

RECEIVED-FPSC

08 OCT -7 AM 11:31

COMMISSION  
CLERK

08 OCT -7 AM 11:21

A.Peter Lubitz  
LeClair Ryan  
830 Third Avenue  
New York, New York 10022  
212-430-8056  
peter.lubitz@leclairryan.com

Attorneys for the Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	x
In re	:
	: Chapter 11 Case No.
American Network Exchange, Inc.,	:
	: 99-B-43020(AJG)
Debtor.	:
-----	x

**NOTICE OF NON-VOTING STATUS TO UNIMPAIRED CLASSES:  
CLASSES 1,2 AND 4 (PRIORITY NON-TAX CLAIMS AND EQUITY INTERESTS)**

PLEASE TAKE NOTICE THAT on August 27, 2008 the United States Bankruptcy Court for the Southern District of New York (the "Court") approved the Disclosure Statement for the Plan of Liquidation Under Chapter 11 of the Bankruptcy Code (as may be amended, the "Disclosure Statement") filed by American Network Exchange, Inc., as debtor and debtor in possession ("Anei" or the "Debtor"), for use by the Debtor in soliciting acceptances or rejections of the Debtor's Plan of Liquidation Under Chapter 11 of the Bankruptcy Code, dated July 29, 2008(as was and may be amended from time to time) from holders of impaired claims who are (or may be) entitled to receive distributions under the Plan.

**UNDER THE TERMS OF THE PLAN, YOUR CLAIM(S) AGAINST THE DEBTOR IS/ARE NOT IMPAIRED AND, THEREFORE, PURSUANT TO SECTION 1126(1) OF TITLE 11 OF THE UNITED STATES CODE, YOU ARE (i) DEEMED TO HAVE ACCEPTED THE PLAN, AND (ii) NOT ENTITLED TO VOTE ON THE PLAN. IF YOU ARE AN EQUITY INTEREST HOLDER, YOU ARE IMPAIRED, AND WILL RECEIVE NO DISTRIBUTION UNDER THE PLAN AND YOU ARE (i) DEEMED TO HAVE REJECTED THE PLAN AND (ii) NOT ENTITLED TO VOTE. ACCORDINGLY, THE ENCLOSED DOCUMENTS, INCLUDING THE ORDER FROM THE COURT APPROVING THE DEBTOR'S DISCLOSURE STATEMENT AND THE CONFIRMATION HEARING NOTICE, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.**

**IF YOU HAVE ANY QUESTIONS ABOUT THE STATUS OF YOUR CLAIM(S) AND/OR EQUITY INTERESTS, OR YOU WANT TO REQUEST A COPY OF THE PLAN AND DISCLOSURE STATEMENT, YOU SHOULD CONTACT EITHER THE DEBTOR'S ATTORNEYS, LECLAIR RYAN 830 THIRD AVENUE, NEW YORK, NEW YORK 10022 BY E-MAIL TO [peter.lubitz@leclairryan.com](mailto:peter.lubitz@leclairryan.com) OR BY TELEPHONE AT 212 430-8056 (ATTN: PETER LUBITZ) OR THE ATTORNEYS FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, LOWENSTEIN SANDLER, 1251 AVENUE OF THE AMERICAS, 18<sup>TH</sup> FLOOR, NEW YORK, NEW YORK 10020 BY EMAIL TO: [wjung@lowenstein.com](mailto:wjung@lowenstein.com) OR BY TELEPHONE AT 212-262-6700.**

COM \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
RCP \_\_\_\_\_  
SSC \_\_\_\_\_  
SGA \_\_\_\_\_  
ADM \_\_\_\_\_  
CLK *Nonnye*

DATED: August 27, 2008  
New York, New York

BY ORDER OF THE COURT

DOCUMENT NUMBER-DATE

09453 OCT-7 8

4483242v3

FPSC-COMMISSION CLERK

A. Peter Lubitz  
LeClair Ryan  
830 Third Avenue  
New York, New York 10022  
212-430-8056  
peter.lubitz@leclairryan.com

Attorneys for the Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	x
In re	:
	: Chapter 11 Case No.
American Network Exchange, Inc.,	:
	: 99-B-43020(AJG)
Debtor.	:
-----	x

**NOTICE OF (A) APPROVAL OF DISCLOSURE STATEMENT,  
(B) HEARING TO CONSIDER CONFIRMATION OF THE DEBTOR'S  
CHAPTER 11 PLAN OF LIQUIDATION; AND (C) CERTAIN DEADLINES  
WITH RESPECT TO VOTING TREATMENT UNDER THE PLAN**

**NOTICE IS GIVEN THAT:**

1. American Network Exchange, Inc., as debtor and debtor in possession, ("ANEI" or the "Debtor") filed with the United States Bankruptcy Court for the Southern District of New York (the "Court"), a proposed amended Plan of Liquidation Under Chapter 11 of the Bankruptcy Code, dated July 29, 2008 (the "Plan"), and a proposed amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code relating to the Plan, dated April 18, 2008 (the "Disclosure Statement"), as each was and hereafter may be amended from time to time. Copies of the Plan and Disclosure Statement are on file with the Clerk of the Court, One Bowling Green, New York, New York, and may be reviewed during the Court's regular business hours. In addition, copies are accessible through the Electronic Case Filing System at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), the official website for the Court, by registered users of the Court's case filing system.

2. On August 27, 2008 the Court entered an order (the "Order"), among other things, (i) approving the Disclosure Statement as containing "adequate information" pursuant to section 1125 of title 11 of the United States Code, (ii) approving the procedures for solicitation of votes to accept or reject the Plan, (iii) fixing October 31, 2008 at 5:00 p.m. (prevailing Eastern Time) as the date and time by which all votes to accept or reject the Plan must be received, and (iv) scheduling a hearing to consider confirmation of the Plan and a deadline for filing and serving objections to the Plan (as provided below).

3. A hearing to consider confirmation of the Plan, any objections that may be interposed and any other matter that may properly come before the Court will be held before the Honorable Arthur J. Gonzales, United States Bankruptcy Judge for the Southern District of New York, on November 5, 2008 commencing at 10:00 a.m. (prevailing Eastern Time), or as soon thereafter as counsel may be heard (the "Confirmation Hearing"). The Confirmation Hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Confirmation Hearing or at an adjourned Confirmation Hearing.

4. If you hold a claim against in the Debtor, and are entitled to vote to accept or reject the Plan, you have received with this Notice, a Ballot form and voting instructions appropriate for your claim. For your vote to accept or reject the Plan to be counted, you must complete all required information on the Ballot, execute the Ballot, and return the completed Ballot

to the address indicated on the Ballot by October 31, 2008 at 5:00 p.m. prevailing Eastern Time. Any failure to follow the voting instructions included with the Ballot may disqualify the Ballot and your vote.

5. Holders of unimpaired claims and impaired equity interests are not entitled to vote on the Plan and will receive a Notice of Non-Voting Status rather than a Ballot in their Solicitation Packages. If you disagree with the Debtor's classification of your claim or interest or believe that you should be entitled to vote on the Plan, then you must serve on the Debtor and file with the Court a motion (a "Rule 3018(a) Motion") for an order pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") temporarily allowing your claim in a different amount or in a different class for purposes of voting to accept or reject the Plan (which motion will be heard on shortened notice). All Rule 3018(a) Motions must be filed by 5:00 p.m. (prevailing Eastern Time) on or before the 10<sup>th</sup> day after service of this notice. In accordance with Bankruptcy Rule 3018, as to any creditor filing a Rule 3018(a) Motion, such creditor's Ballot will not be counted unless temporarily allowed by the Court for voting purposes, after notice and a hearing. Rule 3018(a) Motions that are not timely filed and served in the manner as set forth above shall not be considered.

6. Any objections to the Plan shall be in writing, shall state the name and address of the objector, the amount and nature of the objector's claim against or equity interest in the Debtor, as well as the grounds for the objection and the legal basis therefor, and shall be served and filed with and received by the Court, and served upon and received by the parties listed below, together with proof of service, on or before October 22, 2008 at 4:30 p.m. (prevailing Eastern Time):

LeClair Ryan  
Attorneys for the Debtor  
830 Third Avenue  
New York, New York 10022  
Attn: A. Peter Lubitz, Esq.  
peter.lubitz@leclairryan.com

Lowenstein Sandler P.C.  
Attorneys for the Creditors Committee  
18<sup>th</sup> floor  
1251 Ave. of the Americas  
New York, New York 10020  
Attn: W. Jung, Esq.

THE UNITED STATES TRUSTEE FOR THE  
SOUTHERN DISTRICT OF NEW YORK  
33 Whitehall Street  
21<sup>st</sup> Floor  
New York, New York 10004

**UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE,  
THE OBJECTION WILL NOT BE CONSIDERED BY THE COURT.**

Dated: August 27, 2008  
New York, New York

BY ORDER OF THE COURT

A. Peter Lubitz  
 LeClair Ryan  
 830 Third Avenue  
 New York, New York 10022  
 212-430-8056  
 peter.lubitz@leclairryan.com  
 Attorneys for the Debtor and Debtor-in-Possession

Hearing Held: August 20, 2008

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----	x
In re	:
	: Chapter 11 Case No.
American Network Exchange, Inc.,	:
	: 99-B-43020(AJG)
Debtor.	:
-----	x

**ORDER APPROVING (i) DISCLOSURE STATEMENT (ii) THE  
 NOTICE AND OBJECTION PROCEDURES IN RESPECT OF CONFIRMATION  
 OF THE PLAN (iii) SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF; (iv) THE  
 FORMS OF BALLOTS  
 AND ESTABLISHMENT OF PROCEDURES FOR VOTING ON THE PLAN AND(V) APPROVING AND  
 AUTHORIZING THE DELETION FROM THE SERVICE LISTS OF PERSONS TO WHOM PRIOR NOTICES HAVE  
 BEEN RETURNED AS UNDELIVERABLE**

Upon the motion dated July 31, 2008 (the "Motion"), by American Network Exchange, Inc., as debtor and debtor in possession ("Anei" or the "Debtor"), for an order (i) approving the disclosure statement; (ii) approving the notice and objection procedures in respect of confirmation of the plan; (iii) approving the solicitation packages and procedures for distribution thereof; (iv) approving the forms of ballots and establishment of procedures for voting on the plan; and (v) approving and authorizing the deletion from the service lists in this case of persons to whom prior notices have been returned as undeliverable by the United States Postal Service, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), and the attorneys for the Official Committee of Unsecured Creditors, and no other or further notice being necessary or required to be given; and the relief requested in the Motion being in the best interests of the Debtor, its estate and creditors; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at hearings before the Court (the "Hearings"); and the United States Trustee having served and filed its response dated May 22, 2008, regarding approval of the proposed disclosure statement; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish good and sufficient cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND THAT:

1. The amended disclosure statement for the Debtor's Amended Plan of Liquidation (the "Plan") Under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), filed July 31, 2008 (as the same has been or may be amended, the "Disclosure Statement") contains adequate information within the meaning of section 1125 of the Bankruptcy Code.
2. The form of ballots (the "Ballots") annexed to the Motion as Exhibit B, is sufficiently consistent with Official Form No. 14 and adequately addresses the particular needs of this chapter 11 case, and is appropriate for the class of claims entitled to vote to accept or reject the Plan.
3. Ballots need not be provided to claims in Class 1 (priority non-tax Claims) and Class 2 (Secured Claims), if any, as being unimpaired and deemed to have accepted the Plan and Class 4 (Equity Interests) because they are impaired and, therefore, conclusively presumed to reject the Plan.

4. The period set forth below during which the Debtor may solicit acceptances to the Plan is a reasonable period of time for holders of claims to make an informed decision to accept or reject the Plan.

5. The procedures for the solicitation and tabulation of votes to accept or reject the Plan (as more fully set forth in the Motion) provide for a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code.

6. The deletion from the service lists in this case of all those persons to whom prior notices have been returned as undeliverable by the United States Postal Service is reasonable and appropriate since no useful purpose would be served and no benefit would accrue by incurring the cost and expense of continuing to mail or serve notice known to be undeliverable.

7. The procedures set forth below regarding notice (the "Confirmation Hearing Notice") to all creditors and equity interest holders of the time, date and place of the hearing to confirm the Plan (the "Confirmation Hearing") and the contents of the Solicitation Packages (as defined below) comply with Rules 2002 and 3017 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and constitute sufficient notice to all interested parties.

NOW, THEREFORE, IT IS

ORDERED that the Motion is granted to the extent set forth herein; and it is further

ORDERED that the Disclosure Statement is approved; and it is further

ORDERED that the Confirmation Hearing Notice annexed to the Motion as Exhibit A is approved; and it is further

ORDERED that, except to the extent hereinafter provided, the Debtor is directed to mail or cause to be mailed, by no later than October 1, 2008, solicitation packages (the "Solicitation Packages") containing a copy of (a) this Order, (b) the Confirmation Hearing Notice, (c) the Disclosure Statement (together with the Plan annexed thereto as Exhibit A), and (d) the form of Class 3 Ballot, substantially in the form of the Ballot (with instructions) annexed to the Motion as Exhibit B to (i) those persons entitled to vote on the Plan in Class 3 (General Unsecured Claims); (ii) the U.S. Trustee; (iii) the parties on the Rule 2002 Service List; (iv) the Internal Revenue Service; and (v) the SEC; and it is further

ORDERED that a "Notice of Non-Voting Status – Unimpaired Claims and Impaired Interests" substantially in the form annexed to the Motion as part of Exhibit C, is to be distributed to all known holders of Claims in Classes 1 (Priority Non-Tax Claims) and 2 (Secured Claims) and a "Notice of Non-Voting Status to Class 4 (Equity Interests) in lieu of the ballot otherwise provided in the Solicitation Packages; and it is further

ORDERED that, in lieu of the Solicitation Packages, the Debtor shall provide notice by first-class mail on or before September 15, 2008, to those persons identified in Exhibit E to the Motion that prior efforts to effect service by mail have been returned as undeliverable and that, in the event they determine to continue to be served with notice and other documents and information in this case, a current address for service of notice needs to be provided in writing to Debtor's counsel and filed with the Court no later than October 10, 2008; and it is further

ORDERED that, unless such persons have timely responded with current addresses for service of notice as required in the preceding decretal paragraph hereof, no further service of notice need be made or attempted on those parties identified in Exhibit E to the Motion as persons to whom efforts to effect service by mail of notice in this case have been returned by the United States Postal Service as undeliverable and that such persons shall be, and hereby are, deleted from the service lists in this case; and it is further

ORDERED that the Debtor shall not be required to distribute copies of the Plan and the Disclosure Statement to any party to an executory contract who does not hold a scheduled or filed claim, or whose claims have already been paid the full scheduled or filed amount, or who holds a claim listed as contingent, unliquidated, or disputed in the Debtor's schedules of assets and liabilities, or any amendments thereof (collectively, the "Schedules"), that did not timely file a proof of such claim, unless such party makes a specific request in writing for the same; and it is further

ORDERED that all Ballots must be properly executed, completed, and delivered to the attorneys for the Official Committee of Unsecured Creditors, Lowenstein Sandler, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Wojciech Jung, Esq.) (i) by first-class mail, (ii) by overnight courier, or (iii) by personal delivery so that they are actually received by no later than 5:00 p.m., prevailing Eastern Time, on October 31, 2008 (the "Voting Deadline"); and it is further

ORDERED that, solely for purposes of voting to accept or reject the Plan and not for the purpose of the allowance of, or distribution on account of, a claim, and without prejudice to the rights of the Debtor or the claimants in any other context, each claim within a class of claims entitled to vote to accept or reject the Plan is temporarily allowed in an amount equal to the amount

of such claim as set forth in the Schedules, unless such holder has timely filed a proof of claim, in which event such holder is entitled to vote the amount of such claim as set forth in such proof of claim; provided that:

- (a) If a claim is deemed allowed under the Plan, such claim is allowed for voting purposes in the deemed allowed amount set forth in the Plan;
- (b) If a claim for which a proof of claim has been timely filed is, by its terms, contingent, unliquidated, or disputed, such claim shall be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at \$1.00;
- (c) If a claim has been estimated or otherwise allowed for voting purposes by order of the Court, such claim is temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- (d) If a claim is listed in the Schedules as contingent, unliquidated, or disputed and a proof of claim was not (i) filed by the applicable bar date for the filing of proofs of claim established by the Court or (ii) deemed timely filed by an order of the Court prior to the Voting Deadline, unless the Debtor has consented in writing, such claim shall be disallowed for voting purposes and for purposes of allowance and distribution pursuant to Bankruptcy Rule 3003(c); and
- (e) If the Debtor has served an objection to a claim at least twenty (20) days before the Voting Deadline, such claim shall be temporarily disallowed for voting purposes only and not for purposes of allowance or distribution, except to the extent and in the manner as may be set forth in such objection.

and it is further

ORDERED that if any holder of a claim seeks to challenge the allowance of its claim for voting purposes in accordance with the above procedures, such claimant is directed to serve on the Debtor and file with the Court (with a copy to chambers) on or before the tenth (10th) day after service of the Confirmation Hearing Notice, a motion, pursuant to Bankruptcy Rule 3018(a), seeking temporary allowance of such claim in a different amount for purposes of voting to accept or reject the Plan; and it is further

ORDERED that as to any creditor filing a motion pursuant to Bankruptcy Rule 3018(a), such creditor's Ballot shall not be counted unless temporarily allowed by the Court for voting purposes after notice and a hearing; and it is further

ORDERED that if a creditor casts more than one Ballot voting the same claim before the Voting Deadline, the last validly executed Ballot received before the Voting Deadline is deemed to reflect the voter's intent and thus to supersede any prior Ballots; and it is further

ORDERED that each creditor that votes to accept or reject the Plan is deemed to have voted the full amount of its claim, as applicable; and it is further

ORDERED that creditors must vote all of their claims within a particular class under the Plan, either to accept or reject the Plan and may not split their vote(s), and thus a Ballot that partially rejects and partially accepts the Plan shall not be counted; and it is further

ORDERED that the following types of Ballots will not be counted in determining whether the Plan has been accepted or rejected: (i) any Ballot that is properly completed, executed, and timely returned, but does not indicate an acceptance or rejection of the Plan, or indicates both an acceptance and a rejection of the Plan; (ii) any Ballot received after the Voting Deadline unless the Debtor has granted an extension of the Voting Deadline with respect to such Ballot; (iii) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (iv) any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote to accept or reject the Plan; (v) any Ballot cast for a claim identified as unliquidated, contingent, or disputed for which no proof of claim was timely filed; (vi) any unsigned Ballot; and (vii) any Ballot transmitted by facsimile or other electronic means; and it is further

ORDERED that the Confirmation Hearing will be held at 10:00 a.m. prevailing Eastern Time, on November 5, 2008; provided, however, that the Confirmation Hearing may be continued from time to time by the Court or the Debtor without further notice or through adjournments announced in open court; and it is further

ORDERED that any objections to confirmation of the Plan or proposed modifications to the Plan must (i) be in writing, (ii) state the name and address of the objecting party and the nature of the claim or interest of such party, (iii) state with particularity the basis and nature of any objection or proposed modification, and (iv) be filed, together with proof of service, with the Court and served so that they are actually received no later than 4:30 p.m., prevailing Eastern Time, on October 22, 2008 by the (i) Clerk of the Court, Alexander Hamilton Courthouse, One Bowling Green, 5th Floor, New York, New York 10007 and served upon (ii) LeClair Ryan Attorneys for the Debtor, 830 Third Avenue, New York, New York 10022 (Attention: A. Peter Lubitz, Esq. via e-mail to peter.lubitz@leclairryan.com); (iii) Lowenstein Sandler PC, Attorneys for the Official Committee of Unsecured Creditors, 1251 Avenue of the Americas, New York, New York 10020 (Attn: Wojciech Jung, Esq. via e-mail to wjung@lowenstein.com); and (iv) Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, New York New York 10004; and it is further

ORDERED that objections to confirmation of the Plan not timely filed and served in the manner set forth above shall not be considered and shall be overruled; and it is further

ORDERED that the Debtor and all parties in interest are authorized to file replies to any such objections or proposed modifications by no later than November 4, 2008; and it is further

ORDERED that any requirement for publication of the Confirmation Hearing Notice be waived and dispensed with and that such notice as is hereinabove required is hereby approved and deemed adequate and sufficient notice of the Confirmation Hearing in accordance with Bankruptcy Rule 2002; and it is further

ORDERED that, with respect to addresses from which Disclosure Statement Notices (as defined in the Motion) were returned as undeliverable by the United States Postal Service, the Debtor is excused from mailing Solicitation Packages to those entities listed at such addresses unless the Debtor is provided with accurate addresses or have actual knowledge of accurate addresses for such entities; and it is further

ORDERED that failure to mail Solicitation Packages to such entities will not constitute inadequate notice of the Confirmation Hearing, the Voting Deadline, or violation of Bankruptcy Rule 3017(d); and it is further

ORDERED that the Debtor is authorized to take or refrain from taking any action necessary or appropriate to implement the terms of the relief granted in this Order without seeking further order of the Court; and it is further

ORDERED that the Debtor is authorized to make non-substantive changes to the Disclosure Statement, the Plan, and related documents without further order of the Court including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Package prior to their mailing, provided that all changes shall be identified on a pleading filed with the Court.

Dated: New York, New York  
August 27, 2008

s/Arthur J. Gonzalez  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
In re

AMERICAN NETWORK EXCHANGE, INC.,

Debtor.  
-----

x  
:  
: Chapter 11  
:  
: Case No. 99-43020 (AJG)  
:  
x

**DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT  
PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE**

A.Peter Lubitz  
LeClairRyan  
830 Third Avenue  
New York, New York 10022  
(212) 430-8056  
peter.lubitz@leclairryan.com

Attorneys for the Debtor and Debtor-in-Possession

**Dated: July 29, 2008  
New York, New York**



**DISCLAIMER**

**ALL CREDITORS AND EQUITY SECURITY HOLDERS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT, INCLUDING THE FOLLOWING SUMMARY, ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, OTHER EXHIBITS ANNEXED TO THE PLAN, AND THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE LAW.**

**THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. THE DESCRIPTIONS SET FORTH HEREIN OF THE ACTIONS, CONCLUSIONS, OR RECOMMENDATIONS OF THE DEBTOR OR ANY OTHER PARTY-IN-INTEREST HAVE BEEN SUBMITTED TO OR APPROVED BY SUCH PARTY, BUT NO SUCH PARTY MAKES ANY REPRESENTATION REGARDING SUCH DESCRIPTIONS.**

**THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE LIQUIDATION AS TO HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, THE DEBTOR.**

## GLOSSARY

Administrative Expense Claim	Any expense relating to the administration of the Debtor's Chapter 11 Case, including, (a) any actual and necessary costs and expenses of preserving the Debtor's estate and operating the Debtor's businesses, (b) any indebtedness or obligations incurred or assumed by the Debtor during the Chapter 11 Case and (c) allowances for compensation and reimbursement of expenses to the extent allowed by the Bankruptcy Court.
Allowed	Any claim against the Debtor (a) listed by the Debtor in its Schedules as liquidated in amount and not disputed or contingent and for which no contrary proof of claim has been filed, (b) allowed pursuant to the Plan, (c) which is not Disputed, (d) that is compromised, settled or otherwise resolved by order of the Bankruptcy Court or under the Plan or (e) which, if Disputed, has been Allowed by order of the Bankruptcy Court. Equity Interests are deemed Allowed if registered in the stock register maintained by or on behalf of the Debtor as of the applicable Record Date. Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court are not considered "Allowed Claims."
Available Cash	As of any given date, all cash of the Debtor realized from the sale or other disposition or realization of its assets and all interest earned on invested funds or from any other source, and all recoveries on contingent and unrealized assets such as, without limitation, claims against third parties, less (i) cash of the Debtor's estate to be distributed to the holders of Allowed Administrative Expense Claims and to the holders of Disputed Claims to the extent they become Allowed Administrative Expense Claims, and (ii) the Estimated Liquidation Expenses; provided, however, that Available Cash does not include collateral security or any proceeds of collateral to the extent securing any Allowed Secured Claims.
Bankruptcy Code	Title 11 of the United States Code.
Bankruptcy Court	The United States Bankruptcy Court for the Southern District of New York.
Bankruptcy Rules	means, collectively, the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code and any Local Rules of the Bankruptcy Court, as now in effect or hereafter amended.
Bar Dates	mean the dates designated by the Bankruptcy Court as the last dates for filing proofs of claim (including Administrative Expenses Claims other than Professional Fee Claims) against the Debtor.
Business Day	Any day other than a Saturday, a Sunday or any other day on which commercial banks in New York, New York are required or authorized to close by law or executive order, and the Friday after Thanksgiving Day.

Cash	means legal tender of the United States of America
Causes of Action	means any and all rights, claims, causes of action, liabilities, obligations, suits, debts, sums of money, damages, judgments and demands whatsoever, whether known or unknown, in law, equity or otherwise, including Avoidance Actions.
Chapter 11 Case	means the case commenced on the Commencement Date under Chapter 11 of the Bankruptcy Code by the Debtor before the Bankruptcy Court, as referenced by Case No. 99-43020 (AJG).
Claim	has the meaning set forth in section 101(5) of the Bankruptcy Code, against the Debtor.
Commencement Date	May 5, 1999, the date on which the Debtor commenced its Chapter 11 Case.
Common Stock	The common stock of American Network Exchange, Inc. authorized as of the Commencement Date.
Confirmation Date	The date of entry of the order by the clerk of the Bankruptcy Court confirming the Plan.
Debtor	American Network Exchange, Inc.
Disclosure Statement	This document, together with the annexed exhibits and schedules.
Disputed Claim	Any Claim not Allowed or paid pursuant to the Plan or an order of the Bankruptcy Court (i) which is listed in the Debtor's Schedules as unliquidated, contingent, or disputed and which has not been resolved by agreement of the parties or an order of the Bankruptcy Court, (ii) which is disputed under the Plan, (iii) as to which the Debtor has objected or made a request for estimation and (iv) any Claim, proof of which was required to be filed by order of the Bankruptcy Court but as to which a proof of claim was not timely or properly filed.

Distribution Date	The date distributions will be made to holders of Allowed Claims.
Effective Date	The first Business Day on which the conditions specified in Section 10.1 of the Plan have been satisfied or waived.
Equity Interest	The interest of any holder of equity securities of the Debtor represented by the issued and outstanding shares of its common and/or other classes of its stock.
Estimated Liquidation Expenses	The amount of cash estimated by the Debtor, or, after the Effective date, the Liquidating Trustee, from time to time, to be necessary to fund adequately the Plan and complete the administration of the Chapter 11 Case on and after the Effective Date.
Final Distribution Date	After the liquidation into cash of all assets of the Debtor and the collection of other sums due or otherwise remitted or returned to the Debtor or the Liquidating Trustee, including from the prosecution of claims against third parties, if any, and on or after the final resolution of all Disputed Claims, the date on which the final distribution of Available Cash will be made to holders of Allowed Claims.
Final Order	Means an order of the Bankruptcy Court as to which the time to appeal, petition for certiorari, or move for re-argument or rehearing has expired and as to which no appeal, petition for certiorari, or motion for re-argument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, or move to reargue or rehear shall have been waived in writing in form and substance satisfactory to the Debtor or, in the event that an appeal, writ of certiorari, or re-argument or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been upheld by the highest court to which such order was appealed, or from which certiorari, re-argument or rehearing was sought and the time to take any further appeal, petition for certiorari or move for re-argument or rehearing shall have expired, provided, however, the possibility that a timely motion under Rules 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not prevent such order from being a Final Order.
General Unsecured Claim	Any unsecured, non-priority pre-petition claim against the Debtor.
Holder	means the legal or beneficial holder(s) of a Claim or Equity Interest (and, when used in conjunction with a Class or type of Claim or Equity Interest, means a holder of a Claim or Equity Interest in such Class or of such type).
Impaired	When used with reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.
Liability or Liabilities	Means any and all costs, expenses, actions, causes of action, suits, controversies, damages, claims, liabilities or demands of any nature, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, liquidated or unliquidated, matured or not matured, contingent or direct, whether arising at common law, in equity, or under any statute, based in whole or in part on any act or omission or other occurrence taking place on or prior to the Effective Date.
Lien	Has the meaning assigned to such term in section 101(37) of the Bankruptcy Code (but a lien that has been avoided in accordance with sections 544, 545, 546, 547, 548 or 549 of the Bankruptcy Code shall not constitute a Lien).

Liquidating Trust	The trust established pursuant to the Plan to effectuate the distributions and perform the other duties described therein and in the Plan to complete the liquidation of the Debtor and the administration of the Chapter 11 Case.
Liquidating Trust Agreement	means the Liquidating Trust Agreement, the form of which agreement shall be filed with the Bankruptcy Court at least ten (10) days prior to the Confirmation Hearing.
Liquidating Trustee	means the trustee of the Liquidating Trust, or any Bankruptcy Court approved successor, who is responsible for implementing the functions of the Liquidating Trust, maintaining and administering the Debtor's Available Cash (or any other Asset) from and after the Effective Date, and effectuating the Distributions to Holders of Allowed General Unsecured Claims as prescribed by this Plan. The initial Liquidating Trustee shall be Cynthia Terrell.
Official Committee	Means the official committee of unsecured creditors appointed in the Debtor's Chapter 11 Case, as it was originally constituted and thereafter reconstituted and may be further reconstituted from time to time.
Operating Reserve Account	means an account(s) to be established and maintained by the Debtor or the Liquidating Trustee and into which funds will be deposited in amounts, sufficient to satisfy the Estate's Allowed Administrative Expense Claims that arise prior to, on or after the Confirmation Date, including expenses of the Estate's administration after Confirmation.
Plan	The Debtor's Chapter 11 Plan of Liquidation Under Chapter 11 of the Bankruptcy Code annexed as Exhibit A to this Disclosure Statement, as may be amended from time to time.
Priority Non-Tax Claim	Any Claim entitled to priority under the Bankruptcy Code other than an Administrative Expense Claim or a Priority Tax Claim.
Priority Tax Claim	A Claim of a governmental entity for taxes that are entitled to priority in payment under the Bankruptcy Code.
Professional	means (i) any professional employed in the Chapter 11 Case pursuant to section 327 or 1103 of the Bankruptcy Code or pursuant to the Liquidating Trust Agreement and (ii) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.
Pro Rata Share	With respect to distributions from the Debtor's estate, the proportion that a Claim in a particular class bears to the aggregate of all Claims, including Disputed Claims, in such class.
Record Date	With respect to Claims, the close of business on the fifth Business Day prior to the Confirmation Date.
Schedules	The schedules of assets and liabilities and the statements of financial affairs filed by the Debtor on October 22, 1999, as required by section 521 of the Bankruptcy Code and <u>Bankruptcy Rule 1007, including any supplements or amendments thereto through the Confirmation Date in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.</u>
Secured Claim	Means a Claim (i) secured by Collateral, the amount of which is equal to or less than the value of such Collateral (a) as set forth in the Plan, (b) as agreed to by the holder of such Claim and the Debtor after reasonable notice to creditors or (c) as determined by a Final Order in

accordance with section 506(a) of the Bankruptcy Code or (ii) the amount of any rights of setoff of the holder thereof under section 553 of the Bankruptcy Code; provided, that to the extent that the Collateral or right of setoff is less than the value of the related Claim, such deficiency shall be a General Unsecured Claim.

- Statutory Fees** Means any fee or charges assessed against the estate of the Debtor under section 1930 of chapter 123 of title 28 and section 3717 of title 31 of the United States Code.
- Subsequent Distribution Date** Means, following the Effective Date, a date which shall occur at the end of each subsequent three-month period, or more frequently as may be determined by the Liquidating Trustee, on which a distribution of Cash is made to the holders of Allowed Claims, in accordance with Article V of the Plan.
- Trust Advisory Committee** Means counsel to the Official Committee as set forth in the Liquidating Trust Agreement.

## EXECUTIVE SUMMARY

The Debtor filed a petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court on May 5, 1999. On July 29, 2008, the Debtor filed a proposed First Amended Plan of Liquidation Under Chapter 11 of the Bankruptcy Code (the "Plan"). The Plan sets forth the manner in which Claims against and Equity Interests in the Debtor will be treated following confirmation of the Plan. This Disclosure Statement describes certain aspects of the Plan, the Debtor's business operations, significant events occurring in the Debtor's Chapter 11 Case, and related matters. This Executive Summary is intended solely as a summary of the distribution provisions of the Plan and certain matters related to the Debtor's business. FOR A COMPLETE UNDERSTANDING OF THE PLAN, YOU SHOULD READ THE DISCLOSURE STATEMENT, THE PLAN, AND THE EXHIBITS THERETO IN THEIR ENTIRETY. Capitalized terms used in this Executive Summary and not otherwise defined herein have the meanings ascribed to them in the Plan.

### **A. Summary of the Plan**

The Plan provides for the liquidation and conversion of all of the Debtor's Assets to cash to the extent, if any, not already completed and the distribution of the proceeds thereof, net of fees and expenses, to holders of Allowed Claims in accordance with their relative priority. Generally, unsecured creditors will be paid the residual value of the Debtor's estate which they will share pro rata.

Under the Plan, Claims against and Equity Interests in the Debtor are divided into classes. Certain unclassified Claims, including Administrative Expense Claims and Priority Tax Claims, will receive payment in cash either on the Distribution Date, as such Claims are liquidated, or as agreed with the holders of such Claims. All other Claims and all Equity Interests are classified into classes and will receive the distributions described in the table below.

The table below summarizes the classification and treatment of pre-petition Claims and Equity Interests under the Plan. The classification and treatment of all classes are described in more detail under Section IV of the Disclosure Statement. Unless otherwise indicated, estimated Claim amounts are based upon the Debtor's books and records dated as of October 22, 1999. There can be no assurance that the estimated amounts below are correct, and actual Claim amounts may be significantly different from the estimates. This summary is qualified in its entirety by reference to the provisions of the Plan, a copy of which is attached hereto as Exhibit A.

**THE DEBTOR STRONGLY URGES ACCEPTANCE OF THE PLAN.**

**THE CREDITORS COMMITTEE STRONGLY URGES ACCEPTANCE OF THE PLAN.**

**Summary of Anticipated Distributions Under the Plan**

<b>Class</b>	<b>Description</b>	<b>Treatment Under The Plan</b>	<b>Entitled to Vote</b>	<b>Estimated Recovery</b>
---	Administrative Expense Claims and Statutory Fees  <i>Estimated Amount: \$1,280,000</i>	<i>Unimpaired</i> – Each holder of an Allowed Administrative Expense Claim will receive payment in cash (or as otherwise agreed) on the Distribution Date.	No	100%
---	Priority Tax Claims  <i>Estimated Amount: Less than \$300,000 - \$375,000</i>	<i>Unimpaired</i> – Each holder of an Allowed Priority Tax Claim will receive payment in full in cash, or as otherwise agreed on the Distribution Date.	No	100%, plus interest
1	Priority Non-Tax Claims  <i>Estimated Amount: de minimus, if any</i>	<i>Unimpaired</i> – Each holder of an Allowed Priority Non-Tax Claim, if any exist, will receive payment in full in cash, without interest.	No	100%
2	Secured Claims  <i>Estimated Amount: de minimus, if any</i>	<i>Unimpaired</i> – Each holder of an Allowed Secured Claim will receive (i) the amount of the proceeds actually realized from the sale of any collateral securing such Claim, less the actual costs and expenses of disposing of such collateral and/or (ii) the collateral securing such Claim.	No	100%
3	General Unsecured Claims  <i>Estimated Amount: \$2.5 – 3,000,000</i>	<i>Impaired</i> – Each holder of an Allowed General Unsecured Claim will receive a pro rata distribution of Available Cash in satisfaction and discharge of its Allowed Claim.	Yes	Pro rata estimated at approximately 1-2%
4	Equity Interests  <i>Estimated Amount: \$0</i>	<i>Impaired</i> – Holders of Allowed Equity Interests will not retain their Equity Interests on the occurrence of the Effective Date and the dissolution of the Debtor, at which time such Equity Interests will be extinguished.	No	None



## I. INTRODUCTION

American Network Exchange, Inc. ("ANEI" or the "Debtor") submits this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code to holders of Claims against and Equity Interests in the Debtor in connection with (i) the solicitation of acceptances with respect to the Plan filed by the Debtor with the Bankruptcy Court and (ii) the hearing to consider confirmation of the Plan (the "Confirmation Hearing") scheduled for November 5, 2008, commencing at 10:00 a.m. prevailing Eastern Time. The Plan is a liquidating plan that provides for Cash disbursements to creditors in accordance with the priority scheme established by the Bankruptcy Code or as any such creditor otherwise agrees. Unless otherwise defined herein, all capitalized terms contained herein have the meanings ascribed to them in the Plan.

This Disclosure Statement describes certain aspects of the Plan as they relate to **ANEI's CREDITORS ONLY**. **This Disclosure Statement does not include or relate to creditors of AMNEX, Inc., the corporate parent of the Debtor. There is no plan being filed for AMNEX, Inc.** It is the intention of AMNEX, Inc. that upon confirmation of ANEI's Plan and the plan of Crescent Public Communications, Inc., the AMNEX, Inc. bankruptcy case will be dismissed.

This Disclosure Statement sets forth certain information regarding the Debtor's pre-petition history, the nature of the Chapter 11 Case, and the anticipated method of effectuating distribution and thereafter dissolving the Debtor after the Effective Date of the Plan. This Disclosure Statement also describes the Plan, including certain alternatives to the Plan, certain effects of confirmation of the Plan, and the manner in which distributions will be made under the Plan. In addition, the Disclosure Statement discusses the confirmation process and the voting procedures that holders of Claims in Impaired Classes must follow for their votes to be counted.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN DOCUMENTS RELATED TO THE PLAN, CERTAIN EVENTS IN THE CHAPTER 11 CASE, AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTOR BELIEVES THAT THE PLAN AND RELATED DOCUMENT SUMMARIES ARE FAIR AND ACCURATE, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTOR'S MANAGEMENT, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING THE FINANCIAL INFORMATION, IS WITHOUT ANY INACCURACY OR OMISSION.

NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS AS TO HOLDERS OF ALLOWED CLAIMS OR ALLOWED EQUITY INTERESTS. YOU SHOULD CONSULT YOUR PERSONAL COUNSEL OR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS RESPECTING TAX, SECURITIES, OR OTHER LEGAL CONSEQUENCES OF THE PLAN.

Attached as Exhibits to this Disclosure Statement are copies of the following documents:

- The Plan (Exhibit A);
- The Debtor's Liquidation Analysis (Exhibit B); and
- Order of the Bankruptcy Court dated August 27, 2008 (the "Disclosure Statement Order"), among other things, approving this Disclosure Statement and establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan (Exhibit C).

## II. VOTING INSTRUCTIONS AND PROCEDURES

On August 27, 2008, the Bankruptcy Court approved the Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtor's creditors to make an informed judgment whether to accept or reject the Plan. **APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.**

The Disclosure Statement Order, a copy of which is annexed hereto as Exhibit C, sets forth in detail the deadlines, procedures, and instructions for voting to accept or reject the Plan and for filing objections to confirmation of the Plan, the record date for voting purposes and the applicable standards for tabulating Ballots. In addition, detailed voting instructions accompany each Ballot. Each holder of a Claim entitled to vote on the Plan should read the Disclosure Statement, the Plan, the Disclosure Statement Order, and the instructions accompanying the Ballot in their entirety before voting on the Plan. These documents contain important information concerning the classification of Claims and Equity Interests for voting purposes and the tabulation of votes. No solicitation of votes to accept the Plan may be made except pursuant to section 1125 of the Bankruptcy Code.

### A. Holders of Claims and Equity Interests Entitled to Vote

Pursuant to the provisions of the Bankruptcy Code, only classes of claims or equity interests which (i) are "impaired" by a chapter 11 plan and (ii) entitled to receive a distribution under such a plan are entitled to vote to accept or reject a proposed plan. Classes of claims or equity interests in which the holders of claims or equity interests are unimpaired are deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan. For a detailed description of the treatment of Claims and Equity Interests under the Plan, see Section IV of the Disclosure Statement.

Class 3 (General Unsecured Claims) are impaired under the Plan. To the extent Claims in such Classes are Allowed Claims or have properly been estimated for voting purposes consistent with the Disclosure Statement Order, the holders of such Claims are entitled to vote to accept or reject the Plan. Classes 1 (priority non-tax claims) and 2 (Secured Claims) are unimpaired by the Plan and the holders thereof are conclusively presumed to have accepted the Plan. Class 4 (Equity Interests) is impaired by the Plan and will receive no distribution thereunder and is therefore not entitled to vote and deemed to have rejected the Plan.

The Bankruptcy Code defines "acceptance" of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims that cast ballots for acceptance or rejection of the plan. The Bankruptcy Code defines "acceptance" of a plan by a class of equity interests as acceptance by holders of equity interests in that class that hold at least two-thirds in amount of the allowed equity interests of such class that cast ballots for acceptance or rejection of the plan. Thus, acceptance of the Plan by Class 3 will occur only if at least two-thirds in dollar amount and a majority in number of the holders of Claims in such Class that cast their Ballots vote in favor of acceptance. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. For a more detailed description of the requirements for confirmation of the Plan, see Section VI of the Disclosure Statement.

If the Class of Claims entitled to vote on the Plan rejects the Plan, the Debtor reserves the right to amend the Plan or request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code or both. Section 1129(b) permits the confirmation of a plan of reorganization notwithstanding the non-acceptance of a plan by one or more impaired classes of claims or equity interests if the plan is accepted by an impaired class and does not "discriminate unfairly" and is "fair and equitable" with respect to each non-accepting class. For a more detailed description of the requirements for confirmation of a nonconsensual plan, see Section VI of the Disclosure Statement.

---

### B. Voting Procedures

If you are entitled to vote to accept or reject the Plan, a Ballot is enclosed for the purpose of voting on the Plan. If you hold Claims in more than one Class and you are entitled to vote such Claims, you will receive separate Ballots, which must be used for each separate Class of Claims. Please vote and return your Ballot(s) to:

Lowenstein Sandler PC  
Attorneys for the Official Committee of Unsecured Creditors  
1251 Avenue of the Americas, 18th Floor  
New York, New York 10020  
(212) 262-6700  
Attn: Wojciech F. Jung, Esq.

DO NOT RETURN ANY SECURITIES WITH YOUR BALLOT.

**TO BE COUNTED, YOUR BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED BY NO LATER THAN 5:00 P.M., PREVAILING EASTERN TIME, ON October 31, 2008. ANY EXECUTED BALLOT RECEIVED THAT DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN SHALL NOT BE COUNTED.**

Any Claim in an impaired Class as to which an objection or request for estimation is pending or which was scheduled by the Debtor in its statements of financial affairs as unliquidated, disputed or contingent and for which no proof of claim has been filed is not entitled to vote unless the holder of such Claim has obtained an order of the Bankruptcy Court temporarily allowing such Claim for the purpose of voting on the Plan.

If you are a holder of a Claim entitled to vote on the Plan and did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning the Disclosure Statement, the Plan or the procedures for voting on the Plan, please contact the attorneys for the Official Committee identified above.

### **C. Confirmation Hearing**

Pursuant to section 1128 of the Bankruptcy Code, the Confirmation Hearing will be held on November 5, 2008, commencing at 10:00a.m. prevailing Eastern Time, before the Honorable Arthur J. Gonzales, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be served and filed so that they are received on or before October 22, 2008 at 3:00 p.m., prevailing Eastern Time, in the manner described below in Section VI.B of the Disclosure Statement and in the Disclosure Statement Order. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF. HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD CAREFULLY READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, INCLUDING THE PLAN, PRIOR TO VOTING ON THE PLAN.

FOR THE CONVENIENCE OF HOLDERS OF CLAIMS ENTITLED TO VOTE, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. THE DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, AND NOTHING STATED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTOR OR HOLDERS OF CLAIMS. CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL

OUTCOMES. ALL HOLDERS OF CLAIMS SHOULD CAREFULLY READ AND CONSIDER FULLY THE RISK FACTORS SET FORTH IN SECTION IX.C OF THIS DISCLOSURE STATEMENT BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS, IF ANY, REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND ARE SUBJECT TO, AND ARE QUALIFIED IN THEIR ENTIRETY, BY REFERENCE TO THE FULL TEXT OF THE APPLICABLE AGREEMENT, INCLUDING THE DEFINITIONS OF TERMS CONTAINED IN SUCH AGREEMENT.

THE DEBTOR BELIEVES THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTOR, ITS CREDITORS AND ALL PARTIES IN INTEREST.

### III. GENERAL INFORMATION

#### A. Historical Description of the Debtor's Business

ANEI is a wholly-owned subsidiary of AMNEX, Inc. ("AMNEX"), a public holding company which, on May 5, 1999, also filed its separate Chapter 11 petition in the Bankruptcy Court shortly prior to the filing of a Chapter 11 petition of its subsidiary CRESCENT. ANEI provided operator and other services to a variety of telecommunications carriers, including CRESCENT. Each of ANEI and CRESCENT is being liquidated in their respective and separate pending Chapter 11 cases. Upon the confirmation of liquidating plans in ANEI and CRESCENT, AMNEX will request that the Bankruptcy Court dismiss its chapter 11 case. Since in or about 1996, CRESCENT was engaged in the business of owning and operating public pay phones acquired in a variety of transactions located in the New York and New Jersey metropolitan areas. As of December 31, 1997, CRESCENT owned and operated 7,901 installed private payphones in these metropolitan areas. In March 1997, CRESCENT acquired approximately 800 payphones in Florida through its 80% owned subsidiary, Sun Tel of North America Inc. which acquired Sun Tel, Inc. from its former owner who remained a 20% shareholder. Prior to its Chapter 11 filing, CRESCENT acquired an additional approximately 900 payphones in the NY metropolitan area. CRESCENT also obtained and/or contracted, either through other acquisitions or internal growth, from site owners to install and operate private payphones. The private payphones were installed in properties where it was believed significant demand existed for private payphone services, such as at educational institutions, airports, shopping malls, convenience stores, service stations, grocery stores, restaurants, truck stops and bus terminals, at no cost to the site owner. CRESCENT would then service and collect money from these private payphones and pay the site owner a share of the private payphone's revenues. In addition to the coin revenue generated from the payphones, CRESCENT received compensation from providers of long distance services for "dial around" calls. Dial around is a term used to describe calls placed from payphones that bypass the inter-exchange carrier ("IXC") presubscribed to that payphone. As a domestic services provider, ANEI was the presubscribed IXC for the Debtor's payphones, thereby generating significant incremental revenue to it.

#### B. Significant Facts and Event Leading to Need to Commence the Chapter 11 Case

**Pre-Petition Operating Environment and Results.** Generally speaking, adverse conditions which affected the payphone industry in general impacted the Debtor (and its affiliates) as well. Such included, but were not limited to, increased competition from other payphone and operator service providers, the increased use of "dial around" services, phone cards and, possibly primarily, the rapid decrease in the cost coupled with the rapid increase in the use of cell phones as an alternative to public payphones. Such adverse impact on the payphone business had a direct impact on the level of ANEI's business.

There follows a discussion of the results of operations as reported on a consolidated basis with ANEI, and its debtor and non-debtor affiliates including its parent (AMNEX) and CRESCENT (all collectively referred to herein as the "Company") for the three months ended March 31, 1999 compared with the three months ended March 31, 1998. During the three months ended March 31, 1999, the Company continued to experience the adverse effects on its operations of the decline in its revenue base as the Company's revenues for the three months ended March 31, 1999 declined to \$11,954,000 compared to \$22,180,000 for the three months ended March 31, 1998, or 46.1%. The Company also experienced an operating loss of \$4,906,000 during

the three months ended March 31, 1999 as compared to a \$1,651,000 operating loss for the three months ended March 31, 1998. This revenue reduction was principally attributable to three factors:

1) Continued erosion of ANEI's operator services business, consisting of operator-handled calls from payphone service providers, or PSPs (private payphone operators), presubscribed public payphones, and the hospitality industry. As stated above, this erosion was due to a number of factors including increased competition in the industry, the impact of increased use of "dial around" services and debit cards, and the impact of consumers' increased use of wireless telephones as an alternative to payphones.

2) A reduction in cross-border operator-assisted calls from the Company's business in Mexico. During the second quarter of 1998, the regulatory authorities in Mexico enforced a licensing requirement not previously enforced on the Company, which had been operating without this license. As a result, the revenue base was reduced and the operator-assisted calls from this business base handled by ANEI declined substantially. Despite changes in its business approach in Mexico, the Company was not able to regain significant market share in Mexico.

3) On March 1, 1999, the Company exited the billing and collection business by concluding agreements to sell certain assets and customer information of National Business Exchange, Inc. (NBE), another affiliate which was a debtor previously liquidated in its own Chapter 11 case, to OAN Services, Inc., another billing clearinghouse which, coincidentally, also went through its own liquidating Chapter 11 case in California.

Cost of sales for the three months ended March 31, 1999 was \$9,337,000 or 78.1% of revenue, compared to \$16,810,000 or 75.8% of revenue for the three months ended March 31, 1998. The decrease in costs of \$7,473,000 was primarily due to results of the Company's cost reduction program for network expenses and operator costs to mitigate the effects of declining revenue. Cost of sales as a percentage of revenue increased primarily as a result of lower revenue.

Selling, general and administrative expenses totaled \$5,814,000, or 48.6% of revenue, in the quarter ended March 31, 1999 as compared to \$4,473,000, or 20.2% of revenue, in the first quarter of 1998. The increase in the first quarter 1999 as a percentage of sales resulted primarily from the decline in revenue. The increase in expense, compared to the first quarter 1998 was a result of costs associated with the Company's strategy to broaden its served market base, as well as legal expenses associated with litigation. Depreciation and amortization expenses for the quarter ended March 31, 1999 were \$1,709,000 compared to \$2,548,000 for the first quarter of 1998. The decrease was due primarily to the write off of certain fixed assets, intangible assets, and goodwill at the end of 1998.

Interest expense for the three months ended March 31, 1999 was \$1,246,000 or 10.4% of revenue compared to \$1,378,000 or 6.2% of revenue for the three months ended March 31, 1998. The decrease in interest expense of \$132,000 was primarily due to the Company's obtaining new financing at lower interest rates which replaced existing more expensive financing. The increase in interest expense as a percentage of revenue was due to lower revenues.

Liquidity and Capital Resources. During the three months ended March 31, 1999, the Company continued to experience significant operating losses and a significant working capital deficiency which amounted to \$66,380,000 as of March 31, 1999. Also during this period, the Company was not in compliance with the criteria required for continued listing of its common stock on the NASDAQ SmallCap Market (during which time its shares were trading on an exception basis under the symbol "AMXIC"), pending the outcome of certain actions planned in an effort to cause the Company to be able to maintain the listing of its common stock. On or about March 25, 1999, AMNEX, as guarantor, received notice from Jackson National Life Insurance Company ("JNL"), that an event of default had occurred concerning certain covenants under the Loan and Security Agreement that CRESCENT and CRESCENT's 80% owned subsidiary, Sun Tel, were party to with JNL (the "JNL Loan Agreement") under which CRESCENT was indebted to JNL in the approximate amount of \$24 million. JNL had granted the Company waivers of the default concerning such covenants, and on April 15, 1999, the Company and JNL were in the process of negotiating an amendment to the underlying loan agreement which would have enabled the Company to continue borrowings under the JNL Loan Agreement.

In order to attempt to comply with the listing requirements of the NASDAQ SmallCap Market and to obtain the liquidity required to continue operations, the Company sought to implement a plan which included, among other proposed

actions, the sale of certain non-strategic assets, the concentration of business activities on core businesses, cost reductions, and the negotiation of an amendment to the JNL Loan Agreement. In addition, the Company hired a financial advisor to assist in the sale of CRESCENT and its public payphone business.

**The Debtor's Aborted Pre-Petition Sale of CRESCENT.** The Company signed a non-binding Letter of Intent with a prospective purchaser of CRESCENT on March 18, 1999. The proposed purchase would, it was believed, have provided the Company (without CRESCENT) with sufficient cash to pursue the completion of its strategic plan, and to meet its operating and financial obligations.

The proposed potential purchaser of CRESCENT which entered into the non-binding Letter of Intent withdrew its offer on April 20, 1999, due to, among other reasons, the failure of the Company to provide audited financial statements on a timely basis for the year ended December 31, 1998. The Company was unable to provide these financial statements because it had not received an executed audit report from its auditors.

Separately, NASDAQ notified the Company that its common stock was delisted as of April 27, 1999, as a result of its failure to file its 10-K for the year ended December 31, 1998, on a timely basis. The delisting triggered an obligation of the Company to offer to purchase its \$15.0 million 8 1/2% Convertible Subordinated Notes due 2002 (the "Subordinated Notes") at a purchase price equal to 101% of principal amount. In addition, on April 30, 1999, holders of all of the Company's outstanding Series M Preferred Shares (the "Preferred Shares") exercised a mandatory redemption right, also triggered by the delisting, demanding the payment of approximately \$6.8 million or, in the alternative, a controlling ownership interest in the Company. The Company did not have sufficient liquidity to repurchase the Subordinated Notes or redeem the Preferred Shares. In addition, the continued decline in its operating results made it difficult to meet both its operating and financial obligations. These events and the resulting liquidity shortfall were among the significant factors which led to the filing of AMNEX's and ANEI's Chapter 11 petitions on May 5, 1999, followed by CRESCENT's on May 10, 1999.

### **C. Litigation and Significant Events in this and the Affiliates Chapter 11 Cases**

**Controversies with Jackson National Life, as lender, and others and the sale of the Debtor's Business.** The Company intended to commence its reorganization efforts for itself, ANEI and CRESCENT and certain of its other subsidiaries by obtaining initial interim financing necessary to satisfy its operating requirements from coin collections from its payphone business until other financing sources could be obtained. The use of revenue from coin collections was restricted under the terms of the JNL Loan Agreement negotiated, although JNL did not hold a security interest in such cash revenue.

The Company intended to propose that CRESCENT and Sun Tel, in their then anticipated Chapter 11 cases, grant to JNL a post-petition lien on future coin collections. On May 3, 1999, the Company notified JNL of its intention to file and cause the filing of petitions under Chapter 11 for the Company and ANEI and certain other subsidiaries, including CRESCENT, and to further securitize JNL's position in exchange for additional loans and advances by using CRESCENT's coin revenue as described above. The Company and JNL scheduled a meeting for May 4, 1999 for the purpose of discussing whether, and the terms under which, JNL would provide debtor-in-possession financing to the Company.

JNL refused to negotiate with the Company at that meeting and instead sought to serve the Company and CRESCENT with notices of default. JNL thereafter took control of the Company's common stock in CRESCENT which stock had previously been pledged as part of the pre-petition collateral given to JNL. JNL then purported to have voted in new directors and new management for CRESCENT, and seized possession and operating control of CRESCENT, its assets and operations. The Company then commenced action necessary to cause CRESCENT to file its petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code on May 10, 1999. On May 11, 1999, the Company sought and obtained a temporary restraining order in the U.S. Bankruptcy Court which returned control of CRESCENT to the Company. On May 19, 1999, the Company won a preliminary injunction, confirming its ability to continue to maintain control over CRESCENT and ousting JNL from possession and control. CRESCENT was then able to use the coin revenue in an effort to fund its operating expenses. JNL caused substantial payments to be made to it both pre and post-petition with respect to JNL's debt during the period when it exercised dominion and control over CRESCENT which, in CRESCENT's view, created chronic subsequent cash flow difficulties for it thereafter. It also significantly and adversely affected ANEI as much of the volume it handled was, as a result, transferred to providers other than ANEI and not recoverable.

Other creditors which were providing receivables financing to ANEI ceased remitting proceeds from the transactions they processed under funding agreements with the Company. The Company began negotiation with each of these entities, and the Bankruptcy Court authorized limited funding from one of these creditors from the factoring of ANEI's receivables. The shortfall in funding resulted in ANEI's having limited liquidity to meet post-petition obligations. In addition, ANEI was unable to negotiate a new agreement with MCI Worldcom, the primary long distance network provider to ANEI. The Bankruptcy Court permitted MCI Worldcom to terminate service to ANEI and, as a result, on June 9, 1999, ANEI ceased operations, as did certain other of the Company's non-debtor subsidiaries (other than CRESCENT and Sun Tel) whose operations were unprofitable or dependent upon ANEI. There was no practical alternative other than proceeding at that time with an orderly shut down under Chapter 11 for ANEI, as well as for the other entities which constituted its Integrated Network Services business segment and to seek a sale of CRESCENT.

On or about May 24, 1999, JNL filed a motion seeking the appointment of an operating trustee, which was vigorously opposed by CRESCENT. JNL and CRESCENT then commenced discovery, which included the exchange of document requests, document production, and commencement of depositions. The hearing to consider JNL's motion was scheduled to begin on June 16, 1999. On or about June 2, 1999, counsel for each of CRESCENT, JNL and the Official Committee commenced discussions with a view towards enhancing all creditors' confidence in the status and management of CRESCENT's operations. Following a meeting conducted on June 10, 1999, and after interviewing several candidates, CRESCENT, JNL and the Official Committee agreed that CRESCENT should retain Joseph R. Getz as a business operations consultant. JNL and CRESCENT agreed to a standstill of JNL's motion for a trustee, and such was adjourned to July 21, 1999. Meanwhile, in late June 1999, CRESCENT determined that it was unable to satisfy its weekly payment obligations to Bell under a stipulation that had been "so ordered" by the Court on June 11, 1999. Despite CRESCENT's efforts, Bell would not agree to defer any of the weekly payments or to accept a lien on post-petition dial around compensation. Instead, Bell demanded a lien senior to the JNL Lien on CRESCENT's assets so that Bell would be assured of receiving the first proceeds of the sale of CRESCENT's assets. By motion dated June 21, 1999, CRESCENT requested that the Bankruptcy Court approve the use of cash collateral and grant Bell a senior and priming lien in all of its assets. In response, JNL filed a motion seeking a variety of forms of adequate protection of the JNL Liens. Following negotiations among CRESCENT, Bell and JNL on June 22, 1999, the Bankruptcy Court entered a consent order on June 25, 1999 which, among other things, authorized CRESCENT's use of cash collateral on an interim basis, granted Bell a priming lien on dial-around compensation due in July, 1999 and granted JNL replacement liens to the extent of CRESCENT's use of cash collateral. An application seeking approval of Mr. Getz's retention was filed, and the objection of the United States Trustee thereafter was resolved by the filing of a supplemental affidavit confirming that Mr. Getz had sold those shares of AMNEX stock which he and his wife previously owned. JNL then determined to move forward with its motion for the appointment of a trustee, and JNL and CRESCENT each became engaged once again with the process of conducting discovery. On July 8, 1999, a meeting was conducted that included CRESCENT, JNL, the Official Committee and Mr. Getz to discuss, among other things, the progress of CRESCENT's sale of its assets. Following such meeting, additional discussions occurred during which the Official Committee and JNL expressed the view that they no longer wished to await a possible stalking horse bidder for CRESCENT's assets, but instead that it should conduct an auction sale as soon as possible. CRESCENT filed the necessary motion to set up an auction and related procedures. Ultimately, various interested parties came forward and made their interest known in acquiring these assets and after extensive discussions and negotiations with each such party, CRESCENT and the Official Committee, JNL ultimately would not consent to any of the offers received and, after a hearing held September 9, 1999, CRESCENT's payphones and related assets- the site leases, service vehicles, office equipment and the Long Island operating center among other things-were sold and/or assumed and assigned to JNL in satisfaction of its secured claim pursuant to an order of the Bankruptcy Court dated on or about September 10, 1999. Almost immediately thereafter, the sale was consummated. Any remaining obligations to JNL all are unsecured.

**Other Litigation and Sales of Miscellaneous Assets.** The Debtor was obliged during this Chapter 11 Case to commence and prosecute a significant number of actions to recover monies owed to it, to recover preferential payments and other voidable transfers, and to assert objections to a variety of claims which the Debtor believed to be excessive or asserting the wrong priority or as to which the Debtor believed no monies were due and owing. In a number of instances, the defendants or parties from which recoveries were sought themselves were out of business or otherwise unlocatable. In the balance of cases, resolutions were effectuated pursuant to court orders approving such resolutions and settlements in which recoveries were obtained representing a realization of a relatively significant portion of the monies available for distribution under the Plan, coupled with a sizeable reduction in the amount of allowable claims asserted against the Debtor's estate. In addition, there were fairly

insubstantial realizations from claims filed on the Debtor's behalf in bankruptcy cases of entities indebted to it.

**Miscellaneous Asset Sales.** During this Chapter 11 Case, there were small sales of minor assets of the Debtor in accordance with orders of the Bankruptcy Court. The aggregate net realization from such sales was relatively insubstantial.

**D. Other Events During the Chapter 11 Case**

**1. Bar Date and Claims Process**

**a. Schedules and Statements**

On October 22, 1999, the Debtor filed its statement of financial affairs, schedule of assets and liabilities, and schedule of executory contracts and unexpired leases (collectively, as may be amended, the "Schedules"). A copy thereof is on file with the Bankruptcy Court and accessible by interested parties.

**b. Bar Dates**

By order dated June 8, 2006 (the "Bar Date Order"), the Bankruptcy Court fixed July 17, 2006 at 5:00 p.m. (the "Bar Date") as the last date and time by which proofs of claim were required to be filed in the Chapter 11 Case. In accordance with the Bar Date Order, the Debtor mailed or caused to be mailed notices informing creditors of the last date and time to timely file proofs of claim and a proof of claim form including information concerning the filing of each creditor's Notice of the Bar Date also was published in the national edition of *USA Today*. The Debtor received approximately 77 proofs of claim by the Bar Date filed in ANEI's case and approximately 100 filed on the AMNEX claims docket, certain of which may relate to ANEI. Certain Claims filed in the ANEI case may relate to AMNEX, and all of these claims have and continue to be reviewed and objected to where appropriate. Others remain under pending objection.

The Debtor also obtained and served by mail and published in *USA Today* notice of a court order dated November 18, 2005, which fixed December 23, 2005, as the bar date for filing Administrative Expense Claims (other than those for professional fees), certain of which remain under review and possibly subject to objection or negotiation.

**2. Exclusivity**

Section 1121(c)(3) of the Bankruptcy Code provides an initial period of 120 days after the commencement of a chapter 11 case during which a debtor has the exclusive right to propose and file a chapter 11 plan and a period of 180 days after the commencement of the case to obtain acceptance of such plan. ANEI did not require or seek any such extensions.

**E. Litigation and Other Matters**

There are no material litigation matters to report in this regard in addition to that previously discussed above.

**IV. THE PLAN OF LIQUIDATION**

The Plan provides for the completion of the wind-down and liquidation of the Debtor's Assets and a Distribution of the proceeds of such liquidation to the Holders of Allowed Claims through a trust established for that purpose. The Debtor believes that liquidation pursuant to the Plan will provide Holders of Allowed Claims with a greater distribution than they would receive if the Chapter 11 Case were converted to chapter 7 of the Bankruptcy Code.

The Plan is annexed hereto as Exhibit A and forms a part of this Disclosure Statement. The summary of the Plan set forth below is qualified in its entirety by reference to the provisions of the Plan.



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

The Plan classifies Claims and Equity Interests separately and provides different treatment for different Classes of Claims and Equity Interests in accordance with the Bankruptcy Code. As described more fully below, the Plan provides that holders of certain Claims will receive various amounts and types of consideration, thereby giving effect to the different rights of holders of Claims in each Class. Equity Interests will receive no distributions of any kind in the Chapter 11 Case and such interests will be cancelled.

### **1. Administrative Expense Claims and Statutory Fees**

Administrative Expense Claims are Claims constituting a cost or expense of administration of the Chapter 11 Case allowed under sections 503(b) and 507(a)(1) of the Bankruptcy Code. Such Claims include, without limitation, all actual and necessary costs and expenses of preserving the Debtor's estates, all actual and necessary costs and expenses of operating the Debtor's business, any indebtedness or obligations incurred or assumed by the Debtor, as Debtor in possession, during the Chapter 11 Case and all allowances of compensation and reimbursement of expenses to the extent allowed by Final Order under sections 330 or 503 of the Bankruptcy Code.

Except as provided in the following proviso with respect to ordinary course obligations and in Section IV of the Disclosure Statement with respect to professional compensation and reimbursement Claims and unless a holder of an Allowed Administrative Expense Claim agrees to a different treatment, each holder of an Allowed Administrative Expense Claim will receive, in full satisfaction, settlement, and release of and in exchange for such Allowed Administrative Claim, cash in an amount equal to such Allowed Claim, on the later of the Distribution Date and the date that is ten (10) Business Days after such Administrative Expense Claim becomes an Allowed Administrative Expense Claim pursuant to a Final Order of the Bankruptcy Court, or as soon after such date as is practicable; provided, however, that Allowed Administrative Expense Claims representing obligations incurred in the ordinary course of business of the Debtor (including, without limitation, amounts owed to vendors and suppliers that have sold goods or furnished services to the Debtor since the Commencement Date) will be paid in full by the Debtor in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

The Debtor estimates that Allowed Administrative Expense Claims payable on the Distribution Date, exclusive of compensation and reimbursement of expenses payable to Professionals retained in the Chapter 11 Case and relevant taxing authorities, will be zero or virtually zero since the Debtor's business is and for some period has been inert and accordingly there are little, if any, ordinary course expenses incurred or unpaid in the Chapter 11 Case. Any Statutory Fees remaining unpaid to the Office of the United States Trustee will also be paid on or before the Effective Date.

### **2. Professional Compensation and Reimbursement Claims**

Claims for the compensation of professionals retained in the Chapter 11 Case (collectively, the "Professionals") and reimbursement of expenses incurred by such Professionals (the "Compensation and Reimbursement Claims") pursuant to sections 503(b)(2), 503(b)(3), 503(b)(4) and 503(b)(5) of the Bankruptcy Code are Administrative Expense Claims. All payments to Professionals for Professional Compensation and Reimbursement Claims will be made in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Court relating to the payment of interim and final compensation for services rendered and reimbursement of expenses. The aggregate amount paid by the Debtor or requested by Professionals in respect of compensation for services rendered and reimbursement of expenses incurred by Professionals (including the attorneys and accountants employed by the Debtor from the date of the commencement of this case and the attorneys for the Official Committee), through August 1, 2008, is approximately \$1,500,000 (of which approximately \$330,000 has been paid and a balance of approximately \$1,260,000, including going forward estimates, to be requested). The Bankruptcy Court will review and determine all final applications for compensation for services rendered and reimbursement of expenses.

Pursuant to the Plan, each holder of a Professional Compensation and Reimbursement Claim will file its final application for the allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date by no later than the date that is 60 days after the Effective Date or such other date as may be fixed by the Bankruptcy Court. If granted such an award by the Bankruptcy Court, such Professional will be paid in full in such amounts as

are Allowed by the Bankruptcy Court (i) on the date such Professional Compensation and Reimbursement Claim becomes an Allowed Claim, or as soon thereafter as is practicable or (ii) upon such other terms as may be mutually agreed upon between the Debtor and a Professional entitled to an Administrative Expense Claim for compensation and reimbursement of fees and expenses. It is estimated that all such Professionals will agree to a consensual reduction of their Allowed Administrative Expense Claims to ensure the feasibility of the Plan.

### **3. Priority Tax Claims**

Priority Tax Claims are Claims of governmental units for taxes entitled to priority in payment under sections 502(i) and 507(a)(8) of the Bankruptcy Code. Claims asserted or filed by taxing authorities as of August 1, 2008, or scheduled by the Debtor or as resolved by the Debtor and the taxing authority aggregate approximately \$375,000, certain of which aggregating approximately \$100,000 may be or are being reviewed by the Debtor and the Official Committee and subject to possible objection.

Pursuant to the Plan, except to the extent that any governmental unit entitled to payment of any Allowed Priority Tax Claim agrees to different treatment, pursuant to section 1129(a)(9) of the Bankruptcy Code, each holder of an Allowed Priority Tax Claim, will receive, in full satisfaction, settlement, and release of and in exchange for such Allowed Priority Tax Claim, cash, in an amount equal to such Allowed Priority Tax Claim on the later of the Distribution Date, and to the extent such Priority Tax Claim is not an Allowed Claim on the Distribution Date, on the first Subsequent Distribution Date following allowance of such Claim.

### **4. Class 1 – Priority Non-Tax Claims**

Priority Non-Tax Claims are Claims that are entitled to priority in accordance with sections 507(a)(2)-(7) and (9) of the Bankruptcy Code (other than Administrative Expense Claims and Priority Tax Claims). Such Claims include Claims for (a) accrued employee compensation earned within 90 days prior to commencement of the Chapter 11 Case to the extent of \$4,000 per employee and (b) contributions to employee benefit plans arising from services rendered within 180 days prior to the commencement of the Chapter 11 Case, but only for each such plan to the extent of (i) the number of employees covered by such plan multiplied by \$4,000, less (ii) the aggregate amount paid to such employees from the estates for wages, salaries or commissions during the 90 days prior to the Commencement Date. The Debtor believes that all Priority Non-Tax Claims, to the extent such may have existed, previously have been paid or satisfied in the ordinary course prior to the commencement of the Chapter 11 Case. Accordingly, the Debtor believes that there should be no Allowed Priority Non-Tax Claims.

Class 1 is not impaired by the Plan. Holders of an Allowed Priority Non-Tax Claim are not entitled to vote to accept or reject the Plan.

Pursuant to the Plan, except to the extent that a Holder of an Allowed Priority Non-Tax Claim has been paid by the Debtor prior to the Distribution Date or agrees to a different treatment, each holder of an Allowed Priority Non-Tax Claim, if any exist, will receive in full and complete satisfaction, settlement and release of and in exchange for such Holder's Allowed Priority Non-Tax Claim, cash in an amount equal to such Allowed Priority Non-Tax Claim, without interest, on the later of the Distribution Date and, to the extent such Priority Non-Tax Claim is not an Allowed Claim on the Distribution date, on the first Subsequent Distribution Date following allowance of such Claim.

Class 1 will be deemed to have voted to accept the Plan, if such Class in fact includes any Allowed Priority Non-Tax Claims.

### **5. Class 2 – Secured Claims**

Secured Claims consist of all Secured Claims against ANEI. Based upon the Debtor's Schedules and the proofs of claim filed in the Chapter 11 Case, the Debtor believes that there are no remaining Allowed Secured Claims in the Chapter 11 Case.

Assuming that there in fact are any Allowed Claims included in Class 2, Class 2 is unimpaired by the Plan. Holders of an Allowed Secured Claim are not entitled to vote to accept or reject the Plan. A few taxing authorities have asserted secured claims aggregating what are essentially *de minimus* alleged secured amounts.

Pursuant to the Plan, on the Distribution Date, unless otherwise agreed to by the Holder of an Allowed Secured Claim, each Holder of an Allowed Secured Claim will receive (i) the amount of the proceeds actually realized from the sale of any Collateral securing such Claim, less the actual costs and expenses of disposing of such Collateral and/or (ii) the Collateral securing such Claim, but in neither case in an amount greater than necessary to pay such Allowed Secured Claim in full, plus if the Collateral securing such Allowed Secured Claim exceeds the Allowed amount of such Claim, any interest (including post-petition interest at the non-default rate) on such Allowed Secured Claim and any reasonable fees, costs or charges provided for under the governing agreements, to the extent allowed pursuant to section 506(b) of the Bankruptcy Code. To the extent that the amount of an Allowed Secured Claim exceeds the value of the Collateral securing it, that portion of the Claim will be treated as an unsecured deficiency Claim in Class 3.

The Trustee of the Debtor's Liquidating Trust will have the right (i) to satisfy in full the obligations owed in respect of an Allowed Secured Claim by conveying to the Holder of such Claim all of the right, title, and interest in and to the property that is subject to the lien securing such Claim and/or (ii) to sell any property subject to a lien securing such Claim on the terms and subject to the conditions specified in any orders of the Bankruptcy Court and section 363 and other applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. However, the Debtor does not believe it holds any property subject to any lien.

Except as otherwise provided by an order of the Bankruptcy Court and section 363(f) of the Bankruptcy Code, the Holder of an Allowed Secured Claim will retain the lien securing its Claim as of the Confirmation Date until the distributions provided for in Section 4.2(b) of the Plan have been made to satisfy such Holder's Allowed Claim.

#### **6. Class 3 – General Unsecured Claims**

General Unsecured Claims consist of any unsecured, non-priority Claims against the Debtor. General Unsecured Claims include, without limitation, (a) Claims arising from the rejection of leases of nonresidential real property and executory contracts, (b) Claims relating to personal injury, property damage, products liability, discrimination, employment or any other similar litigation claims asserted against any of the Debtor (the "Tort Claims"), (c) Claims relating to pre-petition litigation against the Debtor, and (d) Claims of the Debtor's trade vendors, suppliers and service providers, which Claims form the vast, if not entire, amount of Claims in the Chapter 11 Case.

The aggregate amount of General Unsecured Claims, as reflected in timely-filed proofs of claim or, in the event no proof of claim was filed, in the Debtor's Schedules or as fixed by subsequent court order is approximately \$2.5 – 3,000,000. In addition, the State of New York Department of Taxation and Finance holds a partially subordinated General Unsecured Claim pursuant to a settlement agreement and stipulation "so ordered" by the Bankruptcy Court in which it has agreed to vote in favor of the Plan. The ultimate resolution of General Unsecured Claims could result in Allowed General Unsecured Claims in amounts less than or greater than those estimated by the Debtor for purposes of this Disclosure Statement.

Class 3 is impaired by the Plan. Each Holder of an Allowed General Unsecured Claim is entitled to vote to accept or reject the Plan.

Pursuant to the Plan, except to the extent that a holder of an Allowed General Unsecured Claim has been paid by the Debtor prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed General Unsecured Claim will receive in full and complete satisfaction, settlement, and release of and in exchange for such holder's Allowed General Unsecured Claim, cash in an amount equal to its Pro Rata Share on the later of the Distribution Date and, to the extent such General Unsecured Claim is not an Allowed Claim on the Distribution Date, on the First Subsequent Distribution Date following allowance of such Claim.

Distributions under the Plan will be made only to Allowed Claims. If a portion of a General Unsecured Claim is in part Allowed, a distribution will be made on account of the Allowed portion of the General Unsecured Claim in accordance with the Plan. A Disputed General Unsecured Claim that becomes an Allowed Claim subsequent to the Distribution Date will receive the

distribution of Cash that would have been made to such holder under Section 4.3(b) of the Plan, if the Disputed General Unsecured Claim had been an Allowed Claim on or prior to the Distribution Date, without any post-Distribution Date interest thereon, on the next Subsequent Distribution Date that is at least ten Business Days following the date on which a Disputed General Unsecured Claim becomes an Allowed Claim. See Article VII of the Plan. It is estimated that the Pro Rata Share to be distributed to holders of Allowed General Unsecured Claims will, depending on the ultimately Allowed amounts of Professional Compensation Claims, United States Trustee fees to be incurred until the Chapter 11 Case is closed, liquidation and Liquidation Trustee expenses and Class 1 and 2 Allowed amounts, range between 1% and 2% based upon an estimated \$37,500 of Cash ultimately available for Distribution to this Class.

**7. Class 4 – Equity Interests**

Equity Interests consist of any Equity Interest relating to the common stock of ANEI issued, outstanding, or otherwise authorized as of the Commencement Date, whether or not transferable, including any existing options, warrants or rights, contractual or otherwise, to acquire such equity securities virtually if not actually 100% of which is held by AMNEX, its debtor-parent.

Class 4 is impaired by the Plan. Nevertheless, Holders of an Allowed Equity Interest are not entitled to vote to accept or reject the Plan which it (or they) are deemed to reject. Pursuant to the Plan, Equity Interests are Allowed and are not required to file proofs of interest.

Pursuant to the Plan, holders of Allowed Equity Interests will retain their Equity Interests until the occurrence of the Effective Date, at which time such Equity Interests will be extinguished, including any options, warrants, or rights, contractual or otherwise, to acquire an Equity Interest in the Debtor, and will be cancelled effective as of the Record Date. Holders of an Allowed Equity Interest, as of the applicable Record Date, will not receive any distribution under the Plan on account of their Equity Interests.

**V. MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. GENERAL**

Each of the transactions required to implement the Plan will be implemented in accordance with the provisions of the Plan, including Article VI thereof.

**B. CREATION OF THE LIQUIDATING TRUST**

On the Effective Date or as soon thereafter as is practicable, all of the Assets of the Debtor's Estate will be transferred to the Liquidating Trust for the benefit of the Holders of General Unsecured Claims, including, but not limited to, all Cash and Causes of Action; provided, however, that the Debtor shall retain such Cash as may be necessary to fund (i) Distributions on the Effective Date to Holders of Allowed Administrative Expense Claim and Allowed Priority Claims, and (ii) the creation and maintenance of the Operating Reserve Account.

**C. APPOINTMENT AND DUTIES OF THE LIQUIDATING TRUSTEE**

The Debtor, after consultation with the Official Committee, has designated Cynthia Terrell, the Debtor's officer overseeing the post-petition liquidation, to be the Liquidating Trustee who shall be paid in accordance with the terms of the Liquidating Trust Agreement. On the Effective Date or as soon thereafter as practicable, all Cash and Assets of the Estate not otherwise required by the Debtor to satisfy its obligations under this Plan, including but not limited to Causes of Action, shall be transferred to the Liquidating Trust for liquidation and distribution in accordance with the Plan and the Liquidating Trust Agreement. For purposes of making Distributions on account of Allowed Claims under the terms and conditions of this Plan, the Liquidating Trustee shall be deemed the Estate's representative in accordance with section 1123 of the Bankruptcy Code. As of each March 31, June 30, September 30 and December 31, the Liquidating Trustee shall prepare a quarterly report, and, upon the resolution of the last Disputed Claim, Avoidance Action or Cause of Action, a final report, regarding receipts, disbursements and

the status of pending, contemplated and resolved Disputed Claims, Avoidance Actions and Causes of Action. Such report shall be filed with the Bankruptcy Court and a copy shall be delivered to the Office of the United States Trustee and the Trust Advisory Committee within fifteen (15) days of the end of each calendar quarter and the final report on or before sixty (60) days following resolution of the last Disputed Claim, Avoidance Action or Cause of Action.

**D. ESTABLISHMENT OF THE OPERATING RESERVE ACCOUNT**

On or before the Effective Date, the Debtor will establish the Operating Reserve Account. The Operating Reserve Account shall be used to pay Administrative Expense Claims of the Chapter 11 Case arising prior to the Confirmation Date, including the fees and expenses of any Professionals retained by the Debtor and/or the Official Committee. The Operating Reserve Account will be funded from the Estate's Assets and other available funds. When the Debtor has been dissolved, any remaining funds in the Operating Reserve Account shall be transferred by the Debtor to the Liquidating Trustee for subsequent disposition in accordance with terms of Liquidating Trust Agreement.

**E. DISTRIBUTIONS UNDER THE PLAN**

1. Date of Distributions

Any Distributions and deliveries to be made under the Plan shall be made on the Distribution Date or as soon as practicable thereafter, including the Final Distribution Date, unless otherwise specifically provided for under the Plan. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Distributions of Available Cash shall be made from the Available Cash on the Distribution Dates, provided, however, that except for the final distribution, the Liquidating Trustee shall not be obligated to make distributions if the amount of Available Cash then on hand is less than or equal to \$100,000. In addition, and notwithstanding the foregoing, nothing shall impair the right of the Debtor or the Liquidating Trustee, as the case may be, to use or retain Available Cash to satisfy the costs of administering and fully consummating the Plan, administering its estate, and winding-down the Debtor's business and affairs.

2. Delivery of Distributions

Subject to Bankruptcy Rule 9010, and except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth on the Schedules filed by the Debtor with the Bankruptcy Court or on the books and records of the Debtor or its agent, unless the Debtor has been notified in writing of a change of address including, without limitation, by the filing of a proof of Claim or interest by such Holder that contains an address for such holder different from the address reflected on such Schedules for such Holder (or at the last known address of such Holders if no proof of Claim is filed or if the Debtor has been notified in writing of a change of address). On the Record Date, the claims register shall be closed, and there shall be no further changes in the record Holder of any Claim. The Liquidating Trustee shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. The Liquidating Trustee shall instead be authorized and entitled to recognize and deal for all purposes under the Plan with only those record Holders stated on the claims register as of the close of business on the Record Date.

3. Time Bar to Cash Payments

Any check issued by the Debtor or the Liquidating Trustee, as the case may be, on account of Allowed claim shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof, unless it has been returned as undeliverable. Requests for re-issuance of any check shall be made in writing directly to the Debtor or the Liquidating Trustee, as the case may be, by the Holder of the Allowed Claim with respect to which such check originally was issued. Any request for reissuance of a voided or undeliverable check constituting the Distribution in respect of an Allowed Claim shall be made in writing on or before the Unclaimed Distribution Date. **AFTER SUCH DATE, ALL CLAIMS IN RESPECT TO VOID CHECKS OR UNDELIVERABLE CHECKS SHALL BE FOREVER BARRED.**

4. Disputed Distributions

If any dispute arises as to the identity of a Holder of an Allowed Claim who is to receive a Distribution, in lieu of making a Distribution to such Person, the Debtor and/or the Liquidating Trustee, as the case may be, shall deposit the Distribution at issue into a segregated account until the disposition of such Distribution is determined by Final Order of the Bankruptcy Court or by written agreement among the interested parties to such dispute.

5. Manner of Payment Under the Plan

At the option of the Debtor or the Liquidating Trustee, as the case may be, any Distribution of Cash to be made pursuant to this Plan may be made by a check or wire transfer, or as otherwise required by or provided in applicable agreements. No payment of cash less than five (\$5) dollars will be made by the Liquidating Trustee to any Holder of a Claim unless a request therefor is made in writing to the Liquidating Trustee. Any undistributed amount will be held under this Section over to the next Subsequent Distribution Date. If any Distribution to any Holder is returned as undeliverable, the Liquidating Trustee shall use reasonable efforts to determine the current address of such Holder, but no Distribution to any such Holder shall be made unless and until the Liquidating Trustee has determined the then current address of such Holder, at which time such Distribution to such Holder shall be made to such Holder without interest. Amounts in respect of any undeliverable Distributions made by the Liquidating Trust shall be returned to the Liquidating Trust until such Distributions are claimed. All claims for undeliverable distributions or voided checks shall be made on or before the earlier of (i) ninety (90) days after the date such undeliverable Distribution (other than Distribution made on the Final Distribution Date) was initially made, and (ii) sixty (60) days after the Final Distribution Date (the "Unclaimed Distribution Date"). At the expiration of the Unclaimed Distribution Date, all such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and shall, in the Debtor's discretion, be used first to satisfy the costs of administering and fully consummating the Plan and administering the estate and thereafter any remaining funds shall become Available Cash for distribution in accordance with the Plan. After the Unclaimed Distribution Date, all unclaimed property shall be transferred to the Liquidating Trust for Distribution to Holders of Allowed General Unsecured Claims and the Claim of any Holder to such property shall be forever barred. Any check issued by the Debtor or the Liquidating Trustee, as the case may be, on account of an Allowed Claim shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof, unless it has been returned as undeliverable. Requests for re-issuance of any check shall be made in accordance with the notice provisions of Section 12.9 of the Plan.

6. Distributions After Effective Date

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

**F. OFFICIAL COMMITTEE**

As of the Effective Date, the Official Committee shall be deemed dissolved and shall have no further duties, authority or responsibility under the Bankruptcy Code, or otherwise, with respect to the Debtor, its assets, or the Plan. Neither the Debtor nor the Liquidating Trustee shall be responsible for any fees, costs or expenses of the Official Committee, its individual members or its Professionals incurred after the Effective Date; provided, however, that following the Effective Date, the responsibilities of the Official Committee and its Professionals shall be limited to the (i) preparation and prosecution of their respective fee applications for which they shall be entitled to reasonable compensation by the Debtor and (ii) service on the Trust Advisory Committee for which they shall be entitled to compensation.

**G. TRUST ADVISORY COMMITTEE**

On the Effective Date, the Trust Advisory Committee shall be formed. The Trust Advisory Committee shall consist of counsel to the Official Committee. The Trust Advisory Committee shall have general oversight powers for the activities of the Trustee, as well as those specific rights and powers set forth in the other provisions of the Liquidating Trust Agreement and under the Plan. The Trustee shall consult with the Trust Advisory Committee before objecting to or settling a Claim, making a Distribution, initiating a Cause of Action, or as otherwise provided for in the Plan. The Trust Advisory Committee shall be entitled to seek compensation and reimbursement of expenses from the Trust.

## **H. Timing of Distributions Under the Plan**

### **1. Distributions on the Distribution Date**

Payments and distributions to holders of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Secured Claims, Lender Claims, and Allowed General Unsecured Claims will be made on the Distribution Date, or as soon thereafter as is practicable.

### **I. Treatment of Executory Contracts and Unexpired Leases; Bar Date for Rejection of Such Contracts and Leases**

The Bankruptcy Code grants the Debtor the power, subject to the approval of the Bankruptcy Court, to assume or reject executory contracts and unexpired leases. If an executory contract or unexpired lease is rejected, the counterparty to the agreement may file a claim for damages incurred by reason of the rejection. In the case of rejection of leases of real property, such damage claims are subject to certain limitations imposed by the Bankruptcy Code.

Pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, on the Confirmation Date, all executory contracts and unexpired leases that exist between the Debtor and any person will be deemed rejected as of the Effective Date, except for any executory contract or unexpired lease (i) that has been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Confirmation Date, or (ii) as to which a motion for approval of the assumption or rejection of such executory contract or unexpired lease has been filed and served prior to the Confirmation Date, provided, however, that any options, warrants, or rights contractual or otherwise, to acquire an Equity Interest in the Debtor which are not exercised by the Record Date for the first Available Cash Distribution Date will be cancelled effective as of the Record Date.

Claims arising out of the rejection of an executory contract or unexpired lease pursuant to the Plan must be filed with the Bankruptcy Court no later than (a) twenty (20) days after the Confirmation Date, or (b) thirty (30) days after the entry of an order by the Bankruptcy Court authorizing rejection of a particular unexpired lease or executory contract. All such Claims not filed within such time will be forever barred from assertion against the Debtor's estate.

The Debtor believes that no executory contracts or unexpired leases exist at this time.

### **J. Provisions for Treatment of Disputed Claims**

Disputed Claims are those Claims, or portions thereof, for which the Debtor have interposed (or has determined to interpose) a timely objection and/or request for estimation in accordance with section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018, which objection and/or request for estimation has not been withdrawn or determined by a Final Order. Any Claim proof of which was required to be filed by order of the Bankruptcy Court but as to which a proof of claim was not timely or properly filed is a Disputed Claim. A Claim that is Disputed by the Debtor as to its amount only, will be deemed Allowed in the amount the Debtor admits owing, if any, and Disputed as to the excess.

All Tort Claims are Disputed Claims. Any Tort Claim as to which a proof of claim was timely filed in the Chapter 11 Case will, at the option of the Debtor, either be estimated or determined and liquidated in the Bankruptcy Court or in the administrative or judicial tribunal in which it is pending on the Confirmation Date or, if no such action was pending on the Confirmation Date, in any administrative or judicial tribunal of appropriate jurisdiction. Any Tort Claim estimated or determined and liquidated pursuant to a judgment obtained in accordance with Section 7.2 of the Plan and applicable non-bankruptcy law that is no longer subject to appeal or other review will be deemed to be an Allowed Claim in Class 3 in such liquidated amount and satisfied in accordance with the Plan. The Debtor believes there are no Tort Claims in the Chapter 11 Case.

If a portion of a General Unsecured Claim is in part Allowed and in part Disputed or otherwise not Allowed, a distribution will be made on account of the Allowed portion of the General Unsecured Claim in accordance with the Plan. Payments and distributions to each Holder of a Claim that is Disputed or that is not Allowed, to the extent that such Claim ultimately becomes Allowed, will be made in accordance with the provisions of the Plan governing such Claim. See Sections 7.4 and 7.5 of the Plan.

On and after the Effective Date, and in each case upon consultation with the Trust Advisory Committee, the Liquidating Trustee shall have the authority to compromise, settle, otherwise resolve or withdraw any objections to Claims and compromise, settle or otherwise resolve Disputed Claims of less than \$50,000.00 without approval of the Bankruptcy Court. Claims in excess of \$50,001.00 may be compromised or settled in accordance with Rule 9019(a) only upon an application with the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, the Debtor or the Liquidating Trust will file all objections to Disputed Claims that are the subject of proofs of claim or requests for payment filed with the Bankruptcy Court (other than applications for allowances of compensation and reimbursement of expenses) and serve such objections upon the holders of the Claims to which the objections are made as soon as is practicable, but in no event later than 60 days after the Effective Date or such later date as may be approved by the Bankruptcy Court.

As set forth in Section 7.5 of the Plan, the Debtor and/or the Liquidating Trustee, as the case may be, at any time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor has previously objected to such Claim, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during litigation concerning any objection to such Claim. In the event that the Bankruptcy Court estimates a Disputed Claim, the estimated amount may constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor may elect to pursue any supplemental proceedings to object to any ultimate payment of such Claim. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and not necessarily exclusive of one another. On and after the Distribution Date, Claims which have been estimated subsequently may be compromised, settled, withdrawn, or otherwise resolved as provided for in Section 7.2 of the Plan.

On and after the Effective Date, as set forth in Section 7.6 of the Plan, the Liquidating Trustee will retain an amount of cash, pending the allowance or disallowance of any Disputed Claims, sufficient to pay to each holder of a Disputed Claim (i) the amount that such holder would have been entitled to receive under the Plan if such Claim had been an Allowed Claim on the Distribution Date or any Subsequent Distribution Date, (ii) such lesser amount as the Bankruptcy Court may estimate pursuant to section 502(c) of the Bankruptcy Code and Section 7.5 of the Plan; or (iii) such amount as agreed to by the Liquidating Trustee or the Holder of such Disputed Claim.

The holder of a Disputed General Unsecured Claim that becomes an Allowed Claim subsequent to the Distribution Date will receive the distribution of cash that would have been made to such holder under Section 4.3 of the Plan if the Disputed General Unsecured Claim had been an Allowed Claim on or prior to the Distribution Date. If, on or after the Distribution Date, any Disputed Claim, or portion thereof, becomes an Allowed Claim, the Liquidating Trustee will, on the Subsequent Distribution Date that is at least ten (10) Business Days following the date on which the Disputed Claim becomes an Allowed Claim, distribute to the holder of such Allowed Claim the amount, without any post- Distribution Date interest thereon, that such holder would have received pursuant to Article IV of the Plan on the Distribution Date and each Subsequent Distribution Date had the Disputed Claim been an Allowed Claim on such dates, which amount will not exceed the amount of cash retained on account of such Claim.

To the extent that all or a portion of a Disputed Claim is disallowed, the holder of such Claim will not receive any distribution on account of the portion of such Claim that is disallowed and such amount will be retained by the Debtor for distribution in accordance with the Plan.

Cash the Debtor and/or the Liquidating Trustee have determined is unnecessary to pay Estimated Liquidation Expenses or Disputed Claims will become Available Cash for distribution in accordance with the Plan.

---

**K. Conditions Precedent to Effectiveness of the Plan**

The Plan will not become effective unless and until the following conditions will have been satisfied pursuant to Section 10.1 of the Plan:

- The Confirmation Order, will have been signed by the judge presiding over the Chapter 11 Case and shall have



become a Final Order;

- No stay or injunction will be in effect at the time the other conditions set forth herein are satisfied or waived; and
- All actions, documents and agreements necessary to implement the Plan will have been effected or executed.

**L. Implementation and Effect of Confirmation of the Plan; Injunctions**

On and after the Confirmation Date, the Debtor and/or the Liquidating Trustee may, as set forth in the Plan, use, sell, acquire, transfer, abandon or otherwise dispose of at a public or private sale any of the Debtor's remaining assets for the purpose of liquidating and converting such assets to cash, making distributions and fully consummating the Plan.

All injunctions and stays provided for in the Chapter 11 Case under sections 105 and 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, will remain in full force and effect until the dissolution of the Debtor. Accordingly, by reason of the continuation of the automatic stay, no person may transfer any stock of the Debtor, or any other interest in the Debtor that would be considered "stock" within the meaning of section 382 of the Internal Revenue Code of 1986, as amended, if such transfer would result in the imposition of limitations on the Debtor's ability to utilize any net operating loss carry forwards thereafter. All Holders of Claims and Equity Interests are urged to consult their tax advisor.

**On and after the Confirmation Date, all persons are permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively or otherwise) on account of or respecting any claim, debt, right or cause of action of the Debtor and Debtor in Possession (i) for which the Debtor and Debtor in Possession (and the Liquidating Trustee) retain sole and exclusive authority to pursue in accordance with the Plan or (ii) which has been barred or extinguished pursuant to Article IX of the Plan. This provision is not intended to operate as a discharge of the Debtor pursuant to Section 1141 of the Bankruptcy Code but to give effect to the Bar Date Order and the jurisdiction of the Bankruptcy Court to determine all claims and rights of any Holder of a Claim against the Debtor's estate. The Office of the United States Trustee has indicated that it objects to the scope of this injunction and reserves all of its rights to assert such objection in connection with the Confirmation of the Plan.**

**M. Certain Causes of Action Extinguished or Preserved**

1. **Avoidance Claims.** From and after the Confirmation Date, any and all rights, claims, causes of action, avoiding powers, suits and proceedings, if any, arising under sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code will be preserved as set forth in Section 9.10 of the Plan.

2. **Exculpation.** Pursuant to Section 9.9 of the Plan, neither the Debtor, the Official Committee, nor any of their directors, officers, employees, members, attorneys, consultants, advisors and agents (acting in such capacity), will have or incur any liability to any Entity for any act taken or omitted to be taken in the formulation, preparation, dissemination, implementation, confirmation or approval of the Plan, the Disclosure Statement related thereto or any contract, instrument, release or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in the Plan; provided, however, that the foregoing provisions of Section 9.9 of the Plan will not affect the liability of any entity that otherwise would result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence, willful misconduct or breach of fiduciary duty. Any of the foregoing parties in all respects will be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**N. Summary of Other Provisions of the Plan**

---

The following subsections summarize certain other significant provisions of the Plan. The Plan should be referred to for the complete text of these and other provisions of the Plan.

## **1. Modification of the Plan**

The Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. After the entry of the Confirmation Order, the Debtor may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A Holder of an Allowed Claim that has accepted the Plan will be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such Holder.

## **2. Cancellation of Existing Securities and Agreements**

Pursuant to the Plan, on the Final Distribution Date, except as otherwise provided for in the Plan, (i) the Common Stock, to the extent not already cancelled, will be cancelled, and (ii) the obligations of the Debtor under the Common Stock and under the Debtor's certificate of incorporation, any agreements or certificates of designations governing the Common Stock will be extinguished.

## **3. Revocation or Withdrawal of the Plan**

The Debtor may withdraw or revoke the Plan at any time prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan prior to the Confirmation Date, or if the Confirmation Date does not occur, then the Plan will be deemed null and void. In such event, nothing contained herein or in the Plan will be deemed to constitute a waiver or release of any Claim or Equity Interest by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any other person in any further proceedings involving the Debtor.

## **4. Claims Preserved**

Except as provided in the Plan, on and after the Effective Date, any and all claims or causes of action accruing to the Debtor and Debtor in Possession will be preserved and retained by the Liquidating Trustee, as successor to the Debtor and Debtor in Possession also will have the exclusive right, subject to consultation with the Trust Advisory Committee, to enforce any such causes of action. The Liquidating Trustee may pursue, abandon, settle or release any or all such rights of action upon, if required, Bankruptcy Court approval after notice and a hearing.

## **5. Effectuating Documents and Further Transactions**

Pursuant to the Plan, upon entry of the Confirmation Order, the Debtor or the Liquidating Trustee are authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such other actions as may be reasonably necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

## **6. Corporate Action**

Pursuant to the Plan (and except as otherwise provided therein), on the Effective Date, all matters provided for under the Plan, or that are contemplated by the Plan (including the liquidation of the remaining assets of the Debtor and its estate) that would otherwise require approval of the stockholders or directors will be deemed to have occurred without having to have obtained such approval and will be in effect from and after the Effective Date pursuant to the applicable general corporation law of the state in which the Debtor is incorporated, without any requirement of further action by the stockholders or further action by the directors of the Debtor.

## **7. Setoffs**

The Debtor and/or the Liquidating Trustee may, in accordance with the provisions of the Plan, set off against or recoup from any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution

is made on account of such Claim), the claims, rights and causes of action of any nature that the Debtor may hold against the holder of such Allowed Claim provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the Debtor, the Debtor in Possession or the Liquidating trustee of any such claims, rights and causes of action that the Debtor or the Debtor in Possession may possess against such holder; and provided further, however, that any claims of the Debtor arising before the Commencement Date will first be setoff against Claims against the Debtor arising before the Commencement Date.

#### **8. Post-Effective Date Fees and Expenses**

From and after the Effective Date, the Liquidating Trustee will, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of professional persons thereafter employed by the Liquidating Trust and the Trust Advisory Committee incurred in connection with the implementation and consummation of the Plan and the Liquidating Trust Agreement, the reconciliation of Claims and Equity Interests, and the prosecution of causes of action belonging to the Debtor, or any other matters as to which such professionals are employed. The fees and expenses of such professionals will be paid by the Liquidating Trustee as set forth in Section 6.4 of the Plan.

The Debtor or the Liquidating Trustee, as the case may be, shall pay all Statutory Fees on or before the Effective Date. In addition, the Liquidating Trustee shall pay all Statutory Fees due and payable on all disbursements, including plan payments and disbursements in and outside of the ordinary course of business until the entry of a Final decree, dismissal of the case or conversion of the case to a case under chapter 7.

#### **VI. CONFIRMATION AND CONSUMMATION PROCEDURE**

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

##### **A. Solicitation of Votes – In General**

In accordance with sections 1126 and 1129 of the Bankruptcy Code, the Claims in Class 3 are impaired and will receive distributions under the Plan. The holders of Allowed Claims in this Class and the holders of Claims that have been temporarily allowed for voting purposes only under Bankruptcy Rule 3018(a) are entitled to vote to accept or reject the Plan. Claims in Classes 1 and 2 unimpaired. The holders of Allowed Claims and Equity Interests in such Classes are conclusively presumed to have accepted the Plan, and the solicitation of acceptances with respect to such Classes is not required under section 1126(f) of the Bankruptcy Code. Class 4 Interest Holders are Impaired, will receive nothing under the Plan and are deemed to reject it.

As to the class of claims entitled to vote on the Plan, the Bankruptcy Code defines acceptance of a plan (i) by a class of creditors as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of the claims of one such class that have timely voted to accept or reject a plan and (ii) in cases where such are impaired and entitled to vote, by a class of equity interests as acceptance by holders of equity interests in that class that hold at least two-thirds in amount of the allowed equity interests in one such class that cast ballots for acceptance or rejection of the plan.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

Any creditor in an impaired Class (i) whose Claim has been listed by the Debtor in the Schedules filed with the Bankruptcy Court (provided that such Claim has not been scheduled as disputed, contingent or unliquidated) or (ii) who filed a proof of claim on or before the applicable Bar Date or any proof of claim properly filed within any other applicable period of limitations or with leave of the Bankruptcy Court, which Claim is not the subject of an objection or request for estimation, is entitled to vote on the Plan.

## **B. The Confirmation Hearing**

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a confirmation hearing. The Confirmation Hearing in respect of the Plan has been scheduled for November 5, 2008, commencing at 10:00 a.m. prevailing Eastern Time, before the Honorable Arthur J. Gonzales, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be served and filed so that they are received on or before October 22, 2008 at 4:30 p.m. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. Any objection to confirmation must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim or number of shares of Common Stock held by the objector. Objections must be timely served upon the following parties:

LeClairRyan  
Attorneys for Debtor and  
Debtor in Possession  
830 Third Avenue  
New York, New York 10022  
Attn: A. Peter Lubitz, Esq.

-AND-

Lowenstein Sandler PC  
Attorneys for the Creditors Committee  
1251 Avenue of the Americas, 18th Floor  
New York, New York 10020  
Attn: Michael Etkin, Esq.

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

## **C. Confirmation**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a plan are that the Plan is (i) accepted by all impaired classes of claims and equity interests or, if rejected by an impaired class, that the plan "does not discriminate unfairly" and is "fair and equitable" as to such class, (ii) feasible and (iii) in the "best interests" of creditors and stockholders that are impaired under the plan.

### **1. Acceptance**

Class 3 of the Plan is impaired under the Plan and is entitled to vote to accept or reject the Plan. Classes 1 and 2 of the Plan are unimpaired and, therefore, are conclusively presumed to have voted to accept the Plan. Class 4 is impaired and deemed to have rejected the Plan without voting.

### **2. Unfair Discrimination and Fair and Equitable Tests**

To obtain nonconsensual confirmation of the Plan, it must be demonstrated to the Bankruptcy Court that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to each impaired, non-accepting Class. The Bankruptcy Code provides a non-exclusive definition of the phrase "fair and equitable." The Bankruptcy Code establishes "cram down" tests for secured creditors, unsecured creditors, and equity holders, as follows:

- **Secured Creditors.** Either (i) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred cash payments having a present value equal to the amount of its

allowed secured claim, (ii) each impaired secured creditor realizes the “indubitable equivalent” of its allowed secured claim or (iii) the property securing the claim is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds to be as provided in clause (i) or (ii) above.

- **Unsecured Creditors.** Either (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.
- **Equity Interests.** Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest or (ii) the holder of an interest that is junior to the non-accepting class will not receive or retain any property under the plan.

A plan does not “discriminate unfairly” with respect to a non-accepting class if the value of the cash and/or securities to be distributed to the non-accepting class is equal to, or otherwise fair when compared to, the value of the distributions to other classes whose legal rights are the same as those of the non-accepting class.

The Debtor believes that these requirements are met and that the Plan may be confirmed on a nonconsensual basis (provided that at least one impaired class of claims votes to accept the Plan). The Debtor will demonstrate at the Confirmation Hearing that the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code as to any non-accepting Class.

### **3. Feasibility**

Section 1129(a)(1) of the Bankruptcy Code provides that a chapter 11 plan may be confirmed only if the Bankruptcy Court finds that such plan is feasible. A feasible plan is one which will not lead to a need for further reorganization or liquidation of the debtor, unless such reorganization or liquidation is proposed in the plan. Since the Plan provides for the liquidation of the Debtor, the Bankruptcy Court will find that the Plan is feasible if it determines that the Debtor will be able to satisfy the conditions precedent to the Effective Date and otherwise have sufficient funds to meet its post-Confirmation Date obligations to pay for the costs of administering and fully consummating the Plan and closing the Chapter 11 Case. The Debtor believes that the Plan satisfies the financial feasibility requirements imposed by the Bankruptcy Code.

### **4. Best Interests Test**

With respect to each impaired Class of Claims and Equity Interests, confirmation of the Plan requires that each holder of a Claim or Equity Interest either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

The starting point in determining whether the Plan meets the “best interests” test is a determination of the amount of proceeds that would be generated from the liquidation of the Debtor’s remaining assets in the context of a chapter 7 liquidation. Such value must then be reduced by the costs of such liquidation, including costs incurred during the Chapter 11 Case and allowed under chapter 7 of the Bankruptcy Code (such as professionals’ fees and expenses), a trustee’s fees, and the fees and expenses of professionals retained by a trustee. The potential chapter 7 liquidation distribution in respect of each Class must be further reduced by costs imposed by the delay caused by conversion to chapter 7. The net present value of a hypothetical chapter 7 liquidation distribution in respect of an impaired Class is then compared to the recovery in respect of such Class provided for in the Plan. A liquidation analysis is annexed hereto as Exhibit B.

---

For the reasons set forth above, the Debtor submits that each impaired Class will receive under the Plan a recovery at least equal in value to the recovery such Class would receive pursuant to a liquidation of each Debtor under chapter 7 of the Bankruptcy Code.

## **D. Consummation**

The Plan will be consummated on the Effective Date. The Effective Date of the Plan will occur on the first Business Day on which the conditions precedent to the effectiveness of the Plan, as set forth in Section 10.1 of the Plan, have been satisfied or waived by the Debtor. For a more detailed discussion of the conditions precedent to the Plan and the consequences of the failure to meet such conditions, see Sections V.K and IX of the Disclosure Statement.

## **VII. EXISTENCE, DISSOLUTION, AND MANAGEMENT OF THE DEBTOR**

From and after the Effective Date, the Debtor will transfer its Assets to the Liquidating Trust and will cease its existence. The Liquidating Trustee will act for the purpose of (i) winding-down the Debtor's affairs, (ii) liquidating, by conversion to Cash or other methods, any remaining assets of the bankruptcy estate, as expeditiously as reasonably possible, (iii) enforcing and prosecuting claims, interests, rights and privileges, if any, of the Debtor and its bankruptcy estate, (iv) resolving Disputed Claims, (v) administering the Plan and taking such actions as are necessary to effectuate the Plan, and (vi) filing appropriate tax returns.

From and after the Effective Date and as necessary prior to the dissolution of ANEI, the board of directors of ANEI will consist of one member, Cynthia Terrell (and all bylaws, articles or certificates of incorporation, and related corporate documents are deemed amended by the Plan to permit her continued service). She also served as the officer of ANEI immediately prior to the Effective Date and will continue to be the officer of ANEI following the Effective Date until her resignation or termination.

Upon the transfer of all assets of the Debtor and Debtor-in-Possession pursuant to the Plan and the filing by or on behalf of the Debtor of a certification to that effect with the Bankruptcy Court, the Debtor will be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith; provided, however, that the Liquidating Trustee will execute and file with the Office of the Secretary of State for the State of the Debtor's incorporation a certificate of dissolution. From and after the Effective Date, the Debtor will not be required to file any document, or take any other action, or obtain any approval from the Board of Directors or shareholders, to withdraw its business operations from any states in which the Debtor previously conducted its business operations.

## **VIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtor and to holders of General Unsecured Claims and Equity Interests based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), existing and proposed Treasury regulations promulgated thereunder (the "Treasury Regulations"), judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service ("IRS"), all as in effect on the date hereof. These rules are subject to change, possibly on a retroactive basis, and any such change could significantly affect the federal income tax consequences described below. The following summary does not address the federal income tax consequences to holders of Priority Non-Tax Claims, or Secured Claims.

The following discussion generally assumes that the Plan will be treated as a plan of liquidation of the Debtor for federal income tax purposes and that all distributions to holders of Claims will be taxed accordingly.

The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor has not requested a ruling from the IRS or an opinion of counsel with respect to any of the tax aspects of the Plan. Thus, no assurance can be given as to the interpretation that the IRS will adopt. In addition, this summary does not discuss all aspects of federal income taxation that may be relevant to a particular holder in light of its individual investment circumstances or to certain types of holders subject to special treatment under the federal income tax laws (such as foreign taxpayers, broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax-exempt organizations, persons holding a General Unsecured Claim, or Equity Interest as part of a hedging, integrated constructive sale or straddle, and investors in pass-through entities). There also may be state, local or foreign income or other tax considerations applicable to each holder.

*Accordingly, the following summary of certain federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a holder of a Claim or Equity Interest. All holders of Claims or Equity Interests are urged to consult their own tax advisors for the federal, state, local and other tax consequences applicable to them under the Plan.*

**A. Consequences to the Debtor**

For federal income tax purposes, the Debtor is a member of an affiliated group of corporations of which AMNEX is the common parent (the "AMNEX Group") and previously joined in the filing of a consolidated federal income tax return. To the extent that there may exist on a consolidated basis any net operating losses ("NOLs"), it appears unlikely that such can be utilized to generate a refund of certain prior year taxes at the AMNEX level since it does not appear that significant amounts of federal income taxes previously were incurred or required to be paid.

Notwithstanding that the Debtor may, under certain circumstances, continue to have some amount of NOL carryforwards, it is possible, though not likely, that substantially all of the Debtor's net income post-Effective Date, if any, whether from interest, litigation recoveries, or otherwise, less expenses paid or incurred including, but not limited to, professional fees and expenses, will be subject to full corporate level taxation.

**B. Consequences to Holders of Allowed Claims**

**1. Consequences to Holders of Allowed General Unsecured Claims**

Pursuant to the Plan, holders of Allowed General Unsecured Claims will receive, in satisfaction of such Claims, cash in an amount equal to their Pro Rata Share of Available Cash, without interest.

In general, a holder of an Allowed General Unsecured Claim will recognize gain or loss in an amount equal to the difference between (i) the amount of cash received in respect of its Claim (other than any Claim for accrued but unpaid interest, and excluding any portion required to be treated as imputed interest, as discussed below) and (ii) such holder's adjusted tax basis in such Claim (other than any Claim for accrued but unpaid interest). To the extent that an amount received by a holder of debt is received in satisfaction of accrued interest or original issue discount during its holding period, such amount generally will be taxable to the holder as interest income (if not previously included in the holder's gross income). Conversely, a holder generally recognizes a deductible loss to the extent any accrued interest previously included in its gross income is not paid in full. No interest is being paid in this case in respect of General Unsecured Claims.

Where gain or loss is recognized by a holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the holder, whether the claim constitutes a capital asset in the hands of the holder and how long it has been held, whether the claim was acquired at a market discount, and whether and to what extent the holder previously had claimed a bad debt deduction. A holder of an Allowed Claim which purchased its claim from a prior holder at a market discount may be subject to the market discount rules of the Tax Code. Under those rules, assuming that the holder has made no election to amortize the market discount into income on a current basis with respect to any market discount instrument, any gain recognized by a holder in respect of its claim (subject to a de minimis rule) generally would be characterized as ordinary income to the extent of the accrued market discount on such claim.

**2. Consequences to Holders of Allowed Equity Interests**

Pursuant to the Plan, holders of Allowed Equity Interests will receive no distribution in respect of the liquidation of such Equity Interests. In general, a holder of an Allowed Equity Interest will recognize gain or loss in an amount equal to the difference between (i) the aggregate amount of cash, if any, received in respect of its Equity Interest pursuant to the Plan and (ii) such holder's adjusted tax basis in such Equity Interest. Any loss, and all or part of any gain, realized by a holder may be deferred until all amounts have been distributed to such holder pursuant to the Plan.

Where gain or loss is recognized by a holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the holder, whether the Equity Interest constitutes a capital asset in the hands of the holder and how long it has been held.

### **3. Information Reporting and Withholding**

All distributions to holders of Allowed Claims under the Plan are subject to any applicable withholding (including employment tax withholding). Under federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then applicable rate (currently 28%). Backup withholding generally applies if the holder (i) fails to furnish its social security number or other taxpayer identification number ("TIN"), (ii) furnishes an incorrect TIN, (iii) fails properly to report interest or dividends, or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is a United States person that is not subject to backup withholding. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax and the appropriate information is supplied to the IRS.

The Treasury Regulations generally require disclosure by a taxpayer on its federal income tax return of certain types of transactions in which the taxpayer participated after January 1, 2003, including, among other types of transactions, the following: (1) certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds; and (2) certain transactions in which the taxpayer's book-tax differences exceed a specified threshold in any tax year. These categories are very broad; however, there are numerous exceptions. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the holders' tax returns.

**THE FOREGOING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE PARTICULAR CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM OR EQUITY INTEREST.**

## **IX. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

If the Plan is not confirmed and consummated, the Debtor's alternatives include (i) liquidation of the Debtor under chapter 7 of the Bankruptcy Code and (ii) the preparation and presentation of an alternative plan or plans of liquidation.

### **A. Liquidation Under Chapter 7**

If the Plan or any other chapter 11 plan for the Debtor cannot be confirmed under section 1129(a) and (b) of the Bankruptcy Code, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed to liquidate any remaining assets of the Debtor for distribution to creditors pursuant to chapter 7 of the Bankruptcy Code. If a trustee is appointed and the remaining assets of the Debtor are liquidated under chapter 7 of the Bankruptcy Code, all creditors holding General Unsecured Claims may receive distributions of a lesser value on account of their Allowed Claims and would have to wait a longer period of time to receive such distributions than they would under the Plan.

### **B. Alternative Chapter 11 Plan**

If the Plan is not confirmed, the Debtor, or any other party in interest, may attempt to formulate an alternative chapter 11 plan which might provide for the liquidation and distribution of the Debtor's remaining assets other than as provided by the Plan. However, since substantially all of the Debtor's assets have already been liquidated and converted to cash and the Plan provides for the distribution of the sale proceeds in accordance with the statutory priorities established by the Bankruptcy Code, the Debtor believes that any alternative chapter 11 plan will necessarily be substantially similar to the Plan. Any attempt to formulate an alternative chapter 11 plan would unnecessarily delay creditors' receipt of distributions to be made and, due to the



incurrence of additional administrative expenses during such period of delay, may provide for smaller distributions to holders of Claims than are currently provided for in the Plan. Accordingly, the Debtor believes that the Plan will enable all parties in interest to realize the greatest possible recovery on their respective Claims with the least delay.

**C. Certain Risk Factors**

In the event that the Plan is not confirmed or the Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code, the Debtor believes that such inaction or action, as the case may be, will cause the Debtor to incur substantial expenses and otherwise serve only to prolong unnecessarily the administration of the Debtor's assets and negatively affect creditors' recoveries on their Claims.

**X. CONCLUSION AND RECOMMENDATION**

The Debtor believes that confirmation and implementation of the Plan is preferable to any of the alternatives described above because it will provide the greatest recoveries to holders of Claims. Other alternatives would involve significant delay, uncertainty and substantial additional administrative costs. The Debtor urges holders of impaired Claims entitled to vote on the Plan to accept the Plan and to evidence such acceptance by returning their Ballots so that they will be received no later than 5:00 p.m., prevailing Eastern Time, on October 31, 2008.

Dated: New York, New York  
July 29, 2008

AMERICAN NETWORK EXCHANGE, INC.  
Debtor and Debtor-in-Possession  
By: /s/ Cynthia Terrell  
Title: Secretary

LeClairRyan  
Attorneys for the Debtor and  
Debtor-in-Possession  
A. Peter Lubitz  
830 Third Avenue  
New York, New York 10022  
Telephone: (212-430-8056)  
/s/ A. Peter Lubitz

A. Peter Lubitz  
LeClairRyan  
830 Third Avenue  
New York, New York 10022  
212-430-8056  
[peter.lubitz@leclairryan.com](mailto:peter.lubitz@leclairryan.com)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

**AMERICAN NETWORK EXCHANGE, INC.,**

Case No. 99 B 43020 (AJG)

Debtor.

-----X

---

**DEBTOR'S FIRST AMENDED PLAN OF LIQUIDATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

---

A. Peter Lubitz  
LeClairRyan  
830 Third Avenue  
New York, New York 10022  
(212) 430-8056  
[peter.lubitz@leclairryan.com](mailto:peter.lubitz@leclairryan.com)

Attorneys for the Debtor and Debtor-in-Possession

**TABLE OF CONTENTS**

ARTICLE I	DEFINITIONS AND INTERPRETATION .....	1
1.1	Definitions .....	1
ARTICLE II	TREATMENT AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS .....	6
2.1	Administrative Expense Claims .....	6
2.2	Professional Compensation and Reimbursement Claims .....	6
2.3	Priority Tax Claims .....	6
ARTICLE III	CLASSIFICATION AND VOTING OF CLAIMS AND EQUITY INTERESTS .....	6
ARTICLE IV	TREATMENT OF CLAIMS AND EQUITY INTERESTS .....	7
4.1	Class 1 - Priority Non-Tax Claims .....	7
4.2	Class 2 - Secured Claims .....	7
4.3	Class 3 - General Unsecured Claims .....	7
4.4	Class 4 - Equity Interests .....	8
ARTICLE V	PROVISIONS REGARDING VOTING AND DISTRIBUTIONS UNDER THE PLAN .....	8
5.1	Voting of Claims .....	8
5.2	Nonconsensual Confirmation .....	8
5.3	Method of Distributions Under the Plan .....	8
ARTICLE VI	MEANS FOR IMPLEMENTATION AND EXECUTION OF THE PLAN .....	9
6.1	Creation of the Liquidating Trust .....	9
6.2	Appointment of the Liquidating Trustee .....	9
6.3	Duties of the Liquidating Trustee .....	10
6.4	Retention and Compensation of Professionals .....	11
6.5	Resignation, Death or Removal .....	11
6.6	Establishment of the Operating Reserve Account .....	11
6.7	Funding of Distributions .....	11
6.8	Substantial Consummation .....	11
ARTICLE VII	PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS .....	11
7.1	No Distributions Pending Allowance .....	11
7.2	Resolution of Disputed Claims .....	12
7.3	Claims Filed or Amended After the Record Date .....	12
7.4	Distributions After Allowance of a Disputed Claim .....	12
7.5	Estimation of Claims .....	12
7.6	Amounts Retained to Pay Disputed Claims .....	12
7.7	No Distribution in Respect of Disallowed Claims .....	12
ARTICLE VIII	TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	12
8.1	Executory Contracts and Unexpired Leases .....	12
8.2	Approval or Rejection of Executory Contracts .....	13
8.3	Bar Date for Filing Proofs of Claim Relating to Executory Contracts Rejected Pursuant to the Plan .....	13
8.4	Retiree Benefits .....	13
ARTICLE IX	EFFECT OF CONFIRMATION OF PLAN .....	13

TABLE OF CONTENTS  
(Continued)

		Page
9.1	Debtor's Authority .....	13
9.2	Corporate Action and Continued Existence of the Debtor .....	13
9.3	Dissolution .....	13
9.4	Vesting and Liens .....	13
9.5	Discharge of the Debtor .....	13
9.6	Binding Nature of Plan .....	13
9.7	Preservation of Limited Release of Directors, Officers and Employees .....	14
9.8	Injunctions and Barring of Claims .....	14
9.9	Exculpation .....	14
9.10	Avoidance and Recovery Actions .....	14
ARTICLE X	EFFECTIVENESS OF THE PLAN .....	15
10.1	Conditions Precedent to the Effective Date .....	15
10.2	Waiver of Conditions .....	15
ARTICLE XI	RETENTION OF JURISDICTION .....	15
11.1	General .....	15
11.2	Modification of the Plan .....	16
ARTICLE XII	MISCELLANEOUS PROVISIONS .....	16
12.1	Effectuating Documents and Further Transactions .....	16
12.2	Official Committee .....	16
12.3	Expenses of Liquidation .....	16
12.4	Obligations Incurred after Confirmation Date .....	17
12.5	Exemption from Transfer Taxes .....	17
12.6	Request for Expedited Determination of Taxes .....	17
12.7	Payment of United States Trustee Quarterly and Statutory Fees .....	17
12.8	Withdrawal or Revocation .....	17
12.9	Notices .....	17
12.10	Severability .....	17
12.11	Governing Law .....	18
12.12	Headings .....	18
12.13	Exhibits .....	18
12.14	Failure of Effective Date .....	18
12.15	Plan Controls .....	18

A. Peter Lubitz  
LeClairRyan  
830 Third Avenue  
New York, New York 10022  
(212) 430-8056  
peter.lubitz@leclairryan.com

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

-----X  
**In re:**  
**AMERICAN NETWORK EXCHANGE, INC.,**  
**Debtor.**  
\_\_\_\_\_X

**Chapter 11**  
**Case No. 99 B-43020(AJG)**

**DEBTOR'S FIRST AMENDED PLAN OF LIQUIDATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

American Network Exchange, Inc. ("ANEI" or the "Debtor") proposes the following chapter 11 plan of liquidation (the "Plan") pursuant to section 1121(a) of the Bankruptcy Code. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

The Plan is a plan of liquidation which provides for the liquidation and conversion of all of the Debtor's assets to cash and the distribution of the proceeds thereof, net of fees and expenses, to Holders of Claims in accordance with their relative priority. Generally, unsecured creditors will be paid a pro rata share of their Claims while Holders of Equity Interests will receive no distribution in respect thereof. All Holders of Claims against, and Equity Interests in, the Debtor are encouraged to read the Plan and Disclosure Statement in their entirety before voting to accept or reject the Plan. Holders of Equity Interests are, as set forth below, deemed to have rejected the Plan and hence do not vote.

**ARTICLE I  
DEFINITIONS AND INTERPRETATION**

**1.1** Definitions. As used in the Plan, the following terms shall have the respective meanings specified below:

**1.1.1** "Administrative Expense Claim" means any right to payment constituting a cost of expense of administration of the Chapter 11 Case allowed under sections 503(b) and 507(a)(1) of the Bankruptcy Code including, without limitation, (a) any actual and necessary costs and expenses of preserving the Debtor's estate, (b) any actual and necessary costs and expenses of operating the Debtor's business, (c) any indebtedness or obligations incurred or assumed by the Debtor, as Debtor-in-Possession, during the Chapter 11 Case, (d) any allowances of compensation and reimbursement of expenses to the extent allowed by Final Order under sections 330 or 503 of the Bankruptcy Code.

**1.1.2** **Allowed** means, (i) with reference to any Claim, (a) any Claim against the Debtor which has been listed by the Debtor in its Schedules, as such Schedules may be amended by the Debtor from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary proof of claim has been filed, (b) any Claim allowed pursuant to the Plan, (c) any Claim which is not Disputed, (d) any Claim that is compromised, settled or otherwise resolved pursuant to the authority granted to the Debtor or the Liquidating Trust pursuant to a Final Order of the Bankruptcy Court or under Section 7.2 of the Plan or (e) any Claim which, if Disputed, has been Allowed by Final Order; provided, however, that Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered "Allowed Claims" hereunder, and (ii) with reference to any Equity Interest, any Equity Interest registered in the stock register maintained by or on behalf of the Debtor as of the applicable Record Date. Unless otherwise specified herein or by order of the Bankruptcy Court, "Allowed Administrative Expense Claim" or "Allowed Claim" shall not, for any purpose under the Plan, include interest on such Claim from and after the Commencement Date.

**1.1.3** **Assets** means all assets of the Debtor, of any nature whatsoever, and property of the Estate pursuant to section 541 of the Bankruptcy Code, including, without limitation all claims, Causes of Action, rights, interests and property,

12185/4  
10/02/2008 7514136.4

whether real or personal, tangible or intangible, and any and all insurance coverage and/or policies of the Debtor, as well as any and all rights related thereto or thereunder.

**1.1.4 Available Cash** means, as of any given date, all Cash or Cash equivalents of the Debtor whether on hand or realized from the sale or other disposition or realization of its Assets, all interest of the Debtor earned on invested funds or from any other source, and all recoveries on contingent and unrealized Assets such as, without limitation, claims against third parties for monies owed to the Debtor for whatever reason less (i) the amount of Cash necessary to satisfy or reserve for all Allowed Administrative Expense Claims, Priority Tax and Non-Tax Claims, Secured Claims, reserves for Disputed Claims, to the extent they become Allowed Claims and (ii) the Estimated Liquidation Expenses.

**1.1.5 Avoidance Actions** means rights, claims and causes of action of the bankruptcy estate of the Debtor arising under Chapter 5 of the Bankruptcy Code.

**1.1.6 Ballots** mean each of the ballot forms distributed by the Debtor to each member of an impaired Class entitled to vote under Article III hereof in connection with the solicitation of acceptances or rejections of the Plan.

**1.1.7 Ballot Date** means the date set by the Bankruptcy Court by which all Ballots for acceptance or rejection of this Plan must be received.

**1.1.8 Bankruptcy Code** means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Case, as in effect on the Confirmation Date.

**1.1.9 Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of New York having jurisdiction over the Chapter 11 Case or any other court with jurisdiction over the Chapter 11 Case.

**1.1.10 Bankruptcy Rules** means, collectively, the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code and any Local Rules of the Bankruptcy Court, as now in effect or hereafter amended.

**1.1.11 Bar Dates** mean the dates designated by the Bankruptcy Court as the last dates for filing proofs of Claim (including Administrative Expense Claims other than Professional Fee Claims) against the Debtor.

**1.1.12 Business Day** means any day other than a Saturday, a Sunday, or any other day on which commercial banks in New York, New York are required or authorized to close by law or executive order, and the Friday after Thanksgiving Day.

**1.1.13 Cash** means legal tender of the United States of America.

**1.1.14 Causes of Action** means any and all rights, claims, causes of action, liabilities, obligations, suits, debts, sums of money, damages, judgments, and demands whatsoever, whether known or unknown, in law, equity or otherwise, including Avoidance Actions.

**1.1.15 Chapter 11 Case** means the case commenced on the Commencement Date under Chapter 11 of the Bankruptcy Code by the Debtor before the Bankruptcy Court, as referenced by Case No. 99-43020(AJG).

**1.1.16 Claim** has the meaning set forth in section 101(5) of the Bankruptcy Code, against the Debtor.

**1.1.17 Class** means a category of Holders of Claims or Equity Interests as set forth in Article III of the Plan, classified by the Plan pursuant to section 1123(a)(1) of the Bankruptcy Code.

**1.1.18 Collateral** means any property or interest in property of the estate of the Debtor subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge or encumbrance is valid, perfected and enforceable under applicable law, and is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

1.1.19 **Commencement Date** means May 5, 1999, the date on which the Debtor commenced its Chapter 11 Case.

1.1.20 **Common Stock** means the common stock of American Network Exchange, Inc. authorized as of the Commencement Date.

1.1.21 **Confirmation Date** means the date on which the Confirmation Order is entered on the legal docket for this Chapter 11 Case.

1.1.22 **Confirmation Hearing** means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

1.1.23 **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.1.24 **Debtor** means American Network Exchange, Inc.

1.1.25 **Debtor in Possession** means the Debtor in its capacity as Debtor in Possession in the Chapter 11 Case pursuant to sections 1101, 1107(a) and 1108 of the Bankruptcy Code.

1.1.26 **Deficiency Claim** means the portion, if any, of a Secured Claim that is unsecured.

1.1.27 **Distribution** means a payment and/or distribution of Cash or other consideration to be made to Holders of Allowed Claims in accordance with the terms and conditions of the Plan.

1.1.28 **Disclosure Statement** means the written disclosure statement (including all exhibits and schedules thereto) that relates to the Plan, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

1.1.29 **Disclosure Statement Order** means the order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code.

1.1.30 **Disputed Claim** means, any Claim not otherwise Allowed or paid pursuant to the Plan or an order of the Bankruptcy Court (i) which has been or hereafter is listed on the Schedules as unliquidated, contingent, or disputed, and which has not been resolved by written agreement of the parties or an order of the Bankruptcy Court, (ii) which is disputed under the Plan, (iii) as to which the Debtor has interposed a timely objection and/or request for estimation in accordance with section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018, which objection and/or request for estimation has not been withdrawn or determined by a Final Order, and (iv) any Claim proof of which was required to be filed by order of the Bankruptcy Court but as to which a proof of claim was not timely or properly filed.

1.1.31 **Distribution Date** means the date, occurring as soon as practicable after the Effective Date, upon which distributions are made by the Debtor or the Liquidating Trustee to Holders of Allowed Claims.

1.1.32 **Effective Date** means the first Business Day on which the conditions specified in Section 10.1 of the Plan have been satisfied or waived.

1.1.33 **Equity Interest** means any interest in the Debtor represented by duly authorized validly issued and outstanding shares of stock.

1.1.34 **Estate** means the bankruptcy estate of the Debtor created as of the Commencement Date pursuant to section 541 of the Bankruptcy Code and being comprised of all property, rights and interests of the Debtor, whether existing as of the Commencement Date or acquired thereunder.

1.1.35 **Estimated Liquidation Expenses** mean the amount of cash estimated by the Debtor or, after the Effective Date, the Liquidating Trustee, from time to time, to be necessary adequately to fund the Plan and complete the administration of the Chapter 11 Case on and after the Effective Date.

**1.1.36 Executory Contracts** means any pre-Commencement Date contracts and leases, including leases for nonresidential real property, which had not expired, or were not terminated, prior to the Commencement Date and under which performance by the parties thereto remains due to some extent.

**1.1.37 Face Amount** means (i) when used in reference to a Disputed Claim, the full stated amount claimed by the Holder of such Claim in any proof of Claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicable bankruptcy law, (ii) when used in reference to an unliquidated Claim, the amount of the Claim as estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code, and (iii) when used in reference to an Allowed Claim, the allowed amount of such Claim.

**1.1.38 Final Distribution Date** means the date on which a final distribution of Available Cash is made pursuant to Section 5.3(a) of the Plan. The Final Distribution Date shall be a date, as determined by the Liquidating Trustee, (i) which is after the liquidation into Cash of all Assets of the Debtor (other than those Assets abandoned by Debtor or the Liquidating Trustee) and collection of other sums due or otherwise remitted or returned to the Liquidating Trust, including from prosecution of claims against third parties, and (ii) on or after final resolution of all Disputed Claims.

**1.1.39 Final Order** means an order of the Bankruptcy Court as to which the time to appeal, petition for certiorari, or move for re-argument or rehearing has expired and as to which no appeal, petition for certiorari, or motion for re-argument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, or move to reargue or rehear shall have been waived in writing in form and substance satisfactory to the Debtor or, in the event that an appeal, writ of certiorari, or re-argument or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been upheld by the highest court to which such order was appealed, or from which certiorari, re-argument or rehearing was sought and the time to take any further appeal, petition for certiorari or move for re-argument or rehearing shall have expired, provided, however, the possibility that a timely motion under Rules 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not prevent such order from being a Final Order.

**1.1.40 General Unsecured Claim** means any unsecured, non-priority Claim against the Debtor that is not an Administrative Expense Claim, Priority Tax Claim, or Priority Non-Tax Claim.

**1.1.41 Holder** means the legal or beneficial holder(s) of a Claim or Equity Interest (and, when used in conjunction with a Class or type of Claim or Equity Interest, means a Holder of a Claim or Equity Interest in such Class or of such type).

**1.1.42 Impaired** means, when used with reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

**1.1.43 Liability or Liabilities** means any and all costs, expenses, actions, causes of action, suits, controversies, damages, claims, liabilities or demands of any nature, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, liquidated or unliquidated, matured or not matured, contingent or direct, whether arising at common law, in equity, or under any statute, based in whole or in part on any act or omission or other occurrence taking place on or prior to the Effective Date.

**1.1.44 Lien** has the meaning assigned to such term in section 101(37) of the Bankruptcy Code (but a lien that has been avoided in accordance with section 544, 545, 546, 547, 548, or 549 of the Bankruptcy Code shall not constitute a Lien).

**1.1.45 Liquidating Trust** means the trust to be formed on the Effective Date to receive, liquidate, and distribute the remaining Assets of the Debtor in accordance with the Plan, and to which the Debtor shall assign its rights to (a) make Distributions to Holders of Allowed Claims, and (b) prosecute and settle Causes of Action for the benefit of Holders of Allowed Claims.

**1.1.46 Liquidating Trust Agreement** means the Liquidating Trust Agreement, the form of which agreement shall be filed with the Bankruptcy Court at least ten (10) days prior to the Confirmation Hearing.

**1.1.47 Liquidating Trustee** means the trustee of the Liquidating Trust, or any Bankruptcy Court approved successor, who is responsible for implementing the functions of the Liquidating Trust, maintaining and administering



the Debtor's Available Cash (or any other Asset) from and after the Effective Date, and effectuating the Distributions to Holders of Allowed General Unsecured Claims as prescribed by this Plan. The initial Liquidating Trustee shall be Cynthia Terrell.

**1.1.48 Official Committee** means the official committee of unsecured creditors appointed in the Debtor's Chapter 11 Case, as it was originally constituted and thereafter reconstituted and may be further reconstituted from time to time.

**1.1.49 Operating Reserve Account** means an account(s) to be established and maintained by the Debtor or the Liquidating Trustee and into which funds will be deposited in amounts, sufficient to satisfy the Estate's Allowed Administrative Expense Claims that arise prior to, on or after the Confirmation Date, including expenses of the Estate's administration after Confirmation.

**1.1.50 Plan** means this Plan of Liquidation Under Chapter 11 of the Bankruptcy Code, including any schedules and exhibits hereto, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof.

**1.1.51 Priority Non-Tax Claim** means any Claim, other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in payment as specified in sections 507(a)(2)-(7) and (9) of the Bankruptcy Code.

**1.1.52 Priority Tax Claim** means any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

**1.1.53 Professional** means (i) any professional employed in the Chapter 11 Case pursuant to section 327 or 1103 of the Bankruptcy Code or pursuant to the Liquidating Trust Agreement and (ii) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.

**1.1.54 Pro Rata Share** means, at any time, with respect to distributions from the Debtor's estate, the proportion that the Face Amount of a Claim in a particular Class bears to the aggregate Face Amount of all Claims, including Disputed Claims, in such Class.

**1.1.55 Record Date** means with respect to Claims, the close of business on the fifth Business Day prior to the Confirmation Date.

**1.1.56 Schedules** mean the schedules of assets and liabilities and the statements of financial affairs filed by the Debtor on October 22, 1999 as required by section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, including any supplements or amendments thereto through the Confirmation Date in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

**1.1.57 Secured Claim** means a Claim (i) secured by Collateral, the amount of which is equal to or less than the value of such Collateral (a) as set forth in the Plan, (b) as agreed to by the Holder of such Claim and the Debtor after reasonable notice to creditors, or (c) as determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code or (ii) the amount of any rights of setoff of the Holder thereof under section 553 of the Bankruptcy Code; provided, that to the extent that the Collateral or right of setoff is less than the value of the related Claim, such deficiency shall be a General Unsecured Claim.

**1.1.58 Statutory Fee** means any fees or charges assessed against the estate of the Debtor under section 1930 of Chapter 123 of title 28 and Section 3717 of title 31 of the United States Code.

**1.1.59 Subsequent Distribution Date** means, following the Effective Date, a date which shall occur at the end of each subsequent three-month period, or more frequently as may be determined by the Liquidating Trustee, on which a distribution of Cash is made to the Holders of Allowed Claims, in accordance with Article V of the Plan.

**1.1.60 Trust Advisory Committee** means counsel to the Official Committee as set for in the Liquidating Trust Agreement.

### Construction of Certain Terms

The words "herein," "hereof," "hereto," "hereunder," and others of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. Any term used in the Plan that is not defined herein shall have the meaning ascribed to that term in the Disclosure Statement or the in the Bankruptcy Code.

## ARTICLE II

### TREATMENT AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS

**2.1 Administrative Expense Claims.** Except to the extent that a Holder of an Allowed Administrative Expense Claim agrees to a different treatment, each Holder of an Allowed Administrative Expense Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Allowed Administrative Expense Claim, Cash from the Operating Reserve Account or any other account in an amount equal to such Allowed Claim, on the later of the Distribution Date and the date that is ten (10) Business Days after such Administrative Expense Claim becomes an Allowed Administrative Expense Claim pursuant to a Final Order of the Bankruptcy Court, or as soon after such dates as is practicable; provided, however, that Allowed Administrative Expense Claims representing obligations incurred in the ordinary course of business of the Debtor shall be paid by the Debtor or the Liquidating Trust, as the case may be, in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to, such transactions.

**2.2 Professional Compensation and Reimbursement Claims.** All Professionals seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement for expenses incurred through and including the Effective Date under sections 503(b) of the Bankruptcy Code shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date by no later than the date that is 60 days after the Effective Date or such other date as may be fixed by the Bankruptcy Court. If granted such an award by the Bankruptcy Court, such Professional shall be paid in full in such amounts as are Allowed by the Bankruptcy Court (i) on the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or as soon thereafter as is practicable, or (ii) upon such other terms as may be mutually agreed upon by such Holder of an Administrative Expense Claim and the Debtor or the Liquidating Trustee.

**2.3 Priority Tax Claims.** Except to the extent that any governmental unit entitled to payment of any Allowed Priority Tax Claim agrees to a different treatment, pursuant to section 1129(a)(9) of the Bankruptcy Code, each Holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, settlement and release of and in exchange for such Allowed Priority Tax Claim, Cash in an amount equal to such Allowed Priority Tax Claim, on the later of the Distribution Date, and to the extent such Priority Tax Claim is not an Allowed Claim on the Distribution Date, on the first Subsequent Distribution Date following allowance of such Claim.

## ARTICLE III

### CLASSIFICATION AND VOTING OF CLAIMS AND EQUITY INTERESTS

Claims and Equity Interests, other than Administrative Expense Claims and Priority Tax Claims, are classified for all purposes, including voting (unless otherwise specified), confirmation and distribution pursuant to the Plan as set forth below.

A Claim or Equity Interest is placed in a particular Class only to the extent that the Claim or Equity Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Equity Interest falls within the description of such other Classes. A Claim or Equity Interest is placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Equity Interest is an Allowed Claim in that Class and such Claim or Equity Interest has not been paid, released or otherwise satisfied prior to the Effective Date.

CLASS	STATUS
Class 1 - Priority Non-Tax Claims	Unimpaired/Deemed to Accept
Class 2 - Secured Claims	Unimpaired/Deemed to Accept
Class 3 - General Unsecured Claims	Impaired/Entitled to Vote
Class 4 - Equity Interests	Impaired/Deemed to Reject

**ARTICLE IV**  
**TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**4.1 Class 1 - Priority Non-Tax Claims.**

(a) **Impairment and Voting.** Class 1 is unimpaired by the Plan. Each Holder of an Allowed Priority Non-Tax Claim is deemed to vote to accept the Plan.

(b) **Treatment.** Except to the extent that a Holder of an Allowed Priority Non-Tax Claim has been paid by the Debtor prior to the Distribution Date or agrees to a different treatment, each Holder of an Allowed Priority Non-Tax Claim shall receive from the Debtor or the Liquidating Trustee, in full and complete satisfaction, settlement, and release of and in exchange for such Holder's Allowed Priority Non-Tax Claim, Cash in an amount equal to such Allowed Priority Non-Tax Claim, without interest, on the later of the Distribution Date and, to the extent such Priority Non-Tax Claim is not an Allowed Claim on the Distribution Date, on the first Subsequent Distribution Date following allowance of such Claim.

**4.2 Class 2 - Secured Claims.**

(a) **Impairment and Voting.** Class 2 is unimpaired by the Plan. Each Holder of an Allowed Secured Claim is deemed to vote to accept the Plan.

(b) **Treatment.** Each Holder of an Allowed Secured claim shall receive, in the Debtor's sole discretion, one of the following types of treatment:

(i) (a) payment of an amount equal to the value of the Collateral securing the Claim as determined by agreement between the Debtor and the Holder of such Claim or by Final Order of the Bankruptcy Court, in Cash on the later of (A) the Distribution Date or as soon thereafter as may be practicable, (B) the sale of the property, or (C) the date such claim becomes an Allowed Class 2 Claim by a Final Order, or as soon thereafter as may be appropriate; and (b) an Allowed Class 3 Claim for any deficiency between the value of the Collateral securing the Claim and the amount of such Holder's Allowed Secured Claim, which Allowed Class 3 Claim shall be treated in accordance with section 4.3(b) of the Plan; or

(ii) The Debtor shall have the right to abandon the property that secures the Allowed Class 2 Claim to the Holder of such Claim on or as soon as practicable after the later of (a) the Effective Date or (b) the date that is ten (10) days after the date on which such Claim becomes an Allowed Class 2 Claim by a Final Order; or

(iii) Such other treatment as the Holder of such Allowed Secured Claim and the Debtor shall agree upon in writing.

(c) **Sale of Collateral After Effective Date.** The Liquidating Trustee shall have the right, at any time subsequent to the Effective Date to sell, subject to Bankruptcy Court approval and upon consultation with the Trust Advisory Committee, any property subject to a Lien securing such Claim on the terms and subject to the conditions specified in the orders of the Bankruptcy Court and section 363 and the other applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

(d) **Retention of Lien.** Except as otherwise provided by an order of the Bankruptcy Court and section 363(f) of the Bankruptcy Code, the Holder of an Allowed Secured Claim shall retain the lien securing the Claim as of the Confirmation Date until the distributions provided for in Section 4.2(b) have been made to such Holder.

**4.3 Class 3 - General Unsecured Claims.**

(a) **Impairment and Voting.** Class 3 is impaired by the Plan. Each Holder of an Allowed General Unsecured Claim is entitled to vote to accept or reject the Plan.

(b) **Treatment.** Except to the extent that a Holder of an Allowed General Unsecured Claim has been paid by the Debtor prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed General

Unsecured Claim shall receive, in full and complete satisfaction, settlement, and release of and in exchange for such Holder's Allowed General Unsecured Claim, Cash in an amount equal to such Holder's Pro Rata Share of Available Cash without interest, on the later of the Distribution Date and, to the extent such General Unsecured Claim is not an Allowed Claim on the Distribution Date, on the first Subsequent Distribution Date following allowance of such Claim.

#### **4.4 Class 4 - Equity Interests.**

(a) **Impairment and Voting.** Class 4 is impaired by the Plan and is deemed to have rejected the Plan. As such, Class 4 is not entitled to vote on the Plan.

(b) **Treatment.** On the Effective Date, Equity Interests shall neither receive any Distribution nor retain any property on account of their Equity Interests. As of the Effective Date, all Class 4 Equity Interests shall be deemed canceled, null and void and of no force and effect without further act or action under any applicable law, regulation, order, rule or agreement.

### **ARTICLE V PROVISIONS REGARDING VOTING AND DISTRIBUTIONS UNDER THE PLAN**

**5.1 Voting of Claims.** Each Holder of an Allowed Claim in an impaired Class of Claims that is entitled to vote on the Plan pursuant to Article IV of the Plan, or the Holder of a Claim that has been temporarily Allowed for voting purposes only under Bankruptcy Rule 3018(a), shall be entitled to vote separately to accept or reject the Plan as provided for in such order as is entered by the Bankruptcy Court approving the Disclosure Statement, or any other order or orders of the Bankruptcy Court. If a Holder of a Claim holds more than one Claim in any one Class, all Claims of such Holder in such Class shall be aggregated and deemed to be one claim for purposes of determining the number of Claims in such Class voting on the Plan.

(i) Class 3 is impaired hereunder and the Holders of Allowed Claims in such class are entitled to vote on this Plan. In accordance with section 1126(g) of the Bankruptcy Code, Holders of Class 4 Equity Interests are receiving no Distribution under the Plan and, accordingly, Class 4 is conclusively deemed to have rejected this Plan.

(ii) Classes 1 and 2 are not impaired hereunder. In accordance with section 1126(f) of the Bankruptcy Code, Holders of Claims in Classes 1 and 2 are conclusively deemed to have accepted this Plan.

**5.2 Nonconsensual Confirmation.** If any impaired Class does not accept the Plan by the requisite statutory majorities provided in section 1126(c) or 1126(d) of the Bankruptcy Code, as applicable, the Debtor reserves the right (a) to undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, (b) to reallocate distribution of assets to Holders of Allowed Claims if necessary to obtain entry of the Confirmation Order, or (c) to amend or modify the Plan in accordance with Section 11.2 of this Plan.

#### **5.3 Method of Distributions Under the Plan.**

(a) **Timing of Distributions:** Any Distributions under the Plan shall be made on the Distribution Date or as soon as practicable thereafter, including the Final Distribution Date, unless otherwise specifically provided for by this Plan. If any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Distributions of Available Cash shall be made from the Available Cash on the Distribution Dates, provided, however, that except for the final distribution, the Liquidating Trustee shall not be obligated to make distributions if the amount of Available Cash then on hand is less than or equal to \$100,000. In addition, and notwithstanding the foregoing, nothing shall impair the right of the Debtor or the Liquidating Trustee, as the case may be, to use or retain Available Cash to satisfy the costs of administering and fully consummating the Plan, administering its estate, and winding-down the Debtor's business and affairs.

(b) **Delivery of Distributions.** Subject to Bankruptcy Rule 9010, and except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth on the Schedules filed by the Debtor with the Bankruptcy Court or on the books and records of the Debtor or its agent, unless the Debtor

has been notified in writing of a change of address including, without limitation, by the filing of a proof of Claim or interest by such Holder that contains an address for such Holder different from the address reflected on such Schedules for such Holder.

(c) **Distributions to Holders of Allowed Claims as of the Record Date.** On the Record Date, the claims register shall be closed, and there shall be no further changes in the record Holder of any Claim. The Liquidating Trustee shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. The Liquidating Trustee shall instead be authorized and entitled to recognize and deal for all purposes under the Plan with only those record Holders stated on the claims register as of the close of business on the Record Date.

(d) **Undeliverable and Unclaimed Distributions.** If any Distribution to any Holder is returned as undeliverable, the Liquidating Trustee shall use reasonable efforts to determine the current address of such Holder, but no Distribution to any such Holder shall be made unless and until the Liquidating Trustee has determined the then current address of such Holder, at which time such Distribution to such Holder shall be made without interest. Amounts in respect of any undeliverable Distributions made by the Liquidating Trust shall be returned to the Liquidating Trust until such Distributions are claimed. All claims for undeliverable distributions or voided checks shall be made on or before the earlier of (i) ninety (90) days after the date such undeliverable Distribution was initially made (other than Distribution made on the Final Distribution Date), and (ii) sixty (60) days after the Final Distribution Date (the "Unclaimed Distribution Date"). At the expiration of the Unclaimed Distribution Date, all such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and shall, in the Debtor's or the Liquidating Trustee's discretion, as the case may be, be used first to satisfy the costs of administering and fully consummating the Plan and administering the estate and thereafter any remaining funds shall become Available Cash for distribution in accordance with the Plan. The Holder of any such Claim shall not be entitled to any other or further distribution under the Plan on account of such Claim. Any check issued by the Debtor or the Liquidating Trustee, as the case may be, on account of Allowed claim shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof, unless it has been returned as undeliverable. Requests for re-issuance of any check shall be made in accordance with the notice provisions of Section 12.9 of the Plan.

(e) **Distributions of Cash.** Any payment of Cash made pursuant to the Plan either by the Debtor or the Liquidating Trustee, as the case may be, at the option of the Debtor or the Liquidating Trustee, as the case may be, shall be made either by check drawn on a domestic bank or by wire transfer.

(f) **Minimum Distributions.** No payment of Cash less than \$5 shall be made by the Debtor or the Liquidating Trustee, as the case may be, to any Holder of a Claim unless a written request is made therefor to the Debtor or the Liquidating Trustee. Any undistributed amount shall be held over to the next Subsequent Distribution Date or Final Distribution Date.

(g) **Setoffs.** The Liquidating Trustee may set off against or recoup from any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Debtor or the Liquidating Trust may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trustee on behalf of the Debtor or the Liquidating Trust (or any successor thereto) of any such claims, rights and causes of action that the Debtor or the Debtor in Possession (or any successor thereto) may possess against such Holder; and provided further, however, that any claims of the Debtor (or any successor thereto) or the Liquidating Trust arising before the Commencement Date shall first be setoff against Claims against the Debtor (or any successor thereto) or the Liquidating Trust arising before the Commencement Date.

## ARTICLE VI MEANS FOR IMPLEMENTATION AND EXECUTION OF THE PLAN

**6.1 Creation of the Liquidating Trust.** On the Effective Date or as soon thereafter as is practicable, all of the Assets of the Debtor's Estate will be transferred to a Liquidating Trust for the benefit of the Holders of General Unsecured Claims, including, but not limited to, all Cash and Causes of Action; provided, however, that the Debtor shall retain such Cash as may be necessary to fund (i) Distributions on the Effective Date to Holders of Allowed Administrative Expense Claim and Allowed Priority Claims, and (ii) the creation and maintenance of the Operating Reserve Account.

### **6.2 Appointment of the Liquidating Trustee.**

(a) Cynthia Terrell shall be the Liquidating Trustee who shall be paid in accordance with the terms of the Liquidating Trust Agreement.

(b) On the Effective Date or as soon thereafter as practicable, all Cash and Assets of the Estate not otherwise required by the Debtor to satisfy its obligations under this Plan, including but not limited to Causes of Action, shall be transferred to the Liquidating Trust for liquidation and distribution in accordance with the Plan and the Liquidating Trust Agreement.

(c) For purposes of making Distributions on account of Allowed Claims under the terms and conditions of this Plan, the Liquidating Trustee shall be deemed the Estate's representative in accordance with section 1123 of the Bankruptcy Code.

(d) As of each March 31, June 30, September 30 and December 31, the Liquidating Trustee shall prepare a quarterly report, and, upon the resolution of the last Disputed Claim, Avoidance Action or Cause of Action, a final report, regarding receipts, disbursements and the status of pending, contemplated and resolved Disputed Claims, Avoidance Actions and Causes of Action. Such report shall be filed with the Bankruptcy Court and a copy shall be delivered to the Office of the United States Trustee and the Trust Advisory Committee within fifteen (15) days of the end of each calendar quarter and the final report on or before sixty (60) days following resolution of the last Disputed Claim, Avoidance Action or Cause of Action.

(e) Post-confirmation and throughout the winding down period, the officers of the Debtor will remain reasonably available to assist in the liquidation of any and all Assets, including but not limited to, Avoidance Actions and Causes of Action that the Liquidating Trust may pursue or commence upon prior consultation with the Trust Advisory Committee.

### **6.3 Duties of the Liquidating Trustee.**

(a) On the Effective Date, the Liquidating Trustee shall begin acting on behalf of the Liquidating Trust and its beneficiaries subject to the provisions hereof and the Liquidating Trust Agreement. The Liquidating Trustee shall be compensated at the rate set forth in the Liquidating Trust Agreement, plus reimbursement for his/her reasonable, actual and necessary expenses incurred in connection with the performance of his/her duties, without the need of Bankruptcy Court approval. The Liquidating Trustee shall not be liable for any action taken or omitted to be taken that he/she believes in good faith to be authorized or within his/her rights or powers unless it is ultimately and finally determined by a court of competent jurisdiction that such action or inaction was the result of gross negligence or willful misconduct. All Distributions to Holders of General Unsecured Claims to be made under the Plan after the Effective Date shall be made by the Liquidating Trustee, who shall deposit and hold all Cash in trust pursuant to the Liquidating Trust Agreement and this Plan.

(b) The duties and powers of the Liquidating Trustee shall, to the extent not inconsistent with the Plan and the Liquidating Trust Agreement, include the following:

(i) To exercise all power and authority that may be exercised, commence all proceedings that may be commenced and take all actions that may be taken by any officer, director or shareholder of the Debtor, with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including consummating the Plan and making all transfers thereunder on behalf of the Debtor and prosecuting any Avoidance Actions or Causes of Action upon prior consultation with the Trust Advisory Committee;

(ii) To maintain all accounts, make Distributions and take other actions consistent with the Plan, including the maintenance of appropriate reserves;

(iii) To take all steps to file and serve on the Office of the United States Trustee any reports that may be required by law and to pay all fees associated therewith;

(iv) Upon consultation with the Trust Advisory Committee, to prosecute objections to General Unsecured Claims and compromise or settle any General Unsecured Claims, Disputed or otherwise;

(v) To make decisions regarding the retention and employment of Professionals or other Persons and to pay, without Bankruptcy Court order, all reasonable fees and expenses incurred by the Liquidating Trust after the Effective Date, including payment of reasonable fees and expenses of the Trust Advisory Committee;

(vi) To prepare and file a closing report and a final decree to close this Chapter 11 Case; and

(vii) To take all other action not inconsistent with the provisions of the Plan and the Liquidating Trust Agreement that the Liquidating Trustee deems reasonably necessary or desirable in connection with the administration of the Plan.

#### **6.4 Post-Confirmation Retention and Compensation of Professionals**

(a) In order to carry out his/her duties under the Plan and the Liquidating Trust Agreement, the Liquidating Trustee, in addition to the rights hereunder and in the Liquidating Trust Agreement, shall compensate the Professionals retained by the Trust Advisory Committee and shall have the right, but not the obligation, to (i) retain and compensate Professionals (including, but not limited to, the Professionals retained by the Official Committee or the Debtor prior to the Effective Date) to assist the Liquidating Trustee in liquidation and distribution of the Assets without prior Bankruptcy Court approval, and (ii) employ such procedures, not inconsistent with the Plan and the Liquidating Trust Agreement, necessary for the Liquidating Trustee to perform his/her duties hereunder. The reasonable and necessary fees and actual and necessary expenses of such Professionals and the Liquidating Trustee shall be paid by the Liquidating Trust upon each monthly submission of a fee statement to the Liquidating Trustee and the Trust Advisory Committee. The Liquidating Trustee and the Trust Advisory Committee shall have fifteen (15) days after the delivery of a fee statement to give notice of an objection to the fee statement of a Professional seeking compensation and / or reimbursement. For an objection to be valid, it shall be in writing and set forth in detail the specific fees objected to and the basis for the objection. Any objection that remains unresolved fifteen (15) days after it is delivered may be submitted to the Bankruptcy Court for resolution. The uncontested portion of the each fee statement shall be paid within thirty (30) days after its delivery to the Liquidating Trust.

#### **6.5 Resignation, Death or Removal**

(a) The Liquidating Trustee may be removed by the Bankruptcy Court upon application for good cause. In the event of resignation, removal, death or incapacitation of the Liquidating Trustee, the Bankruptcy Court shall designate another Person to become the Liquidating Trustee and thereupon the successor shall become fully vested with all the rights, powers, duties and obligations of his/her predecessor. In the event of the removal, resignation or death of the Liquidating Trustee, counsel to the Liquidating Trust or the Trust Advisory Committee shall file with the Bankruptcy Court and serve on the United States Trustee a notice regarding such change.

#### **6.6 Establishment of the Operating Reserve Account**

(a) On or before the Effective Date, the Debtor will establish the Operating Reserve Account. The Operating Reserve Account shall be used to pay Administrative Expense Claims of the Chapter 11 Case arising prior to the Confirmation Date, including the fees and expenses of any Professionals retained by the Debtor and/or the Official Committee. The Operating Reserve Account will be funded from the Estate's Assets and other available funds. When the Debtor has been dissolved, any remaining funds in the Operating Reserve Account shall be transferred by the Debtor to the Liquidating Trustee for subsequent disposition in accordance with terms of the Liquidating Trust Agreement.

#### **6.7 Funding of Distributions**

(a) All Distributions required to be made by the Debtor on the Distribution Date on account of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Non-Priority Tax Claims and Allowed General Unsecured Claims shall be made by the Debtor and / or the Liquidating Trustee, as the case may be, from the Cash held in the Operating Reserve Account, or any other applicable account established pursuant to the Plan as set forth in the Plan.

#### **6.8 Substantial Consummation**

(a) Substantial consummation of this Plan as defined by section 1101(2) of the Bankruptcy Code shall not be deemed to occur, the Chapter 11 Case shall remain open and shall not be deemed fully administered, and no final decree closing this Case shall be entered pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022, until the Effective Date, at the earliest.

### **ARTICLE VII PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS**

#### **7.1 No Distributions Pending Allowance.**

(a) **General.** Notwithstanding any other provision hereof and unless otherwise determined by the Debtor or the Liquidating Trustee, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on any portion of such Claim that is Disputed unless and until such portion of the Disputed Claim becomes Allowed.

**7.2 Resolution of Disputed Claims.** On and after the Effective Date, and in each case upon consultation with the Trust Advisory Committee, the Liquidating Trustee shall have the authority to compromise, settle, otherwise resolve or withdraw any objections to Claims and compromise, settle or otherwise resolve Disputed Claims of less than \$50,000.00 without approval of the Bankruptcy Court. Claims in excess of \$50,001.00 may be compromised or settled in accordance with Rule 9019(a) only upon an application with the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, the Debtor or the Liquidating Trust shall file all objections to Disputed Claims that are the subject of proofs of claim or requests for payment filed with the Bankruptcy Court (other than applications for allowances of compensation and reimbursement of expenses) and serve such objections upon the Holders of the Claims to which the objections are made as soon as practicable, but in no event later than sixty (60) days after the Effective Date or such later date as may be approved by the Court.

**7.3 Claims Filed or Amended After the Record Date.** Except as otherwise provided in the Plan, any new or amended Claim filed after the Record Date shall be deemed disallowed in full and expunged without any action by the Debtor or the Liquidating Trust, unless the Holder of such Claim has obtained prior Bankruptcy Court authorization for the filing. The Holder of a Claim that is disallowed pursuant to this section shall not receive any Distribution on account of such Claim.

**7.4 Distributions After Allowance of a Disputed Claim.** Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of this Plan governing the Class of Claims in which such Claim is classified. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidating Trustee shall distribute to the Holder of such Claim any payment that would have been distributed to such Holder if the Claim had been Allowed on the Distribution Date, plus any payments that have been made on account of such Allowed Claim after the Distribution Date, without any interest thereon.

**7.5 Estimation of Claims.** The Debtor or the Liquidating Trustee may, at any time, request the Bankruptcy Court to estimate any Disputed Claim in its discretion pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Liquidating Trustee has previously objected to such Claim, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during litigation concerning any objection to such Claim. In the event the Bankruptcy Court estimates any Disputed Claim, that estimated amount may constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor or the Liquidating Trust may elect to pursue any supplemental proceedings to object to any ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. On and after the Effective Date, Claims which have been estimated subsequently may be compromised, settled, withdrawn or otherwise resolved as provided for in the Plan.

**7.6 Amounts Retained to Pay Disputed Claims.** On and after the Effective Date, the Liquidating Trust shall retain an amount of Cash, pending the allowance or disallowance of any Disputed Claims, sufficient to pay to each Holder of a Disputed Claim (i) the amount that such Holder would have been entitled to receive under the Plan if such Claim had been an Allowed Claim on the Distribution Date or any Subsequent Distribution Date, or (ii) such lesser amount as the Bankruptcy Court may estimate pursuant to section 502(c) of the Bankruptcy Code and this Plan.

**7.7 No Distribution in Respect of Disallowed Claims.** To the extent that all or a portion of a Disputed Claim is disallowed, the Holder of such Claim shall not receive any distribution on account of the portion of such Claim that is disallowed.

## **ARTICLE VIII**

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

**8.1 Executory Contracts and Unexpired Leases.** On the Confirmation Date, all Executory Contracts that exist between the Debtor and any person shall be deemed rejected as of the Effective Date, except for any Executory Contract (a) that has been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Confirmation Date, or (b) as to which a motion for approval of the assumption or rejection of such Executory Contract is pending on the Confirmation Date.



**8.2 Approval of Rejection of Executory Contracts.** Entry of the Confirmation Order shall constitute the approval, pursuant to section 365(a) of the Bankruptcy Code, of the rejection of all Executory Contracts rejected pursuant to Section 8.1 of the Plan.

**8.3 Bar Date for Filing Proofs of Claim Relating to Executory Contracts Rejected Pursuant to the Plan.** Claims arising out of the rejection of an Executory Contract pursuant to the Plan must be filed with the Bankruptcy Court no later than (a) twenty (20) days after the Confirmation Date or (b) thirty (30) days after the entry of an order by the Bankruptcy Court authorizing rejection of a particular Executory Contract. Any Claims not filed within such applicable time periods shall be forever barred from receiving a distribution from the Debtor's bankruptcy Estate or the Liquidating Trust.

**8.4 Retiree Benefits.** The Debtor has never funded nor maintained any retiree benefit plans, funds or programs, as defined in section 1114 of the Bankruptcy Code, for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise). Accordingly, no such payments will be, or are required to be made pursuant to section 1129(a)(13) of the Bankruptcy Code.

## **ARTICLE IX EFFECT OF CONFIRMATION OF PLAN**

**9.1 Debtor's Authority.** Until the Effective Date, the Bankruptcy Court shall retain custody and jurisdiction over the Debtor, its properties, interests in property and operations. On the Effective Date, the Debtor, its properties and interests in property and operations shall be released from the custody and jurisdiction of the Bankruptcy Court, except as provided in Article XI of this Plan.

**9.2 Corporate Action and Continued Existence of the Debtor.** From and after the Confirmation Date, the Debtor shall continue in existence solely for the purpose of winding up its affairs as expeditiously as reasonably possible. Except as otherwise provided herein, the Plan will be administered by the Liquidating Trustee and all actions taken hereunder shall be taken through the Liquidating Trustee. The Debtor, however, shall retain responsibility for (a) the preparation and submission of all final tax returns, if any, for the Debtor, and (b) the steps necessary to terminate the corporate existence of the Debtor.

**(a)** From and after the Confirmation Date, the board of directors of ANEI shall consist of one member, comprised of Cynthia Terrell. Cynthia Terrell and the then current officers of the Debtor shall continue to serve in their respective capacities through the earlier of the date the Debtor is dissolved under applicable state law such officer or director resigns, is replaced or is terminated, the officer and director of the Debtor shall continue to serve in their respective capacities on the same terms and conditions upon which they presently serve the Debtor.

**9.3 Dissolution.** Upon completion of its purposes detailed in Section 9.2, the Debtor shall be dissolved under applicable state law. Immediately prior to such dissolution, to the extent not already done, all remaining Available Cash (or any other Cash or Asset) shall be transferred to the Liquidating Trust for Distribution in accordance with the Plan's treatment of Allowed General Unsecured Claims.

**9.4 Vesting and Liens.** Except as otherwise provided in this Plan or the Confirmation Order, on the Effective Date, title to all Avoidance Actions, Causes of Action, Assets and Cash of the Debtor and its Estate shall vest in the Liquidating Trust, free and clear of all Liens, Claims and Interests. The Liquidating Trust is a grantor trust and is assumed to have no tax liabilities. On or before the Effective Date, the Liquidating Trust and the Debtor shall enter into the Liquidating Trust Agreement. The Liquidating Trustee shall liquidate the Liquidating Trust Assets in accordance with the terms of the Liquidating Trust Agreement and the Plan. The Debtor shall execute any and all documents necessary to transfer and convey its Assets not otherwise required to satisfy its obligations under this Plan to the Liquidating Trust on the Effective Date.

**9.5 Discharge of the Debtor.** In accordance with section 1141(d)(3) of the Bankruptcy Code, this Plan and the Confirmation Order shall not discharge the Debtor from any Claim or Liability that arose before the Confirmation Date.

**9.6 Binding Nature of Plan.** Except as otherwise provided in section 1141(a) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of this Plan shall bind all present and former Holders of Claims against, or Equity Interests in, the Debtor and its successors and assigns, whether the Claim or Equity Interest of such Holder is impaired under the Plan and whether such Holder has filed a proof of Claim or Equity Interest or voted to accept the Plan. The Confirmation Order shall provide that the terms and provisions of this Plan and the Confirmation Order shall survive and remain effective after entry

of any order which may be entered converting the Case to a case under Chapter 7 of the Bankruptcy Code, and the terms and provisions of this Plan shall continue to be effective in this or any superseding case under the Bankruptcy Code.

**9.7 Preservation of Limited Release of Directors, Officers and Employees.** As of the Effective Date, the Debtor shall be deemed to have waived and released its present and former directors, officers, employees, consultants and agents who served in such capacities on or after the Commencement Date, from any and all claims of the Debtor including, without limitation, claims which the Debtor or Debtor in Possession otherwise has legal power to assert, compromise or settle in connection with the Chapter 11 Case, arising on or prior to the Effective Date; provided, however, that this provision shall not operate as a waiver or release of any claim (i) with respect to any loan, advance or similar payment by the Debtor to any such with respect to any contractual obligation owed by such person to the Debtor, (ii) with respect to any contractual obligation owned by such person to the Debtor, (iii) relating to such person's fraud, recklessness, or gross negligence, (iv) to the extent based upon or attributable to such person gaining in fact a personal profit to which such person was not legally entitled or (v) relating to such person's breach of fiduciary duty, other than those claims against such directors, officers and employees as were or are protected by the provisions of the applicable law. The release provided hereunder shall be without prejudice to, and shall not affect, the Debtor's or Liquidating Trust's claims against any other parties.

**9.8 Injunctions and Barring of Claims.**

- (a) On or after the Confirmation Date, all persons are permanently enjoined from:
  - (i) Commencing or continuing any action or proceeding respecting any claim or interest against the Debtor or its property (other than abandoned property);
  - (ii) Enforcing, attaching, collecting or recovering by any manner or means of any judgment, award, decree or order against the Debtor or its property (other than abandoned property);
  - (iii) Creating, perfecting, or enforcing any encumbrance of any kind against the Debtor or its property (other than abandoned property);
  - (iv) Asserting any right of setoff, subrogation or recoupment of any kind against any obligation due the Debtor from any such Entity; and
  - (v) Performing any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan.

This provision is not intended to operate as a discharge of the Debtor pursuant to Section 1141 of the Bankruptcy Code but to give effect to the Bar Date Order and the jurisdiction of the Bankruptcy Court to determine all claims and rights of any Holder of a Claim against the Debtor's estate. The Office of the United States Trustee has indicated that it objects to the scope of this injunction and reserves all of its rights to assert such objection in connection with the Confirmation of the Plan.

**9.9 Exculpation.**

(a) As of the Effective Date, each Holder of a Claim or Equity Interest, each party-in-interest and each Entity acting or claiming or purporting to act or claim by, through under or on behalf of any of the foregoing, shall forever be enjoined from the commencement or continuation of any action, the employment of process, or any act to assert a claim for relief against the Debtor, the Official Committee, and their respective officers, members, directors, attorneys or other professionals (the "Protected Parties") in respect of: (A) any actions taken or not taken in connection with the Chapter 11 Case; (B) this Plan; (C) the Disclosure Statement; (D) Distributions, payments or transfers made under this Plan; (E) acts performed pursuant to this Plan; (F) any contract, release, or other agreement or document created or entered into, or any other action taken or omitted to be taken, in connection with this Plan; or (G) any Claim compromised, settled or released under or pursuant to this Plan; provided, however, that the foregoing release shall not release the Protected Parties (i) from their obligations under the Plan, and (ii) for any acts, or omissions to act, evidencing and / or constituting gross negligence, willful misconduct, breach of fiduciary duty or malpractice.

**9.10 Avoidance and Recovery Actions.** As of the Effective Date, the Liquidating Trustee shall retain the right to prosecute, on behalf of itself and the Estate, any avoidance or recovery actions under sections 542, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code or any other Causes of Action, or rights to payment of claims, that belong to or could have

been raised by or on behalf of the Debtor, Debtor in Possession or the Estate, and the Liquidating Trustee expressly retains the right to assert such claims and Causes of Action as defenses to, and setoffs against, Disputed General Unsecured Claims. Upon consultation with the Trust Advisory Committee, the Liquidating Trustee may prosecute compromise and settle any Cause of Action it deems necessary and appropriate without Bankruptcy Court approval. All settlements on claims in excess of \$50,000.00 shall be subject to Bankruptcy Court approval under Bankruptcy Rule 9019. Any Cause of Action must be commenced, if at all, no later than ninety (90) days after the Effective Date.

## **ARTICLE X EFFECTIVENESS OF THE PLAN**

**10.1 Conditions Precedent to the Effective Date.** The following are conditions precedent to the Effective Date of the Plan:

(a) The Bankruptcy Court shall have entered the Final Confirmation Order which shall be in form and substance satisfactory to the Debtor;

(b) No stay of the Confirmation Order shall then be in effect at the time the other conditions set forth in this Section 10.1 are satisfied or waived; and

(c) All documents, instruments and agreements, in form and substance satisfactory to the Debtor, provided for under or necessary to implement the Plan shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived by the parties benefited thereby.

**10.2 Waiver of Conditions.** Notwithstanding the foregoing, the Debtor with consultation with the Official Committee may waive the occurrence of any of the foregoing conditions precedent.

## **ARTICLE XI RETENTION OF JURISDICTION**

**11.1 General.** The Bankruptcy Court shall retain jurisdiction of all matters arising under, arising out of, or related to, the Chapter 11 Case, the Liquidating Trust, and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

(a) To hear and determine any motions for the assumption, assumption and assignment or rejection of Executory Contracts, and the allowance of any Claims resulting therefrom;

(b) To determine any and all adversary proceedings, applications, and contested matters that have been or may be commenced;

(c) To ensure that Distributions to Holders of Allowed Claims are accomplished as provided herein;

(d) To hear and determine any objection to, or request to estimate, any Claims, including Administrative Expense Claims or Equity interests;

(e) To hear and determine any disputes relating to distributions of Available Cash;

(f) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

(g) To issue such orders in aid of execution of the Plan to the extent authorized by section 1142 of the Bankruptcy Code;

(h) To consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) To hear and determine all applications for compensation and reimbursement of expenses of professionals under sections 330, 331, and 503(b) of the Bankruptcy Code;

(j) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan;

(k) To recover all Assets of the Debtor and property of the Debtors Estate, wherever located;

(l) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including any requests for expedited determinations under section 505(b) of the Bankruptcy Code filed, or to be filed, with respect to tax returns for any and all taxable periods ending after the Commencement Date through the dissolution of the Debtor);

(m) To enforce all orders, judgments and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);

(n) To issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of this Plan;

(o) To hear any other matter consistent with the provisions of the Bankruptcy Code;

(p) To enter a final decree closing the Chapter 11 Case.

**11.2 Modification of the Plan.** The Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. After the Confirmation Date and prior to substantial consummation of the Plan, as defined in section 1101(2) of the Bankruptcy Code, the Debtor, or the Liquidating Trustee acting on behalf of the Debtor after the Effective Date, may propose in writing to modify the Plan in order to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement and/or the Confirmation Order, but such modifications shall not be effective without the consent of the Official Committee or the Trust Advisory Committee; provided, however, the Plan, as modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms the Plan as modified under section 1129 of the Bankruptcy Code. A Holder of a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted the Plan as modified in accordance with this Section of the Plan if the proposed modification does not materially and adversely change the treatment of the Claim or Equity Interest of such Holder.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

**12.1 Effectuating Documents and Further Transactions.** Upon entry of the Confirmation Order, the Debtor or the Liquidating Trust, as the case may be, shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be reasonably necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**12.2 Official Committee.** As of the Effective Date, the Official Committee shall be deemed dissolved and shall have no further duties, authority or responsibility under the Bankruptcy Code, or otherwise, with respect to the Debtor, its assets, or the Plan. Neither the Debtor nor the Liquidating Trustee shall be responsible for any fees, costs or expenses of the Official Committee, its individual members or its Professionals incurred after the Effective Date: provided, however, that following the Effective Date, the responsibilities of the Official Committee and its Professionals shall be limited to the (i) preparation and prosecution of their respective fee applications for which they shall be entitled to reasonable compensation by the Debtor and (ii) service on the Trust Advisory Committee for which they shall be entitled to compensation.

**12.3 Expenses of Liquidation.** Except as otherwise provided by the Plan or may as otherwise be agreed, all costs and expenses incurred by the Liquidating Trustee, the Trust Advisory Committee or the Debtor and their respective Professionals for implementing the Plan after the Effective Date, including the costs of fees and expenses of professionals and agents retained by the Estate following the Confirmation Date, shall be paid from the Available Cash, in the case of costs incurred by the Debtor, and from the Liquidating Trust, in the case of costs incurred by the Liquidating Trustee or the Trust Advisory Committee.

**12.4 Obligations Incurred after Confirmation Date.** Payment obligations incurred after entry of the Confirmation Order, including, but not limited to, the fees of Professionals, will not, unless otherwise provided in this Plan or the Trust Agreement, be subject to application or proof of Claim and may be paid by the Debtor and/or the Liquidating Trustee, as the case may be, in the ordinary course without further order of the Bankruptcy Court.

**12.5 Exemption from Transfer Taxes.** Pursuant to section 1146(c) of the Bankruptcy Code, the assignment or surrender of any lease or sublease, or the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any deeds, bills of sale or assignments executed in connection with any disposition of assets under, in furtherance of, or in connection with the Plan shall not be subject to any stamp, real estate transfer, mortgage recording, sales, use or other similar tax.

**12.6 Request for Expedited Determination of Taxes.** The Debtor or the Liquidating Trust shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Commencement Date through, and including, the dissolution of the Debtor. The Liquidating Trustee and/or his Professionals or its agents shall not be liable to the Debtor, any Creditor, any Interest Holder, any party in interest or to any person or entity for any negligence, error or erroneous judgment or any act or omission other than for willful misconduct, gross negligence or fraud. Liquidating Trustee and/or his Professionals will be indemnified and held harmless from and against any and all losses, liabilities, obligations, claims, costs, or demands suffered, incurred or sustained or to which the Liquidating Trustee and/or his Professionals becomes subject (including attorneys' fees) of any kind or nature arising out of, in connection with, or related to its duties and services in connection with the Plan, other than for willful misconduct, gross negligence or fraud. The Liquidating Trustee and/or his Professionals shall be indemnified, as set forth herein, out of the proceeds from the Distribution Fund.

**12.7 Payment of United States Trustee Quarterly and Statutory Fees.** The Debtor or the Liquidating Trustee, as the case may be, shall pay all Statutory Fees on or before the Effective Date. In addition, the Liquidating Trustee shall pay all Statutory Fees due and payable on all disbursements, including plan payments and disbursements in and outside of the ordinary course of business until the entry of a Final decree, dismissal of the case or conversion of the case to a case under chapter 7.

**12.8 Withdrawal or Revocation.** The Debtor may withdraw or revoke the Plan at any time prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan prior to the Confirmation Date, or if the Confirmation Date does not occur, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claim by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any other person in any further proceedings involving the Debtor.

**12.9 Notices.** Any notices to or requests of the Debtor or the Liquidation Trust by parties in interest under or in connection with the Plan shall be in writing and served either by (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, all charges prepaid, and shall be deemed to have been given when received by the following parties:

LeClairRyan  
Counsel to the Debtor and Debtor-in-Possession  
830 Third Avenue  
New York, New York 10022  
(212) 430-8056  
Attn: A. Peter Lubitz, Esq.

And

Lowenstein Sandler PC  
Attorneys for the Official Committee of Unsecured Creditors  
1251 Avenue of the Americas, 18th Floor  
New York, New York 10020  
(212) 262-6700  
Attn: W. Jung, Esq.

**12.10 Severability.** In the event that the Bankruptcy Court determines, prior to the Confirmation Date, that any provision of the Plan is invalid, void or unenforceable, the Bankruptcy Court shall, with the consent of the Debtor and the Official Committee, have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and

such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**12.11 Governing Law.** Except to the extent the Bankruptcy Code or 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 New York, without giving effect to the principles of conflicts of law thereof.

**12.12 Headings.** Headings are used in the Plan for convenience and reference only, and shall not constitute a part of the Plan for any other purpose.

**12.13 Exhibits.** All Exhibits and Schedules to the Plan are incorporated into and are a part of the Plan as if set forth in full herein.

**12.14 Failure of Effective Date.** In the event that the Effective Date does not occur, nothing in this Plan, including, without limitation, the releases contained herein, shall be binding on the Debtor, its estate, or any other entity, or otherwise be of any force or effect.

**12.15 Plan Controls.** To the extent the Plan is inconsistent with the Disclosure Statement, the provisions of the Plan shall be controlling.

Dated: New York, New York  
July 29, 2008

American Network Exchange, Inc.,  
Debtor and debtor-in-possession.

By: \_\_\_\_\_  
Name: Cynthia Terrell  
Title: Secretary

LeClairRyan  
Counsel to the Debtor

By: \_\_\_\_\_  
A. Peter Lubitz  
830 Third Avenue  
New York, New York 10022  
[peter.lubitz@leclairryan.com](mailto:peter.lubitz@leclairryan.com)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 11

Case No. 99 B 43020 [AJG]

AMERICAN NETWORK EXCHANGE, INC.,

Debtor.

-----X

**AMERICAN NETWORK EXCHANGE, INC., CREDITORS LIQUIDATING TRUST AGREEMENT**

This American Network Exchange, Inc., Creditors Liquidating Trust Agreement (the "Agreement") dated as of \_\_\_\_\_, \_\_\_\_\_, 2008 by and between American Network Exchange, Inc., (the "Settlor" or "Debtor"), and Cynthia Terrell, as trustee (the "Trustee"), for the benefit of the holders of Allowed Class 3 Claims (the "Beneficiaries") under the terms of the Debtor's First Amended Plan of Liquidation, dated July 29, 2008, filed in the above-captioned matter (the "Plan"), and confirmed by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") in Chapter 11 Case No. 99-43020 (AJG), by Order dated \_\_\_\_\_, 2008.

**WITNESSETH:**

WHEREAS, the Trust is created pursuant to, and to effectuate, the Plan; WHEREAS, the Trust is created on behalf, and for the sole benefit, of the Beneficiaries under the Plan;

WHEREAS, the Trust is established for the purpose of collecting, distributing and liquidating the Assets for the benefit of the Beneficiaries in accordance with the terms of this Agreement and the Plan;

WHEREAS, pursuant to the Plan, the Settlor, the Trustee, and the Beneficiaries are required to treat, for all federal income tax purposes, the transfer of the Assets to the Trust as a transfer of the Assets by the Settlor to the Beneficiaries in satisfaction of their Allowed Unsecured Claims, followed by a transfer of the Assets by the Beneficiaries to the Trust in exchange for the beneficial interest herein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation 301.7701-4;

WHEREAS, the Trust is intended to be treated as a grantor trust for federal income tax purposes;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Settlor and the Trustee agree as follows:

**ARTICLE I.  
DEFINITIONS AND INTERPRETATIONS**

1.1. Definitions.

1.1.1. "Agreement" shall mean this American Network Exchange, Inc., Creditors Liquidating Trust Agreement.

1.1.2. "Beneficiaries" shall collectively mean the holders of Allowed Claims under the Plan, or any successors to such holders' Allowed Claims pursuant to Section 11.1 of this Agreement.

1.1.3. "Effective Date" shall have the same meaning as set forth in the Plan.

1.1.4. "Settlor" shall mean the Debtor, American Network Exchange, Inc.

1.1.5. "Trust" shall mean the trust established pursuant to the terms of this Agreement and the Plan.

1.1.6. "Trust Advisory Committee" shall mean counsel to the Official Committee of Unsecured Creditors appointed in this case.

1.1.7. "Assets" shall mean the Assets as defined in the Plan, including the proceeds and/or income related thereto, held from time to time pursuant to this Agreement by the Trustee of the Trust for the benefit of the Beneficiaries.

1.1.8. "Trustee" shall mean Cynthia Terrell initially or any successors or replacements duly appointed under the terms of this Agreement.

1.2. Use of Plan Definitions. All terms which are used in this Agreement not defined herein shall have the same meaning set forth in the Plan. In the case of any inconsistency between the terms of this Agreement and the terms of the Plan, the terms of the Agreement shall govern and control.

1.3. Interpretation. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

1.4. Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Agreement. The words "hereof," "herein," and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

## ARTICLE II. DECLARATION OF TRUST

2.1. Creation and Name. There is hereby created the Trust, which shall be known as the "American Network Exchange, Inc., Liquidating Trust," and is the Trust referred to as the Liquidating Trust in the Plan. The Trustee may conduct the affairs of the Trust under the name of the "American Network Exchange, Inc., Creditors Liquidating Trust."

2.2. Purpose of Trust. The Settlor and the Trustee, pursuant to the Plan and in accordance with title 11 of the United States Code (the "Bankruptcy Code"), hereby create the Trust for the purpose of collecting, distributing and liquidating the Assets (not otherwise required by the Reorganized Debtor as provided for in the Plan) for the benefit of the Beneficiaries in accordance with the terms of this Agreement and the Plan. The activities of the Trust shall be limited to those activities set forth in Article III hereof and as otherwise contemplated by the Plan.

2.3. Transfer of Assets.

A. The Settlor hereby grants, releases, assigns, conveys, transfers and delivers, on behalf of the Beneficiaries, the Assets (not otherwise required by the Reorganized Debtor as provided for in the Plan) to the Trustee as of the Effective Date in trust for the benefit of the Beneficiaries to be applied as specified in this Agreement and the Plan. The Settlor shall from time to time as and when reasonably requested by the Trustee execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate) and the Settlor shall take or cause to be taken such further action as the Trustee may reasonably deem necessary or appropriate, to vest or perfect in or confirm to the Trustee title to and possession of the Assets.

B. For all federal, state and local income tax purposes, the Settlor, the Beneficiaries, and the Trustee shall treat the transfer of the Assets to the Trust as a transfer of the Assets by the Settlor to the Beneficiaries in satisfaction of their Allowed Claims, followed by a transfer of the Assets by the Beneficiaries to the Trust in exchange for their beneficial interests in the Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of the Trust.

2.4. Securities Law. Under § 1145 of the Bankruptcy Code, the issuance of beneficial interests in the Trust to the Beneficiaries under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Trustee shall take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

## ARTICLE III. ADMINISTRATION OF THE TRUST

3.1. Rights, Powers and Privileges. The Trustee shall have only the rights, powers and privileges expressly provided in this Agreement and the Plan. The Trustee shall have the power to take the actions granted in the subsections below and any powers reasonably incidental thereto, which the Trustee, in its reasonable discretion, deems necessary or appropriate to fulfill the purpose of the Trust, unless otherwise specifically limited or restricted by the Plan or this Agreement:

A. Hold legal title to any and all rights of the Settlor and the Beneficiaries in or arising from the Assets, including but not limited to, claims and causes of action which the Debtor's estate may have, including but not limited to Causes of Action;



B. Rely upon the official claims register maintained in the Bankruptcy Case, maintain on the Trustee's books and records, a register evidencing the beneficial interest herein held by each Beneficiary;

C. Protect and enforce the rights to the Assets (including any Causes of Action) vested in the Trustee by this Agreement by any method deemed appropriate including, without limitation, by judicial proceedings or otherwise;

D. Make distributions to Holders of Allowed Claims provided for in, or contemplated by, the Plan and this Agreement;

E. Open and maintain bank accounts on behalf of or in the name of the Trust;

F. Make all tax withholdings, file tax information returns, make tax elections by and on behalf of the Trust and file returns for the Trust pursuant to Article VIII, Section 8.9 hereof;

G. If appropriate and necessary, send annually to each Beneficiary a statement stating the Beneficiary's share of income, gain, loss, deduction or credit and instruct all such Beneficiaries to report such items on their federal tax returns;

H. Establish such reserves for Disputed Claims, taxes, assessments and other expenses of administration of the Trust as may be necessary and appropriate for the proper operation of matters incident to the Trust;

I. Pay all expenses and make all other payments relating to the Trust Assets;

J. Retain and pay third parties pursuant to Article 111, Section 3.2 hereof;

K. Carry insurance coverage or obtain a bond in such amounts as the Trustee deems advisable as an expense of the Trust;

L. In accordance with the Plan, be vested with and perform all rights and duties of the Liquidating Trustee;

M. Exercise all powers provided under the Plan, including the right to object to and/or reconcile Creditors Claims, prosecute and/or settle Causes of Action, marshal, liquidate, sell, abandon and/or distribute the Assets conveyed to the Trust;

N. Invest any moneys held as part of the Assets conveyed to the Trust in accordance with the terms of Article III and , Section 3.3 hereof, and

O. Terminate this Trust and seek to close the Debtor's Case pursuant to § 350(a) of the Bankruptcy Code.

3.2. Agents and Professionals. The Trustee may, but shall not be required to, consult with and retain attorneys, accountants, appraisers, or other parties deemed by the Trustee to have qualifications necessary to assist in the proper administration of the Trust. The Trustee may pay the reasonable salaries, fees and expenses of such persons (including himself) out of the Assets conveyed to the Trust in the ordinary course of business.

3.3. Investment and Safekeeping of Assets. All moneys and other Assets received by the Trustee shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries, but need not be segregated from other Assets, unless and to the extent required by law or the Plan. The Trustee shall be under no liability for interest or producing income on any moneys received by it herein and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Trustee. Investments of any moneys held by the Trustee shall be administered in view of the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs; provided, however, that the right and power of the Trustee to invest moneys held by the Trustee, the proceeds from any sale of shares of stock, or any income earned by the Trust shall be limited to the right and power to invest such moneys, pending periodic distributions in accordance with Article V hereof and the Plan.

3.4. Limitations on Trustee. The Trustee shall not at any time, on behalf of the Trust or Beneficiaries: (i) enter into or engage in any trade or business, and no part of the Trust's Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business, or (ii) except as provided below, reinvest any Assets.

A. The Trustee may only invest funds held in the Trust consistent with the requirements of the Section 345(a) of the Bankruptcy Code or any order of the Bankruptcy Court modifying such requirements and, provided that the Trustee does so, he or she shall have no liability in the event of insolvency of any institution in which he or she has invested any funds of

the Trust Estate.

B. The Trustee shall be restricted to the holding, collection, conservation, protection and administration of the Trust in accordance with the provisions of this Agreement and the Plan, and the payment and distribution of amounts as set forth herein for the purposes set forth in this Agreement. Any determination by the Trustee as to what actions are in the best interests of the Trust shall be determinative.

3.5. Trust Advisory Committee. The Trust Advisory Committee shall have general oversight powers for the activities of the Trustee, as well as those specific rights and powers set forth in the other provisions of this Agreement and under the Plan. The Trustee shall consult with the Trust Advisory Committee before objecting to or settling a Claim, making a Distribution, initiating a Cause of Action, or as otherwise provided in the Plan. The Trust Advisory Committee shall be entitled to seek compensation from the Trust.

3.6. Bankruptcy Court Approval of Trustee Actions. Except as provided in the Plan or otherwise specified in this Agreement, the Trustee need not obtain the order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court. The Trustee shall exercise its business judgment for the benefit of the Beneficiaries in order to maximize the value of the Trust Assets and distributions, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing, the Trustee shall have the right to submit to the Bankruptcy Court any question or questions regarding which the Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Trustee with respect to the Trust Assets, this Trust, the Agreement, the Plan, or the Debtor, including the administration and distribution of the Trust Assets, The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action upon motion by the Trustee. In addition, unless otherwise set forth in the Plan, the Trustee shall have the authority, but not the obligation, to seek Bankruptcy Court approval to sell any Trust Asset free and clear of any and all liens, claims and encumbrances.

3.7. Management/Dissolution of Debtor. The Trustee, on behalf of the Debtor, shall have the obligation and the power to undertake any and all action necessary to (i) dissolve and wind-up the Debtor and undertake any action on behalf of the Debtor to implement such dissolution and wind-up, including without limitation, the preparation, execution and filing of articles of dissolution and other corporate documents, and the preparation and filing of any federal, state and local tax returns and providing for payment of any taxes related thereto consistent with the Plan; (ii) manage the Debtor to the extent not inconsistent with the Plan; (iii) otherwise cause the Debtor to comply with its obligations and duties under the Plan; (iv) to close the Debtor's Case pursuant to 11 U.S.C. § 350(a); and (v) execute and deliver documents and take actions on behalf of the Debtor as are necessary or appropriate after the Effective Date. All services rendered and expenses incurred by the Trustee with respect to the foregoing shall be paid by the Trust.

#### ARTICLE IV. VOTING RIGHTS

4.1. Voting of Stock. Upon the execution of this Agreement, it shall be the duty of the Trustee, and the Trustee shall have the sole and exclusive power and authority, to vote any stock held in Trust pursuant to this Agreement in person, or by proxy, or by consent to corporate action or otherwise, in their reasonable discretion in accordance with the purposes of the Trust.

#### ARTICLE V. DISTRIBUTIONS FROM THE TRUST

5.1. Distributions. The Trustee shall distribute to the Beneficiaries the Available Cash in accordance with the Plan; provided, however, that the Trustee must retain and reserve in the Trust such amounts as are reasonably necessary to satisfy amounts that would be distributable in respect of Disputed Claims if the Disputed Claims were allowed in their Face Amounts (the "Disputed Claim Reserve"), any such other amounts as required under the Plan or this Agreement.

5.2. Pro Rata Share of Distributions. Each Beneficiary shall receive its Ratable Share of any and all distributions in accordance with the Plan, except that the Trustee may withhold from amounts distributable to any Beneficiary, any and all amounts, determined in the Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

5.3. Distributions After Allowance or Disallowance of a Disputed Claim. Unless otherwise set forth in the Plan, within thirty (30) days of a Disputed Claim becoming an Allowed Claim, the Trustee shall distribute to the holder thereof, from the Disputed Claim Reserve, such amount of Available Cash as would have been distributed to such holder if its Claim had been an Allowed Claim on the Effective Date. The Trustee shall no longer reserve for the amount of any Disputed Claim that becomes disallowed and shall, within a reasonable period following such disallowance, distribute to the Beneficiaries the amount that was previously reserved on account of such disallowed Claim.

5.4. Payments Limited to Trust Assets. All payments to be made by the Trustee to or for the benefit of any Beneficiary shall be made only from the Assets and only to the extent that the Trustee has sufficient reserves to make such payments in accordance with the Plan and this Agreement. Each Beneficiary shall have recourse only to the Assets for distribution under this Agreement and the Plan.

5.5. Priorities of Distribution. The Trustee must pay the operating expenses of the Trust before approving distributions to or for the benefit of Beneficiaries.

5.6. United States Trustee Fees and Reports. After the Effective Date, the Trust shall pay as an expense of the Trust all fees incurred under 28 U.S.C. § 1930(a)(6) and 31 U.S.C. § 3717 by reason of the Trust's disbursements as required under the Confirmation Order until the Debtor's Case is closed. After the Effective Date, the Trust shall prepare and serve on the Office of the U.S. Trustee and the Trust Advisory Committee such quarterly disbursement reports for the Trust as required by the U.S. Trustee for as long as the Debtor's Case remains open. The Trustee shall be responsible for the payment of fees under this paragraph.

## ARTICLE VI. BENEFICIARIES

6.1. Interest Beneficial Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary or the Settlor to any title in or to the Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein.

6.2. Ownership of Beneficial Interests Hereunder. Each Beneficiary shall own a beneficial interest herein equal in proportion to the pro rata share of such Beneficiary's Allowed Claim in accordance with the Plan.

6.3. Evidence of Beneficial Interest. Ownership of a beneficial interest in the Trust Assets shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee.

6.4. Notice of Transfer of Beneficial Interest. Any notice of a change of beneficial interest ownership as described in Section 11.1 of this Agreement shall be forwarded to the Trustee by registered or certified mail as set forth herein. The notice shall be executed by both the transferee and the transferor, and the signatures of the parties shall be acknowledged before a notary public and as required by Bankruptcy Rule 3001(e). The notice must clearly describe the interest to be transferred. The Trustee may rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

## ARTICLE VII. THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

7.1. Parties Dealing With the Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Trust or the Trustee shall be entitled to rely on the authority of the Trustee or any of the Trustee's agents to act in connection with the Trust Assets. There is no obligation on any Person dealing with the Trustee to inquire into the validity or expediency or propriety of any transaction by the Trustee or any agent of the Trustee.

7.2. Limitation of Trustee's Liability. Anything herein to the contrary notwithstanding, in exercising the rights granted herein, the Trustee shall exercise the Trustee's best judgment, to the end that the affairs of the Trust shall be properly managed and the interests of all the Beneficiaries and the Senior are safeguarded; but the Trustee shall not incur any responsibility or liability by reason of any error of law or of any matter or thing done or suffered or omitted to be done under this Agreement, except for gross negligence, willful misconduct, fraud or intentional misconduct.

7.3. Indemnification. The Trustee shall be indemnified and receive reimbursement against and from all loss, liability, expense (including counsel fees) or damage which the Trustee may incur or sustain in the exercise and performance of any of the Trustee's powers and duties under this Agreement, to the full extent permitted by applicable law, except if such loss, liability, expense or damage is finally determined by a court of competent jurisdiction to result from the Trustee's willful misconduct, fraud, intentional misconduct or gross negligence. The amounts necessary for such indemnification and reimbursement shall be paid by the Trust out of the Trust Assets. The Trustee shall not be personally liable for the payment of any Trust expense or claim or other liability of the Trust, and no person shall look to the Trustee personally for the payment of any such expense or liability. This indemnification shall survive the death, dissolution, resignation or removal, as may be applicable, of the Trustee, or the termination of the Trust, and shall inure to the benefit of the Trustee's heirs and assigns.

**ARTICLE VIII.  
SELECTION, REMOVAL AND COMPENSATION OF TRUSTEE**

8.1. Initial Trustee. The initial Trustee shall be \_\_\_\_\_.

8.2. Term of Service. The Trustee shall serve until (a) the completion of all the Trustee's duties, responsibilities and obligations under this Agreement and the Plan; (b) termination of the Trustee in accordance with this Agreement, or (c) the Trustee's death, resignation or removal.

8.3. Removal of a Trustee. Any person serving as Trustee may be removed at any time by an order of the Bankruptcy Court. The removal shall be effective on the date specified in the order.

8.4. Resignation of Trustee. The Trustee may resign at any time by giving the Trust Advisory Committee (as defined herein) at least thirty (30) days written notice of his or her intention to do so. In the event of a resignation, the resigning Trustee - shall render to the Beneficiaries a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Trustee. The resignation shall be effective on the later of (i) the date specified in the notice; (ii) the date that is thirty days (30) after the date the notice is delivered; or (iii) the date the accounting described in the preceding sentence is delivered.

8.5. Appointment of Successor Trustee. Upon the resignation, death, incapacity, or removal of a Trustee, the Trust Advisory Committee shall appoint a successor Trustee to fill the vacancy so created. Any successor Trustee so appointed shall consent to and accept in writing the terms of this Agreement and agrees that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all of their heirs and legal and personal representatives, successors or assigns.

8.6. Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers, and duties of his or her predecessor under this Agreement and the Plan,

8.7. Trust Continuance. The death, resignation or removal of the Trustee shall not terminate the Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Trustee. In the event that a successor Trustee is not appointed when required under this Agreement, the Trust Advisory Committee shall apply to the Bankruptcy Court for appointment of a successor Trustee.

8.8. Compensation and Costs of Administration. The Trustee shall be entitled to receive compensation of \$ \_\_\_\_\_ per hour for actual time spent (including travel at 50% of the applicable rate), plus out-of-pocket expenses including mileage, copies and faxes. The Trustee's standard hourly rate, which shall be a charge against and paid out of the Trust Assets, shall be subject to increase from time to time as such standard hourly rates may be increased in the ordinary course of business.

In order to carry out his/her duties under the Plan and the Agreement, the Trustee, in addition to the rights hereunder and in the Plan, shall compensate the Professionals retained by the Trust Advisory Committee and shall have the right, but not the obligation, to (i) retain and compensate Professionals (including, but not limited to, the Professionals retained by the Official Committee or the Debtor prior to the Effective Date) to assist the Trustee in liquidation and distribution of the Assets without prior Bankruptcy Court approval, and (ii) employ such procedures, not inconsistent with the Plan, necessary for the Trustee to perform his/her duties hereunder and the Plan. The reasonable and necessary fees and actual and necessary expenses of such Professionals and the Trustee shall be paid by the Trust upon each monthly submission of a fee statement to the Trustee and the Trust Advisory Committee. The Trustee and the Trust Advisory Committee shall have fifteen (15) days after the delivery of a fee statement to give notice of an objection to the fee statement of a Professional seeking compensation and/or reimbursement. For an objection to be valid, it shall be in writing and set forth in detail the specific fees objected to and the basis for the objection. Any objection that remains unresolved fifteen (15) days after it is delivered may be submitted to the Bankruptcy Court for resolution. The uncontested portion of the each fee statement shall be paid within thirty (30) days after its delivery to the Trust. All costs, expenses, and obligations incurred by the Trust shall be paid by the Trustee from the Trust Assets prior to any distribution to the Beneficiaries.

8.9. Annual Reporting and Filing Requirements.

A. Within 45 days after the end of each calendar year, the Trustee shall file on the docket of the Debtor's Case, or otherwise make available upon written request, a complete accounting to the Beneficiaries of all Assets received and disbursed by the Trust, including but not limited to, all Available Cash disbursed to Beneficiaries, all cash disbursed as Trust expenses, and all Assets held by the Trust during the preceding calendar year.

B. The Trustee shall file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations.

**ARTICLE IX.  
MAINTENANCE OF RECORDS**

- 9.1. The Trustee shall maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements. Said books shall be open to inspection by any Beneficiary at any reasonable time during normal business hours. The Trustee shall furnish to any Beneficiary or the Trust Advisory Committee upon written request an annual statement of receipts and disbursements of the Trust.
- 9.2.

**ARTICLE X.  
DURATION OF TRUST**

10.1. Duration. The Trust shall become effective upon the Effective Date of the Plan. Thereupon, the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

10.2. Termination Upon Distribution of All Trust Assets. Upon the payment of all costs, expenses, and obligations (including the final distribution to Creditors) incurred in connection with administering the Trust, and the distribution of all remaining Assets in accordance with the provisions of the Plan, the Confirmation Order and this Agreement, the Trustee shall terminate the Trust and the Trustee shall have no further responsibility in connection therewith except as may be required to effectuate such termination under relevant law.

10.3. Termination After Two Years. If the Trust has not been previously terminated pursuant to Section 10.2 hereof, on the second anniversary of the Effective Date, unless otherwise extended for cause by the Bankruptcy Court, the Trustee shall distribute all of the Trust Assets to the Beneficiaries in accordance with the Plan and immediately thereafter, the Trust shall terminate and the Trustee shall have no further responsibility in connection therewith. The Trustee, by the filing of a Motion with the Bankruptcy Court prior to the expiration of the Trust, may extend the life of the Trust for one year periods. Multiple extensions can be obtained so long as Bankruptcy Court approval is obtained prior to the expiration of each extended term; provided, however, that the aggregate of all such extensions shall not exceed three (3) years unless the Trustee obtains a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Trust as a liquidating trust within the meaning of Treasury.

10.4. Continuance of Trust for Winding Up. After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until his duties have been fully performed. Upon distribution of the Assets of the Trust, the Trustee shall retain for a period of two (2) years the books, records, Beneficiary lists, and certificates and other documents and files which shall have been delivered to or created by the Trustee. At the Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the completion and winding up of the affairs of the Trust, Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and the final distribution of the Trust Assets, the Trustee shall have no further duties or obligations hereunder.

**ARTICLE XI.  
MISCELLANEOUS**

11.1. Limitation on Transferability. It is understood and agreed that the beneficial interest herein shall be non-assignable during the term of this Agreement except by operation of law. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Trustee, and the Trustee may continue to pay all amounts to or - for the benefit of the assigning Beneficiaries until receipt of proper notification and proof of assignment by operation of law. Trustee may rely upon such proof without the requirement of any further investigation.

11.2. Notices. All notices to be given to Beneficiaries may be given by ordinary mail, or may be delivered personally, to the holders at the addresses appearing on the books kept by Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

If to the Trust:

LeClairRyan  
Attn: A. Peter Lubitz, Esq.  
830 Third Avenue  
New York, New York 10022  
Telephone: (212) 430-8056  
E-mail: peter.lubitz@leclairryan.com

If to the Trust Advisory Committee

**Michael S. Etkin, Esq.**  
Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, New Jersey 07068  
Telephone: (973) 597-2312  
Facsimile: (973) 597-2313  
E-mail: [metkin@lowenstein.com](mailto:metkin@lowenstein.com)

or –

1251 Avenue of the Americas, 18th Floor  
New York, New York 10020  
Telephone: (212) 262-6700  
Facsimile: (212) 262-7402

or to such other address as may from time to time be provided in written notice by the Trustee.

11.3. No Bond. Notwithstanding any state law to the contrary, the Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction.

11.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

11.5. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

11.6. Headings. The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or understanding of this Agreement or any provision hereof.

11.7. No Execution. All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can execute upon, garnish or attach the Trust Assets or the Trustee in any manner or compel payment from the Trust except by Final Order of the Bankruptcy Court. Payment will be solely governed by the Plan and this Agreement.

11.8. Intention of Parties to Establish Grantor Trust. This Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a grantor trust.

11.9. Amendment. This Agreement may be amended only by order of the Bankruptcy Court.

11.10. Severability. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**IN WITNESS WHEREOF**, the parties have executed this Agreement (or are deemed to have so executed this Agreement) as of the day and year written above.

AMERICAN NETWORK EXCHANGE, INC.

By: /s/  
Name: Cynthia Terrell  
Title: Secretary

AMERICAN NETWORK EXCHANGE, INC.  
CREDITORS LIQUIDATING TRUST

By: /s/  
Trustee

**Liquidation Analysis of ANEI as of Expected Confirmation Date (10/1/08)**

	<b>Estimated Recovery Under Chapter 7</b>	<b>Estimated Recovery Under Debtor's Chapter 11 Plan</b>	<b>Notes</b>
<b>Assets Available for Distribution</b>	\$ 1,100,000	\$ 1,100,000	
Cash and Cash Equivalents			1
Other Assets; assumed none			
<b>Total Assets Available to Distribute</b>	\$ 1,100,000	\$ 1,100,000	
<b>Wind-down Administrative and Priority Claims</b>			
Trustee Fees	\$ 33,000	0	2
Wind-down Costs ( through 12/31/08 )	30,000	-	3
Professional Fees ( through 12/31/08 )	50,000	-	3
Priority Claims (Est. Net Total)	350,000	350,000	
Administrative Expenses	1,280,000	1,280,000	5
<b>Total Wind-down Administrative and Priority Claims</b>	<b>\$ 1,743,000</b>	<b>\$ 1,630,000</b>	5
<b>Liquidation Proceeds Available for Distribution to Claims</b>	\$	\$	
<b>(Less) Secured Claims (Class 2) (assumed equal in each scenario)</b>	\$ 0	\$ 0	4
	\$	\$	
<b>Available for Unsecured Claims (Class 3)</b>	\$ None	\$ 37,500	
<b>Pro Rata Available to Distribute to Holders of Unsecured Claims (assumed to be \$2.5 MM)</b>	%	1.5%	

**Notes**

- 1) Estimated cash available for distribution on the Confirmation Date based on cash on hand at 6/30/08 reduced by operating expenses
- 2) Trustee fees calculated at average of 3% of distributions
- 3) Wind-down expenses and professional fee estimates under a Chapter 7 Liquidation necessitates and assumes the use of more outside professionals compared with the Chapter 11 Liquidation proposed by the Debtor
- 4) Estimate no Secured Claims
- 5) Includes estimated Ch. 11 allowed professional expenses of \$1,260,000, subject to adjustment to sheet distribution to Unsecured claims