

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

**In re:**

**BROADVISION, INC.,<sup>1</sup>**

**Debtor.**

Chapter 11

Case No. 20-10701 (CSS)

**Re: D.I. 57, 58**

**NOTICE OF FILING OF AMENDED PREPACKAGED PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR BROADVISION, INC. AND  
DISCLOSURE STATEMENT FOR THE PREPACKAGED PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR BROADVISION, INC.**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On March 30, 2020, the above-captioned debtor (the “Debtor”) filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

2. On March 30, 2020, the Debtor filed the *Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for BroadVision, Inc.* [Docket No. 14] (the “Plan”) and the *Disclosure Statement for the Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for BroadVision, Inc.* [Docket No. 15] (the “Disclosure Statement”).

3. On April 3, 2020, the Debtor filed the *Amended Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for BroadVision, Inc.* [Docket No. 57] (the “Amended Plan”) and the *Disclosure Statement for the Amended Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for BroadVision, Inc.* [Docket No. 58] (the “Amended Disclosure Statement”).

4. For the convenience of the parties, a blackline comparing the Amended Plan to the Plan is attached hereto as **Exhibit A** and a blackline comparing the Amended Disclosure Statement to the Disclosure Statement is attached hereto as **Exhibit B**.

5. The hearing to consider the Amended Disclosure Statement and Amended Plan is scheduled to be held before the **Honorable Christopher S. Sontchi, United States Bankruptcy Chief Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Fifth Floor, Courtroom No. 6, Wilmington, Delaware 19801** (the “Bankruptcy Court”), on **May 14, 2020 at 2:00 p.m. (EDT)**, or at such other time as the Bankruptcy Court may determine.

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<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 4303. The Debtor’s address is 460 Seaport Ct., Suite 102, Redwood City, California 94063.

6. ALL PLEADINGS FILED IN THESE CHAPTER 11 CASES ARE AVAILABLE FOR FREE AT: <https://dm.epiq11.com/BroadVision>.

Dated: April 3, 2020  
Wilmington, Delaware

Respectfully submitted,

**DLA PIPER LLP (US)**

/s/ R. Craig Martin  
R. Craig Martin (DE 5032)  
1201 North Market Street, Suite 2100  
Wilmington, Delaware 19801  
Telephone: (302) 468-5655  
Facsimile: (302) 778-7834  
Email: craig.martin@us.dlapiper.com

– and –

Joshua D. Morse (*pro hac vice* admission pending)  
555 Mission Street, Suite 2400  
San Francisco, California 94105  
Telephone: (415) 836-2500  
Facsimile: (415) 836-2501  
Email: joshua.morse@us.dlapiper.com

*Proposed Counsel to the Debtor and Debtor in Possession*

**EXHIBIT A**

**Blackline of Amended Plan**

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

In re:

BROADVISION, INC.,

Debtor<sup>1</sup>

Chapter 11

Case No. 20-                     (—) 10701  
(CSS)

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**AMENDED PREPACKAGED PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE FOR BROADVISION, INC.**

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Joshua D. Morse  
DLA PIPER LLP (US)  
555 Mission Street, Suite 2400  
San Francisco, California  
Telephone: (415) 836-2500

R. Craig Martin (DE 5032)  
DLA PIPER LLP (US)  
1201 North Market Street, Suite 2100  
Wilmington, Delaware 19801  
Telephone: (302) 468-5700

*Proposed Counsel to the Debtor and Debtor in Possession*

Dated: ~~March 30~~ April 3, 2020

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<sup>1</sup> The last four digits of the Debtor's tax identification number are 4303. The Debtor's mailing address is 460 Seaport Ct., Suite 102, Redwood City, California 94063.

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**PREPACKAGED PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE FOR BROADVISION, INC.**

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**INTRODUCTION**

BroadVision, Inc., the debtor and debtor-in-possession in the above-referenced case (the “Debtor”) proposes this *Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for BroadVision, Inc.*, for the resolution of outstanding Claims against and Interests in, the Debtor pursuant to the Bankruptcy Code. Generally, the Plan provides for (1) the reorganization of the Debtor by retiring, cancelling, extinguishing and/or discharging all Interests; (2) the funding of the Cash Consideration by the Plan Sponsor, (3) the distribution of Available Cash to holders of Allowed Claims and Interests in accordance with the priority scheme established by the Bankruptcy Code or as otherwise agreed; and (4) the issuance of 100% of the New Equity in the Reorganized Debtor to ESW. The Debtor seeks to consummate the Plan on the Effective Date. Reference is made to the Disclosure Statement filed contemporaneously with the Plan for a discussion of the Debtor’s history, business, property and results of operations, and for a summary and description of the Plan and certain related matters. The Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The Debtor reserves the right to alter, amend, modify, revoke or withdraw this Plan in accordance with the RSA prior to its substantial consummation.

ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY.

FOR AVOIDANCE OF DOUBT, THE PLAN APPLIES AND PRESERVES THE MAXIMUM GLOBAL JURISDICTION POSSIBLE UNDER APPLICABLE U.S. LAW, INCLUDING, WITHOUT LIMITATION, OVER THE ASSETS OF THE DEBTOR WHEREVER LOCATED.

**ARTICLE I  
DEFINITIONS, RULES OF INTERPRETATION, AND CONSTRUCTION OF TERMS**

**A. Definitions**

All capitalized terms not defined elsewhere in the Plan shall have the meanings set forth below (such meanings to be equally applicable to both the singular and plural):

1.1 “Additional Consideration” means all Estate Property which the Plan Sponsor expressly agrees shall not be acquired by the Reorganized Debtor under the Plan on the Effective Date (i.e., the Debtor’s Cash-on-Hand and all IP Addresses that have not yet been liquidated as of the Effective Date); provided that, to the extent the IP Addresses or any portion of them are liquidated prior to the Effective Date, the proceeds from such liquidation shall become Cash-on-Hand.

1.2 “Adequate Assurance Objection” means an objection to adequate assurance of future performance of an Executory Contract or Unexpired Lease.

1.3 “Administrative Claim” means any cost or expense of administration of the Chapter 11 Case incurred on or before the Effective Date entitled to priority under section 507(a)(1) and allowed under section 503(b) of the Bankruptcy Code, including without limitation, any actual and necessary expenses of preserving the Debtor’s Estate, including wages, salaries or commissions for services rendered after the commencement of the Chapter 11 Case, Professional Compensation Claims, certain taxes, fines and penalties, any actual and necessary post-petition expenses of operating the business of the Debtor, certain post-petition indebtedness or obligations incurred by or assessed against the Debtor in connection with the conduct of its business, or for the acquisition or lease of property, or for providing of services to the Debtor, including all allowances of compensation or reimbursement of expenses to the extent allowed by the Bankruptcy Court under the Bankruptcy Code, and any fees or charges assessed against the Debtor’s Estate under Chapter 123, Title 28 of the United States Code. Professional Compensation Claims shall only be Allowed for duly employed Professionals in the Chapter 11 Case in accordance with applicable law.

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

1.5 “Administrative Tax Claim” means an Administrative Claim of a Governmental Unit.

1.6 “Affiliate” has the meaning set forth in section 101(2) of the Bankruptcy Code.

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

1.8 “Allowed” means, (1) with respect to any Claim, a Claim allowable under 11 U.S.C. § 502 (a) for which a proof of claim was filed on or before, as applicable, the General Bar Date, the Governmental Unit Bar Date, the Administrative Claim Bar Date or the Rejection Claim Bar Date, and as to which no objection or other challenge to the allowance thereof has been timely Filed, or if an objection or challenge has been timely Filed, such Claim is allowed by a Final Order; or (b) for which a proof of claim is not filed and that has been listed in the Schedules of Assets and Liabilities and is not listed as disputed, contingent, or unliquidated; or (c) that is deemed allowed by the terms of the Plan; or (2) with respect to any Interest, an Interest allowable under 11 U.S.C. § 502 (a) for which a proof of interest was filed on or before, as applicable, the General Bar Date, or such Interest is reflected as outstanding in the stock transfer ledger or similar register or record of the Debtor on the Petition Date. For purposes of determining the amount of an Allowed Claim (other than a Claim specifically Allowed under the Plan), there shall be deducted therefrom an amount equal to the amount of any Claim that the Debtor may hold against the Creditor under 11 U.S.C. § 553. Notwithstanding anything to the contrary in the Plan, the Debtor may, in its discretion, treat a Claim or Interest as an Allowed Claim or Interest, respectively, to the extent it is allowed by an order that is not a Final Order.

1.9 “Available Cash” means all of the Cash held by the Distribution Trust from time to time, including any proceeds from the liquidation of the IP Addresses pursuant to Section 5.4(g) and including Cash deposited or held in the Distribution Reserve on account of disputed or

undetermined Claims or Interests, to the extent that those Claims or Interests are disallowed in whole or in part after the Effective Date, less the Distribution Reserve.

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

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

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

1.13 “Beneficial Interest” means an interest that entitles the holder thereof to a Distribution in accordance with the Distribution Trust Agreement.

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

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

1.16 “Case-Related Claims and Expenses” means (i) all Administrative Claims, including Professional Compensation Claims and Ordinary Course Liabilities accrued prior to the Effective Date; (ii) all U.S. Trustee Fees payable in accordance with 28 U.S.C. § 1930; (iii) all taxes that accrued during the Case; and (iv) all costs related to administration of the Distribution Trust.

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

1.18 “Cash Consideration” means Cash (inclusive of the Deposit) sufficient to fund all Distributions contemplated under the Plan on the Effective Date, including, but not limited to Distributions on account of all Allowed Administrative Claims, U.S. Trustee Fees, Cure Amounts, Secured Claims, if any, Priority Tax Claims, Other Priority Claims, General Unsecured Claims, and Equity Interests; provided that in calculating the amount of Cash Consideration to be funded by the Plan Sponsor on the Effective Date, Cash-on-Hand and all available proceeds generated from the sale of the IP Addresses shall first be allocated to pay all Case-Related Claims and Expenses, and upon additional proceeds becoming available from the sale of the IP Addresses after the Effective Date, prior to using such IP Address proceeds to make a Subsequent Distribution, the Distribution Trust shall use such IP Address proceeds to reimburse the Plan Sponsor for any Cash funded by the Plan Sponsor to pay for such Case-Related Claims and Expenses.

1.19 “Cash-on-Hand” means all Cash as reflected on the Debtor’s balance sheet rolled up from the Debtor and its subsidiaries on a worldwide basis as of the Effective Date, including, without limitation, the proceeds of any liquidation of all or any portion of the IP Addresses prior to the Effective Date; provided that rather than roll-up Cash from worldwide subsidiaries, the Plan

Sponsor in its sole discretion may elect to increase the Cash Consideration by such amount. For the avoidance of doubt, Cash-on-Hand shall not include accounts receivable.

1.20 “Chapter 11 Case” means *In re BroadVision, Inc.*, Case No. 20-~~10701~~-10701 in the United States Bankruptcy Court for the District of Delaware Debtor under Chapter 11 of the Bankruptcy Code.

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

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

1.23 “Claim Objection Deadline” means the first Business Day that is 180 days after the Effective Date, as may be extended by order of the Bankruptcy Court.

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

1.25 “Clerk” means the Clerk of the Bankruptcy Court.

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

1.27 “Compensation and Benefits Programs” means all employment agreements and severance policies, and all employment, compensation and benefit plans, policies, workers’ compensation programs, savings plans, retirement plans, deferred compensation plans, supplemental executive retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, life and accidental death and dismemberment insurance plans, and programs of the Debtor applicable to any of its employees and retirees; provided that all provisions in any agreement or Compensation and Benefits Program relating to equity-based awards, including any termination-related provisions with respect to equity based awards, will be deemed rejected and terminated on the Effective Date.

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

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

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

1.31 “Consenting Shareholders” means Dr. Pehong Chen and Honu Holdings, LLC in their capacity as Parties to the RSA.

1.32 “Consideration” means the Cash Consideration, plus all Additional Consideration. For the avoidance of doubt, the Consideration shall not include any accounts receivable on the Debtor’s balance sheet as of the Effective Date.

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

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

1.35 “Cure Amount Objection Deadline” means ~~May 7,~~ 2020, at 4:00 p.m. prevailing Eastern time.

1.36 “Cure Notice” means a Notice of (I) Possible Assumption of Contracts and Leases, (II) Fixing of Cure Amounts, and (III) Deadline to Object Thereto.

1.37 “Cure Objection” means an objection to the applicable Cure Amount.

1.38 “D&O Liability Insurance Policies” means all insurance policies of the Debtor for directors’, managers’, and officers liability existing as of the Petition Date, as the same may be modified thereafter to include tail coverage for a period not to exceed six (6) years following the Effective Date.

1.39 “Debtor” means BroadVision, Inc. a Delaware corporation and the debtor in the Chapter 11 Case.

1.40 “Debtor Common Stock” means the common stock, par value \$0.0001 per share, of the Debtor.

1.41 “Deposit” means the non-refundable \$1.5 million deposit provided by ESW to the Debtor pursuant to the RSA.

1.42 “Disclosure Statement” means the *Disclosure Statement for the Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Plan for BroadVision, Inc.*, dated March 30, 2020, filed by the Debtor with the Bankruptcy Court, as may be amended or supplemented.

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

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

1.45 “Distribution” means, except as otherwise provided in the Plan, the property required by the Plan to be distributed to the holders of Allowed Claims and Interests.

1.46 “Distribution Date” means any date that a Distribution is made under the Plan or the Distribution Trust Agreement.

1.47 “Distribution Record Date” means, other than with respect to Allowed Equity Interests, the date for determining which Holders of Allowed Claims and Interests are eligible to receive Distributions pursuant to the Plan, which shall be the date that the Confirmation Order is entered by the Bankruptcy Court, or such other date specified in the Confirmation Order. For the avoidance of doubt, Distributions to the holders of Allowed Equity Interests shall be made in accordance with Section 6.6 of Plan, on or as soon as practicable after the Effective Date, and the Distribution Record Date shall not apply to such Distributions.

1.48 “Distribution Reserve” means a reserve established to hold, in one or more segregated accounts to be established by the Debtor, Cash equal to the aggregate of (a) Cash that would have been distributed on the Distribution Date on account of Disputed or undetermined (i) Administrative Claims, provided that with respect to Professional Compensation Claims and other Administrative Claims for which applications for compensation of professionals or other persons retained or to be compensated pursuant to sections 327, 328, 330, 331 and 503(b) of the Bankruptcy Code are or will be pending but are then undetermined, the amount of Cash deposited shall be the amount sought by such persons, in each case less any monies already received by such Professional or person, (ii) Priority Tax Claims, (iii) Priority Unsecured Non-Tax Claims, (iv) Secured Claims, if any, (v) General Unsecured Claims and (vi) Equity Interests; plus (b) accrued interest on all Cash in the Distribution Reserve; plus (c) Cash in the amount of all taxes previously incurred by the Debtor (and not paid or otherwise provided for under the Plan); plus (d) Cash in the amount of all estimated costs and expenses of effectuating the actions and duties of the Distribution Trustee, including under Articles V and XII of the Plan.

1.49 “Distribution Trust” means the trust established under the Plan and the Distribution Trust Agreement.

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

1.51 “Distribution Trust Assets” means the Consideration, less any amounts paid by the Debtor on the Effective Date.

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

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



1.54 “DTC” means The Depository Trust Company.

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

1.56 “Entity” has the meaning set forth in section 101(15) of the Bankruptcy Code.

1.57 “Equity Interest” means, as of the Record Date, all Outstanding Shares, Restricted Stock Awards, Restricted Stock Units, and Permitted Stock Options, whether or not vested, all of which for the avoidance of doubt shall represent no more than 5,152,333 shares of Debtor Common Stock in the aggregate. For the avoidance of doubt, all Equity Interests reflected as outstanding in the stock transfer ledger or similar register or record of the Debtor on the Petition Date, including without limitation the ESW Equity Interests, shall be deemed to be Allowed Equity Interests.

1.58 “Equity Interest Recovery” means a recovery to holders of Allowed Equity Interests of Cash in the amount of \$4.375 per common share in the Debtor held or deemed to be held by such holder to be made on the Effective Date, following payment in full of all Claims, plus as promptly as practicable following the Effective Date, one or more Subsequent Distributions, calculated on a per share basis; provided, however, that the Equity Interest Recovery may be less than \$4.375 per share of Debtor Common Stock in the event that (A) the Debtor has more than 5,142,333 shares of Debtor Common Stock outstanding (including all Outstanding Shares, Restricted Stock Awards, Restricted Stock Units and Permitted Stock Options, whether or not vested) or (B) the Debtor lacks sufficient Cash (including Cash-on-Hand and proceeds from the liquidation of the IP Addresses after the Effective Date) to pay all Case-Related Claims and Expenses and repayment of amounts, if any, incurred by the Plan Sponsor in connection with funding such Case-Related Claims and Expenses, provided, further, that so long as ESW or its affiliate is the Plan Sponsor on the Effective Date of the Plan, ESW shall not receive a Cash recovery but instead shall receive the ESW Equity Interest Treatment.

1.59 “Estate” means the estate created upon the filing of the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code, together with all rights, claims and interests appertaining thereto.

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

1.61 “ESW” means ESW Capital, LLC.

1.62 “ESW Equity Interests” means the 1,216,071 common shares of the Debtor held by ESW.

1.63 “ESW Equity Interest Treatment” means ESW’s agreement on or about the Effective Date, to, on account of and in full and complete settlement, release and discharge of, and in exchange for its Allowed Equity Interest (x) receive all shares of the New Equity; and (y) waive its right to receive its share of the Cash portion of the Equity Interest Recovery. For the avoidance

of doubt, in the event that a plan of reorganization other than this Plan is proposed in the Chapter 11 Case or ESW or an ESW affiliate is not the Plan Sponsor, ESW shall be provided at least the same Cash recovery and other treatment with respect to its Allowed Equity Interests as each other holder of Allowed Equity Interests under the applicable plan of reorganization.

1.64 “Exculpated Party” means, collectively, and in each case in its capacity as such: (a) the Debtor and the Reorganized Debtor; and (b) with respect to each of the foregoing entities, each such Entity’s current and former predecessors, successors, Affiliates (regardless of whether such interests are held directly or indirectly), subsidiaries, direct and indirect equity holders, and advisors.

1.65 “Executory Contracts” means executory contracts as such term is used in 11 U.S.C. § 365, including all contracts to which the Debtor is a party or beneficiary on the Confirmation Date.

1.66 “File or Filed” means a request for relief encompassed within a pleading or other document is Filed when and on such date as such pleading or other document is entered on the docket of the Bankruptcy Court in this Chapter 11 Case. A proof of claim is Filed when and on such date as such proof of claim is entered on the claims register in this Chapter 11 Case.

1.67 “Final Order” means an order or judgment of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the Clerk of the Bankruptcy Court (or such other court) on the docket in the Chapter 11 Case (or the docket of such other court), which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, stay, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, stay, reargument or rehearing shall then be pending or (b) if an appeal, writ of certiorari, new trial, stay, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, stay, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, stay, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Bankruptcy Rules; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause an order not to be a Final Order.

1.68 “General Bar Date” means the deadline for filing proofs of claim as established by the Bankruptcy Court as ~~May 8,~~ 2020 at 4:00 p.m. prevailing Eastern time.

1.69 “General Unsecured Claim” means any Claim other than a Secured Claim, an Administrative Claim (including, for the avoidance of doubt, a Professional Compensation Claim), a Priority Tax Claim, or an Other Priority Claim.

1.70 “Governmental Unit” has the meaning assigned to such term by section 101(27) of the Bankruptcy Code.



1.71 “Governmental Unit Bar Date” means the deadline for Governmental Units to file proofs of claim as established by the Bankruptcy Court as ~~September 28,~~ 2020 at 4:00 p.m. prevailing Eastern time.

1.72 “Insider” has the meaning assigned to such term by section 101(31) of the Bankruptcy Code.

1.73 “IP Addresses” means, to the extent not sold and/or liquidated prior to the Effective Date, 139.56.0.0/16, which is that certain block of approximately 65,000 individual internet protocol addresses that the Debtor is not using in its business and has listed for sale.

1.74 “Indemnification Provisions” means, solely to the extent covered by the Debtor’s D&O Liability Insurance Policies, each of the Debtor’s indemnification provisions in place as of the Petition Date, whether in the Debtor’s bylaws, certificates of incorporation or formation, limited liability company agreements, other organizational or formation documents, board resolutions, management or indemnification agreements, or employment contracts, for the Debtor’s current and former directors, officers, managers, employees, attorneys, other professionals, and agents and such current and former directors, officers, and managers’ respective affiliates.

1.75 “Interest” means any Equity Interest or Other Interest.

1.76 “Interest Holder” means any record or beneficial holder or owner of an Interest.

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

control procedures, product, service and technical specifications, operating, production and quality control manuals, sales literature, drawings, specifications, blue prints, descriptions, inventions, name plates, catalogs, internet websites, and internet domain names and associated URL addresses; (v) the entire goodwill of or associated with the businesses now or hereafter conducted by the Debtor connected with and symbolized by any of the aforementioned properties and assets; and (vi) all accounts, payment intangibles, commercial tort claims and other rights to payment, all other proprietary rights or other intellectual or other similar property, and all other general intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above, and all proceeds of any Intellectual Property. For the avoidance of doubt, the term “Intellectual Property” shall not include the IP Addresses.

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

1.79 “Material Adverse Change” means any material adverse change or the occurrence of any fact or circumstance which materially and adversely affects the rights, remedies or benefits of, or conferred by, the transactions contemplated by the RSA, including without limitation, strike, lockout, war, terrorism, act of God, fire or other casualty, unusually adverse weather conditions, inability to obtain labor or materials or governmental restriction or other act or thing, provided, however, for the avoidance of doubt, no Material Adverse Change shall be deemed to have occurred as a result of: (i) the filing of the Chapter 11 Case; (ii) the actions required to be taken by the Debtor to conform to and comply with the RSA and the documents entered into in connection with the Plan; and (iii) any actions the Debtor takes at the request of or with the consent of the Plan Sponsor.

1.80 “New Equity” means all of the equity interests in the Reorganized Debtor, issued on the Effective Date, to ESW in the aggregate amount of 1,000 shares, free and clear of all Liens, Claims, interests and encumbrances of any kind, except as provided in the Plan.

1.81 “Ordinary Course Liability” means an Administrative Claim other than a Professional Compensation Claim or an Administrative Tax Claim, based on liabilities incurred in the ordinary course of the Debtor’s business operations during the pendency of this Chapter 11 Case.

1.82 “Other Interest” means all Out-of-the-Money Stock Options and all issued, unissued, authorized, or outstanding shares of common stock, preferred stock or other instrument evidencing an ownership interest in the Debtor, whether or not transferable, together with any warrants, equity-based awards or contractual rights to purchase or acquire such equity interests in the Debtor at any time and all rights arising with respect thereto that existed immediately before the Effective Date including any claims arising from the ownership of any instrument evidencing an ownership interest in a Debtor; provided that the defined term “Other Interest” does not include any Equity Interest.

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

1.84 “Out-of-the-Money Stock Options” means all options to acquire shares of Debtor Common Stock with an exercise price exceeding \$4.70/share. For the avoidance of doubt, all of those certain 119,973 options to acquire shares of Debtor Common Stock with exercise prices ranging from \$6.01 to \$11.89/share shall be deemed to be Out-of-the-Money Stock Options.

1.85 “Outstanding Shares” means all issued and outstanding shares of Debtor Common Stock, which for the avoidance of doubt total no more than 5,061,018 shares of Debtor Common Stock in the aggregate.

1.86 “Permitted Stock Options” means those certain options to acquire 10,000 shares of Debtor Common Stock with an exercise price of \$4.70/share, which shall be deemed under the Plan to have been fully exercised and to represent 10,000 shares of Debtor Common Stock in the aggregate.

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

1.88 “Petition Date” means March 30, 2020, the date on which the Debtor filed its voluntary Chapter 11 petition commencing the Chapter 11 Case.

1.89 “Plan” means this prepackaged plan of reorganization proposed by the Debtor, including, without limitation, the Plan Supplement, the exhibits hereto, as the same may be supplemented, amended, or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof.

1.90 “Plan Documents” means, collectively, those material documents executed or to be executed in order to consummate the transactions contemplated under the Plan, which will be filed with the Bankruptcy Court on or before the Plan Supplement Deadline, including the Distribution Trust Agreement and any other documents that make up the Plan Supplement.

1.91 “Plan Sponsor” means ESW or its affiliate.

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

1.93 “Plan Supplement Deadline” means May 1, 2020.

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

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

1.96 “Professional” means a professional employed in the Chapter 11 Case pursuant to Final Order under sections 327, 328, 363, or 1103 of the Bankruptcy Code; provided that for the purposes of any bar dates, duties or other requirements imposed by the Plan (as distinguished from benefits or rights provided by or pursuant to the Plan), any professional not so employed in the Chapter 11 Case, but asserting any right or claim like a Professional on account of any service for or engagement by any foreign representative or foreign proceeding, shall have to comply with such same bar dates, duties and requirements as a Professional as one condition precedent to seeking any standing in the Chapter 11 Case, any Allowance of any Claim or any other right under the Plan like a Professional, with the Reorganized Debtor and other parties in interest reserving all other challenges and defenses thereto.

1.97 “Professional Compensation Claim” means a Claim for compensation or reimbursement of expenses of a Professional retained in the Chapter 11 Case, and requested in accordance with the provisions of 11 U.S.C. §§ 326, 327, 328, 330, 331, 503(b) and 1103.

1.98 “Record Date” means ~~March 30, 2020~~ the earlier to occur of (a) the date on which the Debtor Common Stock ceases to trade; and (b) the Confirmation Date.

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

1.100 “Released Parties” means collectively, and in each case in its capacity as such: (a) the Debtor and the Reorganized Debtor; (b) ESW; (c) the Consenting Shareholders; (d) with respect to each of the foregoing Entities in clauses (a) through (c), each such Entity’s current and former predecessors, successors, Affiliates (regardless of whether such interests are held directly or indirectly), subsidiaries, direct and indirect equity holders, and funds; and (e) with respect to each of the foregoing Entities in clauses (a) through (c), each of their respective current and former directors, officers, members, employees, partners, managers, independent contractors, agents, representatives, principals, professionals, consultants, financial advisors, attorneys, accountants, investment bankers, and other professional advisors (with respect to clause (c), each solely in their capacity as such).

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

1.102 “Restricted Stock Awards” means all restricted common stock grants awarded to non-employee directors of the Debtor on December 17, 2019, which shall be deemed under the Plan to represent 20,832 shares of Debtor Common Stock in the aggregate.

1.103 “Restricted Stock Units” means the “Restricted Stock Award” granted to Pehong Chen on January 2, 2020, which shall be deemed under the Plan to represent 60,483 shares of Debtor Common Stock in the aggregate.

1.104 “Rights of Action” means any and all Claims, debts, demands, rights, defenses, actions, causes of action, suits, contracts, agreements, obligations, accounts, defenses, offsets, powers, privileges, licenses and franchises of any kind or character whatsoever, known or

unknown, suspected or unsuspected, whether arising before, on, or after the Petition Date, in contract or in tort, at law or in equity, or under any other theory of law, of the Debtor or its Estate.

1.105 “RSA” means the Restructuring Support Agreement, dated March 27, 2020 (as amended, supplemented or otherwise modified from time to time).

1.106 “Schedule of Assumed Contracts and Unexpired Leases” means the schedule identifying certain Executory Contracts and Unexpired Leases to be assumed by the Reorganized Debtor under the Plan. The Schedule of Assumed Contracts and Unexpired Leases is attached as Exhibit A to the Plan.

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

1.108 “Schedule of Rejected Contracts and Unexpired Leases” means the schedule identifying certain Executory Contracts and Unexpired Leases to be rejected by the Debtor under the Plan. The Schedule of Rejected Contracts and Unexpired Leases is attached as Exhibit B to the Plan.

1.109 “Secured Claim” means a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by Final Order of the Bankruptcy Court, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) otherwise Allowed pursuant to the Plan or Final Order of the Bankruptcy Court as a secured claim.

1.110 “Subsequent Distribution” means, following the Effective Date, a subsequent Distribution, if any, from any residual Additional Consideration following payment of all Case-Related Claims and Expenses and repayment of amounts incurred by the Plan Sponsor, if any, in connection with funding such Case-Related Claims and Expenses.

1.111 “Transition Services Agreement” means a transition services plan of the Reorganized Debtor pursuant to which the Reorganized Debtor shall seek Dr. Pehong Chen’s support for transition and operating purposes post-Closing, in consideration for which the Reorganized Debtor shall offer Dr. Chen a three-year employment contract that includes a base annual salary of \$375,000 and, consistent with Dr. Chen’s existing agreement with the Debtor, severance in the amount of two times annual salary. The Transition Services Agreement shall also permit Dr. Chen to reduce such severance in half in consideration for his right to acquire the common stock of Vmoso, Inc., that is held currently by the Debtor. For the avoidance of doubt, Dr. Chen shall not have a rejection damages claim on account of the replacement of his existing agreement and/or Compensation and Benefits Program with the Transition Services Agreement.

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

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

1.114 “U.S. Trustee Fees” means fees arising under 28 U.S.C. § 1930(a)(6) or accrued interest thereon arising under 31 U.S.C. § 3717.

1.115 “Unexpired Leases” means unexpired leases as such term is used in 11 U.S.C. § 365, including all operating leases and capital leases to which the Debtor is a party or beneficiary on the Confirmation Date.

## **B. Interpretation; Application of Definitions and Rules of Construction**

For purposes of the Plan: (1) whenever from the context it is appropriate, 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) unless otherwise specified, any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (3) unless otherwise specified, any reference in the Plan to an existing document, schedule, or exhibit, whether or not filed with the Bankruptcy Court, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (4) any reference to an entity as a holder of a Claim or Interest includes that entity’s successors and assigns; (5) unless otherwise specified, all references in the Plan to articles or sections are references to the articles or sections of the Plan; (6) the words “herein,” “hereof,” and “hereto” and other words of similar import refer to the Plan in its entirety rather than to any particular section, subsection, clause or portion of the Plan, unless the context requires otherwise; (7) subject to the provisions of any contract, certificate of incorporation, bylaw, formation document, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (8) captions and headings to articles of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (9) unless otherwise set forth in the Plan, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (10) any term used in capitalized form in the Plan that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (11) all references to docket numbers of documents filed in the Chapter 11 Case are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (12) all references to statutes, regulations, orders, rules of courts, and the like shall mean such statutes, regulations, orders, rules of courts and the like as applicable to the Chapter 11 Case, unless otherwise stated; (13) any immaterial effectuating provisions may be interpreted by the Reorganized Debtor after the Effective Date in such a manner that is consistent with the overall purpose and intent of the Plan all without further order of the Bankruptcy Court; (14) any act required to be taken on the Effective Date, or any other applicable date, shall be deemed timely taken if taken as soon as reasonably practicable after such date; and (15) all references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided; ~~and~~ (16) references to “Proofs of Claim,” “holders of Claims,” “Disputed Claims,” and the like shall include “Proofs of



Interest,” “holders of Interests,” “Disputed Interests,” and the like, as applicable; and (17) the provisions of section 102 of the Bankruptcy Code shall apply in their entirety.

### **C. Appendices and Plan Documents**

AllSubject to the provisions of Section 12.13 below, all Plan Documents and exhibits to the Plan are incorporated into the Plan by reference and are a part of the Plan as if set forth in full herein. Holders of Claims and Interests may inspect a copy of the Plan Documents, to the extent Filed, in the Office of the Clerk of the Bankruptcy Court during normal business hours, or obtain a copy of such Plan Documents online at <https://dm.epiq11.com/BroadVision>, by making a request via email (with a reference to “BroadVision” in the subject line) to: [tabulation@epiqglobal.com](mailto:tabulation@epiqglobal.com), or by a written request sent to:

BroadVision, Inc.  
c/o Epiq Corporate Restructuring, LLC  
10300 SW Allen Boulevard  
Beaverton, OR 97005

## **ARTICLE II ADMINISTRATIVE CLAIMS, U.S. TRUSTEE FEES AND PRIORITY TAX CLAIMS**

All Claims and Interests, except Administrative Claims, U.S. Trustee Fees and Priority Tax Claims, are placed in the Classes set forth below. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, U.S. Trustee Fees and Priority Tax Claims of the Debtor have not been classified and the holders thereof are not entitled to vote on the Plan.

### **2.1 Administrative Claims**

(a) General: Except with regards to the Professional Fee Claims and Ordinary Course Liabilities (the treatment of which are described, respectively, in Sections 2.2 and 2.5 (below)), subject to the bar date provisions herein, unless otherwise agreed to by the parties, each holder of an Allowed Administrative Claim shall receive Cash equal to the unpaid portion of such Allowed Administrative Claim within ten (10) days after the later of (a) the Effective Date, (b) the Allowance Date, or (c) such other date as is mutually agreed upon by the Debtor, the Plan Sponsor and the holder of such Claim.

(b) Bar Date for Administrative Claims: Except as otherwise provided in this Article II, requests for payment of Administrative Claims must be included within an application (setting forth the amount of, and basis for, such Administrative Claims, together with documentary evidence) and Filed and served on respective counsel for the Debtor, the Distribution Trust and Plan Sponsor no later than the Administrative Claim Bar Date or by such earlier deadline governing a particular Administrative Claim contained in an order of the Bankruptcy Court entered before the Effective Date. Holders of Administrative Claims that are required to File a request for payment of such Claims and that do not File such requests by the applicable bar date shall be forever barred from asserting such Claims against the Debtor or any of its property, absent order

of the Bankruptcy Court to the contrary. Notwithstanding the foregoing, holders of Claims arising pursuant to 28 U.S.C. § 1930 and Governmental Units with Claims arising pursuant to section 503(b)(1)(D) of the Bankruptcy Code shall not be required to file a request for payment, proof of claim, or application for payment.

## 2.2 Professional Compensation Claims

All Professional Compensation Claims must be filed with the Bankruptcy Court and served on the Reorganized Debtor, the Distribution Trust, the U.S. Trustee and the Post-Confirmation Service List, no later than forty-five (45) days after the Effective Date. **FAILURE TO FILE AND SERVE FINAL FEE APPLICATIONS TIMELY AND PROPERLY SHALL RESULT IN THE UNDERLYING PROFESSIONAL FEE CLAIMS BEING FOREVER BARRED AND DISCHARGED.** Objections to Professional Compensation Claims, if any, must be filed and served pursuant to the procedures set forth in the Confirmation Order no later than sixty (60) days after the Effective Date or such other date as may be established by the Bankruptcy Court. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court in the Chapter 11 Case, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court. All holders of Professional Compensation Claims shall be paid in full, in Cash from the Distribution Reserve, in such amounts as are Allowed by the Bankruptcy Court. The Reorganized Debtor and the Distribution Trustee are authorized to pay compensation for professional services rendered and reimbursement of expenses incurred after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

Each holder of a Professional Compensation Claim shall provide the Debtor with an estimate of the unpaid amount of such Professional Compensation Claim not later than seven (7) calendar days prior to the anticipated Effective Date; provided, however, that such estimates shall be used solely for administrative purposes and determining the amount of the Distribution Reserve, shall not be binding on the holders of Professional Compensation Claims and shall not in any way limit, cap, or reduce the amount of the Professional Compensation Claims.

Any professional fees and reimbursements or expenses incurred by the Reorganized Debtor subsequent to the Effective Date may be paid by the Reorganized Debtor without application to the Bankruptcy Court. Any professional fees and reimbursements or expenses incurred by the Distribution Trustee subsequent to the Effective Date may be paid by the Distribution Trustee without application to the Bankruptcy Court.

## 2.3 U.S. Trustee Fees

On or before the Effective Date, the Debtor shall pay any claim for U.S. Trustee Fees that is due and owing on the Effective Date. Post-petition U.S. Trustee Fees shall be paid and post-confirmation reports shall be filed as required by 28 U.S.C. § 1930 until the Chapter 11 Case is closed, converted or dismissed, and failure to do either timely is a material default pursuant to section 1112 of the Bankruptcy Code.



## **2.4 Allowed Priority Tax Claims**

Each Holder of an Allowed Priority Tax Claim against Debtor shall receive in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim (i) Cash equal to the amount of such Allowed Priority Tax Claim on the Effective Date, (ii) payment in full through the fifth anniversary of the Petition Date, plus interest at a rate determined in accordance with section 511 of the Bankruptcy Code, or (iii) such other less favorable treatment to the Holders of an Allowed Priority Tax Claim as to which the Debtor, or the Debtor, the Plan Sponsor, and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing.

## **2.5 Ordinary Course Liabilities**

(a) All Ordinary Course Liabilities are deemed to be Allowed Claims. Holders of Administrative Claims on account of Ordinary Course Liabilities are not required to file or serve any request for payment of the Ordinary Course Liability. The Debtor shall continue to pay each Ordinary Course Liability accrued prior to the Effective Date, pursuant to the payment terms and conditions of the particular transaction giving rise to the Ordinary Course Liability. To the extent that a holder of an Administrative Claim, on account of Ordinary Course Liability which accrued prior to the Effective Date, did not submit an invoice for the Ordinary Course Liability to the Debtor prior to the Effective Date, the holder must submit the invoice to the Distribution Trustee in the ordinary course of business, and in no event later than thirty (30) days following the Effective Date, pursuant to the terms and conditions of the particular transaction giving rise to the Ordinary Course Liability. The Distribution Trustee shall remit payment on the Ordinary Course Liability within fifteen (15) days of receipt of the invoice. The Reorganized Debtor shall pay each Ordinary Course Liability which accrues after the Effective Date, pursuant to the payment terms and conditions of the particular transaction giving rise to the Ordinary Course Liability. In the event that the Reorganized Debtor pays any Ordinary Course Liability accrued prior to the Effective Date, the Distribution Trust shall reimburse the Reorganized Debtor for such payment promptly upon request.

# **ARTICLE III**

## **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

### **3.1 Summary**

Pursuant to sections 1122 and 1123 of the Bankruptcy Code, a Claim or Interest is placed in a particular Class for all purposes, including without limitation, voting, confirmation and receiving Distributions under the Plan only to the extent (i) the Claim or Interest qualifies within the description of that Class; (ii) the Claim or Interest is an Allowed Claim or Allowed Interest (or temporarily allowed Claim or Interest for voting purposes) in that Class, and is classified in another Class or Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Class or Classes; and (iii) the Claim or Interest has not been paid, released, or otherwise compromised before the Effective Date. A Claim or Interest which is not an Allowed Claim or Allowed Interest, including a Disputed Claim, is not in any Class, and, notwithstanding anything to the contrary contained in the Plan, no Distribution shall be made on account of any Claim or Interest which is not an Allowed Claim or Allowed Interest.

### 3.2 Identification of Classes

The following table designates the Classes of Claims against and Existing Interests in the Debtor and specifies which Classes are (a) Impaired or unimpaired by this Plan, (b) entitled to vote to accept or reject this Plan in accordance with section 1126 of the Bankruptcy Code, or (c) deemed to accept or reject this Plan.

| Class   | Designation              | Impairment | Entitled to Vote      |
|---------|--------------------------|------------|-----------------------|
| Class 1 | Secured Claims           | Unimpaired | No (deemed to accept) |
| Class 2 | Other Priority Claims    | Unimpaired | No (deemed to accept) |
| Class 3 | General Unsecured Claims | Unimpaired | No (deemed to accept) |
| Class 4 | Equity Interests         | Unimpaired | No (deemed to accept) |
| Class 5 | Other Interests          | Impaired   | No (deemed to reject) |

### 3.3 Treatment of Allowed Claims and Interests

(a) Secured Claims (Class 1).

i. Classification: Class 1 consists of all Secured Claims, if any, against the Debtor.

ii. Treatment: Each holder of an Allowed Secured Claim against the Debtor shall receive on or about the Effective Date, on account of and in full and complete settlement, release and discharge of, and in exchange for, such Allowed Secured Claim, at the option of the Plan Sponsor: (i) payment in full in Cash; (ii) the collateral securing its Allowed Secured Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (iii) reinstatement of such Allowed Secured Claim; or (iv) such other treatment rendering such Allowed Secured Claim unimpaired.

(b) Impairment and Voting: Allowed Secured Claims are unimpaired, and the holders of such Claims are not entitled to vote to accept or reject the Plan on account of such Claims and will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

(c) Other Priority Claims (Class 2).

i. Classification: Class 2 consists of all Other Priority Claims against the Debtor.

ii. Treatment: Each holder of an Allowed Other Priority Claim against the Debtor shall receive on or about the Effective Date, on account of and in full and complete settlement, release and discharge of, and in exchange for, such Allowed Other Priority Claim, (i) Cash equal to the amount of such Allowed Other Priority Claim on the Effective Date, or (ii) such other treatment to the holder of an Allowed Other Priority Claim as to which the Plan Sponsor and the holder of such Allowed Other Priority Claim shall have agreed upon in writing.

iii. Impairment and Voting: Allowed Other Priority Claims are unimpaired, and the holders of such Claims are not entitled to vote to accept or reject the Plan on

account of such Claims and will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

(d) General Unsecured Claims (Class 3).

i. Classification: Class 3 consists of all General Unsecured Claims against the Debtor.

ii. Treatment: On or about the Effective Date, each holder of an Allowed General Unsecured Claim shall receive, on account of and in full and complete settlement, release and discharge of, and in exchange for its Allowed General Unsecured Claim, payment of its Claim in full in Cash.

iii. Impairment and Voting: Allowed General Unsecured Claims are unimpaired, and the holders of such Claims are not entitled to vote to accept or reject the Plan on account of such Claims and will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

(e) Equity Interests (Class 4).

i. Classification: Class 4 consists of all Equity Interests against the Debtor.

ii. Treatment: On or about the Effective Date, each holder of an Allowed Equity Interest, on account of and in full and complete settlement, release and discharge of, and in exchange for, its Allowed Equity Interest shall receive the Equity Interest Recovery. On the Effective Date, all Allowed Equity Interests shall be deemed automatically cancelled, released, and extinguished without further action by the Debtor or the Reorganized Debtor, and the obligation of the Debtor and the Reorganized Debtor thereunder shall be discharged.

iii. Impairment and Voting: Allowed Equity Interests are unimpaired, and the holders of such Interests are not entitled to vote to accept or reject the Plan on account of such Interests and will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

(f) Other Interests (Class 5).

i. Classification: Class 5 consists of all Other Interests against the Debtor.

ii. Treatment: No Distributions will be made to holders of Other Interests. On the Effective Date, all Other Interests shall be deemed automatically cancelled, released, and extinguished without further action by the Debtor or the Reorganized Debtor, and any and all obligation of the Debtor and the Reorganized Debtor thereunder shall be discharged.

iii. Impairment and Voting: Allowed Other Interests are impaired, and the holders of such Interests are not entitled to vote to accept or reject the Plan on account of such

Interests and will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

#### **ARTICLE IV**

### **IDENTIFICATION OF IMPAIRED CLASSES OF CLAIMS AND INTEREST; ACCEPTANCE OR REJECTION OF THE PLAN**

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

All Classes of Claims and Interests are either (i) unimpaired and deemed to accept; or (ii) impaired and deemed to reject. Accordingly, there are no Classes of Claims or Interests entitled to vote to accept or reject the Plan.

#### **4.2 Unimpaired Classes/Deemed to Accept**

Classes 1, 2, 3 and 4 are unimpaired under the Plan. Under section 1126(f) of the Bankruptcy Code, holders of (i) Claims in Classes 1, 2 and 3 and (ii) Interests in Class 4 are conclusively presumed to have accepted the Plan and are therefore not entitled to vote to accept or reject the Plan.

#### **4.3 Impaired Classes/Deemed to Reject**

Class 5 is impaired under the Plan and is deemed to reject the Plan. Therefore, holders of Interests in Class 5 are not entitled to vote to accept or reject the Plan.

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

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

#### ~~4.5 Voting Classes; Deemed Acceptance by Non-Voting Classes~~

~~If a Class contains Claims or Interests eligible to vote and no holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be deemed accepted by such Class.~~

#### 4.5 [Reserved].

#### **4.6 Intercompany Interests**

All intercompany interests shall be reinstated, and the corporate structure of the Debtor shall remain in effect under the Plan for the ultimate benefit of ESW as the holder of the New Equity.

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

In the event a controversy or dispute should arise involving issues related to the classification, impairment or voting rights of any Creditor or Interest Holder under the Plan, whether before or after the Confirmation Date, the Bankruptcy Court may, after notice and a hearing, determine such controversy. Without limiting the foregoing, the Bankruptcy Court may estimate for voting purposes (i) the amount of any contingent or unliquidated Claim the fixing or liquidation of, as the case may be, would unduly delay the administration of the Chapter 11 Case and (ii) any right to payment arising from an equitable remedy for breach of performance.

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

#### **5.1 Continued Corporate Existence**

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

Upon the Effective Date, and without any further action by the shareholders, directors, or officers of the Reorganized Debtor, the Reorganized Debtor's Charter Documents shall be deemed amended (a) to the extent necessary, to incorporate the provisions of the Plan, and (b) to prohibit the issuance by the Reorganized Debtor of nonvoting securities to the extent required under section 1123(a)(6) of the Bankruptcy Code, subject to further amendment of such Charter Documents as permitted by applicable law, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval other than any requisite filings required under applicable state, provincial or federal law. The Reorganized Debtor's Charter Documents shall be filed with the Plan Supplement.

#### **5.2 Management and Board of Directors and Discharge of Debtor**

The Plan Sponsor may nominate and elect new members for the board of directors of the Reorganized Debtor in accordance with the Reorganized Debtor's Charter Documents. The identity of such new members shall be disclosed in the Plan Supplement on or prior to the Plan Supplement Deadline. Upon the Effective Date, the current members of the Debtor's board of directors shall no longer serve in such capacity and shall, automatically and without further action or approval, be discharged of all duties in connection therewith.

#### **5.3 Arrangements with the Distribution Trustee**

The identity of the individual or entity proposed to serve as the Distribution Trustee under the Distribution Trust shall be disclosed by the Debtor in the Plan Supplement. At the Confirmation Hearing, the Debtor shall seek Bankruptcy Court approval of the Distribution Trustee. The person or entity so approved shall serve as the Distribution Trustee upon effectiveness of the Distribution Trust Agreement on the Effective Date. All compensation for the

Distribution Trustee shall be paid from the Available Cash in accordance with the Distribution Trust Agreement.

#### **5.4 The Closing**

The Closing of the transactions required and contemplated under the Plan shall take place on the Effective Date at the offices of Goulston & Storrs PC, 885 Third Avenue, 18th Floor, New York, New York 10022, or at such other place identified in a notice provided to those parties listed in Section 12.14 of the Plan. The Debtor and Plan Sponsor may reschedule the Closing by making an announcement at the originally scheduled Closing of the new date for the Closing. All documents to be executed and delivered by any party as provided in this Article V and all actions to be taken by any party to implement the Plan as provided herein shall be in form and substance satisfactory to the Debtor and Plan Sponsor. The following actions shall occur at or before the Closing (unless otherwise specified), and shall be effective as of the Effective Date:

(a) Execution of Documents and Corporate Action. The Debtor shall deliver all documents and perform all actions reasonably contemplated with respect to implementation of the Plan. The Debtor, or its designee, is authorized (i) to execute on behalf of the Debtor, in a representative capacity and not individually, any documents or instruments after the Confirmation Date or at the Closing that may be necessary to consummate the Plan; and (ii) to undertake any other action on behalf of the Debtor to consummate the Plan. Each of the matters provided for under the Plan involving the corporate structure of the Debtor or corporate action to be taken by or required of the Debtor will, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized, approved, and (to the extent taken before the Effective Date) ratified in all respects without any requirement of further action by stockholders, creditors, or directors of the Debtor. On the Effective Date, all matters provided for in the Plan involving the corporate structure of the Reorganized Debtor, and all corporate actions required by the Debtor and the Reorganized Debtor in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtor, the Reorganized Debtor or the Bankruptcy Court. For purposes of effectuating the Plan, none of the transactions contemplated in the Plan shall constitute a change of control under any agreement, contract, or document of the Debtor.

(b) Release of Liens. Upon request by the Debtor, the Reorganized Debtor or the Plan Sponsor, any Person holding a Lien in any of the Debtor's Property shall execute any lien release or similar document(s) required to implement the Plan or reasonably requested by the Debtor, the Reorganized Debtor or the Plan Sponsor in a prompt and diligent manner. Notwithstanding the foregoing, the Debtor, the Reorganized Debtor or the Plan Sponsor is authorized to execute any lien release or similar document(s) required to implement the Plan.

(c) Cancellation of Interests. On the Effective Date, all existing Interests of Debtor shall be retired, cancelled, extinguished and/or discharged in accordance with the terms of the Plan. Except as otherwise provided in the Plan or the Plan Supplement, on the Effective Date: (1) the obligations of the Debtor under any 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 Debtor giving rise to any Claim or Interest shall be cancelled as to the Debtor and the Reorganized Debtor shall not have any



continuing obligations thereunder; and (2) the obligations of the Debtor 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, purchase rights, options, warrants or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtor shall be released and discharged.

(d) Issuance of New Equity. On the Effective Date, 1,000 shares of New Equity of the Reorganized Debtor shall be issued to ESW, representing 100% of the equity of the Reorganized Debtor. The New Equity shall be free and clear of all Liens, Claims, interests, and encumbrances of any kind, except as otherwise provided in the Plan. All the shares of the New Equity issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assignable. On the Effective Date, none of the New Equity will be listed on a national securities exchange. The Reorganized Debtor may take all necessary actions, if applicable, after the Effective Date to suspend any requirement to (i) be a reporting company under the Securities Exchange Act, and (ii) file reports with the Securities and Exchange Commission or any other entity or party. On or promptly after the Effective Date, the Debtor or the Reorganized Debtor may file with The Nasdaq Stock Market LLC a Form 25 for the purpose of terminating the listing of the Debtor Common Stock on Nasdaq and with the Securities and Exchange Commission a Form 15 for the purpose of terminating the registration of the Debtor Common Stock under the Securities Exchange Act and take any other in connection therewith.

(e) Funding of the Cash Consideration. On the Effective Date, the Plan Sponsor shall contribute to the Debtor or Distribution Trust an amount of Cash equal to the Cash Consideration. Funding of the Cash Consideration is not subject to any financing contingency. The Cash Consideration shall be used to fund Distributions under the Plan, subject to Section 5.4(h) hereof.

(f) Execution and Ratification of the Distribution Trust Agreement. As a condition to the occurrence of the Effective Date, the Distribution Trust Agreement shall be executed by all parties thereto and become effective on the Effective Date.

(g) Transfer of Distribution Trust Assets. On the Effective Date, all property of the Debtor constituting the Distribution Trust Assets shall be conveyed and transferred by the Debtor to the Distribution Trust, free and clear of all Liens, Claims, Interests, and encumbrances. Unless otherwise provided for herein, on and after the Effective Date, without further approval of the Bankruptcy Court, the Distribution Trust may sell, assign, transfer, abandon or otherwise dispose of at a public or private sale any of the IP Addresses for the purpose of liquidating or converting such assets to Cash; provided, however, that nothing herein restricts the right of the Distribution Trust to seek Bankruptcy Court approval for such sale, assignment, transfer, or other disposal of the IP Addresses.

(h) Distributions from Cash-on-Hand and IP Addresses. Prior to making Distributions to pay holders of Allowed Equity Interests from the Cash-on-Hand or proceeds generated from the sale of the IP Addresses after the Effective Date, such funds shall first be used to pay, to the extent not already paid by the Debtor, all Case-Related Claims and Expenses and repayment of amounts, if any, incurred by the Plan Sponsor in connection with funding such Case-Related Claims and Expenses.

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

The Distribution Trust established under the Plan is established for the purpose of making Distributions to holders of Allowed Claims and Interests from the Distribution Trust Assets transferred to the Distribution Trust (or from the proceeds of such Distribution Trust Assets, as applicable) and performing related and incidental functions referenced in the Distribution Trust Agreement. The Distribution Trust shall have no objective of continuing or engaging in any trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the trust. The purpose of the Distribution Trust is to provide a mechanism for the liquidation of the Distribution Trust Assets, and to distribute the Consideration and the proceeds of the liquidation, net of all claims, expenses, charges, liabilities, and obligations of the Distribution Trust, to the Beneficiaries in accordance with the terms of the Plan. No business activities will be conducted by the Distribution Trust other than those associated with or related to the liquidation of the Distribution Trust Assets. It is intended that the Distribution Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of the Treasury Regulations Section 301.7701-4(d). All parties and Beneficiaries shall treat the transfers in trust described herein as transfers to the Beneficiaries for all purposes of the Internal Revenue Code of 1986, as amended (including Sections 61(a)(12), 483, 1001, 1012, and 1274 thereof). All the parties and Beneficiaries shall treat the transfers in trust as if all the transferred assets, including all the Distribution Trust Assets, had been first transferred to the Beneficiaries and then transferred by the Beneficiaries to the Distribution Trust. The Beneficiaries shall be treated for all purposes of the Internal Revenue Code of 1986, as amended, as the grantors of the Distribution Trust and the owners of the Distribution Trust. The Distribution Trustee shall file returns for the Distribution Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) or (b). All parties, including the Beneficiaries and the Distribution Trustee, shall value the Distribution Trust Assets consistently, and such valuations shall be used for all federal income tax purposes. Beneficiaries may wish to consult with a tax professional regarding the tax consequences of holding a Beneficial Interest in or receiving a Distribution from the Distribution Trust.

## **5.6 Preservation of Rights of Action**

Unless any Rights of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, transferred or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtor shall retain and may enforce all rights to commence and pursue any and all Rights of Action, and the Reorganized Debtor’s rights to commence, prosecute or settle such Rights of Action shall be preserved notwithstanding the occurrence of the Effective Date. For the avoidance of doubt, and notwithstanding Section 6.1 of the Plan, the Reorganized Debtor shall retain and shall have the exclusive right to enforce any and all of the Debtor’s Rights of Action including, without limitation, those arising from or related to (a) Intellectual Property and (b) claims and causes of action under chapter 5 of the Bankruptcy Code (including, without limitation, claims for accounts receivable and claims for turnover of Cash of the Debtor being held in escrow or on deposit by third parties), and shall be the sole beneficiary of any contested matters, claims objections, proceedings or similar actions in connection therewith.



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

**6.1 Right to Object to Claims**

Notwithstanding anything to the contrary herein, subject to the terms and conditions set forth in the Distribution Trust Agreement, and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, except insofar as a Claim is Allowed under the Plan on and after the Effective Date, the Distribution Trustee and the Reorganized Debtor shall have the authority, but not the obligation, to: (1) file, withdraw or litigate to judgment objections to and requests for estimation of Claims; (2) settle or compromise any Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court; and (3) administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court. The Distribution Trustee shall succeed to any pending objections to Claims filed by the Debtor prior to the Effective Date, and shall have and retain any and all rights and defenses the Debtor had immediately prior to the Effective Date with respect to any Disputed Claim. The Reorganized Debtor shall provide commercially reasonable assistance and cooperation to the Distribution Trustee, at the Distribution Trustee's cost, in connection with the Distribution Trustee's prosecution of objections to Claims, including, without limitation, reasonable access to the books and records of the Debtor or the Reorganized Debtor (as the case may be) and other information reasonably requested by the Distribution Trustee to enable the Distribution Trustee to perform its obligations under the Distribution Trust Agreement; provided that the Distribution Trustee will keep all such information confidential and will not disclose any information provided by the Reorganized Debtor without express written consent of the Reorganized Debtor. Further, notwithstanding anything to the contrary, no provision by the Reorganized Debtor of any privileged or confidential information to the Distribution Trustee shall result in the waiver of any privilege, confidentiality or other protections held by the Reorganized Debtor. The Distribution Trustee will cooperate fully with the Reorganized Debtor in preserving privilege and confidentiality of any information provided by the Reorganized Debtor to the Distribution Trustee. Notwithstanding the foregoing, nothing herein shall impose upon or require the Reorganized Debtor to preserve or maintain the Debtor's books and records for any purpose beyond twelve (12) months following the Effective Date unless the Distribution Trustee notifies the Reorganized Debtor in writing before that time that the Distribution Trustee has no further need to have access to such books and records, in which case the Distribution Trust shall bear the costs of such preservation and/or maintenance.

**6.2 Deadline for Objecting to Claims**

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

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

No later than seven (7) days prior to a hearing scheduled with respect to an objection to any Claim, or such other date as is indicated on such objection or the accompanying notice thereof, the Creditor whose Claim was objected to must file a written response to the objection with the Bankruptcy Court and serve a copy on the Distribution Trustee. Failure to file a written response within the applicable deadline may cause the Bankruptcy Court to enter a default judgment against the non-responding Creditor or otherwise grant the relief requested in the claim objection.

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

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

### **6.5 Distribution Procedures Regarding Allowed Claims**

(a) In General. The Distribution Trustee shall make all Distributions on account of Allowed Claims required to be made under the Plan, including Distributions from the Distribution Trust.

(b) Distributions on Allowed Claims Only. Distributions from Available Cash shall be made only to the holders of Allowed Claims. Unless and until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive a Distribution.

(c) Place and Manner of Payments of Distributions Regarding Allowed Claims. Except as otherwise specified in the Plan, Distributions from Available Cash on account of Allowed Claims shall be made by mailing such Distribution to the Creditor at the address listed in any proof of claim filed by the Creditor or at such other address as such Creditor shall have specified for payment purposes in a written notice received by the Distribution Trustee at least twenty (20) days before a Distribution Date. If a Creditor has not filed a proof of claim or sent the Distribution Trustee a written notice of payment address, then the Distribution(s) for such Creditor will be mailed to the address identified in the Schedules of Assets and Liabilities. The Distribution Trustee shall distribute any Cash by wire, check, or such other method as it deems appropriate under the circumstances. Before receiving any Distributions, all Creditors, at the request of the Distribution Trustee, must provide written notification of their respective Federal Tax Identification Numbers or Social Security Numbers to the Distribution Trustee; otherwise, the Distribution Trustee may suspend Distributions to any Creditors who have not provided their Federal Tax Identification Numbers or Social Security Numbers.

(d) Undeliverable Distributions. If a Distribution made from Available Cash on account of an Allowed Claim to any Creditor is returned as undeliverable, the Distribution Trustee shall use reasonable efforts to determine the then current address for such Creditor. If the Distribution Trustee cannot determine, or is not notified of, a then current address for such Creditor within six (6) months after the Effective Date, the Distribution reserved for such Creditor shall be deemed an unclaimed Distribution, and Section 6.5(e) of the Plan shall be applicable thereto.

(e) Unclaimed Distributions. If the current address for a Creditor entitled to a Distribution from Available Cash on account of an Allowed Claim under the Plan has not been determined or such Creditor has otherwise not been located within six (6) months after the Effective Date or a Creditor has not submitted a valid Federal Tax Identification Number or Social Security Number to the Distribution Trustee within three (3) months after the Distribution Trustee made a request therefor, then in each case such Creditor shall forfeit the Distribution on the Claim and any amounts to which the Creditor would have otherwise been entitled shall become Available Cash to pay Allowed Interests the subsequent portion of the Equity Interest Recovery pursuant to Section 6.6(a)(ii) hereof.

## **6.6 Distribution Procedures Regarding Allowed Interests**

(a) In General. The Distribution Trustee shall make all Distributions on account of Allowed Interests required to be made under the Plan, to effectuate the Equity Interest Recovery, including Distributions from the Distribution Trust.

(b) Distributions on Allowed Interests Only. Distributions from Available Cash shall be made only to the holders of Allowed Interests. Unless and until a Disputed Claim becomes an Allowed Interest, the holder of that Disputed Interest shall not receive a Distribution from Available Cash.

(c) Distribution Procedures Regarding Allowed Equity Interests. As a condition precedent to receiving any distribution on account of its Equity Interests, each holder of record of an Allowed Equity Interest shall be deemed to have surrendered such Equity Interest, and such surrendered Equity Interest shall be deemed to be cancelled as of the Effective Date pursuant to this Section 6.6, except to the extent otherwise provided herein, and the Distribution Record Date shall not apply to such distributions. The distribution to Holders of Allowed Equity Interests through DTC shall be made in accordance with the customary procedures of DTC.

## **6.7 Additional Distribution Procedures**

(a) Withholding. The Distribution Trustee may, but shall not be required to, at any time withhold from a Distribution from Available Cash to any Person (except the Internal Revenue Service) amounts sufficient to pay any tax or other charge that has been or may be imposed on such Person with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution provided for in the Plan, whenever such withholding is determined by the Distribution Trustee (in its sole discretion) to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. The Distribution Trustee, in the exercise of its sole discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts that may be withheld in accordance with the provisions of this section.

### **(b) Dissolution**

i. The Distribution Trustee shall be discharged and Distribution Trust shall be dissolved at such time as all of the Distribution Trust Assets have been liquidated and distributed pursuant to the Plan and the Distribution Trust Agreement; provided, however, that in no event shall the Distribution Trust be dissolved later than three (3) years from the creation of the

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

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

(c) Procedures Regarding Distributions from the Distribution Trust. Procedures regarding Distributions from the Distribution Trust shall be governed by the Distribution Trust Agreement.

## **ARTICLE VII EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **7.1 Assumption of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, including without limitation pursuant to Section 7.2 hereof, all Executory Contracts and Unexpired Leases shall be deemed assumed without the need for any further notice to or action, order, or approval of the Bankruptcy Court as of the Effective Date under section 365 of the Bankruptcy Code; provided, further, that, upon the occurrence of the Effective Date, the RSA will terminate in accordance with its terms.

Entry of the Confirmation Order shall constitute a Final Order of the Bankruptcy Court approving the assumption or assumption and assignment, as applicable, of such Executory Contracts or Unexpired Leases as set forth in the Plan, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, the assumption or assumption and assignment of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or a Final Order of the Bankruptcy Court but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified in the Plan or any Final Order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law.

To the maximum extent permitted by law, to the extent that any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Plan restricts or prevents, purports to restrict or prevent, or is breached or deemed breached by the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any “change of control” provision), such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto.

## **7.2 Rejection of Executory Contracts and Unexpired Leases**

All Executory Contracts and Unexpired Leases identified on the Schedule of Rejected Contracts and Unexpired Leases, to be attached to the Plan as Exhibit B (or rejected by the Debtor previously), shall be deemed rejected on the Effective Date. Entry of the Confirmation Order shall constitute approval of such rejections under sections 365 and 1123 of the Bankruptcy Code. Notwithstanding the rejection of an Executory Contract, the terms of any confidentiality agreement or covenant not to compete contained therein shall survive and remain in full force and effect for the term thereof.

## **7.3 Cure of Defaults for Assumed Executory Contracts and Unexpired Leases**

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash from the Consideration on or about the Effective Date, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and payment of the applicable cure amount shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any proof of claim filed with respect to an Executory Contract or Unexpired Lease that is assumed shall be deemed disallowed and expunged, without further notice to or action, order or approval of the Bankruptcy Court.**

## **7.4 Contracts and Leases Entered Into After the Petition Date**

Contracts and leases entered into after the Petition Date, including any Executory Contracts and Unexpired Leases assumed by the Debtor, will be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, unless specifically rejected pursuant to Section 7.2 hereof, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order. For the avoidance of doubt, the Reorganized Debtor is not assuming, and will not be liable for, any of contracts with the Debtor’s professionals or any Professional Compensation Claims in connection therewith.

## **7.5 Procedures Related to Assumption of Executory Contracts and Unexpired Leases**

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

The Cure Amounts associated with the assumption of the Executory Contracts and Unexpired Leases pursuant to Section 7.1 hereof are specified in the Schedule of Assumed Contracts and Unexpired Leases attached to the Plan as Exhibit A. The Debtor shall serve counterparties to the Executory Contracts and Unexpired Leases with a Cure Notice. The Debtor and the Plan Sponsor reserve the right to amend or supplement the Cure Notice.

Any objection to Cure Notice including (i) a Cure Objection or (ii) an Adequate Assurance Objection to be provided by the Plan Sponsor on behalf of the Reorganized Debtor must be in writing, filed with the Bankruptcy Court, and served upon (a) the Debtor, (b) counsel to the Debtor, (c) counsel to the Plan Sponsor, and (d) the U.S. Trustee, by no later than the Cure Amount Objection Deadline (*i.e.*, ~~May 7, 2020~~). Any such Cure Objection or Adequate Assurance Objection must set forth the specific default alleged under the applicable Executory Contract and claim a specific monetary amount that differs from the applicable Cure Amount, if any, and/or further information required of the Reorganized Debtor with respect to adequate assurance of future performance.

If no Objection to the Cure Amount with respect to an Executory Contract or Unexpired Lease is received by the Objection Deadline, then the assumption of such Executory Contract or Unexpired Lease shall be authorized pursuant to sections 365 and 1123 of the Bankruptcy Code and the applicable Cure Amount, if any, shall be binding upon the non-Debtor counterparty to such Executory Contract or Unexpired Lease for all purposes and shall constitute a final determination of the Cure Amount required to be paid to such Executory Contract or Unexpired Lease counterparty, and such Executory Contract or Unexpired Lease counterparty shall be deemed to have waived its right to object to, contest, condition, or otherwise restrict the assumption of such Executory Contract or Unexpired Lease (including, without limitation, from asserting any additional cure or other amounts with respect to the Executory Contract or Unexpired Lease arising prior to such assumption). Furthermore, upon the assumption of such Executory Contract or Unexpired Lease, the Reorganized Debtor shall enjoy all of the Debtor's rights and benefits thereunder without the necessity of obtaining any party's written consent to the Debtor's assumption of such rights and benefits.

### **(b) Objection to Disputed Cure Amounts**

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

If an objection to a Disputed Cure Amount has not been resolved by the Bankruptcy Court or agreement of the parties by the Effective Date, the Executory Contract or Unexpired Lease related to such Disputed Cure Amount shall be deemed assumed by the Reorganized Debtor effective on the Effective Date; provided, however, the Reorganized Debtor may revoke an assumption of any such Executory Contract or Unexpired Lease within ten (10) days after entry of



an order by the Bankruptcy Court adjudicating the objection to the Disputed Cure Amount related to the Executory Contract or Unexpired Lease by filing a notice of such revocation with the Bankruptcy Court and serving a copy on the party(ies) whose Executory Contract or Unexpired Lease is rejected. Any Executory Contract or Unexpired Lease identified in a revocation notice shall be deemed rejected retroactively to the Effective Date.

(c) Payment of Cure Amounts

On or about the Effective Date, the Distribution Trustee shall pay all Cure Amounts related to Executory Contracts and Unexpired Leases listed on the Cure Notice, other than Disputed Cure Amounts from out of Available Cash.

Subject to Section 7.5(b) hereof, the Distribution Trustee shall pay all Cure Amounts that are subject to an objection on the later of (i) within ten (10) Business Days after the Effective Date or (ii) within ten (10) Business Days after entry of an order by the Bankruptcy Court resolving the objection or approving an agreement between the parties concerning the Cure Amount.

(d) No Admission of Liability

Neither the inclusion nor exclusion of any Executory Contract or Unexpired Lease by the Debtor and the Plan Sponsor on the Cure Notice, nor anything contained in the Plan, shall constitute an admission by the Debtor or the Plan Sponsor that any such contract or unexpired lease is in fact an Executory Contract or Unexpired Lease or that the Debtor has any liability thereunder.

(e) Reservation of Rights

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

## **7.6 Rejection Claim**

Each Claim resulting from the rejection of an Executory Contract or Unexpired Lease, pursuant to Section 7.2 hereof, shall be filed with the Bankruptcy Court no later than the Rejection Claim Bar Date; provided, however, any party whose Executory Contract or Unexpired Lease is rejected pursuant to a revocation notice, pursuant to Section 7.5(b) hereof, may file a rejection damage Claim arising out of such rejection within thirty (30) days after the filing of the revocation notice with the Bankruptcy Court. Any Claim resulting from the rejection of an Executory Contract or Unexpired Lease not filed by the applicable deadline shall be discharged and forever barred, and shall not be entitled to any Distributions under the Plan. The Distribution Trustee shall have the right to object to any rejection damage Claim.

Notwithstanding the rejection of an Executory Contract or Unexpired Lease, the terms of any confidentiality agreement or covenant not to compete contained therein shall survive and remain in full force and effect for the term thereof.

## **7.7 Indemnification Obligations**

On and as of the Effective Date, the Indemnification Provisions will be assumed with respect to any claims or Causes of Action whether direct or derivative, liquidated or unliquidated, fixed, or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted. Notwithstanding anything to the contrary herein, the Reorganized Debtor shall not be required to indemnify the Debtor's managers, directors, officers, or employees for any claims or Causes of Action for which indemnification is barred under applicable law, the Debtor's organizational documents, or applicable agreements governing the Debtor's indemnification obligations.

Except with respect to the Indemnification Provisions, any other obligation or agreement of the Debtor to indemnify, reimburse, or limit the liability of any Person, including any contract or lease counterparty, relating to any acts or omissions occurring before the Effective Date, whether arising pursuant to charter, bylaws, contract or applicable state law, shall be deemed to be, and shall be treated as, a General Unsecured Claim and/or Executory Contract and shall be deemed to be rejected, canceled, and discharged pursuant to the Plan as of the Effective Date and any and all Claims resulting from such obligations are disallowed under section 502(e) of the Bankruptcy Code or other applicable grounds, including section 502(d), or if any court of applicable jurisdiction rules to the contrary, such Claim shall be estimated pursuant to section 502(c) of the Bankruptcy Code in the amount of \$0 or such other amount as the Bankruptcy Court shall determine.

## **7.8 Employee Compensation and Benefits**

Subject to the provisions of the Plan and the RSA, all Compensation and Benefits Programs shall be treated as Executory Contracts under the Plan and deemed assumed on the Effective Date pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code; provided, however, that all provisions in any agreement or Compensation and Benefits Program relating to equity-based awards, including any termination-related provisions with respect to equity based awards, will be deemed rejected and terminated on the Effective Date; provided further that any agreement or Compensation and Benefits Program related to Dr. Pehong Chen shall be replaced and superceded by the Transition Services Agreement. The Reorganized Debtor shall 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 and not otherwise paid pursuant to a Final Order of the Bankruptcy Court.

Any assumption or rejection of an agreement or Compensation and Benefits Program pursuant to the terms herein shall not be deemed to trigger any applicable change of control, immediate vesting, termination, or similar provisions therein. No counterparty shall have rights under a Compensation and Benefits Program assumed pursuant to the Plan other than those applicable immediately prior to such assumption.

## **7.9 Director and Officer's Insurance Policies**

Notwithstanding anything in the Plan to the contrary, the Reorganized Debtor shall be deemed to have assumed all of the Debtor's D&O Liability Insurance Policies pursuant to



section 365(a) of the Bankruptcy Code effective as of the Effective Date. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtor's foregoing assumption of the D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained in the Plan, confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be filed.

### **7.10 Other Insurance Policies**

On the Effective Date, each of the Debtor's insurance policies in existence as of the Effective Date shall be reinstated and continued in accordance with their terms and, to the extent applicable, shall be deemed assumed by the Reorganized Debtor pursuant to section 365 of the Bankruptcy Code and Article VII of this Plan. Nothing in the Plan shall affect, impair, or prejudice the rights of the insurance carriers, the insureds, or the Reorganized Debtor under the insurance policies in any manner, and such insurance carriers, the insureds, and Reorganized Debtor shall retain all rights and defenses under such insurance policies. The insurance policies shall apply to and be enforceable by and against the insureds and the Reorganized Debtor in the same manner and according to the same terms and practices applicable to the Debtor, as existed prior to the Effective Date.

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

### **8.1 Impaired Classes Entitled to Vote**

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

### **8.2 Acceptance by Class**

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

A Class of Interests shall have accepted the Plan if the Plan is accepted by at least two thirds (2/3) in amount of the Allowed Claims of such Class that have voted or been deemed to accept or reject the Plan.

### **8.3 Reservation of Cramdown Rights**

In the event that any impaired Class shall fail to accept the Plan in accordance with section 1129(a) of the Bankruptcy Code, the Debtor and Plan Sponsor reserve the right to request

that the Bankruptcy Court confirm the Plan in accordance with the provisions of the section 1129(b) of the Bankruptcy Code.

## **ARTICLE IX EFFECT OF CONFIRMATION**

### **9.1 Legally Binding Effect**

The provisions of the Plan shall be binding and inure to the benefit of the Debtor, all Holders of Claims and Interests, and their respective successors and assigns, whether or not they accept the Plan and wherever located.

### **9.2 Vesting of Property of Debtor in Reorganized Debtor**

On the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, except as otherwise expressly provided in the Plan or Confirmation Order, all Estate Property, other than the Distribution Trust Assets, shall vest in the Reorganized Debtor free and clear of all Liens, Claims, Interests, and encumbrances of any kind, except as otherwise provided in the Plan. Moreover, pursuant to Bankruptcy Code section 1141(d), the effect of confirmation of the Plan shall be to discharge the Debtor from any debt that arose before the Effective Date, and any debt of a kind specified in Bankruptcy Code sections 502(g), 502(h), or 502(i).

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

On the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtor may operate its business and may use, acquire, or dispose of any and all Estate Property, without supervision of or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

## **ARTICLE X INJUNCTIONS, RELEASES, AND DISCHARGE**

### **10.1 Discharge of the Debtor**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or the Confirmation Order, all Distributions under the Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and causes of action, whether known or unknown, including any interest accrued on such Claims from and after the Petition Date, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor or any of its assets or

properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Interests. Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, the Debtor and its estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code. The Confirmation Order shall be a judicial determination of the discharge of all Claims against, and Interests in, the Debtor, subject to the occurrence of the Effective Date.

## **10.2 Discharge Injunction**

Except as otherwise expressly provided in the Plan, the discharge and releases set forth in Section 1101 hereof shall also operate as an injunction permanently prohibiting and enjoining the commencement or continuation of any action or the employment of process with respect to, or any act to collect, recover from, or offset (a) any Claim or Interest discharged and released in Section 10.1 hereof, or (b) any cause of action, whether known or unknown, based on the same subject matter as any Claim or Interest discharged and released in Section 10.1 hereof. Except as otherwise expressly provided in the Plan, all Persons shall be precluded and forever barred from asserting against the Debtor and the Reorganized Debtor, their successors or assigns, or their assets, properties, or interests in property, any other or further Claims or Interests, or any other right to legal or equitable relief, regardless of whether such right can be reduced to a right to payment, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date.

## **10.3 Exculpation and Limitation of Liability**

The Exculpated Parties will neither have nor incur any liability to any entity for any claims or causes of action arising on or after the Petition Date and prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the consummation of the Plan, the Disclosure Statement, or any other contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtor, the approval of the Disclosure Statement or confirmation or consummation of the Plan; provided, however, that the foregoing provisions will have no effect on the liability of any entity that results from any such act or omission that is determined in a Final Order of the Bankruptcy Court or other court of competent jurisdiction to have constituted actual fraud, gross negligence or willful misconduct; provided, further, that the Debtor will be entitled to rely upon the advice of counsel concerning their duties pursuant to, or in connection with, the above referenced documents, actions or inactions.

## **10.4 Releases by the Debtor**

Notwithstanding anything to the contrary in the Plan or the Confirmation Order, effective as of the Effective Date, for good and valuable consideration provided by each of the Released

Parties, the adequacy of which is hereby acknowledged and confirmed, the Debtor will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full discharge, waiver and release to the Released Parties and their respective related parties (and each such Released Party and their respective related parties so released shall be deemed forever released by the Debtor) and their respective properties from any and all claims that the Debtor or any of their respective related parties would have been legally entitled to assert in their own right, on their own behalf, or on behalf of another party, against the Released Parties or their respective related parties; provided, however, that the foregoing provisions of this release shall not operate to waive or release (i) the rights of the Debtor to enforce the Plan and the contracts, instruments, releases and other agreements or documents delivered under or in connection with the Plan or assumed pursuant to the Plan or assumed pursuant to final order of the Bankruptcy Court; and/or (ii) any defenses against a third party.

The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any person, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, or liabilities released pursuant to this release.

Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, or any document, instrument, or agreement (including those set forth in any document, schedule or disclosure included with or contained in the Plan Supplement) executed to implement the Plan.

### **10.5 Releases by Third Parties**

On, and as of, the Effective Date and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Released Parties shall be forever released from any and all claims, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities throughout the world under any law or court ruling through the Effective Date (including all claims based on or arising out of facts or circumstances that existed as of or prior to the Effective Date, including claims based on negligence or strict liability, and further including any derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor, its Estate, or the Reorganized Debtor would have been legally entitled by applicable law to assert in its own right, whether individually or collectively) which the Debtor, its Estate, the Reorganized Debtor, Creditors, Interest Holders or other persons receiving or who are entitled to receive Distributions under the Plan may have against any of them in any way related to the Chapter 11 Case or the Debtor (or its predecessors); provided, however, that the foregoing release is granted only by Creditors and Interest Holders who are unimpaired and do not indicate an election to opt-out of granting such release by making such election electronically on the Claims Agent's website at <https://dm.epiq11.com/broadvision>; provided, further, that the release provided in this Section 10.5 shall not extend to any claims by any Governmental Unit with respect to criminal liability under applicable law, willful misconduct or bad faith under applicable law, or ultra vires acts under applicable law.

Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, or any document, instrument, or agreement (including those set forth in any document, schedule or disclosure included with or contained in the Plan Supplement) executed to implement the Plan

For the avoidance of doubt, nothing in this Article X shall prevent the enforcement of the terms of the Plan.

## **ARTICLE XI RETENTION OF JURISDICTION**

### **11.1 Bankruptcy Court Jurisdiction**

Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court shall retain and have such jurisdiction over the Chapter 11 Case to the maximum extent as is legally permissible, including, without limitation, for the following purposes:

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

(b) To ensure that Distributions to holders of Allowed Claims and Interests are accomplished pursuant to the provisions of the Plan and the Distribution Trust Agreement;

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

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

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

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

(g) To decide or resolve any and all applications, motions, adversary proceedings, contested or litigated matters, and any other matters, or grant or deny any applications involving the Debtor, or the Estate that may be pending on the Effective Date or that may be brought by the Debtor, the Reorganized Debtor, or the Distribution Trustee (as applicable), or any

other related proceedings by the Reorganized Debtor, and to enter and enforce any default judgment on any of the foregoing;

(h) To decide or resolve any and all Professional Compensation Claims;

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

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

(k) To interpret and enforce any orders entered by the Bankruptcy Court in the Chapter 11 Case; and

(l) To enter an order closing this Chapter 11 Case when all matters contemplating the use of such retained jurisdiction have been resolved and satisfied.

## **11.2 Limitation on Jurisdiction**

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

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

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

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



## ARTICLE XII MISCELLANEOUS PROVISIONS

### 12.1 Conditions to Confirmation

The Confirmation Order will not be effective unless (a) the Confirmation Order shall be in form and substance acceptable to the Debtor and Plan Sponsor, in their respective reasonable discretion, and shall provide for ESW to acquire all of the New Equity, free and clear of all Liens, Claims, interests and encumbrances of any kind, except as otherwise provided in the Plan, (b) the final version of the Plan, Plan Supplement, and any other documents, or schedules thereto, shall have been Filed in form and substance acceptable to the Debtor and Plan Sponsor in their respective reasonable discretion, and (c) no breach or failure to comply with the terms of the RSA, the Plan or any other material Final Order of the Bankruptcy Court shall have occurred and be continuing.

### 12.2 Conditions to Effectiveness

The occurrence of the Effective Date is subject to the occurrence of each of the following conditions: (a) the conditions to confirmation above have been either satisfied, or waived, by the Debtor and Plan Sponsor, (b) the Confirmation Order in form and substance reasonably satisfactory to the Debtor and Plan Sponsor shall have been entered by the Bankruptcy Court, confirming the Plan, and the Confirmation Order shall be in full force and effect and not subject to any stay or injunction, (c) the Plan Documents shall have been executed and delivered by all relevant parties, and any conditions (other than the occurrence of the Effective Date or certification by the Debtor that the Effective Date has occurred) contained therein have been satisfied or waived in accordance therewith, (d) the Cash Consideration shall have been received by the Debtor or the Distribution Trust, (e) no breach or failure to comply with the terms of the RSA, the Plan, the Confirmation Order or any other material Final Order of the Bankruptcy Court shall have occurred and be continuing; (f) ESW shall acquire the New Equity, free and clear of all Liens, Claims, interests and encumbrances of any kind, except as otherwise provided in the Plan, and (g) the Debtor has not caused, or as to Insiders, permitted to occur, (i) a Material Adverse Change with respect to the Debtor's Intellectual Property or (ii) an "ownership change" as such term is used in section 382 of title 26 of the United States Code.

### 12.3 Exemption from Taxes

~~The Plan and the Confirmation Order provide for (a) the issuance, transfer or exchange of notes, debt instruments and equity securities under or in connection with the Plan; (b) the creation, assignment, recordation or perfection of any lien, pledge, other security interest or other instruments of transfer; (c) the making or assignment of any lease; (d) the creation, execution and delivery of any agreements or other documents creating or evidencing the formation of the Reorganized Debtor or the issuance or ownership of any interest in the Reorganized Debtor; or (e) the making or delivery of any deed or other instrument of transfer under the Plan in connection with the vesting of the Estate's assets in the Reorganized Debtor or the Distribution Trust pursuant to or in connection with the Plan, including, without limitation, merger agreements, stock purchase agreement, agreements of consolidation, restructuring, disposition, liquidation or dissolution, and transfers of tangible property. Pursuant to section 1146 of the Bankruptcy Code and the Plan, any~~



~~such act described or contemplated herein will not be subject to any stamp tax, transfer tax, filing or recording tax, or other similar tax.~~

Pursuant to section 1146(a) of the Bankruptcy Code and the Plan, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of the Bankruptcy Code, may not be taxed under any law imposing a stamp tax or similar tax.

#### **12.4 Securities Exemption**

The offering and issuance of any rights by any party, including without limitation ESW or the Estate, under, pursuant to or in effecting the Plan, including, without limitation, the New Equity in the Reorganized Debtor, shall be exempt from the registration requirements of Section 5 of the Securities Act of 1933 (the “Securities Act”), if applicable, and from any state or federal securities laws requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security, and shall otherwise enjoy all exemptions available for Distributions of securities under a plan of reorganization in accordance with all applicable law, including without limitation section 1145 of the Bankruptcy Code. If the issuance of the New Equity does not qualify for an exemption under section 1145 of the Bankruptcy Code, the New Equity shall be issued in a manner which qualifies for any other available exemption from registration, whether as a private placement, pursuant to Section 4(2) of the Securities Act and/or safe harbor provisions promulgated thereunder, including Rule 506 under the Securities Act.

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

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

#### **12.6 Withdrawal of Plan**

The Debtor reserves the right to withdraw the Plan, provided that the Plan Sponsor consents, at any time prior to the Confirmation Date. If the Debtor withdraws the Plan prior to the Confirmation Date, or if the Confirmation Date does not occur by May 22, 2020, unless otherwise

extended by mutual agreement of the Debtor and the Plan Sponsor or the Effective Date does not occur by May 29, 2020, unless otherwise extended by mutual agreement of the Debtor and the Plan Sponsor, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute an admission, waiver or release of any claims by or against the Debtor or any other person, or to prejudice in any manner the rights of the Debtor, the Debtor's Estate, or any person in any further proceedings involving the Debtor.

#### **12.7 [Reserved].**

#### **12.8 Filing of Additional Documentation**

By the Plan Supplement Deadline, the Debtor may file with the Bankruptcy Court such Plan Supplement, agreements and other documents as may be reasonably necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan or any Plan Document, which shall also constitute "Plan Documents."

#### **12.9 Governing Law**

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

#### **12.10 Successors and Assigns**

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

#### **12.11 Transfer of Claims and Interests**

Any transfer of a Claim shall be in accordance with Bankruptcy Rule 3001(e) and the terms of this Section 12.11. Notice of any such transfer shall be forwarded to the Debtor by registered or certified mail, as set forth in Section 12.14 hereof. Both the transferee and transferor shall execute any notice, and the signatures of the parties shall be acknowledged before a notary public. The notice must clearly describe the interest in the Claim to be transferred. No transfer of a partial interest shall be allowed. All transfers must be of one hundred percent (100%) of the transferor's interest in the Claim.

No transfer of Interests shall be allowed after the Record Date.

#### **12.12 Time**

Unless otherwise specifically stated in the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed by the Plan.

### 12.13 Inconsistency

In the event of an inconsistency between the Plan, the RSA, and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan shall control. In the event of an inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

### 12.14 Notices

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

(a) If to the Debtor, at:

BroadVision, Inc.  
460 Seaport Ct., Suite 210  
Redwood City, CA 94063  
Attention: Dr. Pehong Chen  
Email: Pehong.Chen@BroadVision.com

and

DLA Piper LLP  
555 Mission Street, Suite 2400  
San Francisco, California  
Attention: Joshua D. Morse, Esq.  
Email: Joshua.Morse@us.dlapiper.com  
Facsimile: (415) 659-7340

and

DLA Piper LLP  
1201 North Market Street, Suite 2100  
Wilmington, Delaware 19801  
Attention: R. Craig Martin, Esq.  
Email: Craig.Martin@us.dlapiper.com  
Facsimile: (302) 394-2341

(b) If to the Plan Sponsor or the Reorganized Debtor, at:

ESW Capital, LLC  
401 Congress Ave., Suite 2650  
Austin, Texas 78701  
Attention: Neeraj Gupta  
Email: neeraj.gupta@eswcapital.com

and

Goulston & Storrs PC  
885 Third Avenue, 18th Floor  
New York, New York 10022  
Attention: Trevor R. Hoffmann, Esq.  
Email: thoffmann@goulstonstorrs.com  
Facsimile: (212) 878-6911

and

Morris, Nichols, Arsht & Tunnell LLP  
1201 North Market Street, 16th Floor  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Attention: Derek Abbott, Esq.  
Email: dabbott@mnat.com

(c) If to the Distribution Trustee, at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

and

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

### **12.15 U.S. Trustee Reporting and Fees**

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

### **12.16 Implementation**

The Debtor, the Reorganized Debtor, the Plan Sponsor, and the Distribution Trustee shall be authorized to perform all reasonable, necessary and authorized acts to consummate the terms and conditions of the Plan and the Plan Documents, without further order from the Bankruptcy Court.

### **12.17 No Admissions**

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

## **ARTICLE XIII SUBSTANTIAL CONSUMMATION**

### **13.1 Substantial Consummation**

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

### **13.2 Final Decree**

Upon compliance with Bankruptcy Rule 3022, the Distribution Trustee and/or the Reorganized Debtor may request the Bankruptcy Court to enter a final decree closing the Chapter 11 Case and such other orders that may be necessary and appropriate.

Dated: ~~March 30~~April 3, 2020

Respectfully submitted,

**BROADVISION, INC.**

By: /s/ Pehong Chen

By: Pehong Chen

Title: President, Chief Executive Officer, Interim  
Chief Financial Officer, and Chairman of  
the Board

**Exhibit A**

**(Schedule of Assumed Contracts and Unexpired Leases)**



**Exhibit B**

**(Schedule of Rejected Contracts and Unexpired Leases)**

**None.**

**EXHIBIT B**

**Blackline of Amended Disclosure Statement**

A COMBINED HEARING TO CONSIDER THE ADEQUACY OF THIS DISCLOSURE STATEMENT UNDER SECTION 1125 OF THE BANKRUPTCY CODE AND CONFIRMATION THE PLAN HAS BEEN SET BY THE BANKRUPTCY COURT FOR MAY 14, 2020, AT 2:00 P.M. (PREVAILING EASTERN TIME). THE DEBTOR RESERVES THE RIGHT TO AMEND, SUPPLEMENT OR OTHERWISE MODIFY THIS DISCLOSURE STATEMENT PRIOR TO AND UP TO THE DATE OF SUCH HEARING. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES. THIS DISCLOSURE STATEMENT IS NOT A SOLICITATION OF VOTES ON THE PLAN.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

BROADVISION, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 20-( )-10701 (CSS)

DISCLOSURE STATEMENT FOR THE AMENDED PREPACKAGED PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR BROADVISION, INC.

Joshua D. Morse  
DLA PIPER LLP (US)  
555 Mission Street, Suite 2400  
San Francisco, California  
Telephone: (415) 836-2500

R. Craig Martin (DE 5032)  
DLA PIPER LLP (US)  
1201 North Market Street, Suite 2100  
Wilmington, Delaware 19801  
Telephone: (302) 468-5700

*Proposed Counsel to the Debtor and Debtor in Possession*

Dated: ~~March 30~~ April 3, 2020

<sup>1</sup> The last four digits of the Debtor's tax identification number are 4303. The Debtor's mailing address is 460 Seaport Ct., Suite 102, Redwood City, California 94063.

**DISCLOSURE STATEMENT & CONFIRMATION HEARING AND  
DEADLINE TO OBJECT TO THE DISCLOSURE STATEMENT AND PLAN**

THE HEARING TO CONSIDER APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN HAS BEEN SCHEDULED FOR           , MAY 14, 2020 AT   :    
  2:00 P.M. (PREVAILING EASTERN TIME). OBJECTIONS TO THE ADEQUACY OF THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN MUST BE FILED (I) ON OR BEFORE           , MAY 7, 2020, AT 4:00 P.M. (PREVAILING EASTERN TIME), AND (II) IN ACCORDANCE WITH PARAGRAPH   5   OF THE PROCEDURES ORDER.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING THE EXHIBITS ATTACHED HERETO) IS SPECULATIVE AND PERSONS SHOULD NOT RELY ON SUCH DOCUMENTS IN MAKING INVESTMENT DECISIONS WITH RESPECT TO (I) THE DEBTOR, OR (II) ANY OTHER ENTITIES THAT MAY BE AFFECTED BY THE CHAPTER 11 CASE.

THE DEBTOR IS PROVIDING THE INFORMATION IN THIS *DISCLOSURE STATEMENT FOR THE PREPACKAGED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR BROADVISION, INC.* TO HOLDERS OF CLAIMS AND INTERESTS FOR PURPOSES OF OBTAINING APPROVAL OF THE DISCLOSURE STATEMENT FROM THE BANKRUPTCY COURT. YOU SHOULD NOT RELY UPON OR USE THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR ANY OTHER PURPOSE.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND IS NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS. THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE AUTHORITY AND NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT MAY CONTAIN “FORWARD LOOKING STATEMENTS” WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD-LOOKING TERMINOLOGY SUCH AS “MAY,” “EXPECT,” “ANTICIPATE,” “ESTIMATE” OR “CONTINUE” OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE READER IS CAUTIONED THAT ALL FORWARD-LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD-LOOKING STATEMENTS. DISTRIBUTION PROJECTIONS AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO ARE ESTIMATES ONLY, AND THE TIMING AND AMOUNT OF ACTUAL DISTRIBUTIONS TO HOLDERS OF ALLOWED CLAIMS MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. THEREFORE, ANY ANALYSES, ESTIMATES OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE.

NO LEGAL OR TAX ADVICE IS PROVIDED TO YOU BY THIS DISCLOSURE STATEMENT. THE DEBTOR URGES EACH HOLDER OF A CLAIM OR AN INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, 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.

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR CLAIM OR PROJECTED OBJECTION TO A PARTICULAR CLAIM IS, OR IS NOT, IDENTIFIED IN THE DISCLOSURE STATEMENT. THE DEBTOR OR THE PLAN SPONSOR MAY SEEK TO INVESTIGATE, FILE, AND/OR PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THE DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS. THE PLAN RESERVES FOR THE DEBTOR AND THE PLAN SPONSOR TO BRING CAUSES OF ACTION (DEFINED IN THE PLAN) AGAINST ANY ENTITY OR PARTY IN INTEREST EXCEPT THOSE SPECIFICALLY RELEASED.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN ANTICIPATED EVENTS IN THE DEBTOR’S CHAPTER 11 CASE AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. ALTHOUGH THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES 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 IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS

INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. THE DEBTOR DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

THE DEBTOR'S PRESIDENT, CHIEF EXECUTIVE OFFICER, AND INTERIM CHIEF FINANCIAL OFFICER HAS REVIEWED THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT. ALTHOUGH THE DEBTOR HAS USED ITS REASONABLE BUSINESS JUDGMENT TO ENSURE THE ACCURACY OF THIS FINANCIAL INFORMATION, NO ENTITY HAS AUDITED THE FINANCIAL INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS DISCLOSURE STATEMENT. THE DEBTOR IS MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTOR MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTOR HAS NO AFFIRMATIVE DUTY TO DO SO. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE FILING OF THIS DISCLOSURE STATEMENT.

THE DEBTOR HAS NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTOR HAS NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTOR OR THE VALUE OF ITS PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.



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|   |
|---|
| <p><b><u>THE DEBTOR HEREBY ADOPTS AND INCORPORATES EACH EXHIBIT ATTACHED TO THIS<br/>DISCLOSURE STATEMENT BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN</u></b></p> |
|---|

## ARTICLE I. INTRODUCTION

### 1.1. Purpose of the Disclosure Statement and the Plan.<sup>2</sup>

BroadVision, Inc., the debtor and debtor-in-possession in the above-referenced case (the “Debtor”), submits this disclosure statement (as may be amended, modified or supplemented, the “Disclosure Statement”), pursuant to section 1125 of the Bankruptcy Code, for the sole purpose of obtaining approval of the Disclosure Statement from the Bankruptcy Court at a combined hearing where the Debtor will seek confirmation of the Amended Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for BroadVision, Inc. (as may be amended, modified or supplemented, the “Plan”), for the resolution of outstanding Claims against and Interests in, the Debtor pursuant to the Bankruptcy Code. The Debtor seeks to consummate the Plan on the Effective Date. The summaries of the Plan contained herein shall not be relied upon for any other purpose. A copy of the Plan is attached hereto as Exhibit 1.

THE DEBTOR BELIEVES THAT THE COMPROMISES AND SETTLEMENTS CONTEMPLATED BY THE PLAN ARE FAIR AND EQUITABLE, MAXIMIZE THE VALUE OF THE DEBTOR’S ESTATE, AND MAXIMIZE RECOVERIES TO HOLDERS OF CLAIMS AND INTERESTS. THE DEBTOR BELIEVES THE PLAN IS THE BEST AVAILABLE ALTERNATIVE FOR IMPLEMENTING A RESTRUCTURING OF THE DEBTOR’S BALANCE SHEET.

THIS DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE A CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN. THIS DISCLOSURE STATEMENT IS INTENDED TO AID AND SUPPLEMENT THAT REVIEW. THE DESCRIPTION OF THE PLAN HEREIN IS ONLY A SUMMARY. HOLDERS OF CLAIMS AND INTERESTS AND OTHER PARTIES IN INTEREST ARE CAUTIONED TO REVIEW THE PLAN AND ANY RELATED ATTACHMENTS FOR A FULL UNDERSTANDING OF THE PLAN’S PROVISIONS. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN.

Additional copies of this Disclosure Statement can be accessed free of charge online at: <https://dm.epiq11.com/BroadVision>.

### 1.2. Overview of the Transactions Contemplated by the Plan.

To implement a comprehensive financial restructuring (the “Restructuring”), the Debtor has commenced a chapter 11 case (the “Chapter 11 Case”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtor has filed the Plan, this Disclosure Statement, and a motion seeking entry of an order approving the Disclosure Statement, obviating the need for a solicitation process, for confirmation of the Plan and approval of various procedures related to the foregoing (the “Procedures Order”). The proposed sponsor of the Plan is ESW Capital, LLC, an existing shareholder of the Debtor (“ESW” or “Plan Sponsor”). On March 27, 2020, the Debtor and the Consenting Stakeholders entered into the restructuring support agreement (together with all exhibits thereto, and as amended, restated, and supplemented from time to time, the “Restructuring Support Agreement”), the assumption of which is subject to a separate motion filed concurrently herewith, that sets forth the principal terms of the Restructuring and requires the parties thereto to support the Plan.

As set forth in the Plan, the Restructuring contemplates a comprehensive in-court restructuring of Claims against and Interests in the Debtor that will preserve the going-concern value of the Debtor’s businesses, maximize recoveries available to all constituents, and provide for an equitable distribution to the Debtor’s stakeholders. Generally, the Plan provides for (1) the reorganization of the Debtor by retiring, cancelling, extinguishing and/or discharging all Interests; (2) the funding of the Cash Consideration by the Plan Sponsor, (3) the distribution of Available Cash to holders of Allowed Claims and Interests in accordance with the priority scheme established by the Bankruptcy Code or as otherwise agreed; and (4) the issuance of 100% of the New Equity in the Reorganized Debtor to ESW.

<sup>2</sup> Capitalized terms utilized within this Disclosure Statement which are not otherwise defined herein shall have the meanings ascribed to such terms in the attached Plan.

**1.3. Summary of Treatment of Claims and Interests and Description of Recoveries under the Plan.**

The Plan organizes the Debtor's creditor and equity constituencies into groups called "Classes." For each Class, the Plan describes: (1) the underlying Claim or Interest; (2) the recovery available to the Holders of Claims or Interests in that Class under the Plan; (3) whether the Class is Impaired or Unimpaired under the Plan; (4) the form of consideration, if any, that Holders in such Class will receive on account of their respective Claims or Interests; and (5) whether the Holders of Claims and Interests in such Class are entitled to vote to accept or reject the Plan.

The table below provides a summary of the classification, description, and treatment of Claims and Interests under the Plan. This information is provided in summary form below for illustrative purposes only and is qualified in its entirety by reference to the provisions of the Plan. Any estimates of Claims or Interests in this Disclosure Statement may vary from the final amounts allowed by the Bankruptcy Court. Your ability to receive distributions under the Plan depends upon the ability of the Debtor to obtain confirmation of the Plan and satisfy the conditions necessary to consummate the Plan. The recoveries available to Holders of Claims and Interests are estimates and actual recoveries may materially differ. Indeed, the recoveries available to Holders of Allowed Claims and Interests could be materially lower when compared to the estimates provided below. To the extent that any inconsistency exists between the summaries contained in this Disclosure Statement and the Plan, the terms of the Plan shall govern.

For a more detailed description of the treatment of Claims and Interests under the Plan and the sources of satisfaction for Claims and Interests, see Article IV of this Disclosure Statement, entitled "Summary of the Plan."

| Class   | Designation              | Impairment | Entitled to Vote      | <u>Estimated Aggregate Amount of Claims<sup>3</sup></u> | Projected Plan Recovery (%) |
|---------|--------------------------|------------|-----------------------|---|-----------------------------|
| Class 1 | Secured Claims           | Unimpaired | No (deemed to accept) | \$0.00  | 100%                        |
| Class 2 | Other Priority Claims    | Unimpaired | No (deemed to accept) | \$2,190   | 100%                        |
| Class 3 | General Unsecured Claims | Unimpaired | No (deemed to accept) | \$281,955   | 100%                        |
| Class 4 | Equity Interests         | Unimpaired | No (deemed to accept) | N/A   | 100%                        |
| Class 5 | Other Interests          | Impaired   | No (deemed to reject) | N/A   | 0%                          |

**1.4. Voting on the Plan Unnecessary.**

The Debtor believes that all Classes of Claims and Interests are either (i) unimpaired and deemed to accept; or (ii) impaired and deemed to reject. Accordingly, the Debtor does not believe there are any Classes of Claims or Interests entitled to vote to accept or reject the Plan. In connection with seeking entry of the Procedures Order, the Debtor has advised the Bankruptcy Court of its belief of the lack of need for a solicitation process.

**1.5. Confirmation and Consummation of the Plan.**

Under section 1128(a) of the Bankruptcy Code, the Bankruptcy Court, after notice, may hold a hearing to confirm a plan of reorganization. When the Debtor filed the Chapter 11 Case, it filed a motion requesting that the Bankruptcy Court set a date and time as soon as reasonably practicable after the Petition Date for a hearing (such hearing, the "Combined Hearing") for the Bankruptcy Court to determine whether the Disclosure Statement contains adequate information under section 1125(a) of the Bankruptcy Code, whether the Debtor needs to solicit acceptances in support of the Plan under section 1126(b) of the Bankruptcy Code, and whether the Plan should be confirmed in light of both the affirmative requirements of the Bankruptcy Code and objections, if any, that are timely filed, as

<sup>3</sup> Estimated aggregate amount of Claims in each Class as well as projected recoveries for each Class are based solely on the Debtor's understanding of the universe of the Claims in each Class. However, neither the Bar Date nor the Governmental Unit Bar Date have yet passed and the actual amount of Claims and projected recoveries could vary significantly based upon the final pool of filed proofs of claim and any reconciliation thereof. Nothing herein shall be construed to be an admission by the Debtor as to the extent, priority or validity of any claim.

permitted by section 105(d)(2)(B)(vi) of the Bankruptcy Code. The Combined Hearing, once set, may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on those parties who have requested notice under Bankruptcy Rule 2002 and the entities who have filed an objection to the Plan, if any, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Combined Hearing, may put in place additional procedures governing the Combined Hearing. Subject to section 1127 of the Bankruptcy Code, the Plan may be modified, if necessary, prior to, during, or as a result of the Combined Hearing, without further notice to parties in interest.

Additionally, section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. The Debtor, in the same motion requesting a date for the Combined Hearing, will request that the Bankruptcy Court set a date and time for parties in interest to file objections to the adequacy of the Disclosure Statement, the lack of need to solicit acceptances in support of the Plan under the circumstances, and confirmation of the Plan. All such objections must be filed with the Bankruptcy Court and served on the Debtor and certain other parties in interest in accordance with the Procedures Order so that they are received before the deadline to file such objections.

**(a) Combined Hearing.**

At the Combined Hearing, the Bankruptcy Court will determine whether the Disclosure Statement contains adequate information under section 1125(a) of the Bankruptcy Code, it is appropriate under the circumstances to obviate the need to solicit acceptances in support of the Plan under section 1126(b) of the Bankruptcy Code, and the Plan should be confirmed in light of both the affirmative requirements of the Bankruptcy Code and objections, if any, that are timely filed and subject to satisfaction or waiver of each condition precedent in Article IX of the Plan. For a more detailed discussion of the Combined Hearing, *see* Article VI of this Disclosure Statement, entitled “Confirmation of the Plan.”

**(b) Effect of Confirmation and Consummation of the Plan.**

Following entry of the Confirmation Order, and subject to satisfaction or waiver of each condition precedent in Section 12.2 of the Plan, the Plan will be consummated on the Effective Date. Among other things, on the Effective Date, certain release, injunction, exculpation, and discharge provisions set forth in Article X of the Plan will become effective. Accordingly, it is important to read the provisions contained in Article X of the Plan very carefully so that you understand how entry of the Confirmation Order and the occurrence of the Effective Date of the Plan—which effectuates such release, injunction, exculpation, and discharge provisions—will affect you and any Claim or Interest you may hold with respect to the Debtor. These provisions are described in Article IV.H of this Disclosure Statement.

**1.6. Additional Plan-Related Documents.**

The Debtor will file certain documents that provide more details about implementation of the Plan in the Plan Supplement, which will be filed with the Bankruptcy Court no later than ~~\_\_\_\_\_~~ April 30, 2020. The Debtor will serve a notice that will inform all parties that the initial Plan Supplement was filed, list the information included therein, and explain how copies of the Plan Supplement may be obtained.

***THE FOREGOING IS ONLY A GENERAL OVERVIEW OF THIS DISCLOSURE STATEMENT AND THE MATERIAL TERMS OF, AND TRANSACTIONS PROPOSED BY, THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO, AND SHOULD BE READ IN CONJUNCTION WITH, THE MORE DETAILED DISCUSSIONS APPEARING ELSEWHERE IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED TO THIS DISCLOSURE STATEMENT, INCLUDING THE PLAN.***

**ARTICLE II. BUSINESS DESCRIPTION, PREPETITION INDEBTEDNESS AND EVENTS LEADING TO CHAPTER 11**

**2.1. The Debtor's Business.**

The Debtor was founded on May 13, 1993 to be a driver of innovative solutions to deliver business value in areas such as one-to-one personalization, knowledge management, e-commerce, e-banking, enterprise social networking, unified communication and collaboration, among other areas, for many years. In 1996, the Debtor underwent an initial public offering and began trading on The Nasdaq Capital Market under the symbol BVSN.

The Debtor pioneered web-based e-commerce and was among the first to offer pre-integrated, packaged self-service web applications for process, commerce, portal and content management. The Debtor develops, markets, and supports enterprise portal applications that enable companies to unify their e-business infrastructure and conduct both interactions and transactions with employees, partners, and customers through a personalized self-service model that increases revenues, reduces costs, and improves productivity.

The Debtor's array of current applications can best be understood when divided into the following product offerings: Business Agility Suite, Commerce Agility Suite and Quicksilver. Each is described, in turn, below:

- a. The Business Agility Suite is a portal that provides personalized views of information and processes from diverse internal, external, and legacy sources. It supports collaboration both inside and outside the enterprise, and manages web content throughout its lifecycle: creation, review, approval, version control, deployment, distribution, and audit trail.
- b. The Commerce Agility Suite is the Debtor's e-commerce system for transacting business on the web, from lead generation, navigation, category management, incentive, shopping cart, order execution, to customer care. It supports both business-to-business and business-to-consumer commerce. Additionally, it has the full capabilities of the Debtor's Business Agility Suite.
- c. QuickSilver is a high-end publishing system for large and complex documents. Quicksilver is commonly used for publishing projects such as aircraft manuals, weapon system manuals, and massive customizable insurance policies. Quicksilver supports multiple output formats, such as HTML, PDF, and Postscript. It also includes a complete XML authoring environment.

The Debtor's product offerings have the following characteristics and advantages:

- a. *Track Record*—Experience from over 1,000 implementations over 20 years.
- b. *Agility, Extensibility, and Configurability*—Integrated tools for rapidly creating e-business applications with modular out-of-the-box capabilities and custom development.
- c. *Scalability*—Advanced load balancing and multi-layered caching for high concurrent users and transactions.
- d. *Personalization*—Session and event-based observations for dynamic and targeted navigation.
- e. *Secure Transaction Processing*—A wide range of commercial functions including order processing, discount, incentive, tax computation, shipping and handling charges, payment processing, and order tracking.

- f. *Multi-Platform Support*—Support for major operating systems (Linux, Solaris, Windows, HP-UX, and AIX), application servers (WebLogic, WebSphere and JBoss) and databases (Oracle, Sybase, IBM, mySQL and SQL Server).
- g. *Low Total Cost of Ownership*—Support for open source platforms in addition to commercial platforms.
- h. *Cloud*—Hosted SaaS (Software-as-a-Service), allowing customers to access enterprise-quality software without traditional IT overhead.
- i. *Mobile*—Native mode application support for Apple iOS and Android as well as support for leading browsers, which extends access to cloud applications and services to most connected devices.

The Debtor, along with its non-Debtor subsidiaries, currently operates in three primary geographical territories: North and South America (Americas); Europe, Middle East and Africa (Europe); and Asia, Pacific and Japan (Asia/Pacific).

The Debtor currently has five full-time employees and one part-time employee, all based in the U.S. As of September 30, 2019, the most recently reported period, the Debtor's financial statements reflected assets with a book value totalling approximately \$5.6 million and liabilities totalling approximately \$2.9 million.

## 2.2. Debtor's Prepetition Capital Structure and Indebtedness.

The Debtor has a number of non-Debtor affiliates, including Vmoso, Inc. ("VMOSO"),<sup>4</sup> in which Dr. Pehong Chen owns a controlling interest of 80.1%. The Debtor and VMOSO are parties to a Services and Facilities Agreement (as amended, the "SFA"), dated as of January 1, 2019, the terms of which provide for the payment of certain fees to the Debtor by VMOSO in exchange for the contribution of the Debtor's expertise, administrative and financial services, and certain resources in VMOSO's business and operations. The SFA has an initial period of one year and is renewable upon the written consent of the parties thereto.

Additional non-Debtor affiliates include BroadVision (Delaware) LLC, a Delaware limited liability company ("BVD"), which the Debtor has a controlling voting interest in. BVD is the sole owner of BroadVision (Barbados) Limited ("BVB"), which is, in turn, the sole owner of BroadVision On Demand, a Chinese entity ("BVOD"). The Debtor invested approximately \$9.0 million in BVOD (directly and through BVD and BVB) from 2007 through 2016. In 2014, The Debtor began making payments directly to BVOD for certain labor outsourcing services and expects to continue to pay BVOD for such services at the rate of approximately \$550,000 per quarter for the foreseeable future. The Debtor made aggregate payments to BVOD of \$1.8 million and \$2.3 million (based on the RMB to USD exchange rates on the applicable dates of payment) for such services in the years ended December 31, 2018 and 2017, respectively. These payments covered, in part, services rendered outside of the applicable twelve-month periods. In April 2019, BVOD was liquidated as a result of cost cutting measures, including a reduction of workforce.

The Debtor has numerous other non-Debtor international affiliates, including: BroadVision Deutschland GmbH, BroadVision France S.A., BroadVision Italia Srl, BroadVision Japan K.K., BroadVision Spain, BroadVision Systems India Pvt Ltd., BroadVision Systems India Pvt Ltd., BroadVision Taiwan, BroadVision UK Ltd., Interleaf German GmbH, and Interleaf UK Ltd. BroadVision Italia Srl, which maintains an office in Rome, Italy, and BroadVision UK Ltd., each currently have two employees—with one employee in finance and the other in sales. BroadVision Spain currently has two employees in engineering. Interleaf German GmbH and Interleaf UK Ltd. each currently have one employee working in sales. BroadVision Taiwan is branch of the Debtor and currently has two

<sup>4</sup> In response to the COVID-19 outbreak, on March 25, 2020, the Company announced the immediate availability of its Telework Jumpstart Program (the "TJP"). Under the TJP, the Company offers unlimited free use for 12 months of the Vmoso enterprise digital hub platform.



employees, one working in sales and the General Manager of Global Operations. BroadVision Japan K.K. utilizes independent contractors to generate sales and maintains no office space.<sup>5</sup>

A copy of the Debtor's prepetition organizational chart is attached hereto as Exhibit 2. None of the Debtor's subsidiaries or affiliates have filed or intend to file for chapter 11 in conjunction with this Chapter 11 Case.

The Debtor has no outstanding secured or unsecured debt facilities, and no creditor or other party holds a security interest in any of the Debtor's cash or cash-generating assets. As such, no such party holds an interest in any cash collateral.

The Debtor is currently authorized to issue two classes of capital stock, designated as common stock and convertible preferred stock. As of February 29, 2020, there were 5,142,333 shares of common stock outstanding (including all Outstanding Shares, Restricted Stock Awards, Restricted Stock Units and Permitted Stock Options, whether or not vested) and no shares of convertible preferred stock are issued or outstanding. The three largest holders of the Debtor's common stock are Dr. Chen / Honu Holdings, LLC (31.9%), ESW Capital, LLC (23.65%), and Marlin Capital Investments (6.85%).

A copy of the Debtor's Form 10-Q for the period ended September 30, 2019, which was filed on November 19, 2019, is attached hereto as Exhibit 3.

### **2.3. Events Leading to Chapter 11 Filing.**

Over the last decade, the Company's cash position has decreased from approximately \$45 million as of December 31, 2011 down to approximately \$400,000 as of the Petition Date, and the Debtor has not generated positive net income since 2009. The Debtor and its consolidated subsidiaries generated net losses of approximately \$9.9 million for the fiscal year ended December 31, 2017 (as reported on Form 10-K), and approximately \$7.0 million for the fiscal year ended December 31, 2018 (as reported on Form 10-K). Further, the Debtor generated net losses of approximately \$1.5 million for the fiscal year ended December 31, 2019 (draft, unaudited). From 2001 to date, the Debtor's annual revenue has declined, and as of December 31, 2019, the Debtor had an accumulated deficit of approximately \$1,269 million. The majority of this accumulated deficit to date has resulted from non-cash charges associated with the acquisition of Interleaf, Inc. in 2000, and restructuring charges related to long-term real estate lease obligations.

In 2016, to preserve the going-concern value of its business and to enable the Debtor to execute a go-forward business plan, I made a capital contribution to the Debtor of \$16 million. Additionally, the Debtor started implementing cost reduction measures in 2017, which were designed to reduce cash needs. These measures reduced the Debtor's operational costs by approximately \$5 million in 2018 and \$4 million in 2019 but were insufficient to guide the Debtor to profitability. The Debtor believed any further cost reductions could result in voluntary departures of the Debtor's highly skilled technical and managerial personnel, which would have a material adverse effect on the Debtor's business, internal controls, financial condition, and revenues.

The Debtor's operations face two key challenges: (a) the maturity of its major revenue-generating legacy products, and (b) competing in a crowded ESN solution space. The Debtor has invested heavily in cloud-based, mobile, messaging, and collaboration technologies, while continuing to support its legacy product base. Unfortunately, as a result of its ongoing losses and required cost-cutting, the Debtor became hampered in its ability to execute on its business plan. Total revenues of approximately \$1.588 million in the first half of 2019 declined from total revenues of \$2.8 million for the first half of 2018, with the decrease mainly in legacy revenue. Total revenues of approximately \$1.383 million for the first half of 2020 declined from total revenues of \$1.588 million for the first half of 2019. The Debtor expects that the decline in legacy revenue, which is the majority of the Debtor's revenue mix, will continue to dominate overall financial performance until a significant installed base of new product revenues is established.

<sup>5</sup> Any entities without a physical office have virtual offices.

As discussed above, as of the Petition Date, the Debtor has approximately \$400,000 in remaining cash. While these funds are believed to be sufficient to permit the Debtor to fund its chapter 11 plan without the need for debtor-in-possession financing, it is clear that absent a restructuring, the Debtor's already tenuous cash position will continue to worsen, and recoveries to the Debtor's creditors and shareholders will be at significant risk. The current economic shutdown has exacerbated the Company's liquidity issues and need for relief, as the Company anticipates that customers may cancel or delay payment. Moreover, the Company does not believe it has the ability to raise cash or debt in the current unique capital market climate. In light of the Debtor's deteriorating liquidity and its inability to generate positive net income, it became clear that a proactive chapter 11 bankruptcy filing represented the best alternative available to maximize recoveries for the Debtor's creditors and shareholders. Accordingly, the Debtor engaged with ESW and the Shareholders and hired restructuring advisors to assist in the development and refinement of a viable path forward. Ultimately, vigorous arm's-length negotiations with ESW resulted in the entry into the Restructuring Support Agreement (the "RSA"). The RSA allows the Debtor's restructuring to be implemented efficiently through the Plan, thereby minimizing administrative costs and protecting the Debtor's estate for the benefit of its stakeholders.

After considering the limited likelihood of success of any other alternatives as of the date hereof, as well as the proposed 100% distributions on account of allowed claims and significant recoveries well in excess of share trading prices (even prior to the recent market correction) to shareholders contemplated by the Plan, the Debtor determined, acting through a special committee, and based on its fiduciary responsibility and advice of its legal advisors, that the restructuring contemplated by the RSA is in the best interests of the Debtor and its stakeholders. The special committee arrived at that conclusion through negotiation and improvement of the terms of the arrangement with ESW, including, among other things, the estimated primary cash return to shareholders of \$4.375/share, which represented a substantial premium to the historic volume weighted average price of the Debtor's Common Stock (the "VWAP"). Indeed, when the final ESW proposal was delivered to the special committee on February 4, 2020, the proposed \$4.375/share represented an approximate 73% premium to the 30-day trailing VWAP and an approximate 158% premium to the 180-day trailing VWAP. The Debtor's Common Stock closed on February 4, 2020, at a price of \$3.26/share.

### **ARTICLE III. ADMINISTRATION OF THE CHAPTER 11 CASE**

#### **3.1. Overview of Chapter 11.**

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

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing of a chapter 11 petition. 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."

The consummation of a plan is the principle objective of a chapter 11 case. A plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan by the Bankruptcy Court makes the plan binding upon the debtor, any entity acquiring property under the plan, any holder of a claim against or equity interest in a debtor and all other entities 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 approving confirmation of a plan discharges a debtor, to the fullest extent permitted by applicable law, from any debt that arose prior to the date of confirmation of the plan and substitutes therefor the obligations specified under the confirmed plan.

Pursuant to section 1125 of the Bankruptcy Code, acceptance or rejection of a plan may not be solicited after the commencement of a chapter 11 case until such time as a bankruptcy court has approved a disclosure statement as containing adequate information. Pursuant to section 1125(a) of the Bankruptcy Code, "adequate information" is information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding the plan. The Debtor is submitting this Disclosure Statement in satisfaction of the applicable disclosure requirements under section 1125 of the Bankruptcy Code.

### 3.2. Debtor's First Day Pleadings.

On March 30, 2020, the Debtor commenced this Chapter 11 Case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Shortly thereafter, the Debtor filed various "first day" motions seeking authority to, among other things: (i) pay prepetition compensation, benefits, and reimbursable employee expenses; (ii) continue certain insurance policies and programs; (iii) substantially maintain their existing bank accounts and continue the Debtor's integrated cash management system that was in place prior to the Petition Date; (iv) prohibit utility companies from discontinuing, altering or refusing service; (v) a motion seeking to establish a deadline for parties to file claims and interests against the Debtor's estate; and (vi) an application to approve Epiq Bankruptcy Solutions, LLC as the Bankruptcy Court-appointed claims and noticing agent.

### 3.3. Debtor's Second Day Pleadings.

Contemporaneously with, or shortly following, the filing of the "first day pleadings," the Debtor filed certain "second day pleadings" with the Bankruptcy Court. In particular, the Debtor will file (i) a motion seeking authority to enter into and approval of the Restructuring Support Agreement; (ii) a motion seeking entry of an order scheduling a combined hearing on this Disclosure Statement and Plan, establishing various deadlines in connection therewith, and granting certain other related relief; and (iii) an application to approve the retention of DLA Piper LLP (US) as counsel for the Debtor.

## **ARTICLE IV. SUMMARY OF PLAN AND CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS THEREUNDER**

This article 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 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.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Interests in the Debtor under the Plan and will, upon the occurrence of the Effective Date, be binding upon all holders of Claims against and Interests in the Debtor, the Debtor's estate, the Reorganized Debtor, all parties receiving property under the Plan, and other parties in interest. In the event of any conflict, inconsistency, or discrepancy between this Disclosure Statement and the Plan, the Plan Supplement, and/or any other operative document, the terms of the Plan, Plan Supplement, and/or such other operative document, as applicable, shall govern and control; provided that, in any event, the terms of the Plan shall govern and control over all other related documents.

### **A. Treatment of Unclassified Claims**

In accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims (including Professional Compensation Claims and Ordinary Course Liabilities), US Trustee Fees and Priority Tax Claims have not been classified and the respective treatment of such unclassified Claims is set forth in Article II of the Plan.

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, U.S. Trustee Fees and Priority Tax Claims of the Debtor have not been classified and the holders thereof are not entitled to vote on the Plan.

### 4.1 **Administrative Claims**

(a) General: Except with regards to the Professional Fee Claims and Ordinary Course Liabilities (the treatment of which are each described below and, respectively, in Sections 2.2 and 2.5 of the Plan, subject to the bar date provisions herein, unless otherwise agreed to by the parties, each holder of an Allowed Administrative Claim shall receive Cash equal to the unpaid portion of such Allowed Administrative Claim within ten (10) days after the later of (a) the Effective Date, (b) the Allowance Date, or (c) such other date as is mutually agreed upon by the Debtor, the Plan Sponsor and the holder of such Claim.

(b) Bar Date for Administrative Claims: Except as otherwise provided in Article II of the Plan, requests for payment of Administrative Claims must be included within an application (setting forth the amount of, and basis for, such Administrative Claims, together with documentary evidence) and Filed and served on respective counsel for the Debtor, the Distribution Trust and Plan Sponsor no later than the Administrative Claim Bar Date or by such earlier deadline governing a particular Administrative Claim contained in an order of the Bankruptcy Court entered before the Effective Date. Holders of Administrative Claims that are required to File a request for payment of such Claims and that do not File such requests by the applicable bar date shall be forever barred from asserting such Claims against the Debtor or any of its property, absent order of the Bankruptcy Court to the contrary.

#### 4.2 Professional Compensation Claims

All Professional Compensation Claims must be filed with the Bankruptcy Court and served on the Reorganized Debtor, the Distribution Trust, the U.S. Trustee and the Post-Confirmation Service List, no later than forty-five (45) days after the Effective Date. **FAILURE TO FILE AND SERVE FINAL FEE APPLICATIONS TIMELY AND PROPERLY SHALL RESULT IN THE UNDERLYING PROFESSIONAL FEE CLAIMS BEING FOREVER BARRED AND DISCHARGED.** Objections to Professional Compensation Claims, if any, must be filed and served pursuant to the procedures set forth in the Confirmation Order no later than sixty (60) days after the Effective Date or such other date as may be established by the Bankruptcy Court. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court in the Chapter 11 Case, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court. All holders of Professional Compensation Claims shall be paid in full, in Cash from the Distribution Reserve, in such amounts as are Allowed by the Bankruptcy Court. The Reorganized Debtor and the Distribution Trustee are authorized to pay compensation for professional services rendered and reimbursement of expenses incurred after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

Each holder of a Professional Compensation Claim shall provide the Debtor with an estimate of the unpaid amount of such Professional Compensation Claim not later than seven (7) calendar days prior to the anticipated Effective Date; provided, however, that such estimates shall be used solely for administrative purposes and determining the amount of the Distribution Reserve, shall not be binding on the holders of Professional Compensation Claims and shall not in any way limit, cap, or reduce the amount of the Professional Compensation Claims.

Any professional fees and reimbursements or expenses incurred by the Reorganized Debtor subsequent to the Effective Date may be paid by the Reorganized Debtor without application to the Bankruptcy Court. Any professional fees and reimbursements or expenses incurred by the Distribution Trustee subsequent to the Effective Date may be paid by the Distribution Trustee without application to the Bankruptcy Court.

#### 4.3 U.S. Trustee Fees

On or before the Effective Date, the Debtor shall pay any claim for U.S. Trustee Fees that is due and owing on the Effective Date. Post-petition U.S. Trustee Fees shall be paid and post-confirmation reports shall be filed as required by 28 U.S.C. § 1930 until the Chapter 11 Case is closed, converted or dismissed, and failure to do either timely is a material default pursuant to section 1112 of the Bankruptcy Code.

#### 4.4 Allowed Priority Tax Claims

Each Holder of an Allowed Priority Tax Claim against Debtor shall receive in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim (i) Cash equal to the amount of such Allowed Priority Tax Claim on the Effective Date, (ii) payment in full through the fifth anniversary of the Petition Date, plus interest at a rate determined in accordance with section 511 of the Bankruptcy Code, or (iii) such other less favorable treatment to the Holders of an Allowed Priority Tax Claim as to which the Debtor, or the Debtor, the Plan Sponsor, and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing.

#### 4.5 Ordinary Course Liabilities

(c) All Ordinary Course Liabilities are deemed to be Allowed Claims. Holders of Administrative Claims on account of Ordinary Course Liabilities are not required to file or serve any request for

payment of the Ordinary Course Liability. The Debtor shall continue to pay each Ordinary Course Liability accrued prior to the Effective Date, pursuant to the payment terms and conditions of the particular transaction giving rise to the Ordinary Course Liability. To the extent that a holder of an Administrative Claim, on account of Ordinary Course Liability which accrued prior to the Effective Date, did not submit an invoice for the Ordinary Course Liability to the Debtor prior to the Effective Date, the holder must submit the invoice to the Distribution Trustee in the ordinary course of business, and in no event later than thirty (30) days following the Effective Date, pursuant to the terms and conditions of the particular transaction giving rise to the Ordinary Course Liability. The Distribution Trustee shall remit payment on the Ordinary Course Liability within fifteen (15) days of receipt of the invoice. The Reorganized Debtor shall pay each Ordinary Course Liability which accrues after the Effective Date, pursuant to the payment terms and conditions of the particular transaction giving rise to the Ordinary Course Liability. In the event that the Reorganized Debtor pays any Ordinary Course Liability accrued prior to the Effective Date, the Distribution Trust shall reimburse the Reorganized Debtor for such payment promptly upon request.

## **B. Classification and Treatment of Claims and Equity Interests**

Pursuant to sections 1122 and 1123 of the Bankruptcy Code, a Claim or Interest is placed in a particular Class for all purposes, including without limitation, voting, confirmation and receiving Distributions under the Plan only to the extent (i) the Claim or Interest qualifies within the description of that Class; (ii) the Claim or Interest is an Allowed Claim or Allowed Interest (or temporarily allowed Claim or Interest for voting purposes) in that Class, and is classified in another Class or Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Class or Classes; and (iii) the Claim or Interest has not been paid, released, or otherwise compromised before the Effective Date. A Claim or Interest which is not an Allowed Claim or Allowed Interest, including a Disputed Claim, is not in any Class, and, notwithstanding anything to the contrary contained in the Plan, no Distribution shall be made on account of any Claim or Interest which is not an Allowed Claim or Allowed Interest.

### **Class 1: Secured Claims**

- (a) Classification: Class 1 consists of all Secured Claims (if any) against the Debtor.
- (b) Treatment: Each holder of an Allowed Secured Claim against the Debtor shall receive on or about the Effective Date, on account of and in full and complete settlement, release and discharge of, and in exchange for, such Allowed Secured Claim, at the option of the Plan Sponsor: (i) payment in full in Cash; (ii) the collateral securing its Allowed Secured Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (iii) reinstatement of such Allowed Secured Claim; or (iv) such other treatment rendering such Allowed Secured Claim unimpaired.
- (c) Impairment and Voting: Allowed Secured Claims are unimpaired, and the holders of such Claims are not entitled to vote to accept or reject the Plan on account of such Claims and will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

### **Class 2: Other Priority Claims**

- (a) Classification: Class 2 consists of all Other Priority Claims against the Debtor.
- (b) Treatment: Each holder of an Allowed Other Priority Claim against the Debtor shall receive on or about the Effective Date, on account of and in full and complete settlement, release and discharge of, and in exchange for, such Allowed Other Priority Claim, (i) Cash equal to the amount of such Allowed Other Priority Claim on the Effective Date, or (ii) such other treatment to the holder of an Allowed Other Priority Claim as to which the Plan Sponsor and the holder of such Allowed Other Priority Claim shall have agreed upon in writing.

- (c) Impairment and Voting: Allowed Other Priority Claims are unimpaired, and the holders of such Claims are not entitled to vote to accept or reject the Plan on account of such Claims and will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

### **Class 3: General Unsecured Claims**

- (a) Classification: Class 3 consists of all General Unsecured Claims against the Debtor.
- (b) Treatment: On or about the Effective Date, each holder of an Allowed General Unsecured Claim shall receive, on account of and in full and complete settlement, release and discharge of, and in exchange for its Allowed General Unsecured Claim, payment of its Claim in full in Cash.
- (c) Impairment and Voting: Allowed General Unsecured Claims are unimpaired, and the holders of such Claims are not entitled to vote to accept or reject the Plan on account of such Claims and will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

### **Class 4: Equity Interests**

- (a) Classification: Class 4 consists of all Equity Interests against the Debtor.
- (b) Treatment: On or about the Effective Date, each holder of an Allowed Equity Interest, on account of and in full and complete settlement, release and discharge of, and in exchange for its Allowed Equity Interest shall receive the Equity Interest Recovery. On the Effective Date, all Allowed Equity Interests shall be deemed automatically cancelled, released, and extinguished without further action by the Debtor or the Reorganized Debtor, and the obligation of the Debtor and the Reorganized Debtor thereunder shall be discharged.
- (c) Impairment and Voting: Allowed Equity Interests are unimpaired, and the holders of such Interests are not entitled to vote to accept or reject the Plan on account of such Interests and will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

### **Class 5: Other Interests**

- (a) Classification: Class 5 consists of all Other Interests against the Debtor.
- (b) Treatment: No Distributions will be made to holders of Other Interests. On the Effective Date, all Other Interests shall be deemed automatically cancelled, released, and extinguished without further action by the Debtor or the Reorganized Debtor, and any and all obligation of the Debtor and the Reorganized Debtor thereunder shall be discharged.
- (c) Impairment and Voting: Allowed Other Interests are impaired, and the holders of such Interests are not entitled to vote to accept or reject the Plan on account of such Interests and will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

### **C. Acceptance or Rejection of the Plan**

All Classes of Claims and Interests are either (i) unimpaired and deemed to accept; or (ii) impaired and deemed to reject. Accordingly, there are no Classes of Claims or Interests entitled to vote to accept or reject the Plan.



### **1. Unimpaired Classes/Deemed to Accept**

Classes 1, 2, 3 and 4 are unimpaired under the Plan. Under section 1126(f) of the Bankruptcy Code, holders of (i) Claims in Classes 1, 2 and 3 and (ii) Interests in Class 4 are conclusively presumed to have accepted the Plan and are therefore not entitled to vote to accept or reject the Plan.

### **2. Impaired Classes/Deemed to Reject**

Class 5 is impaired under the Plan and is deemed to reject the Plan. Therefore, holders of Interests in Class 5 are not entitled to vote to accept or reject the Plan.

### **3. Elimination of Classes for Voting Purposes**

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

### **4. Voting Classes; Deemed Acceptance by Non-Voting Classes**

If a Class contains Claims or Interests eligible to vote and no holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be deemed accepted by such Class.

### **5. Intercompany Interests**

All intercompany interests shall be reinstated, and the corporate structure of the Debtor shall remain in effect under the Plan for the ultimate benefit of ESW as the holder of the New Equity.

### **6. Controversy Concerning Classification, Impairment or Voting Rights**

In the event a controversy or dispute should arise involving issues related to the classification, impairment or voting rights of any Creditor or Interest Holder under the Plan, whether before or after the Confirmation Date, the Bankruptcy Court may, after notice and a hearing, determine such controversy. Without limiting the foregoing, the Bankruptcy Court may estimate for voting purposes (i) the amount of any contingent or unliquidated Claim the fixing or liquidation of, as the case may be, would unduly delay the administration of the Chapter 11 Case and (ii) any right to payment arising from an equitable remedy for breach of performance.

## **D. Means for Implementation of the Plan**

### **1. Continued Corporate Existence**

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

Upon the Effective Date, and without any further action by the shareholders, directors, or officers of the Reorganized Debtor, the Reorganized Debtor's Charter Documents shall be deemed amended (a) to the extent necessary, to incorporate the provisions of the Plan, and (b) to prohibit the issuance by the Reorganized Debtor of nonvoting securities to the extent required under section 1123(a)(6) of the Bankruptcy Code, subject to further amendment of such Charter Documents as permitted by applicable law, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval other than any requisite filings required under applicable state, provincial or federal law. The Reorganized Debtor's Charter Documents shall be filed with the Plan Supplement.



## 2. Management and Board of Directors

The Plan Sponsor may nominate and elect new members for the board of directors of the Reorganized Debtor in accordance with the Reorganized Debtor's Charter Documents. The identity of such new members shall be disclosed in the Plan Supplement on or prior to the Plan Supplement Deadline. Upon the Effective Date, the current members of the Debtor's board of directors shall no longer serve in such capacity and shall, automatically and without further action or approval, be discharged of all duties in connection therewith.

## 3. Arrangements with the Distribution Trustee

The identity of the individual or entity proposed to serve as the Distribution Trustee under the Distribution Trust shall be disclosed by the Debtor in the Plan Supplement. At the Confirmation Hearing, the Debtor shall seek Bankruptcy Court approval of the Distribution Trustee. The person or entity so approved shall serve as the Distribution Trustee upon effectiveness of the Distribution Trust Agreement on the Effective Date. All compensation for the Distribution Trustee shall be paid from the Available Cash in accordance with the Distribution Trust Agreement.

## 4. The Closing

The Closing of the transactions required and contemplated under the Plan shall take place on the Effective Date at the offices of Goulston & Storrs PC, 885 Third Avenue, 18th Floor, New York, New York 10022, or at such other place identified in a notice provided to those parties listed in Section 12.14 of the Plan. The Debtor and Plan Sponsor may reschedule the Closing by making an announcement at the originally scheduled Closing of the new date for the Closing. All documents to be executed and delivered by any party as provided in this Article V and all actions to be taken by any party to implement the Plan as provided herein shall be in form and substance satisfactory to the Debtor and Plan Sponsor. The following actions shall occur at or before the Closing (unless otherwise specified), and shall be effective as of the Effective Date:

(a) Execution of Documents and Corporate Action. The Debtor shall deliver all documents and perform all actions reasonably contemplated with respect to implementation of the Plan. The Debtor, or its designee, is authorized (i) to execute on behalf of the Debtor, in a representative capacity and not individually, any documents or instruments after the Confirmation Date or at the Closing that may be necessary to consummate the Plan; and (ii) to undertake any other action on behalf of the Debtor to consummate the Plan. Each of the matters provided for under the Plan involving the corporate structure of the Debtor or corporate action to be taken by or required of the Debtor will, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized, approved, and (to the extent taken before the Effective Date) ratified in all respects without any requirement of further action by stockholders, creditors, or directors of the Debtor. On the Effective Date, all matters provided for in the Plan involving the corporate structure of the Reorganized Debtor, and all corporate actions required by the Debtor and the Reorganized Debtor in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtor, the Reorganized Debtor or the Bankruptcy Court. For purposes of effectuating the Plan, none of the transactions contemplated in the Plan shall constitute a change of control under any agreement, contract, or document of the Debtor.

(b) Release of Liens. Upon request by the Debtor, the Reorganized Debtor or the Plan Sponsor, any Person holding a Lien in any of the Debtor's Property shall execute any lien release or similar document(s) required to implement the Plan or reasonably requested by the Debtor, the Reorganized Debtor or the Plan Sponsor in a prompt and diligent manner. Notwithstanding the foregoing, the Debtor, the Reorganized Debtor or the Plan Sponsor is authorized to execute any lien release or similar document(s) required to implement the Plan.

(c) Cancellation of Interests. On the Effective Date, all existing Interests of Debtor shall be retired, cancelled, extinguished and/or discharged in accordance with the terms of the Plan. Except as otherwise provided in the Plan or the Plan Supplement, on the Effective Date: (1) the obligations of the Debtor under any 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 Debtor giving rise to any Claim or Interest shall be cancelled as to the Debtor and the Reorganized Debtor shall not have any continuing obligations thereunder; and (2) the obligations of the Debtor 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, purchase rights, options, warrants or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtor shall be released and discharged.

(d) Issuance of New Equity. On the Effective Date, 1,000 shares of New Equity of the Reorganized Debtor shall be issued to ESW, representing 100% of the equity of the Reorganized Debtor. The New Equity shall be free and clear of all Liens, Claims, interests, and encumbrances of any kind, except as otherwise provided in the Plan. All the shares of the New Equity issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assignable. On the Effective Date, none of the New Equity will be listed on a national securities exchange. The Reorganized Debtor may take all necessary actions, if applicable, after the Effective Date to suspend any requirement to (i) be a reporting company under the Securities Exchange Act, and (ii) file reports with the Securities and Exchange Commission or any other entity or party. On or promptly after the Effective Date, the Debtor or the Reorganized Debtor may file with The Nasdaq Stock Market LLC a Form 25 for the purpose of terminating the listing of the Debtor Common Stock on Nasdaq and with the Securities and Exchange Commission a Form 15 for the purpose of terminating the registration of the Debtor Common Stock under the Securities Exchange Act and take any other in connection therewith.

(e) Funding of the Cash Consideration. On the Effective Date, the Plan Sponsor shall contribute to the Debtor or Distribution Trust an amount of Cash equal to the Cash Consideration. Funding of the Cash Consideration is not subject to any financing contingency. The Cash Consideration shall be used to fund Distributions under the Plan, subject to Section 5.4(h) of the Plan.

(f) Execution and Ratification of the Distribution Trust Agreement. As a condition to the occurrence of the Effective Date, the Distribution Trust Agreement shall be executed by all parties thereto and become effective on the Effective Date.

(g) Transfer of Distribution Trust Assets. On the Effective Date, all property of the Debtor constituting the Distribution Trust Assets shall be conveyed and transferred by the Debtor to the Distribution Trust, free and clear of all Liens, Claims, Interests, and encumbrances. Unless otherwise provided for herein, on and after the Effective Date, without further approval of the Bankruptcy Court, the Distribution Trust may sell, assign, transfer, abandon or otherwise dispose of at a public or private sale any of the IP Addresses for the purpose of liquidating or converting such assets to Cash; provided, however, that nothing herein restricts the right of the Distribution Trust to seek Bankruptcy Court approval for such sale, assignment, transfer, or other disposal of the IP Addresses.

(h) Distributions from Cash-on-Hand and IP Addresses. Prior to making Distributions to pay holders of Allowed Claims and Interests from the Cash-on-Hand or proceeds generated from the sale of the IP Addresses after the Effective Date, such funds shall first be used to pay, to the extent not already paid by the Debtor, (i) all Administrative Claims, including Professional Compensation Claims and Ordinary Course Liabilities accrued prior to the Effective Date; (ii) all U.S. Trustee Fees payable in accordance with 28 U.S.C. § 1930; (iii) all taxes that accrued during the Case; and (iv) all costs related to administration of the Distribution Trust.

## 5. Tax Treatment of the Distribution Trust

The Distribution Trust established under the Plan is established for the purpose of making Distributions to holders of Allowed Claims and Interests from the Distribution Trust Assets transferred to the Distribution Trust (or from the proceeds of such Distribution Trust Assets, as applicable) and performing related and incidental functions referenced in the Distribution Trust Agreement. The Distribution Trust shall have no objective of continuing or engaging in any trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the trust. The purpose of the Distribution Trust is to provide a mechanism for the liquidation of the Distribution Trust Assets, and to distribute the Consideration and the proceeds of the liquidation, net of all claims, expenses, charges, liabilities, and obligations of the Distribution Trust, to the Beneficiaries in accordance with the terms of the Plan. No business activities will be conducted by the Distribution Trust other than those associated with or related to the liquidation of the Distribution Trust Assets. It is intended that the Distribution Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of the Treasury Regulations Section 301.7701-4(d). All parties and Beneficiaries shall treat the transfers in trust described herein as transfers to the Beneficiaries for all purposes of the Internal Revenue Code of 1986, as amended (including Sections 61(a)(12), 483, 1001, 1012, and 1274 thereof). All the parties and Beneficiaries shall treat the transfers in trust as if all the transferred assets, including

all the Distribution Trust Assets, had been first transferred to the Beneficiaries and then transferred by the Beneficiaries to the Distribution Trust. The Beneficiaries shall be treated for all purposes of the Internal Revenue Code of 1986, as amended, as the grantors of the Distribution Trust and the owners of the Distribution Trust. The Distribution Trustee shall file returns for the Distribution Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) or (b). All parties, including the Beneficiaries and the Distribution Trustee, shall value the Distribution Trust Assets consistently, and such valuations shall be used for all federal income tax purposes. Beneficiaries may wish to consult with a tax professional regarding the tax consequences of holding a Beneficial Interest in or receiving a Distribution from the Distribution Trust.

#### **6. Preservation of Rights of Action**

Unless any Rights of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, transferred or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtor shall retain and may enforce all rights to commence and pursue any and all Rights of Action, and the Reorganized Debtor's rights to commence, prosecute or settle such Rights of Action shall be preserved notwithstanding the occurrence of the Effective Date. For the avoidance of doubt, and notwithstanding Section 6.1 of the Plan, the Reorganized Debtor shall retain and shall have the exclusive right to enforce any and all of the Debtor's Rights of Action including, without limitation, those arising from or related to (a) Intellectual Property and (b) claims and causes of action under chapter 5 of the Bankruptcy Code (including, without limitation, claims for accounts receivable and claims for turnover of Cash of the Debtor being held in escrow or on deposit by third parties), and shall be the sole beneficiary of any contested matters, claims objections, proceedings or similar actions in connection therewith.

#### **7. Vesting of Property in Reorganized Debtor**

On the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, except as otherwise expressly provided in the Plan or Confirmation Order, all Estate Property, other than the Distribution Trust Assets, shall vest in the Reorganized Debtor free and clear of all Liens, Claims, Interests, and encumbrances of any kind, except as otherwise provided in the Plan. Moreover, pursuant to Bankruptcy Code section 1141(d), the effect of confirmation of the Plan shall be to discharge the Debtor from any debt that arose before the Effective Date, and any debt of a kind specified in Bankruptcy Code sections 502(g), 502(h), or 502(i).

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

On the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtor may operate its business and may use, acquire, or dispose of any and all Estate Property, without supervision of or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

#### **8. Tax Exemption**

The Plan and the Confirmation Order provide for (a) the issuance, transfer or exchange of notes, debt instruments and equity securities under or in connection with the Plan; (b) the creation, assignment, recordation or perfection of any lien, pledge, other security interest or other instruments of transfer; (c) the making or assignment of any lease; (d) the creation, execution and delivery of any agreements or other documents creating or evidencing the formation of the Reorganized Debtor or the issuance or ownership of any interest in the Reorganized Debtor; or (e) the making or delivery of any deed or other instrument of transfer under the Plan in connection with the vesting of the Estate's assets in the Reorganized Debtor or the Distribution Trust pursuant to or in connection with the Plan, including, without limitation, merger agreements, stock purchase agreement, agreements of consolidation, restructuring, disposition, liquidation or dissolution, and transfers of tangible property. Pursuant to section 1146 of

the Bankruptcy Code and the Plan, any such act described or contemplated herein will not be subject to any stamp tax, transfer tax, filing or recording tax, or other similar tax.

## **9. No Successor Liability**

Pursuant to Bankruptcy Code section 1141 and Article X of the Plan, the property of the Debtor's estate shall vest in the Reorganized Debtor, free and clear of all claims and interests of creditors and equity holders of the Debtor. Moreover, pursuant to Bankruptcy Code section 1141(d), the effect of confirmation of the Plan shall be to discharge the Debtor from any debt that arose before the Effective Date, and any debt of a kind specified in Bankruptcy Code sections 502(g), 502(h), or 502(i).

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

## **E. Treatment of Executory Contracts and Unexpired Leases**

### **1. Assumption of Executory Contracts**

On the Effective Date, except as otherwise provided in the Plan or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, including without limitation pursuant to Section 7.2 of the Plan, all Executory Contracts and Unexpired Leases shall be deemed assumed without the need for any further notice to or action, order, or approval of the Bankruptcy Court as of the Effective Date under section 365 of the Bankruptcy Code; provided, further, that, upon the occurrence of the Effective Date, the RSA will terminate in accordance with its terms.

Entry of the Confirmation Order shall constitute a Final Order of the Bankruptcy Court approving the assumption or assumption and assignment, as applicable, of such Executory Contracts or Unexpired Leases as set forth in the Plan, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, the assumption or assumption and assignment of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or a Final Order of the Bankruptcy Court but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified in the Plan or any Final Order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law.

To the maximum extent permitted by law, to the extent that any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Plan restricts or prevents, purports to restrict or prevent, or is breached or deemed breached by the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any "change of control" provision), such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto.

### **2. Rejection of Executory Contracts**

All Executory Contracts and Unexpired Leases identified on the Schedule of Rejected Contracts and Unexpired Leases, to be attached to the Plan as Exhibit B (or rejected by the Debtor previously), shall be deemed rejected on the Effective Date. Entry of the Confirmation Order shall constitute approval of such rejections under sections 365 and 1123 of the Bankruptcy Code. Notwithstanding the rejection of an Executory Contract, the terms of any confidentiality agreement or covenant not to compete contained therein shall survive and remain in full force and effect for the term thereof.

### 3. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash from the Consideration on or about the Effective Date, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and payment of the applicable cure amount shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any proof of claim filed with respect to an Executory Contract or Unexpired Lease that is assumed shall be deemed disallowed and expunged, without further notice to or action, order or approval of the Bankruptcy Court.**

### 4. Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into after the Petition Date, including any Executory Contracts and Unexpired Leases assumed by the Debtor, will be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, unless specifically rejected pursuant to Section 7.2 of the Plan, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order. For the avoidance of doubt, the Reorganized Debtor is not assuming, and will not be liable for, any contracts with the Debtor's professionals or any Professional Compensation Claims in connection therewith.

### 5. Procedures Related to Assumption of Executory Contracts and Unexpired Leases

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

The Cure Amounts associated with the assumption of the Executory Contracts and Unexpired Leases pursuant to Section 7.1 of the Plan are specified in the Schedule of Assumed Contracts and Unexpired Leases attached to the Plan as Exhibit A. The Debtor shall serve counterparties to the Executory Contracts and Unexpired Leases with a Cure Notice. The Debtor and the Plan Sponsor reserve the right to amend or supplement the Cure Notice.

Any objection to Cure Notice including (i) a Cure Objection or (ii) an Adequate Assurance Objection to be provided by the Plan Sponsor on behalf of the Reorganized Debtor must be in writing, filed with the Bankruptcy Court, and served upon (a) the Debtor, (b) counsel to the Debtor, (c) counsel to the Plan Sponsor, and (d) the U.S. Trustee, by no later than the Cure Amount Objection Deadline (*i.e.*, ~~May 7~~<sup>13</sup>, 2020). Any such Cure Objection or Adequate Assurance Objection must set forth the specific default alleged under the applicable Executory Contract and claim a specific monetary amount that differs from the applicable Cure Amount, if any, and/or further information required of the Reorganized Debtor with respect to adequate assurance of future performance.

If no Objection to the Cure Amount with respect to an Executory Contract or Unexpired Lease is received by the Objection Deadline, then the assumption of such Executory Contract or Unexpired Lease shall be authorized pursuant to sections 365 and 1123 of the Bankruptcy Code and the applicable Cure Amount, if any, shall be binding upon the non-Debtor counterparty to such Executory Contract or Unexpired Lease for all purposes and shall constitute a final determination of the Cure Amount required to be paid to such Executory Contract or Unexpired Lease counterparty, and such Executory Contract or Unexpired Lease counterparty shall be deemed to have waived its right to object to, contest, condition, or otherwise restrict the assumption of such Executory Contract or Unexpired Lease (including, without limitation, from asserting any additional cure or other amounts with respect to the Executory Contract or Unexpired Lease arising prior to such assumption). Furthermore, upon the assumption of such Executory Contract or Unexpired Lease, the Reorganized Debtor shall enjoy all of the Debtor's rights and benefits thereunder without the necessity of obtaining any party's written consent to the Debtor's assumption of such rights and benefits.



(b) Objection to Disputed Cure Amounts

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

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

(c) Payment of Cure Amounts

On or about the Effective Date, the Distribution Trustee shall pay all Cure Amounts related to Executory Contracts and Unexpired Leases listed on the Cure Notice, other than Disputed Cure Amounts from out of Available Cash.

Subject to Section 7.5(b) of the plan, the Distribution Trustee shall pay all Cure Amounts that are subject to an objection on the later of (i) within ten (10) Business Days after the Effective Date or (ii) within ten (10) Business Days after entry of an order by the Bankruptcy Court resolving the objection or approving an agreement between the parties concerning the Cure Amount.

(d) No Admission of Liability

Neither the inclusion nor exclusion of any Executory Contract or Unexpired Lease by the Debtor and the Plan Sponsor on the Cure Notice, nor anything contained in the Plan, shall constitute an admission by the Debtor or the Plan Sponsor that any such contract or unexpired lease is in fact an Executory Contract or Unexpired Lease or that the Debtor has any liability thereunder.

(e) Reservation of Rights

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

**6. Rejection Claim**

Each Claim resulting from the rejection of an Executory Contract or Unexpired Lease, pursuant to Section 7.2 of the Plan, shall be filed with the Bankruptcy Court no later than the Rejection Claim Bar Date; provided, however, any party whose Executory Contract or Unexpired Lease is rejected pursuant to a revocation notice, pursuant to Section 7.5(b) of the Plan, may file a rejection damage Claim arising out of such rejection within thirty (30) days after the filing of the revocation notice with the Bankruptcy Court. Any Claim resulting from the rejection of an Executory Contract or Unexpired Lease not filed by the applicable deadline shall be discharged and forever barred, and shall not be entitled to any Distributions under the Plan. The Distribution Trustee shall have the right to object to any rejection damage Claim.

Notwithstanding the rejection of an Executory Contract or Unexpired Lease, the terms of any confidentiality agreement or covenant not to compete contained therein shall survive and remain in full force and effect for the term thereof.

## **7. Indemnification Obligations**

On and as of the Effective Date, the Indemnification Provisions will be assumed with respect to any claims or Causes of Action whether direct or derivative, liquidated or unliquidated, fixed, or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted. Notwithstanding anything to the contrary herein, the Reorganized Debtor shall not be required to indemnify the Debtor's managers, directors, officers, or employees for any claims or Causes of Action for which indemnification is barred under applicable law, the Debtor's organizational documents, or applicable agreements governing the Debtor's indemnification obligations.

Except with respect to the Indemnification Provisions, any other obligation or agreement of the Debtor to indemnify, reimburse, or limit the liability of any Person, including any contract or lease counterparty, relating to any acts or omissions occurring before the Effective Date, whether arising pursuant to charter, bylaws, contract or applicable state law, shall be deemed to be, and shall be treated as, a General Unsecured Claim and/or Executory Contract and shall be deemed to be rejected, canceled, and discharged pursuant to the Plan as of the Effective Date and any and all Claims resulting from such obligations are disallowed under section 502(e) of the Bankruptcy Code or other applicable grounds, including section 502(d), or if any court of applicable jurisdiction rules to the contrary, such Claim shall be estimated pursuant to section 502(c) of the Bankruptcy Code in the amount of \$0 or such other amount as the Bankruptcy Court shall determine.

## **8. Employee Compensation and Benefits**

Subject to the provisions of the Plan and the RSA, all Compensation and Benefits Programs shall be treated as Executory Contracts under the Plan and deemed assumed on the Effective Date pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code; provided that all provisions in any agreement or Compensation and Benefits Program relating to equity-based awards, including any termination-related provisions with respect to equity based awards, will be deemed rejected and terminated on the Effective Date; provided further that any agreement or Compensation and Benefits Program related to Dr. Pehong Chen shall be replaced and superceded by the Transition Services Agreement. The Reorganized Debtor shall 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 and not otherwise paid pursuant to a Final Order of the Bankruptcy Court.

Any assumption or rejection of an agreement or Compensation and Benefits Program pursuant to the terms herein shall not be deemed to trigger any applicable change of control, immediate vesting, termination, or similar provisions therein. No counterparty shall have rights under a Compensation and Benefits Program assumed pursuant to the Plan other than those applicable immediately prior to such assumption.

## **9. Director and Officer's Insurance Policies**

Notwithstanding anything in the Plan to the contrary, the Reorganized Debtor shall be deemed to have assumed all of the Debtor's D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtor's foregoing assumption of the D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained in the Plan, confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be filed.

## **10. Other Insurance Policies**

On the Effective Date, each of the Debtor's insurance policies in existence as of the Effective Date shall be reinstated and continued in accordance with their terms and, to the extent applicable, shall be deemed assumed by the Reorganized Debtor pursuant to section 365 of the Bankruptcy Code and Article VII of the Plan. Nothing in the Plan shall affect, impair, or prejudice the rights of the insurance carriers, the insureds, or the Reorganized Debtor under the insurance policies in any manner, and such insurance carriers, the insureds, and Reorganized Debtor shall retain all rights and defenses under such insurance policies. The insurance policies shall apply to and be enforceable by and



against the insureds and the Reorganized Debtor in the same manner and according to the same terms and practices applicable to the Debtor, as existed prior to the Effective Date.

## **F. Provisions Governing Distributions of Property**

### **1. Distribution Procedures Regarding Allowed Claims**

(a) In General. The Distribution Trustee shall make all Distributions on account of Allowed Claims required to be made under the Plan, including Distributions from the Distribution Trust.

(b) Distributions on Allowed Claims Only. Distributions from Available Cash shall be made only to the holders of Allowed Claims. Unless and until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive a Distribution.

(c) Place and Manner of Payments of Distributions Regarding Allowed Claims. Except as otherwise specified in the Plan, Distributions from Available Cash on account of Allowed Claims shall be made by mailing such Distribution to the Creditor at the address listed in any proof of claim filed by the Creditor or at such other address as such Creditor shall have specified for payment purposes in a written notice received by the Distribution Trustee at least twenty (20) days before a Distribution Date. If a Creditor has not filed a proof of claim or sent the Distribution Trustee a written notice of payment address, then the Distribution(s) for such Creditor will be mailed to the address identified in the Schedules of Assets and Liabilities. The Distribution Trustee shall distribute any Cash by wire, check, or such other method as it deems appropriate under the circumstances. Before receiving any Distributions, all Creditors, at the request of the Distribution Trustee, must provide written notification of their respective Federal Tax Identification Numbers or Social Security Numbers to the Distribution Trustee; otherwise, the Distribution Trustee may suspend Distributions to any Creditors who have not provided their Federal Tax Identification Numbers or Social Security Numbers.

(d) Undeliverable Distributions. If a Distribution made from Available Cash on account of an Allowed Claim to any Creditor is returned as undeliverable, the Distribution Trustee shall use reasonable efforts to determine the then current address for such Creditor. If the Distribution Trustee cannot determine, or is not notified of, a then current address for such Creditor within six (6) months after the Effective Date, the Distribution reserved for such Creditor shall be deemed an unclaimed Distribution, and Section 6.5(e) of the Plan shall be applicable thereto.

(e) Unclaimed Distributions. If the current address for a Creditor entitled to a Distribution from Available Cash on account of an Allowed Claim under the Plan has not been determined or such Creditor has otherwise not been located within six (6) months after the Effective Date or a Creditor has not submitted a valid Federal Tax Identification Number or Social Security Number to the Distribution Trustee within three (3) months after the Distribution Trustee made a request therefor, then in each case such Creditor shall forfeit the Distribution on the Claim and any amounts to which the Creditor would have otherwise been entitled shall become Available Cash to pay Allowed Interests the subsequent portion of the Equity Interest Recovery pursuant to Section 6.6(a)(ii) of the Plan.

### **2. Distribution Procedures Regarding Allowed Interests**

(a) In General. The Distribution Trustee shall make all Distributions on account of Allowed Interests required to be made under the Plan, to effectuate the Equity Interest Recovery, including Distributions from the Distribution Trust.

(b) Distributions on Allowed Interests Only. Distributions from Available Cash shall be made only to the holders of Allowed Interests. Unless and until a Disputed Claim becomes an Allowed Interest, the holder of that Disputed Interest shall not receive a Distribution from Available Cash.

(c) Distribution Procedures Regarding Allowed Equity Interests. As a condition precedent to receiving any distribution on account of its Equity Interests, each holder of record of an Allowed Equity Interest shall be deemed to have surrendered such Equity Interest, and such surrendered Equity Interest shall be deemed to

be cancelled as of the Effective Date pursuant to Section 6.6 of the Plan, except to the extent otherwise provided herein, and the Distribution Record Date shall not apply to such distributions. The distribution to Holders of Allowed Equity Interests through DTC shall be made in accordance with the customary procedures of DTC.

### **3. Additional Distribution Procedures**

(a) Withholding. The Distribution Trustee may, but shall not be required to, at any time withhold from a Distribution from Available Cash to any Person (except the Internal Revenue Service) amounts sufficient to pay any tax or other charge that has been or may be imposed on such Person with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution provided for in the Plan, whenever such withholding is determined by the Distribution Trustee (in its sole discretion) to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. The Distribution Trustee, in the exercise of its sole discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts that may be withheld in accordance with the provisions of this section.

#### **(b) Dissolution**

(i) The Distribution Trustee shall be discharged and Distribution Trust shall be dissolved at such time as all of the Distribution Trust Assets have been liquidated and distributed pursuant to the Plan and the Distribution Trust Agreement; provided, however, that in no event shall the Distribution Trust be dissolved later than three (3) years from the creation of the Distribution Trust unless the Bankruptcy Court, upon motion within the six-month period prior to the third (3rd) anniversary (or within the six-month period prior to the end of an extension period), determines that a fixed period extension is necessary to facilitate or complete the liquidation of the Distribution Trust Assets. Such extensions in aggregate shall not exceed three (3) years without a favorable private letter ruling from the Internal Revenue Service or an opinion of counsel satisfactory to the Distribution Trustee that any further extension would not adversely affect the status of the trust as a liquidating trust for United States federal income tax purposes)

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

(c) Procedures Regarding Distributions from the Distribution Trust. Procedures regarding Distributions from the Distribution Trust shall be governed by the Distribution Trust Agreement.

### **G. Procedures for Resolution of Disputed Claims**

#### **1. Right to Object to Claims**

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

reasonable assistance and cooperation to the Distribution Trustee, at the Distribution Trustee's cost, in connection with the Distribution Trustee's prosecution of objections to Claims, including, without limitation, reasonable access to the books and records of the Debtor or the Reorganized Debtor (as the case may be) and other information reasonably requested by the Distribution Trustee to enable the Distribution Trustee to perform its obligations under the Distribution Trust Agreement; provided that the Distribution Trustee will keep all such information confidential and will not disclose any information provided by the Reorganized Debtor without express written consent of the Reorganized Debtor. Further, notwithstanding anything to the contrary, no provision by the Reorganized Debtor of any privileged or confidential information to the Distribution Trustee shall result in the waiver of any privilege, confidentiality or other protections held by the Reorganized Debtor. The Distribution Trustee will cooperate fully with the Reorganized Debtor in preserving privilege and confidentiality of any information provided by the Reorganized Debtor to the Distribution Trustee. Notwithstanding the foregoing, nothing herein shall impose upon or require the Reorganized Debtor to preserve or maintain the Debtor's books and records for any purpose beyond twelve (12) months following the Effective Date unless the Distribution Trustee notifies the Reorganized Debtor in writing before that time that the Distribution Trustee has no further need to have access to such books and records, in which case the Distribution Trust shall bear the costs of such preservation and/or maintenance.

## **2. Deadline for Objecting to Claims**

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

## **3. Deadline for Responding to Claim Objections**

No later than seven (7) days prior to a hearing scheduled with respect to an objection to any Claim, or such other date as is indicated on such objection or the accompanying notice thereof, the Creditor whose Claim was objected to must file a written response to the objection with the Bankruptcy Court and serve a copy on the Distribution Trustee. Failure to file a written response within the applicable deadline may cause the Bankruptcy Court to enter a default judgment against the non-responding Creditor or otherwise grant the relief requested in the claim objection.

## **4. Right to Request Estimation of Claims**

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

## **H. Injunctions, Releases, and Discharge**

### **1. Discharge and Release**

The Plan contains a release of the Debtor which provides:

**To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or the Confirmation Order, all Distributions under the Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and causes of action, whether known or unknown, including any interest accrued on such Claims from and after the Petition Date, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor or any of its assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Interests. Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, the Debtor and its estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code. The**

Confirmation Order shall be a judicial determination of the discharge of all Claims against, and Interests in, the Debtor, subject to the occurrence of the Effective Date.

## 2. Discharge Injunction

The Plan contains a discharge injunction which provides:

Except as otherwise expressly provided in the Plan, the discharge and releases set forth in Section 10.1 of the Plan shall also operate as an injunction permanently prohibiting and enjoining the commencement or continuation of any action or the employment of process with respect to, or any act to collect, recover from, or offset (a) any Claim or Interest discharged and released in Section 10.1 of the Plan, or (b) any cause of action, whether known or unknown, based on the same subject matter as any Claim or Interest discharged and released in Section 10.1 of the Plan. Except as otherwise expressly provided in the Plan, all Persons shall be precluded and forever barred from asserting against the Debtor and the Reorganized Debtor, their successors or assigns, or their assets, properties, or interests in property, any other or further Claims or Interests, or any other right to legal or equitable relief, regardless of whether such right can be reduced to a right to payment, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date.

## 3. Exculpation and Limitation of Liability

The Plan contains an exculpation in favor of the Debtor and its representatives and professionals with respect to post-petition and pre-Effective Date acts which provides:

The Exculpated Parties will neither have nor incur any liability to any entity for any claims or causes of action arising on or after the Petition Date and prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the consummation of the Plan, the Disclosure Statement, or any other contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtor, the approval of the Disclosure Statement or confirmation or consummation of the Plan; provided, however, that the foregoing provisions will have no effect on the liability of any entity that results from any such act or omission that is determined in a Final Order of the Bankruptcy Court or other court of competent jurisdiction to have constituted gross negligence or willful misconduct; provided, further, that the Debtor will be entitled to rely upon the advice of counsel concerning their duties pursuant to, or in connection with, the above referenced documents, actions or inactions.

## 4. Releases by the Debtor

The Plan contains the Debtor's release of the Released Parties which provides:

Notwithstanding anything to the contrary in the Plan or the Confirmation Order, effective as of the Effective Date, for good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby acknowledged and confirmed, the Debtor will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full discharge, waiver and release to the Released Parties and their respective related parties (and each such Released Party and their respective related parties so released shall be deemed forever released by the Debtor) and their respective properties from any and all claims that the Debtor or any of their respective related parties would have been legally entitled to assert in their own right, on their own behalf, or on behalf of another party, against the Released Parties or their respective related parties; provided, however, that the foregoing provisions of this release shall not operate to waive or release (i) the rights of the Debtor to enforce the Plan and the contracts, instruments, releases and other agreements or documents delivered under or in connection with the Plan or assumed pursuant to the Plan or assumed pursuant to final order of the Bankruptcy Court; and/or (ii) any defenses against a third party.

**The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any person, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, or liabilities released pursuant to this release.**

## **5. Releases by Third Parties**

The Plan also contains a release by third parties, including Creditors, in favor of the Reorganized Debtor, the Plan Sponsor, the DIP Lender, the Noteholders and their respective representatives, professionals and affiliates which provides:

**On, and as of, the Effective Date and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Released Parties shall be forever released from any and all claims, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities throughout the world under any law or court ruling through the Effective Date (including all claims based on or arising out of facts or circumstances that existed as of or prior to the Effective Date, including claims based on negligence or strict liability, and further including any derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor, its Estate, or the Reorganized Debtor would have been legally entitled by applicable law to assert in its own right, whether individually or collectively) which the Debtor, its Estate, the Reorganized Debtor, Creditors, Interest Holders or other persons receiving or who are entitled to receive Distributions under the Plan may have against any of them in any way related to the Chapter 11 Case or the Debtor (or its predecessors); provided however that the foregoing release is granted only by Creditors and Interest Holders who are unimpaired and do not indicate an election to opt-out of granting such release by making such election electronically on the Claims Agent's website at <https://dm.epiq11.com/broadvision>; provided, however, that the release provided in Section 10.5 of the Plan shall not extend to any claims by any Governmental Unit with respect to criminal liability under applicable law, willful misconduct or bad faith under applicable law, or ultra vires acts under applicable law.**

**For the avoidance of doubt, nothing in this Article X shall prevent the enforcement of the terms of the Plan.**

With regard to all Released Parties, releases are appropriate for several reasons: (1) the Plan is expected to be overwhelmingly accepted by creditors; (2) each Released Party has made substantial contributions in exchange for the releases provided for its benefit under the Plan; (3) each Released Party shared an identity of interest in the common goal of confirmation of the Plan; and (4) the Debtor believes that the releases provided in the Plan are of little or no value to its estate as the Debtor does not believe that any claims exist against any Released Party at this time. ESW is entitled to releases under the Plan. As the Plan Sponsor, ESW has made substantial contributions to the Plan. Without ESW, the Plan would not be possible and ESW would not serve as Plan Sponsor.

## **I. Conditions to Confirmation and Effectiveness**

### **1. Conditions to Confirmation**

The Confirmation Order will not be effective unless (a) the Confirmation Order shall be in form and substance acceptable to the Debtor and Plan Sponsor, in their respective reasonable discretion, and shall provide for ESW to acquire all of the New Equity, free and clear of all Liens, Claims, interests and encumbrances of any kind, except as otherwise provided in the Plan, (b) the final version of the Plan, Plan Supplement, and any other documents, or schedules thereto, shall have been Filed in form and substance acceptable to the Debtor and Plan Sponsor in their respective reasonable discretion, and (c) no breach or failure to comply with the terms of the RSA, the Plan or any other material Final Order of the Bankruptcy Court shall have occurred and be continuing.



## **2. Conditions to Effectiveness**

The occurrence of the Effective Date is subject to the occurrence of each of the following conditions: (a) the conditions to confirmation above have been either satisfied, or waived, by the Debtor and Plan Sponsor, (b) the Confirmation Order in form and substance reasonably satisfactory to the Debtor and Plan Sponsor shall have been entered by the Bankruptcy Court, confirming the Plan, and the Confirmation Order shall be in full force and effect and not subject to any stay or injunction, (c) the Plan Documents shall have been executed and delivered by all relevant parties, and any conditions (other than the occurrence of the Effective Date or certification by the Debtor that the Effective Date has occurred) contained therein have been satisfied or waived in accordance therewith, (d) the Cash Consideration shall have been received by the Debtor or the Distribution Trust, (e) no breach or failure to comply with the terms of the RSA, the Plan, the Confirmation Order or any other material Final Order of the Bankruptcy Court shall have occurred and be continuing; (f) ESW shall acquire the New Equity, free and clear of all Liens, Claims, interests and encumbrances of any kind, except as otherwise provided in the Plan, and (g) the Debtor has not caused, or as to Insiders, permitted to occur, (i) a Material Adverse Change with respect to the Debtor's Intellectual Property or (ii) an "ownership change" as such term is used in section 382 of title 26 of the United States Code.

### **J. Modification, Revocation or Withdrawal of the Plan**

#### **1. Defects, Omissions, and Amendments of the Plan**

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

#### **2. Withdrawal of the Plan**

The Debtor reserves the right to withdraw the Plan, in accordance with the RSA or to the extent Plan Sponsor otherwise consents, at any time prior to the Confirmation Date. If the Debtor withdraws the Plan prior to the Confirmation Date, or if the Confirmation Date does not occur by May 22, 2020, unless otherwise extended by mutual agreement of the Debtor and the Plan Sponsor or the Effective Date does not occur by May 29, 2020, unless otherwise extended by mutual agreement of the Debtor and the Plan Sponsor, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute an admission, waiver or release of any claims by or against the Debtor or any other person, or to prejudice in any manner the rights of the Debtor, the Debtor's Estate, or any person in any further proceedings involving the Debtor.

### **K. Retention of Jurisdiction**

#### **1. Bankruptcy Court Jurisdiction**

Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court shall retain and have such jurisdiction over the Chapter 11 Case to the maximum extent as is legally permissible, including, without limitation, for the following purposes:

(a) To allow, disallow, determine, liquidate, classify or establish the priority or secured or unsecured status of or estimate any Claim or Interest, including, without limitation, the resolution of any request for

payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Interests;

(b) To ensure that Distributions to holders of Allowed Claims and Interests are accomplished pursuant to the provisions of the Plan and the Distribution Trust Agreement;

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

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

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

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

(g) To decide or resolve any and all applications, motions, adversary proceedings, contested or litigated matters, and any other matters, or grant or deny any applications involving the Debtor, or the Estate that may be pending on the Effective Date or that may be brought by the Debtor, the Reorganized Debtor, or the Distribution Trustee (as applicable), or any other related proceedings by the Reorganized Debtor, and to enter and enforce any default judgment on any of the foregoing;

(h) To decide or resolve any and all Professional Compensation Claims;

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

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

(k) To interpret and enforce any orders entered by the Bankruptcy Court in the Chapter 11 Case; and

(l) To enter an order closing this Chapter 11 Case when all matters contemplating the use of such retained jurisdiction have been resolved and satisfied.

## **2. Limitations on Jurisdiction**

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

(m) Permit entry of a final judgment by the Bankruptcy Court in any core proceeding referenced in 28 U.S.C. § 157(b) and to hear and resolve such proceedings in accordance with 28 U.S.C. § 157(c) and any and all related proceedings, including, without limitation, (i) all proceedings concerning disputes with, or Rights of Action or Claims against, any Person that the Debtor, the Estate, the Distribution Trust or the Reorganized Debtor or any of their successors or assigns, may have, and (ii) any and all Rights of Action or other Claims against any



Person for harm to or with respect to (x) any Estate Property, including any infringement of Intellectual Property or conversion of Estate Property, or (y) any Estate Property lien or transferred by the Debtor to any other Person;

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

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

## **ARTICLE V. RISK FACTORS**

### **A. Risks Related to Bankruptcy**

#### **1. Parties May Object to the Plan's Classification of Claims and Equity Interests**

Bankruptcy Code section 1122 provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtor believes that the classification of the Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created Classes of Claims and Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims or Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

#### **2. The Debtor May Not Be Able to Obtain Confirmation of the Plan**

With regard to any proposed plan of reorganization, the Bankruptcy Court might not confirm the Plan as proposed if the Bankruptcy Court finds that any of the statutory requirements for confirmation under Bankruptcy Code section 1129 have not been met.

#### **3. The Conditions Precedent to the Effective Date of the Plan May Not Occur**

As more fully set forth in the Plan, the Effective Date is subject to certain conditions precedent. If such conditions precedent are not met or waived, the Effective Date will not occur.

#### **4. Allowed Claims And Interests May Exceed Estimates**

The projected distributions set forth in this Disclosure Statement are based upon, among other things, good faith estimates of the total amounts of Claims and Interests that will ultimately be Allowed. The actual amount of Allowed Claims, including Administrative Claims, and Interests could be materially greater than anticipated, which could impact the distributions to be made to holders of Claims and Interests.

If the Debtor has insufficient Cash from Cash-on-Hand and IP Address proceeds to pay for the costs and expenses of this Chapter 11 Case, including all Administrative Claims, US Trustee Fees and accrued taxes, then the Equity Interest Recovery may be reduced to account for any portion of such costs and expenses paid by the Plan Sponsor.

### **B. Risks Related to Financial Information**

The financial information contained in this Disclosure Statement has not been audited. In preparing this Disclosure Statement, the Debtor relied on financial data derived from the Debtor's books and records and schedules and statements that was available at the time of such preparation. Although the Debtor has used reasonable efforts to assure the accuracy of the financial information provided in this Disclosure Statement the Debtor is unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

**ARTICLE VI.**  
**CONFIRMATION OF THE PLAN**

**A. The Confirmation Hearing**

Bankruptcy Code section 1128(a) requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Bankruptcy Code section 1128(b) provides that any party in interest may object to Confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing to commence on May 14, 2020 at 2:00 p.m. (Prevailing Eastern Time), before the Honorable Christopher S. Sontchi United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

Objections to Confirmation of the Plan must be filed and served by no later May 7, 2020 at 4:00 p.m. (Prevailing Eastern Time). **Unless objections to Confirmation of the Plan are timely served and filed in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court.**

**B. Requirements for Confirmation of the Plan**

Among the requirements for the Confirmation of the Plan is that the Plan (i) is accepted by all Impaired Classes of Claims or Interests, or, if rejected by an Impaired Class of Claims or Interests, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Impaired Class of Claims or Interests; (ii) is feasible; and (iii) is in the “best interests” of Holders of Claims or Interests.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of Bankruptcy Code section 1129. The Debtor believes that: (i) the Plan satisfies or will satisfy all of the necessary statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtor has complied or will have complied with all of the necessary requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith. Specifically, in addition to other applicable requirements, the Debtor believes that the Plan satisfies or will satisfy the following applicable Confirmation requirements of Bankruptcy Code section 1129:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtor, as a plan proponent, has complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- Either each holder of a Claim in an Impaired Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Equity Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtor were liquidated on the Effective Date of the Plan under chapter 7 of the Bankruptcy Code.
- Each Class of Claims that is entitled to vote on the Plan will have accepted the Plan.

- Except to the extent a different treatment is agreed to, the Plan provides that all Administrative Claims and Allowed Priority Tax Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable.
- At least one Class of Impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.
- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successors thereto.
- All accrued and unpaid fees of the type described in 28 U.S.C. § 1930, including the fees of the U.S. Trustee, will be paid as of the Effective Date.

### C. Best Interests of Creditors / Liquidation Analysis

Often called the “best interests of creditors” test, Bankruptcy Code section 1129(a)(7) requires that a Bankruptcy Court find, as a condition to confirmation of a chapter 11 plan, that the plan provides, with respect to each impaired class, that each holder of a claim or an interest in such class either (i) has accepted the plan or (ii) will receive or retain under the plan property of a value that is not less than the amount that such holder would receive or retain if the debtor liquidated under Chapter 7 on the Effective Date. In this Chapter 11 Case all Allowed Claims will be paid in full and holders of Allowed Equity Interests are receiving a material cash distribution. Under these circumstances it is apparent that liquidation under Chapter 7 on the Effective Date could not produce greater value, even before considering the substantial delay involved in distributing proceeds in such a Chapter 7 proceeding. Accordingly, the best interests of creditors test is clearly satisfied and a formal liquidation analysis presentation is not necessary or useful in this context. To make these findings, the Bankruptcy Court must: (a) estimate the cash liquidation proceeds that a chapter 7 trustee would generate if the Chapter 11 Case was converted to a chapter 7 case on the Effective Date and the assets of the Debtor’s Estate were liquidated; (b) determine the liquidation distribution that each nonaccepting holder of a Claim or an Equity Interest would receive from such liquidation proceeds under the priority scheme dictated in chapter 7; and (c) compare the holder’s liquidation distribution to the distribution under the Plan that the holder would receive if the Plan were confirmed and consummated.

As further support, the Debtor has attached hereto as Exhibit 4 a liquidation analysis prepared by its treasury group. Based on the foregoing and the liquidation analysis, the Debtor believes that holders of Claims here, whom are contemplated as receiving full payment on their Allowed Claims, will receive the same value as of the Effective Date under the Plan as such holders would receive in a chapter 7 liquidation (i.e., full payment), however, under the Plan, the Debtor believes that the Equity Interest Recovery of \$4.375 per common share, plus, one or more Subsequent Distributions, calculated on a per share basis, will yield a recovery to holders of Allowed Equity Interests of Cash that is greater than the projected recovery under chapter 7.

### D. Feasibility

Bankruptcy Code section 1129(a)(11) requires that confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtor, or any successor to the Debtor (unless such liquidation or reorganization is proposed in the plan). To determine whether the Plan meets this feasibility requirement, the Debtor and Plan Sponsor have analyzed the ability of the Reorganized Debtor to meet its obligations under the Plan. Further, as discussed in Article V of this Disclosure Statement, the Debtor and Plan Sponsor believe that the Reorganized Debtor will be viable following the Effective Date, and that the Plan therefore meets the feasibility requirements of the Bankruptcy Code. The Debtor shall present further information and evidence regarding feasibility as may be necessary in connection with Confirmation of the Plan. In any event, the Plan contemplates the funding of all Consideration by the Plan Sponsor on the Effective Date, and therefore creditor recoveries are not impacted by the Reorganized Debtor’s post-Effective Date feasibility.

### **E. Acceptance by Impaired Classes**

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or interests that is impaired under a plan accept the plan. A class that is not “impaired” under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required.

A class is “impaired” unless a plan: (a) leaves unaltered the legal, equitable and contractual rights to which the claim or the interest entitles the holder of such claim or interest; or (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Bankruptcy Code section 1126(c) defines acceptance of a plan by a class of claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of allowed claims in that class, counting only those claims that actually voted to accept or reject the plan. Thus, a Class of Impaired Claims will have voted to accept the Plan only if two-thirds in amount and a majority in number actually voting cast their Ballots in favor of acceptance. Here, all Allowed Claims will be paid in full under the Plan, and accordingly, there is no Class of Impaired Claims under the Plan.

Bankruptcy Code section 1126(d) defines acceptance of a plan by a class of interests as acceptance by holders of such interests, other than any entity designated under subsection Bankruptcy Code section 1126(e), that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under Bankruptcy Code section 1126(e), that have accepted or rejected such plan.

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

Bankruptcy Code Section 1129(b) allows a Bankruptcy Court to confirm a plan even if all impaired classes have not accepted it, provided that if there is an impaired class of claims, the plan has been accepted by at least one impaired class of claims, determined without including the acceptance of the plan by any insider. Notwithstanding an impaired class’s rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent’s request, in a procedure commonly known as “cramdown,” so long as the plan does not “discriminate unfairly” (as discussed below) and is “fair and equitable” (as discussed below) with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, to the extent applicable, the Debtor shall request Confirmation of the Plan under Bankruptcy Code section 1129(b). The Debtor reserves the right to alter, amend, modify, revoke, or withdraw the Plan, the Plan Supplement, or any schedule or exhibit, including to amend or modify it to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary, subject to the written approval of the Plan Sponsor.

#### **1. No Unfair Discrimination**

The “unfair discrimination” test applies to classes of claims or interests that reject or are deemed to have rejected a plan and that are of equal priority with another class of claims or interests that is receiving different treatment under such plan. The test does not require that the treatment of such classes of claims or interests be the same or equivalent, but that such treatment be “fair.” In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly, and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class. The Debtor submits that if the Debtor “crams down” the Plan pursuant to Bankruptcy Code section 1129(b), the Plan is structured such that it does not “discriminate unfairly” against any rejecting Class.

#### **2. Fair and Equitable Test**

The “fair and equitable” test applies to classes that reject or are deemed to have rejected a plan and are of different priority and status vis-à-vis another class (*e.g.*, secured versus unsecured claims, or unsecured claims versus equity interests), and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class, including interest. As to the rejecting class, the test sets different standards depending upon the type of claims or interests in such rejecting class. The Debtor submits that if the Debtor “crams down” the Plan pursuant to Bankruptcy Code section 1129(b), the Plan is structured such that the applicable “fair and equitable” standards are met.

**ARTICLE VII.**  
**TAX CONSEQUENCES OF THE PLAN**

**THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**

**ARTICLE VIII. CERTAIN SECURITIES LAW MATTERS**

**A. In General**

As provided in Section 12.4 of the Plan, the Debtor believes that the offering and issuance of any rights by any party, including without limitation ESW or the Estate, under, pursuant to or in effecting the Plan, including, without limitation, the New Equity in the Reorganized Debtor, shall be exempt from the registration requirements of Section 5 of the Securities Act of 1933 (the “Securities Act”), if applicable, and from any state or federal securities laws requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security, and shall otherwise enjoy all exemptions available for Distributions of securities under a plan of reorganization in accordance with all applicable law, including without limitation section 1145 of the Bankruptcy Code. If the issuance of the New Equity does not qualify for an exemption under section 1145 of the Bankruptcy Code, the New Equity shall be issued in a manner which qualifies for any other available exemption from registration, whether as a private placement, pursuant to Section 4(2) of the Securities Act and/or safe harbor provisions promulgated thereunder, including Rule 506 under the Securities Act.

**B. Distribution Trust Related Matters**

**1. Initial Issuance of Beneficial Interests**

Unless an exemption is available, the offer and sale of a security generally is subject to registration with the United States Securities and Exchange Commission (the “SEC”) under Section 5 of the Securities Act of 1933, as amended (the “Securities Act”). In the opinion of the Debtor, and based on “no action” letters by the SEC, the Beneficial Interests will not be considered “securities” within the definition of Section 2(11) of the Securities Act and corresponding definitions under state securities laws and regulations (“Blue Sky Laws”) because the Beneficial Interests will be uncertificated and non-transferable other than by operation of law. Accordingly, the Beneficial Interests should be issuable in accordance with the Plan without registration under the Securities Act or any Blue Sky Law.

Alternatively, in the event that the Beneficial Interests are deemed to constitute securities, Bankruptcy Code section 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan of reorganization from registration under the Securities Act and Blue Sky Laws if three principal requirements are satisfied:

- A. the securities are offered and sold under a plan of reorganization and are securities of the debtor, of an affiliate of the debtor participating in a joint plan with the debtor, or of a successor to the debtor under the plan;

- B. the recipients of the securities hold a pre-petition or administrative claim against the debtor or an interest in the debtor; and
- C. the securities are issued entirely in exchange for recipient's claim against or interest in the debtor, or principally in such exchange and partly for cash or property.

If and to the extent that the Beneficial Interests may constitute securities, the Debtor believes that these beneficial interests issued in respect of certain Allowed Claims will qualify as securities "of the debtor ... or of a successor to the debtor" pursuant to Bankruptcy Code section 1145(a)(1). In addition, the Beneficial Interests will be issued entirely in exchange for such Claims and Equity Interests. Thus, the Debtor believes that the issuance of the Beneficial Interests pursuant to the Plan will satisfy the applicable requirements of Bankruptcy Code section 1145(a)(1), and that such issuance should be exempt from registration under the Securities Act and any applicable Blue Sky Law.

The Debtor believes that their reliance upon the foregoing exemptions in respect of the issuance of the Beneficial Interests is consistent with positions taken by the SEC with respect to similar transactions and arrangements by other chapter 11 trustees. However, the Debtor has not sought any "no-action" letter by the SEC with respect to any such matters, and therefore no assurance can be given regarding the availability of any exemptions from registration with respect to any securities, if any, issued pursuant to the Plan.

## 2. Resales

The Beneficial Interests will be subject to transfer restrictions under the terms of the Distribution Trust Agreement. As provided in said agreement, generally, the Beneficial Interests cannot be assigned or transferred other than by operation of law, and will not be represented by certificates.

## 3. Exchange Act Compliance

Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), applies only to a company that has both (i) total assets in excess of \$10.0 million and (ii) a class of equity securities held of record by more than 2,000 persons or 500 persons who are not accredited investors (within 120 days after the last day of the company's fiscal year). The Debtor believes it unlikely condition (i) will be deemed satisfied in respect to the Distribution Trust and Beneficial Interests, and in any event, the Distribution Trust should not be required to register under Section 12(g) of the Exchange Act. The Debtor understands that the staff of the SEC has issued no-action letters with respect to the non-necessity of Exchange Act registration of a bankruptcy plan trust when the following are true:

- A. the beneficial interests in the trust are not represented by certificates or, if they are, the certificates bear a legend stating that the certificates are transferable only upon death or by operation of law;
- B. the trust exists only to effect a liquidation and will terminate within a reasonable period of time; and
- C. the trust will issue annual unaudited financial information to all beneficiaries.

Based on the foregoing, the Debtor believes that the Distribution Trust will not be subject to registration under the Exchange Act. However, the views of the SEC on the matter have not been sought by the Debtor and, therefore, no assurance can be given regarding this matter.

## 4. Compliance if Required

Notwithstanding the preceding discussion, if the Distribution Trustee, in relation to the Distribution Trust, determines, with the advice of counsel, that the Distribution Trust is required to comply with the registration and reporting requirements of the Exchange Act, then prior to the registration of the Distribution Trust under the Exchange Act, the Distribution Trustee (subject to the terms of the Distribution Trust Agreement) will seek to amend the

Distribution Trust Agreement, to make such changes as are deemed necessary or appropriate to ensure that the Distribution Trust is not subject to registration or reporting requirements of the Exchange Act. The Distribution Trust Agreement, as so amended, will be effective after notice and opportunity for a hearing, and the entry of an order of the Bankruptcy Court.

If the Distribution Trust Agreement, as amended, is not approved by the Bankruptcy Court or the Bankruptcy Court otherwise determines in a Final Order that registration under the Exchange Act (or any other related or similar federal laws) is required, then the Distribution Trustee will take such actions as may be required to satisfy the registration and reporting requirements of the Exchange Act (or any other related or similar federal laws).

**ARTICLE IX. POSITION OF THE DEBTOR.**

In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for a larger distribution to Holders of Allowed Claims and Interests than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Interests than proposed under the Plan.

Respectfully submitted,

**BROADVISION, INC.**

By: /s/ Pehong Chen

By: Pehong Chen

Title: President, Chief Executive Officer, Interim Chief  
Financial Officer, and Chairman of the Board

Prepared By:

R. Craig Martin (DE 5032)  
DLA PIPER LLP (US)  
1201 North Market Street, Suite 2100  
Wilmington, Delaware 19801  
Telephone: (302) 468-5700

and

Joshua D. Morse  
DLA PIPER LLP (US)  
555 Mission Street, Suite 2400  
San Francisco, California  
Telephone: (415) 836-2500



Exhibit 1

(Amended Prepackaged Plan of Reorganization Under  
Chapter 11 of the Bankruptcy Code for BroadVision, Inc.)

Exhibit 2

(Prepetition Organizational Chart)

Exhibit 3

(BroadVision, Inc. Form 10-Q for the Period Ended September 30, 2019)

Exhibit 4

(Liquidation Analysis)