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FOR PUBLIC INSPECTION

December 15, 2009

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**RE: Supplement to Revised Redacted Confidential
Filing Pursuant to Protective Order in IB Docket No.
08-184**

Dear Ms. Dortch:

On December 11, 2009, pursuant to the terms of the Protective Order released in the above-referenced proceeding on November 24, 2009 (DA No. 09-2472), a revised Redacted Confidential Filing was submitted in response to the International Bureau's Initial Information and Document Request dated November 18, 2009 (the "Request").¹ Based on subsequent discussions with the FCC's staff, we hereby submit supplemental material previously included under confidential cover that, by virtue of those revisions to the Redacted Confidential Filing, have been removed from confidential treatment. This supplemental material should be associated with the December 11 revised Redacted Confidential Filing.

¹ Letter from Roderick Porter, Deputy Bureau Chief, International Bureau, FCC to Mr. Henry Goldberg *et al.* (dated Nov. 18, 2009).

Marlene H. Dortch
Federal Communications Commission
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Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Henry Goldberg". The signature is written in a cursive style with a large, prominent "H" and "G".

Henry Goldberg
Joseph A. Godles
Counsel to Harbinger Capital Partners Funds

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

_____))
In re:) Chapter 11
))
DBSD NORTH AMERICA, INC., *et al.*,¹)) Case No. 09-13061(REG)
))
_____)) Debtors.) Jointly Administered

**DISCLOSURE STATEMENT FOR THE DEBTORS' JOINT PLAN OF REORGANIZATION
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

- Voting Record Date: [____], 2009 at 5:00 p.m., prevailing Eastern Time
- Plan Objection Deadline: [____], 2009 at 5:00 p.m., prevailing Eastern Time
- Voting Deadline: [____], 2009 at 5:00 p.m., prevailing Eastern Time
- Confirmation Hearing: [____], 2009 at [____] [_.]m., prevailing Eastern Time

THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL TO THE BANKRUPTCY COURT BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT AT THIS TIME. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THE DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT.

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Counsel for the Debtors and Debtors in Possession
Dated: May 30, 2009

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: DBSD North America, Inc. (6404); 3421554 Canada Inc. (6404); DBSD Satellite Management, LLC (3242); DBSD Satellite North America Limited (6400); DBSD Satellite Services G.P. (0437); DBSD Satellite Services Limited (8189); DBSD Services Limited (0168); New DBSD Satellite Services G.P. (4044); and SSG UK Limited (6399). The service address for each of the Debtors is 11700 Plaza America Drive, Suite 1010, Reston, Virginia 20190.

THE DEADLINE TO ACCEPT OR REJECT THE PLAN IS [____], 2009 AT 5:00 P.M., PREVAILING EASTERN TIME (THE "VOTING DEADLINE"), UNLESS THE DEBTORS, IN THEIR SOLE DISCRETION AND FROM TIME TO TIME, EXTEND THE VOTING DEADLINE. TO BE COUNTED, BALLOTS OR MASTER BALLOTS CAST ON BEHALF OF BENEFICIAL HOLDERS MUST BE RECEIVED BY THE GARDEN CITY GROUP, INC., THE DEBTORS' NOTICE, CLAIMS, AND BALLOTING AGENT ("GCG" OR THE "CLAIMS AND SOLICITATION AGENT") OR BY THE FINANCIAL BALLOTING GROUP LLC ("FBG" OR THE "SECURITIES VOTING AGENT"), AS APPLICABLE, NO LATER THAN THE VOTING DEADLINE.

DBSD North America, Inc. ("DBSD N.A." f/k/a ICO North America, Inc.) and its subsidiaries (collectively, the "Debtors") are providing the information in this document and the accompanying materials (the "Disclosure Statement") solely for the purpose of soliciting votes to accept or reject the *Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (as the same may be amended from time to time, the "Plan"). As set forth in this Disclosure Statement, all Holders of Claims and Interests in the Classes entitled to vote to accept or reject the Plan will receive this Disclosure Statement. All other Holders of Claims and Interests will receive a notice of the Disclosure Statement, which will provide details on how to obtain copies of this Disclosure Statement. Nothing in this Disclosure Statement may be relied on or used for any other purpose. A copy of the Plan is attached hereto as Exhibit A. As explained in ARTICLE I.G hereof, any term used herein in capitalized form that is not otherwise defined shall have the meaning assigned to that term in the Plan.

This Disclosure Statement has been prepared pursuant to section 1125 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3016(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and is not necessarily in accordance with federal or state securities laws or other similar laws. The securities to be issued on or after the Effective Date (as defined below) will not have been the subject of a registration statement filed with the United States Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "Securities Act") or under the securities regulatory authority of any state under any state securities law ("Blue Sky Law"), pursuant to either the exemption from the Securities Act and equivalent state law registration requirements provided by section 1145(a)(1) of the Bankruptcy Code or the private placement exemption under section 4(2) of the Securities Act or Regulation D promulgated thereunder, as more fully set forth herein.

The Plan has not been approved or disapproved by the SEC or any state securities commission, and neither the SEC nor any state securities commission has passed upon the accuracy or adequacy of the information contained herein. Any representation to the contrary may be a criminal offense. Neither the solicitation of votes to accept or reject the Plan (the "Solicitation") nor this Disclosure Statement constitutes an offer to sell or the solicitation of an offer to buy securities in any state or jurisdiction in which such offer or solicitation is not authorized.

The contents of the Disclosure Statement shall not be deemed as providing any legal, financial, securities, tax, or business advice. The Debtors urge Holders of Claims and Interests to consult with their own advisors with respect to any such advice in reviewing this Disclosure Statement, the Plan, and each of the proposed transactions contemplated thereby. In addition, the Debtors recommend that potential recipients of New Common Stock consult their own counsel concerning the securities laws' consequences concerning the transferability of the New Common Stock. The Bankruptcy Court's approval of the adequacy of disclosure contained in this Disclosure Statement does not constitute the Bankruptcy Court's approval of the merits of the Plan.

This Disclosure Statement does not constitute, and may not be construed as, an admission of fact, liability, stipulation, or waiver. Rather, Holders of Claims and Interests should construe this Disclosure Statement as a statement made in settlement negotiations related to contested matters, adversary proceedings, and other pending or threatened litigation or actions.

This Disclosure Statement summarizes certain provisions of the Plan, certain statutory provisions, certain events in the Chapter 11 Cases, certain documents related to the Plan, and certain financial information. Although the Debtors believe that these summaries are fair and accurate, these summaries are

qualified in their entirety to the extent that they do not set forth the entire text of such documents or statutory provisions or every detail of such events. In the event of any inconsistency or discrepancy between a description contained in this Disclosure Statement and the terms and provisions of the Plan or the other documents or financial information to be incorporated herein by reference, the Plan, or such other documents or financial information, as applicable, shall govern for all purposes.

The Debtors' management has reviewed the financial information provided in this Disclosure Statement. Although the Debtors have used their reasonable efforts to ensure the accuracy of this financial information, the financial information contained in, or incorporated by reference into, this Disclosure Statement has not been audited.

This Disclosure Statement describes certain aspects of the Plan, including the treatment of Holders of Claims and Interests, certain aspects of the Debtors' operations, financial projections, and other related matters. The Debtors are making the statements and providing the financial information contained in this Disclosure Statement as of the date hereof, unless otherwise specified. When reviewing this Disclosure Statement, Holders of Claims and Interests should not infer that, at the time of their review, the facts set forth herein have not changed since the date set forth on the cover page of this Disclosure Statement. Holders of Claims and Interests in the Classes entitled to vote (the "Voting Classes") must rely on their own evaluations of the Debtors and their own analyses of the terms of the Plan, including, without limitation, any risk factors cited herein, in deciding whether to vote to accept or reject the Plan.

The Debtors have not authorized any entity to give any information about or concerning the Plan other than that which is contained or incorporated by reference herein. The Debtors have not authorized any representations concerning the Debtors or the value of their property other than as set forth in this Disclosure Statement. Entities should not rely upon any information, representations, or other inducements made to obtain acceptance of the Plan that are other than, or inconsistent with, the information contained or incorporated by reference herein and in the Plan.

Prior to deciding whether and how to vote on the Plan, Holders of Claims and Interests in a Voting Class should read and consider carefully all of the information in the Plan and the Disclosure Statement, including the risk factors described in ARTICLE VIII hereof, entitled "Plan-Related Risk Factors And Alternatives To Confirming And Consummating The Plan."

All exhibits to this Disclosure Statement are incorporated into and made a part of this Disclosure Statement as if set forth in full herein.

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EXHIBITS

Exhibit A	Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code
Exhibit B	Debtors' Prepetition Organizational Structure
Exhibit C	Support Agreement and Term Sheet
Exhibit D	Financial Projections
Exhibit E	Liquidation Analysis
Exhibit F	New Credit Facility Term Sheet

ARTICLE I INTRODUCTION

A. PURPOSE AND EFFECT OF THE PLAN

The primary purpose of the Plan is to effect the restructuring and substantial de-leveraging of the Debtors' capital structure to bring it into alignment with the Debtors' future operating prospects and to provide the Debtors with greater liquidity. The Plan will allow the Debtors to continue their business in the ordinary course. Presently, based on the current outlook, the Debtors have insufficient liquidity to meet their current debt service requirements and to satisfy their current debt obligations unless the restructuring is consummated. The Debtors believe that the restructuring will reduce uncertainty with respect to their future and better position them to finish development and commercialization of the Satellite System (as defined below).

In connection with developing the Plan, the Debtors reviewed their current business operations and compared their prospects as an ongoing business enterprise with the estimated recoveries of Holders of Allowed Claims and Interests in various liquidation scenarios. As a result, the Debtors concluded that the recovery for Holders of Allowed Claims and Interests would be maximized by continuing to operate as a going concern. The Debtors believe that their business and assets have significant value that would not be realized in a liquidation, either in whole or in substantial part. Consistent with the liquidation analysis described herein, the value of the Debtors' assets would be considerably greater if the Debtors operate as a going concern instead of liquidating. Moreover, the Debtors believe that any alternative to Confirmation of the Plan, such as a liquidation or attempts by another party in interest to file a plan of reorganization, would result in significant delays, litigation, and additional costs and, ultimately, would lower the recoveries for Holders of Allowed Claims and Interests. Accordingly, the Debtors strongly recommend that you vote to accept the Plan, if you are entitled to vote.

B. OVERVIEW OF CHAPTER 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. In addition to permitting debtor rehabilitation, chapter 11 of the Bankruptcy Code promotes equality of treatment for similarly situated creditors and similarly situated equity interest holders, subject to the priority of distributions prescribed by the Bankruptcy Code.

The commencement of a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the bankruptcy commencement date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

Consummating a plan is the principal objective of a chapter 11 case. A bankruptcy court's confirmation of a plan binds the debtor, any person acquiring property under the plan, any creditor or equity interest holder of the debtor, and any other Entity as may be ordered by the bankruptcy court, in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by a bankruptcy court confirming a plan provides for the treatment of the debtor's debt in accordance with the terms of the confirmed plan.

C. SUMMARY OF CLASSIFICATION AND PROJECTED RECOVERIES OF HOLDERS OF ALLOWED CLAIMS AND INTERESTS UNDER THE PLAN

The chart below summarizes the Classes of Claims and Interests, an indication of whether such Claims and Interests are Impaired or Unimpaired, and the entitlement to vote and projected recoveries of Holders of Allowed Claims and Interests under the Plan and is subject to change based upon changes in Allowed Claims and Interests and the value and amount of recoveries. Reference should be made to the entire Disclosure Statement and the Plan for a complete description of the classification and treatment of Allowed Claims and Interests.

Under the provisions of the Bankruptcy Code, not all parties in interest are entitled to vote on a chapter 11 plan. For example, Holders of Claims and Interests not Impaired by the Plan are deemed to accept the Plan under section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan. Holders of Claims and Interests that are Impaired by the Plan and receiving no distribution under the Plan are not entitled to vote because they are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code.

Class	Claims and Interests	Status	Voting Rights	Estimated Recovery
1	Prepetition Facility Claims	Impaired	Entitled to Vote	[]%
2	Senior Note Claims	Impaired	Entitled to Vote	[]%
3	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)	100%
4	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)	100%
5	General Unsecured Claims	Impaired	Entitled to Vote	[]%
6	Intercompany Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)	100%
7	Other Equity Interests	Impaired	Entitled to Vote	[]%
8	Existing Stockholder Interests	Impaired	Entitled to Vote	[]%
9	Intercompany Interests	Unimpaired	Not Entitled to Vote (Deemed to Accept)	100%

D. SUMMARY OF SOLICITATION PROCESS AND VOTING PROCEDURES

The following summarizes the solicitation process and voting procedures. A more detailed description is provided in ARTICLE V hereof, entitled “Solicitation Process and Voting Procedures.”

1. Solicitation Process

a. Solicitation Package

The following documents and materials constitute the solicitation package (the “**Solicitation Package**”):

- A cover letter: (i) describing the contents of the Solicitation Package; (ii) explaining that the Plan Supplement will be filed on or before five calendar days prior to the Voting Deadline; and (iii) urging the Holders and/or Beneficial Holders in each of the Voting Classes to vote to accept the Plan;
- If applicable, a letter, in form and substance acceptable to the Debtors, in their discretion, from the Debtors’ significant constituents, urging the Holders and/or Beneficial Holders in each of the Voting Classes to vote to accept the Plan;
- The Disclosure Statement Order (with the Solicitation Procedures, which are Exhibit I attached thereto);
- An appropriate form of Ballot and/or Master Ballot and voting instructions with respect thereto, if applicable (with a pre-addressed, postage pre-paid return envelope);
- The Confirmation Hearing Notice;
- The approved form of this Disclosure Statement (together with the Plan, which shall be Exhibit A attached thereto); and
- Such other materials as the Bankruptcy Court may direct.

Through the Claims and Solicitation Agent, the Debtors intend to distribute the Solicitation Packages on or before [], 2009.

Any Entity that wishes to obtain additional paper copies of the Solicitation Package may obtain copies: (a) from the Claims and Solicitation Agent (i) (except Ballots and Master Ballots) at its website at www.gardencitygroup.com/cases/dbsd, (ii) by writing to The Garden City Group, Inc., Attn: DBSD North America, Inc., 105 Maxess Road, Melville, New York 11747, (iii) by calling (888) 256-2603, or (iv) by emailing dbsdmail@gardencitygroup.com; or (b) (except Ballots and Master Ballots) for a fee via PACER at <https://ecf.nysb.uscourts.gov>.

b. Distribution of the Plan Supplement

The Plan Supplement will be Filed by the Debtors on or before five business days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court on notice to parties in interest. When Filed, the Plan Supplement will be available (i) from the Claims and Solicitation Agent (w) at its website at www.gardencitygroup.com/cases/dbsd, (x) by writing to The Garden City Group, Inc., Attn: DBSD North America, Inc., 105 Maxess Road, Melville, New York 11747, (y) by calling (888) 256-2603, or (z) by emailing dbsdmail@gardencitygroup.com; or (ii) for a fee via PACER at <https://ecf.nysb.uscourts.gov>.

2. Voting Procedures

The Voting Record Date is [____], 2009 at 5:00 p.m., prevailing Eastern Time.

The Voting Deadline is [____], 2009 at 5:00 p.m., prevailing Eastern Time. To be counted, Ballots cast by Holders of Claims and Interests in the Voting Classes and Master Ballots cast on behalf of Beneficial Holders must be **actually received** by GCG by the Voting Deadline.

3. Voting Instructions

Voting instructions are attached to each Ballot and Master Ballot, as well as in ARTICLE V hereof, entitled “Solicitation and Voting Procedures.” It is important to follow all instructions, including the specific instructions provided with each Ballot and Master Ballot.

E. OBJECTING TO THE PLAN AND THE CONFIRMATION HEARING

Section 1128(a) of the Bankruptcy Code requires a bankruptcy court, after notice, to hold a hearing on confirmation of a plan filed under chapter 11 of the Bankruptcy Code. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan.

1. Plan Objection Deadline

The deadline for objecting to the Plan is [____], 2009 at 5:00 p.m., prevailing Eastern Time (the “Plan Objection Deadline”). All objections to the Plan must be Filed with the Bankruptcy Court and served on the Debtors and certain other Entities in accordance with the Disclosure Statement Order on or before the Plan Objection Deadline.

In accordance with the Confirmation Hearing Notice Filed with the Bankruptcy Court, objections to the Plan or requests for modifications to the Plan, if any, must:

- Be in writing;
- Conform to the Bankruptcy Rules and Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”);
- State the name and address of the objecting Entity and the amount and nature of the Claim or Interest of such Entity;
- State with particularity the basis and nature of the objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and
- Be Filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is **actually received** by the notice parties identified in the Confirmation Hearing Notice on or prior to the Plan Objection Deadline.

**THE BANKRUPTCY COURT MAY NOT CONSIDER PLAN OBJECTIONS UNLESS
THEY ARE TIMELY AND PROPERLY SERVED AND FILED IN COMPLIANCE
WITH THE DISCLOSURE STATEMENT ORDER.**

2. Confirmation Hearing Date

The Confirmation Hearing will commence on [], 2009 at [] [] .m., prevailing Eastern Time, before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York. The Confirmation Hearing may be continued from time to time without further notice other than a notice of adjournment Filed with the Bankruptcy Court and served on the notice parties identified in the Confirmation Hearing Notice. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. The Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

F. RISK FACTORS

Prior to deciding whether and how to vote on the Plan, Holders of Claims and Interests in a Voting Class should read and consider carefully all of the information in the Plan and the Disclosure Statement, including the risk factors described in ARTICLE VIII hereof, entitled “Plan-Related Risk Factors And Alternatives To Confirming And Consummating The Plan.”

G. RULES OF INTERPRETATION

The following rules for interpretation and construction shall apply to this Disclosure Statement: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in such form or substantially on such terms and conditions; (3) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified, or supplemented; (4) unless otherwise stated, all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time; (5) any reference herein to an Entity as a Holder of a Claim or Interest includes that Entity’s successors and assigns; (6) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (7) unless otherwise stated, the words “herein,” “hereof,” and “hereto” refer to the Disclosure Statement in its entirety rather than to a particular portion of the Disclosure Statement; (8) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (9) unless otherwise stated, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (10) any term used in capitalized form herein that is not otherwise defined herein shall have the meaning assigned to that term in the Plan; (11) any term used in capitalized form herein that is not otherwise defined herein or in the Plan but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (12) in computing any period of time prescribed or allowed, the provisions of Bankruptcy Rule 9006(a) shall apply, and if the date on which a transaction may occur pursuant to this Disclosure Statement shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day; and (13) unless otherwise specified, all references in this Disclosure Statement to monetary figures shall refer to currency of the United States of America.

ARTICLE II BACKGROUND

A. THE DEBTORS’ CORPORATE HISTORY AND STRUCTURE, BUSINESS OPERATIONS, AND CAPITAL STRUCTURE

1. Corporate History

DBSD N.A. is an approximately 99.8% owned subsidiary of non-Debtor ICO Global Communications (Holdings) Limited (“**ICO Global**”), a publicly traded satellite communications company based in Reston, Virginia. ICO Global and its predecessor entities have been at the forefront of the satellite communications industry for over 14 years, which is significant in this relatively new industry. In 1995, ICO Global’s predecessor, a Cayman Islands-registered private company also named ICO Global Communication (Holdings) Limited (“**Old ICO**”), was

established by a group of strategic investors—made up primarily of telecommunications and technology companies—to develop and operate a high-performance, cost-effective global mobile telecommunications system through a network of 17 wholly-owned direct and indirect subsidiaries located throughout the United Kingdom, Bermuda, Singapore, the Netherlands, and the United States.

Old ICO commenced voluntary chapter 11 cases in the United States Bankruptcy Court for the District of Delaware on August 27, 1999. Pursuant to Old ICO’s chapter 11 plan, ICO Global (incorporated in Delaware in 2000 to facilitate the acquisition of Old ICO upon emergence) acquired substantially all of the assets and assumed certain liabilities of Old ICO. Following the reorganization and acquisition of Old ICO, ICO Global turned its focus to developing its U.S. mobile satellite service (“**MSS**”) business. One of ICO Global’s key strategies was to address the problem of signal blockages resulting from buildings and other terrain, as well as certain capacity limitations plaguing the satellite communications industry. Accordingly, ICO Global successfully lobbied the Federal Communications Commission (the “**FCC**”) to promulgate new rules to permit the integration of terrestrial components into U.S. mobile satellite service networks. To capitalize on the growth opportunities created by the less-restrictive regulatory climate that ensued as a result of the new FCC rules, in December 2004, ICO Global formed DBSD N.A. to develop an integrated mobile satellite and terrestrial services network (the “**Satellite System**”). DBSD N.A. and its direct and indirect subsidiaries—the Debtors in the Chapter 11 Cases—conduct all of ICO Global’s North American operations, as well as certain international operations. ICO Global is not a Debtor in the Chapter 11 Cases.

A chart summarizing the Debtors’ prepetition organizational structure is attached hereto as **Exhibit B**.

2. The Debtors’ Business Operations

a. General Background

The Debtors are a next-generation mobile satellite service operator authorized to offer ubiquitous satellite-terrestrial services throughout the United States using a satellite (the “**DBSD G-1 Satellite**”) that is in “geosynchronous orbit,” such that it essentially remains at the same longitudinal position with respect to the Earth, although its latitude may vary. The Debtors conduct the majority of their operations in North America.

The Debtors’ principal offices are located in Reston, Virginia, with other operations in Kirkland, Washington, San Francisco and Los Angeles, California, and Las Vegas, Nevada. The Debtors employ approximately 50 employees who provide strategy, regulatory, specialized engineering, and back office services.

b. The Satellite System

The Satellite System has been in development since 2004. The Debtors designed the Satellite System flexibly to facilitate integration with a wide-range of technology partners, and they have obtained authorization from the FCC to provide this wide-variety of interactive mobile satellite services with a service footprint covering the United States, Puerto Rico, and the U.S. Virgin Islands. In January 2009, the Debtors cleared the key remaining regulatory hurdle in respect of the Debtors’ ability to implement fully and offer commercially the Satellite System. Specifically, the Debtors received FCC authority for the ground support system for the Satellite System (ancillary terrestrial component (“**ATC**” and, together with MSS, “**MSS/ATC**”) services), subject to the FCC’s ruling on Sprint Nextel’s pending challenge to the grant of this authorization. The Debtors intend to capitalize on the rapid growth of the wireless sector in the United States by using their Satellite System to offer ubiquitous satellite and terrestrial wireless service throughout the United States.

c. Industry Growth and Strategic Partners

The wireless communications sector has been among the strongest growth sectors in the communications industry in recent years. It has also been a sector marked by rapid change and development. Consumers increasingly communicate with a variety of electronic devices, and content providers increasingly seek to reach consumers with different mobile applications. Additionally, due to the increase in wireless traffic, expanding usage of wireless voice services, and accelerating adoption of mobile video, data, and other high-bandwidth applications, the Debtors anticipate that existing and potential wireless service providers will need to significantly enhance their network capacity. Moreover, certain recent advancements in satellite technology have allowed for greater

connectivity and capability to end-user devices that previously had not been possible. Indeed, mass-market manufacturers should be able to develop devices (e.g., car kits with antennas, cellular phones, notebook computer network interface cards, and other data modems and antennas) in a cost-effective manner to take advantage of the benefits of the Debtors' Satellite System.

To develop market share and capitalize on these opportunities, the Debtors have been working closely with several industry-leading vendors, including proven leaders in satellite, consumer electronics, and mobile video solutions. In addition, because the commencement of the full-scale hybrid system utilizing both a satellite and land-based components (the "MSS/ATC Hybrid Network") will require substantial additional capital, the Debtors have been exploring opportunities to offer their services to certain strategic service providers who have the capacity to integrate the Debtors' integrated satellite and terrestrial services with services already offered to their existing customer bases.

Indeed, the Debtors intend and expect to continue to sign agreements with additional vendors to develop more fully other technologies to permit video and data multicasting and voice and data interactivity from the satellite, as well as integrated services for the terrestrial segment. For example, through agreements with Qualcomm Incorporated, the Debtors have developed a limited number of mobile phone-like devices capable of making video calls and sending data to and from the DBSD G-1 Satellite and are developing and integrating satellite and cellular communication technology into select multimode mobile baseband chips, which will enable manufacturers of cellular devices to build mobile devices able to access the Debtors' band capabilities and, thus, provide ubiquitous mobile communications coverage across North America, including in areas where traditional cellular service is currently unavailable or unreliable.

3. Capital Structure

As of March 31, 2009, the aggregate book value of the Debtors' assets was approximately \$630 million, and, as of the Petition Date, the Debtors had total outstanding liabilities in the aggregate principal amount of approximately \$810 million, consisting primarily of approximately \$46 million in secured bank debt (including accrued but unpaid interest) and approximately \$752 million of senior secured notes (including accrued but unpaid interest).

a. Prepetition Facility

On March 27, 2008, DBSD N.A. obtained a \$40 million revolving credit facility (the "**Prepetition Facility**") to provide the cash flow necessary to sustain operations during 2008, evidenced by that certain Amended and Restated Revolving Credit Agreement dated as of April 7, 2008 (as amended, supplemented, or modified from time to time, the "**Prepetition Credit Agreement**"), by and among DBSD N.A., as borrower, each of DBSD N.A.'s subsidiaries, as guarantors, Wells Fargo Bank, N.A., as successor administrative agent (the "**Agent**"), the financial institutions and other persons from time to time lenders party thereto (the "**Prepetition Lenders**"), and The Bank of New York Mellon (f/k/a The Bank of New York), as collateral agent.

The Debtors' obligations under the Prepetition Facility (the "**Prepetition Facility Obligations**") are secured by a first-priority security interest in substantially all of the assets of the Debtors and by a first-priority pledge by ICO Global of the equity of DBSD N.A. (subject to certain exceptions). The Prepetition Facility Obligations bore an initial interest rate of 12.5% *per annum* payable annually (plus 2% during an Event of Default, as defined in the Prepetition Credit Agreement) and matured on May 1, 2009.

On April 3, 2009 and April 30, 2009, the Debtors entered into two forbearance agreements with the Prepetition Lenders (the "**Prepetition Facility Forbearance Agreements**"), pursuant to which the Agent and the Prepetition Lenders agreed to forbear, through May 1, 2009 and May 15, 2009, respectively, from exercising certain rights and remedies against the Debtors with respect to specified defaults under the Prepetition Credit Agreement arising from ICO Global's failure to produce audited financial statements without a going-concern qualification and the Debtors' failure to repay the Prepetition Facility in full on the May 1, 2009 maturity date. In addition, the Prepetition Facility Forbearance Agreements provided for an aggregate fee of 2% of the outstanding principal under the Prepetition Credit Agreement and an increase of the interest rate to 16% per annum (after giving effect to the default rate) effective May 1, 2009. The Debtors further agreed to use all of the proceeds received from any sale or disposition of ARS prior to any bankruptcy filing or any net cash proceeds from any asset sale, debt issuance, or

equity issuance of DBSD N.A. equity prior to any bankruptcy filing to repay the obligations under the Prepetition Credit Agreement and to use commercially reasonable efforts to obtain an ARS margin facility and to replace the Prepetition Credit Agreement. Finally, under the Prepetition Facility Forbearance Agreements, the Debtors agreed, in connection with any insolvency proceeding with respect to DBSD N.A. and its subsidiaries, not to challenge or seek to invalidate any of the outstanding obligations under the Prepetition Credit Agreement or to subordinate or re-characterize any claim of the collateral agent or any Prepetition Lender against the Debtors.

b. Senior Notes Due August 2009

In August 2005, DBSD N.A. issued \$650 million in aggregate principal amount of 7.5% convertible senior secured notes (the “**Senior Notes**”), due August 15, 2009, pursuant to the Indenture, dated as of August 15, 2005, among DBSD N.A., the Debtors, as guarantors, and The Bank of New York (n/k/a The Bank of New York Mellon) as trustee (the “**Indenture Trustee**”), as supplemented by the Supplemental Indenture No. 1 thereto dated as of November 30, 2005, among DBSD N.A., the guarantors party thereto, and the Indenture Trustee and the Supplemental Indenture No. 2 thereto dated as of December 22, 2006, among DBSD N.A., the guarantors party thereto, and the Indenture Trustee (such Indenture, as so supplemented and amended, the “**Indenture**”). The Senior Notes are secured by a second-priority security interest in substantially all of the assets of the Debtors and by a second-priority pledge by ICO Global of the equity of DBSD N.A. (subject to certain exceptions). DBSD N.A. issued the Senior Notes to fund the development of the Satellite System and other operating expenses.

The Senior Notes mature on August 15, 2009, and bear interest at a rate of 7.5% per year, payable semi-annually in arrears in cash on February 15 and August 15. Subject to certain exceptions, for the period from August 16, 2007 through August 15, 2009, DBSD N.A. has the option of paying accrued interest due through the issuance of additional Senior Notes in lieu of cash at an increased interest rate of 8.5% *per annum*. DBSD N.A. elected to make its February 15, 2008, August 15, 2008, and February 15, 2009 interest payments in the form of additional Senior Notes. Therefore, the rate used to accrue interest on the outstanding Senior Notes has been adjusted to 8.5% *per annum*, effective August 16, 2007.

The Indenture contains a conversion feature that allows holders of the Senior Notes (the “**Senior Noteholders**”) to convert their Senior Notes into shares of DBSD N.A.’s common stock at any time in their discretion. Additionally, the Senior Notes would automatically convert into shares of DBSD N.A.’s common stock upon a qualifying private offering or sale, a qualifying public offering of DBSD N.A.’s common stock, or upon written consent of Senior Noteholders owning two-thirds of the Senior Notes. At present, non-Debtor ICO Global holds over 99% of the capital stock of DBSD N.A. If all of the Senior Notes were converted, however, such ownership interest would be reduced to approximately 52%.

On April 30, 2009, the Debtors entered into a forbearance agreement with the Senior Noteholders (the “**Senior Notes Forbearance Agreement**,” together with the Prepetition Facility Forbearance Agreements, the “**Forbearance Agreements**”), pursuant to which, the Senior Noteholders agreed to forbear, through May 15, 2009, from exercising their rights and remedies against the Debtors with respect to specified defaults under the Indenture arising from the failure of the Debtors to repay the Prepetition Facility and other obligations on the maturity date of the Prepetition Facility. In addition, pursuant to the Senior Notes Forbearance Agreement, DBSD N.A. agreed not to sell any ARS without the prior consent of the Senior Noteholders unless the sale would result in gross proceeds to DBSD N.A. of not less than the par or stated value of such ARS. Finally, under the Senior Notes Forbearance Agreement, the Debtors agreed, in connection with any insolvency proceeding with respect to DBSD N.A. and its subsidiaries, not to challenge or seek to invalidate any of the outstanding obligations under the Senior Notes or to subordinate or re-characterize any claim of the trustee or any Senior Noteholder against the Debtors.

c. Collateral Trust Agreement

Pursuant to the Collateral Trust Agreement, dated as of August 15, 2005, among ICO Global, the Debtors, and The Bank of New York, as collateral agent and as trustee under the Indenture (as amended, supplemented, or modified from time to time, the “**Collateral Trust Agreement**”), the liens securing the Debtors’ obligations under the Indenture are junior in priority to the liens securing the Prepetition Facility Obligations. By the Collateral Trust Agreement Joinder, dated as of April 7, 2008, the Agent became a party to the Collateral Trust Agreement.

d. Auction Rate Securities

As part of their financing strategy, during the first quarter of 2008, the Debtors used the proceeds from the sale and maturity of certain of their investments, cash, and cash equivalents to purchase approximately \$98 million of student-loan-backed auction rate securities consisting of variable rate bonds with maturities ranging from 24 to 39 years, for which the interest rates are reset through a Dutch auction each month (the “ARS”). As of March 31, 2009, the ARS held by the Debtors had an aggregate par value of approximately \$74.4 million.

On August 8, 2008, UBS Financial Services, Inc. and certain of its affiliates (collectively, “UBS”) entered into a settlement agreement with the Attorney General of the State of New York, pursuant to which UBS agreed to offer to repurchase certain ARS marketed by UBS and held by certain customers (the “**UBS Settlement Agreement**”). On November 14, 2008, the Debtors accepted an offer (the “**UBS Settlement Offer**”) made by UBS whereby UBS agreed to purchase ARS it sold to the Debtors prior to February 13, 2008, which the Debtors still holds (the “**Eligible ARS**”). Under the terms of the UBS Settlement Offer, at the Debtors’ option, the Debtors can require UBS to purchase Eligible ARS at par value during the period beginning June 30, 2010 through July 2, 2012. Conversely, UBS has the right, at its discretion, to purchase or sell the Eligible ARS at any time until July 2, 2012, so long as the Debtors receive payment at par value upon any sale or disposition. The UBS Settlement Offer also allows the Debtors to borrow an amount up to 75% of the market value of the Eligible ARS against the value of the ARS so long as the Debtors enter into a margin agreement with UBS, but both the Prepetition Facility and the Indenture restrict the Debtors’ ability to enter into such an agreement.

ARTICLE III CHAPTER 11 CASES

The following is a general summary of the significant events leading to the Chapter 11 Cases and the anticipated events that will take place during the Chapter 11 Cases.

A. EVENTS LEADING TO THE CHAPTER 11 CASES

As with many companies, start-up or otherwise, recent turmoil in the credit markets and the financial services industry has negatively affected the Debtors’ financial condition and liquidity. The credit markets and the financial services industry have experienced a period of unprecedented turmoil characterized by the bankruptcy, failure, collapse, and sale of various companies, including financial institutions, and an unprecedented level of intervention from the United States government. While the ultimate outcome of these events cannot be predicted, such events have had a material adverse effect on the Debtors’ ability to (1) refinance their existing Prepetition Facility Obligations and Senior Notes or otherwise complete a recapitalization transaction outside of the bankruptcy forum, (2) realize the anticipated value of their investment securities, and (3) raise future financing for working capital, capital expenditures, and debt service requirements.

In addition to these macroeconomic factors, other conditions have converged to hasten the decline of the Debtors’ financial condition and lack of liquidity that has precipitated the filing of the Chapter 11 Cases, the most notable of which are described below.

1. Unanticipated Illiquidity of Investment Securities

Historically, the monthly ARS auctions provided a liquid market for the Debtors’ ARS. As a result of the impact of the current conditions in the global financial markets, however, multiple ARS auctions have failed. The Debtors have sold certain ARS in the open market, but, as a result of the Prepetition Facility Forbearance Agreements, the proceeds of any further sales now must be used to repay the Prepetition Facility Obligations rather than to fund operating expenses. Thus, the Debtors do not have the liquidity they expected from the sale of the ARS.

2. Maturity and Forbearance Expiration for the Prepetition Facility

As noted above, the Debtors were not able to satisfy the Prepetition Facility Obligations on the May 1, 2009 maturity date, and the most recent forbearance period granted under the Prepetition Facility Forbearance Agreements expired on May 15, 2009. Due to the illiquidity of the ARS, the Debtors are not in a position to satisfy

the Prepetition Facility Obligations in full at this time without unreasonably impairing their liquidity. In addition, the Debtors are facing the imminent maturity of the Senior Notes, and the Debtors' inability to satisfy the Prepetition Facility Obligations on the maturity date constituted an event of default under the Indenture. As indicated above, the Senior Noteholders and the Debtors entered the Senior Notes Forbearance Agreement, under which the Senior Noteholders agreed to forbear exercising their rights and remedies against the Debtors, but the forbearance period expired May 15, 2009. Even absent the occurrence of this event of default, the Debtors would not have been able to repay the Senior Notes upon the expiration of the forbearance period or on the August 15, 2009 maturity date.

Importantly, because the Prepetition Facility and the Senior Notes are secured by first-priority and second-priority security interests, in substantially all of the assets of the Debtors and by first-priority and second-priority pledges, respectively, by ICO Global of DBSD N.A.'s capital stock, the occurrence of certain events of default under the Prepetition Facility or the Indenture may have enabled the Prepetition Lenders and the Senior Noteholders to exercise rights over some or all of the Debtors' assets or the capital stock of the Debtors.

3. Notices of Default Under Key Supplier Contract

In November 2005, the Debtors entered into a contract with Space Systems/Loral, Inc. ("**Loral**" and the contract, as amended, supplemented, or modified from time to time, the "**Loral Contract**") to design, develop, manufacture, test, and deliver the DBSD G-1 Satellite, as well as certain ground-based systems related to its operation. The DBSD G-1 Satellite was delivered in February 2008 and launched successfully on April 14, 2008. The Debtors are obligated to make installment payments to Loral in accordance with terms of the Loral Contract.

On or around April 8, 2009, the Debtors received written notice from Loral relating to certain alleged payment defaults under the Loral Contract. In particular, an aggregate payment of \$5.1 million was allegedly due and payable to Loral on April 2, 2009. Loral asserts that it is entitled to terminate the Loral Contract and exercise other rights and remedies enumerated therein, pursuant to the terms of the Loral Contract because the Debtors did not cure the payment default (i.e., remit the full payment of the \$5.1 million allegedly owed to Loral) on or before May 7, 2009. Loral did not terminate the Loral Contract prior to the Petition Date.

4. Decision to Commence the Chapter 11 Cases

Due to the illiquidity of the ARS as a result of the failed auctions and the need to refinance the Prepetition Facility and the Senior Notes, the Debtors devoted substantial effort prior to the Petition Date to generating additional liquidity and restructuring their debt obligations out of court. Initiatives included determining how to maximize the value of the ARS in light of their unexpected illiquidity, seeking additional financing and capital from existing and new sources, and negotiating with potential strategic partners regarding business combinations to increase enterprise value and potentially attract new financing or capital infusions. In addition, the Debtors entered into the Forbearance Agreements in connection with the Prepetition Facility and the Indenture and made numerous proposals to an ad hoc committee of the Senior Noteholders to restructure the Debtors' obligations under the Indenture. Although the Debtors accepted the UBS Settlement Offer and made substantial progress with potential strategic partners and with respect to restructuring their obligations under the Indenture, ultimately, the Debtors were unable to finalize or to secure an appropriate further forbearance from the Prepetition Lenders or the Senior Noteholders.

In light of the maturity of the Prepetition Facility, the Debtors commenced the Chapter 11 Cases to prevent the Prepetition Lenders, and by virtue of cross-acceleration provisions in the Indenture, the Senior Noteholders, from seeking to foreclose on the Debtors' stock and assets.

B. RESTRUCTURING NEGOTIATIONS AND AGREEMENTS

1. Support Agreement

Beginning before the Petition Date, for the last several months, the Debtors have been in discussions with certain of the Senior Noteholders (the "**Principal Noteholders**") to secure support for the Plan. Indeed, to memorialize those discussions, the Debtors, the Existing Stockholder, and the Principal Noteholders entered into an agreement dated as of May 14, 2009, whereby the Principal Noteholders and the Existing Stockholder committed to support the Debtors' restructuring plans, including an agreement to vote to accept a plan of reorganization consistent

with the Term Sheet attached to the Support Agreement as Exhibit A (together the “**Support Agreement**”), subject to the terms and conditions of the Support Agreement. The reorganization contemplated by the Plan is consistent with the Support Agreement, attached hereto as **Exhibit C** and incorporated herein by reference.

Specifically, pursuant to the terms and conditions of the Support Agreement, and subject to certain conditions being met, each of the Principal Holders has agreed, in sum and substance, that, as a party to the Support Agreement, it (a) will use its reasonable best efforts to, as applicable, take all actions relating to itself reasonably necessary to effectuate and consummate a restructuring and not take any acts inconsistent with a restructuring that is consistent with the terms of the Support Agreement, in each case, as expeditiously as practicable and (b) when lawfully solicited, will vote or cause its Senior Note Claims to be voted to accept the Plan.

The Principal Holders hold a majority of the debt under the Debtors’ Senior Note Claims. In negotiating the Support Agreement, the Principal Noteholders negotiated on their own behalf and not as a representative of the other Senior Noteholders.

Additionally, pursuant to the terms and conditions of the Support Agreement, and subject to certain conditions being met, the Existing Stockholder has agreed, in sum and substance, that, as a party to the Support Agreement, it (a) will use its reasonable best efforts to, as applicable, take all actions reasonably necessary to effectuate and consummate a restructuring and not take any acts inconsistent with a restructuring that is consistent with the terms of the Support Agreement, in each case, as expeditiously as practicable and (b) when lawfully solicited, will vote to accept the Plan.

C. INITIATION OF THE CHAPTER 11 CASES

To facilitate the Chapter 11 Cases and minimize disruption to the Debtors’ operations, the Debtors have sought certain relief, including, without limitation, the relief summarized below.

1. Voluntary Petitions

On the Petition Date, the following entities filed voluntary chapter 11 petitions commencing the Chapter 11 Cases: DBSD North America, Inc.; 3421554 Canada Inc.; DBSD Satellite Management, LLC; DBSD Satellite North America Limited; DBSD Satellite Services G.P.; DBSD Satellite Services Limited; DBSD Services Limited; New DBSD Satellite Services G.P.; and SSG UK Limited.

2. Expected Timetable of the Chapter 11 Cases

The Debtors expect the Chapter 11 Cases to proceed quickly. The Debtors have been in extensive negotiations with the Prepetition Lenders and Senior Noteholders to complete a balance sheet restructuring to deleverage the Debtors’ balance sheet.

3. First Day Relief

The Debtors presented certain motions to the Bankruptcy Court on the Petition Date and shortly thereafter seeking relief (the “**First Day Pleadings**”), which included, without limitation, the following:

a. Cash Collateral

The Debtors sought and received interim approval of proposed adequate protection for Prepetition Lenders and Senior Noteholders and authority to use the cash collateral for working capital and general corporate purposes, including certain expenses necessary to preserve the value of the Debtors’ assets, certain prepetition amounts as requested in the First Day Pleadings, and the costs and expenses of administration and restructuring during the Chapter 11 Cases. This relief is necessary to ensure the Debtors can continue to operate in the ordinary course during the Chapter 11 Cases.

b. Cash Management, Intercompany Transactions, and Intercompany Claims

The Debtors sought and received interim authority to continue using their prepetition cash management system after the Petition Date, to disburse funds from their bank accounts by all usual methods, and to perform

obligations under the documents governing the cash management system. In addition, the Debtors sought and received authority for continued intercompany transactions and requested and received authority from the Court granting superpriority administrative priority to intercompany claims. This relief will minimize unnecessary expenses and administrative delays, will ensure the continued function of Debtors without bank accounts, and facilitate the Debtors' seamless transition into chapter 11.

c. Insurance

The Debtors have requested authority, but not direction, to continue insurance coverage currently in effect and to pay any prepetition amounts related to the satellite insurance policy. This relief is essential because the Debtors are required to maintain certain insurance policies by various regulations, laws, and contracts governing their commercial activities and because the failure to pay insurance policy premiums may result in the loss of insurance coverage or the subsequent need to obtain replacement insurance on an emergency basis, likely at a higher price.

d. Ordinary Course Professionals

The Debtors have requested authority to retain and compensate certain professionals utilized in the ordinary course of the Debtors' business (each, an "OCP"). Due to the number of OCPs that are regularly retained by the Debtors and the significant costs associated with the preparation of employment applications for professionals who receive relatively modest fees, it would be impractical, inefficient, and burdensome to the Debtors and their legal advisors to prepare and submit individual applications and fee applications for each OCP.

e. Taxes and Fees

The Debtors have requested authority to pay certain taxes and fees, including use, franchise, and property taxes, in the ordinary course of business. In some cases, the taxing authorities may seek to hold the Debtors' officers personally liable if these corporate taxes and fees are not paid. To prevent such costly distractions to key management, the Debtors sought and received authority to pay these taxes in the ordinary course of business.

f. Utilities

The Debtors have requested approval of proposed adequate assurance for utility providers, approval of the procedures governing utility providers' requests for additional or different adequate assurance, and a prohibition of utility providers from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on account of prepetition amounts outstanding or on account of any perceived inadequacy of the proposed adequate assurance. The Debtors believe that uninterrupted utility services are essential to the Debtors' ongoing operations and, therefore, to the success of the Debtors' reorganization.

g. Wages

The Debtors sought and received interim authority to pay employees their wage Claims in the ordinary course of business. Additionally, the Debtors continue all prepetition benefit plans and policies, including, among others, the medical, vision, and dental plans, workers' compensation benefits, vacation time and other paid leaves of absence, the 401(k) retirement saving plan, and various other insurance plans, to the extent applicable. This relief will allow the Debtors to maintain employee morale and will prevent costly distractions and retention issues.

h. Employment and Compensation of Chapter 11 Professionals

To assist the Debtors in carrying out their duties as debtors in possession and to otherwise represent the Debtors' interests in the Chapter 11 Cases, the Bankruptcy Court entered an order authorizing the Debtors to retain and employ GCG, as Notice and Claims Agent on May 21, 2009 [Docket No. 33]. The Debtors have also filed applications requesting authority to retain and employ (i) Jefferies & Company, Inc., as investment banker and financial advisor ("Jefferies") and (ii) Kirkland & Ellis LLP, as counsel. These applications are scheduled to be heard on June 15, 2009 and June 5, 2009, respectively.

i. Other Procedural Motions

The Debtors also Filed several procedural motions that are standard in Chapter 11 Cases. These motions included the following:

(i) Joint Administration

The Debtors requested and, on May 21, 2009, the Bankruptcy Court entered an Order Directing Joint Administration of the Chapter 11 Cases [Docket No. 32] for procedural purposes only. Joint administration of the Chapter 11 Cases will reduce fees and costs by avoiding duplicative filings and objections, and it will allow all parties in interest to monitor the Chapter 11 Cases with greater ease and efficiency.

(ii) Interim Compensation Procedures

The Debtors have requested authority to establish procedures for the interim compensation and reimbursement of retained Professionals in the Chapter 11 Cases. The Debtors believe that the efficient administration of the Chapter 11 Cases will be significantly aided by establishing the interim compensation and expense reimbursement procedures.

D. UNSECURED CREDITORS

1. Appointment of the Creditors Committee

On May 29, 2009, the Office of the United States Trustee appointed a creditors committee pursuant to sections 1102(a) and 1102(b) of the Bankruptcy Code (the “**Creditors Committee**”). The members of the Creditors Committee are Space Systems/Loral, Inc., Wildcat Systems LLC, and Wireless Strategy, LLC.

2. Meeting of the Creditors

The meeting of creditors pursuant to section 341 of the Bankruptcy Code will be held on June 23, 2009 at 2:30 p.m., prevailing Eastern Time, at the Office of the United States Trustee, 80 Broad Street, 4th Floor, New York, New York 10004-1408, in accordance with Bankruptcy Rule 9001(5), which requires, at a minimum, that one representative of the Debtors appear at such meeting of creditors for the purpose of being examined under oath by a representative of the United States Trustee and by any attending parties in interest.

E. CLAIMS BAR DATE

The Debtors have filed a Motion for Entry of an Order Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [Docket No. 42] (the “**Claims Bar Date Motion**”). The Claims Bar Date Motion proposes (1) June 30, 2009 at 5:00 p.m. prevailing Eastern Time as the deadline for all entities, other than governmental units, holding a Claim that arose or is deemed to have arisen prior to the Petition Date to File a Proof of Claim and (2) November 11, 2009 at 5:00 p.m. prevailing Eastern Time as the deadline for governmental units holding a Claim that arose or is deemed to have arisen prior to the Petition Date to File a Proof of Claim (collectively, the “**Claims Bar Dates**”). The Claims Bar Date Motion is scheduled to be heard on June 5, 2009. A deadline by which Proofs of Claim for Administrative Claims (as defined in the Claims Bar Date Motion and except to the extent such Claims are asserted pursuant to section 503(b)(9) of the Bankruptcy Code, which are subject to the Claims Bar Dates) are required to be Filed has not been established as of the date of this Disclosure Statement, and the Debtors are requesting that the Bankruptcy Court set such date as part of the Confirmation of the Plan.

F. PENDING LITIGATION PROCEEDINGS

Sprint Nextel Corporation (“**Sprint Nextel**”) has asserted certain claims against the Debtors, as discussed in detail in ARTICLE VIII.C.2.d hereof. Although no judgment against or seizure of property from the Debtors is imminent in this matter, Sprint Nextel alleges that the Debtors ultimately may be required to reimburse Sprint Nextel for certain clearing costs from the 2 GHz band mobile satellite service licensees, including the Debtors, through litigation and regulatory action. In addition, the Debtors are party to various legal proceedings and claims

arising in the ordinary course of business. The Debtors cannot predict with certainty the outcome of these legal proceedings and claims.

With certain exceptions, the filing of the Chapter 11 Cases operates as a stay with respect to the commencement or continuation of litigation that was or could have been commenced against the Debtors before the commencement of the Chapter 11 Cases. In addition, the Debtors' liability is subject to discharge in connection with the confirmation of a plan of reorganization, with certain exceptions. Therefore, certain litigation claims against the Debtors may be subject to compromise in connection with the Chapter 11 Cases. This may reduce the Debtors' exposure to losses in connection with the adverse determination of such litigation.

G. EXCLUSIVITY

Under the Bankruptcy Code, a debtor has the exclusive right to file and solicit acceptance of a plan or plans of reorganization for an initial period of 120 days from the date on which the debtor filed for voluntary relief. If a debtor files a plan within this exclusive period, then the debtor has the exclusive right for 180 days from the commencement date to solicit acceptance of the plan. During these exclusive periods, no other party in interest may file a competing plan of reorganization, however, a court may extend these periods upon request of a party in interest. The Debtors' initial exclusive periods to file and solicit acceptance of a plan or plans of reorganization are set to expire on September 14, 2009 and November 11, 2009, respectively.

ARTICLE IV THE JOINT PLAN

This section provides a summary of the structure and means for implementation of the Plan and the classification and treatment of Claims and Interests under the Plan and is qualified in its entirety by reference to the Plan (as well as the exhibits thereto and definitions therein).

The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in the documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statement of such terms and provisions of the Plan or documents referred to therein.

The Plan itself and the documents therein control the actual treatment of Claims against and Interests in the Debtors under the Plan and will, upon the occurrence of the Effective Date, be binding upon all Holders of Claims against and Interests in the Debtors, the Debtors' Estates, the Reorganized Debtors, all parties receiving property under the Plan, and other parties in interest. In the event of any conflict between this Disclosure Statement and the Plan or any other operative document, the terms of the Plan and/or such other operative document shall control.

A. ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

1. Administrative Claims

Subject to the provisions of sections 328, 330(a), and 331 of the Bankruptcy Code, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Administrative Claim, each Holder of such Allowed Administrative Claim shall be paid in full in Cash on the later of the Effective Date or the date on which an Administrative Claim becomes an Allowed Administrative Claim or as soon as practicable thereafter.

All requests for payment of an Administrative Claim must be Filed with the Claims and Solicitation Agent and served upon counsel to the Debtors or the Reorganized Debtors, as applicable, on or before the Administrative Claim Bar Date. Any request for payment of an Administrative Claim that is not timely Filed shall be disallowed.

automatically, forever barred from assertion, and shall not be enforceable against any Reorganized Debtor without the need for any objection by the Reorganized Debtors or further notice to or action, order, or approval of the Bankruptcy Court or other Entity. The Reorganized Debtors may settle and pay any Administrative Claim in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity. In the event that any party with standing objects to an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order.

2. Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Confirmation Date shall receive on, or as soon as reasonably practicable after the Effective Date: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (b) Cash in an amount agreed to by such Holder and the Debtors; or (c) at the option of the Debtors, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period of not more than 5 years after the Petition Date pursuant to section 1129(a)(9)(C) of the Bankruptcy Code.

B. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

1. Summary

All Claims and Interests, except Administrative Claims and Priority Tax Claims, are classified in the Classes set forth in Article III of the Plan. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest is also classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

Article IV.A of the Plan provides for the deemed substantive consolidation of the Estates into a single Estate for all purposes associated with Plan voting, Confirmation, and Consummation. As a result of the substantive consolidation of the Estates, each Class of Claims and Interests will be treated as against a single consolidated Estate without regard to the separate identification of the Debtors. Without limiting the foregoing, as provided in Article IV.A of the Plan, nothing shall effect the continued corporate existence of each of the Debtors.

The classification of Claims and Interests against the Debtors pursuant to the Plan is as follows:

Class	Claim or Interest	Status	Voting Rights
1.	Prepetition Facility Claims	Impaired	Entitled to Vote
2.	Senior Note Claims	Impaired	Entitled to Vote
3.	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
4.	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
5.	General Unsecured Claims	Impaired	Entitled to Vote
6.	Intercompany Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
7.	Other Equity Interests	Impaired	Entitled to Vote
8.	Existing Stockholder Interests	Impaired	Entitled to Vote
9.	Intercompany Interests	Unimpaired	Not Entitled to Vote (Deemed to Accept)

2. Classification and Treatment of Claims and Interests

To the extent a Class contains Allowed Claims or Allowed Interests with respect to a particular Debtor, the treatment provided to each Class for distribution purposes is specified below:

a. Class 1 - Prepetition Facility Claims

- (i) *Classification:* Class 1 consists of all Prepetition Facility Claims.
- (ii) *Treatment:* In full and final satisfaction, release, and discharge of and in exchange for each Allowed Prepetition Facility Claim, on the Effective Date or as soon thereafter as practicable, each Holder of a Class 1 Prepetition Facility Claim shall receive its Pro Rata share of the Reorganized Debtors' obligations under the Amended Facility Agreement. The distribution to the Allowed Class 1 Claims takes into account and conforms to the relative priority and rights of the Claims in Class 1 and in Class 2 in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principals of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise, and are in full settlement and discharge thereof. Accordingly, the Holders of the Allowed Class 1 Claims shall have no entitlement to any portion of the distribution to the Holders of the Allowed Class 2 Claims.
- (iii) *Voting:* Class 1 is Impaired by the Plan. Holders of Class 1 Prepetition Facility Claims are entitled to vote to accept or reject the Plan.

b. Class 2 – Senior Note Claims

- (i) *Classification:* Class 2 consists of all Senior Note Claims. For purposes of the Plan, all Senior Note Claims shall be Allowed in full without setoff, counterclaim, defense, or recharacterization of any kind or nature whatsoever.
- (ii) *Treatment:* In full and final satisfaction, release, and discharge of and in exchange for each Allowed Senior Note Claim, on the Effective Date or as soon thereafter as practicable, each Holder of a Class 2 Senior Note Claim shall receive its Pro Rata share of the Distribution Shares. The distributions to the Allowed Class 1 Claims and the Allowed Class 2 Claims take into account and conform to the relative priority and rights of the Claims in Class 1 and in Class 2 in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principals of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise, and are in full settlement and discharge thereof.
- (iii) *Voting:* Class 2 is Impaired by the Plan. Holders of Class 2 Senior Note Claims are entitled to vote to accept or reject the Plan.

c. Class 3 - Other Secured Claims

- (i) *Classification:* Class 3 consists of all Other Secured Claims.
- (ii) *Treatment:* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, in full and final satisfaction, release, and discharge of and in exchange for each Allowed Other Secured Claim, on the Effective Date or as soon thereafter as practicable, each Holder of a Class 3 Allowed Other Secured Claims shall receive one of the following treatments, in the sole discretion of the Debtors or the Reorganized Debtors, as applicable: (i) payment of such Allowed Other Secured Claim in full in Cash; (ii) delivery of the collateral securing such Allowed Other Secured Claim and payment of interest required to be paid under section 506(b) of the Bankruptcy Code, if any; or (iii) treatment of such Allowed Other Secured Claim in any other manner such that the Allowed Other Secured Claim shall be rendered Unimpaired.

- (iii) *Voting:* Class 3 is Unimpaired by the Plan. Each Holder of a Class 3 Other Secured Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Holders of Class 3 Other Secured Claims are not entitled to vote to accept or reject the Plan.

d. Class 4 - Other Priority Claims

- (i) *Classification:* Class 4 consists of all Other Priority Claims.
- (ii) *Treatment:* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in full and final satisfaction, release, and discharge of and in exchange for each Allowed Other Priority Claim, on the Effective Date or as soon thereafter as practicable, each Holder of such Class 4 Allowed Other Priority Claim shall be paid in full in Cash, either in accordance with the original terms or on or as soon as practicable after the Effective Date.
- (iii) *Voting:* Class 4 is Unimpaired by the Plan. Each Holder of a Class 4 Other Priority Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Holders of Class 4 Other Priority Claims are not entitled to vote to accept or reject the Plan.

e. Class 5 - General Unsecured Claims

- (i) *Classification:* Class 5 consists of all General Unsecured Claims.
- (ii) *Treatment:* In full and final satisfaction, release, and discharge of and in exchange for each Allowed General Unsecured Claim, on the Effective Date or as soon thereafter as practicable, each Holder of a Class 5 General Unsecured Claim shall receive its Pro Rata share of the General Unsecured Creditors' Shares.
- (iii) *Voting:* Class 5 is Impaired by the Plan. Holders of Class 5 General Unsecured Claims are entitled to vote to accept or reject the Plan.

f. Class 6 - Intercompany Claims

- (i) *Classification:* Class 6 consists of all Intercompany Claims.
- (ii) *Treatment:* Each Allowed Intercompany Claim shall be Reinstated on the Effective Date. After the Effective Date, the Reorganized Debtors, in their sole discretion, shall have the right to resolve or compromise Allowed Intercompany Claims without further notice to or action, order, or approval of the Bankruptcy Court.
- (iii) *Voting:* Class 6 is Unimpaired by the Plan. Each Holder of a Class 6 Intercompany Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Holders of Class 6 Intercompany Claims are not entitled to vote to accept or reject the Plan.

g. Class 7 – Other Equity Interests

- (i) *Classification:* Class 7 consists of all Other Equity Interests.
- (ii) *Treatment:* On the Effective Date, all Other Equity Interests shall be deemed canceled and extinguished, and shall be of no further force and effect, whether surrendered for cancellation or otherwise. In full and final satisfaction, release, and discharge of and in exchange for each Other Equity Interest, on the Effective Date or as soon thereafter as practicable, each Holder of a Class 7

Other Equity Interest shall receive its Pro Rata share of 0.0081% subject to dilution by the General Unsecured Creditors' Shares of the New Common Stock.

- (iii) *Voting:* Class 7 is Impaired by the Plan. Holders of Class 7 Other Equity Interest are entitled to vote to accept or reject the Plan.

h. Class 8 – Existing Stockholder Interests

- (i) *Classification:* Class 8 consists of all Existing Stockholder Interests.
- (ii) *Treatment:* On the Effective Date, all Existing Stockholder Interests shall be deemed canceled and extinguished, and shall be of no further force and effect, whether surrendered for cancellation or otherwise. In full and final satisfaction, settlement, release, and discharge of each Existing Stockholder Interest, and on account of all valuable consideration provided by the Existing Stockholder, including, without limitation, certain consideration provided in the Support Agreement, on the Effective Date or as soon thereafter as practicable, the Holder of such Class 8 Existing Stockholder Interest shall receive the Warrants and, subject to dilution by the General Unsecured Creditors' Shares, 5% of the New Common Stock.
- (iii) *Voting:* Class 8 is Impaired by the Plan. Holders of Class 8 Existing Stockholder Interests are entitled to vote to accept or reject the Plan.

i. Class 9 - Intercompany Interests

- (i) *Classification:* Class 9 consists of all Intercompany Interests.
- (ii) *Treatment:* All Intercompany Interests shall be Reinstated for the benefit of the Holders thereof.
- (iii) *Voting:* Class 9 is Unimpaired by the Plan. Each Holder of a Class 9 Intercompany Interest is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Holders of Class 9 Intercompany Interests are not entitled to vote to accept or reject the Plan.

3. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

4. Acceptance or Rejection of the Plan

a. Presumed Acceptance of the Plan

Classes 3, 4, 6, and 9 are Unimpaired under the Plan. The Holders of Claims and Interests in such Classes are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

b. Voting Classes

Classes 1, 2, 5, 7, and 8 are Impaired under the Plan. Each Holder of an Allowed Claim or Interest as of the Voting Record Date in each of Classes 1, 2, 5, 7, and 8 is entitled to vote to accept or reject the Plan.

c. Acceptance by Impaired Classes of Claims

Pursuant to section 1126(c) of the Bankruptcy Code, and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted the Plan if the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class actually voting have voted to accept the Plan.

5. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by an Impaired Class of Claims. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests.

6. Controversy Concerning Impairment

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

C. MEANS FOR IMPLEMENTATION OF THE PLAN

1. Substantive Consolidation

The Plan shall serve as a motion by the Debtors seeking entry of a Bankruptcy Court order substantively consolidating all of the Estates into a single consolidated Estate for all purposes associated with voting, Confirmation and Consummation.

If substantive consolidation of all of the Estates is ordered, then on and after the Effective Date, all assets and liabilities of the Debtors shall be treated as though they were merged into the Estate of Debtor DBSD N.A. for all purposes associated with Confirmation and Consummation, and all guarantees by any Debtor of the obligations of any other Debtor shall be eliminated so that any Claim and any guarantee thereof by any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor shall be treated as one collective obligation of the Debtors. Substantive consolidation shall not affect the legal and organizational structure of the Reorganized Debtors or their separate corporate existences or any prepetition or postpetition guarantees, Liens, or security interests that are required to be maintained under the Bankruptcy Code, under the Plan, or in connection with contracts or leases that were assumed or entered into during the Chapter 11 Cases. Any alleged defaults under any applicable agreement with the Debtors or the Reorganized Debtors arising from substantive consolidation under the Plan shall be deemed cured as of the Effective Date.

2. [New Credit Facility]

[On the Effective Date, the Reorganized Debtors may enter into the New Credit Facility. The proceeds of such New Credit Facility shall be used as follows: (a) to pay Cash amounts required under the Plan; and (b) to provide for the Reorganized Debtors' capital expenditure and liquidity needs.]

3. Sources of Consideration for Plan Distributions

All consideration necessary for the Reorganized Debtors to make payments or distributions pursuant hereto shall be obtained from the [New Credit Facility], Cash from the sale or other monetization of Auction Rate Securities, and the Debtors' Cash on hand on the Effective Date.

4. Issuance of New Common Stock

The issuance of the New Common Stock, including the shares of the New Common Stock, the Warrants, options, or other equity awards, if any, reserved for the Existing Stockholder, by Reorganized DBSD is authorized without the need for any further corporate action or without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity except for those expressly required pursuant to the Plan. On the Effective Date or as soon as reasonably practicable thereafter, the New Common Stock shall be issued to Holders of Allowed

Senior Note Claims, Allowed General Unsecured Claims, Allowed Existing Stockholder Interests, and Allowed Other Equity Interests pursuant to Article III.B of the Plan.

All of the shares of New Common Stock issued pursuant to the Plan shall be duly authorized, validly issued and, if applicable, fully paid and non-assessable. Each distribution and issuance referred to in Article VI of the Plan shall be governed by the terms and conditions set forth herein applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance.

5. Section 1145 and Other Exemptions

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of any Securities contemplated by the Plan and any and all settlement agreements incorporated herein, including the New Common Stock and Warrants, shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution, or sale of Securities. To the extent that section 1145 of the Bankruptcy Code is not available, the Warrants and the New Common Stock to be issued pursuant to the Warrants will be issued without registration under the Securities Act or any similar federal, state, or local law in reliance on the private placement exemption under section 4(2) of the Securities Act or Regulation D promulgated thereunder.

In addition, under section 1145 of the Bankruptcy Code, any Securities contemplated by the Plan and any and all settlement agreements incorporated therein, including the New Common Stock and Warrants, will be freely tradable by the recipients thereof, subject to (a) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, and compliance with any rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; (b) the restrictions, if any, on the transferability of such Securities and instruments; and (c) applicable regulatory approval.

6. Listing of New Common Stock

The Reorganized Debtors shall not be obligated to list the New Common Stock on a national securities exchange. In order to ensure that the Reorganized Debtors will not become subject to the reporting requirements of the Exchange Act except in connection with a public offering, the New Common Stock will be subject to certain trading restrictions to limit the number of record holders thereof as shall be more fully described in the Plan Supplement.

7. Registration Rights Agreement

On or after the Effective Date, the Reorganized Debtors shall execute and deliver the Registration Rights Agreement for the benefit of all holders of New Common Stock.

8. Issuance of the Warrants

On the Effective Date or as soon as reasonably practicable thereafter, Reorganized DBSD shall issue the Warrants to the Existing Stockholder pursuant to the terms set forth herein and the Warrant Agreement. As Holders of Class 8 Interests, the Existing Stockholder shall receive the Warrants, which shall be exercisable only upon a Valuation Event.

The Warrants shall be issued in three tranches and shall be identical except as set forth below:

- Warrants representing 5.00% of the New Common Stock shall be exercisable if the aggregate Equity Valuation upon a Valuation Event is equal to or greater than \$1.0 billion; plus
- Warrants representing 2.50% of the New Common Stock shall be exercisable if the aggregate Equity Valuation upon a Valuation Event is equal to or greater than \$1.5 billion; plus
- Warrants representing 2.50% of the New Common Stock shall be exercisable if the aggregate Equity Valuation upon a Valuation Event is equal to or greater than \$2.0 billion.

In the event that the Warrants are extended as described below so that they are exercisable after the second anniversary of the Effective Date, the relevant valuation thresholds set forth above shall be increased at the rate of 30% per annum (or portion thereof) beginning on the second anniversary of the Effective Date.

The Warrants shall expire on the Warrant Term; provided that:

- if Reorganized DBSD enters into binding definitive documents (which have been approved by the New Board) for the consummation of a Valuation Event prior to the second anniversary of Effective Date, then the Warrant Term shall be extended until the earlier of (a) the closing of such Valuation Event and (b) the termination or abandonment of such Valuation Event (but only with respect to such Valuation Event);
- if Reorganized DBSD shall have entered into a binding definitive agreement for the consummation of a business combination (which has been approved by the New Board) with the Identified Company within twelve months of the Effective Date, then the Warrant Term shall be extended until the later of (a) the third anniversary of the Effective Date, (b) the closing of the transaction with the Identified Company, and (c) the termination or abandonment of the transaction with the Identified Company (but only with respect to such transaction if the event in clauses (b) or (c) hereof is after such third anniversary);
- if the Warrant Term has been extended until the third anniversary of the Effective Date and Reorganized DBSD enters into binding definitive documents with respect to a Valuation Event during such time, then the Warrant Term shall be extended until the earlier of (a) the closing of such Valuation Event and (b) the termination or abandonment of such Valuation Event (but only with respect to such Valuation Event).

The Warrants shall provide for appropriate adjustments in the event of stock splits, stock recombination, conversion of the New Common Stock into other Securities, or other similar events. The Warrants shall be non-transferable and shall contain terms and conditions acceptable to the Reorganized Debtors, the Principal Noteholders, and the Existing Stockholder.

9. Stockholders' Agreement

The Stockholders' Agreement shall contain terms and conditions acceptable to the Reorganized Debtors, the Principal Noteholders, and the Existing Stockholder. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the Stockholders' Agreement and, upon the Effective Date, the Stockholders' Agreement shall be deemed to become valid, binding, and enforceable in accordance with its terms, and each Holder of New Common Stock shall be bound thereby.

10. Corporate Governance

As shall be set forth in the DBSD Amended and Restated Charter and the DBSD Amended and Restated Bylaws, which shall be included in the Plan Supplement, the New Board shall consist of [five to ten members], with one member being designated by the Existing Stockholder and the remaining members being designated by the Senior Noteholders in their sole discretion on terms to be negotiated among the Holders of the Senior Note Claims. Each member of the New Board shall be entitled to execute a D&O Indemnification Agreement. In accordance with section 1129(a)(5) of the Bankruptcy Code, the Debtors will disclose at or prior to the Confirmation Hearing: (1) the identities and affiliations of any person proposed to serve as a member of the New Board; and (2) the nature of compensation for any member of the New Board who is an "insider" under section 101(31) of the Bankruptcy Code.

11. Corporate Existence

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as applicable, with all the powers of a corporation, limited liability company, partnership, or other form, as applicable, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate

of incorporation and bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents) are amended by the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity except for those expressly required pursuant to the Plan.

12. Corporate Action

Each of the matters provided for by the Plan involving the corporate structure of the Debtors or corporate or related actions to be taken by or required of the Reorganized Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan (except to the extent otherwise indicated), and shall be authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity except for those expressly required pursuant to the Plan.

13. Certificate of Incorporation and Bylaws

The certificates of incorporation and bylaws of DBSD N.A. shall be amended as set forth in the DBSD Amended and Restated Charter and the DBSD Amended and Restated Bylaws and the certificates of incorporation and bylaws (or other formation documents relating to limited liability companies) shall be amended, if applicable, as set forth in the Plan Supplement. On or as soon as reasonably practicable after the Effective Date, each of the Reorganized Debtors shall file new certificates of incorporation with the secretary of state (or equivalent state officer or entity) of the state under which each such Reorganized Debtor is or is to be incorporated. After the Effective Date, each Reorganized Debtor may file new, or amend and restate its other existing constituent documents as permitted by the relevant state corporate law.

14. Transition Services Agreement

Upon consummation of the Plan, the Reorganized Debtors and the Existing Stockholder shall enter into the Transition Services Agreement.

15. Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtors and the officers and members of the boards of directors thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity except for those expressly required pursuant to the Plan.

16. Vesting of Assets in the Reorganized Debtors

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated therein, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances (except for Liens, if any, granted to secure the [New Credit Facility]) without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity except for those expressly required pursuant to the Plan. On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity except for those expressly required pursuant to the Plan and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

17. Intercompany Interests

Intercompany Interests shall be retained, and the legal, equitable, and contractual rights to which the Holders of such Intercompany Interests are entitled shall remain unaltered to implement the Plan.

18. Cancellation of Securities and Agreements

On the Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of the Debtors under the Prepetition Credit Agreement and the Indenture and any other Certificate, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Interest (except such Certificates, notes, or other instruments or documents evidencing indebtedness or obligations of the Debtors that are Reinstated pursuant to the Plan), shall be cancelled solely as to the Debtors, and the Reorganized Debtors shall not have any continuing obligations thereunder; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, Certificates, notes, bonds, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors (except such agreements, Certificates, notes, or other instruments evidencing indebtedness or obligations of the Debtors that are specifically Reinstated pursuant to the Plan) shall be released and discharged; provided, however, notwithstanding Confirmation or the occurrence of the Effective Date, any such indenture or agreement that governs the rights of the Holder of a Claim or Interest shall continue in effect solely for purposes of allowing Holders to receive distributions under the Plan; provided, further, however, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any expense or liability to the Reorganized Debtors.

19. Restructuring Transactions

On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtors may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including: (1) the execution and delivery of appropriate agreements or other documents of merger, consolidation, or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of the Plan; (3) the filing of appropriate certificates of incorporation, merger, or consolidation with the appropriate governmental authorities pursuant to applicable law; and (4) all other actions that the Reorganized Debtors determine are necessary or appropriate.

20. Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfer from a Debtor to a Reorganized Debtor or to any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Reorganized Debtors; (2) the creation, modification, consolidation, or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles, or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, FCC filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

21. Employee and Retiree Benefits

Except as otherwise provided herein, on and after the Effective Date, the Reorganized Debtors may: (1) honor, in the ordinary course of business, any contracts, agreements, policies, programs, and plans, in each case to the extent disclosed in the Disclosure Statement or the First Day Pleadings, for, among other things, compensation (including equity based and bonus compensation), health care benefits, disability benefits, deferred compensation benefits, travel benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity at any time; (2) distribute or reallocate any unused designated employee success fee and bonus funds related to Confirmation and Consummation in the ordinary course of their business; and (3) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date; provided, however, that the Debtors' or Reorganized Debtors' performance of any employment agreement will not entitle any Entity to any benefit or alleged entitlement under any policy, program, or plan that has expired or been terminated before the Effective Date, or restore, reinstate, or revive any such benefit or alleged entitlement under any such policy, program, or plan. Nothing in the Plan shall limit, diminish, or otherwise alter the Reorganized Debtors' defenses, claims, Causes of Action, or other rights with respect to any such contracts, agreements, policies, programs, and plans. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, on and after the Effective Date, all retiree benefits (as that term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law. As of the Effective Date, any equity award, stock option, or similar plans shall be cancelled, including any such plans incorporated into any existing employment agreement.

22. Preservation of Rights of Action

In accordance with section 1123(b) of the Bankruptcy Code, but subject to Article VIII of the Plan, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any Causes of Actions described in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against them. The Debtors or the Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors, as applicable. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. The Reorganized Debtors reserve and shall retain the foregoing Causes of Action notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan.

D. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

1. Assumption and Rejection of Executory Contracts and Unexpired Leases

a. Rejection of Executory Contracts and Unexpired Leases

Except as otherwise provided herein, each Executory Contract and Unexpired Lease shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date, unless

any such Executory Contract or Unexpired Lease: (i) is listed on the schedule of “Assumed Executory Contracts and Unexpired Leases” in the Plan Supplement; (ii) has been previously assumed or rejected by the Debtors by Final Order of the Bankruptcy Court or has been assumed or rejected by the Debtors by order of the Bankruptcy Court as of the Effective Date, which order becomes a Final Order after the Effective Date; (iii) is the subject of a motion to assume or reject pending as of the Effective Date; (iv) is an Intercompany Contract; or (v) is otherwise assumed pursuant to the terms herein.

The Confirmation Order will constitute an order of the Bankruptcy Court approving such rejections pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Non-Debtor parties to Executory Contracts or Unexpired Leases that are rejected as of the Effective Date shall have the right to assert any Claim on account of the rejection of such Executory Contracts or Unexpired Leases, including under section 502(g) of the Bankruptcy Code; provided that, the Non-Debtor parties must comply with Article V.B of the Plan.

Further, the Plan Supplement will contain a schedule of “Rejected Executory Contracts and Unexpired Leases;” provided, however, that any Executory Contract and Unexpired Lease not previously assumed, assumed and assigned, or rejected by an order of the Bankruptcy Court, and not listed in either the schedule of “Rejected Executory Contracts and Unexpired Leases” or the schedule of “Assumed Executory Contracts and Unexpired Leases” in the Plan Supplement will be rejected on the Effective Date, notwithstanding its exclusion from the schedule of “Rejected Executory Contracts and Unexpired Leases.” Each contract and lease listed on the schedule of “Rejected Executory Contracts and Unexpired Leases” will be rejected only to the extent that any such contract or lease constitutes an Executory Contract or Unexpired Lease.

b. Assumption of Executory Contracts and Unexpired Leases

On the Effective Date, the Reorganized Debtors shall assume all of the Executory Contracts and Unexpired Leases listed on the schedule of “Assumed Executory Contracts and Unexpired Leases” in the Plan Supplement. With respect to each such Executory Contract and Unexpired Lease listed on the schedule of “Assumed Executory Contracts and Unexpired Leases” in the Plan Supplement, the Debtors shall have designated a proposed amount of the Cure Claim, and the assumption of such Executory Contract and Unexpired Lease may be conditioned upon the disposition of all issues with respect to such Cure Claim. The Confirmation Order shall constitute an order of the Bankruptcy Court approving any such assumptions pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

- Modified or Amended Executory Contracts and Unexpired Leases: Each Executory Contract and Unexpired Lease to be assumed under the Plan includes any modifications, amendments, supplements, restatements, or other agreements that in any manner affects such contract or lease, unless any such modification, amendment, supplement, restatement, or other agreement is rejected pursuant hereunder.
- Proofs of Claim Based on Executory Contracts or Unexpired Leases that Have Been Assumed: Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including hereunder, except Proofs of Claim asserting Cure Claims pursuant to the order approving such assumption, including the Confirmation Order, shall be deemed disallowed and expunged from the Claims Register as of the Effective Date without any further notice to or action, order or approval of the Bankruptcy Court.

2. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Notwithstanding anything in the Claims Bar Date Order to the contrary, if the rejection of an Executory Contract or Unexpired Lease, including pursuant hereto, gives rise to a Claim by the non-Debtor party or parties to such contract or lease, such Claim will be forever barred and will not be enforceable against the Debtors, their respective successors, or their respective property unless a Proof of Claim is Filed and served on the Reorganized Debtors no later than 30 days after the Effective Date. All Allowed Claims arising from the rejection of the Debtors’ Executory Contracts and Unexpired Leases shall be classified as General Unsecured Claims against the Debtors and shall be treated in accordance with Article III.B.5 of the Plan.

3. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed Pursuant to the Plan

With respect to any Executory Contract or Unexpired Lease to be assumed pursuant hereto, all Cure Claims will be satisfied at the option of the Debtors or their assignee, if any, by payment of the Cure Claim in Cash on the Effective Date or as soon as reasonably practicable thereafter or on such other terms as the parties to each such Executory Contract or Unexpired Lease may otherwise agree without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity except for those expressly required pursuant to the Plan.

At least 15 days prior to the Confirmation Hearing, the Debtors shall file with the Bankruptcy Court and serve upon counterparties to such Executory Contracts and Unexpired Leases, a notice of the proposed assumption which will: (a) list the applicable Cure Claim, if any; (b) describe the procedures for filing objections to the proposed assumption or Cure Claim; and (c) explain the process by which related disputes will be resolved by the Bankruptcy Court. Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or Cure Claim must be Filed, served, and actually received by the Debtors at least 5 days prior to the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption and Cure Claim will be deemed to have assented to such assumption and Cure Claim, as applicable.

In the event of a dispute regarding: (a) the amount of any Cure Claim; (b) the ability of the Reorganized Debtors or any assignee, as applicable, to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under such Executory Contract or Unexpired Lease to be assumed; or (c) any other matter pertaining to assumption or assumption and assignment of such Executory Contract or Unexpired Lease, the payment of any Cure Claim will be made following the entry of a Final Order resolving the dispute and approving the assumption of such Executory Contract or Unexpired Lease; provided, however, that the Reorganized Debtors or any assignee, as applicable, may settle any dispute regarding the amount of any Cure Claim without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity except for those expressly required pursuant to the Plan.

4. Pre-existing Obligations to the Debtors Under Executory Contracts and Unexpired Leases

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors under such contracts or leases. In particular, notwithstanding any nonbankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the contracting Debtors or the Reorganized Debtors, as applicable, from non-Debtor counterparties to rejected Executory Contracts or Unexpired Leases.

5. Intercompany Contracts, Contracts and Leases Entered Into After the Petition Date, Assumed Executory Contracts and Unexpired Leases

Any (a) Intercompany Contracts, (b) contracts and leases entered into after the Petition Date by any Debtor to the extent not rejected prior to the Effective Date, and (c) any Executory Contracts and Unexpired Leases assumed by any Debtor and not rejected prior to the Effective Date may be performed by the applicable Reorganized Debtor in the ordinary course of business.

6. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or is rejected under the Plan.

Modifications, amendments, supplements, and restatements to Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the petition

nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

7. Reservation of Rights

Neither the exclusion nor inclusion of any contract or lease by the Debtors on any exhibit to the Plan Supplement, nor anything contained in the Plan, will constitute an admission by the Debtors that any such contract or lease is or is not in fact an Executory Contract or Unexpired Lease or that the Debtors, or their respective Affiliates, have any liability thereunder.

The Debtors and the Reorganized Debtors reserve the right to alter, amend, modify, or supplement the schedule of "Assumed Executory Contracts and Unexpired Leases" and the schedule of "Rejected Executory Contracts and Unexpired Leases" until and including the Effective Date or as otherwise provided by court order; provided, however, that if there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection or with respect to an asserted Cure Claim, then the Debtors will have 30 days following the entry of a Final Order resolving such dispute to amend their decision to assume or reject such Executory Contract or Unexpired Lease.

8. Nonoccurrence of Effective Date

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

E. PROVISIONS GOVERNING DISTRIBUTIONS

1. Timing and Calculation of Amounts to Be Distributed

Unless otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such a Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim against the Debtors shall receive the full amount of the distribution that such Holder is entitled to pursuant to the Plan; provided that, Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice. Except as otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for herein, regardless of whether such distributions are delivered on or at any time after the Effective Date. The Reorganized Debtors are authorized to make periodic distributions on account of Allowed Claims and Interests and, if such periodic distributions are made, the Debtors shall reserve New Common Stock, as applicable, from distributions to Holders of Allowed Senior Note Claims, Allowed General Unsecured Claims, Allowed Other Equity Interests, and Allowed Existing Stockholder Interests equal to the distributions to which Holders of Disputed Claims would be entitled if such Disputed Claims become Allowed Claims.

2. Disbursing Agent

All distributions under the Plan shall be made by the Reorganized Debtors as Disbursing Agent or such other Entity designated by the Reorganized Debtors as a Disbursing Agent. A Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that a Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be as agreed by and between the Reorganized Debtors and such Disbursing Agent.

Distributions of New Common Stock to the Holders of Allowed Senior Note Claims, Allowed General Unsecured Claims, Allowed Other Equity Interests, and Allowed Existing Stockholder Interests shall be made by the Debtors or the Reorganized Debtors to the Disbursing Agent for the benefit of the Holders of Allowed Senior Note Claims, Allowed General Unsecured Claims, Allowed Other Equity Interests, and Allowed Existing Stockholder

Interests. All distributions by the Disbursing Agent shall be at the discretion of the Reorganized Debtors, and the Disbursing Agent shall not have any liability to any Entity for distributions made by them under the Plan.

3. Rights and Powers of Disbursing Agent

a. Powers of the Disbursing Agent

The Disbursing Agent shall be empowered to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (ii) make all distributions contemplated hereby; (iii) employ professionals to represent it with respect to its responsibilities; and (iv) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

b. Expenses Incurred On or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement claims (including reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Reorganized Debtors.

4. Distributions on Account of Claims Allowed After the Effective Date

a. Payments and Distributions on Disputed Claims

Distributions made after the Effective Date to Holders of Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall be deemed to have been made on the Effective Date.

b. Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the relevant parties: (i) no partial payments and no partial distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order; and (ii) any Entity that holds both an Allowed Claim and a Disputed Claim shall not receive any distribution on the Allowed Claim unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order and the Disputed Claims have been Allowed.

5. Delivery of Distributions and Undeliverable or Unclaimed Distributions

a. Delivery of Distributions in General

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the Reorganized Debtors' records as of the date of any such distribution; provided that the manner of such distributions shall be determined at the discretion of the Reorganized Debtors; and provided, further, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

b. Minimum Distributions

Notwithstanding anything herein to the contrary, the Disbursing Agent shall not be required to make distributions or payments of Cash of less than the amount of \$[50] and shall not be required to make partial distributions or payments of fractions of dollars. Whenever any payment or distribution of a fraction of a dollar under the Plan would otherwise be called for, the actual payment or distribution will reflect a rounding of such fraction to the nearest whole dollar, with half dollars or less being rounded down. The Reorganized Debtors shall not be required to make partial distributions or payments of fractions of shares of New Common Stock and such fractions of shares shall be deemed to be zero.

c. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided, however, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtors (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or Interest in property shall be discharged and forever barred.

6. Compliance with Tax Requirements/Allocations

In connection with the Plan, to the extent applicable, the Reorganized Debtors shall comply with all tax withholding and reporting requirements imposed on them by any governmental unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors and the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtors reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens and encumbrances.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

7. Setoffs

The Debtors and the Reorganized Debtors may withhold (but not setoff except as set forth below) from the distributions called for under the Plan on account of any Allowed Claim (other than the Allowed Prepetition Facility Claims and the Allowed Senior Note Claims) an amount equal to any claims, equity interests, rights, and Causes of Action of any nature that the Debtors or the Reorganized Debtors may hold against the Holder of any such Allowed Claim. In the event that any such claims, equity interests, rights, and Causes of Action of any nature that the Debtors or the Reorganized Debtors may hold against the Holder of any such Allowed Claim are adjudicated by Final Order or otherwise resolved, the Debtors may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim) the amount of any adjudicated or resolved claims, equity interests, rights, and Causes of Action of any nature that the Debtors or the Reorganized Debtors may hold against the Holder of any such Allowed Claim, but only to the extent of such adjudicated or resolved amount. Neither the failure to effect such a setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors or the Reorganized Debtors of any such claims, equity interests, rights, and Causes of Action that the Debtors or the Reorganized Debtors may possess against any such Holder, except as specifically provided herein.

8. Claims Paid or Payable by Third Parties

a. Claims Paid by Third Parties

The Debtors or the Reorganized Debtors, as applicable, shall reduce in full a Claim, and such Claim shall be disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from an Entity that is not a Debtor or a Reorganized Debtor on account of such Claim, such Holder shall, within two weeks of receipt thereof, repay or return the distribution to the applicable Reorganized

Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Reorganized Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the two-week grace period specified above until the amount is repaid.

9. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, such Claim may be expunged without a Claims objection having to be Filed and without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

10. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors, the Reorganized Debtors, or any other Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

F. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

1. Allowance of Claims and Interests

After the Effective Date, the Reorganized Debtors shall have and retain any and all rights and defenses the Debtors had with respect to any Claim immediately prior to the Effective Date, including the Causes of Action referenced in Article IV.V of the Plan. Except as expressly provided herein, no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under Article I.A.6 of the Plan or the Bankruptcy Code.

2. Claims and Interests Administration Responsibilities

Except as otherwise provided in the Plan, after the Effective Date, the Reorganized Debtors shall have the sole and exclusive authority: (a) to File, withdraw, or litigate to judgment, objections to Claims or Interests; (b) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; and (c) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

3. Estimation of Claims and Interests

Before the Effective Date, the Debtors, and after the Effective Date, the Reorganized Debtors may at any time request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any Entity previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Reorganized Debtors may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding any provision in the Plan to the contrary, a Claim that has been disallowed or expunged from the Claims Register but that is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. All of the aforementioned Claims and objection, estimation, and

resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

4. Expungement or Adjustment to Claims Without Objection

Any Claim that has been paid, satisfied, superseded, or compromised in full may be expunged on the Claims Register by the Reorganized Debtors, and any Claim that has been amended may be adjusted thereon by the Reorganized Debtors, in both cases without a claims objection having to be Filed and without any further notice to or action, order, or approval by the Bankruptcy Court or any other Entity. Further, to the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from an Entity that is not a Debtor or Reorganized Debtor on account of such Claim, such Holder shall, within two weeks of receipt thereof, repay or return the distribution to the Reorganized Debtors, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution hereunder. Additionally, any Claim that is duplicative or redundant with another Claim against the same Debtor or any Claims that are duplicative or redundant with another Claim after substantive consolidation of any of the Debtors may be adjusted or expunged on the Claims Register by the Reorganized Debtors without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

5. No Interest

Unless otherwise specifically provided for in the Plan or agreed to by the Debtors, the Confirmation Order, or a postpetition agreement in writing between the Debtors and a Holder of a Claim, postpetition interest shall not accrue or be paid on Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

6. Disallowance of Claims or Interests

Any Claims or Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that are transferees of transfers avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims and Interests may not receive any distributions on account of such Claims and Interests until such time as such Causes of Action against that Entity have been settled or a Final Order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid.

EXCEPT AS PROVIDED HEREIN OR OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE CLAIMS BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT OR ANY OTHER ENTITY, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS ON OR BEFORE THE CONFIRMATION HEARING SUCH LATE CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

7. Amendments to Claims

On or after the later of the Effective Date or the applicable deadline set by the Bankruptcy Court, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Reorganized Debtors, and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order, or approval by the Bankruptcy Court or any other Entity.

G. SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

1. Discharge of Claims and Termination of Interests

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors in accordance with Article III.B.6(b) of the Plan), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment or a termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (a) a Proof of Claim or Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (b) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (c) the Holder of such a Claim or Interest has accepted the Plan. Any default by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date.

2. Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and 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(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtors reserve the right to re-classify any Allowed Claim (other than the Allowed Senior Note Claims) or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

3. Compromise and Settlement of Claims and Controversies

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such an Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against them and Causes of Action against other Entities.

4. Releases by the Debtors

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, including the service of the Released Parties to facilitate the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtors, the Reorganized Debtors, and the Estates from any and all Claims, obligations, rights, suits,

damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtors, the Reorganized Debtors, the Estates, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan and Disclosure Statement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct (including fraud) or gross negligence.

5. Exculpation

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur and each Exculpated Party is hereby released and exculpated from any Claim, obligation, Cause of Action, or liability for any Exculpated Claim, except for willful misconduct (including fraud) or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the distributions of the Securities pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

6. Third-Party Releases by Holders of Claims and Interests

Except as otherwise specifically provided in the Plan, on and after the Effective Date, Holders of Claims and Interests voting to accept the Plan or abstaining from voting (do not vote to accept or reject the Plan) and not opting out from the release herein (which by definition, does not include Holders of Claims and Interests who (a) vote to reject the Plan or (b) are not entitled to vote to accept or reject the Plan), shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Released Parties from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Debtors' Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan and Disclosure Statement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct (including fraud) or gross negligence.

7. Injunction

Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold Claims or Interests that have been released pursuant to Article VIII.D or Article VIII.F of the Plan, discharged pursuant to Article VIII.A of the Plan, or are subject to exculpation pursuant to Article VIII.E of the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against the Debtors or the Reorganized Debtors: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or

recovering by any manner or means any judgment, award, decree or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Confirmation Date, and notwithstanding an indication in a Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan. Nothing in the Plan or Confirmation Order shall preclude any Entity from pursuing an action against one or more of the Debtors in a nominal capacity to recover insurance proceeds so long as the Debtors or Reorganized Debtors, as applicable, and any such Entity agree in writing that such Entity will: (a) waive all Claims against the Debtors, the Reorganized Debtors, and the Estates related to such action; and (b) enforce any judgment on account of such Claim solely against applicable insurance proceeds, if any.

8. Setoffs

Except as otherwise expressly provided for in the Plan, each Reorganized Debtor pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim or Interest, may setoff against any Allowed Claim or Interest and the distributions to be made pursuant to the Plan on account of such Allowed Claim or Interest (before any distribution is made on account of such Allowed Claim or Interest), any Claims, rights, and Causes of Action of any nature that such Debtor or Reorganized Debtor, as applicable, may hold against the Holder of such Allowed Claim or Interest, to the extent such Claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided that, neither the failure to effect such a setoff nor the allowance of any Claim or Interest pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action that such Reorganized Debtor may possess against such Holder. In no event shall any Holder of Claims or Interests be entitled to setoff any Claim or Interest against any Claim, right, or Cause of Action of the Debtor or Reorganized Debtor, as applicable, unless such Holder has Filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 or otherwise.

9. Release of Liens

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

H. ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS

1. Final Fee Applications

All final requests for payment of Claims of a Professional shall be Filed no later than 45 days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Claims shall be determined by the Bankruptcy Court.

2. Payment of Interim Amounts

Except as otherwise provided in the Plan and subject to Article IX.A of the Plan, Professionals shall be paid pursuant to the Interim Compensation Order.

3. Professional Fee Escrow Account

In accordance with Article IX.D of the Plan, on the Effective Date, the Reorganized Debtors shall fund the Professional Fee Escrow Account with Cash equal to the aggregate Professional Fee Reserve Amount for all Professionals. The Professional Fee Escrow Account shall be maintained in trust for the Professionals with respect to whom fees or expenses have been held back pursuant to the Interim Compensation Order. Any unpaid Allowed Claims owing to the Professionals on account of Professional Fees shall be paid in Cash to such Professionals from the Professional Fee Escrow Account, or the Reorganized Debtors if there are insufficient funds in the Professional Fee Escrow Account, when such Claims are Allowed by a Bankruptcy Court order. When all Claims of Professionals for Professional Fees have been paid in full in the Allowed amount or otherwise disallowed, amounts remaining in the Professional Fee Escrow Account, if any, shall be released from the trust and paid to the Reorganized Debtors, and upon such release all such remaining funds shall be the property of the Reorganized Debtors without any claim thereon by any professional.

4. Professional Fee Reserve Amount

On or before the Effective Date, the Professionals shall estimate their Accrued Professional Compensation prior to and as of the Confirmation Date and shall deliver such estimate to the Debtors. If a Professional does not provide an estimate or if the Reorganized Debtors reasonably dispute the reasonableness of the estimate provided, then the Reorganized Debtors may estimate the unbilled fees and expenses of such Professional for purposes of setting the appropriate Professional Fee Reserve Amount with written notice to such Professional within three Business Days, subject to resolution of any dispute by the Bankruptcy Court; provided that, such estimate shall not be considered an admission with respect to the fees and expenses of such Professional. The total amount so estimated as of the Effective Date shall comprise the Professional Fee Reserve Amount.

5. Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Reorganized Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, pay in Cash the reasonable legal, professional, or other fees and expenses incurred by the Debtors. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

I. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE OF THE PLAN

1. Conditions Precedent to the Effective Date

It shall be a condition to the Effective Date of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article X.B of the Plan:

- The Confirmation Order shall have been entered in a form and in substance reasonably satisfactory to the Debtors, the Principal Noteholders, and the Existing Stockholder.
- The New Credit Facility in form and substance acceptable to the Principal Noteholders and the Existing Stockholder shall have been executed and delivered by all of the Entities that are parties thereto, and all conditions precedent to the consummation thereof shall have been waived or satisfied in accordance with the terms thereof, and funding pursuant to the New Credit Facility shall have occurred.