative Claims of the Discounted Professionals on account of the Discounted Professionals Fee Deferment.

"Allowed Administrative Claim" means an Administrative Claim to the extent it is or becomes an Allowed Claim.

"Allowed Administrative Tax Claim" means an Administrative Claim of a Governmental Unit to the extent it is or becomes an Allowed Claim.

"Allowed Converted Noteholder Claim" means a Converted Noteholder Claim to the extent it is or becomes an Allowed Claim.

"Allowed DIP Claim" means the Administrative Claim of the DIP Lender under the DIP Note.

“Allowed Equity Interests” means an Equity Interest to the extent it is or becomes an Allowed Claim.

“Allowed General Unsecured Claim” means a General Unsecured Claim to the extent it is or becomes an Allowed Claim.

“Allowed Other Secured Claim” means an Allowed Secured Claim other than the Allowed Secured Claim held by CME.

“Allowed Priority Non-Tax Claim” means any Claim, other than an Administrative Claim or a Priority Tax Claim, to the extent it is or becomes an Allowed Claim and entitled to priority in payment under section 507(a) of the Bankruptcy Code.

“Allowed Priority Tax Claim” means any Claim, to the extent it is or becomes an Allowed Claim and entitled to priority in payment under section 507(a)(8) of the Bankruptcy Code.

“Allowed Secured Claim” means a Secured Claim other than the Allowed DIP Claim, to the extent it is or becomes an Allowed Claim.

“Approved Budget” means, (as may be amended from time to time by the Debtor and the DIP Lender), the Budget agreed to by the Debtor and the DIP Lender and attached as an exhibit to the DIP Order.

“Assumed Contract or Unexpired Lease” means the executory contracts of unexpired leases to be assumed under the Plan and listed on the Schedule of Assumed Contracts and Unexpired Leases.

“Avoidance Actions” means any and all rights, claims, and causes of action arising under any provision of Chapter 5 of the Bankruptcy Code.

“Ballot” means the form of ballot which the Debtor will transmit to Creditors who are, or may be, entitled to vote on the Plan.

“Bankruptcy Case” means *In re Compressus, Inc.*, Case No. 15-10670 (KJC) in the United States Bankruptcy Court for the District of Delaware.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as amended, Title 11, United States Code, as applicable to this Bankruptcy Case.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware, together with the District Court as to matters as to which the reference is withdrawn under 11 U.S.C. § 157(d).

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

“Beneficial Interest” means an interest that entitles the holder of an Allowed General Unsecured Claim in Class 4 and an Allowed Converted Noteholder Claim in Class 5 to a Distribution from the Distribution Trust Assets accordance with the Plan, Waterfall and the Distribution Trust Agreement. The Allowed Administrative Claims on account of the Discounted Professionals Fee Deferment shall be an expense of the Distribution Trust to be paid pursuant to Tier 2 of the Waterfall and the Distribution Trust Agreement.

“Beneficiary” means the holder of a Beneficial Interest, whether individually or as agent on behalf of other entities.

“Business Day” means any day other than a Saturday, Sunday, or a “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

“Cash” means Cash, wire transfer, certified check, cash equivalents and other readily marketable securities or instruments, including, without limitation, readily marketable direct obligations of the United States of America, certificates of deposit issues by banks, and commercial paper of any Person, including interest accrued or earned thereon.

“Charter Documents” means the articles of certificate of incorporation and the bylaws of the Debtor or Reorganized Debtor, as applicable, and any amendments to the foregoing.

“Chief Executive Officer” means Dan Scherder, in his capacity as the Chief Executive Officer of the Debtor.

“Claim” has the meaning assigned to such term by section 101(5) of the Bankruptcy Code.

“Claim Objection Deadline” means the first Business Day that is 120 days after the Effective Date, as may be extended by order of the Bankruptcy Court.

“Class” means one of the classes of Claims or Equity Interests defined in Article III of the Plan.

“Clerk” means the Clerk of the Bankruptcy Court.

“CME” means Clifton Meyers Enterprises, Incorporated.

“CME Consideration Amount” means (a) \$2,048,000 less the (i) CME DIP Interest Obligation and (ii) Segregated CME Cash Reserve; and (b) the CME New Equity. CME Filed a pre-petition Claim (Claim No. 27) in the amount of \$4,052,256, which shall be deemed to include an Allowed Secured Claim in the amount of \$3,050,000 and an Allowed General Unsecured Claim in the amount of \$1,002,256. CME shall not be required to File any further proofs of claim with respect to its pre-petition claims. CME shall be entitled to vote its Allowed Secured Claim and its Allowed General Unsecured Claim. CME reserves the right to assert the full amount of its secured claim and any accrued Administrative Claim in the event that this Plan does not become effective on the Effective Date.

“CME DIP Interest Obligation” means CME’s obligation to pay an amount equal to 50% of the accrued interest under the DIP Note to be paid out of the CME Consideration Amount.

“CME New Equity” means CME’s receipt of fifty percent (50%) of the New Equity to CME on account of and in partial satisfaction of the CME Secured Claim.

“CME Secured Claim” means the Allowed Secured Claim of CME in the amount of \$3,050,000.

“CME Settlement” means the settlement with CME of its Secured Claim and receipt of the CME Consideration Amount.

“Closing” means the closing of the transactions contemplated under Article VI of the Plan.

“Collateral” means all Estate Property securing the repayment of the DIP Credit Facility.

“Confirmation Date” means the date upon which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

“Confirmation Hearing” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

“Confirmation Order” means the Order of the Bankruptcy Court approving and confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

“Consideration” means Cash paid by the Plan Sponsor in the amount of \$5,100,000. The DIP Lender and the Plan Sponsor may agree to forego exchanging actual cash pursuant to an agreement between them based on their sole judgment. In exchange for such an agreement, the amount of the Consideration will be reduced, dollar-for-dollar, in exchange for the DIP Lender consenting to waiving receipt of actual cash.

“Converted Noteholders” means the holders of Converted Noteholder Claims.

“Converted Noteholder Claims” means any Claim against the Debtor arising under or related to certain unsecured convertible notes that were converted to Equity Interests during the Conversion Period.

“Conversion Period” means the April 1, 2014 through December 31, 2014 period prior to the Petition Date that certain convertible notes held by the holders of Converted Noteholder Claims were converted to Equity Interests in the Debtor.

“Creditor” means any person that holds a Claim against the Debtor that arose on or before the Effective Date, or a Claim against the Debtor of any kind specified in sections 502(f), 502(g), 502(h) or 502(i) of the Bankruptcy Code.

“Cure Amount” means the amount of Cash required to cure defaults necessary to assume an Executory Contract under 11 U.S.C. § 365(b) as determined by the Bankruptcy Court or pursuant to any agreement among the Reorganized Debtor and the other party(ies) to the Executory Contract and as listed in the Schedule of Assumed Contracts and Unexpired Leases.

“Cure Amount Objection Bar Date” means the later of (i) December 3, 2015 at 5:00 p.m. (ET) and (ii) 21 days after service of the notice of the proposed Cure Amount.

“D&O Actions” means any and all rights, claims and/or causes of action against the current and/or former officers and/or directors of Compressus, Inc. that arose prior to the commencement of the Bankruptcy Case.

“D&O Policies” means all current and prior director and officer insurance policies of Debtor and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any insurance recoveries.

“Debtor” means Compressus, Inc., a Delaware corporation and Debtor-in-Possession in the Bankruptcy Case.

“Debtor-in-Possession” means the Debtor in its capacity as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

“Debtor’s Remaining Cash” means the (i) Remaining Consideration and (ii) all of the Debtor’s remaining Cash as of the Effective Date and shall include, without limitation, any previously undrawn portion of the DIP Note.

“Debtor’s Remaining Cash Payment Waterfall” means the priority and Distribution protocol set forth in Article 6.1 of the Plan governing the Distribution of the Debtor’s Remaining Cash.

“DIP Claim” means the Allowed Administrative Claim of the DIP Lender in connection with the DIP Order and the DIP Facility.

“DIP Lender” means ESW Capital, LLC, in its capacity as Debtor-in-Possession lender under the DIP Order and the DIP Facility.

“DIP Facility” means the Debtor-In-Possession financing facility, upon the terms of the term sheet attached to the DIP Order and dated as of October 29, 2015, by and between the Debtor and the DIP Lender and approved by the Bankruptcy Court.

“DIP Order” means the Final Order on Debtor’s Motion for Entry of Interim and Final Orders Pursuant to Sections 105, 361, 363, 364 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001 and 9014: (I) Authorizing the Debtor to Obtain Replacement Post-Petition Financing and to Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Priority, (III) Authorizing Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief (Dkt. No. 283).



“Disallowed Claim” means a Claim, or any portion thereof, that (a) has been disallowed by either a Final Order or pursuant to a settlement, or (b)(i) is listed in the Schedules of Assets and Liabilities at zero or as contingent, disputed or unliquidated, including by amendment hereby of such Schedules of Assets and Liabilities, and (ii) as to which a bar date has been established but no proof of claim has been filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code, any Final Order, or applicable law, or which is not deemed allowed by the terms of the Plan.

“Disbursing Agent” means the (i) Distribution Trustee (but not in his or her capacity as such) or Persons selected by the Distribution Trustee, to make or facilitate all Distributions under the Plan after the Effective Date, and (ii) Debtor with respect to Distributions that are required to be made prior to the Effective Date, in each case to holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Secured Claims. For the avoidance of doubt, the Distribution Trustee in his or her capacity as such (and not as Disbursing Agent) will make Distributions under the Plan in connection with the Waterfall and the Distribution Trust Agreement.

“Disclosure Statement” means the Disclosure Statement for the Plan of Reorganization of Compressus, Inc. dated October 16, 2015, filed by the Proponents with the Bankruptcy Court, as may be amended or supplemented.

“Disclosure Statement Conditional Approval Order” means that certain *Order (I) Conditionally Approving the Disclosure Statement; (II) Scheduling a Plan Confirmation Hearing; (III) Approving Procedures and Deadlines Concerning Executory Contracts and Unexpired Leases; (IV) Approving Solicitation Packages and Procedures; and (V) Approving Form of Ballot* [Dkt. No. 256].

“Discounted Professionals” means the following, Sheppard, Mullin, Richter & Hampton LLP, Gavin/Solmonese LLP, Gellert Scali Busenkell & Brown, LLC, Upshot Services LLC (the Debtor’s claims agent), and Daniel B. Scherder, the Debtor’s Chief Executive Officer.

“Discounted Professionals Aggregate Plan Consideration” means payment from the Consideration in the amount of \$974,004 to the Discounted Professionals on account of their Allowed Administrative Claims, subject to (i) reduction for any amounts received by the Discounted Professionals during the Bankruptcy Case up to the Effective Date (including, for the avoidance of doubt, pursuant to any Debtor-in-Possession financing facility); (ii) payment of the Segregated Discounted Professionals Cash Reserve; and (iii) payment of the (a) Estate DIP Interest Obligation and (b) Distribution Trust Operating Reserve Contribution; provided, however, that except for items (i) through (iii) of the foregoing, the Discounted Professionals Aggregate Plan Consideration shall not be subject to or required to pay any other obligations in connection with the Plan. The Discounted Professionals’ payment of the Estate DIP Interest Obligation and/or the Distribution Trust Operating Reserve Contribution shall each be subject to reimbursement under the Debtor’s Remaining Cash Payment Waterfall in Article 6.1 of the Plan. Except to the extent there are amounts remaining in accordance with and pursuant to the Segregated Discounted Professionals Cash Reserve, the Allowed Administrative Claims of the

Discounted Professionals shall not be entitled to Distributions under the Allowed Additional Claims Process.

“Discounted Professionals Fee Deferment” means the aggregate amount of remaining Allowed Administrative Claims of the Discounted Professionals after payment of the Discounted Professionals Aggregate Plan Consideration and payments, if any, received pursuant to the Debtor’s Remaining Cash Payment Waterfall in Article 6.1 of the Plan. The Discounted Professionals Fee Deferment shall be paid in accordance with the Plan, Waterfall and the Distribution Trust Agreement. Any unpaid fees and expenses of the Discounted Professionals subject to the Discounted Professionals Fee Deferment shall accrue interest at an annual percentage rate of 2.5% commencing on the Effective Date.

“Disputed Claim” means a Claim as to which a proof of Claim or Equity Interest has been Filed or deemed Filed under applicable law, as to which an objection has been or may be timely Filed and which objection, if timely Filed, has not been withdrawn on or before any date fixed for Filing such objections by the Plan or Order of the Bankruptcy Court and has not been overruled or denied by a Final Order. Prior to the time that an objection has been or may be timely Filed, for the purposes of the Plan, a Claim shall be considered a Disputed Claim to the extent that the Claim has been scheduled in the Schedules of Assets and Liabilities as contingent, disputed or unliquidated or in the amount of \$0.

“Disputed Claim Reserve” means, in the event there exists a Disputed Claim on or after the Effective Date, Cash or other assets to be set aside pursuant to Article 7.5 of the Plan in one or more bank accounts, in an amount estimated by the Distribution Trustee to be sufficient to pay the Distributions to all Disputed Claims at the time such Distributions are made in accordance with the provisions of the Plan, Waterfall and the Distribution Trust Agreement, if such Disputed Claims become Allowed Claims.

“Disputed Cure Amount” means, with respect to an Executory Contract for which a Cure Amount has been Filed, the amount that the counterparty to such Executory Contract asserts is necessary to assume such Executory Contract under 11 U.S.C. § 365(b).

“Distribution” means, except as otherwise provided in the Plan, the property required by the Plan to be distributed to the holders of Allowed Claims including, without limitation, the Allowed Claims of the Discounted Professionals.

“Distribution Record Date” means the Confirmation Date.

“Distribution Trust” means the trust established under the Plan and the Distribution Trust Agreement for the purpose of paying the Discounted Professionals Fee Deferment, and for the benefit of Allowed General Unsecured Claims in Class 4 and Allowed Converted Noteholder Claims in Class 5.

“Distribution Trust Account” means the segregated interest bearing account(s) established by the Distribution Trust into which shall be deposited the (a) the proceeds of the Distribution Trust Litigation Actions; (b) the proceeds of the liquidation of all other Distribution Trust Assets; and (c) Distribution Trust Operating Reserve Contribution.

“Distribution Trust Agreement” means the trust agreement that establishes the Distribution Trust and governs the powers, duties, and responsibilities of the Distribution Trustee and the Oversight Board. The Distribution Trust Agreement shall be part of the Plan Supplement.

“Distribution Trust Assets” means, collectively, the (a) Distribution Trust Litigation Actions; (b) Distributions, if any, on account of the Debtor’s Remaining Cash Payment Waterfall; and (c) D&O Policies.

“Distribution Trust Available Cash” means the cash on deposit in the Distribution Trust Account at any time, less the Distribution Trust Operating Reserve.

“Distribution Trust Litigation Actions” means the Avoidance Actions (except against any counterparties to executory contracts and leases that are assumed by the Reorganized Debtor) and all D&O Actions held by the Debtor on the Effective Date that, effective upon the occurrence of the Effective Date, the Reorganized Debtor shall immediately convey and transfer to the Distribution Trust as set forth in the Plan and the Distribution Trust Agreement.

“Distribution Trust Operating Expenses” means the reasonable costs and expenses, including professional fees, of the Distribution Trustee in administering the Distribution Trust.

“Distribution Trust Operating Reserve” means such reserve of Cash determined from time to time by the Distribution Trustee, with oversight by the Oversight Board, pursuant to the Distribution Trust Agreement to be reasonably necessary to pay Distribution Trust Operating Expenses, including (a) the unpaid liabilities, debts, or obligations of the Distribution Trust; (b) the fees and expenses of the Distribution Trustee; (c) all fees and expenses of professionals retained by the Distribution Trust; and (d) any and all other costs associated with the liquidation or preservation of the Distribution Trust Assets.

“Distribution Trust Operating Reserve Contribution” means the contribution capped in the amount of \$15,000 to be paid from the Debtor’s Remaining Cash Payment Waterfall to pay the Distribution Trust Operating Expenses and/or partially fund the Distribution Trust Operating Reserve.

“Distribution Trustee” means the Person appointed to administer the Distribution Trust with such rights, duties, and obligations as set forth in the Distribution Trust Agreement.

“District Court” means the United States District Court for the District of Delaware.

“Effective Date” means the first Business Day following the Confirmation Date on which (a) the Confirmation Order is not stayed, (b) all conditions to the effectiveness of the Plan have been satisfied or waived as provided in the Plan, and (c) the Reorganized Debtor has Filed a notice of the Effective Date.

“Equity Interest” means any interest in the Debtor represented by ownership of common or preferred stock including, to the extent provided by applicable law, any warrant, option or other security to acquire any of the foregoing.

“Estate” means the estate created upon the filing of the Bankruptcy Case pursuant to section 541 of the Bankruptcy Code, together with all rights, claims and interests appertaining thereto.

“Estate DIP Interest Obligation” means the Debtor’s obligation to pay an amount equal to 50% of the accrued interest under the DIP Order and the DIP Facility to be paid pursuant to the Debtor’s Remaining Cash Payment Waterfall set forth in Article 6.1 of the Plan.

“Estate Property” means all right, title, and interest in and to any and all property of every kind or nature owned by the Debtor or its Estate on the Effective Date as defined by 11 U.S.C. § 541.

“Exculpated Parties” (each one, an “Exculpated Party”) means (a) the Debtor; (b) the Distribution Trust; (c) the Disbursing Agent; (d) the Distribution Trustee; (e) each member of the Oversight Board (solely in their respective capacities as members); and (f) directors, officers, agents, attorneys, accountants, consultants, equity holders, financial advisors, investment bankers, professionals, experts, and employees of any of the foregoing, in their respective capacities as such.

“Executory Contracts” means executory contracts and unexpired leases as such terms are used in 11 U.S.C. § 365, including all operating leases, capital leases, and contracts to which the Debtor is a party or beneficiary on the Confirmation Date.

“File or Filed” means a request for relief encompassed within a pleading or other document is Filed when and on such date as such pleading or other document is entered on the docket of the Bankruptcy Court in this Bankruptcy Case. A proof of claim is Filed when and on such date as such proof of claim is entered on the claims register in this Bankruptcy Case.

“First Distribution Date” means that date, on or following the Effective Date, on which the Distribution Trustee determines, as overseen by the Oversight Board, that there is sufficient Distribution Trust Available Cash to make an initial Distribution in accordance with the Plan, the Waterfall and the Distribution Trust Agreement, and in fact makes such Distribution.

“Final Class 4 Amount” means the total Distribution to holders of Allowed General Unsecured Claims in Class 4 under the Waterfall in Article 7.6 of the Plan.

“Final Class 5 Amount” means the total Distribution to holders of Allowed Converted Noteholder Claims in Class 5 under the Waterfall in Article 7.6 of the Plan.

“Final Distribution Date” means the date on which a final Distribution of Distribution Trust Assets is made pursuant to the Plan, the Waterfall and the Distribution Trust Agreement. The Final Distribution Date shall be a date, as determined by the Distribution Trustee as overseen by the Oversight Board, that is on or after (i) the liquidation into Cash of all of the Distribution Trust Assets; (ii) all amounts in the Disputed Claim Reserve pursuant to Article 7.5 of the Plan after final resolution of all Claims that are Disputed have been distributed; (iii) funds no longer needed to be retained in respect of the Distribution Trust Operating Reserve,

and/or (iv) the return of undeliverable, time-barred or unclaimed Distributions to holders of Allowed Claims.

“Final Order” means an order or judgment which has not been reversed, stayed, modified, or amended and as to which the time for appeal has expired and no stay has been obtained.

“General Bar Date” means the deadline for filing proofs of claim established by the Bankruptcy Court as December 3, 2015, at 5:00 p.m. prevailing Eastern time.

“General Unsecured Claim” means a Claim other than an Administrative Claim, a Secured Claim, a Priority Non-Tax Claim, a Priority Tax Claim or a Converted Noteholder Claim.

“Governmental Unit” means United States; State; Commonwealth; District; Territory; municipality; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under title 11 of the United States Code), a State, a Commonwealth, a District, a Territory, or a municipality; or other domestic government.

“Governmental Unit Bar Date” means December 3, 2015, at 5:00 p.m. prevailing Eastern time, the deadline for Governmental Units to File proofs of claim in the Bankruptcy Case.

“Impaired” means, with respect to a Class of Claims or Equity Interests, that such Class is impaired within the meaning of section 1124 of the Bankruptcy Code.

“Insider” has the meaning set forth in section 101(31) of the Bankruptcy Code.

“Intellectual Property” means intellectual property, including, without limitation, the following: (i) all patents and patent applications, domestic or foreign, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, all rights to sue for past, present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (ii) all copyrights and applications for copyright, domestic or foreign, together with the underlying works of authorship (including titles), whether or not the underlying works of authorship have been published and whether said copyrights are statutory or arise under the common law, and all other rights and works of authorship, all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating any copyrights, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, and all other rights, claims and demands in any way relating to any such copyrights or works, including royalties and rights to sue for past, present or future infringement, and all rights of renewal and extension of copyright; (iii) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof; (iv) all trade secrets, trade dress, trade styles, logos, other source of business identifiers, mask-works, mask-work registrations, mask-work

applications, software, confidential and proprietary information, customer lists, license rights, advertising materials, operating manuals, methods, processes, know-how, algorithms, formulae, databases, quality control procedures, product, service and technical specifications, operating, production and quality control manuals, sales literature, drawings, specifications, blue prints, descriptions, inventions, name plates, catalogs, internet websites, and internet domain names and associated URL addresses; (v) the entire goodwill of or associated with the businesses now or hereafter conducted by the Debtor connected with and symbolized by any of the aforementioned properties and assets; and (vi) all accounts, payment intangibles, commercial tort claims and other rights to payment, all other proprietary rights or other intellectual or other similar property, and all other general intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above, and all proceeds of any intellectual property.

“Interest Holder” means any holder or owner of an Equity Interest.

“Lien” means a charge against or interest in property to secure payment of a debt or performance of an obligation which has not been avoided or invalidated under any provision of the Bankruptcy Code or other applicable law.

“New Equity” means all of the equity interest in the Reorganized Debtor, issued on the Effective Date, to the Plan Sponsor and CME, free and clear of all Liens, Claims and encumbrances of any kind, except as provided in the Plan.

“Objection to Cure Amount” means the document filed in the Bankruptcy Court by a counterparty to an Executory Contract required in the event that such counterparty disputes the Cure Amount identified in the Schedule of Assumed Contracts and Unexpired Leases.

“Order Approving Disclosure Statement” means the Order (A) Approving the Disclosure Statement, (B) Scheduling a Hearing to Consider Confirmation of the Plan, (C) Establishing Voting and Objection Deadlines, and (D) Approving Forms of Ballots and Solicitation Procedures entered by the Bankruptcy Court.

“Ordinary Course Creditor(s)” means a Creditor with an Ordinary Course Liability.

“Ordinary Course Liability” means an Administrative Claim (other than a Professional Compensation Claim or an Administrative Tax Claim) based on liabilities incurred in the ordinary course of the Debtor’s business operations as and to the extent provided for in the Approved Budget and that accrued prior to the Effective Date.

“Other Secured Claim” means a claim secured by the Debtor’s assets, other than the CME Secured Claim.

“Oversight Board” means the board appointed by the Transaction Oversight Committee to oversee, direct and approve the actions of the Distribution Trustee in accordance with the Distribution Trust Agreement.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, an estate, a trust, an unincorporated association or organization, a governmental unit or any agency or subdivision thereof or any other entity, and the Protected Parties.

“Petition Date” means March 29, 2015, the date on which the Debtor filed its voluntary Chapter 11 petition commencing the Bankruptcy Case.

“Plan” means this Plan of Reorganization of the Debtor, as it may be amended or modified.

“Plan Documents” means, collectively, those material documents executed or to be executed in order to consummate the transactions contemplated under the Plan, which will be filed with the Bankruptcy Court on or before the Plan Supplement Deadline.

“Plan Sponsor” means Compressus AC, Inc., a wholly owned subsidiary of ESW Capital, LLC in such capacity.

“Plan Supplement” means, collectively, any such documents as are referenced as such in this Plan to be Filed hereafter to supplement or clarify aspects of the Plan.

“Plan Supplement Deadline” means the deadline to file the Plan Supplement, which shall be no later than November 24, 2015.

“Post-Confirmation Service List” means the list of those parties who have notified the Reorganized Debtor and/or the Distribution Trustee in writing, at or following the Confirmation Hearing, of their desire to receive electronic notice of all pleadings filed by the Reorganized Debtor and/or the Distribution Trustee and have provided the e-mail address to which such notices shall be sent.

“Priority Non-Tax Amount” means \$249,500 for payment to holders of Priority Non-Tax Claims.

“Priority Non-Tax Claim” means any Claim (other than an Administrative Claim or a Priority Tax Claim) to the extent entitled to priority in payment under section 507(a) of the Bankruptcy Code.

“Priority Tax Claim” means any Claim held by a Governmental Unit entitled to priority in payment under section 507(a)(8) of the Bankruptcy Code.

“Professional” means an Person or entity employed in the Bankruptcy Case pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Effective Date, pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code; provided that for the purposes of any bar dates, duties or other requirements imposed by the Plan (as distinguished from benefits or rights provided by or pursuant to the Plan), any professional not so employed in the Bankruptcy Case, but asserting any right or claim like a Professional on account of any service for or engagement

by any foreign representative or foreign proceeding, shall have to comply with such same bar dates, duties and requirements as a Professional as one condition precedent to seeking any standing in the Bankruptcy Case, any Allowance of any Claim or any other right under the Plan like a Professional, with the Reorganized Debtor and other parties in interest reserving all other challenges and defenses thereto.

“Professional Compensation Claim” means a Claim for compensation or reimbursement of expenses of a Professional retained in the Bankruptcy Case or any Chapter 11 trustee, and requested in accordance with the provisions of 11 U.S.C. §§ 326, 327, 328, 330, 331, 503(b) and 1103; provided that for the purposes of any Claim asserted by any professional not so employed in the Bankruptcy Case, but asserting any Claim like a Professional on account of any service for or engagement by any foreign representative or foreign proceeding, the holder of such Claim shall have to comply with the same bar dates, duties and requirements as the holder of a Professional Compensation Claim as one condition precedent to seeking any standing or treatment as such, with the Reorganized Debtor and other parties in interest reserving all other challenges and defenses thereto.

“Pro Rata Share” means as to a particular holder of a particular Claim, the ratio that the amount of such Claim held by such Claimholder bears to the aggregate amount of all Claims in the particular Class or category. Such ratio shall be calculated as if all Claims in the particular Class or category asserted against Debtor are Allowed Claims as of the Effective Date, unless specifically provided otherwise in the Plan.

“Proponents” means the Plan Sponsor and the Debtor, in their capacity as proponents of the Plan.

“Protected Parties” (each one, a “Protected Party”) means (a) the Debtor’s Professionals; (b) the Reorganized Debtor; (c) the Distribution Trust; (d) the Distribution Trustee; (e) Disbursing Agent; (f) the Plan Sponsor and its affiliates; (g) the DIP Lender; (h) ESW Capital, LLC; (i) CME; and (j) with respect to each of the foregoing entities in clauses (b) through (i), their respective directors, officers, agents, attorneys, accountants, consultants, equity holders, financial advisors, investment bankers, professionals, experts, and employees, in their respective capacities as such. Any affiliate or other party related to any Protected Party shall also be a Protected Party to the extent that such affiliate or related party is alleged or charged to be directly or indirectly liable on any derivative, vicarious liability, alter ego or other theory for imposing liability on an affiliate or related party for the conduct or liability of the Protected Party. Notwithstanding anything to the contrary under the Plan, in the event that a director and/or officer of the Reorganized Debtor was a current and/or former director and/or officer of the Debtor, such director and/or officer of the Reorganized Debtor shall not be released under the Plan for any Claims that arose prior to the Petition Date.

“Qualified Bid” shall have the meaning ascribed to such term in the Bankruptcy Court approved bidding procedures for the sale of the Debtor’s assets or to obtain a sponsor for a plan of reorganization, as filed in the Bankruptcy Case [Dkt. No. 122 and 133].



“Rejection Claim Bar Date” means either (as applicable) (i) in respect to Executory Contracts rejected pursuant to a revocation notice filed pursuant to Article 8.3(b) of the Plan, the date that is thirty (30) days after the filing of such revocation notice, or (ii) as to all other Executory Contracts, the date that is thirty (30) days after the Effective Date.

“Remaining Consideration” means Consideration after payment and/or escrowing by the Disbursing Agent of certain obligations on the Effective Date that include the (a) Allowed DIP Claim; (b) Discounted Professionals Aggregate Plan Consideration; (c) Segregated Discounted Professionals Cash Reserve; (d) CME Consideration Amount; (e) Allowed Priority Non-Tax Claims; and (f) Segregated CME Cash Reserve.

“Reorganized Debtor” means the Debtor as it exists after the Effective Date.

“Rights of Action” means any and all claims, debts, demands, rights, defenses, actions, causes of action, suits, contracts, agreements, obligations, accounts, defenses, offsets, powers, privileges, licenses and franchises of any kind or character whatsoever, known or unknown, suspected or unsuspected, whether arising before, on, or after the Petition Date, in contract or in tort, at law or in equity, or under any other theory of law, of the Debtor or its Estate.

“RSA” means the Restructuring Support Agreement dated as of October 23, 2015 and approved pursuant to order of the Court (Dkt. No. 247).

“Schedule of Assumed Contracts and Unexpired Leases” means the schedule identifying the Executory Contracts and Unexpired Leases to be assumed by the Reorganized Debtor under the Plan. The Schedule of Assumed Contracts and Unexpired Leases will be Filed on or before November 6, 2015. The Plan Sponsor may amend the Schedule of Assumed Contracts and Unexpired Leases through the deadline to file the Plan Supplement.

“Schedules of Assets and Liabilities” means the Debtor’s Schedules of Assets and Liabilities, as may be amended or supplemented, and filed with the Bankruptcy Court in accordance with section 521(a)(1) of the Bankruptcy Code, including as amended by the Plan or any Plan Supplement.

“Secured Claim” means the CME Secured Claim and the Other Secured Claim, to the extent secured by the Debtor’s assets.

“Segregated CME Cash Reserve” means the segregated Cash reserve that the Plan Sponsor shall fund, prior to any Distributions to CME on account of the Allowed CME Secured Claim, in the amount of \$125,000 from the cash component of the CME Consideration Amount, which cash reserve shall only be used to satisfy the Plan treatment of any and all Allowed Additional Claims up to \$125,000; provided, however that pursuant to the Allowed Additional Claims Process, the first \$144,000 of Allowed Additional Claims must be satisfied from the Segregated Discounted Professionals Cash Reserve, and no amounts from the Segregated CME Cash Reserve may be used to satisfy the Plan treatment of Allowed Additional Claims until after all amounts deposited into the Segregated Discounted Professionals Cash Reserve have been completely exhausted. Except as provided in the Plan, CME shall not be obligated to provide any funding above the Segregated CME Cash Reserve for any purpose. Upon payment in full of

the Allowed Additional Claims or if the amount of Allowed Additional Claims is less than \$144,000 by the deadline to assert such Claims, any and all funds in the Segregated CME Cash Reserve at that time shall be distributed to CME on account of the Allowed CME Secured Claim.

“Segregated Discounted Professionals Cash Reserve” means the segregated Cash reserve that the Plan Sponsor shall fund, prior to any Distributions to the Discounted Professionals on account of their respective Administrative Claims, in the amount of \$144,000 from the Discounted Professionals Aggregate Plan Consideration, which cash reserve shall only be used to satisfy the Plan treatment of all Allowed Additional Claims up to \$144,000. Upon payment in full of the Allowed Additional Claims, any and all excess funds remaining in the Segregated Discounted Professionals Cash Reserve shall be distributed to the Discounted Professionals on account of their respective Allowed Administrative Claims pursuant to an agreed-upon formula amongst such Discounted Professionals.

“Subsequent Distribution Date” means any date, as determined by the Distribution Trustee as overseen by the Oversight Board, which is after the First Distribution Date and prior to the Final Distribution Date, on which a Distribution of Distribution Trust Available Cash is made pursuant to the Plan, the Waterfall and the Distribution Trust Agreement.

“Transaction Oversight Committee” shall mean the *ad hoc* committee consisting of the Debtor, Patrick Raher (an investor in the Debtor), CME, a representative of the *ad hoc* committee of certain employees of the Debtor, and a representative of the Office of the United States Trustee (as an ex officio participant from time to time).

“Treasury Regulations” means the regulations promulgated under the Internal Revenue Code by the Department of the Treasury of the United States.

“Unimpaired” means, with respect to a Class of Claims or Equity Interests, that such Class is not Impaired.

“U.S. Trustee” means the Office of the United States Trustee for Region 3.

“Waterfall” means the priority and distribution protocol set forth in Article 7.6 of the Plan that shall be implemented by the Distribution Trustee in making Distributions of and from the Distribution Trust Assets pursuant to the Plan and the Distribution Trust Agreement.

**Exhibit B**

**Schedule of Assumed Contracts and Unexpired Leases**

**\*None\***

**Exhibit B**

**[Form of Confirmation and Effective Date Notice]**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re  
COMPRESSUS, INC.,<sup>1</sup>  
Debtor.

Chapter 11  
Case No. 15-10670 (KJC)  
Related Dkt. Nos. \_\_\_\_\_

**NOTICE OF (I) ENTRY OF ORDER CONFIRMING, AND  
OCCURRENCE OF EFFECTIVE DATE OF, THE SECOND  
AMENDED CHAPTER 11 PLAN OF REORGANIZATION OF THE DEBTOR  
DATED NOVEMBER 2, 2015; (II) BAR DATE FOR ADMINISTRATIVE CLAIMS;  
AND (III) CERTAIN RELEASES AND INJUNCTION THEREUNDER**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

**1. Confirmation of the Plan.**

On December \_\_, 2015, the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") entered an order [Dkt. No. \_\_\_\_\_] (the "**Confirmation Order**") confirming the *Second Amended Plan of Reorganization of the Debtor Dated November 2, 2015* as attached to the Confirmation Order as Exhibit A (collectively with all exhibits and supplements and any modifications or other amendments thereto, the "**Plan**") in the chapter 11 case of the above-captioned debtor (the "**Debtor**"). Capitalized terms used but not defined in this Notice have the meanings given to them in the Plan and the Confirmation Order,

**2. Occurrence of the Effective Date; Distribution Trustee; Vesting of Assets.**

Pursuant to paragraph 8 of the Confirmation Order, the Plan became effective on December \_\_, 2015 at \_\_\_\_\_.M. (the "**Effective Date**"). As of the Effective Date, among other things, (a) the Debtor continues in existence as the Reorganized Debtor; (b) the Distribution Trustee was appointed with the power to exercise the rights, power, and authority of the Distribution Trust under applicable provisions of the Plan, Distribution Trust Agreement and/or the Confirmation Order; and (c) except as otherwise provided in the Plan, the Confirmation Order and/or the Distribution Trust Agreement, all property of the Estate and the Debtor (other than the Distribution Trust Assets including, without limitation, the Distribution Trust Litigation Actions and the D&O Policies, which are conveyed and transferred free and clear of all Claims, liens, charges or other encumbrances to the Distribution Trust, subject to

<sup>1</sup> The Debtor's federal tax identification number is 52-230723. The Debtor's address is 101 Constitution Avenue, NW, Suite 800, Washington, DC 20001.

Allowed General Unsecured Claims in Class 4, Allowed Converted Noteholder Claims in Class 5, and the Allowed Administrative Claims of the Discounted Professionals on account of the Discounted Professionals Fee Deferment) became the property of, and vested in, the Reorganized Debtor free and clear of all Claims, liens, charges, other encumbrances, and interests. Except as otherwise provided in the Plan, the Confirmation Order and/or the Distribution Trust Agreement, all distributions to be made to creditors under the Plan shall be made by the Disbursing Agent.

### **3. Resolution of Disputed Claims.**

Except as otherwise provided in Article VII of the Plan, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, and subject to section 502(a) of the Bankruptcy Code, the Reorganized Debtor and/or Distribution Trustee on behalf of the Distribution Trust have the right to make, file, prosecute, settle, compromise, withdraw, or resolve objections to certain Claims as set forth in Article VII of the Plan. Further, except as otherwise provided in Article VII of the Plan, the Distribution Trustee (on behalf of the Distribution Trust) has the exclusive authority, but not the obligation, to object to, litigate and settle the amount, priority or the extent of General Unsecured Claims in Class 4, Converted Noteholder Claims in Class 5, and the Administrative Claims of the Discounted Professionals on account of the Discounted Professionals Professional Fee Deferment that, in each instance, are subject to payment under the Distribution Trust.

### **4. Releases; Exculpation; Injunction.**

Discharge and Injunction. Except as otherwise set forth in the Plan and/or Confirmation Order including, without limitation, Articles IV, V, and XI of the Plan, upon the Effective Date, (i) the rights afforded in the Plan and the treatment of all Claims and Equity Interest shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtor and its Estate, or against any of its assets and property or interests in assets and property; (ii) the Plan shall bind all holders of Claims and Equity Interests, notwithstanding whether any such holders failed to vote to accept or reject the plan, voted to accept the Plan or voted to reject the Plan; (iii) all Claims and Equity Interests against the Debtor and its Estate, or against any of its assets and property or interests in assets and property, shall be satisfied, discharged, and released in full, and the Debtor's liability with respect thereto shall be extinguished completely; and (iv) all Persons or entities shall be precluded from asserting against the Debtor or its Estate, assets and property, any other Claims or Equity Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date. The Reorganized Debtor shall not be responsible or liable for any duties, obligations, responsibilities, or liabilities of the Debtor except those expressly assumed by them in the Plan.

Except as otherwise provided in the Plan and/or Confirmation Order, confirmation of the Plan shall have the effect of, among other things, permanently enjoining all Persons that have held, hold or may hold or have asserted, assert or may assert Claims against or Equity Interests in the Estate with respect to any such Claims or Equity Interests from taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (i) commencing,

conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets or any of its or their property on account of such Claims or Equity Interests; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets, or any of its or their property on account of such Claims or Equity Interests; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets, or any of its or their property on account of such Claims or Equity Interests; (iv) assert any right of setoff, directly or indirectly, against any obligation due the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets, or any of its or their property, except with respect to a right of setoff asserted prior to the entry of the Confirmation Order, whether asserted in a Proof of Claim or otherwise, or as contemplated or allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan. Additionally, unless otherwise explicitly stated in the Plan, the injunction in Article 11.2 of the Plan shall prohibit the assertion against the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets of all Claims or Equity Interests, if any, related to the Debtor.

Terms of Existing Injunctions or Stays. All injunctions or stays arising under or entered during the Bankruptcy Case under section 105 or 362 of the Bankruptcy Code, or otherwise, that are in existence on the Confirmation Date shall remain in full force and effect until the Effective Date, *provided, however*, that no such injunction or stay shall preclude enforcement of parties' rights under the Plan and the related documents.

Exoneration and Reliance. Except as provided in the Plan (including, without limitation, Article XI of the Plan) and the Confirmation Order, to the extent allowed by law, the Exculpated Parties shall not be liable, other than with respect to criminal liability under applicable law, fraud, gross negligence, willful misconduct, or bad faith under applicable law, to any holder of a Claim or Equity Interest or any other Person with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time after the Petition Date in connection with or related to the Bankruptcy Case, including without limitation, the (i) negotiation, formulation, development, proposal, disclosure, solicitation, confirmation or implementation of the sales process and the Plan and (ii) administration of the Plan and the property to be distributed under the Plan, and except with respect to criminal liability under applicable law, willful misconduct, gross negligence or bad faith under applicable law, all such Persons are permanently enjoined from initiating a suit against any Exculpated Parties with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time after the Petition Date in connection with or related to the Bankruptcy Case. Nothing in Article 11.3 of the Plan shall prevent the enforcement of the terms of the Plan.

Releases by the Holders of Claims. Except as otherwise provided in the Plan and/or Confirmation Order, and to the extent allowed by applicable law, on, and as of, the Effective

Date and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Protected Parties (acting in any capacity whatsoever) shall be forever released and discharged from any and all Claims, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities throughout the world under any law or court ruling through the Effective Date (including all Claims based on or arising out of facts or circumstances that existed as of or prior to the Plan in the Bankruptcy Case, including Claims based on negligence or strict liability, and further including any derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor, its Estate, or the Reorganized Debtor would have been legally entitled by applicable law to assert in its own right, whether individually or collectively) which the Debtor, its Estate, the Reorganized Debtor, Creditors, Equity Interests or other Persons receiving or who are entitled to receive Distributions under the Plan may have against any of them in any way related to the Bankruptcy Case or the Debtor (or its predecessors); provided, however, the releases provided for in this paragraph shall not extend to any claims by any Governmental Unit with respect to criminal liability under applicable law, willful misconduct or bad faith under applicable law, or *ultra vires* acts under applicable law; provided further, however, that the foregoing releases shall not operate to release claims, obligations, debts, rights, suits, damages, remedies, causes of action, and liabilities of any releasing party expressly set forth in and preserved by the Plan, the Plan supplement, or related documents. No compliance with or reliance on the applicable law or the orders of the Bankruptcy Court shall be deemed or permitted to be judged, declared, or ruled to be in any way wrongful, in bad faith, *ultra vires*, inequitable or otherwise subject to any sanction or punishment, all of which are preempted, superseded and negated by the Plan to the maximum extent permitted by applicable law.

Notwithstanding anything else to the contrary in the Plan, the (i) Debtor's current and/or former officers and directors are not released pursuant to Article 11.4 of the Plan; and (ii) releases pursuant to Article 11.4 of the Plan for Protected Parties that are also Exculpated Parties shall be subject to the exceptions in Article 11.3 of the Plan with respect to gross negligence or fraud arising after the Petition Date in connection with or related to the Bankruptcy Case.

A vote to accept the Plan, or failure to vote by a Creditor entitled to vote, constitutes an acceptance of all of the terms and provisions contained in the Plan, including, but not limited to, the grant of releases, injunctions, exculpation, exoneration and other limitations of liability in the Plan. If a Creditor votes to reject the Plan, the Creditor may nevertheless be deemed to be bound to the releases and be bound by the injunctions, exculpations, and other limitations of liability in the Plan to the maximum extent permitted by law.

Notwithstanding anything else in the Plan, a Creditor may elect NOT to grant the releases contained in Article 11.4 of the Plan with respect to the Protected Parties. The election to withhold consent is at the Creditor's option that must be exercised solely by checking the appropriate "opt-out" box in the Ballot.

Holders of Equity Interests in Class 6, which are deemed to reject the Plan and are therefore not entitled to vote on the Plan, shall not be bound by the releases in Article 11.4 of the Plan.



Limitation of Liability. The Protected Parties shall have all of the benefits and protections afforded under section 1125(e) of the Bankruptcy Code and applicable law.

**5. Rejection of Executory Contracts and Unexpired Leases Not Assumed.**

Except as otherwise provided (i) in the Plan; or (ii) in a Final Order of the Bankruptcy Court, as of the Effective Date, pursuant to section 365 of the Bankruptcy Code, the Debtor rejected all Executory Contracts not previously assumed, assumed and assigned, or rejected during the Bankruptcy Case. In addition, except as otherwise provided in the Plan or in a Final Order of the Bankruptcy Court, all executory contracts entered into by the Debtor postpetition are rejected as of the Effective Date.

**6. Bar Dates.**

a. Administrative Bar Date. Except as otherwise provided in the Plan (including Article IV of the Plan) and/or the Confirmation Order, requests for payment of Administrative Claims must be included within an application (setting forth the amount of, and basis for, such Administrative Claims, together with documentary evidence) and Filed and served on respective counsel for the Debtor and Plan Sponsor **on or before \_\_\_\_\_, 2016, which is the first Business Day that is thirty (30) days after the Confirmation Hearing.** Administrative Claim Bar Date or by such earlier deadline governing a particular Administrative Claim contained in an order of the Bankruptcy Court entered before the Effective Date. Holders of Administrative Claims that are required to File a request for payment of such Claims and that do not File such requests by the applicable bar date specified in this section shall be forever barred from asserting such Claims against the Debtor or any of its property. Requests for payments of Administrative Claims included within a proof of claim are of no force and effect, and are disallowed in their entirety as of the Confirmation Date unless such Administrative Claim is subsequently Filed in a timely fashion as provided herein.

b. Professional Compensation. Except as otherwise provided in the Plan (including Article IV of the Plan), all professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code for services rendered before the Effective Date (including, without limitation, any compensation requested by any professional or any other entity for making a substantial contribution in the Bankruptcy Case) shall File and serve on the Distribution Trust, the Reorganized Debtor, the U.S. Trustee and the Post-Confirmation Service List an application for final allowance of compensation and reimbursement of expenses **on or before \_\_\_\_\_, 2016, which is thirty (30) days after the Effective Date.** Objections to applications of professionals for compensation or reimbursement of expenses must be filed and served on the Reorganized Debtor, the Distribution Trust, the U.S. Trustee, and the professionals to whose application the objections are addressed no later than twenty-one (21) days after the date the application is filed, or the Bankruptcy Court may enter an order authorizing the fees without a hearing. Any professional fees and reimbursements or expenses incurred by the Reorganized Debtor subsequent to the Effective Date may be paid without application to the Bankruptcy Court.

c. **Rejection Damages Bar Date.** Each Claim resulting from the rejection of an Executory Contract pursuant to Article 8.2 of the Plan shall be filed with the Bankruptcy Court **no later than \_\_\_\_\_, 2016, which is the date that is thirty (30) days after the Effective Date;** provided, however, any party whose Executory Contract is rejected pursuant to a revocation notice pursuant to Article 8.3 of the Plan may file a rejection damage Claim arising out of such rejection within 30 days after the filing of the revocation notice with the Bankruptcy Court. Any Claim resulting from the rejection of an Executory Contract not filed by the applicable deadline shall be discharged and forever barred, and shall not be entitled to any Distributions under the Plan. The Distribution Trustee shall have the right to object to any rejection damage Claim.

**7. Retention of Jurisdiction by Bankruptcy Court.**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court retained jurisdiction over the Bankruptcy Case after the Effective Date to the fullest extent legally permissible, including, without limitation, with respect to all matters specified in Article XII of the Plan and/or the Confirmation Order.

**8. Notice Parties' Service Addresses.**

For purposes of serving requests for payment of Administrative Claims, applications for allowance of Fee Claims, and any other papers required to be served on the notice parties set forth in the Plan, such service should be made, as applicable, on:

a. [\_\_\_\_\_].

**9. Service Upon Claims and Noticing Agent.**

Proofs of Claim arising from the rejection of executory contracts or unexpired leases should be served on the Debtor's claims and noticing agent by mailing the original proof of claim to Compressus Claims Processing, c/o UpShot Services LLC, 8269 E. 23<sup>rd</sup> Ave., Suite 275, Denver, CO 80238. Proofs of Claim submitted by facsimile or e-mail shall not be accepted.

**10. Copies of Confirmation Order.**

Copies of the Plan and the Confirmation Order may be obtained for free at [www.upshotservices.com/compressus](http://www.upshotservices.com/compressus) or upon request from counsel to the Distribution Trustee.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

COMPRESSUS INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 15-10670 (KJC)

Related Dkt. Nos. 325

**NOTICE OF (I) ENTRY OF ORDER CONFIRMING, AND  
OCCURRENCE OF EFFECTIVE DATE OF, THE SECOND  
AMENDED CHAPTER 11 PLAN OF REORGANIZATION OF THE DEBTOR  
DATED NOVEMBER 2, 2015; (II) BAR DATE FOR ADMINISTRATIVE CLAIMS;  
AND (III) CERTAIN RELEASES AND INJUNCTION THEREUNDER**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

**1. Confirmation of the Plan.**

On December 11, 2015, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order [Dkt. No. 325] (the “**Confirmation Order**”) confirming the Second Amended Plan of Reorganization of the Debtor Dated November 2, 2015 as attached to the Confirmation Order as Exhibit A (collectively with all exhibits and supplements and any modifications or other amendments thereto, the “**Plan**”) in the chapter 11 case of the above-captioned debtor (the “**Debtor**”). Capitalized terms used but not defined in this Notice have the meanings given to them in the Plan and the Confirmation Order,

**2. Occurrence of the Effective Date; Distribution Trustee; Vesting of Assets.**

Pursuant to paragraph 8 of the Confirmation Order, the Plan became effective on December 16, 2015 at 2:37 p.m. (Eastern Time) (the “**Effective Date**”). As of the Effective Date, among other things, (a) the Debtor continues in existence as the Reorganized Debtor; (b) the Distribution Trustee was appointed with the power to exercise the rights, power, and authority of the Distribution Trust under applicable provisions of the Plan, Distribution Trust Agreement and/or the Confirmation Order; and (c) except as otherwise provided in the Plan, the Confirmation Order and/or the Distribution Trust Agreement, all property of the Estate and the Debtor (other than the Distribution Trust Assets including, without limitation, the Distribution Trust Litigation Actions and the D&O Policies, which are conveyed and transferred free and clear of all Claims, liens, charges or other encumbrances to the Distribution Trust, subject to

<sup>1</sup> The Debtor’s federal tax identification number is 52-230723. The Debtor’s address is 101 Constitution Avenue, NW, Suite 800, Washington, DC 20001.

Allowed General Unsecured Claims in Class 4, Allowed Converted Noteholder Claims in Class 5, and the Allowed Administrative Claims of the Discounted Professionals on account of the Discounted Professionals Fee Deferment) became the property of, and vested in, the Reorganized Debtor free and clear of all Claims, liens, charges, other encumbrances, and interests. Except as otherwise provided in the Plan, the Confirmation Order and/or the Distribution Trust Agreement, all distributions to be made to creditors under the Plan shall be made by the Disbursing Agent.

### **3. Resolution of Disputed Claims.**

Except as otherwise provided in Article VII of the Plan, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, and subject to section 502(a) of the Bankruptcy Code, the Reorganized Debtor and/or Distribution Trustee on behalf of the Distribution Trust have the right to make, file, prosecute, settle, compromise, withdraw, or resolve objections to certain Claims as set forth in Article VII of the Plan. Further, except as otherwise provided in Article VII of the Plan, the Distribution Trustee (on behalf of the Distribution Trust) has the exclusive authority, but not the obligation, to object to, litigate and settle the amount, priority or the extent of General Unsecured Claims in Class 4, Converted Noteholder Claims in Class 5, and the Administrative Claims of the Discounted Professionals on account of the Discounted Professionals Professional Fee Deferment that, in each instance, are subject to payment under the Distribution Trust.

### **4. Releases; Exculpation; Injunction.**

Discharge and Injunction. Except as otherwise set forth in the Plan and/or Confirmation Order including, without limitation, Articles IV, V, and XI of the Plan, upon the Effective Date, (i) the rights afforded in the Plan and the treatment of all Claims and Equity Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtor and its Estate, or against any of its assets and property or interests in assets and property; (ii) the Plan shall bind all holders of Claims and Equity Interests, notwithstanding whether any such holders failed to vote to accept or reject the plan, voted to accept the Plan or voted to reject the Plan; (iii) all Claims and Equity Interests against the Debtor and its Estate, or against any of its assets and property or interests in assets and property, shall be satisfied, discharged, and released in full, and the Debtor's liability with respect thereto shall be extinguished completely; and (iv) all Persons or entities shall be precluded from asserting against the Debtor or its Estate, assets and property, any other Claims or Equity Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date. The Reorganized Debtor shall not be responsible or liable for any duties, obligations, responsibilities, or liabilities of the Debtor except those expressly assumed by them in the Plan.

Except as otherwise provided in the Plan and/or Confirmation Order, confirmation of the Plan shall have the effect of, among other things, permanently enjoining all Persons that have held, hold or may hold or have asserted, assert or may assert Claims against or Equity Interests in the Estate with respect to any such Claims or Equity Interests from taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (i) commencing,

conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets or any of its or their property on account of such Claims or Equity Interests; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets, or any of its or their property on account of such Claims or Equity Interests; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets, or any of its or their property on account of such Claims or Equity Interests; (iv) assert any right of setoff, directly or indirectly, against any obligation due the Debtor, the Estate, the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets, or any of its or their property, except with respect to a right of setoff asserted prior to the entry of the Confirmation Order, whether asserted in a Proof of Claim or otherwise, or as contemplated or allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan. Additionally, unless otherwise explicitly stated in the Plan, the injunction in Article 11.2 of the Plan shall prohibit the assertion against the Reorganized Debtor, the Distribution Trust and/or the Distribution Trust Assets of all Claims or Equity Interests, if any, related to the Debtor.

Terms of Existing Injunctions or Stays. All injunctions or stays arising under or entered during the Bankruptcy Case under section 105 or 362 of the Bankruptcy Code, or otherwise, that are in existence on the Confirmation Date shall remain in full force and effect until the Effective Date, provided, however, that no such injunction or stay shall preclude enforcement of parties' rights under the Plan and the related documents.

Exoneration and Reliance. Except as provided in the Plan (including, without limitation, Article XI of the Plan) and the Confirmation Order, to the extent allowed by law, the Exculpated Parties shall not be liable, other than with respect to criminal liability under applicable law, fraud, gross negligence, willful misconduct, or bad faith under applicable law, to any holder of a Claim or Equity Interest or any other Person with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time after the Petition Date in connection with or related to the Bankruptcy Case, including without limitation, the (i) negotiation, formulation, development, proposal, disclosure, solicitation, confirmation or implementation of the sales process and the Plan and (ii) administration of the Plan and the property to be distributed under the Plan, and except with respect to criminal liability under applicable law, willful misconduct, gross negligence or bad faith under applicable law, all such Persons are permanently enjoined from initiating a suit against any Exculpated Parties with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time after the Petition Date in connection with or related to the Bankruptcy Case. Nothing in Article 11.3 of the Plan shall prevent the enforcement of the terms of the Plan.

Releases by the Holders of Claims. Except as otherwise provided in the Plan and/or Confirmation Order, and to the extent allowed by applicable law, on, and as of, the Effective

Date and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Protected Parties (acting in any capacity whatsoever) shall be forever released and discharged from any and all Claims, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities throughout the world under any law or court ruling through the Effective Date (including all Claims based on or arising out of facts or circumstances that existed as of or prior to the Plan in the Bankruptcy Case, including Claims based on negligence or strict liability, and further including any derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor, its Estate, or the Reorganized Debtor would have been legally entitled by applicable law to assert in its own right, whether individually or collectively) which the Debtor, its Estate, the Reorganized Debtor, Creditors, Equity Interests or other Persons receiving or who are entitled to receive Distributions under the Plan may have against any of them in any way related to the Bankruptcy Case or the Debtor (or its predecessors); provided, however, the releases provided for in this paragraph shall not extend to any claims by any Governmental Unit with respect to criminal liability under applicable law, willful misconduct or bad faith under applicable law, or ultra vires acts under applicable law; provided further, however, that the foregoing releases shall not operate to release claims, obligations, debts, rights, suits, damages, remedies, causes of action, and liabilities of any releasing party expressly set forth in and preserved by the Plan, the Plan supplement, or related documents. No compliance with or reliance on the applicable law or the orders of the Bankruptcy Court shall be deemed or permitted to be judged, declared, or ruled to be in any way wrongful, in bad faith, ultra vires, inequitable or otherwise subject to any sanction or punishment, all of which are preempted, superseded and negated by the Plan to the maximum extent permitted by applicable law.

Notwithstanding anything else to the contrary in the Plan, the (i) Debtor's current and/or former officers and directors are not released pursuant to Article 11.4 of the Plan; and (ii) releases pursuant to Article 11.4 of the Plan for Protected Parties that are also Exculpated Parties shall be subject to the exceptions in Article 11.3 of the Plan with respect to gross negligence or fraud arising after the Petition Date in connection with or related to the Bankruptcy Case.

A vote to accept the Plan, or failure to vote by a Creditor entitled to vote, constitutes an acceptance of all of the terms and provisions contained in the Plan, including, but not limited to, the grant of releases, injunctions, exculpation, exoneration and other limitations of liability in the Plan. If a Creditor voted to reject the Plan, the Creditor may nevertheless be deemed to be bound to the releases and be bound by the injunctions, exculpations, and other limitations of liability in the Plan to the maximum extent permitted by law.

The Plan provided that a Creditor may elect NOT to grant the releases contained in Article 11.4 of the Plan with respect to the Protected Parties. The election to withhold consent was at the Creditor's option that was exercised solely by checking the appropriate "opt-out" box in the Ballot.

Holders of Equity Interests in Class 6, which are deemed to reject the Plan and are therefore not entitled to vote on the Plan, shall not be bound by the releases in Article 11.4 of the Plan.

Limitation of Liability. The Protected Parties shall have all of the benefits and protections afforded under section 1125(e) of the Bankruptcy Code and applicable law.

**5. Rejection of Executory Contracts and Unexpired Leases Not Assumed.**

Except as otherwise provided (i) in the Plan; or (ii) in a Final Order of the Bankruptcy Court, as of the Effective Date, pursuant to section 365 of the Bankruptcy Code, the Debtor rejected all Executory Contracts not previously assumed, assumed and assigned, or rejected during the Bankruptcy Case. In addition, except as otherwise provided in the Plan or in a Final Order of the Bankruptcy Court, all executory contracts entered into by the Debtor postpetition are rejected as of the Effective Date.

**6. Bar Dates.**

a. Administrative Bar Date. Except as otherwise provided in the Plan (including Article IV of the Plan) and/or the Confirmation Order, requests for payment of Administrative Claims must be included within an application (setting forth the amount of, and basis for, such Administrative Claims, together with documentary evidence) and Filed and served on respective counsel for the Debtor and Plan Sponsor **on or before January 11, 2016**. Administrative Claim Bar Date or by such earlier deadline governing a particular Administrative Claim contained in an order of the Bankruptcy Court entered before the Effective Date. **Holders of Administrative Claims that are required to File a request for payment of such Claims and that do not File such requests by the applicable bar date specified in this section shall be forever barred from asserting such Claims against the Debtor or any of its property.** Requests for payments of Administrative Claims included within a proof of claim are of no force and effect, and are disallowed in their entirety as of the Confirmation Date unless such Administrative Claim is subsequently Filed in a timely fashion as provided herein.

b. Professional Compensation. Except as otherwise provided in the Plan (including Article IV of the Plan), all professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code for services rendered before the Effective Date (including, without limitation, any compensation requested by any professional or any other entity for making a substantial contribution in the Bankruptcy Case) shall File and serve on the Distribution Trust, the Reorganized Debtor, the U.S. Trustee and the Post-Confirmation Service List an application for final allowance of compensation and reimbursement of expenses **on or before January 15, 2016**. Objections to applications of professionals for compensation or reimbursement of expenses must be filed and served on the Reorganized Debtor, the Distribution Trust, the U.S. Trustee, and the professionals to whose application the objections are addressed no later than twenty-one (21) days after the date the application is filed, or the Bankruptcy Court may enter an order authorizing the fees without a hearing. Any professional fees and reimbursements or expenses incurred by the Reorganized Debtor subsequent to the Effective Date may be paid without application to the Bankruptcy Court.

c. Tax Claims. Except as otherwise provided in the Plan (including Article IV of the Plan), all requests for payment of Administrative Claims and other Claims by a Governmental Unit for taxes (and for interest and/or penalties related to such taxes) for any tax

year or period, which accrued or was assessed within the period from and including the Petition Date through and including the Effective Date (“**Post-Petition Tax Claims**”) and for which no bar date has otherwise been previously established, must be Filed on or before the later of (i) forty-five ( 45) days following the Effective Date; and (ii) ninety (90) days following the filing with the applicable Governmental Unit of the tax return for such taxes for such tax year or period. **Any holder of any Post-Petition Tax Claim that is required to File a request for payment of such taxes and does not File such a Claim by the applicable bar date shall be forever barred from asserting any such Post-Petition Tax Claim against the Debtor or its property, whether any such Post Petition Tax Claim is deemed to arise prior to, on, or subsequent to the Effective Date.**

d. Rejection Damages Bar Date. Each Claim resulting from the rejection of an Executory Contract pursuant to Article 8.2 of the Plan shall be filed with the Bankruptcy Court **no later than January 15, 2016**; provided, however, any party whose Executory Contract is rejected pursuant to a revocation notice pursuant to Article 8.3 of the Plan may file a rejection damage Claim arising out of such rejection within 30 days after the filing of the revocation notice with the Bankruptcy Court. **Any Claim resulting from the rejection of an Executory Contract not filed by the applicable deadline shall be discharged and forever barred, and shall not be entitled to any Distributions under the Plan.** The Distribution Trustee shall have the right to object to any rejection damage Claim.

#### **7. Retention of Jurisdiction by Bankruptcy Court.**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court retained jurisdiction over the Bankruptcy Case after the Effective Date to the fullest extent legally permissible, including, without limitation, with respect to all matters specified in Article XII of the Plan and/or the Confirmation Order.

#### **8. Notice Parties’ Service Addresses.**

For purposes of serving requests for payment of Administrative Claims, applications for allowance of Fee Claims, and any other papers required to be served on the notice parties set forth in the Plan, such service should be made on: (i) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Benjamin Hackman (Benjamin.A.Hackman@usdoj.gov); (ii) the Debtor, c/o (a) Sheppard Mullin Richter & Hampton, LLP, 30 Rockefeller Plaza, 39<sup>th</sup> Floor, New York, NY 10112, Attn: Craig A. Wolfe (cwolfe@sheppardmullin.com) and Jason R. Alderson (jalderson@sheppardmullin.com); and (b) Gellert Scali Busenkell & Brown, LLC, 913 N. Market Street, 10<sup>th</sup> Floor, Wilmington, DE 19801, Attn: Michael Busenkell (Mbusenkell@gsbblaw.com) and Brya M. Keilson (bkeilson@gsbblaw.com); (iii) the Plan Sponsor (Compressus AC, Inc.), c/o Haynes & Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, TX 77010, Attn: Charles A. Beckham, Jr. (Charles.beckham@haynesboone.com), and Haynes & Boone, LLP, 30 Rockefeller Plaza, 26<sup>th</sup> Floor, New York, NY 10112, Attn: Trevor R. Hoffman (trevor.hoffmann@haynesboone.com); (iv) CME, c/o Smith, Katzenstein & Jenkins LLP, 1000 West Street, Ste 1501, P.O. Box 410, Wilmington, DE 19899, Attn: Kathleen M. Miller (kmiller@skjilaw.com); (v) the Distribution Trustee to the Compressus Distribution Trust, Gavin/Solmonese LLC, 919 Market St., Ste. 600, Wilmington, DE 19801, Attn: Stanley W.



Mastil, CPA, CFF, Director ([stanley.mastil@gavinsolmonese.com](mailto:stanley.mastil@gavinsolmonese.com)); and (vi) the DIP Lender, ESW Capital, LLC, c/o Haynes & Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, TX 77010, Attn: Charles A. Beckham, Jr. ([Charles.beckham@haynesboone.com](mailto:Charles.beckham@haynesboone.com)), and Haynes & Boone, LLP, 30 Rockefeller Plaza, 26<sup>th</sup> Floor, New York, NY 10112, Attn: Trevor R. Hoffman ([trevor.hoffmann@haynesboone.com](mailto:trevor.hoffmann@haynesboone.com)).

**9. Service Upon Claims and Noticing Agent.**

Proofs of Claim arising from the rejection of executory contracts or unexpired leases should be served on the Debtor's claims and noticing agent by mailing the original proof of claim to Compressus Claims Processing, c/o UpShot Services LLC, 8269 E. 23<sup>rd</sup> Ave., Suite 275, Denver, CO 80238. Proofs of Claim submitted by facsimile or e-mail shall not be accepted.

**10. Copies of Confirmation Order.**

Copies of the Plan and the Confirmation Order may be obtained for free at [www.upshotservices.com/compressus](http://www.upshotservices.com/compressus) or upon request from counsel to the Distribution Trustee.

Dated: December 16, 2015

GELLERT SCALI BUSENKELL & BROWN, LLC

/s/ Michael Busenkell

Michael Busenkell (DE 3933)

Brya M. Keilson (DE 4643)

913 N. Market Street, 10th Floor

Wilmington, DE 19801

Telephone: (302) 425-5800

Facsimile: (302) 425-5814

Email: [mbusenkell@gsbblaw.com](mailto:mbusenkell@gsbblaw.com)

[bkeilson@gsbblaw.com](mailto:bkeilson@gsbblaw.com)

-and-

SHEPPARD MULLIN RICHTER & HAMPTON, LLP

Craig A. Wolfe, Esq.

Malani J. Cademartori, Esq.

30 Rockefeller Plaza, 39th Floor

New York, NY 10112

Telephone: (212) 634-3071

Email: [cwolfe@sheppardmullin.com](mailto:cwolfe@sheppardmullin.com)

[mcademartori@sheppardmullin.com](mailto:mcademartori@sheppardmullin.com)

Counsel for the Debtor and Debtor-in-Possession