

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

**MOTION RECORD
(RETURNABLE JANUARY 29, 2016)**

January 26, 2016

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TAB 1

**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
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**NOTICE OF MOTION
(RETURNABLE JANUARY 29, 2016)**

(Recognition of Confirmation Order, Recognition of DIP Amendment
and Termination of Proceedings)

The applicant will make a Motion to a Judge presiding over the Commercial List on Friday,
January 29, 2016 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court
house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

1. An order substantially in the form of the draft order attached hereto at Tab A, *inter alia*:
 - (a) abridging the time for service and validating the service of this Notice of Motion and Motion Record, such that this motion is properly returnable on January 29, 2016;
 - (b) pursuant to section 49 of the *Companies' Creditors Arrangement Act* R.S.C. 1985 c. 36, as amended (the "**CCAA**"), recognizing and giving full force and effect in all provinces and territories of Canada, to the following orders (the "**Foreign Orders**")

of the United States Bankruptcy Court for the Western District of Virginia (the “**U.S. Bankruptcy Court**”) in respect of the case commenced by Xinergy Ltd. (“**Xinergy**” or the “**Applicant**”) in the U.S. Bankruptcy Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”);

- (i) *Second Supplemental Order Authorizing The Debtors to Amend The DIP Credit Agreement and Obtain Incremental Financing Under the DIP Credit Agreement and Granting Related Relief* (the “**Second Supplemental DIP Order**”), granted on January 5, 2016; and
- (ii) *Findings of Fact and Conclusions of Law and Order Confirming the Debtors’ Amended Joint Chapter 11 Plan* (the “**Confirmation Order**”), scheduled to be heard on January 27, 2016;
- (c) granting related relief to facilitate certain transactions pursuant to the Amended Plan (as defined below) including the dissolution or other disposition of the Applicant and the cancellation of the common stock of the Applicant;
- (d) approving the activities of the Information Officer as set out in the fourth report of the Deloitte Restructuring Inc. (“**Deloitte**”) as court-appointed information officer (the “**Information Officer**”), to be filed (the “**Fourth Report**”);
- (e) discharging Deloitte as Information Officer and releasing Deloitte and its counsel from any and all liability as set out in paragraph 15 of the draft Order;
- (f) terminating this proceeding upon the filing of the Information Officer’s Certificate (as defined in the draft Order); and
- (g) such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Corporate Overview

1. Xinergy, an Ontario corporation, is the ultimate parent of 26 subsidiaries, 25 of which are incorporated in the United States (the “**U.S.**”). Until it was delisted on May 12, 2015, Xinergy was listed on the Toronto Stock Exchange;
2. Xinergy and the 25 U.S. subsidiaries (collectively, the “**Chapter 11 Debtors**”) are a U.S. producer of metallurgical and thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian regions of West Virginia and Virginia;

Background on Proceedings

3. On April 6, 2015, the Chapter 11 Debtors filed voluntary petitions for relief under the Bankruptcy Code to commence proceedings in the U.S. (the “**Chapter 11 Cases**”);
4. On April 7, 2015, Xinergy obtained an order from the U.S. Bankruptcy Court authorizing it to act as the foreign representative of the Chapter 11 Debtors, pursuant to section 1505 of the Bankruptcy Code, in any judicial or other proceeding, including these proceedings;
5. In order to ensure the protection of Xinergy’s Canadian assets and potential tax attributes related to the transfers of Xinergy’s common shares, and to ensure that this Court and the Canadian stakeholders are kept properly informed of Xinergy’s Chapter 11 Case, pursuant to its appointment as foreign representative, Xinergy sought and obtained from this Court on April 23, 2015, recognition of its Chapter 11 Case as a “foreign main proceeding” under the CCAA;

6. On April 23, 2015, this Court also granted a second order, which, among other things, (i) appointed Deloitte as Information Officer, (ii) recognized the order of the U.S. Bankruptcy Court appointing Xinergy as the foreign representative, and (iii) recognized certain interim orders of the U.S. Bankruptcy Court (the “**Supplemental Order**”);

7. From time to time, this Court has recognized other orders of the U.S. Bankruptcy Court in order to facilitate the administration of these cross-border proceedings;

The Plan and Disclosure Statement

8. On September 16, 2015, the Chapter 11 Debtors filed their *Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors In Possession* (the “**Plan**”) and their *Disclosure Statement Accompanying Joint Plan of Reorganization Proposed by Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* (the “**Disclosure Statement**”);

9. On September 16, 2015, the Chapter 11 Debtors also filed their a motion for approval of the Disclosure Statement (the “**Disclosure Statement Motion**”);

10. Following conversations with their stakeholders, on October 14, 2015, the Chapter 11 Debtors filed revised versions of the Plan (the “**Amended Plan**”), Disclosure Statement (“**Amended Disclosure Statement**”) and proposed order;

11. The Amended Plan essentially provides for a debt for equity swap in which the Chapter 11 Debtors’ prepetition secured noteholders will acquire equity in the reorganized enterprise. The portion of the current post-petition financing (the “**DIP Financing**”) provided pursuant to the Second Supplemental DIP Order will be rolled into a first lien term loan under the exit facility, pursuant to which the lenders providing such DIP Financing will receive a pro rata share of equity in the reorganized enterprise as a commitment fee. The remaining DIP Financing will be converted into a second lien term loan under the exit facility and will convert to equity in the

reorganized enterprise at maturity if not refinanced in cash or prepaid in full. Unsecured creditors will receive a portion of a cash “gift” that the secured lenders have agreed to make available to facilitate a consensual plan process. Although the Amended Plan is presented as a “joint plan” it is a separate plan for each Chapter 11 Debtor;

12. Under the Amended Plan, it is contemplated that Xinergy will be dissolved and a new Delaware company, White Forest Resources, Inc. (“**White Forest**”), will become the new corporate parent. The Amended Plan does not lay out the specific transaction steps, but allows the Chapter 11 Debtors to take the necessary action to effect the Amended Plan and the transactions contemplated thereby;

The Disclosure Statement Order

13. The Disclosure Statement Motion sought an order, among other things (i) approving the Amended Disclosure Statement; (ii) establishing solicitation and tabulation procedures with respect to votes on the Amended Plan; and (iii) establishing procedures for objections to the Amended Plan and proposed cure amounts in connection with contracts to be assumed under the Amended Plan.

14. On October 16, 2015, the U.S. Bankruptcy Court granted an order, among other things, approving the Disclosure Statement (the “**Disclosure Statement Order**”);

15. On October 26, 2015, Justice Penny granted an order recognizing the Disclosure Statement Order;

Adjournment of Confirmation

16. Although the Disclosure Statement Order set a voting deadline of November 24, 2015 and scheduled a hearing on confirmation of the Amended Plan (the “**Confirmation Hearing**”) for

December 1, 2015, on November 20, 2015, the Chapter 11 Debtors filed a motion to continue and reschedule the Confirmation Hearing and the related voting, filing and objection deadlines;

17. On November 24, 2015, the U.S. Bankruptcy Court granted an order continuing the Confirmation Hearing to January 27, 2016 and extending the voting deadline to January 20, 2016;

Second Supplemental DIP Order

18. In light of the continuation of the Confirmation Hearing, the Chapter 11 Debtors determined that they required additional financing to complete the Chapter 11 Cases;

19. On December 31, 2015, the Chapter 11 Debtors filed a motion (the “**Supplemental DIP Motion**”) seeking the Second Supplemental DIP Order to obtain additional financing and modify the exiting DIP agreement (and related orders) to allow the new confirmation schedule, to delay certain administrative expenses until the effective date of the plan, and to promote to orderly transition of management consistent with the Amended Plan;

20. Although the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases filed a limited objection to the Supplemental DIP Motion, the objection was overruled and the U.S. Bankruptcy Court granted the Second Supplemental DIP Order on January 5, 2016;

Confirmation of the Amended Plan

21. The results of the voting on the Amended Plan will be provided to this Court in a supplemental affidavit;

22. Objections to confirmation of the Amended Plan were due on January 20, 2016;

23. The Internal Revenue Service, the Office of the United States Trustee, Jon Nix (a shareholder) and Sabra Investments, LPS filed objections to confirmation of the Amended Plan;

24. Lexon Insurance Co. also filed a response to the Amended Plan;

25. The Chapter 11 Debtors expect that if the U.S. Bankruptcy Court confirms the Amended Plan, the Confirmation Order will be entered on January 27, 2016 following the Confirmation Hearing;

26. If the Confirmation Order is granted, a copy will be provided to this Court in advance of the hearing on this Motion;

27. It is a condition to the effective date of the Amended Plan that the Applicant obtain an order of this Court recognizing the Confirmation Order. It is also a requirement of the Applicant's post-filing financing that the plan effective date occur by February 5, 2016. The Applicant is serving this motion in advance of the hearing in the U.S. Bankruptcy Court in order to provide this Court additional time to review the motion materials;

Relief to Effect the Amended Plan

28. On January 14, 2016, the Chapter 11 Debtors filed certain additional documents (the "**Plan Supplement**") providing additional disclosure regarding the implementation of the Amended Plan. Pursuant to the Amended Plan and the Plan Supplement, the secured noteholders will receive shares in White Forest instead of the current corporate parent (the Applicant). In addition, the Amended Plan provides that the shares of the Applicant will be cancelled and the Chapter 11 Debtors may take steps to dissolve, merge or otherwise eliminate the Applicant from the corporate structure;

29. Xinergy requires approval of this Court in order to facilitate the transactions contemplated in the Amended Plan;

30. In connection with the plan implementation, the Chapter 11 Debtors, in connection with the new equity holders, will determine the appropriate disposition of the Applicant;

31. Following the first business day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Section 9.1 of the Amended Plan have been satisfied or waived in accordance with Section 9.3 of the Amended Plan (the “**Effective Date**”) and the consummation of the transactions contemplated in the Amended Plan, Xinergy will have no assets;

32. At that time, there will no longer be a need for this proceeding and termination of the proceeding will be in the best interests of the Applicant;

General

33. The facts as further set out in the Affidavit of Michael R. Castle, sworn January 26, 2016 (the “**Castle Affidavit**”); the Affidavit of Leonard Loewith, to be sworn (the “**Loewith Affidavit**”); the Supplemental Affidavit of Leonard Loewith (the “**Supplemental Loewith Affidavit**”); and the Fourth Report;

34. The *Rules of Civil Procedure*, including rules 2.03, 3.02, and 16;

35. The provisions of the CCAA, including Part IV;

36. The provisions of the *Business Corporations Act* (Ontario); and

37. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The Castle Affidavit and the exhibits referred to therein;

2. The Loewith Affidavit, and the exhibits referred to therein, to be filed;
3. The Supplemental Loewith Affidavit, and the exhibits referred to therein, to be filed;
4. The Fourth Report, to be filed; and
5. Such further and other evidence as the lawyers may advise and this Court may permit.

January 26, 2016

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED
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**ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(RETURNABLE JANUARY 29, 2016)**

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TAB A

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	FRIDAY, THE 29th
)	
JUSTICE)	DAY OF JANUARY, 2016

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
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APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES'*
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ORDER

(Confirmation Recognition, Recognition of DIP Amendment
and Termination of Proceedings)

THIS MOTION, made by Xinergy Ltd. (the "**Debtor**") in its capacity as the foreign representative for itself, for an Order substantially in the form attached as Schedule A to the Notice of Motion of the Debtor dated January 26, 2016 (the "**Notice of Motion**"), among other things:

- (i) abridging the time for service and validating the service of this Notice of Motion and Motion Record, such that this motion is properly returnable on January 29, 2016;
- (ii) pursuant to section 49 of the *Companies' Creditors Arrangement Act* R.S.C. 1985 c. 36, as amended (the "**CCAA**"), recognizing and giving full force and effect in all provinces and territories of Canada, to the following orders (the "**Foreign Orders**") of the United States Bankruptcy Court for the Western District of Virginia (the "**U.S. Bankruptcy Court**") in respect of the case commenced by the Debtor in the U.S.

Bankruptcy Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”);

- a. *Second Supplemental Order Authorizing The Debtors to Amend The DIP Credit Agreement and Obtain Incremental Financing Under the DIP Credit Agreement and Granting Related Relief* (the “**Second Supplemental DIP Order**”); and
- b. *Findings of Fact and Conclusions of Law and Order Confirming the Debtors’ Amended Joint Chapter 11 Plan* (the “**Confirmation Order**”);
- (iii) granting related relief to facilitate certain transactions pursuant to the Amended Plan (as defined below) including the dissolution or other disposition of the Debtor and the cancellation of the common stock of the Debtor;
- (iv) approving the activities of the Information Officer as set out in the fourth report of the Deloitte Restructuring Inc. (“**Deloitte**”) as court-appointed information officer (the “**Information Officer**”), dated January 1, 2016 (the “**Fourth Report**”);
- (v) discharging Deloitte as Information Officer and releasing Deloitte and its counsel from any and all liability as set out in paragraph 15 of this Order;
- (vi) terminating this proceeding upon the filing of the Information Officer’s Certificate (as defined below); and
- (vii) such further and other relief as this Court may deem just.

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Michael R. Castle sworn January 26, 2016 (the “**Castle Affidavit**”), the affidavit of Leonard Loewith sworn January 1, 2016 and the

supplemental affidavit of Leonard Loewith sworn January 1, 2016, and the Fourth Report, each filed,

AND UPON HEARING the submissions of counsel for the Debtor, counsel for the Information Officer, counsel for the informal group of noteholders and DIP Lenders, counsel for Mr. Nix (as defined in the Castle Affidavit) and no one else appearing although duly served as appears from the affidavits of service of Margaret Wong sworn on January 26, 2016, and January 1, 2016,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

RECOGNITION OF FOREIGN ORDERS

2. THIS COURT ORDERS that the Confirmation Order, attached hereto as **Schedule "A"**, of the U.S. Bankruptcy Court made in respect of the chapter 11 case of the Debtor, which among other things, confirmed the *First Amended Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* (the "**Amended Plan**") under the U.S. Bankruptcy Code, is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA.

3. THIS COURT ORDERS that the Second Supplemental DIP Order, attached hereto as **Schedule "B"**, of the U.S. Bankruptcy Court made in respect of the chapter 11 case of the Debtor, is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA.

4. THIS COURT ORDERS that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to such terms in the Amended Plan or Confirmation Order.

IMPLEMENTATION OF AMENDED PLAN

5. THIS COURT ORDERS that the Debtor is authorized, directed and permitted to take all such steps and actions, and do all things necessary or appropriate to implement the Amended Plan and the transactions contemplated thereby in accordance with and subject to the terms of the Amended Plan, and to enter into, execute, deliver, implement and consummate all the steps, transactions and agreements contemplated by the Amended Plan.

6. THIS COURT ORDERS that, as of the Effective Date, to the extent all Restructuring Transactions (as defined in the Castle Affidavit) have occurred or have been consummated prior to or on the Effective Date, each creditor of the Debtor shall be deemed to have consented and agreed to all of the provisions of the Amended Plan in their entirety and, in particular, each creditor shall be deemed:

- (a) to have executed and delivered to the Debtor all consents, releases or agreements required to implement and carry out the Amended Plan in its entirety; and
- (b) to have agreed that if there is any conflict between, (i) the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such creditors and the Debtor as of the Effective Date, and (ii) the provisions of the Amended Plan and Confirmation Order, the provisions of the Amended Plan or the Confirmation Order, as applicable, take precedence and priority and the provisions of such agreement or other arrangement shall be deemed to be amended accordingly.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of this proceeding;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the transactions contemplated by the Amended Plan and the Plan Supplement (as defined in the Castle Affidavit) and the Amended Plan shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

RELEASES AND INJUNCTIONS

8. THIS COURT ORDERS that, without limiting anything in this Order, the releases, exculpations and injunctions set forth in the Confirmation Order and set out in Article VIII of the Amended Plan be, and the same are, hereby approved and shall be effective in Canada immediately or on the Effective Date, as applicable, in accordance with the Confirmation Order and the Amended Plan, without further act or order.

STAY OF PROCEEDINGS

9. THIS COURT ORDERS that the Stay Period (as defined in the Initial Recognition Order, dated April 23, 2015 (the "**Initial Recognition Order**") and the Supplemental Order, dated April 23, 2015 (the "**Supplemental Order**") shall terminate immediately upon the filing by the

Information Officer of a certificate (the “**Information Officer’s Certificate**”) substantially in the form attached hereto as **Schedule “C”**.

DISSOLUTION OF THE DEBTOR

10. THIS COURT ORDERS that, upon the filing of the Information Officer’s Certificate, (a) all the shares of the Xinergy Ltd. Common Stock (as defined in the Amended Plan) shall be and are hereby deemed cancelled without return of capital or other consideration; (b) the directors of the Debtor shall be deemed to have resigned; and (c) the Debtor shall be and is hereby deemed dissolved, in each case pursuant to the terms of the Amended Plan and the Plan Supplement and for all purposes without any other or further action and payments in connection therewith; provided, however, that the Debtor shall file with the appropriate public office, a certificate of dissolution to the extent required by applicable law.

INFORMATION OFFICER

11. THIS COURT ORDERS that the Fourth Report and the activities of the Information Officer as described therein be and hereby are authorized and approved.

12. THIS COURT ORDERS that promptly following (i) receipt of the notice described in paragraph 14 and (ii) payment of all amounts owing to the Information Officer and its counsel, the Information Officer shall file the Information Officer’s Certificate.

13. THIS COURT ORDERS that upon the filing of the Information Officer’s Certificate, Deloitte shall be discharged as Information Officer of the Debtor and all duties associated therewith. Notwithstanding its discharge herein (a) Deloitte shall remain Information Officer for the performance of such incidental duties as may be required to complete the administration of this proceeding, and (b) the Information Officer shall continue to have the benefit of the provisions of

all Orders made in this proceeding, including all approvals, and protections and stays of proceedings in favour of Deloitte in its capacity as Information Officer.

14. THIS COURT ORDERS that the Information Officer may rely on written notice from the Debtor that the Effective Date has occurred and that the Restructuring Transactions with respect to the Debtor are complete, and shall incur no liability with respect to the delivery of the Information Officer's Certificate, save and except for any gross negligence or wilful misconduct on its part.

15. THIS COURT ORDERS AND DECLARES that upon filing of the Information Officer's Certificate, Deloitte and its counsel are hereby released and discharged from any and all liability that Deloitte or its counsel now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Deloitte while acting in its capacity as Information Officer herein or its counsel while acting in its capacity as counsel to the Information Officer herein, save and except for any gross negligence or wilful misconduct on the Information Officer's or its counsel's part. Without limiting the generality of the foregoing, upon the filing of the Information Officer's Certificate, Deloitte and its counsel are hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within proceedings, save and except for any gross negligence or wilful misconduct on their part.

16. THIS COURT ORDERS AND DECLARES that the Information Officer, upon filing of the Information Officer's Certificate, shall have satisfied all of its duties and obligations pursuant to all Orders made in respect of these proceedings.

17. THIS COURT ORDERS that these proceedings shall be terminated upon the filing of the Information Officer's Certificate.

GENERAL

18. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the U.S., to give effect to this Order and to assist the Debtor, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtor and the Information Officer and their respective agents in carrying out the terms of this Order.

19. THIS COURT ORDERS that each of the Debtor and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

(Signature of Judge)

SCHEDULE "A"
CONFIRMATION ORDER

SCHEDULE "B"
SECOND SUPPLEMENTAL DIP ORDER

SCHEDULE "C"
INFORMATION OFFICER'S CERTIFICATE

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES
BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

**CERTIFICATE OF DELOITTE RESTRUCTURING INC.
AS THE COURT-APPOINTED INFORMATION OFFICER OF XINERGY LTD.
(Plan Effective Date and Termination of Proceedings)**

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the *First Amended Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* (the "**Amended Plan**") which was recognized and enforced in Canada by this Court's order dated January 29, 2016 (the "**Plan Recognition Order**") and which was attached to Schedule "A" to the Plan Recognition Order.

In reliance upon the written confirmation delivered to the Information Officer by Xinergy Ltd. on the date hereof, pursuant to paragraph 14 of the Plan Recognition Order, Deloitte Restructuring Inc., in its capacity as Court-appointed Information Officer of Xinergy Ltd. files this certificate and certifies that:

- (i) the Effective Date has occurred;
- (ii) the Restructuring Transactions with respect to the Debtor are complete; and
- (iii) it has completed the activities described in the Information Officer's Fourth Report to Court, dated January 14, 2016.

DATED at the City of Toronto, in the Province of Ontario, this ____ day of _____, 2016

**DELOITTE RESTRUCTURING INC.,
solely in its capacity as Court-appointed
Information Officer of Xinergy Ltd.**

By: _____
Name:
Title:

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.
APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

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Lawyers for Xinergy Ltd.

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES
BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

**AFFIDAVIT OF MICHAEL R. CASTLE
(SWORN JANUARY 26, 2016)**

I, Michael R. Castle, of the City of Knoxville in the state of Tennessee, MAKE OATH AND
SAY:

1. I am the Chief Financial Officer of Xinergy Ltd. (the "**Applicant**" or "**Xinergy**"). As such, I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and verily believe it to be true.

2. This Affidavit is filed in support of the Applicant's motion for an order, *inter alia*, recognizing in Canada and giving full force and effect in all provinces and territories of Canada pursuant to section 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C. 36, as amended (the "**CCAA**") to the following orders (the "**Foreign Orders**") granted, or which the Applicant has requested be granted, by the United States Bankruptcy Court for the Western District of Virginia (the "**U.S. Bankruptcy Court**") in respect of the case (the "**Chapter 11 Case**") commenced by Xinergy in the U.S. Bankruptcy Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**");

- (a) *Second Supplemental Order Authorizing The Debtors to Amend The DIP Credit Agreement and Obtain Incremental Financing Under the DIP Credit Agreement and Granting Related Relief* (the “**Second Supplemental DIP Order**”), granted on January 5, 2016; and
- (b) *Findings of Fact and Conclusions of Law and Order Confirming the Debtors’ Amended Joint Chapter 11 Plan* (the “**Confirmation Order**”), scheduled to be heard on January 27, 2016.

3. I understand that the Applicant’s counsel will serve a supplemental affidavit attaching the form of Confirmation Order, if granted, in advance of the hearing of the Applicant’s motion.

4. In order to comply with the terms of its post-filing financing, the Applicant’s plan of reorganization must be effective no later than February 5, 2016. Under the Amended Plan (as defined below), it is a condition to the Effective Date (defined below), that this Court enter an order recognizing the Confirmation Order. The Applicant is serving its motion record prior to the hearing in the U.S. Bankruptcy Court in order to provide this Court and the parties on the service list with time to consider and review the materials.

Corporate Overview

5. Xinergy, an Ontario corporation, is the ultimate parent of 26 subsidiaries, 25 of which are incorporated in the U.S. Until it was delisted on May 12, 2015, Xinergy was listed on the Toronto Stock Exchange. A corporate organizational chart is attached hereto as **Exhibit “A”**.

6. Xinergy and the 25 U.S. subsidiaries (collectively, the “**Chapter 11 Debtors**”) are a U.S. producer of metallurgical and thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian regions of West Virginia and Virginia.

Background on Proceedings

7. On April 6, 2015, the Chapter 11 Debtors filed voluntary petitions for relief under the Bankruptcy Code to commence proceedings in the United States (the “**Chapter 11 Cases**”).

8. On April 7, 2015, Xinergy obtained an order from the U.S. Bankruptcy Court authorizing it to act as the foreign representative of the Chapter 11 Debtors, pursuant to section 1505 of the Bankruptcy Code, in any judicial or other proceeding, including these proceedings.

9. In order to ensure the protection of Xinergy’s Canadian assets and potential tax attributes related to the transfers of Xinergy’s common shares, and to ensure that this Court and the Canadian stakeholders are kept properly informed of Xinergy’s Chapter 11 Case, pursuant to its appointment as foreign representative, Xinergy sought and obtained from this Court on April 23, 2015, recognition of its Chapter 11 Case as a “foreign main proceeding” under the CCAA. A copy of the Initial Recognition Order of April 23, 2015 is attached hereto as **Exhibit “B”**. A copy of the reasons of Justice Newbould of April 24, 2015 is attached hereto as **Exhibit “C”**.

10. On April 23, 2015, this Court also granted a second order, which, among other things, (i) appointed Deloitte Restructuring Inc. as Information Officer, (ii) recognized the order of the U.S. Bankruptcy Court appointing Xinergy as the foreign representative, and (iii) recognized certain interim orders of the U.S. Bankruptcy Court (the “**Supplemental Order**”). A copy of the Supplemental Order (without schedules) of April 23, 2015 is attached hereto as **Exhibit “D”**.

11. From time to time, this Court has recognized other orders of the U.S. Bankruptcy Court in order to facilitate the administration of these cross-border proceedings. A list of orders recognized by this Court is attached hereto as **Exhibit “E”**.

The Plan and Disclosure Statement

12. On September 16, 2015, the Chapter 11 Debtors filed their *Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors In Possession* (the “**Plan**”) and their *Disclosure Statement Accompanying Joint Plan of Reorganization Proposed by Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* (the “**Disclosure Statement**”).

13. On September 16, 2015, the Chapter 11 Debtors’ also filed their *Motion for Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections (A) to Confirmation of the Plan and (B) to Proposed Cure Amounts; and (IV) Granting Related Relief* (the “**Disclosure Statement Motion**”).

14. Following conversations with their stakeholders, on October 14, 2015, the Chapter 11 Debtors filed revised versions of the Plan (the “**Amended Plan**”), Disclosure Statement (the “**Amended Disclosure Statement**”) and proposed order. A copy of the Amended Plan is attached hereto as **Exhibit “F”**.

15. I understand that the Applicant is likely to make further, immaterial modifications to the Amended Plan in advance of the confirmation hearing and that if a revised plan is filed, the Applicant’s counsel will provide this Court with a copy of the revisions.

16. The Amended Plan essentially provides for a debt for equity swap in which the Chapter 11 Debtors’ senior secured noteholders will acquire equity in the reorganized enterprise. The portion

of the current post-petition financing (the “**DIP Financing**”) provided pursuant to the Second Supplemental DIP Order will be rolled into an first lien term loan under the exit facility, pursuant to which the lenders providing such DIP Financing will receive a pro rata share of equity in the reorganized enterprise as a commitment fee. The remaining DIP Financing will be converted into a second lien term loan under the exit facility and will convert to equity in the reorganized enterprise at maturity if not refinanced in cash or prepaid in full. Unsecured creditors will receive a portion of a cash “gift” that the secured lenders have agreed to make available to facilitate a consensual plan process. Although the Amended Plan is presented as a “joint plan” it is a separate Amended Plan for each Chapter 11 Debtor.

17. Below is a brief description of the treatment of claims and interests under the Amended Plan. This information is included in the Amended Disclosure Statement, but reproduced here for the convenience of the Court. Terms used in the two charts below and not defined herein have the meanings set forth in the Amended Disclosure Statement. The amounts set forth below are in U.S. dollars.

Claim	Plan Treatment	Projected Plan Recovery
Administrative Claims	Paid in full in Cash	100%
DIP Facility Claims	Conversion to Exit Facility Loans or paid in full in Cash	100%
Professional Claims	Paid in Allowed amount in Cash	100%
Priority Tax Claims	Paid in full in Cash	100%

Class	Claim or Interest	Voting Rights	Treatment	Estimated Allowed Claims	Projected Plan Recovery
1	Priority Non-Tax Claims	Deemed to Accept	Paid in full in Cash	\$0	100%
2	Other Secured Claims	Deemed to Accept	Paid in full in Cash, surrender of the collateral securing the Other Secured Claim, or other treatment in accordance with section 1124.	\$38,952	100%
3	Senior Secured Note Claims	Entitled to Vote	Pro Rata share of 100% of the New Common Stock	\$202,114,791 (\$65,500,000 secured)	27.5%–32.4%
4	General Unsecured Claims	Entitled to Vote	Lesser of Pro Rata share of \$200,000 or 4% of Allowed Class 4 Claims (excluding Senior Secured Note Deficiency Claims) and release from any Avoidance Actions	\$141,600,000 (\$4,500,000 – \$5,500,000 excluding the Senior Secured Note Deficiency Claims)	<0.2% (which may increase to 4% in certain circumstances) ⁴
5	Intercompany Claims and Interests	Deemed to Reject/Accept	Canceled/Unaltered, reinstated or other treatment rendering Unimpaired	\$280,394,441	0%/100% ⁵
6	Interests in Xinergy Ltd. Common Stock	Deemed to Reject	Canceled	n/a	0%

⁴ The holders of Senior Secured Note Deficiency Claims that are Consenting Noteholders have agreed to vote to accept the Plan and to waive any recovery on account of such Class 4 Claim if Class 4 votes in sufficient number and amount to accept the Plan. In that circumstance, the projected recovery to holders of Class 4 Claims (other than the Senior Secured Note Deficiency Claims) is approximately 4%.

⁵ Intercompany Claims and Interests shall be, at the option of the Debtors (with the consent of the Majority Consenting Noteholders) (a) canceled or (b) unaltered, reinstated or otherwise treated as unimpaired. No Distribution will be made on account of Intercompany Claims and Interests under the Plan.

18. As provided in the Amended Disclosure Statement, holders of Class 3 claims will initially receive a distribution of 100% of the equity in anewly created company named White Forest

Resources, Inc. ("**White Forest**"). Upon the closing of the exit financing, which is anticipated to occur substantially contemporaneous with the Effective Date (defined below), the lenders providing the first lien term loans under the exit financing will receive 20% of the equity in White Forest as a commitment fee, thereby diluting the shares received by holders of Class 3 claims under the Amended Plan. DIP lenders providing the Incremental Amount under the Supplemental DIP Motion (defined below) will receive a pro rata share of the equity paid as a commitment fee because the Incremental Amount will be rolled into the first lien term loans. The terms of the exit financing, including a description of the payment of equity in White Forest to the first lien term loan lenders as a commitment fee, was disclosed in the Plan Supplement (defined below). The Chapter 11 Debtors have not received any objections from holders of Class 3 claims to the terms of the exit facility.

19. The Amended Plan provides for releases of third parties (i) by the Chapter 11 Debtors and (ii) by certain third parties who consent to the releases (the "**Third Party Release**"). The Third Party Release does not bind shareholders or other parties who hold impaired claims and elect not to be bound by the Third Party Release. The Amended Plan also contains language exculpating the Released Parties (as defined in the Amended Plan) for actions in connection with the Chapter 11 Cases and the Recognition Proceedings and an injunction against continuing claims that are released or exculpated pursuant to the Amended Plan.

20. It is contemplated that Xinergy will be dissolved and that a new Delaware company, White Forest, will become the new corporate parent. The Amended Plan does not lay out the specific transaction steps, but allows the Chapter 11 Debtors to take the necessary action to effect the Reorganization Transactions. The corporate steps with respect to Xinergy are described in detail below.

The Disclosure Statement Order

21. The Disclosure Statement Motion sought an order, among other things (i) approving the Disclosure Statement; (ii) establishing solicitation and tabulation procedures with respect to votes on the Amended Plan; and (iii) establishing procedures for objections to the Amended Plan and proposed cure amounts in connection with contracts to be assumed under the Amended Plan.

22. The Official Committee of Unsecured Creditors filed a response in support of approval of the Disclosure Statement. Lexon Insurance Company and Bond Safeguard Insurance Company (collectively, "**Lexon**") and one of the largest shareholders ("**Mr. Nix**"), filed objections to the Disclosure Statement. Lexon withdrew its objection prior to the hearing. After argument, the Court overruled the objection of Mr. Nix to approval of the Disclosure Statement, but requested, and the Chapter 11 Debtors agreed, that the notice to non-voting parties be amended to include an additional disclosure that the Third Party Release did not apply to shareholders.

23. On October 16, 2015, the U.S. Bankruptcy Court granted the *Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections (A) to Confirmation of the Plan, and (B) to Proposed Cure Amounts; and (IV) Granting Related Relief* (the "**Disclosure Statement Order**").

24. On October 26, 2015, Justice Penny granted an order recognizing the Disclosure Statement Order. A copy of Justice Penny's order (with schedules) is attached hereto at **Exhibit "G"**.

Adjournment of Confirmation

25. Although the Disclosure Statement Order set a voting deadline of November 24, 2015 and scheduled a hearing on confirmation of the Amended Plan (the “**Confirmation Hearing**”) for December 1, 2015, on November 20, 2015, the Chapter 11 Debtors filed a motion to continue and reschedule the Confirmation Hearing and the related voting, filing and objection deadlines.

26. On November 24, 2015, the U.S. Bankruptcy Court granted an order (the “**Continuation Order**”) continuing the Confirmation Hearing to January 27, 2016 and extending the voting deadline to January 20, 2016. A copy of the Continuation Order is attached hereto at **Exhibit “H”**.

Second Supplemental DIP Order

27. In light of the continuation of the Confirmation Hearing, the Chapter 11 Debtors determined that they required additional financing to complete the Chapter 11 Cases.

28. On December 31, 2015, the Chapter 11 Debtors filed a motion (the “**Supplemental DIP Motion**”) seeking the Second Supplemental DIP Order to obtain additional financing and modify the existing DIP agreement and related orders. The material modifications include:

- (a) access to an additional US\$1,500,000 (the “**Incremental Amount**”);
- (b) termination of the lenders’ commitment for certain CapEx funding, which commitment is currently undrawn and no longer necessary prior to the Effective Date;
- (c) an extension of the credit agreement milestones related to confirmation of the Amended Plan and the Effective Date of the Amended Plan to January 28, 2016 and February 5, 2016, respectively;

- (d) an extension of the maturity date of the DIP facility to February 5, 2016;
- (e) a modification of priorities among the DIP lenders to allow the Incremental Amount to be repaid prior to other amounts under the DIP facility; and
- (f) creation of a new event of default in the event that any professional fees for which the Chapter 11 Debtors are responsible are paid without the written consent of the agent under the DIP facility. It is expected that the professional fees will be paid in connection with the Effective Date of the Amended Plan.

29. Although the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases filed a limited objection to the Supplemental DIP Motion, the objection was overruled and the U.S. Bankruptcy Court granted the Second Supplemental DIP Order on January 5, 2016. A copy of the Second Supplemental DIP Order is attached hereto at **Exhibit "I"**.

Solicitation of Votes on the Amended Plan

30. The Disclosure Statement Order governs the solicitation and tabulation of votes on the Amended Plan. Canadian creditors are subject to the same solicitation procedures; there has been and will be no separate solicitation process in Canada.

31. Between October 20, 2015 and October 23, 2015, the Chapter 11 Debtors' solicitation agent served the parties identified by the solicitation procedures with copies of the:

- (a) Notice of (I) Approval of Disclosure Statement, (II) Deadline for Voting on the Joint Plan of Reorganization of Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession, (III) Hearing to Consider Confirmation of the Plan, and (IV) Last Date and Procedures for Filing Objections to Confirmation of the Plan;
- (b) Letter in support of the Plan from the Official Committee of Unsecured Creditors;

- (c) Disclosure Statement Order;
- (d) Plan;
- (e) Ballots; and
- (f) Notice of (I) Approval of Disclosure Statement, (II) Hearing to Consider Confirmation of the Plan, and (III) Last Date and Procedures for Filing Objections to Confirmation of the Plan.

32. Pursuant to the Continuation Order, on November 24, 2015, the Chapter 11 Debtors served the parties entitled to vote with a notice regarding the continuation of the Confirmation Hearing and the extension of the voting deadline. A copy of the notice is attached to the Continuation Order.

33. The Continuation Order established January 20, 2016 as the deadline for submission of ballots to the Chapter 11 Debtors' solicitation agent.

34. The Amended Plan designates seven classes of claims and interests. Classes 3 and 4 are entitled to vote on the Amended Plan.

35. I understand that Xinergy's counsel will serve a further affidavit, attaching the voting results.

Confirmation of the Amended Plan

36. Objections to assumption of contracts pursuant to the Amended Plan (and the related cure amounts) were due November 10, 2015. None of the contracts to be assumed under the Amended Plan are contracts with Canadian counterparties. To the best of my knowledge, there are also no contracts with the Applicant to be rejected pursuant to the Amended Plan.

37. Objections to confirmation of the Amended Plan were due on January 20, 2016.

38. On November 20, 2015, the Internal Revenue Service ("**IRS**") filed an objection to the Amended Plan. The IRS objected to the treatment of the IRS's priority tax claim, the scope of the Chapter 11 Debtors' discharge and the third party-releases as they relate to the IRS's claims.

39. On January 14, 2016, the Chapter 11 Debtors filed certain additional documents (the "**Plan Supplement**") providing additional disclosure regarding the implementation of the Amended Plan. A copy of the Plan Supplement is attached hereto as **Exhibit "J"**.

40. On January 21, 2016, the Office of the United States Trustee (the "**U.S. Trustee**") filed an objection to the Amended Plan, opposing the third party release and exculpation provisions in the Amended Plan.

41. On January 22, Jon Nix, the holder of certain of the issued and outstanding voting and non-voting shares of Xinergy, filed a joinder to the U.S. Trustee's objection to the Amended Plan.

42. In addition, a small number of other creditors have objected to the proposed cure amounts with respect to contracts to be assumed under the Amended Plan. The Applicant is not party to any contracts to be assumed or rejected under the Amended Plan.

43. The Chapter 11 Debtors expect that if the U.S. Bankruptcy Court confirms the Amended Plan, the Confirmation Order will be entered on January 27, 2016, following the Confirmation Hearing. I understand that the Applicant's counsel will serve a supplemental affidavit attaching the form of order, if granted, in advance of the hearing on this motion.

44. A draft of the Confirmation Order attached hereto at **Exhibit "K"**.

45. As noted above, it is a condition to the Effective Date of the Amended Plan that the Applicant obtain an order of this Court recognizing the Confirmation Order. In addition, the

Chapter 11 Debtors' post-filing financing requires that the date on which the Amended Plan is implemented (the "**Effective Date**") occur no later than February 5, 2016. As a result, it is critical that this Court enter an order recognizing the Confirmation Order so that Xinergy and the other Chapter 11 Debtors may timely consummate the Amended Plan.

Relief to Effect the Amended Plan

46. Pursuant to the Amended Plan and Plan Supplement, the secured noteholders will receive shares in White Forest, a Delaware corporation, instead of the current corporate parent (the Applicant). In addition, the Amended Plan provides that the Chapter 11 Debtors may take steps to dissolve, merge or otherwise eliminate the Applicant from the corporate structure.

47. The Applicant has limited assets, consisting mostly of interests in related entities (as set out in **Exhibit "A"**). The only assets of the Applicant at this time are:

- (a) the shares of Xinergy Finance Canada Ltd. (an inactive, non-debtor entity);
- (b) the shares of Xinergy Finance (U.S.) Inc. (a Chapter 11 Debtor);
- (c) the shares of Xinergy Corp. (a Chapter 11 Debtor);
- (d) an intercompany receivable of approximately \$37 million; and
- (e) a bank account with approximately CAD \$11,000.

48. In order to effect the Amended Plan, the Chapter 11 Debtors anticipate the following restructuring transactions (the "**Restructuring Transactions**") with respect to the assets of the Applicant:

- (a) Step One: The Amended Plan becomes effective;

- (b) Step Two: The Applicant contributes all its assets other than the shares of Xinergy Corp. (i.e., the shares of Xinergy Finance Canada Ltd. and Xinergy Finance (U.S.) Inc. and any cash on hand, if any) to Xinergy Corp. in exchange for Xinergy Corp.'s payment to the Applicant of the portion of the US\$200,000 set aside for Class 4 Creditors of the Applicant;
- (c) Step Three: The common stock of Xinergy Corp. owned by the Applicant and its subsidiaries is cancelled or transferred to White Forest (to be determined prior to the Effective Date);
- (d) Step Four: The common stock of the Applicant is cancelled;
- (e) Step Five: White Forest issues new stock to the senior secured noteholders and DIP lenders.

49. The transactions described above are in the best interests of the Applicant and its creditors because:

- (a) Without the funds contributed by Xinergy Corp., the Applicant would not have sufficient funds to pay the amounts owing to the Applicant's Class 4 creditors;
- (b) The assets of the Applicant are of minimal value;
- (c) The transfer of assets to Xinergy Corp. is necessary to effect the Amended Plan and the compromises of claims set forth therein;
- (d) There are less than 15 creditors of Xinergy Ltd. (other than the senior secured noteholders) and only two of those creditors are domiciled in Canada; and

- (e) The senior secured noteholders who will own the equity of the reorganized corporate group have secured claims at the Applicant and Xinergy Corp. exceeding the value of the assets at both entities and thus a transfer of assets from one entity to another does not prejudice any other creditors.

50. Following the first business day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Section 9.1 of the Amended Plan have been satisfied or waived in accordance with Section 9.3 of the Amended Plan (the “**Effective Date**”) the Applicant will have no assets remaining. In addition, pursuant to the Amended Plan, on the Effective Date, the directors of the Applicant will be deemed to have resigned. Consistent with section 4.16 of the Amended Plan, the Chapter 11 Debtors in connection with the equity holders in the reorganized enterprise will determine the appropriate disposition of the Applicant.

51. Once the Amended Plan has been implemented, there will be no further need for relief from this Court. Following implementation, the Information Officer will file a certificate (the “**Information Officer’s Certificate**”) indicating that the Amended Plan has been implemented, that the charges granted in the Supplemental Order have been released, and that these proceedings may be terminated.

52. Following the Effective Date of the Amended Plan and the consummation of the Restructuring Transactions, I believe there will no longer be a need for this recognition proceeding, and that termination of the proceeding will be in the best interests of the Applicant.

53. I make this affidavit in support of the motion of Xinergy returnable January 29, 2016 and for no other or improper purpose.

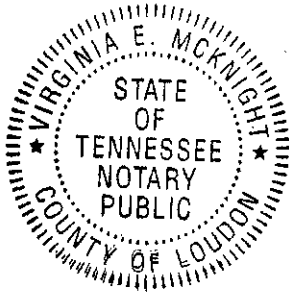
SWORN/AFFIRMED BEFORE ME at the City
of Knoxville in the State of Tennessee this
26th day of January, 2016.

Virginia E. McKnight

Notary Public for the State of Tennessee

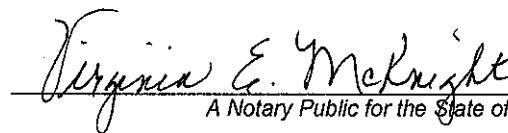
Michael R. Castle

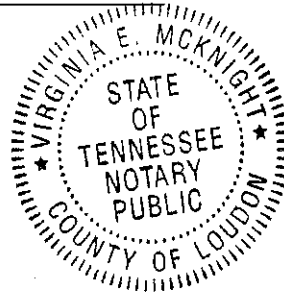
MICHAEL R. CASTLE

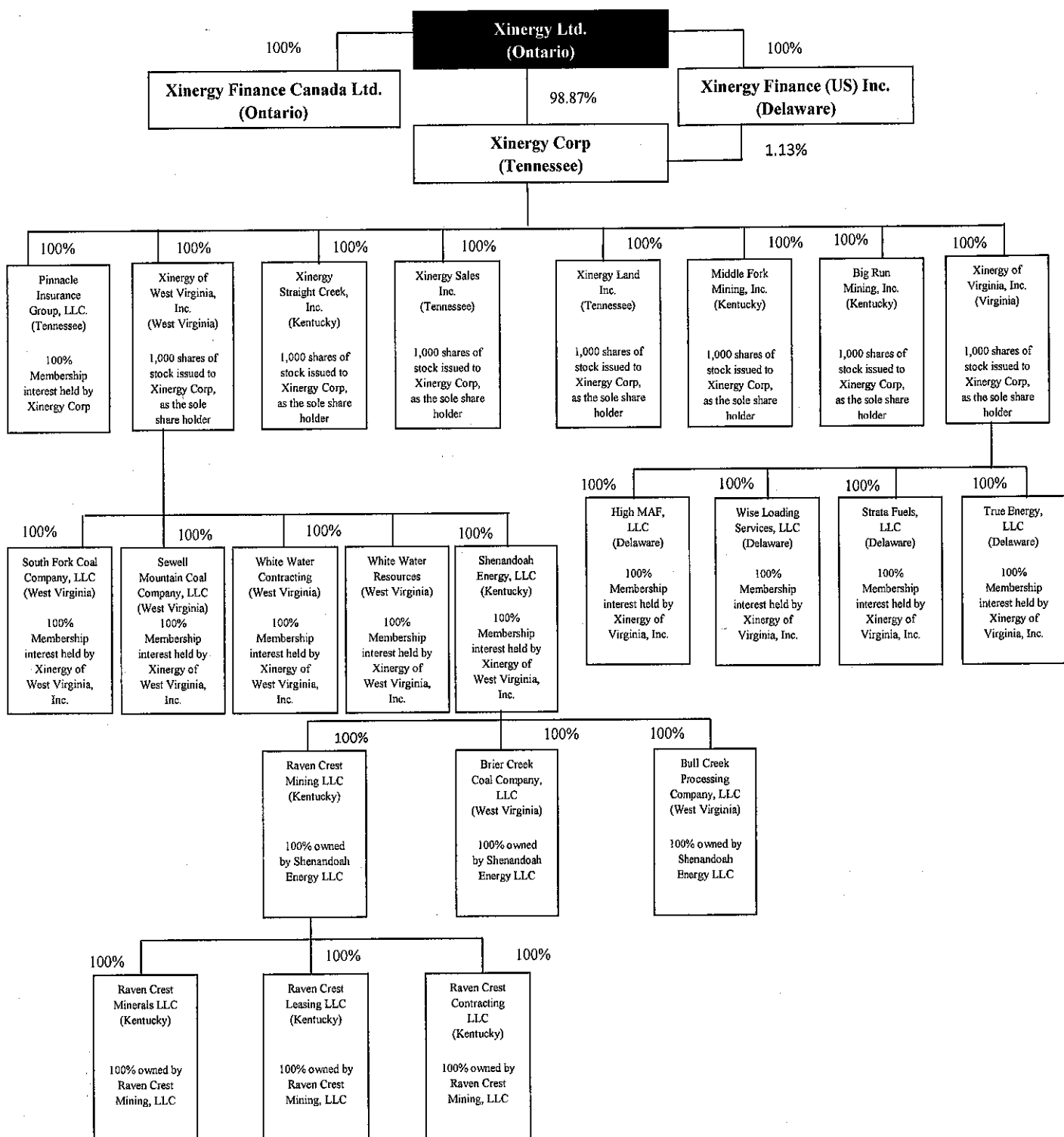


TAB A

This is Exhibit "A" referred to in the Affidavit of Michael R.
Castle sworn January 26, 2016


A Notary Public for the State of Tennessee

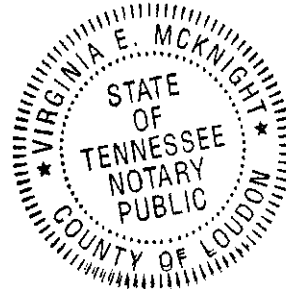




TAB B

This is Exhibit "B" referred to in the Affidavit of Michael R.
Castle sworn January 26, 2016

Virginia E. McKnight
A Notary Public for the State of Tennessee



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 23RD
JUSTICE *NEUBAUER*)
DAY OF APRIL, 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)



THIS APPLICATION, made by Xinergy Ltd. in its capacity as the foreign representative (the "**Foreign Representative**" or the "**Debtor**") of itself, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Michael R. Castle sworn April 15, 2015 (the "**Castle Affidavit**"), the preliminary report of Deloitte Restructuring Inc., in its capacity as proposed information officer (the "**Proposed Information Officer**") dated April 21, 2015, each filed, and upon being provided with copies of the documents required by s.46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) is being sought,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Proposed Information Officer, counsel for an informal group of holders of the Debtor's 9.25% senior secured notes due 2019 and lenders under the Debtor's postpetition senior secured new money term loan credit facility (collectively, the "**DIP Lenders**"), counsel for Jon Nix, and no one else appearing although duly served as appears from the affidavits of service of Monique Sassi, sworn on April 15, 2015 and April 21, 2015, the affidavits of service of Margaret Wong, sworn on April 16, 2015, April 20, 2015 and April 21, 2015, and the affidavit of service of Natalie E. Levine, sworn on April 20, 2015:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

FOREIGN REPRESENTATIVE

2. THIS COURT ORDERS AND DECLARES that the Foreign Representative is the "foreign representative" as defined in section 45 of the CCAA in respect of the proceedings under chapter 11 of title 11 of the United States Code pending before the United States Bankruptcy Court for the Western District of Virginia (the "**Foreign Proceeding**").

CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

3. THIS COURT DECLARES that the centre of its main interests for the Debtor is the United States, and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding" as defined in section 45 of the CCAA.

STAY OF PROCEEDINGS

4. THIS COURT ORDERS that until otherwise ordered by this Court:

- (a) all proceedings taken or that might be taken against the Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;

- (b) further proceedings in any action, suit or proceeding against the Debtor are restrained; and
- (c) the commencement of any action, suit or proceeding against the Debtor is prohibited.

NO SALE OF PROPERTY

5. THIS COURT ORDERS that, except with leave of this Court, the Debtor is prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
- (b) any of its other property in Canada.

GENERAL

6. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Debtor and its counsel and agents in carrying out the terms of this Order.

7. THIS COURT ORDERS AND DECLARES that this Order shall be effective as of 12:01 a.m. on the date of this Order.

8. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtor and its counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.



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ON / BOOK NO:
LE / DANS LE REGISTRE NO..

APR 24 2015



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.
APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)**

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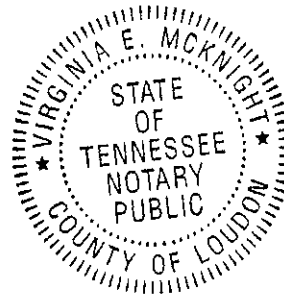
Lawyers for Xinergy Ltd.

TAB C

This is Exhibit "C" referred to in the Affidavit of Michael R.
Castle sworn January 26, 2016

Virginia E. McKnight

A Notary Public for the State of Tennessee



CITATION: Re Xinergy Ltd., 2015 ONSC 2692
COURT FILE NO.: CV-15-10936-00CL
DATE: 20150424

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES'	)	<i>Jane Dietrich and Natalie Levine</i> , for the
CREDITORS ARRANGEMENT ACT,	)	Applicant
R.S.C. 1985, c. C 36, AS AMENDED)	
)	
AND IN THE MATTER OF CERTAIN	)	<i>Aubrey E. Kauffman</i> , for Whitebox Advisors
PROCEEDINGS TAKEN IN THE	)	LLC, Highbridge Capital Management LLC
UNITED STATES BANKRUPTCY	)	and other DIP Lenders
COURT WITH RESPECT TO XINERGY)	
LTD.	)	<i>Sean Sweig</i> , for Deloitte Restructuring Inc.,
	)	the proposed Information Officer
APPLICATION OF XINERGY LTD.)	
UNDER SECTION 46 OF THE	)	<i>James H. Grout</i> , for Jon Nix, a shareholder
COMPANIES' CREDITORS	)	of the Applicant
ARRANGEMENT ACT, R.S.C. 1985, c. C)	
36, AS AMENDED)	
)	
)	
	)	HEARD: April 23, 2015

NEWBOULD J.

[1] On April 6, 2015, Xinergy Ltd. ("Xinergy"), an Ontario corporation, commenced a voluntary reorganization proceeding in the United States Bankruptcy Court for the Western District of Virginia (the "U.S. Court") under chapter 11 of the United States Bankruptcy Code. On the same date, 25 of Xinergy's U.S. subsidiaries also filed voluntary petitions under chapter 11 of the Bankruptcy Code with the U.S. Court.

[2] On April 6 and 7, 2015 the chapter 11 Debtors filed 17 First Day Motions with the U.S. Court and on April 7 and 8, 2015, the U.S. Court entered the orders requested.

[3] Xinergy has now brought an application before this Court pursuant to Part IV of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended for an order recognizing the U.S. proceedings as foreign main proceedings and for orders recognizing some of the first day orders made by the U.S. Court. At the conclusion of the hearing I granted the orders requested for short reasons to follow. These are my reasons.

Business of the applicant

[4] Xinergy is a publicly traded company on the TSX under the ticker symbol XRG. As at September 30, 2014, the date of Xinergy's most recent public filing, there were approximately 58.3 million voting common shares issued and outstanding, and 7.5 million common non-voting shares issued and outstanding, totalling approximately 65.8 million common shares.

[5] The Chapter 11 Debtors are a U.S.-based producer of metallurgical and thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian regions of West Virginia and Virginia. The Chapter 11 Debtors' principal operations include two active mining complexes known as South Fork and Raven Crest located in Greenbrier and Boone Counties, West Virginia. The Chapter 11 Debtors also lease or own the mineral rights to properties located in Fayette, Nicholas and Greenbrier Counties, West Virginia and Wise County, Virginia. Collectively, the Chapter 11 Debtors lease or own mineral rights to approximately 72,000 acres with proven and probable coal reserves of approximately 77 million tons and additional estimated reserves of 40 million tons.

[6] The Chapter 11 Debtors currently produce and ship coal from the South Fork mid-volatile metallurgical mine and the Raven Crest thermal operations. The Chapter 11 Debtors' primary customers for metallurgical coal—used in a chemical process that yields coke for the manufacture of steel—are steel producers, commodities brokers and industrial customers throughout North America, Europe and South America. Electric utilities and industrial companies in the southeastern United States and Europe are the principal customers for the Chapter 11 Debtors' thermal coal.

[7] Recently, U.S. demand for thermal coal has fallen sharply in large part due to (i) increasingly attractive alternative sources of energy, such as natural gas, and (ii) burdensome environmental and governmental regulations impacting end users. Simultaneously, the increasingly stringent regulatory environment in which coal companies operate has driven up the cost of mining and processing coal. Continued weakness in the market for metallurgical and thermal coal, combined with an extremely cold and snowy winter that impacted the mining and shipment of coal, has continued to erode Xinerger's cash position. Prior to approval by the U.S. Court of the post-petition DIP financing, Xinerger lacked the liquidity needed to maintain operations in the near term and to sustain its current capital structure. The confluence of these factors and Xinerger's substantial debt burden has taken Xinerger to the point of unsustainability absent the relief provided by the Chapter 11 proceeding.

[8] Xinerger has issued US\$200 million in 9.25% Senior Secured Notes (the "Second Lien Notes"), of which approximately US\$195 million (principal amount) is outstanding. As of the April 6, 2015, Xinerger was also obligated under two term loans totalling US\$20 million in principal amount (the "First Lien Loans").

Requests for relief

[9] Xinerger seeks recognition of four of the orders granted by the U.S. Court. The U.S. Court orders are:

- (a) Order Authorizing Xinerger Ltd. to Act as a Foreign Representative (the "Foreign Representative Order");
- (b) Interim Order (I) Authorizing Debtors (a) to Obtain Post-petition Financing and (b) to Utilize Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; and (III) Scheduling Final Hearing (the "Interim DIP Order");

- (c) Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors' Estates (the "Interim Trading Order"); and
- (d) Interim Order (I) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (II) Granting Administrative Expense Status for Intercompany Claims; and (III) Waiving the Requirements of Section 345(b) of the Bankruptcy Code (the "Interim Cash Management Order")

Recognition of foreign main proceeding

[10] Subsection 46(1) of the CCAA provides that a foreign representative may apply to the Court for recognition of a foreign proceeding in respect of which he or she is a foreign representative.

[11] A "foreign representative" for the purpose of subsection 46(1) of the CCAA is defined by subsection 45(1) of the CCAA, which provides:

"Foreign Representative" means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

- (a) monitor the debtor company's business and financial affairs or the purpose of reorganization; or
- (b) act as a representative in respect of the foreign proceeding.

[12] In the Chapter 11 proceedings, the Chapter 11 Debtors sought the appointment of Xinergy as the foreign representative of the Chapter 11 Debtors, within the meaning of subsection 45(1) of the CCAA. The Foreign Representative Order was granted by the U.S. Court on April 7, 2015.

[13] Subsection 47(1) of the CCAA provides that the Court shall grant an order recognizing the foreign proceeding if (i) the proceeding is a foreign proceeding; and (ii) the applicant is a foreign representative in respect of that proceeding. There is no question but that the Chapter 11 proceedings are foreign proceedings and should be recognized under the CCAA.

[14] Subsection 47(2) of the CCAA requires that the Court specify whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.” I am satisfied that the Chapter 11 proceedings are foreign main proceedings.

[15] Subsection 45(2) of the CCAA provides that in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests, or COMI. The registered office of Xinergy is in Toronto at its counsel's office. In considering whether the registered office presumption has been rebutted a court should consider the following factors in determining COMI (i) the location is readily ascertainable by creditors (ii) the location is one in which the debtor's principal assets and operations are found and (iii) the location is where the management of the debtor takes place. See *Lightsquared LLP, Re* (2012), 92 C.B.R. (5th) 321; *MtGox Co. (Re)* (2014), 20 C.B.R. (6th) 307.

[16] Although Xinergy's registered office is in Ontario, it has no operations in Canada. Additionally, Xinergy has no employees in Canada and no offices in Canada other than its registered office. The Chapter 11 Debtors operate on an integrated basis, with corporate and other major decision-making occurring from the consolidated offices in Knoxville, Tennessee. In particular:

- (a) Corporate and other major decision-making occurs from the consolidated offices in Knoxville, Tennessee, although administrative employees frequently work remotely or from the Chapter 11 Debtors' mines in the United States;
- (b) All of the senior executives of the Chapter 11 Debtors, including Xinergy, are residents of the United States;

- (c) In order to fulfil the Canadian residency requirements of Ontario corporations, Xinergy has two Canadian directors;
- (d) The majority of the management of the Chapter 11 Debtors, including Xinergy, is shared;
- (e) Employee administration, human resource functions, marketing and communications decisions are made, and related actions taken, on behalf of all of the Chapter 11 Debtors, including Xinergy, in the United States;
- (f) The Chapter 11 Debtors, including Xinergy, share a cash management system that is largely funded by the U.S. Subsidiaries, overseen by employees of the United States-based Chapter 11 Debtors and located primarily in the United States;
- (g) Other functions shared between the Chapter 11 Debtors, including Xinergy, are managed from the United States including: pricing decisions, business development decisions, accounts payable, accounts receivable and treasury functions;
- (h) While Xinergy maintains a bank account with The Toronto Dominion Bank in Ontario, the Chapter 11 Debtors use this account to make Canadian denominated deposits and to pay for Canadian services. When additional funds are required, a transfer is made from the U.S. operating account at Xinergy Corp. Xinergy is dependent on the U.S. subsidiaries for substantially all of its funding requirements; and
- (i) Other functions shared between the Chapter 11 Debtors, including Xinergy, are managed from the United States including: pricing decisions, business development decisions, accounts payable, accounts receivable and treasury functions.

[17] As the Chapter 11 proceedings are foreign main proceedings, an order is to go under subsection 48(1) of the CCAA staying all proceedings against Xinergy.

Interim DIP Order

[18] The Interim DIP Facility Order, inter alia:

- (a) authorizes Xinergy Corp. to obtain post-petition financing pursuant to the DIP Facility up to an aggregate principal amount of \$40 million;
- (b) authorizes Xinergy and the other Chapter 11 Debtors to unconditionally guarantee all obligations arising under the DIP Facility;
- (c) authorizes the Chapter 11 Debtors to use proceeds of the DIP Facility to pay in full the First Lien Loans (the holders of the First Lien Notes are the DIP lenders) ; and
- (d) grants first priority super priority claims in connection with the DIP Facility.

[19] The authorization by the U.S. Court to use the proceeds of the DIP Facility to pay out the First Lien Loans, called a “rollup” provision, is not something that can be ordered in a CCAA proceeding as subsection 11.2(1) of the CCAA provides that DIP security may not secure an obligation that existed prior to an Initial Order. However, the issue is whether our Court should recognize the U.S. Court order authorizing that DIP facility under the principles of comity recognized in section 44 of Part IV of the CCAA.

[20] Such a provision has been recognized in *Hartford Computer Hardware Inc., Re* (2012), 94 C.B.R. (5th) 20 by Morawetz J. (as he then was) under section 49 of the CCAA which permits an order to be made if the Court is satisfied that it is necessary to protect the debtor’s property or is in the interests of its creditors.

[21] It was obviously seen by the U.S. Court to be in the interests of Xinergy and the other Chapter 11 Debtors to make DIP order that it did. One question to consider is whether there would be any material adverse interest to any Canadian interests in recognizing the “rollup” features of the DIP facility. If there were such material adverse interest, it would put in play a consideration of that adverse interest vis-à-vis the principles of comity that speak to the recognition of an order made in a foreign main proceeding.

[22] In this case, there are four unsecured creditors of Xinergy in Canada being (i) a director owed approximately \$1,674, (ii) TMX Equity Transfer Services owed approximately \$4,000, (iii) TMX owed \$16,492, and (iv) the solicitors for Xinergy (who consent to the rollup DIP facility). The bank account in Canada had approximately \$48,415 in it on April 6, 2015. The Canadian unsecured creditors, however, had no economic interest in that bank account as it was secured to the holders of the First Lien Notes. The DIP facility has not changed that. Deloitte, the proposed Information Officer, is of the view that there will be no material prejudice to the Canadian creditors if the Interim Dip Facility order is recognized in these proceedings, and I accept that view.

[23] I am satisfied that the Interim DIP Facility Order should be recognized.

Other orders

[24] The interim trading order made by the U.S. Court ordered on an interim basis certain restrictions on the trading of Xinergy stock. In light of the rules under the Internal Revenue Code in the United States, transfers of the stock may, through no fault of the Chapter 11 Debtors, deprive the Chapter 11 Debtors of important tax benefits. The Interim Trading order was made to protect against this potential harm to debtors in chapter 11 proceedings. It is appropriate to recognize it in this CCAA proceeding.

[25] The relief granted by the U.S. Court in the Interim Cash Management Order will permit Xinergy and the other Chapter 11 Debtors to continue to operate in ordinary course, thereby preserving value for creditors. It is appropriate to recognize it in this CCAA proceeding.

[26] Xinergy has requested an order appointing Deloitte as Information Officer and granting a super-priority charge up to a maximum of \$100,000 for its fees and those of its counsel. It is appropriate to make such an order. The DIP lenders consent to the charge. The appointment of Deloitte will help facilitate these proceedings and the dissemination of information concerning the Chapter 11 proceeding. The Information Officer will: (i) act as a resource to the foreign

representative in the performance of its duties; (ii) act as an officer to the Court, reporting to the Court on the proceedings, as required by the Court; and (iii) provide stakeholders of Xinergy with material information on the Chapter 11 proceeding. See *Lear Canada, Re* (2009), 55 C.B.R. (5th) 57 at para. 23 per Pepall J. (as she then was).

[27] For these reasons, I signed the orders as requested at the conclusion of the hearing.

A handwritten signature in black ink, appearing to read "Newbould J.", is written over a horizontal line.

Newbould J.

Released: April 24, 2015

CITATION: Re Xinerger Ltd., 2015 ONSC 2692
COURT FILE NO.: CV-15-10936-00CL
DATE: 20150424

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN
PROCEEDINGS TAKEN IN THE
UNITED STATES BANKRUPTCY COURT WITH
RESPECT TO **XINERGY LTD.**

APPLICATION OF XINERGY LTD.
UNDER SECTION 46 OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.
C 36, AS AMENDED

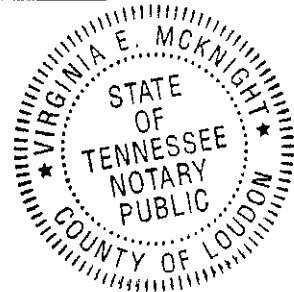
REASONS FOR JUDGMENT

Newbould J.

TAB D

This is Exhibit "D" referred to in the Affidavit of Michael R.
Castle sworn January 26, 2016

Virginia E. McKnight
A Notary Public for the State of Tennessee





Court File No. CV-15-10936-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

JUSTICE

NEUBOURG

)

)

)

THURSDAY, THE 23RD

DAY OF APRIL, 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

**SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)**

THIS APPLICATION, made by Xinergy Ltd. in its capacity as the foreign representative (the "**Foreign Representative**" or the "**Debtor**") of itself, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Michael R. Castle sworn April 15, 2015 (the "**Castle Affidavit**") the preliminary report of Deloitte Restructuring Inc., in its capacity as proposed information officer dated April 21, 2015, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Foreign Representative, counsel for the proposed information officer, counsel for an informal group of holders of the Debtor's 9.25% senior secured notes due 2019 and lenders under the Debtor's postpetition senior secured new money term loan credit facility (the "**DIP Lenders**"), counsel for Jon Nix and no one else appearing

although duly served as appears from the affidavits of service of Monique Sassi, sworn on April 15, 2015 and April 21, 2015, the affidavits of service of Margaret Wong, sworn on April 16, 2015, April 20, 2015 and April 21, 2015, and the affidavit of service of Natalie E. Levine, sworn on April 20, 2015, and on reading the consent in the preliminary report of Deloitte Restructuring Inc. to act as the information officer:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

INITIAL RECOGNITION ORDER

2. THIS COURT ORDERS that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated April 23, 2015 (the "**Recognition Order**").
3. THIS COURT ORDERS that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

RECOGNITION OF FOREIGN ORDERS

4. THIS COURT ORDERS that the following orders (collectively, the "**Foreign Orders**") of the United States Bankruptcy Court for the Western District of Virginia made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) *Order Authorizing Xinergy Ltd. to Act as Foreign Representative Pursuant to 11 U.S.C. §1505, attached as Schedule A to this Order;*
- (b) *Interim Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. §*

363, (II) *Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)*, (the "**U.S. DIP Order**") attached as Schedule B to this Order;

(c) *Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors' Estates*, attached as Schedule C to this Order; and

(d) *Interim Order (I) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (II) Granting Administrative Expense Status for Intercompany Claims; and (III) Waiving the Requirements of Section 345(b) of the Bankruptcy Code*, attached as Schedule D to this Order.

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

APPOINTMENT OF INFORMATION OFFICER

5. THIS COURT ORDERS that Deloitte Restructuring Inc. (the "**Information Officer**") is hereby appointed as an officer of this Court, with the powers and duties set out herein.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

6. THIS COURT ORDERS that until such date as this Court may order (the "**Stay Period**") no proceeding or enforcement process in any court or tribunal in Canada (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Debtor or affecting their business (the "**Business**") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), except with leave of this Court or the written consent of the Debtor and the Information Officer, and any and all Proceedings currently under way against or in respect of the Debtor or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the written consent of the Debtor and the Information Officer.

NO EXERCISE OF RIGHTS OR REMEDIES

7. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtor, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court or with the written consent of the Debtor and the Information Officer, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower the Debtor to carry on any business in Canada which the Debtor is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA; or (iv) prevent the DIP Lenders from making any personal property lien registrations in Canada.

NO INTERFERENCE WITH RIGHTS

8. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor and affecting the Business in Canada, except with leave of this Court.

ADDITIONAL PROTECTIONS

9. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Debtor, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtor, and that the Debtor shall be entitled to the continued use in Canada of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names.

10. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtor with respect to any claim against the directors or officers that arose before the date hereof and that relates to any

obligations of the Debtor whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. THIS COURT ORDERS that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

OTHER PROVISIONS RELATING TO INFORMATION OFFICER

12. THIS COURT ORDERS that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at least once every six months with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;
- (d) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtor, to the extent that is necessary to perform its duties arising under this Order; and
- (e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. THIS COURT ORDERS that the Debtor shall (i) advise the Information Officer of all material steps taken by the Debtor in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. THIS COURT ORDERS that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. THIS COURT ORDERS that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. THIS COURT ORDERS that as soon as practicable from the date of this Order, the Information Officer shall cause to be published a notice substantially in the form attached to this Order as Schedule E, once a week for two consecutive weeks, in The Globe and Mail, National Edition.

17. THIS COURT ORDERS that the Information Officer may provide any creditor of the Debtor with information provided by the Debtor in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Debtor is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, and the Debtor may agree.

18. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer shall be paid by the Debtor their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.

The Debtor is hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer on a monthly basis or such other time interval as may be agreed by the Information Officer and the Debtor and, in addition, the Debtor is hereby authorized, *nunc pro tunc*, to pay to the Information Officer and counsel to the Information Officer, retainers in the amounts of \$50,000 and \$25,000 respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

19. THIS COURT ORDERS that if requested by this Court, the Debtor or any other interested person, the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

20. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property in Canada, which charge shall not exceed an aggregate amount of \$100,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 22 and 24 hereof.

INTERIM FINANCING

21. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property in Canada, which DIP Lender's Charge shall be consistent with the liens and charges created by the *Interim Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364 (c)(2), 364(c)(3), 364(d)(1) and 364(e); and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§361, 362, 363 and 364; and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)*, with respect to the Property in Canada, shall have the priority set out in paragraphs 22 and 24 hereof, and further provided that the DIP Lender's Charge shall not be enforced except in accordance with the terms of the U.S. DIP Order and on notice to the Information Officer.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

22. THIS COURT ORDERS that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First—Administration Charge (to the maximum amount of \$100,000; and

Second—DIP Lender's Charge.

23. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

24. THIS COURT ORDERS that (i) Administration Charge shall constitute a charge on the Property in Canada and such Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, and (ii) the DIP Lenders' Charge shall have the priority set out in paragraph 10 of the U.S. DIP Order; *provided, however*, that to the extent of any conflict between the U.S. DIP Order and this Order, with respect to the priorities of the Charges, this Order shall govern.

25. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtor shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge or the DIP Lender's Charge, unless the Debtor also obtains the prior written consent of the Information Officer and the DIP Lender or, with respect to the DIP Lender's Charge only, as otherwise provided for in the U.S. DIP Order.

26. THIS COURT ORDERS that the Administration Charge and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal

or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an **"Agreement"**) which binds the Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Debtor to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

27. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Debtor's interest in such real property leases.

SERVICE AND NOTICE

28. THIS COURT ORDERS that that the E-Service Protocol of the Commercial List (the **'Protocol'**) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol at <http://www.insolvencies.deloitte.ca/en-ca/Pages/Search-Insolvencies.aspx> under the name Xinergy Ltd.

29. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtor and the Information Officer are at liberty to serve

or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

30. THIS COURT ORDERS that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

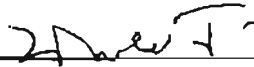
31. THIS COURT ORDERS that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of the Debtor, the Business or the Property.

32. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtor, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtor, and the Information Officer and their respective agents in carrying out the terms of this Order.

33. THIS COURT ORDERS that each of the Debtor, and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtor, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

35. THIS COURT ORDERS that this Order shall be effective as of 12:01 a.m. on the date of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO

APR 23 2015



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)**

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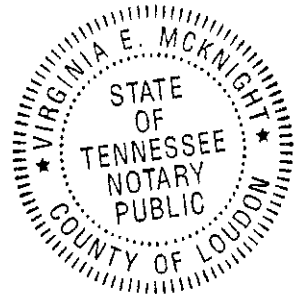
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Fax: 416.640.3144
jdietch@casselsbrock.com

Lawyers for Xinergy Ltd.

TAB E

This is Exhibit "E" referred to in the Affidavit of Michael R.
Castle sworn January 26, 2016

Virginia E. McKnight
A Notary Public for the State of Tennessee



List of Orders Recognized by Canadian Court

No.	Name of Order	Date Granted in US
1.	Order Authorizing Xinergy Ltd. to Act as Foreign Representative Pursuant to 11 U.S.C. §1505	April 7, 2015
2.	Interim Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. §363, (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)	April 7, 2015
3.	Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors' Estates	April 7, 2015
4.	Interim Order (I) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (II) Granting Administrative Expense Status for Intercompany Claims; and (III) Waiving the Requirements of Section 345(b) of the Bankruptcy Code	April 8, 2015
5.	Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. §363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364	May 5, 2015
6.	Final Order (I) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (II) Granting Administrative Expense Status for Intercompany Claims; and (III) Waiving the Requirements of Section 345(b) of the Bankruptcy Code	May 8, 2015
7.	Final Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors' Estates	May 8, 2015

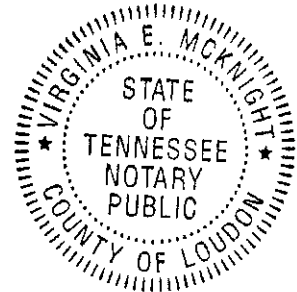
No.	Name of Order	Date Granted in US
8.	Modified Final Order (1) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. §363, (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364	June 5, 2015
9.	Stipulated Order Staying Adversary Proceeding	June 5, 2015
10.	Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims, and Proofs of Interest (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief	June 8, 2015
11.	Supplemental Order Authorizing the Debtors to Amend the DIP Credit Agreement and Obtain Incremental Financing Under the DIP Credit Agreement and Granted Related Relief	August 27, 2015
12.	Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections (A) To Confirmation of the Plan, and (B) To Proposed Cure Amounts; and (IV) Granting Related Relief	October 16, 2015

TAB F

This is Exhibit "F" referred to in the Affidavit of Michael R.
Castle sworn January 26, 2016

Virginia E. McKnight

A Notary Public for the State of Tennessee



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

NOTICE OF FILING OF AMENDED PLAN

PLEASE TAKE NOTICE that on September 16, 2015, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Joint Chapter 11 Plan of Reorganization Proposed by Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* [Doc. No. 406] (the “Plan”) with the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division (the “Court”).

PLEASE TAKE FURTHER NOTICE that on October 14, 2015, the Debtors filed the *First Amended Joint Chapter 11 Plan of Reorganization Proposed by Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* (the “Amended Plan”) with the Court.

PLEASE TAKE FURTHER NOTICE that, if you would like a copy of the Amended Plan, Amended Disclosure Statement, or related documents, please contact American Legal Claims Services, LLC at (904) 517-1442 or by writing to Xinergy Ltd. c/o American Legal Claims Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650. Copies of the Amended Plan and Amended Disclosure Statement also may be obtained at no charge at www.americanlegalclaims.com/xinergy or for a fee at <https://ecf.vawb.uscourts.gov>.

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached hereto. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Case Management Order (defined below).

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Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

PLEASE TAKE FURTHER NOTICE that attached hereto as Exhibit A is a copy of the Debtors' Amended Plan.

PLEASE TAKE FURTHER NOTICE that attached hereto as Exhibit B is a redline copy of the Debtors' Amended Plan, reflecting the variations as against the Plan.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve all rights and remedies with respect to the Amended Plan including, but not limited to, the right to further amend, modify and/or supplement the Amended Plan.

DATED: October 14, 2015

Respectfully submitted,

/s/ Tyler P. Brown

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
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*Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1

(Debtor Entities)

- | | |
|--|---|
| 1. Xinergy Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinergy Corp. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinergy Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinergy of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
| 6. Xinergy Straight Creek, Inc. (0071) | 19. Strata Fuels, LLC (1559) |
| 7. Xinergy Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinergy Land, Inc. (8121) | 21. Raven Crest Mining, LLC (0122) |
| 9. Middle Fork Mining, Inc. (1593) | 22. Brier Creek Coal Company, LLC (9999) |
| 10. Big Run Mining, Inc. (1585) | 23. Bull Creek Processing Company, LLC (0894) |
| 11. Xinergy of Virginia, Inc. (8046) | 24. Raven Crest Minerals, LLC (7746) |
| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**FIRST AMENDED JOINT CHAPTER 11 PLAN OF XINERGY LTD. AND
ITS SUBSIDIARY DEBTORS AND DEBTORS IN POSSESSION**

HUNTON & WILLIAMS LLP

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*Counsel to the Debtors
and Debtors in Possession*

Dated: October 14, 2015

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

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INTRODUCTION

Xinergy, Ltd. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases jointly propose this Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against and Interests in, as applicable, each Debtor pursuant to the Bankruptcy Code. The Debtors seek to consummate the Restructuring on the Effective Date of the Plan. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in ARTICLE III shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, business, operations, projections, risk factors, a summary and analysis of this Plan, the Restructuring, and certain related matters.

ARTICLE I

DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES

1.1 Defined Terms

1. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors' businesses; (b) Allowed Professional Claims; and (c) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

2. “*Administrative Claims Bar Date*” means the last date by which a request for payment of an Administrative Claim may be filed, which date is thirty (30) days after the Effective Date.

3. “*Administrative Claims Objection Deadline*” means the last day for filing an objection to any request for the payment of an Administrative Claim, which shall be the later of (a) one hundred twenty (120) days after the Effective Date or (b) such other date specified in this Plan or ordered by the Bankruptcy Court.

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

5. “*Allowed*” means, as to a Claim, a Claim allowed under the Plan, under the Bankruptcy Code, or by a Final Order, as applicable.

6. “*Avoidance Actions*” means claims of the Estate arising under sections 544, 547 or 548 of the Bankruptcy Code and, solely to the extent related to the foregoing, section 550 of the Bankruptcy Code.

7. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as may be amended from time to time.

8. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Western District of Virginia or such other court having jurisdiction over the Chapter 11 Cases.

9. “*Bankruptcy Rules*” means 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, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases and the general, local, and chambers rules of the Bankruptcy Court.

10. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims, and Proofs of Interest, (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief*, approved and entered by the Bankruptcy Court on June 8, 2015 [Doc. No. 276], as the same may be amended from time to time.

11. “*BLBA*” means the Federal Black Lung Benefit Act, 30 U.S.C. §§ 901-944.

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

13. “*Canadian Court*” means the Ontario Superior Court of Justice (Commercial List) that has recognized the chapter 11 case of Xinergy Ltd. as a “foreign main proceeding” under the CCAA.

14. “*Cash*” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

15. “*Causes of Action*” means any and all claims, actions, causes of action, choses in action, suits, debts, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims (including all claims and any avoidance, recovery, subordination, or other actions against insiders and/or any other Entities under the Bankruptcy Code) of any of the Debtors and/or the Debtors’ estates, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, that are or may be pending on the Effective Date or commenced by the Reorganized Debtors after the Effective Date against any Entity, based in law or equity, including under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order.

16. “*CCAA*” means *Companies’ Creditors Arrangement Act* (Canada) R.S.C. 1985 c. C. 36, as amended.

17. “*Certificate*” means any instrument evidencing a Claim or an Interest.

18. “*Chapter 11 Cases*” means the procedurally consolidated Chapter 11 Cases pending for the Debtors in the Bankruptcy Court.

19. “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.

20. “*Claims Register*” means the official register of Claims against and Interests in the Debtors maintained by the Solicitation Agent.

21. “*Class*” means a category of holders of Claims or Interests under section 1122(a) of the Bankruptcy Code.

22. “*Collateral Trustee*” means Wells Fargo Bank, National Association, as collateral trustee under that certain Collateral Trust Agreement, dated May 6, 2011, between, among others, Xinergy Corp., Xinergy Ltd., and Wells Fargo Bank, National Association, as amended, restated, supplemented or otherwise modified from time to time.

23. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

24. “*Confirmation Date*” means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

25. “*Confirmation Hearing*” means the hearing(s) before the Bankruptcy Court under section 1128 of the Bankruptcy Code at which the Debtors seek entry of the Confirmation Order.

26. “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code and approving the Disclosure Statement, which order shall be in form and substance satisfactory to the Consenting Noteholders and the Debtors.

27. “*Confirmation Recognition Order*” means the order of the Canadian Court recognizing and enforcing the Confirmation Order, which order shall be in form and substance satisfactory to the Consenting Noteholders and the Debtors.

28. “*Consenting Noteholders*” means members of the informal committee of Noteholders represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP, Kutak Rock LLP, Fasken Martineau and Houlihan Lokey Capital, Inc., as disclosed in the *Verified Statement of the Informal Prepetition Noteholder Committee and DIP Lenders Pursuant to Bankruptcy Rule 2019* [Doc. No. 176], that support the Plan.

29. “*Consummation*” means the occurrence of the Effective Date.

30. “*Creditor*” has the meaning set forth in section 101(10) of the Bankruptcy Code.

31. “*Creditors Committee*” means the Official Committee of Unsecured Creditors appointed by the United States Trustee in the Debtors’ Chapter 11 Cases, as reconstituted from time to time.

32. “*Cure*” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s defaults under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

33. “*Cure Objection Deadline*” means the deadline established by the Bankruptcy Court by which non-debtor parties to Executory Contracts and Unexpired Leases that the Debtors propose to assume as part of the Plan must object to (i) the Cure proposed by the Debtors and (ii) the proposed assumption of the Executory Contracts and Unexpired Leases.

34. “*Debtors*” means, collectively, each of the entities listed on Schedule 1 hereto.

35. “*DIP Facility*” means that certain \$49.0 million debtor-in-possession credit facility provided under the DIP Facility Loan Agreement.

36. “*DIP Facility Agent*” means that certain administrative agent under the DIP Facility.

37. “*DIP Facility Claims*” means any Claim held by the DIP Facility Lenders or the DIP Facility Agent arising under or related to the DIP Facility Loan Agreement or the DIP Facility Order, including, without limitation, claims for principal, interest, fees and expenses (including professional fees and expenses), penalties, premiums, and other obligations incurred under or in connection with the DIP Facility.

38. “*DIP Facility Consenting Lenders*” means DIP Facility Lenders who hold, in the aggregate, more than 50% of the principal amount of the total outstanding borrowings under the DIP Facility held by all DIP Facility Lenders.

39. “*DIP Facility Lenders*” means those certain lenders party to the DIP Facility Loan Agreement.

40. “*DIP Facility Loan Agreement*” means that certain Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of April 8, 2015, by and among Xinergy Corp., as borrower, certain guarantors thereto, the DIP Facility Lenders, and the DIP Facility Agent, as amended by that certain Incremental Assumption Agreement, Amendment No. 1, and Waiver, dated as of August 28, 2015, by and among Xinergy Corp., as borrower, certain guarantors thereto, the lenders party thereto from time to time and the DIP Facility Agent

41. “*DIP Facility Order*” means, collectively, the interim and final orders and supplemental orders entered by the Bankruptcy Court authorizing the Debtors to enter into the DIP Facility Loan Agreement and access the DIP Facility.

42. “*Disclosure Statement*” means the disclosure statement for the Plan, as may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto, to be approved by the Confirmation Order.

43. “*Disputed*” means, as to a Claim or an Interest, a Claim or an Interest: (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order, as applicable; and (c) with respect to which a party in interest has filed a Proof of Claim or otherwise made a written request to a Debtor for payment, without any further notice to or action, order, or approval of the Bankruptcy Court.

44. “*Distribution*” means any initial or subsequent payment or transfer made under the Plan.

45. “*Distribution Agent*” means, as applicable, the Reorganized Debtors or any Person the Reorganized Debtors select to make or to facilitate Distributions in accordance with the Plan.

46. “*Distribution Date*” means, except as otherwise set forth herein, the date or dates determined by the Debtors or the Reorganized Debtors, on or after the Effective Date, upon which the Distribution Agent shall make Distributions to holders of Allowed Claims entitled to receive Distributions under the Plan.

47. “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Section 9.1 have been satisfied or waived in accordance with Section 9.3.

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

49. “*Environmental Law*” means all federal, state and local statutes, regulations, ordinances and similar provisions having the force or effect of law, all judicial and administrative orders, agreements and determinations and all common law concerning pollution or protection of the environment, or environmental impacts on human health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Water Act; the Clean Air Act; the Emergency Planning and Community Right-to-Know Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Resource Conservation and Recovery Act; the Safe Drinking Water Act; the Surface Mining Control and Reclamation Act; the Toxic Substances Control Act; and any state or local equivalents.

50. “*Equity Security*” has the meaning set forth in section 101(16) of the Bankruptcy Code and includes, for the avoidance of doubt, Xinergy Ltd. Common Stock.

51. “*Estate*” means the estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor’s Chapter 11 Case.

52. “*Executory Contract*” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

53. “*Exit Conversion*” means the Debtors’ right, with the consent of the DIP Facility Consenting Lenders, to elect to convert the DIP Facility into the Exit Facility Term Loan, consistent in all respects with the applicable Exit Facility Term Sheet.

54. “*Exit Facility*” means, collectively, the Exit Facility Term Loan and any additional or alternative financing that may be provided in the form of a term loan or revolving credit facility by one or more of the DIP Facility Lenders or a third party, the material terms of which will be set forth in the applicable Exit Facility Term Sheet(s).

55. “*Exit Facility Agreement*” means one or more credit agreements governing the Exit Facility executed by and among reorganized Xinergy Corp., as borrower, and reorganized

Xinergy Corp.'s wholly-owned subsidiaries and New Holdco (as applicable), as guarantors, and each of the Exit Facility Parties from time to time party thereto, to be effective on the Effective Date, which agreement(s) shall be consistent in all respects with the Exit Facility Term Sheet(s).

56. “*Exit Facility Documents*” means, collectively, each Exit Facility Agreement, each other Loan Document (as defined in such Exit Facility Agreement), and all other agreements, documents, and instruments to be delivered or entered into in connection therewith (including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents) each of which shall be (a) satisfactory in form and substance to the DIP Facility Consenting Lenders, and (b) consistent in all respects with the Exit Facility Term Sheet(s).

57. “*Exit Facility Parties*” means, collectively, any administrative agent, trustee, collateral trustee, or lender to one or more Exit Facility Agreements.

58. “*Exit Facility Term Loan*” means that certain term loan to be provided upon the exercise of the Exit Conversion.

59. “*Exit Facility Term Sheet*” means the term sheet providing the material terms of the Exit Facility Term Loan, and, if applicable, the term sheet providing the material terms of such additional or alternative Exit Facility, in each case, to be mutually agreed to by the Debtors, the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, and which shall be filed in the Plan Supplement.

60. “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

61. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction (including the Canadian Court) with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to seek leave to appeal, appeal or seek certiorari has expired and no application for leave to appeal, appeal or petition for certiorari has been timely taken, or as to which any application for leave to appeal or appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice.

62. “*General Unsecured Claim*” means any Claim other than an Administrative Claim, a Professional Claim, a Secured Tax Claim, an Other Secured Claim, a Priority Tax Claim, a Priority Non-Tax Claim, an Intercompany Claim, a DIP Facility Claim, a Senior Secured Note Claim, or a Section 510(b) Claim, and shall include Senior Secured Note Deficiency Claims as set forth in Article 3.2(d).

63. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

64. “*Impaired*” means, with respect to any Class of Claims, a Claim that is not Unimpaired.

65. “*Indemnification Provisions*” means each of the Debtors’ indemnification provisions currently in place whether in the Debtors’ bylaws, certificates of incorporation, other formation documents, board resolutions, contracts or other agreements with current and former directors, officers, managers, employees, attorneys, other professionals, and agents of the Debtors.

66. “*Indenture*” means that certain Indenture, dated as of May 6, 2011, by and among Xinergy Corp., certain parties thereto as guarantors, the Collateral Trustee, and the Trustee, pursuant to which Xinergy Corp. issued the Senior Secured Notes, as amended, restated, supplemented or otherwise modified from time to time.

67. “*Information Officer*” means Deloitte Restructuring Inc. in its capacity as the court-appointed officer in connection with the Recognition Proceeding.

68. “*Initial Distribution Date*” means the Effective Date or as soon thereafter as practicable, but no later than thirty (30) days after the Effective Date.

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

70. “*Intercompany Claim*” means any Claim held by a Debtor against another Debtor.

71. “*Intercompany Interest*” means any Interest held by one Debtor in any of the other Debtors.

72. “*Interest*” means any Equity Security of a Debtor existing immediately prior to the Effective Date.

73. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

74. “*Majority Consenting Noteholders*” means Consenting Noteholders who hold, in the aggregate, more than 50% of the principal amount of the total outstanding Senior Secured Notes held by all Consenting Noteholders as of the filing of the Plan.

75. “*Management Incentive Plan*” means that certain post-Effective Date management incentive plan that may provide for up to 10% of the New Common Stock, on a fully diluted basis, to be reserved for issuance to management of the Reorganized Debtors at the discretion of the New Board after the Effective Date.

76. “*New Board*” means New Holdco’s initial board of directors.

77. “*New Common Stock*” means the common stock of New Holdco.

78. “*New Holdco*” means reorganized Xinergy Corp. or such other Debtor entity as the Debtors select with the consent of the Majority Consenting Noteholders, which will be the Reorganized Debtors’ ultimate parent company upon Consummation of the Plan.

79. “*New Holdco Bylaws*” means the bylaws of New Holdco, substantially in the form contained in the Plan Supplement and satisfactory in form and substance to the Majority Consenting Noteholders.

80. “*New Holdco Certificate of Incorporation*” means the certificate of incorporation of New Holdco, substantially in the form contained in the Plan Supplement and satisfactory in form and substance to the Majority Consenting Noteholders.

81. “*New Holdco Governance Documents*” means, as applicable, the New Holdco Certificate of Incorporation, the New Holdco Bylaws, and the New Holdco Shareholders Agreement each in form and substance satisfactory to the Majority Consenting Noteholders.

82. “*New Holdco Shareholders Agreement*” means that certain shareholders agreement to be filed as part of the Plan Supplement, effective as of the Effective Date, to which all parties receiving New Common Stock (and all persons to whom such parties may sell or transfer their equity in the future and all persons who purchase or acquire equity from the Debtors in future transactions) will be required to become or will be deemed parties, in substantially the form included in the Plan Supplement, which agreement shall be in form and substance satisfactory to the Majority Consenting Noteholders.

83. “*Noteholder*” means a holder of the Senior Secured Notes.

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

85. “*Other Secured Claim*” means any Secured Claim other than the following: (a) a Secured Tax Claim; (b) a DIP Facility Claim; or (c) a Senior Secured Note Claim. For the avoidance of doubt, “Other Secured Claims” includes any Claim arising under, derived from, or based upon any letter of credit issued in favor of one or more Debtors, the reimbursement obligation for which is either secured by a Lien on collateral or is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

86. “*Person*” has the meaning set forth in section 101(41) of the Bankruptcy Code.

87. “*Petition Date*” means the date on which each of the Debtors filed their petitions for relief commencing the Chapter 11 Cases.

88. “*Plan*” means this chapter 11 plan, as it may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof, including the Plan Supplement and all exhibits, supplements, appendices, and schedules, which plan shall be in form and substance satisfactory to the DIP Facility Consenting Lenders and the Majority Consenting Noteholders.

89. “*Plan Securities*” means the New Common Stock to be issued pursuant to the Plan to holders of Claims in Class 3.

90. “*Plan Supplement*” means any compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan, which shall be filed by the Debtors no later than 5 business days before the voting deadline or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement, each of which shall be consistent in all respects with, and shall otherwise contain, the terms and conditions set forth on the exhibits attached hereto, where applicable, and, without limiting the foregoing, shall be satisfactory in form and substance to the DIP Facility Consenting Lenders, the Majority Consenting Noteholders and the Debtors. The Plan Supplement includes, but is not limited to, the following: the New Holdco Shareholders Agreement, the New Holdco Governance Documents, the Rejection Schedule, and the Exit Facility Term Sheet(s).

91. “*Police or Regulatory Law*” means any police or regulatory statute or regulation including, but not limited to, Environmental Law, the Federal Mine Safety and Health Act, or the BLBA.

92. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

93. “*Pro Rata*” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class.

94. “*Professional*” means a Person employed in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Effective Date pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code.

95. “*Professional Claim*” means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 328, 330 or 331 of the Bankruptcy Code.

96. “*Professional Fee Amount*” means the aggregate amount of Professional Claims and other unpaid fees and expenses Professionals estimate they have incurred or will incur in rendering services to the Debtors prior to and as of the Confirmation Date, which estimates Professionals shall deliver to the Debtors as set forth in Section 2.3 herein.

97. “*Professional Fee Escrow Account*” means an interest-bearing account funded by the Debtors with Cash on the Effective Date in an amount equal to the Professional Fee Amount.

98. “*Proof of Claim*” means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

99. “*Recognition Proceeding*” means the recognition proceeding under Part IV of the CCAA pending for Xinergy Ltd in the Canadian Court.

100. “*Rejection Schedule*” means the schedule of Executory Contracts and Unexpired Leases in the Plan Supplement, as may be amended from time to time, setting forth certain Executory Contracts and Unexpired Leases for rejection as of the Effective Date under section 365 of the Bankruptcy Code.

101. “*Released Parties*” means each of the following in its capacity as such: (a) Representatives of the Debtors; (b) the Trustee and the Collateral Trustee; (c) the Consenting Noteholders; (d) the DIP Facility Agent; (e) the DIP Facility Lenders; (f) the members of the Creditors Committee; (g) the Information Officer and (h) the Representatives of the Persons set forth in (b) – (g) of this paragraph.

102. “*Reorganization Value*” means the theoretical enterprise valuation of the Reorganized Debtors through the application of various relative and intrinsic valuation methodologies, as described in the Disclosure Statement.

103. “*Reorganized Debtor*” means a Debtor, or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the Effective Date.

104. “*Representative*” means, with respect to any Person, any successor, assign, predecessor, subsidiary, affiliate, current or former officer or director, to the extent serving in such capacity at any point during the Chapter 11 Cases, principal, partner, limited partner, general partner, member, manager, management company, investment manager, employee, agent, attorney, advisor, investment banker, financial advisor, restructuring advisor, consultant, accountant or other Professional of such entity or any of the foregoing.

105. “*Restructuring*” means the restructuring and reorganization to be effectuated by the Plan.

106. “*Restructuring Transactions*” means the transactions described in Section 4.16.

107. “*Section 510(b) Claim*” means any Claim against the Debtors arising from rescission of a purchase or sale of a security of the Debtors or an Affiliate of the Debtors, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

108. “*Secured Claim*” means a Claim: (a) secured by a Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

109. “*Secured Tax Claim*” means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

110. “*Securities Act*” means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a–77aa, applicable Canadian securities legislation, or any similar federal, state, or local law.

111. “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act or applicable Canadian securities legislation.

112. “*Senior Secured Notes*” means the 9.25% Senior Secured Notes Due 2019 issued by Xinergy Corp. pursuant to the Indenture.

113. “*Senior Secured Note Deficiency Claim*” means that portion of a Claim of a holder of Senior Secured Notes that is unsecured pursuant to section 506(a) of the Bankruptcy Code.

114. “*Solicitation Agent*” means American Legal Claims Services LLC, the notice, claims, and solicitation agent retained by the Debtors in the Chapter 11 Cases by Bankruptcy Court order.

115. “*Sureties*” means all sureties that have issued one or more of the Surety Bonds.

116. “*Surety Bonds*” means each of the surety bonds listed on Exhibit B to the *Debtors Motion for Entry of Interim and Final Orders Authorizing (I) Debtors to Continue and Renew Surety Bond Program and (II) Financial Institutions to Honor and Process Related Checks and Transfers* [Doc. No. 13].

117. “*Surety Indemnity Agreements*” means the indemnity agreements entered into by one or more of the Debtors with the Sureties in connection with the issuance of the Surety Bonds, existing and valid as of the Effective Date.

118. “*Trustee*” means Wells Fargo Bank, National Association, as trustee under the Indenture.

119. “*Unclaimed Distribution*” means any Distribution under the Plan on account of an Allowed Claim to a holder that has not: (a) accepted a particular Distribution or, in the case of Distributions made by check, negotiated such check; (b) given notice to the Reorganized Debtors of an intent to accept a particular Distribution; (c) responded to the Debtors’ or Reorganized Debtors’ requests for information necessary to facilitate a particular Distribution; or (d) taken any other action necessary to facilitate such Distribution.

120. “*Unexpired Lease*” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

121. “*Unimpaired*” means a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

122. “*Xinergy Corp.*” means Xinergy Corp., a corporation existing under the laws of the state of Tennessee and that is a Debtor in these Chapter 11 Cases.

123. “*Xinergy Ltd.*” means Xinergy Ltd., a corporation organized under the laws of Ontario, Canada and that is a Debtor in these Chapter 11 Cases.

124. “*Xinergy Ltd. Common Stock*” means all of Xinergy Ltd.’s issued and outstanding voting shares of common stock and any options, warrants, or other rights to acquire Xinergy Ltd. Common Stock.

1.2 Rules of Interpretation

For purposes of the Plan: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (b) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (d) unless otherwise specified, all references herein to “Articles” and “Sections” are references to Articles and Sections, respectively, hereof or hereto; (e) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (g) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (i) references to docket numbers of documents filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (j) references to “Proofs of Claim,” “Holders of Claims,” “Disputed Claims,” and the like shall include “Proofs of Interest,” “Holders of Interests,” “Disputed Interests,” and the like as applicable; (k) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable state limited liability company laws; and (l) any immaterial effectuating provisions may be interpreted by the Debtors or the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court, the Canadian Court, or any other Entity.

1.3 Computation of Time

Bankruptcy Rule 9006(a) applies in computing any period of time prescribed or allowed herein.

1.4 Governing Law

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to conflict of laws principles.

1.5 Reference to Monetary Figures

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

1.6 Reference to the Debtors or the Reorganized Debtors

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Debtors mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

1.7 Controlling Document

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan shall control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

ARTICLE II

ADMINISTRATIVE AND PRIORITY CLAIMS

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

2.1 Administrative Claims

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors, in consultation with the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, each holder of an Allowed Administrative Claim (other than holders of Professional Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (c) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the holders of such Allowed Administrative Claim; (d) at such time and upon such terms as may be agreed upon by such holder and the Debtors or the Reorganized Debtors, as applicable; or (e) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

All requests for allowance and payment of an Administrative Claim, other than Professional Claims, must be filed with the Court and served on counsel for the Debtors and counsel for the DIP Facility Lenders and the Consenting Noteholders by no later than the Administrative Claims Bar Date. In the event that the Consenting Noteholders or the Debtors or the Reorganized Debtors, if applicable, objects to an Administrative Claim on or before the Administrative Claims Objection Deadline, the Bankruptcy Court shall determine the allowed amount of such Administrative Claim.

2.2 DIP Facility Claims

Except to the extent that a holder of a DIP Facility Claim agrees to less favorable treatment, to the extent the Debtors exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive Exit Facility Term Loans in a face amount equal to the amount of such DIP Facility Claim on the Effective Date, or such other treatment in full satisfaction of the DIP Facility Claims as the Debtors, the DIP Facility Consenting Lenders and the Majority Consenting Noteholders may agree, to be specified in the applicable Exit Facility Term Sheet and to be otherwise governed by the Exit Facility Documents. Unless otherwise agreed to between the Debtors and a holder of a DIP Facility Claim, if the Debtors do not exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive payment in full in Cash on the Effective Date.

2.3 Professional Claims

All requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date must be filed and served in accordance with the Compensation Procedures approved by the Bankruptcy Court no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. The Reorganized Debtors shall pay Professional Claims in Cash in the amount the Bankruptcy Court allows, including from the Professional Fee Escrow Account, which the Reorganized Debtors will establish in trust for the Professionals and fund with Cash equal to the Professional Fee Amount on the Effective Date. Professionals shall deliver to the Debtors their estimates for purposes of the Reorganized Debtors computing the Professional Fee Amount no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be deemed to limit the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Claims filed with the Bankruptcy Court. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. No funds in the Professional Fee Escrow Account shall be property of the Estates. Any funds remaining in the Professional Fee Escrow Account after all Allowed Professional Claims have been paid will be turned over to New Holdco.

From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

2.4 Priority Tax Claims

Each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive on the Effective Date, or as soon as reasonably practicable thereafter, from the respective Debtor liable for such Allowed Priority Tax Claim, payment in Cash in an amount equal to the amount of such Allowed Priority Tax Claim or, at the Debtors' election and with the consent of the Majority Consenting Noteholders, regular installment payments of a total value, as of the Effective Date, equal to the amount of the Allowed Priority Tax Claim as provided in section 1129(a)(9)(c) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business.

ARTICLE III

CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

3.1 Classification of Claims and Interests

This Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in ARTICLE II, all Claims and Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving Distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

Below is a chart assigning each Class a number for purposes of identifying each separate Class.

Class	Claim or Interest	Status	Voting Rights
1	Priority Non-Tax Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Senior Secured Note Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Intercompany Claims and Intercompany Interests	Unimpaired/Impaired	Deemed to Accept/Deemed to Reject
6	Interests in Xinergy Ltd.	Impaired	Deemed to Reject

7 Section 510(b) Claims (if any) Impaired Deemed to Reject

3.2 Treatment of Classes of Claims and Interests

Except to the extent that the Debtors and a holder of an Allowed Claim or Interest, as applicable, agree to a less favorable treatment, with the consent of the Majority Consenting Noteholders, such holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such holder's Allowed Claim or Interest. Unless otherwise indicated, the holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

(a) Class 1 — Priority Non-Tax Claims

- (1) *Classification:* Class 1 consists of any Priority Non-Tax Claims against any Debtor.
- (2) *Treatment:* Each holder of an Allowed Class 1 Claim shall receive, as applicable:
 - A. if the Allowed Class 1 Claim is due and payable on or before the Effective Date, Cash in an amount equal to such Allowed Class 1 Claim; or
 - B. if the Allowed Class 1 Claim is not due and payable on or before the Effective Date, Cash in an amount as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.
- (3) *Voting:* Class 1 is Unimpaired. Holders of Allowed Class 1 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan.

(b) Class 2 — Other Secured Claims

- (1) *Classification:* Class 2 consists of any Other Secured Claims against any Debtor.
- (2) *Treatment:* Each holder of an Allowed Class 2 Claim shall receive, as the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, determine:
 - A. payment in full in Cash of its Allowed Class 2 Claim, including any accrued and unpaid interest, fees, and expenses as may be required to be paid;

B. the collateral securing its Allowed Class 2 Claim; or

C. such other treatment rendering its Allowed Class 2 Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

- (3) *Voting:* Class 2 is Unimpaired. Holders of Allowed Class 2 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 2 Claims are not entitled to vote to accept or reject the Plan.

(c) **Class 3 — Senior Secured Note Claims**

- (1) *Classification:* Class 3 consists of Senior Secured Note Claims against any Debtor.

Treatment: The Senior Secured Note Claims (including the Senior Secured Note Deficiency Claims) shall be Allowed in the aggregate principal amount of \$195,000,000 plus accrued and unpaid interest of \$7,114,791.67 as of the Petition Date, plus, to the extent the following are payable in accordance with the Indenture, fees and expenses (including any prepayment fees and professional fees and expenses), penalties, premiums and other obligations incurred in connection with the Senior Secured Note Claims. The Senior Secured Note Claims are secured claims pursuant to section 506(a) of the Bankruptcy Code to the extent of the midpoint of the Debtors' Reorganization Value less the estimated amount of the DIP Facility Claims and the Other Secured Claims, or approximately \$65,500,000. The remaining portion of the Senior Secured Note Claims are unsecured Senior Secured Note Deficiency Claims, and shall be treated as General Unsecured Claims in Class 4.

Each holder of an Allowed Class 3 Claim shall receive its Pro Rata share of 100% of the Plan Securities on account of the secured portion of its Senior Secured Note Claim.

- (2) *Voting:* Class 3 is Impaired. Holders of Allowed Class 3 Claims are entitled to vote to accept or reject the Plan.

(d) **Class 4 — General Unsecured Claims**

- (1) *Classification:* Class 4 consists of any General Unsecured Claims against any Debtor.

- (2) *Treatment:* Each holder of an Allowed Class 4 Claim shall receive a cash Distribution equal to the lesser of its Pro Rata share of \$200,000, or four percent (4%) of the Allowed Amount of Class 4 Claims (excluding Senior Secured Note Deficiency Claims) on the Effective Date; provided,

however, that if holders of Allowed Class 4 Claims representing at least two-thirds in amount and more than one-half in number of Claims in Class 4 that vote accept the Plan, then holders of Senior Secured Note Deficiency Claims shall agree to waive their right to Distributions on account of such Class 4 Claims. In addition, notwithstanding anything to the contrary in Section 4.15 of the Plan, or any other provision in the Plan, the Estate and the Reorganized Debtors shall waive and release each holder of an Allowed Class 4 Claim from any Avoidance Actions.

- (3) *Voting:* Class 4 is Impaired. Holders of Allowed Class 4 Claims are entitled to vote to accept or reject the Plan.

(e) **Class 5 — Intercompany Claims and Intercompany Interests**

- (1) *Classification:* Class 5 consists of any Intercompany Claims and Intercompany Interests.
- (2) *Treatment:* Each holder of an Allowed Class 5 Claim or Interest shall, at the option of the Debtors, with the consent of the Majority Consenting Noteholders, have its Allowed Class 5 Claim or Interest:
- (i) canceled; or
- (ii) left unaltered, reinstated or otherwise rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

Allowed Class 5 Claims shall not be entitled to any Distribution under the Plan.

- (3) *Voting:* Holders of Allowed Class 5 Claims and Interests are conclusively deemed to have accepted or rejected the Plan under section 1126(f) or 1126(g) of the Bankruptcy Code, as applicable. Therefore, such holders are not entitled to vote to accept or reject the Plan.

(f) **Class 6 — Interests in Xinergy Ltd.**

- (1) *Classification:* Class 6 consists of any Interests in Xinergy Ltd., including Xinergy Ltd. Common Stock.
- (2) *Treatment:* All Interests in Xinergy Ltd., including Xinergy Ltd. Common Stock, shall be deemed canceled as of the Effective Date of the Plan and no Distribution shall be made on account of Class 6 Interests.
- (3) *Voting:* Class 6 is Impaired. Holders of Class 6 Interests are deemed to vote against the Plan.

(g) **Class 7 — Section 510(b) Claims (if any)**

- (1) *Classification:* Class 7 consists of any Section 510(b) Claims (if any) against any Debtor.
- (2) *Allowance:* Notwithstanding anything to the contrary herein, a Class 7 Claim, if any such Claim exists, may only become Allowed by Final Order of the Bankruptcy Court. The Debtors are not aware of any valid Class 7 Claim and believe that no such Class 7 Claim exists.
- (3) *Treatment:* Allowed Class 7 Claims, if any, shall be discharged, canceled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and holders of Allowed Section 510(b) Claims shall not receive any Distribution on account of such Allowed Section 510(b) Claims.
- (4) *Voting:* Class 7 is Impaired. Holders (if any) of Allowed Class 7 Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Holders (if any) of Allowed Class 7 Claims are not entitled to vote to accept or reject the Plan.

3.3 Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Unimpaired Claim, including all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

3.4 Elimination of Vacant Classes

Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

3.5 Voting Classes; Presumed Acceptance by Non-Voting Classes

If a Class contains Claims eligible to vote and no holders of Claims eligible to vote in such Class vote to accept or reject the Plan, the Debtors shall request the Bankruptcy Court to deem the Plan accepted by the holders of such Claims in such Class.

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

The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors, with the consent of the DIP Facility Consenting Lenders and the Majority Consenting Noteholders,

reserve the right to modify the Plan in accordance with ARTICLE X hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

ARTICLE IV

PROVISIONS FOR IMPLEMENTATION OF THE PLAN

4.1 General Settlement of Claims and Interests

Unless otherwise set forth in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims and Interests, including those arising from, or related to, (i) the Senior Secured Notes, (ii) the total enterprise value of the Debtors' estates and the Reorganized Debtors for allocation purposes under the Plan, and (iii) the treatment of holders of General Unsecured Claims and holders of Interests. In the event that, for any reason, the Confirmation Order is not entered or the Effective Date does not occur, the Debtors, the DIP Facility Lenders and the Consenting Noteholders reserve all of their respective rights with respect to any and all disputes resolved and settled under the Plan. The entry of the Confirmation Order shall constitute the Court's approval of each of the compromises and settlements embodied in the Plan, and the Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, their estates, creditors, and other parties-in-interest, and are fair, equitable, and within the range of reasonableness. The Plan, the Confirmation Order and the Confirmation Recognition Order shall have res judicata, collateral estoppel, and estoppel (judicial, equitable, or otherwise) effect with respect to all matters provided for, or resolved pursuant to, the Plan, the Confirmation Order and/or the Confirmation Recognition Order, including, without limitation, the release, injunction, exculpation, discharge, and compromise provisions contained in the Plan, the Confirmation Order, and/or the Confirmation Recognition Order.

4.2 New Holdco Equity Interests

All existing Equity Securities in Xinergy Ltd., including without limitation Xinergy Ltd. Common Stock, shall be canceled as of the Effective Date. New Holdco's equity interests shall consist of New Common Stock.

The Plan Securities shall be issued in accordance with the Plan to holders of Allowed Claims in Class 3 upon the Effective Date. The Plan Securities will be subject to dilution by any awards of New Common Stock subsequently issued under the Management Incentive Plan.

The issuance of New Common Stock is authorized without the need for any further corporate action and without any further action by the Debtors or New Holdco, as applicable. New Holdco's Governance Documents shall authorize the issuance and distribution on the Effective Date of Plan Securities to the Distribution Agent for the benefit of holders of Allowed

Claims in Class 3. All New Common Stock issued or contemplated under the Plan, including New Common Stock to be issued to holders of equity based awards issued under the Management Incentive Plan, shall be duly authorized, validly issued, fully paid, and non-assessable and the holders of New Common Stock shall be deemed to have accepted the terms of the New Holdco Shareholders Agreement (in their capacity as shareholders of New Holdco) and to be parties thereto without further action or signature. The New Holdco Shareholders Agreement shall be adopted on the Effective Date and shall be deemed to be valid, binding, and enforceable in accordance with its terms, and each holder of New Common Stock shall be bound thereby.

4.3 Exit Facility

The Debtors anticipate the need for exit financing on terms to be determined. The exit financing may involve the conversion of the DIP Facility pursuant to the Exit Conversion and such additional or alternative financing, the material terms of which shall be set forth in the Exit Facility Term Sheets. On or before the Effective Date, the Debtors shall execute and deliver the Exit Facility Agreements evidencing such exit financing arrangements, which shall become effective and enforceable in accordance with their terms and the Plan. Confirmation of the Plan shall be deemed approval of the Exit Facility and the Exit Facility Documents, and all transactions contemplated thereby, including, without limitation, any supplemental or additional syndication of the Exit Facility and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein, and authorization of the Reorganized Debtors to enter into and execute the Exit Facility Documents and such other documents as may be required to effectuate the treatment afforded by the Exit Facility. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Facility Documents (a) shall be deemed to be approved, (b) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (c) shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Exit Facility Documents, and (d) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the persons and entities granted such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

4.4 Exemption from Registration Requirements

The offering, issuance, and distribution of any Securities, including the Plan Securities, pursuant to the Plan will be exempt from the registration requirements of section 5 of the

Securities Act pursuant to section 1145 of the Bankruptcy Code or any other available exemption from registration under the Securities Act, as applicable. Pursuant to section 1145 of the Bankruptcy Code, the Plan Securities will be freely transferrable under the Securities Act by the recipients thereof, subject to: (a) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act and compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; (b) the restrictions, if any, on the transferability of such Securities and instruments in the New Holdco Shareholders Agreement; and (c) any other applicable regulatory approval.

4.5 Subordination

The allowance, classification, and treatment of all Claims and Interests under the Plan shall conform to and be consistent with the respective contractual, legal, and equitable subordination rights of such Claims and Interests, and the Plan shall recognize and implement any such rights. Pursuant to section 510 of the Bankruptcy Code, except where otherwise provided herein, the Reorganized Debtors reserve the right, with the consent of the Majority Consenting Noteholders, to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

4.6 Vesting of Assets in the Reorganized Debtors; Continued Corporate Existence

Except as otherwise provided herein, or in any agreement, instrument, or other document incorporated in the Plan (including, without limitation, the Exit Facility Documents, as applicable), on the Effective Date, all property in each Debtor's Estate, all Causes of Action, and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, except as otherwise provided herein, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

Except as otherwise provided herein, the Debtors will, as Reorganized Debtors, continue to exist after the Effective Date as separate legal entities, with all of the powers of such legal entities under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable law. On and after the Effective Date, the Reorganized Debtors may operate their business and may use, acquire, and dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, subject only to those restrictions expressly imposed by the Plan or the Confirmation Order as well as the documents and instruments executed and delivered in connection therewith, including the documents, exhibits, instruments, and other materials comprising the Plan Supplement. Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur from and after the Effective Date for Professional Fee Claims, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to, or the approval of, the Bankruptcy Court.

4.7 Professional Fee Escrow Account

On or prior to the Effective Date, the Debtors shall establish the Professional Fee Escrow Account and fund such account with Cash equal to the Professional Fee Amount. The Professional Fee Escrow Account shall be maintained in trust for the Professionals. The Debtors shall pay Allowed Professional Fee Claims in Cash from the Professional Fee Escrow Account as soon as reasonably practicable after such Claims have been Allowed by the Bankruptcy Court. All amounts remaining in the Professional Fee Escrow Account after all Allowed Professional Fee Claims have been paid in full shall revert to the Reorganized Debtors.

4.8 Cancellation of Notes, Instruments, Certificates, and Other Documents

On the Effective Date, except to the extent otherwise provided herein, all notes, instruments, Certificates, and other documents evidencing Claims or Interests shall be canceled and the obligations of the Debtors or the Reorganized Debtors and any non-Debtor Affiliates thereunder or in any way related thereto shall be discharged; *provided, however*, that notwithstanding Confirmation or the occurrence of the Effective Date, any credit document or agreement that governs the rights of the holder of a Claim or Interest shall continue in effect solely for purposes of (a) allowing holders of Allowed Claims to receive Distributions under the Plan and (b) allowing and preserving the rights of the Distribution Agent, as applicable, to make Distributions on account of Allowed Claims as provided herein.

4.9 Corporate Action

Each of the matters provided for by the Plan involving the corporate structure of the Debtors or corporate or related actions to be taken by or required of the Reorganized Debtors, whether taken prior to or as of the Effective Date, shall be deemed authorized and approved in all respects without the need for any further corporate action and without any further action by the Debtors or the Reorganized Debtors, as applicable. Such actions may include: (a) the adoption and filing of the New Holdco Certificate of Incorporation; (b) the adoption of the New Holdco Bylaws and New Holdco Shareholders Agreement; (c) the selection of the directors, managers, and officers for the Reorganized Debtors, including the appointment of the New Board; (d) the authorization, issuance, and distribution of New Common Stock; (e) the adoption or assumption, as applicable, of Executory Contracts or Unexpired Leases; and (f) the entry into the Exit Facility and the execution and delivery of the Exit Facility Documents, as applicable.

4.10 Charter, Bylaws, and New Holdco Shareholders Agreement

The Debtors' respective certificates of incorporation and bylaws (and other formation and constituent documents relating to limited liability companies) shall be amended as may be required to be consistent with the provisions of the Plan, the Exit Facility Documents, as applicable, and the Bankruptcy Code, and such documents and agreements shall be consistent in all respects with, and shall otherwise contain, the terms and conditions set forth in the documents included in the Plan Supplement. The New Holdco Governance Documents shall, among other things: (a) authorize the issuance of the New Common Stock; and (b) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting Equity Securities. After the Effective Date, each Reorganized Debtor

may amend and restate its certificate of incorporation and other formation and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of such documents.

4.11 Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the boards of directors and managers thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the Exit Facility Documents, as applicable, and the Equity Securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

4.12 Section 1146(a) Exemption

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Reorganized Debtors; (b) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; (d) the grant of collateral as security for any or all of the Exit Facility; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

4.13 Directors and Officers

In accordance with section 1129(a)(5) of the Bankruptcy Code, the identities and affiliations of the members of the New Board and the officers, directors, and/or managers of each of the Reorganized Debtors, and any Person proposed to serve as an officer of New Holdco, will be identified in the Plan Supplement and shall be designated by the Majority Consenting

Noteholders. The members of Xinergy Ltd.'s board of directors are deemed to have resigned as of the Effective Date. On the Effective Date, the New Board will consist of five or seven (5 or 7) members, one of whom will be New Holdco's chief executive officer. The remaining directors of the New Board will be selected by the Majority Consenting Noteholders in their sole discretion and thereafter shall be selected pursuant to the director election process set forth in the New Holdco Bylaws. On the Effective Date, unless replaced, the existing officers of the Debtors shall continue to serve in their current capacities for the Reorganized Debtors. From and after the Effective Date, each director, officer, or manager of the Reorganized Debtors shall serve pursuant to the terms of the respective charter and bylaws or other formation and constituent documents, and applicable laws of the respective Reorganized Debtor's jurisdiction of formation.

In connection with the Transaction, the Debtors will secure tail liability coverage for the Debtors' directors and officers effective as of the Effective Date that is consistent with the existing directors and officers liability coverage and is on terms reasonably satisfactory to the Majority Consenting Noteholders.

4.14 Incentive Plans and Employee and Retiree Benefits

Except as otherwise provided herein, on and after the Effective Date, subject to any Final Order and, without limiting the authority provided to the New Board under the Debtors' respective certificates of incorporation, bylaws and other formation and constituent documents, the Reorganized Debtors shall: (a) amend, adopt, assume and/or honor in the ordinary course of business, any contracts, agreements, policies, programs, and plans, in accordance with their respective terms, for, among other things, compensation, including any incentive plans, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits (except with respect to any employee whose employment agreement is rejected on or prior to the Effective Date), retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity from and after the Petition Date; and (b) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date and not otherwise paid pursuant to a Bankruptcy Court order. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

4.15 Preservation of Rights of Action

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors

will not pursue any and all available Causes of Action against them. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided herein. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Reorganized Debtors reserve and shall retain Causes of Action. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

4.16 Restructuring Transactions

On the Effective Date, the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, may take any actions as may be necessary or appropriate to implement the Restructuring Transactions and effect a corporate restructuring of their respective businesses or a corporate restructuring of the overall corporate structure of the Reorganized Debtors, as and to the extent provided herein, which may include: one or more intercompany mergers, consolidations, amalgamations, arrangements, continuances, restructurings, conversions, dissolutions, transfers, liquidations, or other corporate transactions. Among other Restructuring Transaction to be effectuated, the Debtors may take steps to dissolve, merge or otherwise eliminate Xinergy Ltd. from the corporate structure of the Reorganized Debtors. The actions to effect the Restructuring Transactions may include: (a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable U.S. state or Canadian law; (d) an application to the Canadian Court under applicable law; and (e) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions.

ARTICLE V

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

5.1 Assumption and Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease (i) is expressly identified on the Rejection Schedule; (ii) has been previously rejected by Debtors by Final Order or has been rejected by the Debtors by order of the Court as of the Effective Date, which order becomes a Final Order after the Effective Date; (iii) is the subject of a motion to reject pending as of the Effective Date; or (iv) is otherwise rejected pursuant to the terms herein, each Executory Contract and Unexpired Lease shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code. The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to Affiliates. The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions and assignments.

Except as otherwise provided herein or agreed to by the Debtors, the Majority Consenting Noteholders, and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

If a Claim arises from the rejection of any Executory Contract or Unexpired Lease pursuant to Section 5.1, such Claim shall be barred and unenforceable against the Debtors, Reorganized Debtors or their property unless a proof of claim asserting such Claim is filed with the Bankruptcy Court or the Solicitation Agent and served upon the Debtors within thirty (30) days after the Effective Date. Unless otherwise ordered by the Bankruptcy Court, any such rejection damages Claims shall be treated as General Unsecured Claims under the Plan.

5.2 Indemnification

Indemnification Provisions owed to directors, officers, and employees of the Debtors (or the Estates of any of the foregoing) who served or were employed by the Debtors as of or after the Petition Date, excluding claims which have been determined by Final Order to have resulted from gross negligence, willful misconduct or intentional tort, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed pursuant to section 365 of the Bankruptcy Code under the Plan. In addition, and notwithstanding any other term of the Plan, the Indemnification Provisions owed under the Senior Secured Notes shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed pursuant to section 365 of the Bankruptcy Code.

Notwithstanding anything to the contrary in the Plan, following the Effective Date, each of the Reorganized Debtors shall jointly and severally indemnify and hold harmless (i) the DIP Facility Agent, the DIP Facility Lenders, the Exit Facility Parties, the Trustee, and the Collateral Trustee and (ii) the Representatives of any of the foregoing (the “Indemnitees”) from and against any claims, demands, judgments, actions or Causes of Action, liabilities, obligations, damages, losses, deficiencies, assessments, costs, fines, penalties, interest and expenditures (including the reasonable fees and out-of-pocket expenses of counsel) suffered or incurred by any Indemnatee arising out of, based upon, attributable to or resulting from: (w) the DIP Facility Loan Agreement, or the Exit Facility Agreements, (x) any breach or inaccuracy of any representation or warranty made by the Debtors; (y) any breach or failure by the Debtors to perform any of their respective covenants or obligations contained in the Plan; or (z) any legal proceedings relating to or arising out of the Plan or the Chapter 11 Cases, in each case except to the extent of the fraud, gross negligence or willful misconduct of an Indemnatee (as finally determined by a court of competent jurisdiction).

5.3 Surety Bonds

On and as of the Effective Date, each Surety Bond shall be deemed assumed and each Reorganized Debtor party thereto shall pay any and all premiums and other obligations due or that may become due on or after the Effective Date. Additionally, as specified in Section 8.5, each obligation of a Debtor that is covered by the Surety Bonds, including, but not limited to, obligations of the Debtors to various Governmental Units for reclamation of mines, are not being released, discharged, precluded or enjoined by the Plan or the Confirmation Order and shall remain obligations of the applicable Reorganized Debtor as of the Effective Date. Nothing contained in this Section 5.3 shall constitute or be deemed a waiver of any Cause of Action that any Debtor may hold against any Entity. All Proofs of Claim on account of or in respect of any agreement covered by this Section 5.3 shall be deemed withdrawn automatically and without further notice to or action by the Bankruptcy Court. Each Reorganized Debtors shall be deemed to have assumed as of the Effective Date, and shall continue to perform under, any of its Surety Indemnity Agreements. Failure to expressly identify any Surety Indemnity Agreement in any schedule pursuant to Section 5.3 shall not imply the rejection or failure to assume that agreement. To the extent that Restructuring Transactions create new corporate entities or change the relative corporate position of Xinergy Ltd. as parent, then each new corporate entity and/or the new corporate parent will execute a Surety Indemnity Agreement. Notwithstanding any other provision of the Plan, all letters of credit issued to the Sureties as security for a Debtor’s obligations under the Surety Bonds or Surety Indemnity Agreements shall remain in place for the benefit of the resulting Reorganized Debtors to secure against any “loss” (as defined in the applicable Surety Indemnity Agreement) incurred by the respective Surety. Notwithstanding any other provisions of the Plan, nothing in the injunction and release provisions of the Plan shall be deemed to apply to the Sureties or the Sureties’ claims, nor shall these provisions be interpreted to bar, impair, prevent or otherwise limit the Sureties from exercising their rights under any of the Surety Bonds, letters of credit, Surety Indemnity Agreements, Surface Mining Control and Reclamation Act, or the common law of suretyship.

5.4 Insurance Policies

All of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan. Notwithstanding anything herein to the contrary, as of the Effective Date, the Debtors shall assume (and assign to the Reorganized Debtor if necessary to continue the insurance policies in full force) all of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtor's foregoing assumption (and assignment, if necessary) of each of the insurance policies.

5.5 Cure of Defaults and Objections to Cure and Assumption

The Debtors or the Reorganized Debtors, as applicable, shall pay Cures, if any, on the Effective Date or as soon as applicable thereafter. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure that differ from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors to a counterparty must be filed with the Solicitation Agent on or before the Cure Objection Deadline. Any such request that is not timely filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the Cure; *provided, however*, that nothing herein shall prevent the Reorganized Debtors from paying any Cure despite the failure of the relevant counterparty to file such request for payment of such Cure. The Reorganized Debtors also may settle any Cure without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be filed with the Bankruptcy Court by the Cure Objection Deadline. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' or Reorganized Debtors', as applicable, first scheduled omnibus hearing for which such objection is timely filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

If there is a dispute regarding Cure, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of Cure shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, and the counterparty to the Executory Contract or Unexpired Lease.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any

assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

5.6 Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into after the Petition Date by any Debtor and any Executory Contracts and Unexpired Leases assumed by any Debtor may be performed by the applicable Reorganized Debtor in the ordinary course of business.

5.7 Reservation of Rights

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtors or any other party that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption, the Debtors or the Reorganized Debtors, as applicable, shall have forty-five (45) days following entry of a Final Order resolving such dispute to determine whether to assume, assign or reject the related contract or lease, if applicable.

ARTICLE VI

PROVISIONS GOVERNING DISTRIBUTIONS

6.1 Distributions on Account of Claims Allowed as of the Effective Date

Except as otherwise provided herein, a Final Order, or as otherwise agreed to by the Debtors or the Reorganized Debtors, as the case may be, and the holder of the applicable Claim or Interest, on the Initial Distribution Date, the Distribution Agent shall make Distributions under the Plan on account of Claims Allowed on or before the Effective Date, subject to the Reorganized Debtors' right to object to Claims; *provided, however*, that (1) Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice, and (2) Allowed Priority Tax Claims shall be paid in accordance with Section 2.4. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim or as may be due and payable under applicable non-bankruptcy law in the ordinary course of business or, at the Debtors' election and with the consent of Majority Consenting Noteholders, through regular installment payments of a total value, as of the Effective Date, equal to the amount of the Allowed Priority Tax Claim as provided in section 1129(a)(9)(c) of the Bankruptcy Code. A Distribution Date shall occur no less frequently than once in every 30-day period after the Effective Date, as necessary, in the Reorganized Debtors' sole discretion.

6.2 Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the relevant parties, no partial payments and no partial Distributions shall be made with respect to a Disputed Claim until such Claim becomes an Allowed Claim.

6.3 Delivery of Distributions

(a) Record Date for Distributions to Holders of Claims

On the Confirmation Date, the Claims Register shall be closed and the Distribution Agent shall be authorized and entitled to recognize only those record holders, if any, listed on the Claims Register as of the close of business on the Confirmation Date. Notwithstanding the foregoing, if a Claim is transferred and the Debtors have been notified in writing of such transfer no later than 10 days before the Effective Date, the Distribution Agent shall make Distributions to the transferee (rather than the transferor) only to the extent practical and in any event only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor. The Distribution Agent and the Reorganized Debtors may, but shall have no obligation to, recognize transfers occurring after 10 days before the Effective Date.

(b) Distribution Process

The Distribution Agent shall make all Distributions required under the Plan. Except as otherwise provided herein, and notwithstanding any authority to the contrary, Distributions to holders of Allowed Claims, including Claims that become Allowed after the Effective Date, shall be made to beneficial holders of record as of the Confirmation Date by the Distribution Agent: (1) to the address of such holder as set forth in the books and records of the applicable Debtor (or if the Debtors have been notified in writing, on or before the date that is 10 days before the Effective Date, of a change of address, to the changed address); (2) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004, if no address exists in the Debtors' books and records, no Proof of Claim has been filed and the Distribution Agent has not received a written notice of a change of address on or before the date that is 10 days before the Effective Date; or (3) on any counsel that has appeared in the Chapter 11 Cases on the holder's behalf. Notwithstanding anything to the contrary in the Plan, including this Section 6.3, Distributions under the Plan to holders of Senior Secured Note Claims shall be made to, or to Entities at the direction of, the Trustee and the Collateral Trustee in accordance with the terms of the Plan and the Indenture. The Debtors, the Reorganized Debtors, and the Distribution Agent, as applicable, shall not incur any liability whatsoever on account of any Distributions under the Plan.

(c) Accrual of Dividends and Other Rights

For purposes of determining the accrual of Distributions or other rights after the Effective Date, the New Holdco Interests shall be deemed distributed as of the Effective Date regardless of the date on which it is actually issued, dated, authenticated, or distributed; *provided, however,*

the Reorganized Debtors shall not pay any such Distributions or distribute such other rights, if any, until after Distributions of the New Holdco Interests actually take place.

(d) Compliance Matters

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

(e) Foreign Currency Exchange Rate

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition on the Petition Date, for all purposes under the Plan, including voting, allowance and distribution.

(f) Fractional, Undeliverable, and Unclaimed Distributions

- (1) *Fractional Distributions.* Whenever any Distribution of fractional shares of New Common Stock would otherwise be required pursuant to the Plan, the actual Distribution shall reflect a rounding of such fraction to the nearest share (up or down), with half shares or less being rounded down. Whenever any payment of Cash of a fraction of a dollar pursuant to the Plan would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down.
- (2) *Undeliverable Distributions.* If any Distribution to a holder of an Allowed Claim is returned to the Distribution Agent as undeliverable, no further Distributions shall be made to such holder unless and until the Distribution Agent is notified in writing of such holder's then-current address or other necessary information for delivery, at which time all currently due missed Distributions shall be made to such holder on the next Distribution Date. Undeliverable Distributions shall remain in the possession of the Reorganized Debtors until such time as a Distribution becomes deliverable, or such Distribution reverts to the Reorganized Debtors or is

canceled pursuant to Section 6.3(f)(3), and shall not be supplemented with any interest, dividends, or other accruals of any kind.

- (3) *Reversion.* Any Distribution under the Plan that is an Unclaimed Distribution for a period of six months after Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert in the applicable Reorganized Debtor and, to the extent such Unclaimed Distribution is New Common Stock, shall be deemed canceled. Upon such revesting, the Claim or Interest of any holder or its successors with respect to such property shall be canceled, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws, or any provisions in any document governing the Distribution that is an Unclaimed Distribution, to the contrary.
- (4) *De Minimis Distributions.* The Reorganized Debtors shall not be required to, but may in their sole and absolute discretion, make Distributions of Cash in an amount less than \$50 to any holder of an Allowed Claim. Any Allowed Claims affected by the Section 6.3(f)(4) shall be discharged and forever barred from assertion against the Debtors, the Reorganized Debtors, and their respective property or Estates.

(g) Surrender of Canceled Instruments or Securities

On the Effective Date, each holder of a Certificate shall be deemed to have surrendered such Certificate to the Distribution Agent. Such Certificate shall be canceled solely with respect to the Debtors and the Reorganized Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such Certificate.

6.4 Claims Paid or Payable by Third Parties

(a) Maximum Distribution

An Allowed Claim that receives (i) Distributions in the Allowed amount of such Claim or (ii) Distributions that combined with Distributions or other consideration provided on the Allowed Claim equal the Allowed amount of such Claim shall, in each case be deemed satisfied in full as to such Allowed Claim, and in no event shall an Allowed Claim receive Distributions in excess of the Allowed amount of such Claim.

(b) Claims Paid by Third Parties

The Reorganized Debtors may, in their sole discretion, request that a holder of an Allowed Claim certify in writing and provide evidence reasonably acceptable to the Reorganized Debtors to confirm whether: (i) the holder of such Claim has received payment in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor; or (ii) such holder has been notified by or on behalf of a third party of any future Distributions or payment anticipated or estimated to be made on account of such Claim from such third party.

If (i) the Reorganized Debtors determine, based on the foregoing, that an Allowed Claim has been satisfied in full in accordance with Section 6.4(a) of the Plan, then unless the Bankruptcy Court orders otherwise, no Distributions shall thereafter be made on account of such Allowed Claim, or (ii) a holder of an Allowed Claim does not comply with this section, then unless the Bankruptcy Court orders otherwise, the Reorganized Debtors shall not be required to make Distributions on account of such Allowed Claim, *provided* that nothing herein shall preclude a holder of an Allowed Claim from challenging the determination of the Reorganized Debtors in the Bankruptcy Court.

(c) Rights of Reimbursement

The Reorganized Debtors' rights to assert or prosecute claims for reimbursement, indemnification, recoupment or any other similar right, including, without limitation, any right to setoff with respect to any of the foregoing, against any entity on account of Distributions made to the holders of Allowed Claims, shall be fully preserved to the fullest extent permitted by applicable law.

(d) Claims Payable by Insurance Carriers

No Distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), such Claim shall be disallowed and expunged to the extent of any agreed upon satisfaction in accordance with this section after notice to such Holder of an Allowed Claim and an opportunity for a hearing.

(e) Applicability of Insurance Policies

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

6.5 Setoffs

Except with respect to the DIP Facility Claims, or as otherwise expressly provided for herein, each Reorganized Debtor, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the holder of a Claim, may set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Allowed Claim (before any Distribution is made on account of such Allowed Claim), any Claims, rights, and Causes of Action of any nature that such Debtor or Reorganized Debtor, as applicable, may hold against the holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or

otherwise); *provided, however*, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action that such Reorganized Debtor may possess against such holder. In no event shall any holder of Claims be entitled to set off any Claim against any Claim, right, or Cause of Action of the Debtor or Reorganized Debtor, as applicable, unless such holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

6.6 Allocation Between Principal and Accrued Interest

Except as otherwise provided herein, the aggregate consideration paid to holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to the interest, if any, on such Allowed Claim accrued through the Effective Date.

ARTICLE VII

PROCEDURES FOR RESOLVING DISPUTED CLAIMS

7.1 Disputed Claims Process

Except as otherwise provided herein, if an Entity files a Proof of Claim and the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, do not determine, and without the need for notice to or action, order, or approval of the Bankruptcy Court, that the Claim subject to such Proof of Claim is Allowed, such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in this ARTICLE VII. Except as otherwise provided herein, all Proofs of Claim not filed in accordance with the requirements set forth in the Bar Date Order shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.

7.2 Prosecution of Objections to Claims and Interests

Except insofar as a Claim or Interest is Allowed under the Plan, the Debtors, the Reorganized Debtors, or any other party in interest shall be entitled to object to the Claim or Interest. Any objections to Claims and Interests shall be served and filed on or before the 60th day after the Effective Date or by such later date as ordered by the Bankruptcy Court. All Claims and Interests not objected to by the end of such 60-day period shall be deemed Allowed unless such period is extended upon approval of the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Section 4.15.

7.3 Estimation of Claims

The Debtors or the Reorganized Debtors may at any time, request that the Court estimate any contingent, unliquidated, or Disputed Claim, to the extent permitted by the Bankruptcy Code and Bankruptcy Rules, regardless of whether the Debtors, the Reorganized Debtors or any other Person has previously objected to such Claim. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during proceedings concerning any objection to such Claim and any appeal thereof. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, such estimated amount may constitute either (a) the Allowed amount of such Claim, (b) the amount on which a reserve is to be calculated for purposes of any reserve requirement in the Plan, or (c) a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Reorganized Debtors may elect to object to ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

7.4 Recoupment

In no event shall any holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or Interest or otherwise that such holder asserts, has, or intends to preserve any right of recoupment.

7.5 No Interest

Unless otherwise specifically provided for herein or by order of the Bankruptcy Court, including in respect of the DIP Facility Claims, postpetition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final Distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

7.6 Disallowance of Claims and Interests

All Claims and Interests of any Entity from which property is sought by the Debtors under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors or the Reorganized Debtors allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if: (a) the Entity, on the one hand, and the Debtors or the Reorganized Debtors, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code; and (b) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

ARTICLE VIII

EFFECT OF CONFIRMATION OF THE PLAN

8.1 Dissolution of the Creditors Committee

The Creditors Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code. On the Effective Date, the Creditors Committee shall be dissolved automatically and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases and this Plan and its implementation, and the retention or employment of the Creditors Committee's attorneys, financial advisors, and other agents shall terminate as of the Effective Date; provided, however, such attorneys and financial advisors shall be entitled to pursue their own Professional Claims and represent the Creditors Committee in connection with the review of and the right to be heard in connection with all Professional Claims.

8.2 Discharge of Claims and Termination of Interests

The Reorganized Debtors shall receive the benefit of any and all discharges under the Plan. On and after the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, the Reorganized Debtors may operate the Debtors' business and may use, acquire or dispose of property and compromise or settle any Claims or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

As discussed in detail in the Disclosure Statement and otherwise provided herein, pursuant to Section 1123 of the Bankruptcy Code, and in consideration for the classification, Distributions, releases and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies related to the contractual, legal and equitable rights that a holder of a Claim or Interest may have in respect of such Claim or Interest. All Distributions made to holders of Allowed Claims in any Class are intended to, and shall be, final.

Except as otherwise provided for herein and effective as of the Effective Date pursuant to section 1141(d) of the Bankruptcy Code: (a) the rights afforded in the Plan and the treatment of all Claims, Interests, and Causes of Action that arose before the Effective Date shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their assets, property, or Estates; (b) the Plan shall bind all holders of Claims and Interests, whether known or unknown, notwithstanding whether any such holders has filed a Proof of Claim or Interest or has failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code, regardless of whether a Proof of Claim or Interest with respect thereto was filed, whether the Claim or Interest is

Allowed, or whether the holder thereof votes to accept the Plan or is entitled to receive a Distribution hereunder; and (d) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

8.3 Releases by the Debtors

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, and Claims, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, the Debtors, on behalf of themselves and their Estates, and the Reorganized Debtors shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (and covenant with such Released Party not to sue or otherwise seek recovery from such Released Party on account of) any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Estates, the Reorganized Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, any act or omission, transaction, agreement or occurrence taking place on or before the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; *provided, however*, that the foregoing provisions of this Section 8.3 shall not waive, release, or otherwise affect (i) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order, (ii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan, including the Exit Facility, (iii) except as otherwise expressly set forth in the Plan, any

objections by the Debtors or the Reorganized Debtors to Claims filed by any Person against any Debtor and/or the Estates, including rights of setoff, refund, recoupment or other adjustments, and (iv) the rights of the Debtors or the Reorganized Debtors to assert any applicable defenses in litigation or other proceedings, including with their employees, or any claim of the Debtors or the Reorganized Debtors, including (but not limited to) cross-claims or counterclaims or other Causes of Action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized Debtors are a party. The releases in this Section 8.3 apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of this Section 8.3, which includes by reference each of the related provisions and definitions contained in the Plan, *and further*, shall constitute the Bankruptcy Court's finding that this Section 8.3 is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released by the Debtor Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates asserting any claim or Cause of Action released pursuant to this Section 8.3.

8.4 Consensual Third Party Releases

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, Claims, and Interests, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, (a) each holder of an Impaired Claim, except those holders that elect to opt-out of the Releases set forth in this Section 8.4, and (b) each Released Party shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (regardless of whether a Released Party is also giving a release under this Section 8.4), and covenant with each Released Party not to sue or otherwise seek recovery from such Released Party on account of, any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such party would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, any action, omission, transaction, agreement or event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized

Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; *provided, however*, that the foregoing provisions of this Section 8.4 shall not waive, release, or otherwise affect (i) any claims, obligations, debts, rights, suits, damages remedies, Causes of Action, and liabilities of such Persons solely to the extent of their right to receive Distributions or other treatment under the Plan; (ii) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order and (iii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan. The releases in this Section 8.4 apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of this Section 8.4, which includes by reference each of the related provisions and definitions contained in the Plan, *and further*, shall constitute the Bankruptcy Court's finding that this Section 8.4 is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released in this Section 8.4; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Persons from asserting any Claim or Cause of Action released pursuant to this Section 8.4.

8.5 Exculpation

Notwithstanding anything contained herein to the contrary, the Released Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, administering or implementing the Plan, or consummating the Plan, the Disclosure Statement, the Plan Supplement, the New Holdco Governance Documents, the Exit Facility Documents, the Restructuring, the Chapter 11 Cases, the issuance, distribution, and/or sale of any shares of New Common Stock or any other security offered, issued, or distributed in connection with the Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the Chapter 11 Cases, the Recognition Proceeding, or the Restructuring; *provided, however*, that each Released Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Person solely to the extent resulting from any such act or omission that is determined

in a Final Order to have constituted gross negligence or willful misconduct; *provided, further*, that the foregoing “Exculpation” shall have no effect on the liability of any Person for acts or omissions occurring after the Confirmation Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Released Parties from liability. Without limiting the generality of the foregoing, the Released Parties shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code. Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim, or Interest shall be permitted to commence or continue any Cause of Action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or before the Effective Date and that has been released or waived pursuant to this Plan.

8.6 Injunction

Except as otherwise provided herein or for obligations issued pursuant hereto, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to Section 8.3 or Section 8.4, discharged pursuant to Section 8.1, or are subject to exculpation pursuant to Section 8.5 are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and the Released Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Persons on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Persons or the property or Estates of such Persons on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Persons or against the property or Estates of such Persons on account of or in connection with or with respect to any such Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.

Nothing in the Plan or the Confirmation Order releases, discharges, precludes, exculpates, or enjoins the enforcement of: (i) any liability or obligation to, or any Claim or cause of action by, a Governmental Unit under any applicable Environmental Law to which any Debtor is subject as and to the extent that it is the owner, lessee, controller, or operator of real property or a mining operation after the Effective Date (whether or not such liability, obligation, Claim or cause of action is based in whole or part on acts or omission prior to the Confirmation Date); (ii) any liability to a Governmental Unit under any applicable Police or Regulatory Law that is not a Claim; (iii) any Claim of a Governmental Unit under any applicable Police or Regulatory Law arising on or after the Effective Date; (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or Reorganized Debtors; (v) any liability to a Governmental Unit under

the Federal Mine Safety & Health Act, any state mine safety law or the BLBA; or (vi) any valid right of setoff or recoupment by any Governmental Unit. Nothing in this Plan or any Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.

8.7 Protection Against Discriminatory Treatment

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against any Reorganized Debtor, or any Person with which a Reorganized Debtor has been or is associated, solely because such Reorganized Debtor was a Debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

8.8 Release of Liens

Except (a) with respect to the Liens securing (i) the DIP Facility to the extent set forth in the Exit Facility Documents and (ii) Other Secured Claims (depending on the treatment of such Claims), or (b) as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and the holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall execute such documents as may be reasonably requested by the Debtors or the Reorganized Debtors, as applicable, to reflect or effectuate such releases, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.

8.9 Reimbursement or Contribution

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (a) such Claim has been adjudicated as noncontingent, or (b) the relevant holder of a Claim has filed a noncontingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

ARTICLE IX

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

9.1 Conditions Precedent to the Effective Date.

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Section 9.3:

(a) a Confirmation Order shall have been entered by the Bankruptcy Court in a form and substance reasonably acceptable to the Debtors, the DIP Facility Consenting Lenders, and the Majority Consenting Noteholders;

(b) the Confirmation Order shall not have been stayed, modified, or vacated on appeal;

(c) the Confirmation Recognition Order shall be entered by the Canadian Court in a form and substance reasonably acceptable to the Debtors, the DIP Facility Consenting Lenders, and the Majority Consenting Noteholders;

(d) the Confirmation Recognition Order shall not have been stayed, modified or vacated on appeal;

(e) all authorizations, consents, regulatory approvals, rulings or documents (if any) that are necessary for the Plan's effectiveness shall have been obtained;

(f) each of the Plan Supplement documents shall have been filed in a form and substance reasonably acceptable to the Debtors, the DIP Facility Consenting Lenders and the Majority Consenting Noteholders;

(g) all respective conditions precedent to consummation of the Exit Facility Agreements shall have been waived or satisfied in accordance with the terms thereof;

(h) the Professional Fee Escrow Account shall have been established and funded with the Professional Fee Amount;

(i) payment in full in Cash of all reasonable and documented fees and expenses of the DIP Facility Lenders, the Consenting Noteholders, the Trustee and the Collateral Trustee incurred by the following advisors to the such Persons in connection with the Restructuring: (i) Paul, Weiss, Rifkind, Wharton & Garrison, LLP, (ii) Kutak Rock LLP, (iii) Fasken Martineau (iv) Houlihan Lokey Capital, Inc. and (v) Thompson Hine LLP;

(j) payment in full in Cash of all reasonable and documented fees and expenses of the Information Officer and its counsel; and

(k) with respect to all documents, applications, and agreements necessary to implement the Plan: (1) all conditions precedent to such documents, applications, and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements; (2) such documents, applications, and agreements shall have been tendered for delivery to the required parties and been approved by any required parties and, to the extent required, filed with and approved by any applicable Governmental Units, regulators, or commissions in accordance with applicable laws; and (3) such documents, applications, and agreements shall have been effected or executed.

9.2 Substantial Consummation

“Substantial Consummation” of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

9.3 Waiver of Conditions Precedent

The Debtors, with the prior written consent of the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, may waive any of the conditions to the Effective Date set forth in Section 9.1 at any time without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan; provided, however, that section 9.1(j) may not be waived without the consent of the Information Officer.

9.4 Effect of Non-Occurrence of Conditions to Consummation

If the Effective Date does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or any claims held by the Debtors; (b) prejudice in any manner the rights of the Debtors or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

9.5 Vacatur of Confirmation Order

If prior to Consummation, the Confirmation Order is vacated pursuant to a Final Order, then except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action; (b) prejudice in any manner the rights of any Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

ARTICLE X

MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

10.1 Modification of Plan

Effective as of the date hereof: (a) the Debtors, with the consent of the Majority Consenting Noteholders, reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan before the entry of the Confirmation Order consistent with the terms set forth herein; and (b) after the entry of the Confirmation Order, the Debtors, with the consent of the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, may, upon order of the Bankruptcy

Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, 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 consistent with the terms set forth herein.

10.2 Effect of Confirmation on Modifications

Entry of the Confirmation Order shall constitute approval of all modifications to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

10.3 Revocation or Withdrawal of Plan

The Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (a) the Plan will be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant hereto will be null and void in all respects; and (c) nothing contained in the Plan shall (1) constitute a waiver or release of any Claims, Interests, or Causes of Action, (2) prejudice in any manner the rights of any Debtor or any other Entity, or (3) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

ARTICLE XI

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim, including the resolution of any request for payment of an Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims;
2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure or Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential

contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) any dispute regarding whether a contract or lease is or was executory or expired; and (d) any dispute regarding rejection damages claims.

4. ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to Distributions under the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, indentures, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;

7. enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of Distributions and the recovery of additional amounts owed by the holder of a Claim or an Interest for amounts not timely repaid pursuant to Section 6.4(a); (b) with respect to the releases, injunctions, and other provisions contained in ARTICLE VIII, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan; or (d) related to section 1141 of the Bankruptcy Code;

11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

13. issue any order in aid of implementation of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

14. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
15. enter an order or Final Decree concluding or closing the Chapter 11 Cases;
16. enforce all orders previously entered by the Bankruptcy Court; and
17. hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Additional Documents

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Reorganized Debtors, as applicable, and all holders of Claims receiving Distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

12.2 Payment of Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930(a) shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first.

12.3 Waiver of Federal Rule of Civil Procedure 62(a)

The Debtors may request that the Confirmation Order include (a) a finding that Fed. R. Civ. P. 62(a) shall not apply to the Confirmation Order, and (b) authorization for the Debtors to consummate the Plan immediately after entry of the Confirmation Order.

12.4 Reservation of Rights; Binding Effect

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

Upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtor, the Reorganized Debtor, and any and all holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements,

compromises, releases, discharges, and injunctions described in the Plan, each Person acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtor.

12.5 Successors and Assigns

The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Person.

12.6 Closing of Chapter 11 Cases and the Canadian Proceeding

The Reorganized Debtors shall, as promptly as practicable after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required to obtain closures of the Chapter 11 Cases under Bankruptcy Rule 3022, any applicable local rules, and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases. The Confirmation Order shall identify a Reorganized Debtor to serve as foreign representative, who shall, as promptly as practicable after the full administration of the Chapter 11 Cases (or at such other time as the Reorganized Debtors determine appropriate), seek to terminate the Canadian Proceeding.

12.7 Service of Documents

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Reorganized Debtors shall be served on:

Reorganized Debtors

Xinergy Corp.
8351 East Walker Springs Lane
Suite 400
Knoxville, TN 37923
Attn: Bernie Mason

Counsel to Debtors

Hunton & Williams LLP
951 East Byrd Street
Richmond, Virginia 23219
Attn.: Tyler P. Brown

United States Trustee

**Office of the United States Trustee
for the Western District of Virginia**
First Campbell Square
210 First Street, Suite 505
Roanoke, VA 24011
Attn: Margaret K. Garber

12.8 Term of Injunctions or Stays

Unless otherwise provided herein or in the Confirmation Order, or in the Confirmation Recognition Order, all injunctions or stays in effect during the Chapter 11 Cases or the Recognition Proceeding (pursuant to sections 105 or 362 of the Bankruptcy Code, any order of the Bankruptcy Court, or the Canadian Court, as applicable) and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan, the Confirmation Order, or the Confirmation Recognition Order shall remain in full force and effect in accordance with their terms.

12.9 Entire Agreement

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

12.10 Plan Supplement Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from <https://www.americanlegal.com/xinergy> or the Bankruptcy Court's website at www.vawb.uscourts.gov or the Information Officer's website at <http://www.insolvencies.deloitte.ca/en-ca/Pages/XinergyLtd.aspx>. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

12.11 Non-Severability

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid and 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 will remain in full force and effect and will 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: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' and the DIP Facility Consenting Lenders' and the Majority Consenting Lenders' consent, consistent with the terms set forth herein; and (c) non-severable and mutually dependent.

[Remainder of page intentionally left blank.]

DATED: October 14, 2015

/s/ Tyler P. Brown

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SCHEDULE 1
(Debtor Entities)

- | | |
|---|---|
| 1. Xinerger Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinerger Corp. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinerger Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinerger of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
| 6. Xinerger Straight Creek, Inc. (0071) | 19. Strata Fuels, LLC (1559) |
| 7. Xinerger Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinerger Land, Inc. (8121) | 21. Raven Crest Mining, LLC (0122) |
| 9. Middle Fork Mining, Inc. (1593) | 22. Brier Creek Coal Company, LLC (9999) |
| 10. Big Run Mining, Inc. (1585) | 23. Bull Creek Processing Company, LLC (0894) |
| 11. Xinerger of Virginia, Inc. (8046) | 24. Raven Crest Minerals, LLC (7746) |
| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

EXHIBIT B

(Redline)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**FIRST AMENDED JOINT CHAPTER 11 PLAN OF XINERGY LTD.
AND ITS SUBSIDIARY DEBTORS AND DEBTORS IN POSSESSION**

HUNTON & WILLIAMS LLP

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Dated: ~~September 16~~October 14, 2015

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

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INTRODUCTION

Xinergy, Ltd. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases jointly propose this Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against and Interests in, as applicable, each Debtor pursuant to the Bankruptcy Code. The Debtors seek to consummate the Restructuring on the Effective Date of the Plan. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in ARTICLE III shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, business, operations, projections, risk factors, a summary and analysis of this Plan, the Restructuring, and certain related matters.

ARTICLE I

DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES

1.1 Defined Terms

1. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors' businesses; (b) Allowed Professional Claims; and (c) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

2. “*Administrative Claims Bar Date*” means the last date by which a request for payment of an Administrative Claim may be filed, which date is thirty (30) days after the Effective Date.

3. “*Administrative Claims Objection Deadline*” means the last day for filing an objection to any request for the payment of an Administrative Claim, which shall be the later of (a) one hundred twenty (120) days after the Effective Date or (b) such other date specified in this Plan or ordered by the Bankruptcy Court.

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

5. “*Allowed*” means, as to a Claim, a Claim allowed under the Plan, under the Bankruptcy Code, or by a Final Order, as applicable.

6. “*Avoidance Actions*” means claims of the Estate arising under sections 544, 547 or 548 of the Bankruptcy Code and, solely to the extent related to the foregoing, section 550 of the Bankruptcy Code.

7. ~~6.~~ “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as may be amended from time to time.

8. ~~7.~~ “*Bankruptcy Court*” means the United States Bankruptcy Court for the Western District of Virginia or such other court having jurisdiction over the Chapter 11 Cases.

9. ~~8.~~ “*Bankruptcy Rules*” means 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, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases and the general, local, and chambers rules of the Bankruptcy Court.

10. ~~9.~~ “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims, and Proofs of Interest, (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief*, approved and entered by the Bankruptcy Court on June 8, 2015 [Doc. No. 276], as the same may be amended from time to time.

11. ~~10.~~ “*BLBA*” means the Federal Black Lung Benefit Act, 30 U.S.C. §§ 901-944.

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

13. ~~12.~~ “*Canadian Court*” means the Ontario Superior Court of Justice (Commercial List) that has recognized ~~these Chapter~~the chapter 11 ~~Cases~~case of Xinergy Ltd. as a “foreign main proceeding” under the ~~*Companies’ Creditors Arrangement Act, R.S.C. 1985 c. C. 36, as amended.*~~CCAA.

14. ~~13.~~ “*Cash*” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

15. ~~14.~~ “*Causes of Action*” means any and all claims, actions, causes of action, choses in action, suits, debts, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims (including all claims and any avoidance, recovery, subordination, or other actions against insiders and/or any other Entities under the Bankruptcy Code) of any of the Debtors and/or the Debtors’ estates, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, that are or may be pending on the Effective Date or commenced by the Reorganized Debtors after the Effective Date against any Entity, based in law or equity, including under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order.

16. “*CCAA*” means *Companies’ Creditors Arrangement Act (Canada) R.S.C. 1985 c. C. 36, as amended.*

17. ~~15.~~ “*Certificate*” means any instrument evidencing a Claim or an Interest.

18. ~~16.~~ “*Chapter 11 Cases*” means the procedurally consolidated Chapter 11 Cases pending for the Debtors in the Bankruptcy Court.

~~17. “*Chapter 15 Cases*” means the foreign recognition proceedings pending for the Debtors in the Canadian Court.~~

19. ~~18.~~ “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.

20. ~~19.~~ “*Claims Register*” means the official register of Claims against and Interests in the Debtors maintained by the Solicitation Agent.

21. ~~20.~~ “*Class*” means a category of holders of Claims or Interests under section 1122(a) of the Bankruptcy Code.

22. ~~21.~~ “*Collateral Trustee*” means Wells Fargo Bank, National Association, as collateral trustee under that certain Collateral Trust Agreement, dated May 6, 2011, between, among others, Xinerger Corp., Xinerger Ltd., and Wells Fargo Bank, National Association, as amended, restated, supplemented or otherwise modified from time to time.

23. ~~22.~~ “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

24. ~~23.~~ “*Confirmation Date*” means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

25. ~~24.~~ “*Confirmation Hearing*” means the hearing(s) before the Bankruptcy Court under section 1128 of the Bankruptcy Code at which the Debtors seek entry of the Confirmation Order.

26. ~~25.~~ “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code and approving the Disclosure Statement, which order shall be in form and substance satisfactory to the Consenting Noteholders and the Debtors.

27. “*Confirmation Recognition Order*” means the order of the Canadian Court recognizing and enforcing the Confirmation Order, which order shall be in form and substance satisfactory to the Consenting Noteholders and the Debtors.

28. ~~26.~~ “*Consenting Noteholders*” means members of the informal committee of Noteholders represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP, Kutak Rock LLP, Fasken Martineau and Houlihan Lokey Capital, Inc., as disclosed in the *Verified Statement of the Informal Prepetition Noteholder Committee and DIP Lenders Pursuant to Bankruptcy Rule 2019* [Doc. No. 176], that support the Plan.

29. ~~27.~~ “*Consummation*” means the occurrence of the Effective Date.

30. ~~28.~~ “*Creditor*” has the meaning set forth in section 101(10) of the Bankruptcy Code.

31. ~~29.~~ “*Creditors Committee*” means the Official Committee of Unsecured Creditors appointed by the United States Trustee in the Debtors’ Chapter 11 Cases, as ~~constituted~~ reconstituted from time to time.

32. ~~30.~~ “*Cure*” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s defaults under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

33. ~~31.~~ “*Cure Objection Deadline*” means the deadline established by the Bankruptcy Court by which non-debtor parties to Executory Contracts and Unexpired Leases that the Debtors propose to assume as part of the Plan must object to (i) the Cure proposed by the Debtors and (ii) the proposed assumption of the Executory Contracts and Unexpired Leases.

34. ~~32.~~ “*Debtors*” means, collectively, each of the entities listed on Schedule 1 hereto.

35. ~~33.~~ “*DIP Facility*” means that certain \$49.0 million debtor-in-possession credit facility provided under the DIP Facility Loan Agreement.

36. ~~34.~~ “*DIP Facility Agent*” means that certain administrative agent under the DIP Facility.

37. ~~35.~~ “*DIP Facility Claims*” means any Claim held by the DIP Facility Lenders or the DIP Facility Agent arising under or related to the DIP Facility Loan Agreement or the DIP Facility Order, including, without limitation, claims for principal, interest, fees and expenses (including professional fees and expenses), penalties, premiums, and other obligations incurred under or in connection with the DIP Facility.

38. ~~36.~~ “*DIP Facility Consenting Lenders*” means DIP Facility Lenders who hold, in the aggregate, more than 50% of the principal amount of the total outstanding borrowings under the DIP Facility held by all DIP Facility Lenders.

39. ~~37.~~ “*DIP Facility Lenders*” means those certain lenders party to the DIP Facility Loan Agreement.

40. ~~38.~~ “*DIP Facility Loan Agreement*” means that certain Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of April 8, 2015, by and among Xinergy Corp., as borrower, certain guarantors thereto, the DIP Facility Lenders, and the DIP Facility Agent, as amended by that certain Incremental Assumption Agreement, Amendment No. 1, and

Waiver, dated as of August 28, 2015, by and among Xinergy Corp., as borrower, certain guarantors thereto, the lenders party thereto from time to time and the DIP Facility Agent

41. ~~39.~~ “*DIP Facility Order*” means, collectively, the interim and final orders and supplemental orders entered by the Bankruptcy Court authorizing the Debtors to enter into the DIP Facility Loan Agreement and access the DIP Facility.

42. ~~40.~~ “*Disclosure Statement*” means the disclosure statement for the Plan, as may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto, to be approved by the Confirmation Order.

43. ~~41.~~ “*Disputed*” means, as to a Claim or an Interest, a Claim or an Interest: (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order, as applicable; and (c) with respect to which a party in interest has filed a Proof of Claim or otherwise made a written request to a Debtor for payment, without any further notice to or action, order, or approval of the Bankruptcy Court.

44. ~~42.~~ “*Distribution*” means any initial or subsequent payment or transfer made under the Plan.

45. ~~43.~~ “*Distribution Agent*” means, as applicable, the Reorganized Debtors or any Person the Reorganized Debtors select to make or to facilitate Distributions in accordance with the Plan.

46. ~~44.~~ “*Distribution Date*” means, except as otherwise set forth herein, the date or dates determined by the Debtors or the Reorganized Debtors, on or after the Effective Date, upon which the Distribution Agent shall make Distributions to holders of Allowed Claims entitled to receive Distributions under the Plan.

47. ~~45.~~ “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Section 9.1 have been satisfied or waived in accordance with Section 9.29.3.

48. ~~46.~~ “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

49. ~~47.~~ “*Environmental Law*” means all federal, state and local statutes, regulations, ordinances and similar provisions having the force or effect of law, all judicial and administrative orders, agreements and determinations and all common law concerning pollution or protection of the environment, or environmental impacts on human health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Water Act; the Clean Air Act; the Emergency Planning and Community Right-to-Know Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Resource Conservation and Recovery Act; the Safe Drinking Water Act; the Surface Mining Control and Reclamation Act; the Toxic Substances Control Act; and any state or local equivalents.

50. ~~48.~~ “*Equity Security*” has the meaning set forth in section 101(16) of the Bankruptcy Code and includes, for the avoidance of doubt, Xinergy Ltd. Common Stock.

51. ~~49.~~ “*Estate*” means the estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor’s Chapter 11 Case.

52. ~~50.~~ “*Executory Contract*” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

53. ~~51.~~ “*Exit Conversion*” means the Debtors’ right, with the consent of the DIP Facility Consenting Lenders, to elect to convert the DIP Facility into the Exit Facility Term Loan, consistent in all respects with the applicable Exit Facility Term Sheet.

54. ~~52.~~ “*Exit Facility*” means ~~that certain credit facility provided under, collectively,~~ the Exit Facility ~~Credit Agreement~~ Term Loan and any additional or alternative financing that may be provided in the form of a term loan or revolving credit facility by one or more of the DIP Facility Lenders or a third party, the material terms of which will be set forth in the applicable Exit Facility Term ~~Sheet~~ Sheet(s).

~~53. “Exit Facility Agent” means the administrative agent for the Exit Facility.~~

55. ~~54.~~ “*Exit Facility Credit Agreement*” means ~~the one or more credit agreement~~ agreements governing the Exit Facility executed by and among reorganized Xinergy Corp., as borrower, and reorganized Xinergy Corp.’s wholly-owned subsidiaries and New Holdco (as applicable), as guarantors, ~~the lender parties~~ and each of the Exit Facility Parties from time to time party thereto, ~~and the Exit Facility Agent~~, to be effective on the Effective Date, which ~~agreement~~ agreement(s) shall be consistent in all respects with the Exit Facility Term ~~Sheet~~ Sheet(s).

56. ~~55.~~ “*Exit Facility Documents*” means, collectively, ~~the each~~ Exit Facility ~~Credit Agreement~~, each other Loan Document (as defined in ~~the such~~ Exit Facility ~~Credit Agreement~~), and all other agreements, documents, and instruments to be delivered or entered into in connection therewith (including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents) each of which shall be (a) satisfactory in form and substance to the DIP Facility Consenting Lenders, and (b) consistent in all respects with the Exit Facility Term ~~Sheet~~ Sheet(s).

57. ~~56.~~ “*Exit Facility Lender*” ~~means each Lender (as defined in the Exit Facility Credit Agreement) that is a party to the Exit Facility Credit Agreement.~~ Parties” means, collectively, any administrative agent, trustee, collateral trustee, or lender to one or more Exit Facility Agreements.

58. ~~57.~~ “*Exit Facility Notes*” ~~means those notes or other debt instruments evidencing the loans under the Exit Facility, which shall be consistent in all respects with~~

~~the Exit Facility Term Sheet.~~Term Loan” means that certain term loan to be provided upon the exercise of the Exit Conversion.

59. ~~58.~~“Exit Facility Term Sheet” means ~~at~~the term sheet providing the material terms ~~for~~of the Exit Facility Term Loan, and, if applicable, the term sheet providing the material terms of such additional or alternative Exit Facility, in each case, to be mutually agreed to by the Debtors, the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, and which shall be filed in the Plan Supplement.

60. ~~59.~~“Final Decree” means the decree contemplated under Bankruptcy Rule 3022.

61. ~~60.~~“Final Order” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction (including the Canadian Court) with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to seek leave to appeal, appeal or seek certiorari has expired and no application for leave to appeal, appeal or petition for certiorari has been timely taken, or as to which any application for leave to appeal or appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice.

62. ~~61.~~“General Unsecured Claim” means any Claim other than an Administrative Claim, a Professional Claim, a Secured Tax Claim, an Other Secured Claim, a Priority Tax Claim, a Priority Non-Tax Claim, an Intercompany Claim, a DIP Facility Claim, a Senior Secured Note Claim, or a Section 510(b) Claim, and shall include Senior Secured Note Deficiency Claims as set forth in Article 3.2(d).

63. ~~62.~~“Governmental Unit” has the meaning set forth in section 101(27) of the Bankruptcy Code.

64. ~~63.~~“Impaired” means, with respect to any Class of Claims, a Claim that is not Unimpaired.

65. ~~64.~~“Indemnification Provisions” means each of the Debtors’ indemnification provisions currently in place whether in the Debtors’ bylaws, certificates of incorporation, other formation documents, board resolutions, contracts or other agreements with current and former directors, officers, managers, employees, attorneys, other professionals, and agents of the Debtors.

66. ~~65.~~“Indenture” means that certain Indenture, dated as of May 6, 2011, by and among Xinerdy Corp., certain parties thereto as guarantors, the Collateral Trustee, and the Trustee, pursuant to which Xinerdy Corp. issued the Senior Secured Notes, as amended, restated, supplemented or otherwise modified from time to time.

67. *“Information Officer” means Deloitte Restructuring Inc. in its capacity as the court-appointed officer in connection with the Recognition Proceeding.*

68. ~~66.~~ *“Initial Distribution Date”* means the Effective Date or as soon thereafter as practicable, but no later than thirty (30) days after the Effective Date.

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

70. ~~68.~~ *“Intercompany Claim”* means any Claim held by a Debtor against another Debtor.

71. ~~69.~~ *“Intercompany Interest”* means any Interest held by one Debtor in any of the other Debtors.

72. ~~70.~~ *“Interest”* means any Equity Security of a Debtor existing immediately prior to the Effective Date.

73. ~~71.~~ *“Lien”* has the meaning set forth in section 101(37) of the Bankruptcy Code.

74. ~~72.~~ *“Majority Consenting Noteholders”* means Consenting Noteholders who hold, in the aggregate, more than 50% of the principal amount of the total outstanding Senior Secured Notes held by all Consenting Noteholders as of the filing of the Plan.

75. ~~73.~~ *“Management Incentive Plan”* means that certain post-Effective Date management incentive plan that may provide for up to 10% of the New Common Stock, on a fully diluted basis, to be reserved for issuance to management of the Reorganized Debtors at the discretion of the New Board after the Effective Date.

76. ~~74.~~ *“New Board”* means New Holdco’s initial board of directors.

77. ~~75.~~ *“New Common Stock”* means the common stock of New Holdco.

78. ~~76.~~ *“New Holdco”* means reorganized Xinergy Corp., or such other Debtor entity as the Debtors select with the consent of the Majority Consenting Noteholders, which will be the Reorganized Debtors’ ultimate parent company upon Consummation of the Plan.

79. ~~77.~~ *“New Holdco Bylaws”* means the bylaws of New Holdco, substantially in the form contained in the Plan Supplement and satisfactory in form and substance to the Majority Consenting Noteholders.

80. ~~78.~~ *“New Holdco Certificate of Incorporation”* means the certificate of incorporation of New Holdco, substantially in the form contained in the Plan Supplement and satisfactory in form and substance to the Majority Consenting Noteholders.

81. ~~79.~~ *“New Holdco Governance Documents”* means, as applicable, the New Holdco Certificate of Incorporation, the New Holdco Bylaws, and the New Holdco

Shareholders Agreement each in form and substance satisfactory to the Majority Consenting Noteholders.

82. ~~80.~~ “*New Holdco Shareholders Agreement*” means that certain shareholders agreement to be filed as part of the Plan Supplement, effective as of the Effective Date, to which all parties receiving New Common Stock (and all persons to whom such parties may sell or transfer their equity in the future and all persons who purchase or acquire equity from the Debtors in future transactions) will be required to become or will be deemed parties, in substantially the form included in the Plan Supplement, which agreement shall be in form and substance satisfactory to the Majority Consenting Noteholders.

83. ~~81.~~ “*Noteholder*” means a holder of the Senior Secured Notes.

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

85. ~~83.~~ “*Other Secured Claim*” means any Secured Claim other than the following: (a) a Secured Tax Claim; (b) a DIP Facility Claim; or (c) a Senior Secured Note Claim. For the avoidance of doubt, “*Other Secured Claims*” includes any Claim arising under, derived from, or based upon any letter of credit issued in favor of one or more Debtors, the reimbursement obligation for which is either secured by a Lien on collateral or is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

86. ~~84.~~ “*Person*” has the meaning set forth in section 101(41) of the Bankruptcy Code.

87. ~~85.~~ “*Petition Date*” means the date on which each of the Debtors filed their petitions for relief commencing the Chapter 11 Cases.

88. ~~86.~~ “*Plan*” means this chapter 11 plan, as it may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof, including the Plan Supplement and all exhibits, supplements, appendices, and schedules, which plan shall be in form and substance satisfactory to the DIP Facility Consenting Lenders and the Majority Consenting Noteholders.

89. “*Plan Securities*” means the New Common Stock to be issued pursuant to the Plan to holders of Claims in Class 3.

90. ~~87.~~ “*Plan Supplement*” means any compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan, which shall be filed by the Debtors no later than 5 business days before the voting deadline or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement, each of which shall be consistent in all respects with, and shall otherwise contain, the terms and conditions set forth on the exhibits attached hereto, where applicable, and, without limiting the foregoing, shall be satisfactory in form and substance to the DIP Facility Consenting Lenders,

the Majority Consenting Noteholders and the Debtors. The Plan Supplement includes, but is not limited to, the following: the New Holdco Shareholders Agreement, the New Holdco Governance Documents, the Rejection Schedule, and the Exit Facility Term ~~Sheet~~Sheet(s).

91. ~~88.~~ “*Police or Regulatory Law*” means any police or regulatory statute or regulation including, but not limited to, Environmental Law, the Federal Mine Safety and Health Act, or the BLBA.

92. ~~89.~~ “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

93. ~~90.~~ “*Pro Rata*” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class.

94. ~~91.~~ “*Professional*” means a Person employed in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Effective Date pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code.

95. ~~92.~~ “*Professional Claim*” means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 328, 330 or 331 of the Bankruptcy Code.

96. ~~93.~~ “*Professional Fee Amount*” means the aggregate amount of Professional Claims and other unpaid fees and expenses Professionals estimate they have incurred or will incur in rendering services to the Debtors prior to and as of the Confirmation Date, which estimates Professionals shall deliver to the Debtors as set forth in Section 2.3 herein.

97. ~~94.~~ “*Professional Fee Escrow Account*” means an interest-bearing account funded by the Debtors with Cash on the Effective Date in an amount equal to the Professional Fee Amount.

98. ~~95.~~ “*Proof of Claim*” means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

99. “*Recognition Proceeding*” means the recognition proceeding under Part IV of the CCAA pending for Xinergy Ltd in the Canadian Court.

100. ~~96.~~ “*Rejection Schedule*” means the schedule of Executory Contracts and Unexpired Leases in the Plan Supplement, as may be amended from time to time, setting forth certain Executory Contracts and Unexpired Leases for rejection as of the Effective Date under section 365 of the Bankruptcy Code.

101. ~~97.~~ “*Released Parties*” means each of the following in its capacity as such: (a) Representatives of the Debtors; (b) the Trustee and the Collateral Trustee; (c) the Consenting Noteholders; (d) the DIP Facility Agent; (e) the DIP Facility Lenders; (f) the members of the

Creditors Committee; ~~and~~ (g) the Information Officer and (h) the Representatives of the Persons set forth in (b) – (g) of this paragraph.

102. “Reorganization Value” means the theoretical enterprise valuation of the Reorganized Debtors through the application of various relative and intrinsic valuation methodologies, as described in the Disclosure Statement.

103. 98. “Reorganized Debtor” means a Debtor, or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the Effective Date.

104. 99. “Representative” means, with respect to any Person, any successor, assign, predecessor, subsidiary, affiliate, current or former officer or director, to the extent serving in such capacity at any point during the Chapter 11 Cases, principal, partner, limited partner, general partner, member, manager, management company, investment manager, employee, agent, attorney, advisor, investment banker, financial advisor, restructuring advisor, consultant, accountant or other Professional of such entity or any of the foregoing.

105. 100. “Restructuring” means the restructuring and reorganization to be effectuated by the Plan.

106. 101. “Restructuring Transactions” means the transactions described in Section 4.16.

107. 102. “Section 510(b) Claim” means any Claim against the Debtors arising from rescission of a purchase or sale of a security of the Debtors or an Affiliate of the Debtors, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

108. 103. “Secured Claim” means a Claim: (a) secured by a Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

109. 104. “Secured Tax Claim” means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

110. 105. “Securities Act” means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a–77aa, applicable Canadian securities legislation, or any similar federal, state, or local law.

111. 106. “Security” has the meaning set forth in section 2(a)(1) of the Securities Act or applicable Canadian securities legislation.

112. ~~**107.**~~ “*Senior Secured Notes*” means the 9.25% Senior Secured Notes Due 2019 issued by Xinerdy Corp. pursuant to the Indenture.

113. “*Senior Secured Note Deficiency Claim*” means that portion of a Claim of a holder of Senior Secured Notes that is unsecured pursuant to section 506(a) of the Bankruptcy Code.

114. ~~**108.**~~ “*Solicitation Agent*” means American Legal Claims Services LLC, the notice, claims, and solicitation agent retained by the Debtors in the Chapter 11 Cases by Bankruptcy Court order.

115. ~~**109.**~~ “*Sureties*” means all sureties that have issued one or more of the Surety Bonds.

116. ~~**110.**~~ “*Surety Bonds*” means each of the surety bonds listed on Exhibit B to the Debtors Motion for Entry of Interim and Final Orders Authorizing (I) Debtors to Continue and Renew Surety Bond Program and (II) Financial Institutions to Honor and Process Related Checks and Transfers [Doc. No. 13].

117. ~~**111.**~~ “*Surety Indemnity Agreements*” means the indemnity agreements entered into by one or more of the Debtors with the Sureties in connection with the issuance of the Surety Bonds, existing and valid as of the Effective Date.

118. ~~**112.**~~ “*Trustee*” means Wells Fargo Bank, National Association, as trustee under the Indenture.

119. ~~**113.**~~ “*Unclaimed Distribution*” means any Distribution under the Plan on account of an Allowed Claim to a holder that has not: (a) accepted a particular Distribution or, in the case of Distributions made by check, negotiated such check; (b) given notice to the Reorganized Debtors of an intent to accept a particular Distribution; (c) responded to the Debtors’ or Reorganized Debtors’ requests for information necessary to facilitate a particular Distribution; or (d) taken any other action necessary to facilitate such Distribution.

120. ~~**114.**~~ “*Unexpired Lease*” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

121. ~~**115.**~~ “*Unimpaired*” means a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

122. ~~**116.**~~ “*Xinerdy Corp.*” means Xinerdy Corp., a corporation existing under the laws of the state of Tennessee and that is a Debtor in these Chapter 11 Cases.

123. ~~**117.**~~ “*Xinerdy Ltd.*” means Xinerdy Ltd., a corporation organized under the laws of Ontario, Canada and that is a Debtor in these Chapter 11 Cases.

124. ~~**118.**~~ “*Xinergy Ltd. Common Stock*” means all of Xinergy Ltd.’s issued and outstanding voting shares of common stock and any options, warrants, or other rights to acquire Xinergy Ltd. Common Stock.

1.2 Rules of Interpretation

For purposes of the Plan: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (b) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (d) unless otherwise specified, all references herein to “Articles” and “Sections” are references to Articles and Sections, respectively, hereof or hereto; (e) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (g) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (i) references to docket numbers of documents filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (j) references to “Proofs of Claim,” “Holders of Claims,” “Disputed Claims,” and the like shall include “Proofs of Interest,” “Holders of Interests,” “Disputed Interests,” and the like as applicable; (k) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable state limited liability company laws; and (l) any immaterial effectuating provisions may be interpreted by the Debtors or the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court, [the Canadian Court](#), or any other Entity.

1.3 Computation of Time

Bankruptcy Rule 9006(a) applies in computing any period of time prescribed or allowed herein.

1.4 Governing Law

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising

hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to conflict of laws principles.

1.5 Reference to Monetary Figures

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

1.6 Reference to the Debtors or the Reorganized Debtors

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Debtors mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

1.7 Controlling Document

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

ARTICLE II

ADMINISTRATIVE AND PRIORITY CLAIMS

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

2.1 Administrative Claims

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors, in consultation with the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, each holder of an Allowed Administrative Claim (other than holders of Professional Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (c) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the holders of such Allowed Administrative Claim; (d) at such

time and upon such terms as may be agreed upon by such ~~Holder~~holder and the Debtors or the Reorganized Debtors, as applicable; or (e) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

All requests for allowance and payment of an Administrative Claim, other than Professional Claims, must be filed with the Court and served on counsel for the Debtors and counsel for the DIP Facility Lenders and the Consenting Noteholders by no later than the Administrative Claims Bar Date. In the event that the Consenting Noteholders or the Debtors or the Reorganized Debtors, if applicable, objects to an Administrative Claim on or before the Administrative Claims Objection Deadline, the Bankruptcy Court shall determine the allowed amount of such Administrative Claim.

2.2 DIP Facility Claims

Except to the extent that a holder of a DIP Facility Claim agrees to less favorable treatment, to the extent the Debtors exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive Exit Facility Term Loans in a face amount equal to the amount of such DIP Facility Claim on the Effective Date, or such other treatment in full satisfaction of the DIP Facility Claims as the Debtors, the DIP Facility Consenting Lenders and the Majority Consenting Noteholders may agree, to be specified in the applicable Exit Facility Term Sheet and to be otherwise governed by the Exit Facility Documents. Unless otherwise agreed to between the Debtors and a holder of a DIP Facility Claim, if the Debtors do not exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive payment in full in Cash on the Effective Date.

2.3 Professional Claims

All requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date must be filed and served in accordance with the Compensation Procedures approved by the Bankruptcy Court no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. The Reorganized Debtors shall pay Professional Claims in Cash in the amount the Bankruptcy Court allows, including from the Professional Fee Escrow Account, which the Reorganized Debtors will establish in trust for the Professionals and fund with Cash equal to the Professional Fee Amount on the Effective Date. Professionals shall deliver to the Debtors their estimates for purposes of the Reorganized Debtors computing the Professional Fee Amount no later than five Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be deemed to limit the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Claims filed with the Bankruptcy Court. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. No funds in the Professional Fee Escrow Account shall be property of the Estates. Any funds remaining in the Professional Fee Escrow Account after all Allowed Professional Claims have been paid will be turned over to New Holdco.

From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

2.4 Priority Tax Claims

Each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive on the Effective Date, or as soon as reasonably practicable thereafter, from the respective Debtor liable for such Allowed Priority Tax Claim, payment in Cash in an amount equal to the amount of such Allowed Priority Tax Claim or, at the Debtors' election and with the consent of the Majority Consenting Noteholders, regular installment payments of a total value, as of the Effective Date, equal to the amount of the Allowed Priority Tax Claim as provided in section 1129(a)(9)(c) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business.

ARTICLE III

CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

3.1 Classification of Claims and Interests

This Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in ARTICLE II, all Claims and Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving Distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

Below is a chart assigning each Class a number for purposes of identifying each separate Class.

Class	Claim or Interest	Status	Voting Rights
1	Priority Non-Tax Claims	Unimpaired	Presumed <u>Deemed</u> to Accept
2	Other Secured Claims	Unimpaired	Presumed <u>Deemed</u> to Accept
3	Senior Secured Note Claims	Impaired	Entitled to Vote

4	General Unsecured Claims	Impaired	{Entitled to Vote}
5	Intercompany Claims and Intercompany Interests	Unimpaired/ Impaired <u>d</u>	Presumed <u>Deemed</u> to Accept/ <u>Deemed</u> <u>to Reject</u>
6	Interests in Xinergy Ltd.	Impaired	Deemed to Reject
7	Section 510(b) Claims (if any)	Impaired	Deemed to Reject

3.2 Treatment of Classes of Claims and Interests

Except to the extent that the Debtors and a holder of an Allowed Claim or Interest, as applicable, agree to a less favorable treatment, with the consent of the Majority Consenting Noteholders, such holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such holder's Allowed Claim or Interest. Unless otherwise indicated, the holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

(a) **Class 1 — Priority Non-Tax Claims**

- (1) *Classification:* Class 1 consists of any Priority Non-Tax Claims against any Debtor.
- (2) *Treatment:* Each holder of an Allowed Class 1 Claim shall receive, as applicable:
 - A. if the Allowed Class 1 Claim is due and payable on or before the Effective Date, Cash in an amount equal to such Allowed Class 1 Claim; or
 - B. if the Allowed Class 1 Claim is not due and payable on or before the Effective Date, Cash in an amount as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.
- (3) *Voting:* Class 1 is Unimpaired. Holders of Allowed Class 1 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan.

(b) **Class 2 — Other Secured Claims**

- (1) *Classification:* Class 2 consists of any Other Secured Claims against any Debtor.

- (2) *Treatment:* Each holder of an Allowed Class 2 Claim shall receive, as the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, determine:
- A. payment in full in Cash of its Allowed Class 2 Claim, including any accrued and unpaid interest, fees, and expenses as may be required to be paid;
 - B. the collateral securing its Allowed Class 2 Claim; or
 - C. such other treatment rendering its Allowed Class 2 Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.
- (3) *Voting:* Class 2 is Unimpaired. Holders of Allowed Class 2 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 2 Claims are not entitled to vote to accept or reject the Plan.

(c) **Class 3 — Senior Secured Note Claims**

- (1) *Classification:* Class 3 consists of Senior Secured Note Claims against any Debtor.

~~(2)~~ *Treatment:* The Senior Secured Note Claims (including the Senior Secured Note Deficiency Claims) shall be Allowed in the aggregate principal amount of \$195,000,000 plus accrued and unpaid interest of \$7,114,791.67 as of the Petition Date, plus, to the extent the following are payable in accordance with the Indenture, fees and expenses (including any prepayment fees and professional fees and expenses), penalties, premiums and other obligations incurred in connection with the Senior Secured Note Claims. The Senior Secured Note Claims are secured claims pursuant to section 506(a) of the Bankruptcy Code to the extent of the midpoint of the Debtors' Reorganization Value less the estimated amount of the DIP Facility Claims and the Other Secured Claims, or approximately \$65,500,000. The remaining portion of the Senior Secured Note Claims are unsecured Senior Secured Note Deficiency Claims, and shall be treated as General Unsecured Claims in Class 4.

Each holder of an Allowed Class 3 Claim shall receive its Pro Rata share of 100% of ~~New Common Stock~~ the Plan Securities on account of the secured portion of its Senior Secured Note Claim.

- (2) ~~(3)~~ *Voting:* Class 3 is Impaired. Holders of Allowed Class 3 Claims are entitled to vote to accept or reject the Plan.

(d) **Class 4 — General Unsecured Claims**

- (1) *Classification:* Class 4 consists of any General Unsecured Claims against any Debtor.

~~(2) *Treatment:* [TBD].~~

(2) *Treatment:* Each holder of an Allowed Class 4 Claim shall receive a cash Distribution equal to the lesser of its Pro Rata share of \$200,000, or four percent (4%) of the Allowed Amount of Class 4 Claims (excluding Senior Secured Note Deficiency Claims) on the Effective Date; provided, however, that if holders of Allowed Class 4 Claims representing at least two-thirds in amount and more than one-half in number of Claims in Class 4 that vote accept the Plan, then holders of Senior Secured Note Deficiency Claims shall agree to waive their right to Distributions on account of such Class 4 Claims. In addition, notwithstanding anything to the contrary in Section 4.15 of the Plan, or any other provision in the Plan, the Estate and the Reorganized Debtors shall waive and release each holder of an Allowed Class 4 Claim from any Avoidance Actions.

- (3) *Voting:* Class 4 is Impaired. ~~Holders of Allowed Class 4 Claims are entitled to vote to accept or reject the Plan.~~

(e) **Class 5 — Intercompany Claims and Intercompany Interests**

- (1) *Classification:* Class 5 consists of any Intercompany Claims and Intercompany Interests.

- (2) *Treatment:* Each holder of an Allowed Class 5 Claim or Interest shall, at the option of the Debtors, with the consent of the Majority Consenting Noteholders, ~~as applicable,~~ have its Allowed Class 5 Claim or Interest ~~(+):~~

(i) canceled; or

(ii) left unaltered and, reinstated or otherwise rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code, (ii) reinstated, or (iii) other treatment rendering its Allowed Class 5 Claim Unimpaired as such holder may agree.

Allowed Class 5 Claims shall not be entitled to any Distribution under the Plan.

- (3) *Voting:* ~~Class 5 is Unimpaired.~~ Holders of Allowed Class 5 Claims and Interests are conclusively ~~presumed~~ deemed to have accepted or rejected the Plan under section 1126(f) or 1126(g) of the Bankruptcy

Code. ~~Holders of Allowed Class 5 Claims and Interests, as applicable. Therefore, such holders~~ are not entitled to vote to accept or reject the Plan.

(f) **Class 6 — Interests in Xinergy Ltd.**

- (1) *Classification:* Class 6 consists of any Interests in Xinergy Ltd., including Xinergy Ltd. Common Stock.
- (2) *Treatment:* All Interests in Xinergy Ltd., including Xinergy Ltd. Common Stock, shall be deemed canceled as of the Effective Date of the Plan and no Distribution shall be made on account of Class 6 Interests.
- (3) *Voting:* Class 6 is Impaired. Holders of Class 6 Interests are deemed to vote against the Plan.

(g) **Class 7 — Section 510(b) Claims (if any)**

- (1) *Classification:* Class 7 consists of any Section 510(b) Claims (if any) against any Debtor.
- (2) *Allowance:* Notwithstanding anything to the contrary herein, a Class 7 Claim, if any such Claim exists, may only become Allowed by Final Order of the Bankruptcy Court. The Debtors are not aware of any valid Class 7 Claim and believe that no such Class 7 Claim exists.
- (3) *Treatment:* Allowed Class 7 Claims, if any, shall be discharged, canceled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and holders of Allowed Section 510(b) Claims shall not receive any Distribution on account of such Allowed Section 510(b) Claims.
- (4) *Voting:* Class 7 is Impaired. Holders (if any) of Allowed Class 7 Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Holders (if any) of Allowed Class 7 Claims are not entitled to vote to accept or reject the Plan.

3.3 Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Unimpaired Claim, including all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

3.4 Elimination of Vacant Classes

Any Class of Claims or Interests that does not have a ~~Holder~~holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court

as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

3.5 Voting Classes; Presumed Acceptance by Non-Voting Classes

If a Class contains Claims eligible to vote and no ~~Holders~~holders of Claims eligible to vote in such Class vote to accept or reject the Plan, the Debtors shall request the Bankruptcy Court to deem the Plan accepted by the ~~Holders~~holders of such Claims in such Class.

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

The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors, with the consent of the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, reserve the right to modify the Plan in accordance with ARTICLE X hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

ARTICLE IV

PROVISIONS FOR IMPLEMENTATION OF THE PLAN

4.1 General Settlement of Claims and Interests

Unless otherwise set forth in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims and Interests, including those arising from, or related to, (i) the Senior Secured Notes, (ii) the total enterprise value of the Debtors' estates and the Reorganized Debtors for allocation purposes under the Plan, and (iii) the treatment of holders of General Unsecured Claims and holders of Interests. In the event that, for any reason, the Confirmation Order is not entered or the Effective Date does not occur, the Debtors, the DIP Facility Lenders and the Consenting Noteholders reserve all of their respective rights with respect to any and all disputes resolved and settled under the Plan. The entry of the Confirmation Order shall constitute the Court's approval of each of the compromises and settlements embodied in the Plan, and the Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, their estates, creditors, and other parties-in-interest, and are fair, equitable, and within the range of reasonableness. The Plan, the Confirmation Order and the Confirmation Recognition Order shall have res judicata, collateral estoppel, and estoppel (judicial, equitable, or otherwise) effect with respect to all matters provided for, or resolved pursuant to, the Plan, the Confirmation Order and/or the Confirmation Recognition Order, including, without

limitation, the release, injunction, exculpation, discharge, and compromise provisions contained in the Plan, the Confirmation Order, and/or the Confirmation Recognition Order.

4.2 New Holdco Equity Interests

All existing Equity Securities in Xinergy Ltd., including without limitation Xinergy Ltd. Common Stock, shall be canceled as of the Effective Date. New Holdco's equity interests shall consist of New Common Stock.

~~New Common Stock~~The Plan Securities shall be issued in accordance with the Plan to: ~~(a) holders of Allowed Claims in Class 3 upon the Effective Date, and (b) holders of equity-based awards.~~ The Plan Securities will be subject to dilution by any awards of New Common Stock subsequently issued under the Management Incentive Plan.

The issuance of New Common Stock is authorized without the need for any further corporate action and without any further action by the Debtors or New Holdco, as applicable. New Holdco's Governance Documents shall authorize the issuance and distribution on the Effective Date of ~~New Common Stock~~Plan Securities to the Distribution Agent for the benefit of holders of Allowed Claims in Class 3. All New Common Stock issued or contemplated under the Plan, including New Common Stock to be issued to holders of equity based awards issued under the Management Incentive Plan, shall be duly authorized, validly issued, fully paid, and non-assessable and the holders of New Common Stock shall be deemed to have accepted the terms of the New Holdco Shareholders Agreement (in their capacity as shareholders of New Holdco) and to be parties thereto without further action or signature. The New Holdco Shareholders Agreement shall be adopted on the Effective Date and shall be deemed to be valid, binding, and enforceable in accordance with its terms, and each holder of New Common Stock shall be bound thereby.

4.3 Exit Facility

The Debtors anticipate the need for exit financing on terms to be determined. The exit financing may involve the conversion of the DIP Facility pursuant to the Exit Conversion. ~~If the Debtors, with the consent of the DIP Facility Consenting Lenders, exercise and such additional or alternative financing, the material terms of which shall be set forth in the Exit Conversion with the DIP Facility Consenting Lenders, or enter into an alternative exit financing arrangement, on~~Term Sheets. On or before the Effective Date, the Debtors shall execute and deliver the Exit Facility ~~Loan Agreement~~Agreements evidencing such exit financing arrangements, which shall become effective and enforceable in accordance with ~~its~~their terms and the Plan. Confirmation of the Plan shall be deemed approval of the Exit Facility and the Exit Facility Documents, and all transactions contemplated thereby, including, without limitation, any supplemental or additional syndication of the Exit Facility, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein, and authorization of the Reorganized Debtors to enter into and execute the Exit Facility Documents and such other documents as may be required to effectuate the treatment afforded by the Exit Facility. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Facility Documents (a) shall be

deemed to be approved, (b) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (c) shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Exit Facility Documents, and (d) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the persons and entities granted such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

4.4 Exemption from Registration Requirements

The offering, issuance, and distribution of any Securities, including ~~New Common Stock~~ the Plan Securities, pursuant to the Plan will be exempt from the registration requirements of section 5 of the Securities Act pursuant to section 1145 of the Bankruptcy Code or any other available exemption from registration under the Securities Act, as applicable. Pursuant to section 1145 of the Bankruptcy Code, ~~New Common Stock issued under the Plan~~ Securities will be freely transferrable under the Securities Act by the recipients thereof, subject to: (a) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act and compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; (b) the restrictions, if any, on the transferability of such Securities and instruments in the New Holdco Shareholders Agreement; and (c) any other applicable regulatory approval.

4.5 Subordination

The allowance, classification, and treatment of all Claims and Interests under the Plan shall conform to and be consistent with the respective contractual, legal, and equitable subordination rights of such Claims and Interests, and the Plan shall recognize and implement any such rights. Pursuant to section 510 of the Bankruptcy Code, except where otherwise provided herein, the Reorganized Debtors reserve the right, with the consent of the Majority Consenting Noteholders, to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

4.6 Vesting of Assets in the Reorganized Debtors; Continued Corporate Existence

Except as otherwise provided herein, or in any agreement, instrument, or other document incorporated in the Plan (including, without limitation, the Exit Facility Documents,

as applicable), on the Effective Date, all property in each Debtor's Estate, all Causes of Action, and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, except as otherwise provided herein, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

Except as otherwise provided herein, the Debtors will, as Reorganized Debtors, continue to exist after the Effective Date as separate legal entities, with all of the powers of such legal entities under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable law. On and after the Effective Date, the Reorganized Debtors may operate their business and may use, acquire, and dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, subject only to those restrictions expressly imposed by the Plan or the Confirmation Order as well as the documents and instruments executed and delivered in connection therewith, including the documents, exhibits, instruments, and other materials comprising the Plan Supplement. Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur from and after the Effective Date for Professional Fee Claims, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to, or the approval of, the Bankruptcy Court.

4.7 Professional Fee Escrow Account

On or prior to the Effective Date, the Debtors shall establish the Professional Fee Escrow Account and fund such account with Cash equal to the Professional Fee Amount. The Professional Fee Escrow Account shall be maintained in trust for the Professionals. The Debtors shall pay Allowed Professional Fee Claims in Cash from the Professional Fee Escrow Account as soon as reasonably practicable after such Claims have been Allowed by the Bankruptcy Court. All amounts remaining in the Professional Fee Escrow Account after all Allowed Professional Fee Claims have been paid in full shall revert to the Reorganized Debtors.

4.8 ~~Cancellation~~Cancellation of Notes, Instruments, Certificates, and Other Documents

On the Effective Date, except to the extent otherwise provided herein, all notes, instruments, Certificates, and other documents evidencing Claims or Interests shall be canceled and the obligations of the Debtors or the Reorganized Debtors and any non-Debtor Affiliates thereunder or in any way related thereto shall be discharged; *provided, however*, that notwithstanding Confirmation or the occurrence of the Effective Date, any credit document or agreement that governs the rights of the holder of a Claim or Interest shall continue in effect solely for purposes of (a) allowing holders of Allowed Claims to receive Distributions under

the Plan and (b) allowing and preserving the rights of the Distribution Agent, as applicable, to make Distributions on account of Allowed Claims as provided herein.

4.9 Corporate Action

Each of the matters provided for by the Plan involving the corporate structure of the Debtors or corporate or related actions to be taken by or required of the Reorganized Debtors, whether taken prior to or as of the Effective Date, shall be deemed authorized and approved in all respects without the need for any further corporate action and without any further action by the Debtors or the Reorganized Debtors, as applicable. Such actions may include: (a) the adoption and filing of the New Holdco Certificate of Incorporation; (b) the adoption of the New Holdco Bylaws and New Holdco Shareholders Agreement; (c) the selection of the directors, managers, and officers for the Reorganized Debtors, including the appointment of the New Board; (d) the authorization, issuance, and distribution of New Common Stock; (e) the adoption or assumption, as applicable, of Executory Contracts or Unexpired Leases; and (f) the entry into the Exit Facility and the execution and delivery of the Exit Facility Documents, as applicable.

4.10 Charter, Bylaws, and New Holdco Shareholders Agreement

The Debtors' respective certificates of incorporation and bylaws (and other formation and constituent documents relating to limited liability companies) shall be amended as may be required to be consistent with the provisions of the Plan, the Exit Facility Documents, as applicable, and the Bankruptcy Code, and such documents and agreements shall be consistent in all respects with, and shall otherwise contain, the terms and conditions set forth in the documents included in the Plan Supplement. The New Holdco Governance Documents shall, among other things: (a) authorize the issuance of the New Common Stock; and (b) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting Equity Securities. After the Effective Date, each Reorganized Debtor may amend and restate its certificate of incorporation and other formation and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of such documents.

4.11 Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the boards of directors and managers thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the Exit Facility Documents, as applicable, and the Equity Securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

4.12 Section 1146(a) Exemption

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Reorganized Debtors; (b) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; (d) the grant of collateral as security for any or all of the Exit Facility; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

4.13 Directors and Officers

In accordance with section 1129(a)(5) of the Bankruptcy Code, the identities and affiliations of the members of the New Board and the officers, directors, and/or managers of each of the Reorganized Debtors, and any Person proposed to serve as an officer of New Holdco, will be identified in the Plan Supplement and shall be designated by the Majority Consenting Noteholders. The members of Xinergy Ltd.'s board of directors are deemed to have resigned as of the Effective Date. On the Effective Date, the New Board will consist of ~~six~~five or seven (~~6~~5 or 7) members, one of whom will be New Holdco's chief executive officer. The remaining directors of the New Board will be selected by the Majority Consenting Noteholders in their sole discretion and thereafter shall be selected pursuant to the director election process set forth in the New Holdco Bylaws. On the Effective Date, unless replaced, the existing officers of the Debtors shall continue to serve in their current capacities for the Reorganized Debtors. From and after the Effective Date, each director, officer, or manager of the Reorganized Debtors shall serve pursuant to the terms of the respective charter and bylaws or other formation and constituent documents, and applicable laws of the respective Reorganized Debtor's jurisdiction of formation.

In connection with the Transaction, the Debtors will secure tail liability coverage for the Debtors' directors and officers effective as of the Effective Date that is consistent with the existing directors and officers liability coverage and is on terms reasonably satisfactory to the Majority Consenting Noteholders.

4.14 Incentive Plans and Employee and Retiree Benefits

Except as otherwise provided herein, on and after the Effective Date, subject to any Final Order and, without limiting the authority provided to the New Board under the Debtors' respective certificates of incorporation, bylaws and other formation and constituent documents, the Reorganized Debtors shall: (a) amend, adopt, assume and/or honor in the ordinary course of business, any contracts, agreements, policies, programs, and plans, in accordance with their respective terms, for, among other things, compensation, including any incentive plans, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits (except with respect to any employee whose employment agreement is rejected on or prior to the Effective Date), retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity from and after the Petition Date; and (b) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date and not otherwise paid pursuant to a Bankruptcy Court order. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

4.15 Preservation of Rights of Action

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against them. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided herein. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Reorganized Debtors reserve and shall retain Causes of Action. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

4.16 Restructuring Transactions

On the Effective Date, the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, may take any actions as may be necessary or appropriate to implement the Restructuring Transactions and effect a corporate restructuring of their respective businesses or a corporate restructuring of the overall corporate structure of the Reorganized Debtors, as and to the extent provided herein, which may include: one or more intercompany mergers, consolidations, amalgamations, arrangements, continuances, restructurings, conversions, dissolutions, transfers, liquidations, or other corporate transactions. Among other Restructuring ~~Transactions~~Transaction to be effectuated, the Debtors ~~will~~may take steps to dissolve, merge or otherwise eliminate Xinergy Ltd. from the corporate structure of the Reorganized Debtors. The actions to effect the Restructuring Transactions may include: (a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable U.S. state or Canadian law; ~~and~~ (d) an application to the Canadian Court under applicable law; and (e) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions.

ARTICLE V

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

5.1 Assumption and Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease (i) is expressly identified on the Rejection Schedule; (ii) has been previously rejected by Debtors by Final Order or has been rejected by the Debtors by order of the Court as of the Effective Date, which order becomes a Final Order after the Effective Date; (iii) is the subject of a motion to reject pending as of the Effective Date; or (iv) is otherwise rejected pursuant to the terms herein, each Executory

Contract and Unexpired Lease shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code. The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to Affiliates. The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions and assignments.

Except as otherwise provided herein or agreed to by the Debtors, the Majority Consenting Noteholders, and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

If a Claim arises from the rejection of any Executory Contract or Unexpired Lease pursuant to Section 5.1, such Claim shall be barred and unenforceable against the Debtors, Reorganized Debtors or their property unless a proof of claim asserting such Claim is filed with the Bankruptcy Court or the Solicitation Agent and served upon the Debtors within thirty (30) days after the Effective Date. Unless otherwise ordered by the Bankruptcy Court, any such rejection damages Claims shall be treated as General Unsecured Claims under the Plan.

5.2 Indemnification

Indemnification Provisions owed to directors, officers, and employees of the Debtors (or the Estates of any of the foregoing) who served or were employed by the Debtors as of or after the Petition Date, excluding claims which have been determined by Final Order to have resulted from gross negligence, willful misconduct or intentional tort, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed pursuant to section 365 of the Bankruptcy Code under the Plan. In addition, and notwithstanding any other term of the Plan, the Indemnification Provisions owed under the Senior Secured Notes shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed pursuant to section 365 of the Bankruptcy Code.

Notwithstanding anything to the contrary in the Plan, following the Effective Date, each of the Reorganized Debtors shall jointly and severally indemnify and hold harmless (i) the DIP Facility Agent, the DIP Facility Lenders, the Exit Facility ~~Agent, the Exit Facility Lenders, Parties,~~ the Trustee, and the Collateral Trustee and (ii) the Representatives of any of the foregoing (the “Indemnitees”) from and against any claims, demands, judgments, actions or Causes of Action, liabilities, obligations, damages, losses, deficiencies, assessments, costs, fines, penalties, interest and expenditures (including the reasonable fees and out-of-pocket expenses of counsel) suffered or incurred by any Indemnitee arising out of, based upon, attributable to or resulting from: (w) the DIP Facility Loan Agreement, or the Exit Facility ~~Credit~~

~~Agreement~~Agreements, (x) any breach or inaccuracy of any representation or warranty made by the Debtors; (y) any breach or failure by the Debtors to perform any of their respective covenants or obligations contained in the Plan; or (z) any legal proceedings relating to or arising out of the Plan or the Chapter 11 Cases, in each case except to the extent of the fraud, gross negligence or willful misconduct of an Indemnitee (as finally determined by a court of competent jurisdiction).

5.3 Surety Bonds

On and as of the Effective Date, each Surety Bond shall be deemed assumed and each Reorganized Debtor party thereto shall pay any and all premiums and other obligations due or that may become due on or after the Effective Date. Additionally, as specified in Section 8.5, each obligation of a Debtor that is covered by the Surety Bonds, including, but not limited to, obligations of the Debtors to various Governmental Units for reclamation of mines, are not being released, discharged, precluded or enjoined by the Plan or the Confirmation Order and shall remain obligations of the applicable Reorganized Debtor as of the Effective Date. Nothing contained in this Section 5.3 shall constitute or be deemed a waiver of any Cause of Action that any Debtor may hold against any Entity. All Proofs of Claim on account of or in respect of any agreement covered by this Section 5.3 shall be deemed withdrawn automatically and without further notice to or action by the Bankruptcy Court. Each Reorganized Debtors shall be deemed to have assumed as of the Effective Date, and shall continue to perform under, any of its Surety Indemnity Agreements. Failure to expressly identify any Surety Indemnity Agreement in any schedule pursuant to Section 5.3 shall not imply the rejection or failure to assume that agreement. To the extent that Restructuring Transactions create new corporate entities or change the relative corporate position of Xinerger Ltd. as parent, then each new corporate entity and/or the new corporate parent will execute a Surety Indemnity Agreement. Notwithstanding any other provision of the Plan, all letters of credit issued to the Sureties as security for a Debtor's obligations under the Surety Bonds or Surety Indemnity Agreements shall remain in place for the benefit of the resulting Reorganized Debtors to secure against any "loss" (as defined in the applicable Surety Indemnity Agreement) incurred by the respective Surety. Notwithstanding any other provisions of the Plan, nothing in the injunction and release provisions of the Plan shall be deemed to apply to the Sureties or the Sureties' claims, nor shall these provisions be interpreted to bar, impair, prevent or otherwise limit the Sureties from exercising their rights under any of the Surety Bonds, letters of credit, Surety Indemnity Agreements, Surface Mining Control and Reclamation Act, or the common law of suretyship.

5.4 Insurance Policies

All of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan. Notwithstanding anything herein to the contrary, as of the Effective Date, the Debtors shall assume (and assign to the Reorganized Debtor if necessary to continue the insurance policies in full force) all of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto. Entry of the Confirmation Order shall constitute the Bankruptcy Court's

approval of the Debtor's foregoing assumption (and assignment, if necessary) of each of the insurance policies.

5.5 Cure of Defaults and Objections to Cure and Assumption

The Debtors or the Reorganized Debtors, as applicable, shall pay Cures, if any, on the Effective Date or as soon as applicable thereafter. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure that differ from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors to a counterparty must be filed with the Solicitation Agent on or before the Cure Objection Deadline. Any such request that is not timely filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the Cure; *provided, however*, that nothing herein shall prevent the Reorganized Debtors from paying any Cure despite the failure of the relevant counterparty to file such request for payment of such Cure. The Reorganized Debtors also may settle any Cure without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be filed with the Bankruptcy Court by the Cure Objection Deadline. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' or Reorganized Debtors', as applicable, first scheduled omnibus hearing for which such objection is timely filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

If there is a dispute regarding Cure, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of Cure shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, and the counterparty to the Executory Contract or Unexpired Lease.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

5.6 Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into after the Petition Date by any Debtor and any Executory Contracts and Unexpired Leases assumed by any Debtor may be performed by the applicable Reorganized Debtor in the ordinary course of business.

5.7 Reservation of Rights

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtors or any other party that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption, the Debtors or the Reorganized Debtors, as applicable, shall have forty-five (45) days following entry of a Final Order resolving such dispute to determine whether to assume, assign or reject the related contract or lease, if applicable.

ARTICLE VI

PROVISIONS GOVERNING DISTRIBUTIONS

6.1 Distributions on Account of Claims Allowed as of the Effective Date

Except as otherwise provided herein, a Final Order, or as otherwise agreed to by the Debtors or the Reorganized Debtors, as the case may be, and the holder of the applicable Claim or Interest, on the Initial Distribution Date, the Distribution Agent shall make Distributions under the Plan on account of Claims Allowed on or before the Effective Date, subject to the Reorganized Debtors' right to object to Claims; *provided, however*, that (1) Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice, and (2) Allowed Priority Tax Claims shall be paid in accordance with Section 2.4. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim or as may be due and payable under applicable non-bankruptcy law in the ordinary course of business or, at the Debtors' election and with the consent of Majority Consenting Noteholders, through regular installment payments of a total value, as of the Effective Date, equal to the amount of the Allowed Priority Tax Claim as provided in section 1129(a)(9)(c) of the Bankruptcy Code. A Distribution Date shall occur no less frequently than once in every 30-day period after the Effective Date, as necessary, in the Reorganized Debtors' sole discretion.

6.2 Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the relevant parties, no partial payments and no partial Distributions shall be made with respect to a Disputed Claim until such Claim becomes an Allowed Claim.

6.3 Delivery of Distributions

(a) Record Date for Distributions to Holders of Claims

On the Confirmation Date, the Claims Register shall be closed and the Distribution Agent shall be authorized and entitled to recognize only those record holders, if any, listed on the Claims Register as of the close of business on the Confirmation Date. Notwithstanding the foregoing, if a Claim is transferred and the Debtors have been notified in writing of such transfer no later than 10 days before the Effective Date, the Distribution Agent shall make Distributions to the transferee (rather than the transferor) only to the extent practical and in any event only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor. The Distribution Agent and the Reorganized Debtors may, but shall have no obligation to, recognize transfers occurring after 10 days before the Effective Date.

(b) Distribution Process

The Distribution Agent shall make all Distributions required under the Plan. Except as otherwise provided herein, and notwithstanding any authority to the contrary, Distributions to holders of Allowed Claims, including Claims that become Allowed after the Effective Date, shall be made to beneficial holders of record as of the Confirmation Date by the Distribution Agent: (1) to the address of such holder as set forth in the books and records of the applicable Debtor (or if the Debtors have been notified in writing, on or before the date that is 10 days before the Effective Date, of a change of address, to the changed address); (2) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004, if no address exists in the Debtors' books and records, no Proof of Claim has been filed and the Distribution Agent has not received a written notice of a change of address on or before the date that is 10 days before the Effective Date; or (3) on any counsel that has appeared in the Chapter 11 Cases on the holder's behalf. Notwithstanding anything to the contrary in the Plan, including this Section 6.3, Distributions under the Plan to holders of Senior Secured Note Claims shall be made to, or to Entities at the direction of, the Trustee and the Collateral Trustee in accordance with the terms of the Plan and the Indenture. The Debtors, the Reorganized Debtors, and the Distribution Agent, as applicable, shall not incur any liability whatsoever on account of any Distributions under the Plan.

(c) Accrual of Dividends and Other Rights

For purposes of determining the accrual of Distributions or other rights after the Effective Date, the New Holdco Interests shall be deemed distributed as of the Effective Date regardless of the date on which it is actually issued, dated, authenticated, or distributed; *provided, however*, the Reorganized Debtors shall not pay any such Distributions or distribute

such other rights, if any, until after Distributions of the New Holdco Interests actually take place.

(d) Compliance Matters

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

(e) Foreign Currency Exchange Rate

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition on the Petition Date, for all purposes under the Plan, including voting, allowance and distribution.

(f) Fractional, Undeliverable, and Unclaimed Distributions

- (1) *Fractional Distributions.* Whenever any Distribution of fractional shares of New Common Stock would otherwise be required pursuant to the Plan, the actual Distribution shall reflect a rounding of such fraction to the nearest share (up or down), with half shares or less being rounded down. Whenever any payment of Cash of a fraction of a dollar pursuant to the Plan would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down.
- (2) *Undeliverable Distributions.* If any Distribution to a holder of an Allowed Claim is returned to the Distribution Agent as undeliverable, no further Distributions shall be made to such holder unless and until the Distribution Agent is notified in writing of such holder's then-current address or other necessary information for delivery, at which time all currently due missed Distributions shall be made to such holder on the next Distribution Date. Undeliverable Distributions shall remain in the possession of the Reorganized Debtors until such time as a Distribution becomes deliverable, or such Distribution reverts to the Reorganized

Debtors or is canceled pursuant to Section 6.3(f)(3), and shall not be supplemented with any interest, dividends, or other accruals of any kind.

- (3) *Reversion.* Any Distribution under the Plan that is an Unclaimed Distribution for a period of six months after Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert in the applicable Reorganized Debtor and, to the extent such Unclaimed Distribution is New Common Stock, shall be deemed canceled. Upon such revesting, the Claim or Interest of any holder or its successors with respect to such property shall be canceled, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws, or any provisions in any document governing the Distribution that is an Unclaimed Distribution, to the contrary.
- (4) *De Minimis Distributions.* The Reorganized Debtors shall not be required to, but may in their sole and absolute discretion, make Distributions of Cash in an amount less than \$50 to any holder of an Allowed Claim. Any Allowed Claims affected by the Section 6.3(f)(4) shall be discharged and forever barred from assertion against the Debtors, the Reorganized Debtors, and their respective property or Estates.

(g) **Surrender of Canceled Instruments or Securities**

On the Effective Date, each holder of a Certificate shall be deemed to have surrendered such Certificate to the Distribution Agent. Such Certificate shall be canceled solely with respect to the Debtors and the Reorganized Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such Certificate.

6.4 Claims Paid or Payable by Third Parties

(a) **Maximum Distribution**

An Allowed Claim that receives (i) Distributions in the Allowed amount of such Claim or (ii) Distributions that combined with Distributions or other consideration provided on the Allowed Claim equal the Allowed amount of such Claim shall, in each case be deemed satisfied in full as to such Allowed Claim, and in no event shall an Allowed Claim receive Distributions in excess of the Allowed amount of such Claim.

(b) **Claims Paid by Third Parties**

The Reorganized Debtors may, in their sole discretion, request that a holder of an Allowed Claim certify in writing and provide evidence reasonably acceptable to the Reorganized Debtors to confirm whether: (i) the holder of such Claim has received payment in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor; or (ii)

such holder has been notified by or on behalf of a third party of any future Distributions or payment anticipated or estimated to be made on account of such Claim from such third party.

If (i) the Reorganized Debtors determine, based on the foregoing, that an Allowed Claim has been satisfied in full in accordance with Section 6.4(a) of the Plan, then unless the Bankruptcy Court orders otherwise, no Distributions shall thereafter be made on account of such Allowed Claim, or (ii) a holder of an Allowed Claim does not comply with this section, then unless the Bankruptcy Court orders otherwise, the Reorganized Debtors shall not be required to make Distributions on account of such Allowed Claim, *provided* that nothing herein shall preclude a holder of an Allowed Claim from challenging the determination of the Reorganized Debtors in the Bankruptcy Court.

(c) Rights of Reimbursement

The Reorganized Debtors' rights to assert or prosecute claims for reimbursement, indemnification, recoupment or any other similar right, including, without limitation, any right to setoff with respect to any of the foregoing, against any entity on account of Distributions made to the holders of Allowed Claims, shall be fully preserved to the fullest extent permitted by applicable law.

(d) Claims Payable by Insurance Carriers

No Distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), such Claim shall be disallowed and expunged to the extent of any agreed upon satisfaction in accordance with this section after notice to such Holder of an Allowed Claim and an opportunity for a hearing.

(e) Applicability of Insurance Policies

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

6.5 Setoffs

Except with respect to the DIP Facility Claims, or as otherwise expressly provided for herein, each Reorganized Debtor, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the holder of a Claim, may set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Allowed Claim (before any Distribution is made on account of such Allowed Claim), any Claims, rights, and Causes of Action of any nature that such Debtor

or Reorganized Debtor, as applicable, may hold against the holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); *provided, however*, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action that such Reorganized Debtor may possess against such holder. In no event shall any holder of Claims be entitled to set off any Claim against any Claim, right, or Cause of Action of the Debtor or Reorganized Debtor, as applicable, unless such holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

6.6 Allocation Between Principal and Accrued Interest

Except as otherwise provided herein, the aggregate consideration paid to holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to the interest, if any, on such Allowed Claim accrued through the Effective Date.

ARTICLE VII

PROCEDURES FOR RESOLVING DISPUTED CLAIMS

7.1 Disputed Claims Process

Except as otherwise provided herein, if an Entity files a Proof of Claim and the Debtors, with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, do not determine, and without the need for notice to or action, order, or approval of the Bankruptcy Court, that the Claim subject to such Proof of Claim is Allowed, such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in this ARTICLE VII. Except as otherwise provided herein, all Proofs of Claim not filed in accordance with the requirements set forth in the Bar Date Order shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.

7.2 Prosecution of Objections to Claims and Interests

Except insofar as a Claim or Interest is Allowed under the Plan, the Debtors, the Reorganized Debtors, or any other party in interest shall be entitled to object to the Claim or Interest. Any objections to Claims and Interests shall be served and filed on or before the 60th day after the Effective Date or by such later date as ordered by the Bankruptcy Court. All Claims and Interests not objected to by the end of such 60-day period shall be deemed Allowed unless such period is extended upon approval of the Bankruptcy Court. For the

avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Section 4.15.

7.3 Estimation of Claims

The Debtors or the Reorganized Debtors may at any time, request that the Court estimate any contingent, unliquidated, or Disputed Claim, to the extent permitted by the Bankruptcy Code and Bankruptcy Rules, regardless of whether the Debtors, the Reorganized Debtors or any other Person has previously objected to such Claim. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during proceedings concerning any objection to such Claim and any appeal thereof. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, such estimated amount may constitute either (a) the Allowed amount of such Claim, (b) the amount on which a reserve is to be calculated for purposes of any reserve requirement in the Plan, or (c) a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Reorganized Debtors may elect to object to ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

7.4 Recoupment

In no event shall any holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or Interest or otherwise that such holder asserts, has, or intends to preserve any right of recoupment.

7.5 No Interest

Unless otherwise specifically provided for herein or by order of the Bankruptcy Court, including in respect of the DIP Facility Claims, postpetition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final Distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

7.6 Disallowance of Claims and Interests

All Claims and Interests of any Entity from which property is sought by the Debtors under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors or the Reorganized Debtors allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if: (a) the Entity, on the one hand, and the Debtors or the Reorganized Debtors, as applicable, on the

other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code; and (b) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

ARTICLE VIII

EFFECT OF CONFIRMATION OF THE PLAN

8.1 Dissolution of the Creditors Committee

The Creditors Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code. On the Effective Date, the Creditors Committee shall be dissolved automatically and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases and this Plan and its implementation, and the retention or employment of the Creditors Committee's attorneys, financial advisors, and other agents shall terminate as of the Effective Date; provided, however, such attorneys and financial advisors shall be entitled to pursue their own Professional Claims and represent the Creditors Committee in connection with the review of and the right to be heard in connection with all Professional Claims.

8.2 Discharge of Claims and Termination of Interests

The Reorganized Debtors shall receive the benefit of any and all discharges under the Plan. On and after the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, the Reorganized Debtors may operate the Debtors' business and may use, acquire or dispose of property and compromise or settle any Claims or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

As discussed in detail in the Disclosure Statement and otherwise provided herein, pursuant to Section 1123 of the Bankruptcy Code, and in consideration for the classification, Distributions, releases and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies related to the contractual, legal and equitable rights that a ~~Holder~~holder of a Claim or Interest may have in respect of such Claim or Interest. All Distributions made to ~~Holders~~holders of Allowed Claims in any Class are intended to, and shall be, final.

Except as otherwise provided for herein and effective as of the Effective Date pursuant to section 1141(d) of the Bankruptcy Code: (a) the rights afforded in the Plan and the treatment of all Claims, Interests, and Causes of Action that arose before the Effective Date shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their assets, property, or Estates; (b) the Plan shall bind all holders of Claims and Interests, whether known or unknown, notwithstanding whether any such holders has

filed a Proof of Claim or Interest or has failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code, regardless of whether a Proof of Claim or Interest with respect thereto was filed, whether the Claim or Interest is Allowed, or whether the ~~Holder~~[holder](#) thereof votes to accept the Plan or is entitled to receive a Distribution hereunder; and (d) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

8.3 Releases by the Debtors

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, and Claims, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, the Debtors, on behalf of themselves and their Estates, and the Reorganized Debtors shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (and covenant with such Released Party not to sue or otherwise seek recovery from such Released Party on account of) any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Estates, the Reorganized Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, any act or omission, transaction, agreement or occurrence taking place on or before the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the [Recognition Proceeding](#), the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other

documents, or the solicitation of votes with respect to the Plan; *provided, however*, that the foregoing provisions of this Section 8.3 shall not waive, release, or otherwise affect (i) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order, (ii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan, including the Exit Facility, (iii) except as otherwise expressly set forth in the Plan, any objections by the Debtors or the Reorganized Debtors to Claims filed by any Person against any Debtor and/or the Estates, including rights of setoff, refund, recoupment or other adjustments, and (iv) the rights of the Debtors or the Reorganized Debtors to assert any applicable defenses in litigation or other proceedings, including with their employees, or any claim of the Debtors or the Reorganized Debtors, including (but not limited to) cross-claims or counterclaims or other Causes of Action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized Debtors are a party. The releases in this Section 8.3 apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of this Section 8.3, which includes by reference each of the related provisions and definitions contained in the Plan, *and further*, shall constitute the Bankruptcy Court's finding that this Section 8.3 is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released by the Debtor Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates asserting any claim or Cause of Action released pursuant to this Section 8.3.

8.4 Consensual Third Party Releases

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, Claims, and Interests, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, (a) each holder of an Impaired Claim, except those holders that ~~(i) do not vote or vote to reject the Plan and (ii)~~ elect to opt-out of the Releases set forth in this Section 8.4, and (b) each Released Party shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (regardless of whether a Released Party is also giving a release under this Section 8.4), and covenant with each Released Party not to sue or otherwise seek recovery from such Released Party on account of, any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever,

including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such party would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, any action, omission, transaction, agreement or event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; *provided, however*, that the foregoing provisions of this Section 8.4 shall not waive, release, or otherwise affect (i) any claims, obligations, debts, rights, suits, damages remedies, Causes of Action, and liabilities of such Persons solely to the extent of their right to receive Distributions or other treatment under the Plan; (ii) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order and (iii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan. The releases in this Section 8.4 apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of this Section 8.4, which includes by reference each of the related provisions and definitions contained in the Plan, *and further*, shall constitute the Bankruptcy Court's finding that this Section 8.4 is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released in this Section 8.4; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Persons from asserting any Claim or Cause of Action released pursuant to this Section 8.4.

8.5 Exculpation

Notwithstanding anything contained herein to the contrary, the Released Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, administering or implementing the Plan, or consummating the Plan, the Disclosure Statement, the Plan

Supplement, the New Holdco Governance Documents, the Exit Facility Documents, the Restructuring, the Chapter 11 Cases, the issuance, distribution, and/or sale of any shares of New Common Stock or any other security offered, issued, or distributed in connection with the Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the Chapter 11 Cases, the Recognition Proceeding, or the Restructuring; *provided, however*, that each Released Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement; *provided, further*, that the foregoing “Exculpation” shall have no effect on the liability of any Person solely to the extent resulting from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; *provided, further*, that the foregoing “Exculpation” shall have no effect on the liability of any Person for acts or omissions occurring after the Confirmation Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Released Parties from liability. Without limiting the generality of the foregoing, the Released Parties shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code. Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim, or Interest shall be permitted to commence or continue any Cause of Action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or before the Effective Date and that has been released or waived pursuant to this Plan.

8.6 Injunction

Except as otherwise provided herein or for obligations issued pursuant hereto, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to Section 8.3 or Section 8.4, discharged pursuant to Section 8.1, or are subject to exculpation pursuant to Section 8.5 are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and the Released Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Persons on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Persons or the property or Estates of such Persons on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Persons or against the property or Estates of such Persons on account of or in connection with or with respect to any such Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date; and (e) commencing or continuing in any manner any action or other proceeding

of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.

Nothing in the Plan or the Confirmation Order releases, discharges, precludes, exculpates, or enjoins the enforcement of: (i) any liability or obligation to, or any Claim or cause of action by, a Governmental Unit under any applicable Environmental Law to which any Debtor is subject as and to the extent that it is the owner, lessee, controller, or operator of real property or a mining operation after the Effective Date (whether or not such liability, obligation, Claim or cause of action is based in whole or part on acts or omission prior to the Confirmation Date); (ii) any liability to a Governmental Unit under any applicable Police or Regulatory Law that is not a Claim; (iii) any Claim of a Governmental Unit under any applicable Police or Regulatory Law arising on or after the Effective Date; (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or Reorganized Debtors; (v) any liability to a Governmental Unit under the Federal Mine Safety & Health Act, any state mine safety law or the BLBA; or (vi) any valid right of setoff or recoupment by any Governmental Unit. Nothing in this Plan or any Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.

8.7 Protection Against Discriminatory Treatment

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against any Reorganized Debtor, or any Person with which a Reorganized Debtor has been or is associated, solely because such Reorganized Debtor was a Debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

8.8 Release of Liens

Except (a) with respect to the Liens securing (i) the DIP Facility to the extent set forth in the Exit Facility Documents and (ii) Other Secured Claims (depending on the treatment of such Claims), or (b) as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and the holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall execute such documents as may be reasonably requested by the Debtors or the Reorganized Debtors, as applicable, to reflect or effectuate such releases, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.

8.9 Reimbursement or Contribution

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (a) such Claim has been adjudicated as noncontingent, or (b) the relevant holder of a Claim has filed a noncontingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

ARTICLE IX

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

9.1 Conditions Precedent to the Effective Date.

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Section 9.3:

(a) a Confirmation Order shall have been entered by the Bankruptcy Court in a form and substance reasonably acceptable to the Debtors, the DIP Facility Consenting Lenders, and the Majority Consenting Noteholders;

(b) the Confirmation Order shall not have been stayed, modified, or vacated on appeal;

(c) ~~an order recognizing~~ the Confirmation Recognition Order ~~in the Chapter 15 Proceedings~~ shall be entered by the Canadian Court in a form and substance reasonably acceptable to the Debtors, the DIP Facility Consenting Lenders, and the Majority Consenting Noteholders;

(d) the Confirmation Recognition Order shall not have been stayed, modified or vacated on appeal;

(e) ~~(d)~~ all authorizations, consents, regulatory approvals, rulings or documents (if any) that are necessary for the Plan's effectiveness shall have been obtained;

(f) ~~(e)~~ each of the Plan Supplement documents shall have been filed in a form and substance reasonably acceptable to the Debtors, the DIP Facility Consenting Lenders and the Majority Consenting Noteholders;

~~(f) if the Debtors, with the consent of the DIP Facility Consenting Lenders and the Majority Consenting Lenders, exercise the Exit Conversion, all respective conditions precedent to consummation of the Exit Facility Loan Agreement shall have been waived or satisfied in accordance with the terms thereof;~~

(g) all respective conditions precedent to consummation of the Exit Facility Agreements shall have been waived or satisfied in accordance with the terms thereof;

(h) ~~(g)~~ the Professional Fee Escrow Account shall have been established and funded with the Professional Fee Amount;

(i) ~~(h)~~ payment in full in Cash of all reasonable and documented fees and expenses of the DIP Facility Lenders, the Consenting Noteholders, the Trustee and the Collateral Trustee incurred by the following advisors to the such Persons in connection with the Restructuring: (i) Paul, Weiss, Rifkind, Wharton & Garrison, LLP, (ii) Kutak Rock LLP, (iii) Fasken Martineau (iv) Houlihan Lokey Capital, Inc. and (v) Thompson Hine LLP; ~~and~~

(j) payment in full in Cash of all reasonable and documented fees and expenses of the Information Officer and its counsel; and

(k) ~~(i)~~ with respect to all documents, applications, and agreements necessary to implement the Plan: (1) all conditions precedent to such documents, applications, and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements; (2) such documents, applications, and agreements shall have been tendered for delivery to the required parties and been approved by any required parties and, to the extent required, filed with and approved by any applicable Governmental Units, regulators, or commissions in accordance with applicable laws; and (3) such documents, applications, and agreements shall have been effected or executed.

9.2 Substantial Consummation

“Substantial Consummation” of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

9.3 Waiver of Conditions Precedent

The Debtors, with the prior written consent of the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, may waive any of the conditions to the Effective Date set forth in Section 9.1 at any time without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm and consummate the Plan; provided, however, that section 9.1(j) may not be waived without the consent of the Information Officer.

9.4 Effect of Non-Occurrence of Conditions to Consummation

If the Effective Date does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or

release of any Claims, Interests, or any claims held by the Debtors; (b) prejudice in any manner the rights of the Debtors or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

9.5 Vacatur of Confirmation Order

If prior to Consummation, the Confirmation Order is vacated pursuant to a Final Order, then except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action; (b) prejudice in any manner the rights of any Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

ARTICLE X

MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

10.1 Modification of Plan

Effective as of the date hereof: (a) the Debtors, with the consent of the Majority Consenting Noteholders, reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan before the entry of the Confirmation Order consistent with the terms set forth herein; and (b) after the entry of the Confirmation Order, the Debtors, with the consent of the DIP Facility Consenting Lenders and the Majority Consenting Noteholders, or the Reorganized Debtors, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, 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 consistent with the terms set forth herein.

10.2 Effect of Confirmation on Modifications

Entry of the Confirmation Order shall constitute approval of all modifications to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

10.3 Revocation or Withdrawal of Plan

The Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (a) the Plan will be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant hereto will be null and void in all respects; and (c) nothing contained in the Plan shall (1) constitute a waiver or release of any Claims, Interests, or Causes of Action, (2) prejudice in

any manner the rights of any Debtor or any other Entity, or (3) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

ARTICLE XI

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim, including the resolution of any request for payment of an Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims;
2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure or Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) any dispute regarding whether a contract or lease is or was executory or expired; and (d) any dispute regarding rejection damages claims.
4. ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to Distributions under the Plan;
5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;
6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, indentures, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;
7. enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of Distributions and the recovery of additional amounts owed by the holder of a Claim or an Interest for amounts not timely repaid pursuant to Section 6.4(a); (b) with respect to the releases, injunctions, and other provisions contained in ARTICLE VIII, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan; or (d) related to section 1141 of the Bankruptcy Code;

11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

13. issue any order in aid of implementation of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

14. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

15. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

16. enforce all orders previously entered by the Bankruptcy Court; and

17. hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Additional Documents

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Reorganized Debtors, as applicable, and all holders of Claims receiving Distributions pursuant to the Plan and all other

parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

12.2 Payment of Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930(a) shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first.

12.3 Waiver of Federal Rule of Civil Procedure 62(a)

The Debtors may request that the Confirmation Order include (a) a finding that Fed. R. Civ. P. 62(a) shall not apply to the Confirmation Order, and (b) authorization for the Debtors to consummate the Plan immediately after entry of the Confirmation Order.

12.4 Reservation of Rights; Binding Effect

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court ~~shall enter~~enters the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

Upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtor, the Reorganized Debtor, and any and all holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Person acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtor.

12.5 Successors and Assigns

The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Person.

12.6 Closing of Chapter 11 Cases and the Canadian Proceeding

The Reorganized Debtors shall, as promptly as practicable after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required to obtain closures of the Chapter 11 Cases under Bankruptcy Rule 3022, any applicable local rules, and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases. The Confirmation Order shall identify a Reorganized Debtor to serve

as foreign representative, who shall, as promptly as practicable after the full administration of the Chapter 11 Cases (or at such other time as the Reorganized Debtors determine appropriate), seek to terminate the Canadian Proceeding.

12.7 ~~12.6~~ Service of Documents

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Reorganized Debtors shall be served on:

Reorganized Debtors	Xinergy Corp. 8351 East Walker Springs Lane Suite 400 Knoxville, TN 37923 Attn: Bernie Mason
Counsel to Debtors	Hunton & Williams LLP 951 East Byrd Street Richmond, Virginia 23219 Attn.: Tyler P. Brown
United States Trustee	Office of the United States Trustee for the Western District of Virginia First Campbell Square 210 First Street, Suite 505 Roanoke, VA 24011 Attn: Margaret K. Garber

12.8 ~~12.7~~ Term of Injunctions or Stays

Unless otherwise provided herein or in the Confirmation Order, or in the Confirmation Recognition Order, all injunctions or stays in effect during the Chapter 11 Cases or the Recognition Proceeding (pursuant to sections 105 or 362 of the Bankruptcy Code ~~or~~, any order of the Bankruptcy Court, or the Canadian Court, as applicable) and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan ~~or~~, the Confirmation Order, or the Confirmation Recognition Order shall remain in full force and effect in accordance with their terms.

12.9 ~~12.8~~ Entire Agreement

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

12.10 ~~12.9~~ Plan Supplement Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from <https://www.americanlegal.com/xinergy> or the Bankruptcy Court's website at ~~www.vawb.uscourts.gov~~ www.vawb.uscourts.gov or the Information Officer's website at <http://www.insolvencies.deloitte.ca/en-ca/Pages/XinergyLtd.aspx>. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

12.11 ~~12.10~~ Non-Severability

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid and 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 will remain in full force and effect and will 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: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' and the DIP Facility Consenting Lenders' and the Majority Consenting Lenders' consent, consistent with the terms set forth herein; and (c) non-severable and mutually dependent.

[Remainder of page intentionally left blank.]

DATED: ~~September 16~~October 14, 2015

/s/ Tyler P. Brown

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
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hlong@hunton.com
jpaget@hunton.com

*Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1
(Debtor Entities)

- | | |
|---|---|
| 1. Xinerger Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinerger Corp. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinerger Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinerger of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
| 6. Xinerger Straight Creek, Inc. (0071) | 19. Strata Fuels, LLC (1559) |
| 7. Xinerger Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinerger Land, Inc. (8121) | 21. Raven Crest Mining, LLC (0122) |
| 9. Middle Fork Mining, Inc. (1593) | 22. Brier Creek Coal Company, LLC (9999) |
| 10. Big Run Mining, Inc. (1585) | 23. Bull Creek Processing Company, LLC (0894) |
| 11. Xinerger of Virginia, Inc. (8046) | 24. Raven Crest Minerals, LLC (7746) |
| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

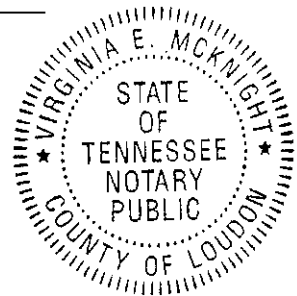
Summary report: Litéra® Change-Pro TDC 7.5.0.127 Document comparison done on 10/14/2015 8:32:03 PM	
Style name: H&W Standard	
Intelligent Table Comparison: Active	
Original filename: 56036485_19.docx	
Modified filename: 57593969_15.docx	
Changes:	
<u>Add</u>	354
Delete	336
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	690

TAB G

This is Exhibit "G" referred to in the Affidavit of Michael R.
Castle sworn January 26, 2016

Virginia E. McKnight

A Notary Public for the State of Tennessee



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE *Mr. J. R.*
JUSTICE *PEONY*

)
)
)

MONDAY, THE 26th
DAY OF OCTOBER, 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

RECOGNITION ORDER

THIS MOTION, made by Xinergy Ltd. (the "**Debtor**") in its capacity as the foreign representative for itself, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form attached as Schedule A to the Notice of Motion of the Debtor dated October 20, 2015 (the "**Notice of Motion**"), among other things, recognizing certain orders granted by the United States Bankruptcy Court for the Western District of Virginia (the "**US Bankruptcy Court**") in respect of the case commenced by the Debtor under chapter 11 of title 11 of the United States Code (the "**US Bankruptcy Code**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Michael R. Castle sworn October 20, 2015 (the "**Castle Affidavit**"), and the third report of the Deloitte Restructuring Inc. (the "**Information Officer**"), dated October 21, 2015 (the "**Third Report**"), each filed,

AND UPON HEARING the submissions of counsel for the Debtor, counsel for the Information Officer, counsel for the informal group of noteholders and DIP Lenders, counsel for ~~Mr. Nix~~ (as defined in the Castle Affidavit) and no one else appearing although duly served as appears from the affidavit of service of Margaret Wong sworn on October 20, 2015:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

RECOGNITION OF FOREIGN ORDERS

2. THIS COURT ORDERS that the following orders (collectively, the "**Foreign Orders**") of the US Bankruptcy Court made in respect of the chapter 11 case of the Debtor are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

- (a) *Supplemental Order Authorizing The Debtors To Amend The DIP Credit Agreement And Obtain Incremental Financing Under The DIP Credit Agreement And Granted Related Relief; and*
- (b) *Order (I) Approving The Disclosure Statement; (II) Establishing Procedures For Solicitation And Tabulation Of Votes To Accept Or Reject The Plan, Including (A) Approving Form And Manner Of Solicitation Procedures, (B) Approving Form And Notice Of The Confirmation Hearing, (C) Establishing Record Date And Approving Procedures For Distribution Of Solicitation Packages, (D) Approving Forms Of Ballots, (E) Establishing Deadline For Receipt Of Ballots And (F) Approving Procedures For Vote Tabulations; (III) Establishing Deadline And Procedures For Filing Objections (A) To Confirmation Of The Plan, And (B) To Proposed Cure Amounts; And (IV) Granting Related Relief;*

each attached hereto as Schedules "A"- "B", respectively, provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever in Canada.

INFORMATION OFFICER'S REPORT

3. THIS COURT ORDERS that the Third Report of the Information Officer and the activities of the Information Officer as described therein be and hereby are approved.

GENERAL


4. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtors, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtor and the Information Officer and their respective agents in carrying out the terms of this Order.

5. THIS COURT ORDERS that each of the Debtor and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



OCT 26 2015



(Signature of Judge)

SCHEDULE "A"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

In re:

XINERGY LTD., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-70444 (PMB)

Jointly Administered

Related Docket No. 263

**SUPPLEMENTAL ORDER AUTHORIZING THE DEBTORS TO AMEND
THE DIP CREDIT AGREEMENT AND OBTAIN INCREMENTAL FINANCING
UNDER THE DIP CREDIT AGREEMENT AND GRANTED RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), and Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), seeking, among other things, a supplemental order (this “Supplemental Order”) authorizing the Debtors to (i) obtain up to an aggregate principal amount of \$9,000,000 in incremental post-petition financing under the DIP Credit Agreement (the

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule I attached to the Motion.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Court’s *Modified Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* [Dkt. No. 263], entered by the Court on June 5, 2015 (the “DIP Order”).

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
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Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

“Incremental DIP Financing”) on the same terms as, and ranking *pari passu* in right of payment and of security with, the Initial Term Loans made on the Closing Date and the Delayed Draw Term Loan made on the Final Term Funding Date (as such terms are defined in the DIP Credit Agreement) which were approved under the DIP Order, from those DIP Lenders who have executed the Incremental Amendment (as defined below), (ii) amend the DIP Credit Agreement to, among other things, permit the incurrence of the Incremental DIP Financing, and (iii) pay certain fees and expenses to the DIP Lenders who have executed the Incremental Amendment in connection with the Incremental DIP Financing; and the Court having considered the Motion, and the record in these cases; and it appearing that notice of the Motion, the relief requested therein and the hearing on the Motion (the “Hearing”) are adequate and appropriate under the particular circumstances; and the Court having considered all objections, if any, to the Motion; and upon the record made by the Debtors in the Motion, the Declaration of Michael R. Castle in support of the Chapter 11 Petitions and Related Motions (the “Castle Declaration”) [Doc. No. 18] and at the Hearing, and at the hearing on the DIP Order, and after due deliberation and consideration and it appearing that sufficient cause exists for granting the requested relief and that the relief requested is in the best interest of the Debtors, their estates, and their creditors;

IT IS HEREBY FOUND, DETERMINED, ORDERED AND ADJUDGED THAT:

1. The Motion is granted as set forth herein. Any objections to the Motion with respect to the entry of this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled without prejudice to the rights of parties in interest to object to the granting of the Motion on a final basis in accordance with paragraph 17 hereof.

2. This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and properties affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Under the circumstances, the notice given by the Debtors of the Motion and the Hearing constitutes due and sufficient notice of the Motion and the Hearing, and is adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law, and no further notice related to this proceeding is necessary or required.

4. The terms of that certain Incremental Assumption Agreement, Amendment No. 1, and Waiver, dated as of August __, 2015 (the “Incremental Amendment”), a copy of which was attached to the Motion in substantially final form, and the transactions related thereto are hereby authorized and approved on an INTERIM BASIS; provided that this Supplemental Order shall become a final order to the extent provided in paragraph 17 below. Promptly upon entry of this Supplemental Order, the Borrower is authorized to borrow up to an aggregate principal amount of \$5,000,000 pursuant to the Incremental DIP Financing (and, upon this Supplemental Order becoming a final order as provided in paragraph 17 below, the entire Incremental DIP Financing shall be available to the Borrower), and the guarantors under the Incremental DIP Financing are hereby authorized to guarantee such borrowings, plus interest, fees, amounts paid-in-kind, prepayment premiums, original issue discount, expenses (including professional fees and expenses whether incurred pre- or post-petition) and other amounts, in each case, as provided for in the DIP Documents and the Incremental Amendment, under the Incremental DIP Financing and in accordance with the terms and conditions of the DIP Credit Agreement, the DIP Order, this Supplemental Order, and the Incremental Amendment.

5. The Debtors are hereby authorized to perform and do all acts, including to make, execute and deliver the Incremental Amendment and all instruments and documents as may be required to effect the Incremental DIP Financing and the transactions contemplated thereby. The Debtors are authorized to perform each of their obligations in respect of the Incremental DIP Financing and to pay fees and other amounts that may be reasonably required or necessary for the Debtors' performance under the DIP Documents (including the Incremental Amendment) or in connection with the Incremental DIP Financing, including, without limitation, payment of fees referenced in the Fee Letter executed in connection with the Incremental Amendment and payment of the reasonable fees and out-of-expenses of the professionals of the DIP Agent and the DIP Lenders in accordance with the DIP Order.

6. The amendments and modifications to the DIP Credit Agreement and the DIP Order as set forth herein and in Section 2 of the Incremental Amendment are hereby approved on an interim basis in all respects, subject to this Supplemental Order becoming a final order as provided in paragraph 17 below.

7. Good cause has been shown for entry of this Order. The relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtors' business, the management, and preservation of the Debtors' assets and personal property. It is in the best interest of the Debtors' estates that the Debtors be allowed to borrow the Incremental DIP Financing.

8. The Debtors are unable to obtain the required additional financing in the form of (i) unsecured credit or unsecured debt allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense pursuant to section 364(a) or (b) of the Bankruptcy Code, (ii) unsecured debt having the priority afforded by section 364(c)(1) of the Bankruptcy Code, or (iii)

secured debt under section 364(c)(2) or (3) of the Bankruptcy Code. No other source of financing exists on terms more favorable than those offered in connection with the Incremental DIP Financing.

9. The Incremental DIP Financing and the amendments to the DIP Credit Agreement are vital to avoid immediate and irreparable loss or harm to the Debtors' estates, which will otherwise occur if immediate access to the Incremental DIP Financing is not obtained.

10. The terms of the Incremental DIP Financing and the Incremental Amendment are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. The Incremental DIP Financing, the amendments to the DIP Credit Agreement, the Incremental Amendment and this Supplemental Order have been negotiated in good faith and at arm's length between the Debtors and the DIP Lenders. Consequently, the Incremental DIP Financing shall be deemed to have been extended by the DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code.

11. The obligations under the Incremental DIP Financing and the Incremental Amendment shall constitute valid and binding obligations of the Debtors, and such obligations shall constitute Obligations (as defined in the DIP Credit Agreement) and DIP Obligations for all purposes. The Incremental DIP Financing and all other obligations under the Incremental Amendment shall be treated as Superpriority Claims, Obligations (as defined in the DIP Credit Agreement) and DIP Obligations for all purposes hereunder, under the DIP Order and the DIP Documents (which, for the avoidance of doubt, shall include the Incremental Amendment), and, except for the Carve Out, no claims having an administrative priority superior to or *pari passu* with such DIP Obligations shall be granted while any portion thereof remains outstanding,

without the consent of the DIP Lenders in accordance with the DIP Documents. All references in the DIP Credit Agreement, the DIP Documents and the DIP Order to the DIP Facility shall be read to include the Incremental DIP Financing, and references to the DIP Credit Agreement shall be read to include the Incremental Amendment. The Incremental Amendment and all definitive documents relating to the Incremental DIP Financing shall be considered DIP Documents.

12. All DIP Liens, security interests, priorities and other rights, remedies, benefits, privileges and protections provided to the DIP Lenders in the DIP Order and the DIP Documents with respect to or relating to the DIP Financing or the DIP Collateral shall apply with equal force and effect to the Incremental DIP Financing, the Incremental Amendment and all obligations incurred under or in connection therewith or related thereto, and the various claims, liens, super-priority claims and other protections granted pursuant to this Supplemental Order will not be affected by any subsequent reversal or modification of this Supplemental Order, the DIP Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the post-petition financing arrangements contemplated by this Supplemental Order.

13. The terms of the DIP Order are incorporated herein and made a part of this Supplemental Order. Except to the extent modified by this Supplemental Order, the terms, provisions and conditions of, and relief granted by, the DIP Order remain in full force and effect, and shall apply with equal weight to the Incremental DIP Financing as if the Incremental DIP Financing was entered into and authorized contemporaneously with the DIP Financing. All factual and other findings and conclusions of law contained in the DIP Order shall remain fully applicable to the DIP Financing, and shall apply with equal weight to the Incremental DIP Financing as if the Incremental DIP Financing was entered into and authorized contemporaneously with the DIP Financing, except to the extent specifically modified herein. In

the event of any inconsistency among the provisions of this Supplemental Order, the DIP Order and the definitive documents related to the Incremental DIP Financing, the provisions of the DIP Order shall govern, except as expressly modified by this Supplemental Order.

14. The provisions of this Supplemental Order shall be binding upon and inure to the benefit of the DIP Lenders, the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors), and the Debtors' estates.

15. All liens and priority granted to the DIP Lenders pursuant to this Supplemental Order shall be deemed perfected by operation of law as of the date hereof.

16. This Supplemental Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Supplemental Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Supplemental Order.

17. The Final Hearing to consider entry of this Supplemental Order on a final basis is scheduled for September 24, 2015 at 2:00 p.m. (EST) before this Court. The Debtors shall promptly mail copies of this Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court. Objections, if any, to entry of this Supplemental Order on a final basis are due September 18, 2015 at 4:00 p.m (EST), provided, however, if no such objections are received by such date, this Supplemental Order shall automatically become final

without further order or action by the Court or the Debtors and the Final Hearing shall be cancelled.

18. On or before September 8, 2015, the Debtors shall serve a copy of the updated Budget (as defined in the DIP Order) on the United States Trustee, counsel to the Official Committee of Unsecured Creditors, and counsel to Jon Nix, which in the case of Mr. Nix shall be subject to the Stipulated Protective Order entered by this Court on May 5, 2015 [Doc. No. 155].

19. This Court shall retain jurisdiction to hear and determine any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: August 27, 2015
Roanoke, Virginia


UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Justin F. Paget
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
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Counsel to the Debtors and Debtors in Possession

SEEN AND NO OBJECTION:

/s/ Brandy M. Rapp (with permission via email dated 8/27/2015)

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*Counsel for Official Committee of Unsecured
Creditors of Xinergy Ltd., et al.*

SEEN AND NO OBJECTION:

/s/ Margaret K. Garber (with permission via email dated 8/27/2015)

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margaret.k.garber@usdoj.gov
United States Trustee

SEEN AND NO OBJECTION:

/s/ Robert S. Westermann (with permission via email dated 8/27/2015)

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Counsel for Mr. Jon Nix

SCHEDULE "B"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, INCLUDING (A) APPROVING FORM AND MANNER OF SOLICITATION PROCEDURES, (B) APPROVING FORM AND NOTICE OF THE CONFIRMATION HEARING, (C) ESTABLISHING RECORD DATE AND APPROVING PROCEDURES FOR DISTRIBUTION OF SOLICITATION PACKAGES, (D) APPROVING FORMS OF BALLOTS, (E) ESTABLISHING DEADLINE FOR RECEIPT OF BALLOTS AND (F) APPROVING PROCEDURES FOR VOTE TABULATIONS; (III) ESTABLISHING DEADLINE AND PROCEDURES FOR FILING OBJECTIONS (A) TO CONFIRMATION OF THE PLAN, AND (B) TO PROPOSED CURE AMOUNTS; AND (IV) GRANTING RELATED RELIEF

Upon the motion (the “Motion”)² of the Debtors for entry of an order pursuant to sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017 and 3020 and Local Rule 3016-1, (i) approving the Disclosure Statement as containing “adequate information” as that term is defined in section 1125(a)(1) of the Bankruptcy Code; (ii) establishing procedures

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule I attached to the Motion.

² Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Motion.

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*Counsel to the Debtors
and Debtors in Possession*

for solicitation and tabulation of votes to accept or reject the Plan including (a) approving the form and manner of the solicitation packages, (b) approving the form and manner of notice of the confirmation hearing, (c) establishing a record date and approving procedures for distributing solicitation packages, (d) approving the forms of ballots, (e) establishing the deadline for the receipt of ballots and (f) approving procedures for tabulating acceptances and rejections of the Plan; (iii) establishing the deadline and procedures for filing objections (a) to confirmation of the Plan and (b) to proposed Cure Amounts; and (iv) granting related relief, the Court finds that: (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b); (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the relief requested in the Motion is in the best interests of the Debtors' estates and creditors; (d) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (e) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. All objections, including all reservations of rights, pertaining to the Motion that have not been withdrawn, waived, or resolved by agreement are overruled on their merits.
3. The Disclosure Statement is approved as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.
4. The Debtors shall mail or caused to be mailed to the Voting Parties no later than the Solicitation Date, a solicitation package containing: (i) written notice (the "Confirmation Hearing Notice"), substantially in the form annexed hereto as Exhibit 1, of (a) ~~the Court's~~ approval of the Disclosure Statement, (b) the deadline for voting on the Plan, (c) the date of the Confirmation Hearing, and (d) the deadline and procedures for filing objections to confirmation

of the Plan, which Confirmation Hearing Notice is approved; (ii) the Plan (either by paper copy or in “pdf” format on a CD-Rom, at the Debtors’ discretion); (iii) the Disclosure Statement, substantially in the form approved by the Court (either by paper copy or in “pdf” format on a CD-Rom, at the Debtors’ discretion); (iv) the appropriate Ballot (substantially in the form annexed hereto as Exhibits 3-a through 3-e) and ballot return envelope; (v) a letter from the Committee urging unsecured creditors to vote in favor of the Plan; and (vi) such other information as the Court may direct or approve (collectively, the “Solicitation Package”). The Solicitation Package and the manner of service of the Solicitation Package satisfies the requirements of Bankruptcy Rule 3017(d).

5. The Debtors shall mail or cause to be mailed to each of the known counterparties to the Assumed Executory Contracts and Unexpired Leases and the Rejected Executory Contracts and Unexpired Leases a Confirmation Hearing Notice as well as copies of the Disclosure Statement and the Plan (either by paper copy or in “pdf” format on a CD-Rom, at the Debtors’ discretion).

6. The Debtors are not required to transmit a Solicitation Package to the Non-Voting Parties. By October 27, 2015, the Debtors shall mail or cause to be mailed to each Non-Voting Party the Non-Voting Creditor Notice substantially in the form attached hereto as Exhibit 2.

7. **October 5, 2015**, is established as the record date (the “Record Date”) for the purposes of determining the Holders of Claims and Interests entitled to receive the Solicitation Package and to vote on the Plan, and for the purpose of determining the Holders of Claims and Interests entitled to receive the Non-Voting Creditor Notice.

8. American Legal Claims Services, LLC (“ALCS”) shall tabulate the Ballots and certify to the Court the results of the balloting (in such capacity ALCS shall be referred to as the “Solicitation Agent,” the “Tabulation Agent” or the “Balloting Agent”).

9. The Debtors are required to continue good faith efforts to mail or otherwise distribute Solicitation Packages or Non-Voting Creditor Notices to addresses and entities to which the notice of the Disclosure Statement Hearing was returned by the United States Postal Service as undeliverable.

10. The Ballots, substantially in the form annexed hereto as Exhibits 3-a through 3-e, are hereby approved.

11. All Ballots must be properly executed, completed and delivered to the Balloting Agent at Xinergy Ltd. Ballot Tabulation Center c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650, so that the Ballots are actually received on or before **November 24, 2015, at 5:00 p.m. (prevailing Eastern Time)** (the “Voting Deadline”), unless extended by the Debtors. Ballots cast by facsimile, email or other electronic transmission will not be counted unless approved in advance by the Debtors in writing.

12. For purposes of voting on the Plan, the amount of a Claim held by a creditor shall be determined pursuant to the following guidelines:

- (a) The amount of the Claim listed in a Debtor’s schedule of liabilities, provided that (i) such Claim is not scheduled as contingent, unliquidated, undetermined or disputed, and (ii) no proof of claim has been timely filed (or otherwise deemed timely filed by the Court under applicable law).
- (b) The noncontingent and liquidated amount specified in a proof of claim timely filed with the Court or ALCS (or otherwise deemed timely filed by the Court under applicable law) to the extent the proof of claim is not the subject of an objection, or an objection by the Debtors to a Claim amount solely for voting purposes, filed no later than November 24, 2015 (the “Vote Objection Deadline”) (or, if such Claim has been resolved pursuant to a stipulation or order entered by the Court, or otherwise resolved by the Court, the amount set forth in such stipulation or order).

- (c) The amount temporarily allowed by the Court for voting purposes, pursuant to Bankruptcy Rule 3018(a), provided that a motion is brought, notice is provided and a hearing is held at or prior to the Confirmation Hearing, in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.
- (d) Except as otherwise provided in subsection (c) hereof, with respect to Ballots cast by alleged creditors whose Claims (i) are not listed on a Debtor's schedule of liabilities, or (ii) are listed as disputed, contingent and/or unliquidated on a Debtor's schedule of liabilities, but who have timely filed proofs of claim in wholly unliquidated or unknown amounts that are not the subject of an objection filed before the Vote Objection Deadline, such Ballots shall be counted as votes in determining whether the numerosity requirement of section 1126(c) of the Bankruptcy Code has been met, and shall be counted as having a value of \$1.00 for determining whether the aggregate Claim amount requirement has been met.

13. If a creditor casts a Ballot and has timely filed a proof of claim (or has otherwise had a proof of claim deemed timely filed by the Court under applicable law), but the creditor's Claim is the subject of an objection (either generally to the applicable Claim, or solely for purposes of determining the amount of the applicable Claim for voting purposes) filed no later than the Vote Objection Deadline, then the creditor's Ballot shall not be counted, unless such Claim is temporarily allowed by the Court for voting purposes, pursuant to Bankruptcy Rule 3018(a), after a Claims Estimation Motion is brought by such creditor, notice is provided and a hearing is held at or prior to the Confirmation Hearing. Notwithstanding the foregoing, if an objection to a Claim requests that such Claim be reclassified and/or allowed in a fixed, reduced amount, such claimant's Ballot shall be counted in such reduced amount and/or as the reclassified category.

14. Creditors seeking to have a Claim temporarily allowed for purposes of voting to accept or reject the Plan pursuant to Bankruptcy Rule 3018(a) must file and serve notice of a hearing on, and a Claims Estimation Motion, no later than **November 4, 2015**. The Court will schedule a hearing on such Claims Estimation Motion to be heard at or prior to the Confirmation

Hearing. If a Claims Estimation Motion is timely filed, the Debtors shall be required to send a provisional Ballot to such claimant (unless such claimant has already been provided with a ballot).

15. The following voting procedures and standard assumptions shall be used in tabulating the Ballots:

- (a) Creditors must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split their vote. Accordingly, a Ballot (or multiple Ballots with respect to multiple Claims within a single Class) that partially rejects and partially accepts the Plan will not be counted.
- (b) Ballots that fail to indicate an acceptance or rejection of the Plan or that indicate both acceptance and rejection of the Plan, but which are otherwise properly executed and received prior to the Voting Deadline, will not be counted.
- (c) A creditor that declined to vote, voted to accept the Plan, or voted to reject the Plan may opt to reject the Consensual Third Party Release provisions in Section 8.4 of the Plan by so indicating on the Ballot.
- (d) Only Ballots that are timely received with original signatures will be counted. Unsigned Ballots will not be counted.
- (e) Ballots postmarked prior to the Voting Deadline, but received after the Voting Deadline, will not be counted.
- (f) Ballots that are illegible, or contain insufficient information to permit the identification of the creditor, will not be counted.
- (g) Whenever a creditor casts more than one Ballot voting the same Claim prior to the Voting Deadline, the last Ballot received prior to the Voting Deadline shall be deemed to reflect the voter's intent and supersede any prior Ballots.
- (h) If a creditor simultaneously casts inconsistent duplicate Ballots, with respect to the same Claim, such Ballots shall not be counted.
- (i) Each creditor shall be deemed to have voted the full amount of its Claim. Unless otherwise ordered by the Court, questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots shall be determined by the Balloting Agent and the Debtors, which determination shall be final and binding and disclosed by

the Debtors and/or the Balloting Agent in any report disclosing the results of voting.

16. The following additional procedures shall be followed with respect to the holders of Claims in Class 3 (Senior Secured Note Claims) and holders of Senior Secured Note Deficiency Claims in Class 4 (General Unsecured Claims), the Master Ballots submitted by the Nominees, and the tabulation of votes cast:

- (a) Only holders of Claims in Class 3 (Senior Secured Note Claims) and Senior Secured Note Deficiency Claims in Class 4 (General Unsecured Claims) as reflected in the records (the “Record Amount”) maintained by DTC as of the close of business on the Record Date shall be entitled to vote.
- (b) Votes submitted by the Nominees, pursuant to Master Ballots, shall not be counted in excess of the Record Amount held by the Nominees.
- (c) The Nominees shall summarize on the Master Ballots all Ballots cast by the holders of claims in Class 3 (Senior Secured Note Claims) and Senior Secured Note Deficiency Claims in Class 4 (General Unsecured Claims) and return the Master Ballots to the Solicitation Agent on or before the Voting Deadline; provided, however, that the Nominees shall be required to retain the original Ballots cast by the holders of claims in Class 3 and Senior Secured Note Deficiency Claims in Class 4 (General Unsecured Claims) for inspection for one year following the submission of the Master Ballots.
- (d) To the extent that conflicting votes or “overvotes” are submitted by the Nominees on Master Ballots, the Solicitation Agent, in good faith, shall attempt to reconcile discrepancies with the Nominees.
- (e) To the extent that overvotes submitted by the Nominees on the Master Ballots are not reconcilable prior to the preparation of the vote certification, the Solicitation Agent shall apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and reject the Plan submitted on the Master Ballot that contains the overvote, but only to the extent of the position maintained by such Nominees as of the Record Date.
- (f) Each holder of an Allowed Senior Secured Note Claim in Class 3 and a Senior Secured Note Deficiency Claim in Class 4 shall be deemed to have voted the full amount of such holder’s Allowed Senior Secured Note Claim in Class 3 notwithstanding any purported allocation of such Claim on the respective ballots. The Solicitation Agent shall have responsibility

for allocating the amount of Allowed Senior Secured Note Claims and Senior Secured Note Deficiency Claims between Class 3 and Class 4 in accordance with the Plan for the purpose of determining satisfaction of section 1126(c) of the Bankruptcy Code.

- (g) Holders of Allowed Senior Secured Note Claims shall not be entitled to split their votes between Class 3 and Class 4. In the event such holder returns Class 3 and Class 4 ballots that disagree, the vote and Consensual Third Party Release opt-out selection indicated on the Class 3 ballot shall control such holder's Class 4 vote and opt-out election.

17. Any objection, comment or response to confirmation of the Plan (including any supporting memoranda) must be in writing, served on the parties identified below, and filed with the Court, together with proof of service, such that the foregoing are received by such parties and the Court on or before **November 24, 2015, at 5:00 p.m. (prevailing Eastern Time)**. The Court shall consider only timely filed written objections. All objections not timely filed and served in accordance with the provisions of this Motion are hereby deemed waived. Objections to confirmation of the Plan should provide proposed language to remedy such objections and shall be served on the following parties (collectively, the "Notice Parties"):

The Debtors: Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, Attn: Tyler P. Brown, Esq.

The Creditors Committee: (i) McGuireWoods LLP, EQT Plaza, 625 Liberty Avenue, 23rd Floor, Pittsburgh, Pennsylvania 15222-3142, Attn: Michael J. Roeschenthaler, Esq., and (ii) Whiteford Taylor & Preston, LLP, 114 Market Street, Suite 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings, Esq.

The Informal Prepetition Noteholder Committee and DIP Lenders: Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York, 10019, Attn: Brian Hermann, Esq. & Lauren Shumejda, Esq.

The Office of the United States Trustee: 210 First Street, Suite 505, Roanoke, Virginia 24011, Attn: Margaret K. Garber, Esq.

18. Any party supporting the Plan shall be afforded an opportunity to file a response to any objection to confirmation of the Plan, prior to the Confirmation Hearing.

19. A hearing shall be held before this Court on **December 1, 2015, at 11:00 a.m. (prevailing Eastern Time)**, at the United States Bankruptcy Court for the Western District of

Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011, or as soon thereafter as counsel may be heard, to consider confirmation of the Plan (the “Confirmation Hearing”).

20. The Confirmation Hearing may be adjourned from time to time without further notice to creditors and other parties-in-interest other than an announcement of the adjourned date at the Confirmation Hearing.

21. The following procedures are approved for establishing the Cure Amounts for the Assumed Executory Contracts:

- (a) the Debtors will cause the *Notice of (I) Possible Assumption of Contracts and Leases, (II) Fixing of Cure Amounts, and (III) Deadline to Object Thereto* (the “Cure Notice”), in a form substantially similar to the form attached to this Order as Exhibit 4, to be served on the non-debtor parties to the Assumed Executory Contracts by October 27, 2015. Among other things, the Cure Notice shall set forth the amount that the Debtors believe must be paid in order to cure all monetary defaults under each of the Assumed Executory Contracts;
- (b) the non-debtor parties to the Assumed Executory Contracts shall have until **November 10, 2015, at 5:00 p.m. (prevailing Eastern Time)** (the “Cure Objection Deadline”), which deadline may be extended in the sole discretion of the Debtors, to object (a “Cure Objection”) to the (a) Cure Amounts listed by the Debtors and to propose alternative cure amounts, and/or (b) proposed assumption or assumption and assignment of the Assumed Executory Contracts under the Plan; provided, however, that if the Debtors amend the Cure Notice or any related pleading that lists the Assumed Executory Contracts to add a contract or lease or to reduce the Cure Amount thereof, except where such reduction was based upon the mutual agreement of the parties, the non-debtor party thereto shall have at least ten (10) calendar days after service of such amendment to object thereto or to propose alternative Cure Amounts;
- (c) any party objecting to the Cure Amounts, whether or not such party previously filed a proof of claim with respect to amounts due under the applicable Assumed Executory Contract, or objecting to the potential assumption or assumption and assignment of such Assumed Executory Contract, shall be required to file and serve a Cure Objection, in writing, setting forth with specificity any and all cure obligations that the objecting party asserts must be cured or satisfied in respect of the Assumed Executory Contract and/or any and all objections to the potential

assumption or assumption and assignment of such Assumed Executory Contract, together with all documentation supporting such cure claim or objection, upon each of the Notice Parties so that the Cure Objection is actually received by them no later than the Cure Objection Deadline. If a Cure Objection is timely filed and the parties are unable to settle such Cure Objection, the Court shall determine the amount of any disputed Cure Amounts or objection to assumption or assumption and assignment at a hearing to be held at the time of the Confirmation Hearing or such other hearing date to which the parties may mutually agree. The Debtors may, in their sole discretion, extend the Cure Objection Deadline without further notice, but are not obligated to do so; and

- (d) in the event that no Cure Objection is timely filed with respect to an Assumed Executory Contract, the counterparty to such Assumed Executory Contract shall be deemed to have consented to the assumption or assumption and assignment of the Assumed Executory Contract and the Cure Amount proposed by the Debtors and shall be forever enjoined and barred from seeking any additional amount(s) on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their Estates. In addition, if no timely Cure Objection is filed with respect to an Assumed Executory Contract, upon the Effective Date of the Plan, the Debtors or the assignee of such Assumed Executory Contract, and the counterparty to such Assumed Executory Contract shall enjoy all of the rights and benefits under the Assumed Executory Contract without the necessity of obtaining any party's written consent to the Debtors' assumption or assumption and assignment of the Assumed Executory Contract, and such counterparty shall be deemed to have waived any right to object, consent, condition or otherwise restrict the Debtors' assumption or assumption and assignment of the Assumed Executory Contract.

The inclusion of an Assumed Executory Contract in the Cure Notice is without prejudice to the Debtors' right to modify their election to assume, assume and assign or reject such Assumed Executory Contract prior to the entry of a final, non-appealable order (which order may be the order confirming the Plan) deeming any such Assumed Executory Contract assumed, assumed and assigned or rejected, and inclusion in the Cure Notice is not a final determination that any Assumed Executory Contract will, in fact, be assumed. In addition, the inclusion of an Assumed Executory Contract in the Cure Notice does not constitute an admission by the Debtors that the contract or lease is an executory contract or that the Debtors have any liability thereunder.

22. Prior to mailing the Disclosure Statement, Solicitation Packages, Non-Voting Creditor Notices, or the Cure Notice, the Debtors may fill in any missing dates and other information, correct any typographical errors and make such other non-material, non-substantive changes as they deem appropriate.

23. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

24. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Roanoke, Virginia
October 16, 2015



United States Bankruptcy Judge

WE ASK FOR THIS:

HUNTON & WILLIAMS LLP

/s/ Tyler P. Brown
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Email: tpbrown@hunton.com
hlong@hunton.com
jpaget@hunton.com

*Counsel to the Debtors
and Debtors in Possession*

SEEN AND OBJECTED TO FOR THE REASONS STATED ON THE RECORD

/s/ Robert S. Westermann (with permission via email dated 10/16/2015)
Robert S. Westermann (VSB No. 43294)

Rachel A. Greenleaf (VSB No. 83938)
HIRSHLER FLEISCHER, P.C.
The Edgeworth Building
2100 East Cary Street
Richmond, Virginia 23218-0500
Telephone: (804) 771-9500
Facsimile: (804) 644-0957
Email: rwestermann@hf-law.com
rgreenleaf@hf-law.com

-and-

Thomas R. Califano (NY Bar No. 2286144) (admitted pro hac vice)
Daniel G. Egan (NY Bar No. 4644191) (admitted pro hac vice)
DLA PIPER LLP (US)
1251 Avenue of Americas
New York, New York 10020-1104
Telephone: (212) 335-4500
Facsimile: (212) 335-4501
Email: Thomas.Califano@dlapiper.com
Daniel.Egan@dlapiper.com

Counsel for Mr. Jon Nix

SEEN AND NO OBJECTION

/s/ Margaret K. Garber (with permission via email dated 10/16/15)

Margaret K. Garber
Assistant U.S. Trustee
Office of the United States Trustee
210 First Street, SW, Suite 505
Roanoke, VA 24011
Tel: (540) 857-2806
Fax: (540) 857-2844
margaret.k.garber@usdoj.gov

United States Trustee

SEEN AND NO OBJECTION

/s/ Brandy M. Rapp (with permission via email dated 10/16/2015)

Michael L. Hastings, Esq., Va. Bar No. 36090
Brandy M. Rapp, Esq., Va. Bar No. 71385
WHITEFORD TAYLOR & PRESTON LLP
114 Market Street, Suite 210
Roanoke, VA 24011
Phone: (540) 759-3579

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mhastings@wtplaw.com
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-and-

Michael J. Roeschenthaler (PA 87647)
McGUIREWOODS LLP
EQT Plaza
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Telephone: (412) 667-6000
Facsimile: (412) 667-6050
mroeschenthaler@mcguirewoods.com
*Counsel for Official Committee of Unsecured
Creditors of Xinergy Ltd., et al.*

Exhibit 1

Confirmation Hearing Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

NOTICE OF (I) APPROVAL OF DISCLOSURE STATEMENT,
(II) DEADLINE FOR VOTING ON THE JOINT PLAN OF REORGANIZATION
OF XINERGY LTD. AND ITS SUBSIDIARY DEBTORS AND DEBTORS IN
POSSESSION, (III) HEARING TO CONSIDER CONFIRMATION OF THE PLAN,
AND (IV) LAST DATE AND PROCEDURES FOR FILING OBJECTIONS
TO CONFIRMATION OF THE PLAN

TO: ALL HOLDERS OF CLAIMS IN CLASSES 3 AND 4
AND CERTAIN OTHER PARTIES

PLEASE TAKE NOTICE THAT IF THIS NOTICE IS ACCOMPANIED BY A BALLOT, YOUR VOTE IS BEING SOLICITED IN CONNECTION WITH THE JOINT PLAN OF REORGANIZATION OF XINERGY LTD. AND ITS SUBSIDIARY DEBTORS AND DEBTORS IN POSSESSION (THE "PLAN") FILED BY THE ABOVE-CAPTIONED DEBTORS AND DEBTORS-IN-POSSESSION (COLLECTIVELY, THE "DEBTORS"). YOU SHOULD CAREFULLY REVIEW THE MATERIAL SET FORTH IN THE DISCLOSURE STATEMENT (AND IN THE EXHIBIT ATTACHED THERETO) IN ORDER TO MAKE AN INDEPENDENT DETERMINATION AS TO WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

THE DEBTORS RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule I attached to the Plan.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

APPROVAL OF DISCLOSURE STATEMENT

PLEASE TAKE FURTHER NOTICE that, by Order dated October [], 2015 (the “Disclosure Statement Order”), the United States Bankruptcy Court for the Western District of Virginia (the “Court”) approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated October 14, 2015 (the “Disclosure Statement”), as containing adequate information within the meaning of section 1125 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”).

DEADLINE FOR VOTING ON THE PLAN

PLEASE TAKE FURTHER NOTICE that, pursuant to the Disclosure Statement Order, the Court established **November 24, 2015, at 5:00 p.m. prevailing Eastern Time** (the “Voting Deadline”) as the deadline by which Ballots² accepting or rejecting the Plan must be actually received. To be counted, your original signed Ballot (a Ballot to be completed by you may be enclosed herewith) must actually be received on or before the Voting Deadline by American Legal Claim Services LLC (the “Balloting Agent”) at Xinergy Ltd. Ballot Tabulation Center c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650. Ballots received by facsimile, e-mail or other means of electronic transmission will not be counted.

CONFIRMATION HEARING

PLEASE TAKE FURTHER NOTICE that on **December 1, 2015, at 11:00 a.m. prevailing Eastern Time** or as soon thereafter as counsel may be heard, a hearing will be held before Judge Paul M. Black, at the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011 to consider confirmation of the Plan, as the same may be further amended or modified, and for such other and further relief as may be just and proper (the “Confirmation Hearing”).

PLEASE TAKE FURTHER NOTICE that the Confirmation Hearing may be adjourned from time to time by the Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. Additionally, the Plan may be modified in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and other applicable law, without further notice, prior to or as a result of the Confirmation Hearing.

RELEASE, INJUNCTION AND EXCULPATION PROVISIONS CONTAINED IN PLAN

PLEASE TAKE FURTHER NOTICE THAT THE PLAN CONTAINS CERTAIN RELEASE, INJUNCTION AND EXCULPATION PROVISIONS. YOU ARE ADVISED TO CAREFULLY REVIEW AND CONSIDER THE PLAN, INCLUDING THE RELEASE, INJUNCTION AND EXCULPATION PROVISIONS, AS YOUR RIGHTS MAY BE AFFECTED.

DEADLINE AND PROCEDURES FOR OBJECTIONS TO CONFIRMATION OF THE PLAN

PLEASE TAKE FURTHER NOTICE that objections, if any, to confirmation of the Plan, including any supporting memoranda, must be in writing, must be filed with the Clerk of the United States Bankruptcy Court of the Western District of Virginia, 210 Church Avenue, Room 200, Roanoke, Virginia 24011 together with proof of service, and shall state the name and address of the objector, all

² Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Plan.

grounds for the objection and the amount of the Claim(s) or other Interest(s) held by the objector, and shall provide proposed language to remedy such objections. Any such objection must be filed with the Court and served so that it is actually received by the Court, the following parties, and all other parties requesting or entitled to receive notice in these cases, on or before **November 24, 2015, at 5:00 p.m. prevailing Eastern Time**:

The Debtors: Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, Attn: Tyler P. Brown, Esq.

The Creditors Committee: (i) McGuireWoods LLP, EQT Plaza, 625 Liberty Avenue, 23rd Floor, Pittsburgh, Pennsylvania 15222-3142, Attn: Michael J. Roeschenthaler, Esq., and (ii) Whiteford Taylor & Preston, LLP, 114 Market Street, Suite 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings, Esq.

The Informal Prepetition Noteholder Committee and DIP Lenders: Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York, 10019, Attn: Brian Hermann, Esq. & Lauren Shumejda, Esq.

The Office of the United States Trustee: 210 First Street, Suite 505, Roanoke, Virginia 24011, Attn: Margaret K. Garber, Esq.

Any objection not filed and served as set forth above will be deemed waived and will not be considered by the Court.

COPIES OF THE PLAN AND THE DISCLOSURE STATEMENT

PLEASE TAKE FURTHER NOTICE that to the extent not enclosed herewith, copies of the Plan and the Disclosure Statement have been filed with the Bankruptcy Court and may be viewed at no charge at <https://www.americanlegal.com/xinergy> or for a fee via PACER at <http://www.vawb.uscourts.gov/>, or may be obtained at no charge by writing to Xinergy Ltd. c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650.

HUNTON & WILLIAMS LLP

Dated: October [], 2015

/s/ Tyler P. Brown

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
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Email: tpbrown@hunton.com
hlong@hunton.com
jpaget@hunton.com

*Counsel to the Debtors
and Debtors in Possession*

Exhibit 2

Non-Voting Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**NOTICE OF (I) APPROVAL OF DISCLOSURE STATEMENT, (II) HEARING TO
CONSIDER CONFIRMATION OF THE PLAN, AND (III) LAST DATE AND
PROCEDURES FOR FILING OBJECTIONS TO CONFIRMATION OF THE PLAN**

TO: ALL HOLDERS OF ADMINISTRATIVE CLAIMS, DIP FACILITY CLAIMS,
PROFESSIONAL CLAIMS, PRIORITY TAX CLAIMS, AND CLAIMS AND
INTERESTS IN CLASSES 1, 2, 5, 6, AND 7.

APPROVAL OF DISCLOSURE STATEMENT

PLEASE TAKE NOTICE that, by Order dated October [], 2015 (the "Disclosure Statement Order"), the United States Bankruptcy Court for the Western District of Virginia (the "Court") approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated October 14, 2015 (the "Disclosure Statement"), as containing adequate information within the meaning of section 1125 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code").

CONFIRMATION HEARING

PLEASE TAKE FURTHER NOTICE that on **December 1, 2015, at 11:00 a.m. prevailing Eastern Time** or as soon thereafter as counsel may be heard, a hearing will be held before Judge Paul M. Black, at the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011 to consider confirmation of the Plan, as the same

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule I attached to the Plan.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
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Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

may be further amended or modified, and for such other and further relief as may be just and proper (the “Confirmation Hearing”).

PLEASE TAKE FURTHER NOTICE that the Confirmation Hearing may be adjourned from time to time by the Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. Additionally, the Plan may be modified in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and other applicable law, without further notice, prior to or as a result of the Confirmation Hearing.

CLASSES OF CLAIMS AND INTERESTS NOT ENTITLED TO VOTE

PLEASE TAKE FURTHER NOTICE that, in accordance with the terms of the Plan and the Bankruptcy Code, (i) Holders of Administrative Claims, DIP Facility Claims, Professional Claims, Priority Tax Claims, and Claims in Classes 1 and 2 are unimpaired, are conclusively deemed to have accepted the Plan and, thus, are not entitled to vote on the Plan; (ii) Holders of Intercompany Claims and Interests in Class 5 are deemed to either accept or reject the Plan depending on the treatment elected by the Debtors with the consent of the Majority Consenting Noteholders, and are not entitled to vote on the Plan; and (iii) Holders of Interests in Class 6 and Claims in Class 7 will not receive any Distributions under the Plan and are deemed to have rejected the Plan. Only the Holders of impaired Claims in Classes 3 and 4 are entitled to vote to accept or to reject the Plan. You have been sent this notice because you may be a Holder of an Administrative Claim, a DIP Facility Claim, a Professional Claim, a Priority Tax Claim, or a Claim or Interest in Classes 1, 2, 5, 6, or 7.

SUMMARY OF PLAN TREATMENT OF CLAIMS AND INTERESTS

PLEASE TAKE FURTHER NOTICE that the Plan proposes to modify the rights of certain creditors and equity securities holders of all of the Debtors (collectively, the “Debtors”). The Plan establishes the following classes of Claims and Interests with the following treatment:²

Unclassified - Administrative Claims

Administrative Claims include those Claims against one or more of the Debtors constituting a cost or expense of administration of the Cases of the kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 363, 364(c)(1), 365, 503(b), 507(a)(2) or 507(b) of the Bankruptcy Code (other than a Professional Claim) for the period from the Petition Date to the Effective Date. A Holder of an Allowed Administrative Claim will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably thereafter; (c) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the holders of such Allowed Administrative Claim; (d) at such time and upon such terms as may be agreed upon by such

² For a complete description of the Plan provisions, reference should be made to the Plan and Disclosure Statement, copies of which can be obtained by the methods described at the end of this Notice. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Plan.

Holder and the Debtors or the Reorganized Debtors, as applicable; or (e) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

Unclassified - DIP Facility Claims

DIP Facility Claims include those Claims against one or more of the Debtors pursuant to that certain Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of April 8, 2015, by and among Xinergy Corp., as borrower, certain guarantors thereto, those certain lenders party to the DIP Facility Loan Agreement, and that certain administrative agent under the DIP Facility Loan Agreement, as amended and supplemented. Except to the extent that a holder of a DIP Facility Claim agrees to less favorable treatment, to the extent the Debtors exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive Exit Facility Loans in a face amount up to the amount of such DIP Facility Claim on the Effective Date, or such other treatment in full satisfaction of the DIP Facility Claims as the Debtors and Majority Consenting Noteholders may agree, to be specified in the Exit Facility Term Sheet, and to be otherwise governed by the Exit Facility Documents. If the Debtors do not exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive payment in full in Cash. There are ongoing discussions between the Debtors and the DIP Facility Consenting Lenders concerning the terms and sizing of the Exit Facility, which will impact the treatment of the DIP Facility Claims. The material terms of the Exit Facility will be contained in an Exit Facility Term Sheet, which will be included in the Plan Supplement to be filed no later than five (5) days before the Voting Deadline.

Unclassified - Professional Claims

Professional Claims include all fees and expenses claimed by Professionals retained by the Debtors or the Committee that have been approved on a final basis by a Final Order. Professional Claims do not include professional fees and expenses incurred by any professionals in connection with their retention and employment by the Debtors on or after the Effective Date. The Debtors shall pay Professionals who are entitled to reimbursement or allowance of fees and expenses from the Estates, in Cash, in the amount awarded to such Professionals by Final Order of the Bankruptcy Court, as soon as practicable after the later of the Effective Date and the date upon which any order awarding fees and expenses becomes a Final Order, in accordance with the terms of any order entered by the Bankruptcy Court governing the payment of such fees and expenses. Any final application for allowance of a Professional Claim must be filed with the Bankruptcy Court and served on counsel for the Debtors and the Committee and the U.S. Trustee so that it is received no later than forty-five (45) days after the Effective Date or such Professional Claim shall be forever barred.

Unclassified - Priority Tax Claims

Priority Tax Claims are Claims asserted against one or more of the Debtors for an amount entitled to priority under section 507(a)(8) of the Bankruptcy Code. Unless a Final Order provides otherwise, each Holder of a Priority Tax Claim that is an Allowed Claim shall receive, at the discretion of the Debtors with the consent of the Majority Consenting Noteholders and in full and final satisfaction of such Holder's Allowed Claim, (a) Cash in an amount equal to the unpaid portion of such Allowed Claim, (b) payment of such Allowed Claim over a period not to exceed five (5) years with interest, or (c) some other, less favorable treatment as is agreed upon by the Debtors and the Holder of such Allowed Priority Tax Claim. Notwithstanding the foregoing, the Holder of an Allowed Priority Tax Claim shall not be entitled to receive any payment on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim. Any Claim or demand for any such penalty (a) will be subject to treatment as a General Unsecured Claim, if and to the extent an Allowed Claim, and (b) the Holder of an Allowed Priority Tax Claim shall not assess or attempt to collect such

amounts from the Debtors or the Assets except as a General Unsecured Claim, if and to the extent an Allowed Claim.

Class 1 - Priority Non-Tax Claims

Priority Non-Tax Claims include Claims against one or more of the Debtors that are entitled to priority pursuant to section 507(a) of the Bankruptcy Code and that are not Administrative Claims, Professional Claims or Priority Tax Claims. Each Holder of an Allowed Class 1 Claims shall receive, as applicable: (i) if the Allowed Class 1 Claim is due and payable on or before the Effective Date, Cash in an amount equal to such Allowed Class 1 Claim; or (ii) if the Allowed Class 1 Claim is not due and payable on or before the Effective Date, Cash in an amount as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business. Class 1 Claims are unimpaired and conclusively deemed to have voted to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code.

Class 2 - Other Secured Claims

Secured Claims include any Claim against one or more of the Debtors that is secured by a valid and unavoidable lien on property in which the Estates have an interest, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code to the extent of the value of the Holder's interest in the Estates' interest in such property, or to the extent of the amount subject to setoff, as applicable, as determined by the Bankruptcy Court pursuant to sections 506(a), 553, and/or 1129 (b)(2)(A)(i)(II), as applicable. At the sole option of the Debtors with the consent of the Majority Consenting Noteholders, each holder of an Allowed Class 2 Claim shall receive in full satisfaction, settlement, and release of, and in exchange for, the holder's Allowed Secured Claim, (i) payment in full in Cash of its Allowed Class 2 Claim, including any accrued and unpaid interest, fees, and expenses as may be required to be paid, (ii) the collateral securing its Allowed Class 2 Claim, or (iii) such other treatment rendering its Allowed Class 2 Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code. Class 2 Claims are unimpaired and conclusively deemed to have voted to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code.

Class 3 - Senior Secured Note Claims

Senior Secured Note Claims include any Claim arising under those certain 9.25% Senior Secured Notes Due 2019 issued by Xinerger Corp. pursuant to the Indenture, dated as of May 6, 2011, by and among Xinerger Corp., certain parties thereto as guarantors, and Wells Fargo Bank, National Association as trustee and collateral trustee. Each Holder of an Allowed Claim in Class 3 shall receive its Pro Rata share of 100% of the New Common Stock to the extent such claim is secured as determined pursuant to section 506(a) of the Bankruptcy Code. The remaining unsecured claim is a Senior Secured Note Deficiency Claims treated as a Class 4 Claim. Class 3 is an impaired Class and is entitled to vote on the Plan.

Class 4 - General Unsecured Claims

General Unsecured Claims include any Claim against one or more of the Debtors other than (1) an Administrative Claim, (2) a DIP Facility Claim, (3) a Professional Claim, (4) a Priority Tax Claim, (5) a Priority Non-Tax Claim, (6) an Other Secured Claim, (7) a Senior Secured Note Claim, (8) an Intercompany Claim or Interest, (9) an Interest in Xinerger Ltd., or (10) a Claim subject to subordination pursuant to section 510(b) of the Bankruptcy Code. Class 4 includes General Unsecured Claims and Senior Secured Note Deficiency Claims. Each holder of an Allowed Class 4 Claim shall receive a Cash distribution equal to the lesser of its Pro Rata share of \$200,000, or four percent (4%) of the Allowed Amount of Class 4 Claims on the later of (A) the Effective Date or (B) the date such claim becomes an

Allowed Class 4 Claim; provided, however, that if holders of Allowed Class 4 Claims representing at least two-thirds in amount and more than one-half in number of Claims in Class 4 that vote accept the Plan, then holders of Senior Secured Note Deficiency Claims shall agree to waive their right to distributions on account of such Class 4 Claims. Class 4 is an impaired Class and is entitled to vote on the Plan.

Class 5 - Intercompany Claims

Intercompany Claims and Interests include Claims and Interests held by a Debtor against any other Debtor or any Interest of a Debtor in any other Debtor, respectively. All Intercompany Claims and Interests, at the option of the Debtors with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors shall be (i) canceled or (ii) left unaltered, reinstated or otherwise rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code. Class 5 Claims are not entitled to vote on the Plan, and are conclusively deemed to accept or reject to the Plan pursuant to section 1126(f) or section 1126(g) of the Bankruptcy Code, as applicable.

Class 6 - Interests in Xinergy Ltd.

Interests in Xinergy Ltd. include any stock or other equity ownership interest in Xinergy Ltd. and all dividends and distributions with respect to such stock or interest and all rights, options, warrants, or other rights to acquire any stock or other equity ownership interest in Xinergy Ltd. as of the Petition Date. On the Effective Date, the Interests in Xinergy Ltd. shall be canceled and no Distribution shall be made on account of Allowed Class 6 Interests. Class 6 Interests are impaired and conclusively deemed to have voted to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

Class 7 - Section 510(b) Claims

Section 510(b) Claims, if any, include any Claim against one or more of the Debtors arising under 11 U.S.C. § 510(b). The Debtors are not aware of any Class 7 Claims and do not believe any exist. Upon Confirmation, all Class 7 Claims, if any exist, will be discharged, canceled, released and extinguished, and Holders of Class 7 Claims will not receive any Distribution on account of such Allowed Section 510(b) Claims. Class 7 Claims are impaired and conclusively deemed to have voted to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that the Plan contains the injunction, release and exculpation provisions set forth below:

Discharge of Claims and Termination of Interests

The Reorganized Debtors shall receive the benefit of any and all discharges under the Plan. On and after the Effective Date, except as otherwise provided in the Plan or in the Confirmation Order or for some other specified reason, the Reorganized Debtors may operate the Debtors' business and may use, acquire or dispose of property and compromise or settle any Claims or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

As discussed in detail in the Disclosure Statement and otherwise provided herein, pursuant to Section 1123 of the Bankruptcy Code, and in consideration for the classification, Distributions, releases and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies related to the contractual, legal and equitable rights that a holder of a Claim or

Interest may have in respect of such Claim or Interest. All Distributions made to holders of Allowed Claims in any Class are intended to, and shall be, final.

Except as otherwise provided for herein and effective as of the Effective Date pursuant to section 1141(d) of the Bankruptcy Code: (a) the rights afforded in the Plan and the treatment of all Claims, Interests, and Causes of Action that arose before the Effective Date shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their assets, property, or Estates; (b) the Plan shall bind all holders of Claims and Interests, whether known or unknown, notwithstanding whether any such holders has filed a Proof of Claim or has failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code, regardless of whether a Proof of Claim with respect thereto was filed, whether the Claim is Allowed, or whether the holder thereof votes to accept the Plan or is entitled to receive a Distribution hereunder; and (d) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

Releases by the Debtors.

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, and Claims, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, the Debtors, on behalf of themselves and their Estates, and the Reorganized Debtors shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (and covenant with such Released Party not to sue or otherwise seek recovery from such Released Party on account of) any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Estates, the Reorganized Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, any act or omission, transaction, agreement or occurrence taking place on or before the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes

with respect to the Plan; provided, however, that the foregoing provisions of Section 8.3 of the Plan shall not waive, release, or otherwise affect (i) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order, (ii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan, including the Exit Facility, (iii) except as otherwise expressly set forth in the Plan, any objections by the Debtors or the Reorganized Debtors to Claims filed by any Person against any Debtor and/or the Estates, including rights of setoff, refund, recoupment or other adjustments, and (iv) the rights of the Debtors or the Reorganized Debtors to assert any applicable defenses in litigation or other proceedings, including with their employees, or any claim of the Debtors or the Reorganized Debtors, including (but not limited to) cross-claims or counterclaims or other Causes of Action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized Debtors are a party. The releases in Section 8.3 of the Plan apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of Section 8.3 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that Section 8.3 of the Plan is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released by the Debtor Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates asserting any claim or Cause of Action released pursuant to Section 8.3 of the Plan.

Consensual Third Party Releases.

The following Consensual Third Party Releases provision does not apply to the holders of Claims or Interests in Classes 1, 2, 5, 6 and 7 with respect to their Claims or Interests therein.

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, Claims, and Interests, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, (a) each holder of an Impaired Claim, except those holders that elect to opt-out of the Releases set forth in Section 8.4 of the Plan, and (b) each Released Party shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (regardless of whether a Released Party is also giving a release under Section 8.4 of the Plan), and covenant with each Released Party not to sue or otherwise seek recovery from such Released Party on account of, any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such party would have been legally entitled to assert (whether individually or collectively), based on or relating

to, or in any manner arising from, in whole or in part, any action, omission, transaction, agreement or event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; *provided, however*, that the foregoing provisions of Section 8.4 of the Plan shall not waive, release, or otherwise affect (i) any claims, obligations, debts, rights, suits, damages remedies, Causes of Action, and liabilities of such Persons solely to the extent of their right to receive Distributions or other treatment under the Plan; (ii) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order and (iii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan. The releases in Section 8.4 of the Plan apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of Section 8.4 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, *and further*, shall constitute the Bankruptcy Court's finding that Section 8.4 of the Plan is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released in Section 8.4 of the Plan; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Persons from asserting any Claim or Cause of Action released pursuant to Section 8.4 of the Plan.

Exculpation.

Notwithstanding anything contained herein to the contrary, the Released Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, administering or implementing the Plan, or consummating the Plan, the Disclosure Statement, the Plan Supplement, the New Holdco Governance Documents, the Exit Facility Documents, the Restructuring, the Chapter 11 Cases, the issuance, distribution, and/or sale of any shares of New Common Stock or any other security offered, issued, or distributed in connection with the Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the Chapter 11 Cases, the Recognition Proceeding or the Restructuring; *provided, however*, that each Released Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Person solely to the extent resulting from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Person for acts or omissions occurring

after the Confirmation Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Released Parties from liability. Without limiting the generality of the foregoing, the Released Parties shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code. Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim, or Interest shall be permitted to commence or continue any Cause of Action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or before the Effective Date and that has been released or waived pursuant to this Plan.

Injunction

Except as otherwise provided herein or for obligations issued pursuant hereto, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to Section 8.3 or Section 8.4 of the Plan, discharged pursuant to Section 8.1 of the Plan, or are subject to exculpation pursuant to Section 8.5 of the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and the Released Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.

Nothing in the Plan or the Confirmation Order releases, discharges, precludes, exculpates, or enjoins the enforcement of: (i) any liability or obligation to, or any Claim or cause of action by, a Governmental Unit under any applicable Environmental Law to which any Debtor is subject as and to the extent that it is the owner, lessee, controller, or operator of real property or a mining operation after the Effective Date (whether or not such liability, obligation, Claim or cause of action is based in whole or part on acts or omission prior to the Confirmation Date); (ii) any liability to a Governmental Unit under any applicable Police or Regulatory Law that is not a Claim; (iii) any Claim of a Governmental Unit under any applicable Police or Regulatory Law arising on or after the Effective Date; (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or Reorganized Debtors; (v) any liability to a Governmental Unit under the Federal Mine Safety & Health Act, any state mine safety law or the BLBA; or (vi) any valid right of setoff or recoupment by any Governmental Unit. Nothing in this Plan or any Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.

DEADLINE AND PROCEDURES FOR OBJECTIONS TO CONFIRMATION OF THE PLAN

PLEASE TAKE FURTHER NOTICE that objections, if any, to confirmation of the Plan, including any supporting memoranda, must be in writing, must be filed with the Clerk of the United States Bankruptcy Court of the Western District of Virginia, 210 Church Avenue, Room 200, Roanoke,

Virginia 24011 together with proof of service, and shall state the name and address of the objector, all grounds for the objection and the amount of the Claim(s) or other Interest(s) held by the objector, and shall provide proposed language to remedy such objections. Any such objection must be filed with the Court and served so that it is actually received by the Court, the following parties, and all other parties requesting or entitled to receive notice in these cases, on or before **November 24, 2015, at 5:00 p.m. prevailing Eastern Time:**

The Debtors: Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, Attn: Tyler P. Brown, Esq.

The Creditors Committee: (i) McGuireWoods LLP, EQT Plaza, 625 Liberty Avenue, 23rd Floor, Pittsburgh, Pennsylvania 15222-3142, Attn: Michael J. Roeschenthaler, Esq., and (ii) Whiteford Taylor & Preston, LLP, 114 Market Street, Suite 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings, Esq.

The Informal Prepetition Noteholder Committee and DIP Lenders: Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York, 10019, Attn: Brian Hermann, Esq. & Lauren Shumejda, Esq.

The Office of the United States Trustee: 210 First Street, Suite 505, Roanoke, Virginia 24011, Attn: Margaret K. Garber, Esq.

Any objection not filed and served as set forth above will be deemed waived and will not be considered by the Court.

COPIES OF THE PLAN AND THE DISCLOSURE STATEMENT

PLEASE TAKE FURTHER NOTICE that copies of the Plan and the Disclosure Statement have been filed with the Bankruptcy Court and may be viewed at no charge at <https://www.americanlegal.com/xinergy> or for a fee via PACER at <http://www.vawb.uscourts.gov/>, or may be obtained at no charge by writing to Xinergy Ltd. c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650.

HUNTON & WILLIAMS LLP

Dated: October [], 2015

/s/ Tyler P. Brown

Tyler P. Brown (VSB No. 28072)

Henry P. (Toby) Long, III (VSB No. 75134)

Justin F. Paget (VSB No. 77949)

HUNTON & WILLIAMS LLP

Riverfront Plaza, East Tower

951 East Byrd Street

Richmond, Virginia 23219

Telephone: (804) 788-8200

Facsimile: (804) 788-8218

Email: tpbrown@hunton.com

hlong@hunton.com

jpaget@hunton.com

Counsel to the Debtors

and Debtors in Possession

Exhibit 3-a

Master Ballot for Class 3 (Senior Secured Notes Claims)

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

MASTER BALLOT FOR CLASS 3 (SENIOR SECURED NOTES CLAIMS) FOR
ACCEPTING OR REJECTING THE JOINT PLAN OF REORGANIZATION
OF XINERGY LTD. AND ITS SUBSIDIARY DEBTORS
AND DEBTORS IN POSSESSION

PLEASE READ AND FOLLOW THE INSTRUCTIONS CAREFULLY. PLEASE COMPLETE, SIGN, AND DATE THIS CLASS 3 MASTER BALLOT AND RETURN IT TO THE SOLICITATION AGENT BY FIRST CLASS MAIL, OR DURING REGULAR BUSINESS HOURS BY OVERNIGHT COURIER OR HAND DELIVERY, TO: BALLOTING AGENT AT XINERGY LTD. BALLOT TABULATION CENTER C/O AMERICAN LEGAL CLAIM SERVICES, LLC, P.O. BOX 23650, JACKSONVILLE, FL 32241-3650. IF THIS CLASS 3 MASTER BALLOT HAS NOT BEEN RECEIVED BY THE SOLICITATION AGENT BY NOVEMBER 24 AT 5:00 P.M. (PREVAILING EASTERN TIME) (THE “VOTING DEADLINE”), THE VOTES OF THE INDIVIDUAL HOLDERS OF CLAIMS IN CLASS 3 (EACH AN “INDIVIDUAL CLAIMANT” AND COLLECTIVELY, THE “INDIVIDUAL CLAIMANTS”) WILL NOT BE COUNTED. THEREFORE, YOU MUST ALLOW SUFFICIENT TIME TO BE SURE THAT THE CLASS 3 MASTER BALLOT IS RECEIVED BY THE SOLICITATION AGENT BY THE VOTING DEADLINE.

You, as the Nominee² for the Individual Claimants (“You,” “YOU,” or “you”), must deliver the completed, executed Class 3 master ballot (the “Master Ballot”) so that it is actually *received* by the Solicitation Agent on or before the Voting Deadline. For each completed, executed Ballot returned to you

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule I attached to the Plan.

² Capitalized terms used, but not defined herein, shall have the meaning ascribed to them in the Plan.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

by an Individual Claimant (each an “Individual Ballot”), you must retain such Individual Ballot in your files for one year from the Voting Deadline.

This Master Ballot is to be used by you, as the representative of holders of Claims in Class 3 (Senior Secured Notes Claims), to transmit the votes of such Individual Claimants in respect of their decision to accept or reject the *First Amended Joint Plan of Reorganization of Xinerdy Ltd. and its Subsidiary Debtors and Debtors In Possession* (as the same may be amended, modified, and/or supplemented, the “Plan”).

By Order dated October [], 2015, the “Disclosure Statement Order”), the United States Bankruptcy Court for the Western District of Virginia (the “Court”) approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinerdy Ltd. and its Subsidiary Debtors and Debtors In Possession* (including all exhibits thereto, and as the same may be amended, modified, and/or supplemented from time to time, the “Disclosure Statement”) as containing adequate information within the meaning of section 1125 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). These documents are contained on the CDs sent to you with this Master Ballot. The Disclosure Statement Order also contains important information regarding the balloting process. Please also read the Disclosure Statement Order and the instructions sent with this Master Ballot prior to submitting a Master Ballot.

VOTING INSTRUCTIONS

VOTING DEADLINE:

The Voting Deadline is **November 24 at 5:00 p.m. (prevailing Eastern Time)**, unless such time is extended. To have the votes of the Individual Claimants in Class 3 counted, you must complete, sign, and return this Master Ballot so that it is received by the Solicitation Agent at the address set forth in the Master Ballot on or before the Voting Deadline. Accordingly, you should immediately transmit the enclosed Solicitation Packages, including Ballots, to the Individual Claimants, with a return envelope addressed to you with instructions that the Individual Claimants return their Individual Ballots to you so as to be received on or before the Voting Deadline.

HOW TO VOTE:

If you are transmitting the votes of any Individual Claimants, other than yourself, you must deliver the Class 3 Ballot to the Individual Claimants, along with the Plan, Disclosure Statement, Disclosure Statement Order, Confirmation Hearing Notice, and other materials requested to be forwarded, and take the necessary actions to enable such Individual Claimants to complete and execute such Individual Ballot voting to accept or reject the Plan, and to return the completed, executed Individual Ballot to you so as to be received on or before the Voting Deadline.

With respect to all of the Individual Ballots returned to you, you must properly complete the Master Ballot, as follows:

- i. Complete the certification of authority to vote in Item 1;
- ii. Indicate in Item 2 the total votes to accept or reject the Plan;

IMPORTANT: INDIVIDUAL CLAIMANTS MAY NOT SPLIT THEIR VOTES. EACH INDIVIDUAL CLAIMANT MUST VOTE ALL OF HIS, HER, OR ITS CLAIMS IN CLASS 3 TO ACCEPT OR REJECT THE PLAN. IF ANY SUCH BENEFICIAL HOLDER HAS ATTEMPTED TO SPLIT SUCH

VOTE BY SUBMITTING A BALLOT THAT PARTIALLY ACCEPTS AND PARTIALLY REJECTS THE PLAN, PLEASE CONTACT THE SOLICITATION AGENT IMMEDIATELY. Any Individual Claimant that does not indicate either acceptance or rejection of the Plan, or indicates both acceptance and rejection of the Plan, will not be counted, and the votes in such ballots should not be included in your tabulation;

- iii. Transcribe the votes from the Individual Ballots in the addendum to the Master Ballot referenced in Item 3 thereof;
- iv. Review the certification in Item 4 of the Master Ballot;
- v. Ensure that each Individual Ballot is signed and the certification is complete;
- vi. Sign and date the Master Ballot;
- vii. Independently verify and confirm the accuracy of the information provided with respect to each individual holder of Class 3 Claims;
- viii. If additional space is required to respond to any item on the Master Ballot, please use additional sheets of paper clearly marked to indicate the applicable item of the Master Ballot to which you are responding;
- ix. You must deliver the completed, executed Master Ballot so that it is *actually received* by the Solicitation Agent on or before the Voting Deadline. For each completed, executed Individual Ballot returned to you by an individual holder, you must retain such Individual Ballot in your files for one year from the Voting Deadline;
- x. Votes cast by Individual Claimants through You will be applied against the positions held by such entities as of the Record Date. Votes submitted by You, pursuant to the Master Ballot, will not be counted in excess of the Record Amount;
- xi. To the extent that conflicting votes or “overvotes” are submitted by You, the Solicitation Agent, in good faith, will attempt to reconcile discrepancies with You; and
- xii. To the extent that “overvotes” on the Master Ballot are not reconcilable prior to the preparation of the vote certification, the Solicitation Agent will apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and reject the Plan submitted on the Master Ballot that contained the “overvote,” but only to the extent of your position in the applicable security.

PLEASE NOTE

This Master Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan. Holders should not surrender, at this time, certificates representing their securities. The Solicitation Agent will not accept delivery of any such certificates surrendered together with a Master Ballot or Individual Ballot.

No Master Ballot or Individual Ballot shall constitute or be deemed to be a proof of claim or Equity Interest, or an assertion of a Claim, an allowance of a Claim, or an admission by the Debtors of the validity of a Claim.

No fees or commissions or other remuneration will be payable to You in connection with the distribution of Solicitation Packages or the preparation of the Master Ballot.

PLEASE MAIL THIS MASTER BALLOT PROMPTLY. IF YOU BELIEVE THAT YOU ARE MISSING ANY MATERIALS FROM THE SOLICITATION PACKAGE, HAVE RECEIVED THE WRONG BALLOTS OR MASTER BALLOT, HAVE QUESTIONS REGARDING THE BALLOTS OR MASTER BALLOT, OR THE VOTING PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF OTHER ENCLOSED MATERIALS, PLEASE CALL THE SOLICITATION AGENT AT (904) 517-1442. DO NOT CONTACT THE SOLICITATION AGENT FOR LEGAL ADVICE. THE SOLICITATION AGENT CANNOT AND WILL NOT PROVIDE PARTIES WITH LEGAL ADVICE.

Item 1 - CERTIFICATION OF AUTHORITY TO VOTE. The undersigned certifies that as of October 5, 2015 (the "Record Date"), the undersigned (please check applicable box):

☐ Is a nominee and/or an Intermediary for the Individual Claimants of the aggregate principal amount listed in Item 2 below; or

☐ Is acting under a power of attorney and/or agency (a copy of which will be provided upon request) granted by a nominee that is the registered holder of the aggregate principal amount listed in Item 2 below; or

☐ Has been granted a proxy (an original of which is attached hereto) from a nominee that is the registered holder of the aggregate principal amount listed in Item 2 below and accordingly, has full power and authority to vote to accept or reject the Plan on behalf of the Individual Claimants of the Class 3 (Senior Secured Notes Claims) described below.

Item 2 - TABULATION OF BENEFICIAL OWNER VOTING. The undersigned certifies that:

A. Class 3 Claims – Senior Secured Notes Claims

Acceptances. _____ Individual Claimants holding Class 3 Senior Secured Notes Claims in the aggregate unpaid principal amount of \$_____ have delivered duly completed Individual Ballots to the undersigned voting to **ACCEPT** the Plan; and

Rejections. _____ Individual Claimants holding Class 3 Senior Secured Notes Claims in the aggregate unpaid principal amount of \$_____ have delivered duly completed Individual Ballots to the undersigned voting to **REJECT** the Plan.

Item 3 – TRANSMITTAL OF VOTES FROM INDIVIDUAL BALLOTS. The undersigned transmits the votes of Individual Claimants holding Claims in Class 3 as fully set forth below and certifies that the parties listed are the Individual Claimants, as of the Record Date, and have delivered to the undersigned, as the Nominee, Individual Ballots casting such votes, which, as set forth in each column therein, indicate the aggregate principal amount voted for each claim, and whether such claim is voted to accept or reject the Plan, and whether the holder of such claim that voted to accept the Plan has elected not to grant the release provisions set forth in Article VIII of the Plan.

ADDENDUM TO MASTER BALLOT

I. Summary of Class 3 Senior Secured Notes Claims Voted.

Name or Account Number for Each Individual Claimant of a Class 3 Senior Secured Notes Claims Voting on the Plan	Principal Amount of Claim Voted	Principal Amount of Class 3 Senior Secured Notes Claims Voted to ACCEPT the Plan*	Principal Amount of Class 3 Senior Secured Notes Claims Voted to REJECT the Plan*	Individual Claimant has Elected Not to Grant the Release Provisions Set Forth in Article VIII of the Plan (Indicate Yes if Item 3 was checked, or No if it was not checked)
1.		\$	\$	
2.		\$	\$	
3.		\$	\$	
4.		\$	\$	
5.		\$	\$	
6.		\$	\$	
7.		\$	\$	
8.		\$	\$	
TOTALS		\$	\$	

[If space is insufficient, attach additional sheets in same format.]

Item 4. CERTIFICATION AS TO TRANSCRIPTION OF INFORMATION FROM ITEM 3 OF THE INDIVIDUAL BALLOT AS TO OTHER CLASS 3 SENIOR SECURED NOTES CLAIMS VOTED THROUGH OTHER INDIVIDUAL BALLOTS.

The undersigned certifies that the undersigned has transcribed in the following table the information, if any, provided by Individual Claimants in Item 3 of the original Individual Ballots, identifying any Class 3 Senior Secured Notes Claims for which such holders have submitted other Individual Ballots other than to the undersigned:

Your Customer Account Number for Each Holder of Voting Class 3 Senior Secured Notes Claims	TRANSCRIBE FROM ITEM 3 OF THE INDIVIDUAL BALLOTS		
	Account Number	Name of Holder	Principal Amount of Other Class 3 Senior Secured Notes Claims Voted
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Item 5 - CERTIFICATION. By signing this Master Ballot, the undersigned certifies that: (a) each Individual Claimant holding a Claim(s) in Class 3 whose vote is being transmitted by this Master Ballot has been provided with a copy of the Plan, Disclosure Statement, Disclosure Statement Order, and a Ballot for voting its Claim(s); and (b) each Individual Claimant has not cast more than one vote with respect to any given Claim for any purpose, including for determining both the number of votes and the amount of the Claim, even if such holder holds securities of the same type in more than one account. The undersigned also acknowledges that the solicitation of votes in Class 3 to accept or reject the Plan is subject to all the terms and conditions set forth in the Disclosure Statement Order, dated October [], 2015.

Name of Nominee

Participant Number

Signature of Nominee

Street Address

City, State and Zip Code

Telephone Number

Date Completed

In order to vote Claims in Class 3 to accept or reject the Plan, please complete, sign, and date this Master Ballot and promptly return it to one of the following addresses, as appropriate, so as to be received on or prior to the Voting Deadline, by regular mail, or by hand delivery or overnight courier during normal business hours, to: Balloting Agent at Xinerdy Ltd. Ballot Tabulation Center c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650.

**MASTER BALLOTS RECEIVED BY FACSIMILE OR OTHER ELECTRONIC MEANS,
OR RECEIVED AFTER THE VOTING DEADLINE, WILL NOT BE COUNTED**

Exhibit 3-b

Ballot for Class 3 (Senior Secured Notes Claims)

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.⁹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

Voting Deadline: November 24 at 5:00 p.m. (ET)
Confirmation Obj. Deadline: November 24 at 5:00 p.m. (ET)
Confirmation Hearing Date: December 1 at 11:00 a.m. (ET)

**INDIVIDUAL BALLOT FOR CLASS 3 SENIOR SECURED NOTES CLAIMS FOR
ACCEPTING OR REJECTING THE JOINT PLAN OF REORGANIZATION OF XINERGY
LTD. AND ITS SUBSIDIARY DEBTORS AND DEBTORS IN POSSESSION**

**FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE RETURNED TO YOUR
NOMINEE SO THAT IT IS ACTUALLY RECEIVED BY
THE NOMINEE ON OR BEFORE THE VOTING DEADLINE**

**THE VOTING DEADLINE FOR YOUR NOMINEE TO SUBMIT THE
MASTER BALLOT TO ACCEPT OR REJECT THE PLAN IS
5:00 P.M. (PREVAILING EASTERN TIME) ON NOVEMBER 24, 2015 (THE "VOTING
DEADLINE").**

This ballot (the "Ballot") is being sent to parties holding Claims¹⁰ against one or more of the Debtors other than (1) an Administrative Claim, (2) a DIP Facility Claim, (3) a Professional Claim, (4) a Priority Tax Claim, (5) a Priority Non-Tax Claim, (6) an Other Secured Claim, (7) a General Unsecured Claims; (8) an Intercompany Claim or Interest, (9) an Interest in Xinergy Ltd., or (10) a Claim subject to subordination pursuant to section 510(b) of the Bankruptcy Code (the "Senior Secured Note Claims"). If you hold Claims in other Classes in which you are entitled to vote, you will receive a Ballot for each such other Class.

On October [], 2015, the United States Bankruptcy Court for the Western District of Virginia (the "Court") signed an order (the "Solicitation Order") which approved the *Disclosure Statement Accompanying Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated September 16, 2015 (including all exhibits thereto and as amended, modified or supplemented from time to time, the "Disclosure Statement") regarding the *Joint Plan of*

⁹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule I attached to the Plan.

¹⁰ Capitalized terms used, but not defined herein, shall have the meaning ascribed to them in the Plan.

Reorganization of Xinerger Ltd. and its Subsidiary Debtors and Debtors In Possession (as the same may be further amended or modified, the "Plan"), and which established certain procedures for the solicitation and tabulation of votes to accept or reject the Plan. Please use this Ballot to cast your vote to accept or reject the Plan, which is proposed by the above-captioned debtors and debtors-in-possession (collectively the "Debtors"). The Plan is Exhibit A to the Disclosure Statement that accompanies this Ballot. Any party may request, at the Debtors' expense, hard copies of the Disclosure Statement, together with the Plan and other exhibits annexed thereto, from the Balloting Agent. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Senior Secured Notes Claims and if the Plan otherwise satisfies the applicable requirements of section 1129(a) of the Bankruptcy Code. If the requisite acceptances are not obtained, the Bankruptcy Court nonetheless may confirm the Plan if it finds that the Plan (a) provides fair and equitable treatment to, and does not unfairly discriminate against, the Class or Classes rejecting the Plan and (b) otherwise satisfies the requirements under section 1129(b) of the Bankruptcy Code.

THIS BALLOT IS TO BE USED BY HOLDERS OF CLASS 3 SENIOR SECURED NOTE CLAIMS. PLEASE COMPLETE, SIGN AND DATE THIS BALLOT AND RETURN IT IN THE ENCLOSED ENVELOPE TO THE NOMINEE. THE VOTING DEADLINE IS 5:00 P.M. PREVAILING EASTERN TIME ON NOVEMBER 24, 2015.

ITEM 1. CLASS 3 CLAIM AMOUNT. The undersigned certifies that as of October 5, 2015 (the "Record Date"), it held a Senior Secured Note Claim in the below amount:

\$ _____

ITEM 2. CLASS 3 (SENIOR SECURED NOTE CLAIMS) VOTE. The Holder of the Senior Secured Note Claim that relates to this Ballot votes:

☐ to ACCEPT the Plan ☐ to REJECT the Plan

ANY BALLOT WHICH INDICATES BOTH AN ACCEPTANCE AND REJECTION OF THE PLAN OR DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.

ITEM 3. OPTIONAL RELEASE ELECTION:

☐ The undersigned elects NOT to grant the releases contained in Section 8.4 of the Plan.

ITEM 4. CERTIFICATION. By signing this Ballot, the Holder of the Senior Secured Note Claim certifies that it:

A. is the Holder of the Senior Secured Note Claim to which this Ballot pertains;

B. has been provided with a copy of the Plan and the Disclosure Statement and that it acknowledges that the vote, or the election concerning the Third Party Release in Section 8.4 of the Plan, set forth on this Ballot is subject to all the terms and conditions set forth in the Plan and the Disclosure Statement;

C. has full power and authority to vote to accept or reject the Plan and to elect to accept or reject the Third Party Release in Section 8.4 of the Plan; and

D. has not submitted any other Ballots relating to the Senior Secured Note Claim that are inconsistent with the vote or election as set forth in this Ballot or that, as limited by the terms of the Solicitation Order and the instructions attached hereto, if such other Ballots were previously submitted, they either have been or are hereby revoked or changed to reflect the vote or election set forth herein.

Name: _____
(Print or Type)

Social Security Or Federal Tax I.D. No.: _____
(Optional)

Signature: _____

By: _____
(If Appropriate)

Title: _____
(If Appropriate)

Street Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Date Completed: _____

This Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan or to elect to accept or reject the Third Party Release in Section 8.4 of the Plan. This Ballot shall not constitute or be deemed to be a proof of claim or equity interest or an assertion of a claim or equity interest.

YOUR VOTE MUST BE ACTUALLY RECEIVED BY THE NOMINEE, BY 5:00 P.M. EASTERN TIME ON NOVEMBER 24, 2015, OR YOUR VOTE WILL NOT BE COUNTED. FACSIMILE OR OTHER MEANS OF ELECTRONIC TRANSMISSION OF THIS BALLOT WILL NOT BE ACCEPTED.

IF YOU HAVE QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED AN ADDITIONAL BALLOT OR ADDITIONAL COPIES OF THE DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CALL THE BALLOTING AGENT AT (904) 517-1442.

Exhibit 3-c

**Master Ballot for Holders of Senior Secured Note Deficiency Claims
in Class 4 (General Unsecured Claims)**

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**MASTER BALLOT FOR HOLDERS OF SENIOR SECURED NOTE
DEFICIENCY CLAIMS IN CLASS 4 (GENERAL UNSECURED CLAIMS) FOR
ACCEPTING OR REJECTING THE JOINT PLAN OF REORGANIZATION OF
XINERGY LTD. AND ITS SUBSIDIARY DEBTORS
AND DEBTORS IN POSSESSION**

PLEASE READ AND FOLLOW THE INSTRUCTIONS CAREFULLY. PLEASE COMPLETE, SIGN, AND DATE THIS SENIOR SECURED NOTE DEFICIENCY CLAIMS CLASS 4 MASTER BALLOT AND RETURN IT TO THE SOLICITATION AGENT BY FIRST CLASS MAIL, OR DURING REGULAR BUSINESS HOURS BY OVERNIGHT COURIER OR HAND DELIVERY, TO: BALLOTING AGENT AT XINERGY LTD. BALLOT TABULATION CENTER C/O AMERICAN LEGAL CLAIM SERVICES, LLC, P.O. BOX 23650, JACKSONVILLE, FL 32241-3650. IF THIS SENIOR SECURED NOTE DEFICIENCY CLAIMS CLASS 4 MASTER BALLOT HAS NOT BEEN RECEIVED BY THE SOLICITATION AGENT BY NOVEMBER 24 AT 5:00 P.M. (PREVAILING EASTERN TIME) (THE "VOTING DEADLINE"), THE VOTES OF THE INDIVIDUAL HOLDERS OF SENIOR SECURED NOTE DEFICIENCY CLAIMS IN CLASS 4 (EACH AN "INDIVIDUAL CLAIMANT" AND COLLECTIVELY, THE "INDIVIDUAL CLAIMANTS") WILL NOT BE COUNTED. THEREFORE, YOU MUST ALLOW SUFFICIENT TIME TO BE SURE THAT THE SENIOR SECURED NOTE DEFICIENCY CLAIMS CLASS 4 MASTER BALLOT IS RECEIVED BY THE SOLICITATION AGENT BY THE VOTING DEADLINE.

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule I attached to the Plan.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

You, as the Nominee² for the Individual Claimants (“You,” “YOU,” or “you”), must deliver the completed, executed Senior Secured Note Deficiency Claims Class 4 master ballot (the “Master Ballot”) so that it is actually *received* by the Solicitation Agent on or before the Voting Deadline. For each completed, executed Ballot returned to you by an Individual Claimant (each an “Individual Ballot”), you must retain such Individual Ballot in your files for one year from the Voting Deadline.

This Master Ballot is to be used by you, as the representative of holders of Senior Secured Note Deficiency Claims in Class 4 (General Unsecured Claims), to transmit the votes of such Individual Claimants in respect of their decision to accept or reject the *Joint Plan of Reorganization of Xinery Ltd. and its Subsidiary Debtors and Debtors In Possession* (as the same may be amended, modified, and/or supplemented, the “Plan”).

By Order dated October [], 2015, the “Disclosure Statement Order”), the United States Bankruptcy Court for the Western District of Virginia (the “Court”) approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinery Ltd. and its Subsidiary Debtors and Debtors In Possession* (including all exhibits thereto, and as the same may be amended, modified, and/or supplemented from time to time, the “Disclosure Statement”) as containing adequate information within the meaning of section 1125 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). These documents are contained on the CDs sent to you with this Master Ballot. The Disclosure Statement Order also contains important information regarding the balloting process. Please also read the Disclosure Statement Order and the instructions sent with this Master Ballot prior to submitting a Master Ballot.

VOTING INSTRUCTIONS

VOTING DEADLINE:

The Voting Deadline is **November 24 at 5:00 p.m. (prevailing Eastern Time)**, unless such time is extended. To have the votes of the Individual Claimants that hold Senior Secured Note Deficiency Claims in Class 4 counted, you must complete, sign, and return this Master Ballot so that it is received by the Solicitation Agent at the address set forth in the Master Ballot on or before the Voting Deadline. Accordingly, you should immediately transmit the enclosed Solicitation Packages, including Ballots, to the Individual Claimants, with a return envelope addressed to you with instructions that the Individual Claimants return their Individual Ballots to you so as to be received on or before the Voting Deadline.

HOW TO VOTE:

If you are transmitting the votes of any Individual Claimants, other than yourself, you must deliver the Class 4 Ballot to the Individual Claimants, along with the Plan, Disclosure Statement, Disclosure Statement Order, Confirmation Hearing Notice, and other materials requested to be forwarded, and take the necessary actions to enable such Individual Claimants to complete and execute such Individual Ballot voting to accept or reject the Plan, and to return the completed, executed Individual Ballot to you so as to be received on or before the Voting Deadline.

With respect to all of the Individual Ballots returned to you, you must properly complete the Master Ballot, as follows:

- xiii. Complete the certification of authority to vote in Item 1;

² Capitalized terms used, but not defined herein, shall have the meaning ascribed to them in the Plan.

- xiv. Indicate in Item 2 the total votes to accept or reject the Plan;

IMPORTANT: EACH HOLDER OF AN ALLOWED SENIOR SECURED NOTE CLAIM IN CLASS 3 AND A SENIOR SECURED NOTE DEFICIENCY CLAIM IN CLASS 4 SHALL BE DEEMED TO HAVE VOTED THE FULL AMOUNT OF SUCH HOLDER'S ALLOWED SENIOR SECURED NOTE CLAIM IN CLASS 3 NOTWITHSTANDING ANY PURPORTED ALLOCATION OF SUCH CLAIM ON THE RESPECTIVE BALLOTS. HOLDERS OF ALLOWED SENIOR SECURED NOTE CLAIMS SHALL NOT BE ENTITLED TO SPLIT THEIR VOTES BETWEEN CLASS 3 AND CLASS 4. IN THE EVENT SUCH HOLDER RETURNS CLASS 3 AND CLASS 4 BALLOTS THAT DISAGREE, THE VOTE AND THIRD-PARTY RELEASE OPT-OUT SELECTION INDICATED ON THE CLASS 3 BALLOT SHALL CONTROL SUCH HOLDER'S CLASS 4 VOTE AND OPT-OUT ELECTION. INDIVIDUAL CLAIMANTS MAY NOT SPLIT THEIR VOTES WITHIN A CLASS. EACH INDIVIDUAL CLAIMANT MUST VOTE ALL OF HIS, HER, OR ITS CLAIMS TO ACCEPT OR REJECT THE PLAN. IF ANY SUCH BENEFICIAL HOLDER HAS ATTEMPTED TO SPLIT SUCH VOTE WITHIN A CLASS BY SUBMITTING A BALLOT THAT PARTIALLY ACCEPTS AND PARTIALLY REJECTS THE PLAN, PLEASE CONTACT THE SOLICITATION AGENT IMMEDIATELY. Any Individual Claimant that does not indicate either acceptance or rejection of the Plan, or indicates both acceptance and rejection of the Plan, will not be counted, and the votes in such ballots should not be included in your tabulation;

- xv. Transcribe the votes from the Individual Ballots in the addendum to the Master Ballot referenced in Item 3 thereof;
- xvi. Review the certification in Item 4 of the Master Ballot;
- xvii. Ensure that each Individual Ballot is signed and the certification is complete;
- xviii. Sign and date the Master Ballot;
- xix. Independently verify and confirm the accuracy of the information provided with respect to each individual holder of Class 4 Senior Secured Note Deficiency Claims;
- xx. If additional space is required to respond to any item on the Master Ballot, please use additional sheets of paper clearly marked to indicate the applicable item of the Master Ballot to which you are responding;
- xxi. You must deliver the completed, executed Master Ballot so that it is *actually received* by the Solicitation Agent on or before the Voting Deadline. For each completed, executed Individual Ballot returned to you by an individual holder, you must retain such Individual Ballot in your files for one year from the Voting Deadline;
- xxii. Votes cast by Individual Claimants through You will be applied against the positions held by such entities as of the Record Date. Votes submitted by You, pursuant to the Master Ballot, will not be counted in excess of the Record Amount;
- xxiii. To the extent that conflicting votes or "overvotes" are submitted by You, the Solicitation Agent, in good faith, will attempt to reconcile discrepancies with You; and
- xxiv. To the extent that "overvotes" on the Master Ballot are not reconcilable prior to the preparation of the vote certification, the Solicitation Agent will apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and reject the Plan

submitted on the Master Ballot that contained the “overvote,” but only to the extent of your position in the applicable security.

PLEASE NOTE

This Master Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan. Holders should not surrender, at this time, certificates representing their securities. The Solicitation Agent will not accept delivery of any such certificates surrendered together with a Master Ballot or Individual Ballot.

No Master Ballot or Individual Ballot shall constitute or be deemed to be a proof of claim or Equity Interest, or an assertion of a Claim, an allowance of a Claim, or an admission by the Debtors of the validity of a Claim.

No fees or commissions or other remuneration will be payable to You in connection with the distribution of Solicitation Packages or the preparation of the Master Ballot.

PLEASE MAIL THIS MASTER BALLOT PROMPTLY. IF YOU BELIEVE THAT YOU ARE MISSING ANY MATERIALS FROM THE SOLICITATION PACKAGE, HAVE RECEIVED THE WRONG BALLOTS OR MASTER BALLOT, HAVE QUESTIONS REGARDING THE BALLOTS OR MASTER BALLOT, OR THE VOTING PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF OTHER ENCLOSED MATERIALS, PLEASE CALL THE SOLICITATION AGENT AT (904) 517-1442. DO NOT CONTACT THE SOLICITATION AGENT FOR LEGAL ADVICE. THE SOLICITATION AGENT CANNOT AND WILL NOT PROVIDE PARTIES WITH LEGAL ADVICE.

Item 1 - CERTIFICATION OF AUTHORITY TO VOTE. The undersigned certifies that as of October 5, 2015 (the “Record Date”), the undersigned (please check applicable box):

☐ Is a nominee and/or an Intermediary for the Individual Claimants of the aggregate principal amount listed in Item 2 below; or

☐ Is acting under a power of attorney and/or agency (a copy of which will be provided upon request) granted by a nominee that is the registered holder of the aggregate principal amount listed in Item 2 below; or

☐ Has been granted a proxy (an original of which is attached hereto) from a nominee that is the registered holder of the aggregate principal amount listed in Item 2 below and accordingly, has full power and authority to vote to accept or reject the Plan on behalf of the Individual Claimants of the Class 4 (General Unsecured Claims) described below.

Item 2 - TABULATION OF BENEFICIAL OWNER VOTING. The undersigned certifies that:

B. Class 4 General Unsecured Claims

Acceptances. _____ Individual Claimants holding Senior Secured Notes in the aggregate unpaid principal amount of \$ _____ have delivered duly completed Individual Ballots to the undersigned voting to **ACCEPT** the Plan; and

Rejections. _____ Individual Claimants holding Senior Secured Notes in the aggregate unpaid principal amount of \$ _____ have delivered duly completed Individual Ballots to the undersigned voting to **REJECT** the Plan.

Item 3 – TRANSMITTAL OF VOTES FROM INDIVIDUAL BALLOTS. The undersigned transmits the votes of Individual Claimants holding Senior Secured Note Deficiency Claims in Class 4 as fully set forth below and certifies that the parties listed are the Individual Claimants, as of the Record Date, and have delivered to the undersigned, as the Nominee, Individual Ballots casting such votes, which, as set forth in each column therein, indicate the aggregate principal amount voted for each claim, and whether such claim is voted to accept or reject the Plan, and whether the holder of such claim that voted to accept the Plan has elected not to grant the release provisions set forth in Article VIII of the Plan.

ADDENDUM TO MASTER BALLOT

2. Summary of Class 4 Senior Secured Note Deficiency General Unsecured Claims Voted.

Name or Account Number for Each Individual Claimant of a Class 4 Senior Secured Note Deficiency General Unsecured Claims Voting on the Plan	Principal Amount of Claim Voted	Principal Amount of Class 4 Senior Secured Note Deficiency General Unsecured Claims Voted to ACCEPT the Plan*	Principal Amount of Class 4 Senior Secured Note Deficiency General Unsecured Claims Voted to REJECT the Plan*	Individual Claimant has Elected Not to Grant the Release Provisions Set Forth in Article VIII of the Plan (Indicate Yes if Item 3 was checked, or No if it was not checked)
1.		\$	\$	
2.		\$	\$	
3.		\$	\$	
4.		\$	\$	
5.		\$	\$	
6.		\$	\$	
7.		\$	\$	
8.		\$	\$	
TOTALS		\$	\$	

[If space is insufficient, attach additional sheets in same format.]

Item 4. CERTIFICATION AS TO TRANSCRIPTION OF INFORMATION FROM ITEM 3 OF THE INDIVIDUAL BALLOT AS TO OTHER CLASS 4 SENIOR SECURED NOTE DEFICIENCY GENERAL UNSECURED CLAIMS VOTED THROUGH OTHER INDIVIDUAL BALLOTS.

The undersigned certifies that the undersigned has transcribed in the following table the information, if any, provided by Individual Claimants in Item 3 of the original Individual Ballots, identifying any Class 4 Senior Secured Note Deficiency General Unsecured Claims for which such holders have submitted other Individual Ballots other than to the undersigned:

Your Customer Account Number for Each Holder of Voting Class 4 Senior Secured Note Deficiency General Unsecured Claims	TRANSCRIBE FROM ITEM 3 OF THE INDIVIDUAL BALLOTS		
	Account Number	Name of Holder	Principal Amount of Other Class 4 Senior Secured Note Deficiency General Unsecured Claims
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

Item 5 - CERTIFICATION. By signing this Master Ballot, the undersigned certifies that: (a) each Individual Claimant holding a Senior Secured Note Deficiency General Unsecured Claim(s) in Class 4 whose vote is being transmitted by this Master Ballot has been provided with a copy of the Plan, Disclosure Statement, Disclosure Statement Order, and a Ballot for voting its Claim(s); and (b) each Individual Claimant has not cast more than one vote with respect to any given Claim for any purpose, including for determining both the number of votes and the amount of the Claim, even if such holder holds securities of the same type in more than one account. The undersigned also acknowledges that the solicitation of Senior Secured Note Deficiency Claim votes in Class 4 to accept or reject the Plan is subject to all the terms and conditions set forth in the Disclosure Statement Order, dated October [], 2015.

Name of Nominee

Participant Number

Signature of Nominee

Street Address

City, State and Zip Code

Telephone Number

Date Completed

In order to vote Senior Secured Note Deficiency General Unsecured Claims in Class 4 to accept or reject the Plan, please complete, sign, and date this Master Ballot and promptly return it to one of the following addresses, as appropriate, so as to be received on or prior to the Voting Deadline, by regular mail, or by hand delivery or overnight courier during normal business hours, to: Balloting Agent at Xnergy Ltd. Ballot Tabulation Center c/o American Legal Claim Services, I.L.C., P.O. Box 23650, Jacksonville, FL 32241-3650.

**MASTER BALLOTS RECEIVED BY FACSIMILE OR OTHER ELECTRONIC MEANS,
OR RECEIVED AFTER THE VOTING DEADLINE, WILL NOT BE COUNTED**

Exhibit 3-d

**Ballot for Holders of Senior Secured Note Deficiency Claims
in Class 4 (General Unsecured Claims)**

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

Voting Deadline: November 24 at 5:00 p.m. (ET)
Confirmation Obj. Deadline: November 24 at 5:00 p.m. (ET)
Confirmation Hearing Date: December 1 at 11:00 a.m. (ET)

**INDIVIDUAL BALLOT FOR HOLDERS OF SENIOR SECURED NOTE DEFICIENCY
CLAIMS IN CLASS 4 (GENERAL UNSECURED CLAIMS) FOR ACCEPTING OR
REJECTING THE JOINT PLAN OF REORGANIZATION OF XINERGY LTD. AND ITS
SUBSIDIARY DEBTORS AND DEBTORS IN POSSESSION**

**FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE RETURNED TO YOUR
NOMINEE SO THAT IT IS ACTUALLY RECEIVED BY
THE NOMINEE ON OR BEFORE THE VOTING DEADLINE**

**THE VOTING DEADLINE FOR YOUR NOMINEE TO SUBMIT THE
MASTER BALLOT TO ACCEPT OR REJECT THE PLAN IS
5:00 P.M. (PREVAILING EASTERN TIME) ON NOVEMBER 24, 2015 (THE "VOTING
DEADLINE").**

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule I attached to the Plan.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

This ballot (the "Ballot") is being sent to parties holding Class 4 Senior Secured Note Deficiency Claims² against one or more of the Debtors. If you hold Claims in other Classes in which you are entitled to vote, you will receive a Ballot for each such other Class.

On October [], 2015, the United States Bankruptcy Court for the Western District of Virginia (the "Court") signed an order (the "Solicitation Order") which approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinery Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated October 14, 2015 (including all exhibits thereto and as amended, modified or supplemented from time to time, the "Disclosure Statement") regarding the *First Amended Joint Plan of Reorganization of Xinery Ltd. and its Subsidiary Debtors and Debtors In Possession* (as the same may be further amended or modified, the "Plan"), and which established certain procedures for the solicitation and tabulation of votes to accept or reject the Plan. Please use this Ballot to cast your vote to accept or reject the Plan, which is proposed by the above-captioned debtors and debtors-in-possession (collectively the "Debtors"). The Plan is Exhibit A to the Disclosure Statement that accompanies this Ballot. Any party may request, at the Debtors' expense, hard copies of the Disclosure Statement, together with the Plan and other exhibits annexed thereto, from the Balloting Agent. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of General Unsecured Claims and if the Plan otherwise satisfies the applicable requirements of section 1129(a) of the Bankruptcy Code. If the requisite acceptances are not obtained, the Bankruptcy Court nonetheless may confirm the Plan if it finds that the Plan (a) provides fair and equitable treatment to, and does not unfairly discriminate against, the Class or Classes rejecting the Plan and (b) otherwise satisfies the requirements under section 1129(b) of the Bankruptcy Code.

THIS BALLOT IS TO BE USED BY HOLDERS OF CLASS 4 SENIOR SECURED NOTE DEFICIENCY CLAIMS. PLEASE COMPLETE, SIGN AND DATE THIS BALLOT AND RETURN IT IN THE ENCLOSED ENVELOPE TO THE NOMINEE. THE VOTING DEADLINE IS 5:00 P.M. PREVAILING EASTERN TIME ON NOVEMBER 24, 2015.

IMPORTANT: HOLDERS OF ALLOWED SENIOR SECURED NOTE CLAIMS SHALL NOT BE ENTITLED TO SPLIT THEIR VOTES BETWEEN CLASS 3 AND CLASS 4. IN THE EVENT SUCH HOLDER RETURNS CLASS 3 AND CLASS 4 BALLOTS THAT DISAGREE, THE VOTE AND THIRD-PARTY RELEASE OPT-OUT SELECTION INDICATED ON THE CLASS 3 BALLOT SHALL CONTROL SUCH HOLDER'S CLASS 4 VOTE AND OPT-OUT ELECTION. INDIVIDUAL CLAIMANTS MAY NOT SPLIT THEIR VOTES. EACH INDIVIDUAL CLAIMANT MUST VOTE ALL OF HIS, HER, OR ITS CLAIMS TO ACCEPT OR REJECT THE PLAN.

ITEM 1. CLASS 4 SENIOR SECURED NOTE DEFICIENCY CLAIM AMOUNT. The undersigned certifies that as of October 5, 2015 (the "Record Date"), it held a Senior Secured Note Claim in the below amount:

\$ _____

² Capitalized terms used, but not defined herein, shall have the meaning ascribed to them in the Plan.

ITEM 2. CLASS 4 SENIOR SECURED NOTE DEFICIENCY CLAIM VOTE. The Holder of the Class 4 Senior Secured Note Deficiency Claim that relates to this Ballot votes:

☐ to ACCEPT the Plan ☐ to REJECT the Plan

ANY BALLOT WHICH INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN OR DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.

ITEM 3. OPTIONAL RELEASE ELECTION:

☐ The undersigned elects NOT to grant the releases contained in Section 8.4 of the Plan.

ITEM 4. CERTIFICATION. By signing this Ballot, the Holder of the Class 4 Senior Secured Note Deficiency Claim certifies that it:

A. is the Holder of the Senior Secured Note Deficiency Claim to which this Ballot pertains;

E. has been provided with a copy of the Plan and the Disclosure Statement and that it acknowledges that the vote, or the election concerning the Third Party Release in Section 8.4 of the Plan, set forth on this Ballot is subject to all the terms and conditions set forth in the Plan and the Disclosure Statement;

F. has full power and authority to vote to accept or reject the Plan and to elect to accept or reject the Third Party Release in Section 8.4 of the Plan; and

G. has not submitted any other Ballots relating to its Class 4 Senior Secured Note Deficiency Claim that are inconsistent with the vote or election as set forth in this Ballot or that, as limited by the terms of the Solicitation Order and the instructions attached hereto, if such other Ballots were previously submitted, they either have been or are hereby revoked or changed to reflect the vote or election set forth herein.

Name: _____
(Print or Type)

Social Security Or Federal Tax I.D. No.: _____
(Optional)

Signature: _____

By: _____
(If Appropriate)

Title: _____
(If Appropriate)

Street Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Date Completed: _____

This Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan or to elect to accept or reject the Third Party Release in Section 8.4 of the Plan. This Ballot shall not constitute or be deemed to be a proof of claim or equity interest or an assertion of a claim or equity interest.

YOUR VOTE MUST BE ACTUALLY RECEIVED BY THE NOMINEE, BY 5:00 P.M. EASTERN TIME ON NOVEMBER 24, 2015, OR YOUR VOTE WILL NOT BE COUNTED. FACSIMILE OR OTHER MEANS OF ELECTRONIC TRANSMISSION OF THIS BALLOT WILL NOT BE ACCEPTED.

**IF YOU HAVE QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES,
OR IF YOU NEED AN ADDITIONAL BALLOT OR ADDITIONAL COPIES OF THE
DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CALL THE
BALLOTING AGENT AT (904) 517-1442.**

Exhibit 3-e

Ballot for Class 4 (General Unsecured Claims)

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**BALLOT FOR HOLDERS OF CLASS 4 GENERAL UNSECURED CLAIMS FOR
ACCEPTING OR REJECTING THE JOINT PLAN OF REORGANIZATION OF
XINERGY LTD. AND ITS SUBSIDIARY DEBTORS
AND DEBTORS IN POSSESSION**

This ballot (the “Ballot”) is being sent to parties holding Claims² against one or more of the Debtors other than (1) an Administrative Claim, (2) a DIP Facility Claim, (3) a Professional Claim, (4) a Priority Tax Claim, (5) a Priority Non-Tax Claim, (6) an Other Secured Claim, (7) a Senior Secured Note Claims, (8) an Intercompany Claim or Interest, (9) an Interest in Xinergy Ltd., (10) a Claim subject to subordination pursuant to section 510(b) of the Bankruptcy Code and (11) Senior Secured Note Deficiency Claims (the “Class 4 General Unsecured Claims”). If you hold Claims in other Classes in which you are entitled to vote, you will receive a Ballot for each such other Class.

On October [], 2015, the United States Bankruptcy Court for the Western District of Virginia (the “Court”) signed an order (the “Solicitation Order”) which approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated October 14, 2015 (including all exhibits thereto and as amended, modified or supplemented from time to time, the “Disclosure Statement”) regarding the *First*

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule I attached to the Plan.

² Capitalized terms used, but not defined herein, shall have the meaning ascribed to them in the Plan.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

Amended Joint Plan of Reorganization of Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession (as the same may be further amended or modified, the "Plan"), and which established certain procedures for the solicitation and tabulation of votes to accept or reject the Plan. Please use this Ballot to cast your vote to accept or reject the Plan, which is proposed by the above-captioned debtors and debtors-in-possession (collectively the "Debtors"). Any party may request, at the Debtors' expense, hard copies of the Disclosure Statement, together with the Plan and other exhibits annexed thereto, from the Balloting Agent. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Class 4 Claims and if the Plan otherwise satisfies the applicable requirements of section 1129(a) of the Bankruptcy Code. If the requisite acceptances are not obtained, the Bankruptcy Court nonetheless may confirm the Plan if it finds that the Plan (a) provides fair and equitable treatment to, and does not unfairly discriminate against, the Class or Classes rejecting the Plan and (b) otherwise satisfies the requirements under section 1129(b) of the Bankruptcy Code.

THIS BALLOT IS TO BE USED BY HOLDERS OF CLASS 4 GENERAL UNSECURED CLAIMS. PLEASE COMPLETE, SIGN AND DATE THIS BALLOT AND RETURN IT IN THE ENCLOSED ENVELOPE TO THE AGENT SUPERVISING THE SOLICITATION, TABULATION, AND BALLOTING PROCESS (THE "BALLOTING AGENT"). THE VOTING DEADLINE IS 5:00 P.M. PREVAILING EASTERN TIME ON NOVEMBER 24, 2015.

ITEM 1. CLASS 4 CLAIM AMOUNT. The undersigned certifies that as of October 5, 2015 (the "Record Date"), it held a Class 4 General Unsecured Claim in the below amount:

\$ _____

ITEM 2. CLASS 4 (GENERAL UNSECURED CLAIMS) VOTE. The holder of the Class 4 General Unsecured Claim that relates to this Ballot votes:

☐ to ACCEPT the Plan ☐ to REJECT the Plan

ANY BALLOT WHICH INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN OR DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.

ITEM 3. OPTIONAL RELEASE ELECTION:

☐ The undersigned elects NOT to grant the releases contained in Section 8.4 of the Plan.

ITEM 4. CERTIFICATION. By signing this Ballot, the Holder of the General Unsecured Claim certifies that it:

A. is the Holder of the General Unsecured Claim to which this Ballot pertains;

B. has been provided with a copy of the Plan and the Disclosure Statement and that it acknowledges that the vote, or the election concerning the Third Party

Release in Section 8.4 of the Plan, set forth on this Ballot is subject to all the terms and conditions set forth in the Plan and the Disclosure Statement;

C. has full power and authority to vote to accept or reject the Plan and to elect to accept or reject the Third Party Release in Section 8.4 of the Plan; and

D. has not submitted any other Ballots relating to the Class 4 General Unsecured Claim that are inconsistent with the vote or election as set forth in this Ballot or that, as limited by the terms of the Solicitation Order and the instructions attached hereto, if such other Ballots were previously submitted, they either have been or are hereby revoked or changed to reflect the vote or election set forth herein.

Name: _____
(Print or Type)

Social Security Or Federal Tax I.D. No.: _____
(Optional)

Signature: _____

By: _____
(If Appropriate)

Title: _____
(If Appropriate)

Street Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Date Completed: _____

No fees, commissions or other remuneration will be payable to any broker, dealer or other person for soliciting votes on the Plan. This Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan or to elect to accept or reject the Third Party Release in Section 8.4 of the Plan. Holders should not surrender, at this time, certificates representing their securities. The Balloting Agent will not accept delivery of any such certificates surrendered together with a Ballot. Moreover, this Ballot shall not constitute or be deemed to be a proof of claim or equity interest or an assertion of a claim or equity interest.

YOUR VOTE MUST BE ACTUALLY RECEIVED BY THE BALLOTING AGENT, BY 5:00 P.M. EASTERN TIME ON NOVEMBER 24, 2015, OR YOUR VOTE WILL NOT BE COUNTED. FACSIMILE OR OTHER MEANS OF ELECTRONIC TRANSMISSION OF THIS BALLOT WILL NOT BE ACCEPTED.

IF YOU HAVE QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED AN ADDITIONAL BALLOT OR ADDITIONAL COPIES OF THE DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CALL THE BALLOTING AGENT AT (904) 517-1442.

VOTING INSTRUCTIONS

All capitalized terms used in the ballot (the “Ballot”) or these instructions but not otherwise defined therein shall have the meanings ascribed to them in the Plan.

Please read and follow these instructions carefully. You must transmit this Ballot to the Balloting Agent by no later than 5:00 p.m. prevailing Eastern Time on November 24, 2015, unless such time is extended (the “Voting Deadline”), or your Ballot will not be counted.

In order for your vote to count, you must:

- Complete Item 1;
- Cast ONE vote to accept or reject the Plan by checking the proper box in Item 2;
- Review the certifications in Item 4;
- Sign the Ballot – Your original signature is required on the Ballot in order for your vote to count;
- If you are completing the Ballot on behalf of an entity, indicate your relationship with such entity and the capacity in which you are signing, and provide proof of your authorization to so sign. In addition, please provide your name and mailing address if different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot; and
- Return the completed Ballot to the Balloting Agent in the pre-addressed stamped envelope enclosed with this Ballot.

IF YOU DO NOT CAST A VOTE WITH RESPECT TO THE PLAN, YOU MAY COMPLETE ITEM 3 TO ELECT TO ACCEPT OR REJECT THE THIRD PARTY RELEASE.

If you believe you received the wrong form of Ballot, or if you need additional Ballots, please immediately contact the Balloting Agent.

If you wish to have your Claim or Interest allowed for purposes of voting on the Plan in a manner that is inconsistent with the Ballot you received or if you did not receive a Ballot and wish to have your Claim or Interest temporarily allowed for voting purposes only, you must serve on the Debtors and file with the Bankruptcy Court, on or before November 4, 2015, a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing such Claim or Interest for purposes of voting (an “Estimation Motion”). An Estimation Motion must set forth with particularity the amount and classification of which you believe your Claim or Interest should be allowed for voting purposes, and the evidence in support of your belief. In respect of any timely filed Estimation Motion, the Ballot in question shall be counted (a) in the amount established by the Bankruptcy Court in an order entered on or before the Confirmation Hearing or (b) if such an order has not been entered by the Confirmation Hearing and unless the Debtors and you have come to an agreement as to the relief requested in the Estimation Motion, in an amount equal to the preprinted amount on the Ballot or in the event you did not receive a Ballot, you shall not

have a Ballot counted at all. The Court will schedule a hearing on such Estimation Motion to be heard at or prior to the Confirmation Hearing.

If multiple Ballots are received from the same person with respect to the same Claims or Interests prior to the Voting Deadline, the last Ballot timely received will supersede and revoke any earlier received Ballot. However, if a Holder of Claims or Interests casts Ballots received by the Balloting Agent on the same day, but which are voted inconsistently, such Ballots will not be counted.

Any Ballot that is illegible or that contains insufficient information to permit the identification of the claimant will not be counted.

Properly executed Ballots that attempt to partially accept and partially reject the Plan will not be counted.

After the Voting Deadline, no Ballot may be withdrawn or modified without the prior consent of the Debtors.

This Ballot does not constitute, and shall not be deemed to be, a proof of claim or an assertion or admission of a Claim or Interest.

If you hold Claims or Interests in more than one Class under the Plan, you may receive more than one Ballot for each different Class. Each Ballot votes only your Claims or Interests indicated on that Ballot. Please complete and return each Ballot you receive.

PLEASE MAIL YOUR BALLOT PROMPTLY. FACSIMILE OR OTHER ELECTRONIC (INCLUDING E-MAIL) TRANSMISSION OF THIS BALLOT WILL NOT BE ACCEPTED.

IF YOU HAVE ANY QUESTIONS REGARDING THE BALLOT OR THE PROCEDURES GENERALLY, OR IF YOU NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CALL THE BALLOTING AGENT AT (904) 517-1442.

FOR MAILING PURPOSES, THE ADDRESS OF THE BALLOTING AGENT IS: XINERGY LTD. BALLOTS C/O AMERICAN LEGAL CLAIM SERVICES, LLC, P.O. BOX 23650, JACKSONVILLE, FL 32241-3650.

Exhibit 4

Cure Notice

EXHIBIT 4

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹⁷

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**NOTICE OF (I) POSSIBLE ASSUMPTION OR ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (II) FIXING OF CURE
AMOUNTS; AND (III) DEADLINE TO OBJECT THERETO**

PLEASE TAKE NOTICE that on September 16, 2015, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed in the United States Bankruptcy Court for the Western District of Virginia (the “Bankruptcy Court”) the *Debtors’ Motion for Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections (A) to Confirmation of the Plan, and (B) to Proposed Cure Amounts; and (IV) Granting Related Relief* (the “Voting Procedures Motion”). The Voting Procedures Motion sought approval of, among other things, procedures for the fixing of Cure Amounts (as defined below) in connection with the potential assumption or assumption and assignment of certain executory contracts and unexpired leases (collectively, the “Contracts”) pursuant to the *First Amended Joint Plan of Reorganization of Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated October 14, 2015 (as amended, the “Plan”),¹⁸ and the deadline to object to such Cure Amounts, assumptions or assumptions and assignments.

PLEASE TAKE FURTHER NOTICE that on the schedule annexed hereto as Exhibit A, the Debtors have indicated the cure amounts that the Debtors believe must be paid to compensate the non-Debtor parties for any actual pecuniary losses arising from any defaults under the Debtors’ Contracts that may be assumed, or assumed and assigned, under the Plan (in each instance, the “Cure Amount”).¹⁹

¹⁷ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule I attached to the Plan.

¹⁸ Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Plan.

¹⁹ To the extent that any Contract previously has been rejected in part, with respect to certain portions of a Contract, the inclusion of such Contract on Exhibit A refers solely to the proposed assumption of those portions of the Contract not previously rejected pursuant to Court Order.

PLEASE TAKE FURTHER NOTICE that any party objecting to the Cure Amounts, whether or not such party previously filed a proof of claim with respect to amounts due under the applicable agreement, or objecting to the potential assumption or assumption and assignment of such Contract(s), shall be required to file and serve an objection, in writing, setting forth with specificity any and all cure obligations that the objecting party asserts must be cured or satisfied in respect of the Contracts and/or any and all objections to the potential assumption or assumption and assignment of such agreements, together with all documentation supporting such cure claim or objection. Any objections to the proposed assumption or assumption and assignment of the Contract(s) and/or the corresponding Cure Amount(s), must be filed with the Clerk of the Bankruptcy Court for the Western District of Virginia, 210 Church Avenue, Room 200, Roanoke, Virginia 24011, and served upon each of the following notice parties so that the objection is received no later than **November 10, 2015, at 5:00 p.m. prevailing Eastern Time** (the "Cure Objection Deadline"):

The Debtors: Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, Attn: Tyler P. Brown, Esq.

The Creditors Committee: (i) McGuireWoods LLP, EQT Plaza, 625 Liberty Avenue, 23rd Floor, Pittsburgh, Pennsylvania 15222-3142, Attn: Michael J. Roeschenthaler, Esq., and (ii) Whiteford Taylor & Preston, LLP, 114 Market Street, Suite 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings, Esq.

The Informal Prepetition Noteholder Committee and DIP Lenders: Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York, 10019, Attn: Brian Hermann, Esq. & Lauren Shumejda, Esq.

The Office of the United States Trustee: 210 First Street, Suite 505, Roanoke, Virginia 24011, Attn: Margaret K. Garber, Esq

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed and the parties are unable to settle such objection, a hearing with respect to the assumption or assumption and assignment of your Contract and/or your Cure Amount will be held at the time of the Confirmation Hearing, **December 1, 2015, at 11:00 a.m. prevailing Eastern Time**, or such other hearing date to which the parties may mutually agree, before Judge Paul M. Black, United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011.

PLEASE TAKE FURTHER NOTICE that in the event that no objection is timely filed with respect to a Contract, the counterparty to such Contract shall be deemed to have consented to the Cure Amount proposed by the Debtors and shall be forever enjoined and barred from seeking any additional amount(s) on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their Estates. In addition, if no timely objection is filed with respect to a Contract, upon the Effective Date of the Plan, the Debtors or the assignee, and the counterparty to such Contract shall enjoy all of the rights and benefits under the Contract without the necessity of obtaining any party's written consent to the Debtors' assumption or assumption and assignment of the Contract, and such counterparty shall be deemed to have waived any right to object, consent, condition or otherwise restrict the Debtors' assumption or assumption and assignment of the Contract.

PLEASE TAKE FURTHER NOTICE that if you agree with assumption or assumption and assignment of your Contract and the Cure Amount indicated, you need not take any further action.

PLEASE TAKE FURTHER NOTICE that the inclusion of a Contract herein is without prejudice to the Debtors' right to modify their election to assume, assume and assign or to reject such Contract prior to the entry of a final, non-appealable order (which order may be the order confirming the

Plan) deeming such Contract assumed, assumed and assigned or rejected, and inclusion of a Contract herein is not a final determination that such Contract will, in fact, be assumed or assumed and assigned.

PLEASE TAKE FURTHER NOTICE that the inclusion of a Contract herein shall not constitute or be deemed to be a determination or admission by the Debtors that such document is, in fact, an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code or that the Debtors have any liability thereunder.

HUNTON & WILLIAMS LLP

Dated: October [], 2015

/s/ Tyler P. Brown

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
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Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Email: tpbrown@hunton.com
hlong@hunton.com
jpaget@hunton.com

*Counsel to the Debtors
and Debtors in Possession*

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD
APPLICATION OF XINERGY LTD UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

RECOGNITION ORDER

CASSELS BROCK & BLACKWELL LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

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Natalie E. Levine LSUC #64908K

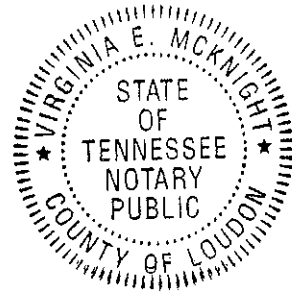
Tel: 416.860.6568
Fax: 416.640.3207
nlevine@casselsbrock.com

Lawyers for Xinergy Ltd.

TAB H

This is Exhibit "H" referred to in the Affidavit of Michael R.
Castle sworn January 26, 2016

Virginia E. McKnight
A Notary Public for the State of Tennessee



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**ORDER (I) CONTINUING AND RESCHEDULING HEARING ON
CONFIRMATION OF JOINT PLAN OF REORGANIZATION, (II)
EXTENDING DEADLINE FOR SUBMITTING BALLOTS, (III)
EXTENDING DEADLINE FOR FILING PLAN SUPPLEMENT AND (IV)
GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned cases debtors and debtors in possession (collectively, the “Debtors”), for the entry of an Order (i) continuing and rescheduling the hearing to consider confirmation of the *First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession* (the “Plan”) previously scheduled for December 1, 2015, at 11:00 a.m. prevailing Eastern Time (the “Confirmation Hearing”); (ii) extending the previously established deadline of November 24, 2015, at 5:00 p.m. prevailing Eastern Time (the “Voting Deadline”) by which Ballots accepting or rejecting the Plan must be actually received, (iii) extending the deadline for filing the Plan Supplement and (iv) granting certain related relief, including the form and manner of notice of the adjournment of the Confirmation Hearing; and it appearing that the relief requested in the Motion is in the best interest of the Debtors and their estates; and the Court finding that it has

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Motion.

² Capitalized terms used, but not otherwise defined, herein shall have the meanings set forth in the Motion.

jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and notice of this Motion having been due and sufficient under the circumstances; and upon the record therein; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.
2. The Confirmation Hearing previously scheduled for December 1, 2015, at 11:00 a.m. prevailing Eastern Time is hereby adjourned to **January 27, 2016 at 11:00 a.m. prevailing Eastern Time** at the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011, or as soon thereafter as counsel may be heard, to consider confirmation of the Plan.
3. The Voting Deadline by which Ballots accepting or rejecting the Plan must be actually received is hereby extended to **January 20, 2016 at 5:00 p.m. prevailing Eastern Time**. All Ballots must be properly executed, completed and delivered to the Balloting Agent at Xinergy Ltd. Ballot Tabulation Center c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650, so that the Ballots are actually received on or before Voting Deadline. Ballots cast by facsimile, email or other electronic transmission will not be counted unless approved in advance by the Debtors in writing. Creditors who have already submitted Ballots shall have the opportunity to re-vote, if desired, by contacting ALCS and requesting a replacement Ballot or by such other mechanism as the Debtors may otherwise agree or institute, including, as needed, by further order of the Court. All re-submitted Ballots must comply with this paragraph 3.

4. The deadline by which the Debtors must file the Plan Supplement is hereby extended to no later than five (5) business days before the Voting Deadline (as extended by this Order), or such later date as may be approved by this Court on notice to parties in interest.

5. Objections, if any, to confirmation of the Plan, including any supporting memoranda, must be in writing, must be filed with the Clerk of the United States Bankruptcy Court of the Western District of Virginia, 210 Church Avenue, Room 200, Roanoke, Virginia 24011 together with proof of service, and shall state the name and address of the objector, all grounds for the objection and the amount of the Claim(s) or other Interest(s) held by the objector, and shall provide proposed language to remedy such objections. Any such objection must be filed with the Court and served so that it is actually received by the Court, the following parties, and all other parties requesting or entitled to receive notice in these cases, on or before **January 20, 2016, at 5:00 p.m. prevailing Eastern Time:**

The Debtors: Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, Attn: Tyler P. Brown, Esq.

The Creditors Committee: (i) McGuireWoods LLP, EQT Plaza, 625 Liberty Avenue, 23rd Floor, Pittsburgh, Pennsylvania 15222-3142, Attn: Michael J. Roeschenthaler, Esq., and (ii) Whiteford Taylor & Preston, LLP, 114 Market Street, Suite 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings, Esq.

The Informal Prepetition Noteholder Committee and DIP Lenders: Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York, 10019, Attn: Brian Hermann, Esq. & Lauren Shumejda, Esq.

The Office of the United States Trustee: 210 First Street, Suite 505, Roanoke, Virginia 24011, Attn: Margaret K. Garber, Esq.

6. Any objection not filed and served as set forth above will be deemed waived and will not be considered by the Court.

7. Any party supporting the Plan shall be afforded an opportunity to file a response to any objection to confirmation of the Plan, prior to the Confirmation Hearing.

8. The Debtors shall mail or caused to mailed to the Voting Parties (as defined in the Disclosure Statement Order) within two (2) business days of entry of this Order the notice of adjournment of the Confirmation Hearing substantially in the form annexed hereto as Exhibit 1.

9. The relief requested herein is without prejudice to the Debtors' right to seek additional extensions or modifications to any of the foregoing dates or deadlines.

10. The Debtors are authorized and empowered to take such steps and perform such actions as may be necessary to implement and effectuate the terms of this Order.

11. This Court shall retain jurisdiction over all matters arising out of or related to the Motion and this Order.

Dated: November 24, 2015


UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Tyler P. Brown
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

*Counsel to the Debtors
and Debtors in Possession*

EXHIBIT 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**NOTICE OF RESCHEDULED HEARING TO CONSIDER
CONFIRMATION OF JOINT PLAN OF REORGANIZATION
AND EXTENDED DEADLINE FOR VOTING**

TO: ALL PARTIES IN INTEREST

PLEASE TAKE NOTICE that, by Order dated October 16, 2015 (the “Disclosure Statement Order”), the United States Bankruptcy Court for the Western District of Virginia (the “Court”) approved the disclosure statement accompanying the *First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession* (the “Plan”), and previously established November 24, 2015, at 5:00 p.m. prevailing Eastern Time (the “Voting Deadline”) as the deadline by which Ballots² accepting or rejecting the Plan must be actually received, and scheduled the hearing to consider confirmation of the Plan for December 1, 2015, at 11:00 a.m. prevailing Eastern Time (the “Confirmation Hearing”).

PLEASE TAKE NOTICE that, by order of the Court, each of these dates and deadlines have been extended as set forth below.

RESCHEDULED CONFIRMATION HEARING

PLEASE TAKE FURTHER NOTICE that, by order of the Court, the Confirmation Hearing has been continued and rescheduled for **January 27, 2016, at 11:00 a.m. prevailing Eastern Time** or as soon thereafter as counsel may be heard, before Judge Paul M. Black, at the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011 to consider confirmation of the Plan, as the same may be further amended or modified, and for such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that the Confirmation Hearing may be adjourned from time to time by the Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. Additionally, the Plan may be modified in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and other applicable law, without further notice, prior to or as a result of the Confirmation Hearing.

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Plan.

² Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Plan.

EXTENDED DEADLINE FOR SUBMITTING BALLOTS

PLEASE TAKE FURTHER NOTICE that, by order of the Court, the Voting Deadline by which Ballots accepting or rejecting the Plan must be actually received is extended to **January 20, 2016, at 5:00 p.m. prevailing Eastern Time**. To be counted, your original signed Ballot (a Ballot to be completed by you may be enclosed herewith) must actually be received on or before January 13, 2016, by American Legal Claim Services LLC (the "Balloting Agent") at Xinergy Ltd. Ballot Tabulation Center c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650. Ballots received by facsimile, e-mail or other means of electronic transmission will not be counted.

PLEASE TAKE FURTHER NOTICE that, if you have already submitted a Ballot, you may re-vote, if desired, by requesting a replacement Ballot from the Balloting Agent or by such other mechanism as the Debtors may otherwise agree or institute, including, as needed, by further order of the Court. You may contact the Balloting Agent by calling (904) 517-1442 to request a replacement Ballot. All replacement Ballots submitted must comply with the preceding paragraph.

EXTENDED DEADLINE FOR PLAN OBJECTIONS

PLEASE TAKE FURTHER NOTICE that, objections, if any, to confirmation of the Plan, including any supporting memoranda, must be in writing, must be filed with the Clerk of the United States Bankruptcy Court of the Western District of Virginia, 210 Church Avenue, Room 200, Roanoke, Virginia 24011 together with proof of service, and shall state the name and address of the objector, all grounds for the objection and the amount of the Claim(s) or other Interest(s) held by the objector, and shall provide proposed language to remedy such objections. Any such objection must be filed with the Court and served so that it is actually received by the Court, the following parties, and all other parties requesting or entitled to receive notice in these cases, on or before **January 20, 2016, at 5:00 p.m. prevailing Eastern Time**:

The Debtors: Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, Attn: Tyler P. Brown, Esq.

The Creditors Committee: (i) McGuireWoods LLP, EQT Plaza, 625 Liberty Avenue, 23rd Floor, Pittsburgh, Pennsylvania 15222-3142, Attn: Michael J. Roeschenthaler, Esq., and (ii) Whiteford Taylor & Preston, LLP, 114 Market Street, Suite 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings, Esq.

The Informal Prepetition Noteholder Committee and DIP Lenders: Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York, 10019, Attn: Brian Hermann, Esq. & Lauren Shumejda, Esq.

The Office of the United States Trustee: 210 First Street, Suite 505, Roanoke, Virginia 24011, Attn: Margaret K. Garber, Esq.

Any objection not filed and served as set forth above will be deemed waived and will not be considered by the Court.

HUNTON & WILLIAMS LLP

Dated: November __, 2015

/s/ Tyler P. Brown

Tyler P. Brown (VSB No. 28072)

Henry P. (Toby) Long, III (VSB No. 75134)

Justin F. Paget (VSB No. 77949)

HUNTON & WILLIAMS LLP

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Counsel to the Debtors

and Debtors in Possession

SCHEDULE 1

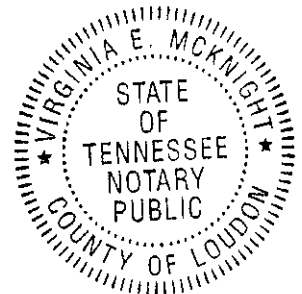
Debtor Entities

- | | |
|--|---|
| 1. Xinergy Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinergy Corp. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinergy Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinergy of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
| 6. Xinergy Straight Creek, Inc. (0071) | 19. Strata Fuels, LLC (1559) |
| 7. Xinergy Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinergy Land, Inc. (8121) | 21. Raven Crest Mining, LLC (0122) |
| 9. Middle Fork Mining, Inc. (1593) | 22. Brier Creek Coal Company, LLC (9999) |
| 10. Big Run Mining, Inc. (1585) | 23. Bull Creek Processing Company, LLC (0894) |
| 11. Xinergy of Virginia, Inc. (8046) | 24. Raven Crest Minerals, LLC (7746) |
| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

TAB I

This is Exhibit "I" referred to in the Affidavit of Michael R.
Castle sworn January 26, 2016

Virginia E. McKnight
A Notary Public for the State of Tennessee



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

In re:

XINERGY LTD., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-70444 (PMB)

Jointly Administered

**SECOND SUPPLEMENTAL ORDER AUTHORIZING THE DEBTORS TO AMEND
THE DIP CREDIT AGREEMENT AND OBTAIN INCREMENTAL FINANCING
UNDER THE DIP CREDIT AGREEMENT AND GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), and Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), seeking, among other things, a second supplemental order (this “Supplemental Order”) authorizing the Debtors to (i) obtain up to an aggregate principal amount of \$1,500,000 in incremental post-petition financing under the DIP Credit Agreement (the “Subsequent Incremental DIP Financing”) substantially on the same terms as the Initial Term Loans and the Delayed Draw Term Loans approved under the DIP Order and the Incremental DIP Financing approved under the First Supplemental DIP Order, except as

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Motion.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Court’s *Modified Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* [Dkt. No. 263], entered by the Court on June 5, 2015 (the “DIP Order”), as supplemented and amended, including by the *Supplemental Order Authorizing the Debtors to Amend the DIP Credit Agreement and Obtain Incremental Financing under the DIP Credit Agreement and Grant[ing] Related Relief* [Dkt. No. 363], entered by the Court on August 27, 2015 (the “First Incremental DIP Order”).

otherwise provided below, from those DIP Lenders who have executed Incremental Amendment No. 2, (ii) amend the DIP Credit Agreement to, among other things, permit the incurrence of the Subsequent Incremental DIP Financing, and (iii) pay certain fees and expenses to the DIP Lenders who have executed the Incremental Amendment No. 2 in connection with the Subsequent Incremental DIP Financing; and the Court having considered the Motion, and the record in these cases; and it appearing that notice of the Motion, the relief requested therein and the hearing on the Motion (the “Interim Hearing”) are adequate and appropriate under the particular circumstances; and the Court having considered all objections, if any, to the Motion; and upon the record made by the Debtors in the Motion, the Declaration of Michael R. Castle in support of the Chapter 11 Petitions and Related Motions (the “Castle Declaration”) [Doc. No. 18], and at the Hearing, and at the hearing on the DIP Order, and after due deliberation and consideration and it appearing that sufficient cause exists for granting the requested relief and that the relief requested is in the best interest of the Debtors, their estates, and their creditors;

IT IS HEREBY FOUND, DETERMINED, ORDERED AND ADJUDGED THAT:

1. The Motion is granted as set forth herein. Any objections to the Motion with respect to the entry of this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled without prejudice to the rights of parties in interest to object to the granting of the Motion on a final basis in accordance with paragraph 18 hereof.

2. This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and properties affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Under the circumstances, the notice given by the Debtors of the Motion and the Hearing constitutes due and sufficient notice of the Motion and the Hearing, and is adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law, and no further notice related to this proceeding is necessary or required.

4. The terms of Incremental Amendment No. 2, a copy of which was attached to the Motion in substantially final form, and the transactions related thereto are hereby authorized and approved on an INTERIM BASIS; provided that this Supplemental Order shall become a final order to the extent provided in paragraph 18 below. Promptly upon entry of this Supplemental Order, the Borrower is authorized to borrow up to an aggregate principal amount of \$1,500,000 pursuant to the Subsequent Incremental DIP Financing, and the guarantors under the Subsequent Incremental DIP Financing are hereby authorized to guarantee such borrowings, plus interest, fees, amounts paid-in-kind, prepayment premiums, original issue discount, expenses (including professional fees and expenses whether incurred pre- or post-petition) and other amounts, in each case, as provided for in the DIP Documents and the Incremental Amendment No. 2, under the Subsequent Incremental DIP Financing and in accordance with the terms and conditions of the DIP Credit Agreement, the DIP Order, the First Supplemental DIP Order, this Supplemental Order, and Incremental Amendment No. 2.

5. The Debtors are hereby authorized to perform and do all acts, including to make, execute and deliver Incremental Amendment No. 2 and all instruments and documents as may be required to effect the Subsequent Incremental DIP Financing and the transactions contemplated thereby. The Debtors are authorized to perform each of their obligations in respect of the Subsequent Incremental DIP Financing and to pay fees and other amounts that may be reasonably required or necessary for the Debtors' performance under the DIP Documents

(including Incremental Amendment No. 2) or in connection with the Subsequent Incremental DIP Financing, including, without limitation, payment of the Subsequent Incremental DIP Amendment Fee referenced in the Fee Letter executed in connection with the Subsequent Incremental Amendment and the agreement to pay the reasonable fees and out-of-expenses of the professionals of the DIP Agent and the DIP Lenders in accordance with the DIP Order.

6. The amendments and modifications to the DIP Credit Agreement and the DIP Order as set forth herein and in Section 2 of Incremental Amendment No. 2 are hereby approved on an interim basis in all respects, subject to this Supplemental Order becoming a final order as provided in paragraph 18 below.

7. Good cause has been shown for entry of this Supplemental Order. The relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtors' business, the management, and preservation of the Debtors' assets and personal property. It is in the best interest of the Debtors' estates that the Debtors be allowed to borrow the Subsequent Incremental DIP Financing.

8. The Debtors are unable to obtain the required additional financing in the form of (i) unsecured credit or unsecured debt allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense pursuant to section 364(a) or (b) of the Bankruptcy Code, (ii) unsecured debt having the priority afforded by section 364(c)(1) of the Bankruptcy Code, or (iii) secured debt under section 364(c)(2) or (3) of the Bankruptcy Code. No other source of financing exists on terms more favorable than those offered in connection with the Subsequent Incremental DIP Financing.

9. The Subsequent Incremental DIP Financing and the amendments to the DIP Credit Agreement are vital to avoid immediate and irreparable loss or harm to the Debtors'

estates, which will otherwise occur if immediate access to the Subsequent Incremental DIP Financing is not obtained.

10. The terms of the Subsequent Incremental DIP Financing and Incremental Amendment No. 2 are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. The Subsequent Incremental DIP Financing, the amendments to the DIP Credit Agreement, Incremental Amendment No. 2 and this Order have been negotiated in good faith and at arm's length between the Debtors and the DIP Lenders. Consequently, the Subsequent Incremental DIP Financing shall be deemed to have been extended by the DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code.

11. The obligations under the Subsequent Incremental DIP Financing and Incremental Amendment No. 2 shall constitute valid and binding obligations of the Debtors, and such obligations shall constitute Obligations (as defined in the DIP Credit Agreement) and DIP Obligations for all purposes. The Subsequent Incremental DIP Financing and all other obligations under Incremental Amendment No. 2 shall be treated as Superpriority Claims, Obligations (as defined in the DIP Credit Agreement) and DIP Obligations for all purposes hereunder, under the DIP Order and the DIP Documents (which, for the avoidance of doubt, shall include Incremental Amendment No. 2), and, except for the Carve Out, no claims having an administrative priority superior to or *pari passu* with such DIP Obligations shall be granted while any portion thereof remains outstanding, without the consent of the DIP Lenders in accordance with the DIP Documents. All references in the DIP Credit Agreement, the DIP Documents and the DIP Order to the DIP Facility shall be read to include the Subsequent Incremental DIP Financing, and references to the DIP Credit Agreement shall be read to include Incremental

Amendment No. 2. Incremental Amendment No. 2 and all definitive documents relating to the Subsequent Incremental DIP Financing shall be considered DIP Documents.

12. All DIP Liens, security interests, priorities and other rights, remedies, benefits, privileges and protections provided to the DIP Lenders in the DIP Order and the DIP Documents with respect to or relating to the DIP Financing or the DIP Collateral shall apply with equal force and effect to the Subsequent Incremental DIP Financing, Incremental Amendment No. 2 and all obligations incurred under or in connection therewith or related thereto, and the various claims, liens, super-priority claims and other protections granted pursuant to this Supplemental Order will not be affected by any subsequent reversal or modification of this Supplemental Order, the DIP Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the post-petition financing arrangements contemplated by this Supplemental Order.

13. Notwithstanding anything to the contrary in the DIP Order, the principal amount of the Subsequent Incremental Term Loans (as such term is defined in Incremental Amendment No. 2) shall be senior in right of payment relative to the other loans provided under the DIP Order, the First Supplemental DIP Order or the DIP Credit Agreement.

14. The terms of the DIP Order, including the terms of the First Supplemental DIP Order, are incorporated herein and made a part of this Supplemental Order. Except to the extent modified by this Supplemental Order, the terms, provisions and conditions of, and relief granted by, the DIP Order remain in full force and effect, and shall apply with equal weight to the Subsequent Incremental DIP Financing as if the Subsequent Incremental DIP Financing was entered into and authorized contemporaneously with the DIP Financing. All factual and other findings and conclusions of law contained in the DIP Order shall remain fully applicable to the DIP Financing, and shall apply with equal weight to the Subsequent Incremental DIP Financing

as if the Subsequent Incremental DIP Financing was entered into and authorized contemporaneously with the DIP Financing, except to the extent specifically modified herein. In the event of any inconsistency among the provisions of this Supplemental Order, the DIP Order and the definitive documents related to the Subsequent Incremental DIP Financing, the provisions of the DIP Order shall govern, except as expressly modified by this Supplemental Order.

15. The provisions of this Supplemental Order shall be binding upon and inure to the benefit of the DIP Lenders, the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors), and the Debtors' estates.

16. All liens and priority granted to the DIP Lenders pursuant to this Supplemental Order shall be deemed perfected by operation of law as of the date hereof.

17. This Supplemental Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Supplemental Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Supplemental Order.

18. The Final Hearing to consider entry of this Supplemental Order on a final basis is scheduled for January 27, 2016, at 11:00 a.m. (EST) before this Court. The Debtors shall promptly mail copies of this Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court. Objections, if any, to entry of this Supplemental Order

on a final basis are due January 20, 2016, at 4:00 p.m. (EST); provided, however, if no such objections are received by such date, this Supplemental Order shall automatically become final without further order or action by the Court or the Debtors and the Final Hearing shall be cancelled.

19. This Court shall retain jurisdiction to hear and determine any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: January 5, 2016
Roanoke, Virginia


UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

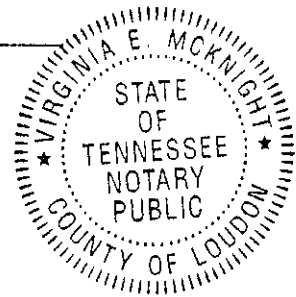
/s/ Justin F. Paget
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

*Counsel to the Debtors
and Debtors in Possession*

TAB J

This is Exhibit "J" referred to in the Affidavit of Michael R.
Castle sworn January 26, 2016

Virginia E. McKnight
A Notary Public for the State of Tennessee



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**NOTICE OF FILING OF PLAN SUPPLEMENT RELATING TO THE DEBTORS'
FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

PLEASE TAKE NOTICE the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) hereby file the *Plan Supplement Related to the First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession* (the “Plan Supplement”) with the United States Bankruptcy Court for the Western District of Virginia.

PLEASE TAKE FURTHER NOTICE that the Plan Supplement is filed in support of, and in accordance with, the *First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession* (the “Plan”).²

PLEASE TAKE FURTHER NOTICE that the following documents are included in the Plan Supplement, as each may be amended, modified, or supplemented:

Exhibit	Description
A	Summary of Proposed Principal Terms of Governance and Related Rights
B	Exit Facility Term Sheet
C	Disclosure of Proposed Officers and Directors of Reorganized Debtors
D	List of Rejected Executory Contracts and Unexpired Leases of Nonresidential Real Property

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Plan.

² Capitalized terms used, but not otherwise defined herein, shall have the meanings set forth in the Plan.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in the Plan Supplement remain subject to continuing negotiations among the Debtor and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained therein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Court.

PLEASE TAKE FURTHER NOTICE that inclusion of any contract or lease on the Rejection Schedule attached hereto as Exhibit D is not an admission by the Debtors that such contract or lease constitutes an executory contract or unexpired lease of nonresidential real property under section 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that a copy of the Plan Supplement may be obtained at no charge at www.americanlegalclaims.com/xinergy or for a fee at <https://ecf.vawb.uscourts.gov>.

DATED: January 13, 2016

Respectfully submitted,

/s/ Justin F. Paget

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
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*Counsel to the Debtors
and Debtors in Possession*

EXHIBIT A

Summary of Proposed Principal Terms of Governance and Related Rights

Exhibit A – Proposed Principal Terms of Governance and Related Rights

WHITE FOREST RESOURCES, INC.:
SUMMARY OF PROPOSED PRINCIPAL TERMS OF GOVERNANCE AND RELATED RIGHTS

JANUARY 13, 2016

The following is a description of certain proposed terms of governance and related rights with respect to White Forest Resources, Inc., a Delaware corporation (the “Company”), to be set forth in (i) the Stockholders’ Agreement to be entered into by and among the Company and its initial stockholders (the “Stockholders’ Agreement”), (ii) the Certificate of Incorporation of the Company (the “Charter”), and (iii) the Bylaws of the Company (the “Bylaws”), in each case effective upon the restructuring of the indebtedness of Xinergy Corp., a Tennessee corporation (“Xinergy”), and its affiliated debtors pursuant to the plan of reorganization filed with the United States Bankruptcy Court, Western District of Virginia, pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Restructuring”). The Company will be a newly-formed holding company formed to hold the equity interests of Xinergy as of immediately following the effectiveness of the Restructuring.

Stockholders’ Agreement

I. Parties

The Company, Centerbridge Partners (“Centerbridge”), Spectrum Group Management (“Spectrum”), Credit Suisse Asset Management (“CSAM”), one or more funds managed by Whitebox Advisors LLC (such funds collectively, “Whitebox”) and each other holder of shares of common stock (“Common Stock” and shares of such Common Stock, “Shares”) of the Company as set forth on Annex A hereto immediately following the completion of the Restructuring (each holder of equity interests of the Company, a “Stockholder” and each Stockholder set forth on Annex A hereto, an “Initial Stockholder”).

II. Board of Directors

A. Board of Directors

Exhibit A – Proposed Principal Terms of Governance and Related Rights

- i. The Board will initially be comprised of five members (each, a “Director”), as follows:
 - (a) Centerbridge and Spectrum will each designate one Director; provided, that if either Centerbridge or Spectrum ceases to hold at least 70% of the total number of Shares initially held by such party (as set forth on Annex A hereto), such party will no longer have the right to designate a Director;
 - (b) CSAM and Whitebox (each, a “CSAM/Whitebox Party”) will jointly designate one Director (the “CSAM/Whitebox Director”); provided, that if either CSAM or Whitebox ceases to hold at least 85% of the total number of Shares initially held by such party, the CSAM/Whitebox Director will be designated solely by the other CSAM/Whitebox Party; provided, further that if both CSAM and Whitebox cease to hold at least 85% of the total number of Shares initially held by such parties respectively, CSAM and Whitebox will no longer have the right to designate a CSAM/Whitebox Director;
 - (c) one Director will be the Company’s chief executive officer; and
 - (d) the remaining Directors (initially, one Director), each of whom will be independent directors (to be defined), will be elected by the vote of a supermajority (66 2/3rds) of the Shares issued and outstanding.

B. Transferability

- i. The right of each of Centerbridge and Spectrum to designate one Director will be transferable by such party in connection with a transfer (in any single transaction or series of related transactions) of Shares held by such party to any transferee, which transfer represents not less than 20% in the aggregate of the total number of Shares issued and outstanding as of the effective time of such transfer.
- ii. The right of the CSAM/Whitebox Parties to jointly designate one Director will be transferable by the CSAM/Whitebox Parties in connection with a transfer (in any single transaction or series of related transactions) of Shares collectively held by the CSAM/Whitebox Parties to any transferee, which transfer represents not less than 20% in the aggregate of the total number of Shares issued and outstanding as of the effective time of such transfer; provided that immediately following such transfer, neither CSAM/Whitebox Party shall be entitled to designate a Director.

C. Board Observers

Exhibit A – Proposed Principal Terms of Governance and Related Rights

<ul style="list-style-type: none"> i. Each Initial Stockholder will be entitled to have one representative attend, as an observer, all meetings of the Board (a “<u>Board Observer</u>”); <u>provided</u> that no Initial Stockholder will be entitled to designate a Board Observer for so long as such Stockholder has a Director designated to the Board. ii. For the avoidance of doubt, each CSAM/Whitebox Party will be entitled to appoint one Board Observer in the event that the CSAM/Whitebox Parties are entitled to jointly designate a CSAM/Whitebox Director and such CSAM/Whitebox Director is a representative of the other CSAM/Whitebox Party.
<p>B. Committees</p>
<ul style="list-style-type: none"> i. The composition and governance of committees of the Board will be structured in a manner that preserves the Board nomination rights and consent rights of the Stockholders and their Board designations.
<p>C. Power to Fill Vacancies</p>
<ul style="list-style-type: none"> i. Centerbridge, Spectrum and the CSAM/Whitebox Parties (each, a “<u>Designating Stockholder</u>”) will have the right to designate a replacement Director to the Board in the event of the death, incapacity, resignation or removal of such Designating Stockholder’s designee. Any vacancies of the Director(s) elected by the vote of a majority of the Shares will be replaced by an independent director according to the vote of a majority of the Shares issued and outstanding at the time of determination. ii. If a Designating Stockholder loses the right to designate a Director to the Board as a result of such Designating Stockholder ceasing to satisfy the required ownership threshold set forth above, such Designating Stockholder’s designee shall immediately resign and the resulting vacancy on the Board will be filled by an independent director pursuant to the vote of a majority of the Shares issued and outstanding at the time of determination.
<p>III. Negative Control Rights</p>
<ul style="list-style-type: none"> i. The following actions of the Company will require the approval of the Stockholder(s) holding at least two-thirds of the issued and outstanding Shares: <ul style="list-style-type: none"> (a) any increase or decrease in the size or composition of the Board;

Exhibit A – Proposed Principal Terms of Governance and Related Rights

<p>(b) any fundamental changes to the nature of the business of the Company or its subsidiaries involving the entry by the Company or its subsidiaries into material new and unrelated lines of business; and</p> <p>(c) the consummation of a change of control, merger, consolidation or other business combination.</p> <p>ii. Any transaction between the Company or its subsidiaries, on the one hand, and any Stockholder, Director or affiliate of any Stockholder or Director, on the other hand, must be approved by a majority of the votes of the Directors then in office, excluding any Director who is, or has been designated by, a party that has an interest in such transaction.</p>
<p>IV. Indemnification</p>
<p>To the fullest extent provided by law, the Company will indemnify its and its subsidiaries’ Directors and officers from any and all losses, costs, claims, liabilities, damages or expenses (including the advancement of legal fees and expenses) arising from third party claims relating to such Director’s or officer’s service to or on behalf of the Company or its subsidiaries.</p>
<p>V. Information and Access Rights</p>
<p>Each Stockholder will have the right to receive customary information, including audited annual financial statements, unaudited quarterly financial statements and copies of all board materials that are not privileged.</p>
<p>VI. Drag-Along Rights</p>
<p>If Stockholder(s) holding at least two-thirds in the aggregate of the issued and outstanding Shares (collectively, the “<u>Drag-Along Stockholder(s)</u>”), propose to transfer (in any single transaction or series of related transactions) all of the Shares owned by the Drag-Along Stockholder(s) to an unaffiliated third party (a “<u>Drag-Along Sale</u>”), then (i) such Drag-Along Stockholder(s) shall have the right to require the other Stockholder(s) to participate and transfer all of their Shares in such Drag-Along Sale on the same terms and conditions as the Drag-Along Stockholder(s) and/or vote in favor of such Drag-Along Sale, and (ii) the other Stockholders must waive any appraisal rights in connection therewith.</p>
<p>VII. Tag-Along Rights</p>
<p>If any Stockholder (a “<u>Selling Stockholder</u>”) proposes to transfer (in any single transaction or series of related transactions) at least</p>

Exhibit A – Proposed Principal Terms of Governance and Related Rights

two-thirds of the equity securities of the Company to an unaffiliated third party (a “ <u>Tag-Along Sale</u> ”), then the other Stockholders will have the right to participate proportionately in such Tag-Along Sale on the same terms and conditions as the Selling Stockholder.
VIII. Preemptive Rights
In the event the Company proposes to issue or sell any Shares, then each Stockholder holding at least 5% of the issued and outstanding Shares will have a preemptive right to proportionately participate in such offering or sale on the same terms as the proposed offering. The preemptive rights are also not transferable except to an affiliate and shall be subject to other customary exceptions set forth in the Stockholders’ Agreement.
IX. Transferability
Except in connection with a Drag-Along Sale, Tag-Along Sale, or transfer requiring board approval as described below, there are no transfer restrictions on the transfer of Shares by the Stockholders.
X. Transfers Requiring Board Approval
Any transfer of Shares by one or more Stockholders to any person that is not an institutional investor (including without limitation, an investment bank, a hedge fund, private equity fund or other investment fund) or that is a company that operates in the mining industry or holds at least 10% of the equity interests in a company that operates in the mining industry (other than transfers of Shares to any Initial Stockholder), shall, in each case, require the prior approval of a majority of all of the directors on the Board, such approval not to be unreasonably withheld.
XI. Confidential Information
If any Stockholder desires to disclose confidential information regarding the Company to a potential purchaser of all or any portion of its Shares in connection with a potential sale of such Shares, such Stockholder shall cause the potential purchaser to enter into a confidentiality agreement approved by the Company (such approval not to be unreasonably withheld) and the Company shall be a third party beneficiary to such confidentiality agreement.
XII. Jurisdiction; Venue
The Stockholders’ Agreement will be governed by Delaware law. Any disputes under the Stockholders’ Agreement will be

Exhibit A – Proposed Principal Terms of Governance and Related Rights

adjudicated by the courts located in the State of Delaware.

Annex A

Initial Stockholders

<u>Initial Stockholders</u>	<u>Shares</u>
Albert Fried & Company/Vineyard	
Armory	
Bank of America	
Bayside	
Centerbridge	
Credit Suisse Asset Management	
Highbridge	
Spectrum Group Management	
Whitebox Advisors	
[other]	
Total	

EXHIBIT B

Exit Facility Term Sheet

Exhibit B – Exit Facility Term Sheet

XINERGY CORP.
Summary Term Sheet for
Exit Financing

*This Term Sheet (this “**Term Sheet**”) sets forth the preliminary outline of certain material terms and conditions of proposed transactions (the “**Transactions**”) involving the debt obligations and equity ownership of Xinerger Corp. and its subsidiaries. This Term Sheet is intended as a summary for discussion purposes only and does not constitute a commitment, obligation or agreement to provide, arrange or syndicate any financing on the part of the lenders identified herein. Only execution and delivery of definitive documentation relating to the transactions contemplated herein shall result in any binding or enforceable obligations of any party relating to the Transactions. This Term Sheet does not include descriptions of all of the terms, conditions and other provisions that would be contained in the definitive documentation relating to the Transactions and is not intended to limit the scope of discussion and negotiation of any matter not inconsistent with the specific matters set forth herein. The terms and conditions for the Transactions set forth herein are dependent upon, among other things, internal authorization and approval by the appropriate credit committees for each of the lenders.*

Reference is made to that certain Superpriority Secured Debtor-In-Possession Credit Agreement, dated as of April 8, 2015 (as amended, the “**Existing DIP Credit Agreement**”), by and among Xinerger Corp., as borrower, the guarantors party thereto, WBOX 2014-4 Ltd., as DIP Agent, and the lenders from time to time party thereto.

Borrower: Xinerger Corp., a Tennessee corporation (the “**Borrower**”).

Current Capital Structure:

- Senior secured DIP facility with:
 - \$47,000,000 term loans under the Existing DIP Credit Agreement (the “**2015 DIP Term Loans**”); and
 - \$1,500,000 incremental term loans incurred on January 7, 2016 under the Existing DIP Credit Agreement (the “**Senior DIP Term Loans**” and, collectively with the 2015 DIP Term Loans, the “**DIP Term Loans**”).
- 9.25% Senior Secured Notes due 2019 in the original principal amount of \$200,000,000 issued pursuant to that certain note indenture, dated as of May 6, 2011, among the Borrower, certain guarantors and Wells Fargo Bank, National Association, as trustee (the “**Prepetition Notes**”).

Exit Capital Structure:

- A senior secured term loan facility in an aggregate principal amount of \$12,000,000 (the “**First Lien Facility**” and the loans thereunder, the “**First Lien Term Loans**”), \$1,500,000 of which will consist of the Senior DIP Term Loans (which will be automatically converted into First Lien Term Loans on a dollar for dollar basis), and \$10,500,000 of which will consist of new money (such portion, the “**New Money First Lien Term Loan**”).¹
- A second lien secured term loan facility in an aggregate principal amount

¹ Participation in the New Money First Lien Term Loan to be offered to holders of DIP Term Loans and Prepetition Notes on a 60/40 basis (with the 60% allocations offered on a pro rata basis in respect of the DIP Term Loan commitments).

Exhibit B – Exit Facility Term Sheet

of \$47,000,000 (plus any accrued and unpaid capitalized interest on the 2015 DIP Term Loans as of the effective date of the plan) (the “**Second Lien Facility**” and the loans thereunder, the “**Second Lien Term Loans**”), which shall consist solely of converted 2015 DIP Term Loans on a dollar for dollar basis.

- Equity: 100% to holders of Prepetition Notes, subject to dilution as set forth below.

Guarantors: Each existing and subsequently acquired or organized subsidiary of the Borrower (together with the Borrower, the “**Obligors**”).

Collateral: Substantially all the assets of the Obligors subject to intercreditor arrangements between the First Lien Facility and the Second Lien Facility to be agreed.

Interest:

- First Lien Facility: At Borrower option, either: (i) 10% payable in cash, or (ii) 15% PIK (and in each case payable quarterly).
- Second Lien Facility: 15% PIK.

Maturity: 1 year.

- At maturity, if not refinanced with cash and prepaid in full (including all accrued and unpaid interest), the Second Lien Facility will automatically convert into 48% of the equity of the Borrower (the “**Second Lien Conversion**”).²
- All equity shall be subject to dilution pursuant to the Borrower management incentive plan (providing for up to 10% of Borrower equity, on a fully diluted basis, pursuant to the plan of reorganization).

Fees:

- First Lien Facility: lenders will receive their pro rata portion of 20% of Borrower equity at issuance as a commitment fee, resulting in immediate dilution of the Prepetition Note holders from 100% to 80%. The equity fee to the First Lien Term Lenders shall not be diluted by the Second Lien Conversion.
- Second Lien Facility: None.

Voluntary Prepayments: The First Lien Facility and the Second Lien Facility may be prepaid at any time in minimum principal amounts to be agreed without premium or penalty.

Mandatory Prepayments: Customary for transactions of this type.

Representations and Customary for transactions of this type.

² Expected equity ownership of Borrower after one year: (i) 20% First Lien Facility, (ii) 32% Prepetition Notes, and (iii) 48% Second Lien Facility (i.e., 60% of Prepetition Note holders’ 80%), in each case, subject to dilution under the management incentive plan.

Exhibit B – Exit Facility Term Sheet

Warranties:

Affirmative and Negative Covenants: Customary for transactions of this type, with covenant levels for the Second Lien Facility set at a cushion to the corresponding levels for the First Lien Facility.

Financial Covenants: [TBD]

Additional Financing Covenant: Solely with respect to the initial incurrence of debt (not otherwise contemplated by this Term Sheet) that is secured on a senior or pari basis with the First Lien Facility, a portion of such debt shall be first offered to each New Money First Lien Term Lender on a pro rata basis to the extent of its then existing holdings of First Lien Term Loans.

Events of Default: Customary for transactions of this type.

First Lien Agent/Trustee: [TBD]

Second Lien Agent/Trustee: [TBD]

Additional Conditions: Bankruptcy court approval of a plan of reorganization in form and substance acceptable to the First Lien Term Loan lenders and Second Lien Term Loan lenders.

Governing Law: New York.

EXHIBIT C

Disclosure of Proposed Officers and Directors of Reorganized Debtors

Exhibit C – Proposed Officers and Directors

Section 4.13 of the Plan provides that the New Board will consist of five or seven members, one of whom will be New Holdco's Chief Executive Officer. This Exhibit C lists the identities and affiliations of the individuals who have been proposed as of the date hereof to serve as members of the New Board. One or more of the proposed members of the New Board or the proposed officers identified below will service as officers, directors and/or managers of each of the Reorganized Debtors. In accordance with Section 4.13 of the Plan, the Debtors submit the following information:

Proposed Directors of the New Board:

1. Matthew Cantor – Director. Mr. Cantor previously served as Chief General Counsel and Executive Vice President of Legal Affairs of Lehman Brothers Holdings, Inc. Mr. Cantor was a Founding Principal, Executive Officer, and an Investment Manager at Normandy Hill Capital and focused on distressed, event-driven credit and special situations. Mr. Cantor joined Normandy Hill Capital in 2007. Prior to this, Mr. Cantor was a Partner at Kirkland & Ellis LLP where he specialized in restructuring, insolvency, and workout & bankruptcy. Mr. Cantor was a Principal at Valley Lane Industries from 1998 to 2001 and a Partner at Weil, Gotshal & Manges LLP from 1997 to 1998. He previously served as a Director of Lehman Brothers Special Finance Corp. He is a Member of the New York State Bar Association, Member Business Law Section. Mr. Cantor holds a J.D. from New York University School of Law and B.A. from State University of New York at Binghamton.
2. Jeffrey Wilson – Director. Mr. Wilson has recently served as Sr. Vice President-Operations for the Debtors and was formerly Interim President of the J.W. Resources companies based in Knoxville, TN. Mr. Wilson spent almost 20 years with A.T. Massey Coal Company and 5 years with James River Coal Company in various roles in production, engineering, sales, and operations management. Since 2005, he has also been owner and manager of Wilson Energy Advisors, LLC, a consultancy specializing in management, property evaluations, and financial analyses related to the mining industry. Jeff holds a B.S. in Mining Engineering from West Virginia University and an MBA from Marshall University. He is a Registered Professional Engineer, a Registered Member of SME-AIME and serves on the Visiting Committee for the WVU Department of Mining Engineering.
3. Jacob Mercer – Director. Jacob Mercer joined Whitebox Advisors, LLC, in 2007 and is a Senior Portfolio Manager with a focus on special situations and distressed assets. Previously, Mr. Mercer worked for Xcel Energy from 2005 to 2007 as Assistant Treasurer and Managing Director. Prior to that, he worked at Piper Jaffray as a Senior Credit Analyst and Principal and at Voyageur Asset Management as a Credit Analyst. In addition, Mr. Mercer served as a Logistics Officer in the United States Army. Mr. Mercer holds a B.A. in both Business Management and Economics from St. John's University. He also holds the Chartered Financial Analyst (CFA) designation. Mr. Mercer has served on a number of boards including Ceres Global Ag, Hycroft Mining, Jerritt Canyon Gold, Par Petroleum, Piceance Energy, and Platinum Energy Solutions.

Exhibit C – Proposed Officers and Directors

4. Jeffrey Buller – Director. Mr. Buller is a Managing Director at Spectrum Group Management LLC. He has 20 years of broad experience in analyzing, structuring and executing complex transactions involving mergers & acquisitions, capital restructuring and turnaround management. Prior to joining Spectrum in 2003, Mr. Buller was responsible for the strategic and financial management of Eureka Broadband Corporation, a national provider of integrated communications services. From 1996 to 1998, Mr. Buller was an Investment Banker at Salomon Brothers focusing on debt restructuring, mergers and acquisitions, as well as workout management in various industries. From 1994 to 1996, Mr. Buller was an Associate at Coopers & Lybrand, where he obtained his CPA. In addition, Mr. Buller currently serves as a Director of JHT Holdings, Inc., a specialized transportation and logistics company. Mr. Buller received a B.S. from the State University of New York at Binghamton and an M.B.A. from Columbia Business School.
5. The fifth director will be an independent director to be disclosed prior to the Confirmation Hearing.

In accordance with Section 4.13 of the Plan, the Debtors submit the following information about the officers of the Reorganized Debtors as of the Effective Date.¹

Individual proposed to serve as officers of the Reorganized Debtors:

- | | |
|----------------------------|-------------------|
| 1. Chief Executive Officer | Jeffrey A. Wilson |
| 2. Chief Financial Officer | Michael R. Castle |

¹ The senior management of the Reorganized Debtors may change after the Effective Date.

EXHIBIT D

List of Rejected Executory Contracts and Unexpired Leases of Nonresidential Real Property

Exhibit D – Rejection Schedule

**List of Rejected Executory Contracts and Unexpired Leases of Nonresidential Real
Property**

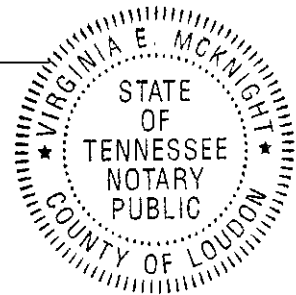
Section 5.1 of the Plan provides that unless an Executory Contract or Unexpired Lease (i) is expressly identified on the Rejection Schedule; (ii) has been previously rejected by Debtors by Final Order or has been rejected by the Debtors by order of the Court as of the Effective Date, which order becomes a Final Order after the Effective Date; (iii) is the subject of a motion to reject pending as of the Effective Date; or (iv) is otherwise rejected pursuant to the terms herein, each Executory Contract and Unexpired Lease shall be deemed assumed, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date under section 365 of the Bankruptcy Code. In accordance with Section 5.1 of the Plan, the Debtors submit the following Rejection Schedule:

Debtor Entity	Counterparty	Description of Lease or Executory Contract
South Fork Coal Company, LLC	MERAL Incorporated	Asset Purchase Agreement, dated January 31, 2011, concerning the purchase of that certain Coal Mining Lease by and between WPP, LLC and Seller dated August 13, 2008 and certain Other Assets
South Fork Coal Company, LLC	MERAL Incorporated	Amendment to Asset Purchase Agreement, dated March 17, 2014
Xinergy Corp.	WPP LLC	Mineral Lease (WPP Lease 7323) dated August 22, 2012, regarding property located in Leslie County, Kentucky
Raven Crest Contracting, LLC	Appalachian Power Company	Electric Utility Contract dated June 22, 2012, regarding premises located at Bull Creek Hollow, Dartmouth, WV
South Fork Coal Company, LLC	Appalachian Power Company	Electric Utility Contract dated January 21, 2014, regarding account number 0224277383
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Surface, Mineral, and Timber Lease, dated December 12, 2011, concerning approximately 15 acres in the Peytona District of Boone County, West Virginia
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Surface, Mineral, and Timber Lease, dated December 12, 2011, concerning approximately 24.75 acres in the Peytona District of Boone County, West Virginia
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Amendment to Surface, Timber and Mineral Lease, dated January 23, 2012, concerning 15 acre tract
Raven Crest Minerals, LLC	Sondra K and Gary Jarrell	Amendment to Surface, Timber and Mineral Lease, dated January 23, 2012, concerning 24.75 acre tract
Whitewater Resources, LLC	Sabra Investments, LP	Lease Agreement, dated December 29, 2014, concerning the lease of six (6) cabins, the office building and the "lounge" and the site on which the trailer is located, plus (1) acre surrounding each site

TAB K

This is Exhibit "K" referred to in the Affidavit of Michael R.
Castle sworn January 26, 2016

Virginia E. McKnight
A Notary Public for the State of Tennessee



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER CONFIRMING
THE DEBTORS' AMENDED JOINT CHAPTER 11 PLAN**

I. RECITALS

A. On April 6, 2015 (the “Petition Date”), the debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned cases, commenced their chapter 11 cases (the “Chapter 11 Cases”) in good faith by filing their respective Voluntary Petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Virginia (the “Court”). The Debtors have continued to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On May 8, 2015, the Court entered an order authorizing joint administration of these chapter 11 cases [Doc. No. 184]. On May 11, 2015, the Office of the United States Trustee for the Western District of Virginia (the “United States Trustee”) appointed an official committee of unsecured creditors (the “Committee”) in the Chapter 11 Cases. No trustee or examiner has been appointed in the Chapter 11 Cases.

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached hereto.

B. On September 16, 2015, the Debtors filed the *Chapter 11 Plan of Reorganization Joint Chapter 11 Plan of Xinerdy Ltd. and Its Subsidiary Debtors and Debtors In Possession* [Doc. No. 406] and the *Disclosure Statement Accompanying Joint Plan of Reorganization Proposed by Xinerdy Ltd. and Its Subsidiary Debtors and Debtors in Possession* [Doc. No. 407]. On October 14, 2015, the Debtors filed the *First Amended Joint Chapter 11 Plan of Xinerdy Ltd. and Its Subsidiary Debtors and Debtors In Possession* [Doc. No. 453]² and the *First Amended Disclosure Statement Accompanying First Amended Joint Chapter 11 Plan of Xinerdy Ltd. and Its Subsidiary Debtors and Debtors In Possession* [Doc. No. 454].

C. After due notice and a hearing held on October 16, 2015, the United States Bankruptcy Court for the Western District of Virginia (the “Court”) entered its *Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (c) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections (A) to Confirmation of the Plan, and (B) to Proposed Cure Amounts; and (IV) Granting Related Relief* [Doc. No. 465] (the “Disclosure Statement Order”) that, among other things, (i) approved the Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable a hypothetical investor of the relevant voting Classes under the Plan to make an informed judgment whether to vote to accept or reject the Plan; (ii) established the deadline to vote to accept or reject the Plan; (iii) established the deadline to file and serve

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Plan.

objection to the Plan; and (iv) scheduled a hearing to consider confirmation of the Plan. Thereafter the Debtors commenced their solicitation of votes to accept or reject the Plan, including a form of confirmation hearing notice (the “Confirmation Hearing Notice”).

D. The manner in which votes were solicited in respect of the Plan is described in the Affidavit of Service, dated October 27, 2015 [Doc. No. 477], prepared by American Legal Claims Services, LLC (the “Solicitation Affidavit”).

E. On November 20, 2015, the Debtors filed the *Motion for Entry of an Order (I) Continuing Hearing on Confirmation of Joint Plan of Reorganization, (II) Extending Deadline for Submitting Ballots, (III) Extending the Deadline for Filing the Plan Supplement and (IV) Granting Related Relief* [Doc. No. 519] (the “Motion to Continue”). On November 24, 2015, the Court granted the Motion to Continue, and entered its *Order (I) Continuing and Rescheduling Hearing on Confirmation of Joint Plan of Reorganization, (II) Extending Deadline for Submitting Ballots, (III) Extending Deadline for Filing Plan Supplement and (IV) Granting Related Relief* [Doc. No. 523] (the “Continuance Order”). The Continuance Order (i) extended the previous deadline to vote to accept or reject the Plan to January 20, 2016, at 5:00 p.m. (prevailing Eastern Time) (the “Voting Deadline”); (ii) extended the previously scheduled deadline to file and serve objection to the Plan to January 20, 2016, at 5:00 p.m. (prevailing Eastern Time) (the “Plan Objection Deadline”); and (iii) adjourned the previously scheduled confirmation hearing to January 27, 2016 at 11:00 a.m. (prevailing Eastern Time) (the “Confirmation Hearing”).

F. On January 14, 2016, the Debtors filed the *Plan Supplement to the First Amended Chapter 11 Plan of Reorganization Proposed by Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* [Doc. No. 628].

G. On January 25, 2016, the Debtors filed the *Declaration of Jeffrey L. Pirrung Certifying Vote On and Tabulation of Ballots Accepting and Rejecting the First Amendment Plan of Xinergy Ltd.* [Doc. No. ____] (the “Pirrung Declaration”), which summarizes the certified results from the Plan solicitation process.

H. The Confirmation Hearing was held before the Court on January 27, 2016.

NOW, THEREFORE, the Court having reviewed and considered the Disclosure Statement, the Plan, the Plan Supplement, the Solicitation Affidavit, and the Pirrung Declaration; and the Court having heard statements of counsel in support of Confirmation of the Plan at the Confirmation Hearing; and upon the record of the Confirmation Hearing, including evidence proffered; and the Court having considered objections to the Plan and confirmation and any responses or replies to such objections; and the Court having taken judicial notice of the papers and pleadings on file in the Chapter 11 Cases; and it appearing to the Court that the legal and factual bases set forth in the *Memorandum of Law in Support of Confirmation of the Plan* [Doc. No. ____] and the *Memorandum of Law in Support of the Consensual Third Party Release, Exculpation, and Injunction Provisions of the Plan* [Doc. No. ____] and presented at the Confirmation Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Court hereby makes and issues the following findings of fact and conclusions of law and order:

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction, Venue and Other Matters³

1. Incorporation of the Recitals. Each of the Recitals shall be, and hereby is, incorporated herein as a Finding of Fact.

³ Headings to sections and paragraphs in this Confirmation Order are inserted for convenience of reference only and are not intended to affect the interpretation of this Confirmation Order.

2. Exclusive Jurisdiction; Venue; Core Proceeding. The Court has subject matter jurisdiction over this proceeding and the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and this Court has jurisdiction to enter a Final Order with respect thereto. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code, and thus, whether the Plan should be confirmed.

3. Objections Overruled. Any resolution of objections to Confirmation explained on the record at the Confirmation Hearing is hereby incorporated by reference. All unresolved objections, statements, and reservations of rights are hereby overruled on the merits.

4. Burden of Proof. In accordance with section 1121(a) of the Bankruptcy Code, the Debtor, as the proponent of the Plan, has met its burden of proving the elements of section 1129 of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation of the Plan. Further, the Debtor has proven the elements of section 1129 of the Bankruptcy Code by clear and convincing evidence.

5. Transmittal of Solicitation Packages. The Solicitation Packages were transmitted and served in compliance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, as amended and promulgated under 28 U.S.C. § 2075, and the Local Rules of the Bankruptcy Court, as the same may be applicable (collectively, the “Bankruptcy Rules”) and the Disclosure Statement Approval Order as evidenced by the Solicitation Affidavit. Such transmittal and service of the Solicitation Packages was adequate and sufficient.

6. Notice of the Confirmation Hearing and Voting Deadline. As evidenced by the Solicitation Affidavits, notice of the Confirmation Hearing and Voting Deadline was mailed to

Holders of Claims against the Debtors, Holders of Interests in the Debtors and other parties in interest. As evidenced by the Affidavit of Publication filed with the Court on ____ [Doc. No. ____] (the “Publication Affidavit”), the Confirmation Hearing Notice, which also provided notice of the Voting Deadline, was also published timely in the print editions of the *Globe and Mail* on October 22, 2015, and the *Charleston Gazette-Mail* on October 22, 2015. Accordingly, adequate and sufficient notice of the Confirmation Hearing and Voting Deadline was given in compliance with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Approval Order, and no other or further notice was, is or shall be required.

7. Votes on the Plan. Votes for acceptance or rejection of the Plan were solicited in good faith and such solicitation complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, all other applicable provisions of the Bankruptcy Code, and the Disclosure Statement Order. As evidenced by the Pirrung Declaration, Ballots were tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Approval Order.

8. Plan Supplement. The Debtors caused the Plan Supplement to be filed with the Court in compliance with the terms of the Plan. The documents included in the Plan Supplement were negotiated in good faith and at arm’s length. The filing and notice of the Plan Supplement was good and proper and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Order, and the Continuance Order.

B. Compliance with the Applicable Provisions of the Bankruptcy Code

9. The Plan’s Compliance with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As set forth below, the Plan complies with all, and is not inconsistent

with, the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

- (a) Proper Classification of Claims and Interests (11 U.S.C. §§ 1122 and 1123(a)(1)). In addition to Administrative Claims and Priority Claims, which need not be classified, the Plan designates five Classes of Claims, one Class of Intercompany Claims and Interests, and one Class of Interests. *See* Plan at Article III. The Claims or Interests placed in each Class are substantially similar to the other Claims or Interests, as the case may be, in such Class. Valid business, factual and legal reasons exist for separately classifying the various categories of Claims and Interests created under the Plan, the classifications were not done for any improper purpose and the creation of such Classes does not unfairly discriminate between or among Holders of Claims or Interests. Thus, the Plan satisfies the requirements of sections 1122 and 1123(a)(1) of the Bankruptcy Code.
- (b) Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article III of the Plan specifies that Classes 1, 2, and 5 are Unimpaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.
- (c) Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Article III of the Plan specifies that Classes 3, 4, 6, and 7 are Impaired and specifies the treatment of the Claims and Interests in those Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

(d) Equal Treatment within Classes (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Interest in a particular Class, as the case may be, unless the Holder of a particular Claim or Interest in such Class has agreed to less favorable treatment of its Claim or Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

(e) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan and Plan Supplement provide adequate and proper means for implementation of the Plan, including but not limited to: (i) the good faith compromise and settlement of all Claims and Interests; (ii) the issuance of the Plan Securities; (iii) providing the Debtors the ability to obtain adequate exit financing; (iv) exempting the offering, issuance, and distribution of Securities, including the Plan Securities, from the registration requirements of section 5 of the Securities Act pursuant to section 1145 of the Bankruptcy Code or any other available exemption from registration under the Securities Act, as applicable; (v) the reservation of rights to properly re-classify any Allowed Claim or Interest; (vi) the vesting of rights in and the continued corporate existence of the Reorganized Debtors; (vii) the establishment of the Professional Fee Escrow Account; (viii) the cancellation of notes, instruments, Certificates, and other documents evidencing Claims or Interests; (ix) the approval of actions taken by the Reorganized Debtors pursuant to the Plan; (x) the amendment of the Debtors' certificates of incorporation and bylaws; (xi) the issuance,

execution, delivery, filing, and recording of effectuating documents; (xii) the exemption from section 1146(a) of the Bankruptcy Code; (xiii) the identification of the New Board and the officers, directors, and/or managers of each of the Reorganized Debtors; (xiv) the inclusion of provisions governing incentive plans and employee and retiree benefits; (xv) the preservation of Causes of Action; and (xvi) the implementation of the Restructuring Transactions. Accordingly, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

(f) Prohibition on Issuance of Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6)). The Plan provides that on the Effective Date, all interests in the Debtors will be indefeasibly cancelled and the Holders of Interests shall receive no property or distribution under the Plan. Accordingly, the requirements of section 1123(a)(6) of the Bankruptcy Code are satisfied.

(g) The Plan's Provisions Regarding Directors, Managers and Officers are Consistent with the Interests of Creditors and Interest Holders and Public Policy (11 U.S.C. § 1123(a)(7)). Article 4.13 of the Plan states that, the members of the Debtors' board of directors are deemed to have resigned as of the Effective Date of the Plan. Upon such resignation, the New Board selected by the Majority Consenting Noteholders in their sole discretion will be appointed and, thereafter, members of the New Board shall be selected pursuant to the director election process set forth in the New Holdco Bylaws. The Debtors' existing officers, unless replaced,

shall continue to serve in their current capacities for the Reorganized Debtors. In light of the foregoing, the requirements of section 1123(a)(7) of the Bankruptcy Code have been satisfied.

(h) Future Income (11 U.S.C. § 1123(a)(8)). Section 1123(a)(8) of the Bankruptcy Code is not applicable to the Plan because none of the Debtors are individuals.

10. The Debtors' Compliance with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically, (a) the Debtors are proper debtors under section 109 of the Bankruptcy Code and are proper proponents of the Plan under section 1121(a) of the Bankruptcy Code, (b) the Debtors have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court, and (c) as stated above, the Debtors have complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, the Bankruptcy Rules and the Disclosure Statement Approval Order in transmitting the Solicitation Packages and in soliciting and tabulating votes on the Plan.

11. The Debtors' Compliance with Bankruptcy Rule 3016. The Plan is dated and identifies the entities submitting and filing it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Clerk of the Court satisfies Bankruptcy Rule 3016(b).

12. The Debtors' Compliance with Bankruptcy Rule 3017. The Debtors have given notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d) and the Disclosure Statement Approval Order. The transmittal and service of the Solicitation Packages was (i) in

compliance with the Disclosure Statement Approval Order, and (ii) sufficient under the Bankruptcy Rules and the circumstances surrounding the Chapter 11 Cases.

13. The Debtors' Compliance with Bankruptcy Rule 3018. The solicitation of votes to accept or reject the Plan solely from Holders of Allowed Claims in Classes entitled to vote to accept or reject the Plan as of the Voting Record Date satisfies Bankruptcy Rule 3018. Votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Approval Order.

14. The Debtors Proposed the Plan in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself and the process leading to its formulation. The Chapter 11 Cases were filed and the Plan was proposed with the legitimate and honest purpose of reorganizing the Debtors' assets and liabilities. The Plan (including all documents necessary to effectuate the Plan, including but not limited to those comprising the Plan Supplement) is the result of extensive arm's-length negotiations among the Debtors, the informal committee of holders of the Senior Secured Notes, and the Committee. The Plan achieves two of the primary objectives underlying a chapter 11 bankruptcy—the resolution of disputed claims and distribution of value to creditors for amounts owing. Therefore, the Debtors have proposed the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

15. Bankruptcy Court Approval of Certain Payments as Reasonable (11 U.S.C. § 1129(a)(4)). The Plan complies with section 1129(a)(4) of the Bankruptcy Code because any

payment made or to be made by the Debtors for services or goods in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by the Court or is subject to the approval of the Court as reasonable.

16. Disclosure of All Necessary Information Regarding Directors, Managers and Officers is Consistent with the Interests of Creditors and Interest Holders and Public Policy (11 U.S.C. § 1129(a)(5)). The Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code. The Plan Supplement, in accordance with Section 4.13 of the Plan, discloses the identities and affiliations of the proposed directors and officers of the Reorganized Debtors. The appointment of the directors and officers identified in the Plan Supplement is consistent with the best interests of the holders of Claims against, and Interests in, the Debtors and with public policy.

17. Government Regulatory Control over Rate Changes (11 U.S.C. § 1129(a)(6)). Section 1129(a)(6) of the Bankruptcy Code does not apply because the Plan does not provide for any changes in rates over which a governmental regulatory commission has jurisdiction.

18. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). The Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis contained in the Disclosure Statement and any other evidence proffered or adduced at the Confirmation Hearing (i) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented or proffered, (ii) utilize reasonable and appropriate methodologies and assumptions, (iii) have not been successfully challenged or controverted by other evidence, and (iv) establish that each Holder of a Claim or Interest in an Impaired Class either (x) has voted to accept the Plan (as evidenced by the Pirrung Declaration) or (y) will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of

the Effective Date of the Plan, that is not less than the amount that it would have received if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code.

19. Acceptance or Rejection of the Plan by Certain Classes (11 U.S.C. § 1129(a)(8)).

As set forth in the Pirrung Declaration, the percentage of Holders of Claims in Impaired Classes entitled to vote on the Plan that voted to accept or reject the Plan is as follows:

<u>Impaired Class of Claims</u>	<u>Percentage Accepting (Dollar Amount)</u>	<u>Percentage Accepting (Number of Claims)</u>
Class 3	100% (\$65,291,416.50)	100% (40)
Class 4	100% (—)	100% (31)

Accordingly, Classes 3 and 4 have accepted the Plan pursuant to section 1126(c) of the Bankruptcy Code. Classes 1, 2, and 5 which are Unimpaired, are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. As to the Unimpaired Class and the Impaired and accepting Classes, the requirements of section 1129(a)(8) of the Bankruptcy Code have been satisfied. Holders of Claims and Interests in Classes 6 and 7 will not receive any distributions of property under the Plan and therefore are deemed to have rejected the Plan. Because the requirements of section 1129(a)(8) of the Bankruptcy Code have not been satisfied in connection with Classes 6 and 7, section 1129(b) of the Bankruptcy Code applies to these Classes. No filed Claims in Class 7 have been allowed in these chapter 11 cases. Therefore, as Class 7 is an empty Class, the requirements of section 1129(b) of the Bankruptcy Code are only applicable to Class 6. Notwithstanding the lack of compliance of Class 6 with section 1129(a)(8) of the Bankruptcy Code, the Plan is confirmable because it satisfies section 1129(b) of the Bankruptcy Code with respect to Class 6, as set forth in paragraph [28] below.

20. Treatment of Claims Entitled to Priority (11 U.S.C. § 1129(a)(9)). The Plan complies with section 1129(a)(9) of the Bankruptcy Code because it provides for treatment of

Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Priority Non-Tax Claims entitled to priority pursuant to section 507 of the Bankruptcy Code in the manner required by section 1129(a)(9) of the Bankruptcy Code.

21. Acceptance of at Least One Impaired Class (11 U.S.C. § 1129(a)(10)). As set forth in the Pirrung Declaration, Classes 3 and 4, whose members are Impaired, have voted to accept the Plan and have accepted the Plan in requisite numbers and amounts without the need to include any acceptance of the Plan by any insider (as defined by the Bankruptcy Code). Thus, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

22. Feasibility of the Plan (11 U.S.C. § 1129(a)(11)). The Plan satisfies section 1129(a)(11) of the Bankruptcy Code because the Debtors will have sufficient funds and other financial wherewithal on the Effective Date to allow the Debtors to substantially consummate the Plan. The Debtors have sufficient monies and assets available and existing on the Effective Date to pay in accordance with the Plan or enable the Debtors to reserve in full for the payment of, all Allowed Administrative Claims, Allowed Priority Non-Tax Claims and Allowed Priority Claims. The evidence proffered or adduced at the Confirmation Hearing in support of feasibility of the Plan (i) is reasonable, persuasive, credible, and accurate, and (ii) has not been successfully challenged or controverted by any other evidence. Confirmation of the Plan is not likely to be followed by the liquidation or further reorganization of the Reorganized Debtors. Accordingly, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

23. Payment of Bankruptcy Fees (11 U.S.C. § 1129(a)(12)). In accordance with section 1129(a)(12) of the Bankruptcy Code, the Debtors have paid, or will pay on or before the Effective Date, all fees payable under section 1930 of title 28 of the United States Code. As a result, the requirements of section 1129(a)(12) of the Bankruptcy Code have been satisfied.

24. Retiree Benefits (11 U.S.C. § 1129(a)(13)). The evidence adduced or proffered at the Confirmation Hearing established that the Debtors are not obligated now, nor will they become obligated in the future, to pay “retiree benefits” (as defined in section 1114 of the Bankruptcy Code) as described in section 1129(a)(13) of the Bankruptcy Code. Accordingly, section 1129(a)(13) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

25. Post-petition Domestic Support Obligations and Disposable Income (11 U.S.C. § 1129(a)(14) and (15)). Sections 1129(a)(14) and (15) of the Bankruptcy Code impose certain requirements on individual chapter 11 debtors. As corporate entities, sections 1129(a)(14) and (15) of the Bankruptcy Code are not implicated by the Plan.

26. Transfers of Property by Nonprofit Entities (11 U.S.C. § 1129(a)(16)). Section 1129(a)(16) of the Bankruptcy Code imposes certain requirements on corporations or trusts that are not a moneyed, business or commercial corporation. As none of the Debtors is a corporation that is not a moneyed, business, or commercial corporation, section 1129(a)(16) of the Bankruptcy Code is not implicated by the Plan.

27. Satisfaction of Confirmation Requirements. For all of the above reasons, the Plan satisfies the requirements for confirmation set forth in section 1129(a) of the Bankruptcy Code other than subsection (a)(8) with respect to Class 6.

28. Confirmation of the Plan Over Nonacceptance of Impaired Classes (11 U.S.C. § 1129(b)). As described in paragraphs 8 through 26 above, the Plan satisfies all of the applicable requirements of section 1129(a) of the Bankruptcy Code other than subsection (a)(8) with respect to Class 6. Pursuant to section 1129(b)(1) of the Bankruptcy Code, the Plan may be confirmed notwithstanding the fact that Class 6 has not voted to accept the Plan. Based upon the Pirrung Declaration and the evidence proffered, adduced, or presented by the Debtors at the

Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable, as required by section 1129(b)(1) of the Bankruptcy Code, with respect to the members of Class 6. Thus, the Plan may be confirmed notwithstanding the Debtors' failure to satisfy section 1129(a)(8) of the Bankruptcy Code in connection with Class 6. After the entry of this Confirmation Order and upon the occurrence of the Effective Date, the Plan shall be binding upon all Classes.

29. Only One Plan (11 U.S.C. § 1129(c)). Other than the Plan (including the previous versions thereof), no other plan has been filed in the Chapter 11 Cases. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

30. Principal Purpose (11 U.S.C. § 1129(d)). The principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of section 5 of the Securities Act of 1933 (the "Securities Act"), and no Governmental Unit (as defined in section 101(27) of the Bankruptcy Code) has requested that the Court deny Confirmation of the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

31. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based upon the record before the Court, the Debtors and their agents, officers, directors, LLC managers, employees, counsel and advisors have solicited votes on the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the releases and exculpatory and injunctive provisions set forth in Article VIII of the Plan.

C. Other Findings

32. Conditions to Confirmation. Entry of this Confirmation Order shall satisfy the conditions set forth in section 9.1 of the Plan.

33. Releases, Exculpation, and Injunction. The releases, exculpations, and injunction provisions set forth in Article VIII of the Plan constitute good faith compromises and settlements of the matters covered thereby. Each of the release, exculpation, and injunction provisions set forth in Article VIII of the Plan: (a) is within the jurisdiction of the Court under 28 U.S.C. § 1334; (b) is an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (c) is an integral element of the reorganization of the Debtors and the resolution of the Chapter 11 Cases in accordance with the Plan and the failure to effect such provision would seriously impair the Debtors' ability to confirm the Plan; (d) confers material benefits on, and is in the best interests, of the Debtors, the Debtors' Estates, and Holders of Claims and Interests; (e) is, *inter alia*, supported by extensive consideration; (f) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties in interest in the Chapter 11 Cases with respect to the Debtors; and (f) is consistent with sections 105, 1123, 1129, and other applicable sections of the Bankruptcy Code. The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the release, exculpation, and injunction provisions contained in Article VIII of the Plan.

34. Consensual Third Party Releases. The releases described in Section 8.4 of the Plan are consensual third party releases and constitute an integral component of the Plan (the "Consensual Third Party Releases"). The Consensual Third Party Releases provide that each Holder of an Impaired Claim in Classes 3 and 4, regardless of whether such Holder votes to accept or reject the Plan or does not vote at all, may elect to opt out of the Consensual Third Party Releases. The Ballots that were sent to Holders of Claims in Classes 3 and 4 clearly and

explicitly stated that Holders of such Claims could opt out of the Consensual Third Party Releases by checking the “opt out” box provided on the Ballot, and directed Holders of such Claims to Section 8.4 of the Plan for further information about the release provisions. Thus, Holders of Claims in Classes 3 and 4 were given due and adequate notice that they could opt out of the Consensual Third Party Releases. The Holders of Claims in Class 3 and 4 who did not exercise the option to opt out of the Consensual Third Party Releases have manifested their consent to, and are contractually bound by, the Consensual Third Party Releases, including, without limitation, releases of claims against non-debtors to the extent set forth in Section 8.4 of the Plan. Further, the Released Parties compensated the Holders of Claims in Classes 3 and 4 for these Consensual Third Party Releases with adequate consideration, including by engaging in extensive, good faith negotiation of, and participation in, the restructuring process, which ultimately resulted in the Debtors being able to submit a confirmable plan providing for efficient and timely distributions to be made to creditors. Additionally, the Consensual Third Party Releases constitute: (i) a good-faith settlement and compromise of the Claims and Causes of Action released by the Consensual Third Party Releases; (ii) are in the best interests of the Debtors and their Estates; (iii) are fair, equitable, and reasonable; (iv) are given and made after due notice and opportunity for hearing; (v) are narrowly tailored; and (vi) are a bar to any Claim or Cause of Action released by the Consensual Third Party Releases against any of the Released Parties.

35. Exculpation. The Exculpation provisions set forth in Section 8.5 of the Plan are essential to the Plan. The record in the Chapter 11 Cases fully supports the Exculpation and the Exculpation provisions set forth in Section 8.5 of the Plan, which are appropriately tailored to protect the Released Parties from inappropriate litigation.

36. Injunction. The Injunction provisions set forth in Section 8.6 of the Plan are essential to the Plan and are necessary to implement the Plan and to preserve and enforce the Debtor Release, the Consensual Third Party Releases, and the Exculpation provisions in Section 8.5 of the Plan. Such Injunction provisions are appropriately tailored to achieve those purposes.

37. Executory Contracts and Unexpired Leases. The Debtors have exercised reasonable business judgment in determining to assume all remaining executory contracts and unexpired leases as set forth in Article V of the Plan. Pursuant to the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, each executory contract and unexpired lease of the Debtors that is not identified on the Rejection Schedule, has not been assumed and assigned through the True Energy Assumption and Assignment Procedures, or that has been previously rejected by the Debtors, is hereby deemed assumed by the Debtors. The Debtors have provided adequate assurance of future performance for each of the executory contracts and unexpired leases that are being assumed by the Debtors pursuant to the Plan. The Debtors have cured or provided adequate assurance that the Reorganized Debtors will cure defaults (if any) under or relating to each of the executory contracts and unexpired leases that are being assumed by the Debtors pursuant to the Plan. The Plan and such assumptions, therefore, satisfy the requirements of section 365 of the Bankruptcy Code.

38. Exit Facility. The incurrence of indebtedness and granting of collateral under the Exit Facility and Exit Facility Documents are essential elements of the Plan and in the best interests of the Reorganized Debtors, and are appropriate for the consummation of the Plan and the operations of the Reorganized Debtors. The Exit Facility Documents were negotiated at arm's length, and in good faith, without the intent to hinder, delay or defraud any creditor of the Debtors. The Debtors have provided sufficient and adequate notice of the Exit Facility and Exit

Facility Documents to all parties in interest in these Chapter 11 Cases. The terms and conditions of the Exit Facility, as set forth in the Exit Facility Documents, are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

39. Vesting of Assets. Pursuant to Section 4.6 of the Plan except as otherwise provided in the Plan, all Causes of Action, and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, including New Holdco, free and clear of all Liens, Claims, charges, or other encumbrances. From and after the Effective Date, the Debtors may take any action, including, without limitation, the operation of their businesses, the use, acquisition, sale, lease and disposition of property, and the entry into transactions, agreements, understandings or arrangements, whether or not in the ordinary course of business, and execute, deliver, implement, and fully perform any and all obligations, instruments, documents and papers or otherwise in connection with any of the foregoing, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code, except as explicitly provided in the Plan. Such transactions are appropriate, and is in the best interests of the Debtors and their Estates.

40. Implementation of the Plan. Pursuant to section 1142(b) of the Bankruptcy Code, no action of any of the Debtors' managers or board of directors will be required (a) to authorize the Debtors (or any of their officers, employees or agents acting on their behalf) to effectuate and carry out the Plan or any order of the Court relating thereto, (b) to consummate the transactions contemplated by the Plan or this Confirmation Order, or (c) to take any other action contemplated by the Plan or this Confirmation Order as may be necessary and appropriate to fully effectuate the interests and purposes thereof, and all such actions hereby are or will be

deemed to have been taken or done with like effect as if they have been duly authorized or approved by unanimous actions of the managers or board of directors, as appropriate.

III. ORDER

A. Confirmation of the Plan

1. Approval and Confirmation of the Plan. The Plan, including the Plan Supplement, which is annexed hereto as **Exhibit A**, shall be, and hereby is, **APPROVED** and **CONFIRMED** pursuant to section 1129 of the Bankruptcy Code.

2. The provisions of the Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purpose of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall control and take precedence. The provisions of this Confirmation Order are integrated with each other and are non-severable and are mutually dependent.

3. The Plan and this Confirmation Order will be effective and binding on all parties in interest in the Chapter 11 Cases.

4. The failure to include or refer to any particular article, section, or provision of the Plan, Plan Supplement, or any related document or exhibit does not impair the effectiveness of that article, section, or provision; it being the intent of the Court that the Plan, Plan Supplement, and any related document or exhibit will be approved in their entirety.

5. The Debtors and all other appropriate parties shall be, and hereby are, authorized and directed to: (a) take all actions necessary or appropriate to enter into, implement and consummate the Plan and any other contracts, instruments, releases, indentures and other

agreements created in connection with the Plan or referred to therein, all of which such Plan documents and such other contracts, instruments, releases, indentures and other agreements shall be, and hereby are, approved, (b) to take such other steps to perform such other acts as may be necessary to implement and effectuate the Plan and such other contracts, instruments, releases, indentures and other agreements, and (c) to execute and deliver any instrument and perform any other act that is necessary for the consummation of the Plan and such other contracts, instruments, releases, indentures and other agreements, in accordance with section 1142(b) of the Bankruptcy Code, without further application to, or order of the Court, or further action by the respective officers, managers, or board of directors, as appropriate, and with the effect that such actions have been taken by unanimous action of such officers, managers, or board of directors, as appropriate.

6. [PLACEHOLDER FOR NON-MATERIAL MODIFICATIONS, IF ANY]

7. Objections. To the extent any objections (including any reservations of rights contained therein) to Confirmation have not been withdrawn, waived, or settled prior to entry of this Confirmation Order, are not cured by the relief granted in this Confirmation Order, or have been otherwise resolved as stated by the Debtors on the record at the Confirmation Hearing, all such objections (including any reservation of rights contained therein) are hereby overruled on the merits.

8. Findings of Facts and Conclusions of Law. This Confirmation Order constitutes this Court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure. All findings of fact shall constitute findings of fact even if stated as conclusions of law, and all conclusions of law shall constitute conclusions of law even if stated

as findings of fact. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Court at the Confirmation Hearing and incorporated herein) constitutes an order of this Court, it is adopted as such.

9. Notice and Solicitation of Votes. Through service and publication of the Confirmation Hearing Notice, as evidenced by the Solicitation and Publication Affidavit, Holders of Claims and Interests in the Debtors and all other parties in interest received adequate and sufficient notice of the Voting Deadline, the Objection Deadline, and the Confirmation Hearing. The Debtors solicitation of votes through the Solicitation Agent, as described in the Pirrung Affidavit, was appropriate and done in good faith. Accordingly, the Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Approval Order.

10. Binding Effect. The Plan and its provisions shall be binding on the Debtors, any entity acquiring or receiving property or a Distribution under the Plan, and any Holder of a Claim or Interest in the Debtors, including all governmental entities, whether or not the Claim or Interest of such Holder is impaired under the Plan or has accepted the Plan.

11. Implementation. On and after the Effective Date, the Debtors are authorized to (i) execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, including, without limitation, those contained in the Plan Supplement, (ii) make any and all Distributions and transfers contemplated pursuant to, and as provided for in, the Plan, and (iii) take such other actions as may be necessary to effectuate, implement, and further evidence the terms and conditions of the Plan.

12. Effectiveness of Plan Provisions. Each term and provision of the Plan, as approved by this Confirmation Order, is binding, valid, and enforceable pursuant to its terms

13. Execution by Third Parties. Each and every federal, state and local governmental agency or department shall be, and hereby is, directed to accept, and lessors and holders of liens are directed to execute, any and all documents, instruments or amendments necessary and appropriate to consummate the transactions contemplated by the Plan, including without limitation, documents, instruments or amendments for recording in county and state offices in order to effectuate the Plan.

14. General Settlement of Claims and Interests. Except as otherwise provided in the Plan or this Confirmation order, pursuant to Section 4.1 of the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all controversies, Claims, and Interests resolved pursuant to the Plan.

15. Preservation of Claims and Causes of Action. Pursuant to Section 4.15 of the Plan and in accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court

16. Payment of Statutory Fees. All fees payable pursuant to section 1930(a) of the United States Judicial Code shall be paid for each quarter (including any fraction thereof) until these Chapter 11 Cases are converted, dismissed or closed, whichever occurs first.

17. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any State or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement, and any other documents, instruments or agreements contained therein, and any amendments or modifications of any of the foregoing.

18. Continued Organizations Existence. Except as otherwise provided in the Plan and subject to any Restructuring Transactions consummated as permitted by the Plan or described in the Plan Supplement, each Debtor may, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, each with all of the powers of a corporation, limited liability company or other applicable legal entity form, under the laws of its jurisdiction or organization and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable law. Additionally, except as otherwise provided in the Plan and subject to any Restructuring Transactions consummated as permitted by the Plan or described in the Plan Supplement, each Debtor may, at such time that the Reorganized Debtors consider appropriate and consistent with the implementation of the Plan pertaining to such Debtor, dissolve such Debtor under the laws of its jurisdiction or organization.

19. Authorization of New Common Stock. Without further act or action under applicable law, regulation, order or rule, the Reorganized Debtors are authorized to issue the

New Common Stock in New Holdco. Each of the New Common Stock issued and distributed pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable and the holders of New Common Stock shall be deemed to have accepted the terms of the New Holdco Shareholders Agreement (in their capacity as shareholders of New Holdco) and to be parties thereto without further action or signature. The Debtors or the Reorganized Debtors, as the case may be, are authorized to execute and deliver all documentation relating to the issuance of the aforementioned New Common Stock and the Restructuring Transactions, and are authorized to engage in such further transactions as determined by the Debtors, or the Reorganized Debtors, to be necessary in furtherance of the Plan.

20. Exit Facility. The Reorganized Debtors' entry on the Effective Date into the Exit Facility and the Exit Facility Documents, and the incurrence of indebtedness thereunder, the granting of collateral and other security interests in accordance therewith, and all other actions to be taken, undertakings to be made and obligations to be incurred by the Reorganized Debtors shall be authorized and approved in all respects by virtue of entry of this Confirmation Order, in accordance with the Bankruptcy Code and any other applicable law and without the need for any further corporate action or any further action by the Holders of Claims or Interests in the Debtors or Reorganized Debtors or stockholders, directors, or members of the Debtors or the Reorganized Debtors, and with like effect as if such actions had been taken by unanimous action thereof. Each of the Reorganized Debtors, without any further action by the Court or each respective Reorganized Debtors' officers, directors or stockholders, is hereby authorized and directed to enter into, and take such actions as necessary to perform under, or otherwise effectuate, the Exit Facility and Exit Facility Documents, as well as any note, documents or agreements in connection therewith, including, without limitation, any documents required in

connection with the creation or perfection of Liens or other security interests in connection therewith. The Reorganized Debtors and the secured parties under the Exit Facility and Exit Facility Documents are hereby authorized to make all filings and recordings, and to obtain all government approvals and consents to evidence, establish and perfect such Liens and other security interests under the provisions of the applicable state, provincial, federal or other law that would be applicable in the absence of the Plan or this Confirmation Order.

21. Release of Liens. Except as otherwise provided in this Confirmation Order, the Plan, or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to the Plan, any Lien, mortgage, deed of trust, pledge, or other security interest securing any Secured Claim shall be deemed fully released, settled, and compromised and the Holder of such Secured Claim shall be authorized and directed to release any collateral or other property of the Debtors held by such Holder and to take such actions as may be requested by the Debtors to evidence the release of such lien, including, without limitation, the execution, delivery, filing, or recording of such releases as may be requested by the Debtors. The filing of this Confirmation Order with any federal, state, provincial or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens, Claims, and other interests described above. Any Entity holding such Liens, Claims, or interests shall, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtors such instruments of termination, release, satisfaction, and/or assignment (in recordable form) as may be reasonably requested by the Debtors.

22. Restructuring Transactions. On or after the Effective Date, the Reorganized Debtors may engage or take such actions as may be necessary or appropriate to effect the

Restructuring Transactions. The Debtors or Reorganized Debtors, as applicable, are hereby authorized to execute and deliver such contracts, instruments, certificates, agreements and documents to make such filings under applicable law and to take such other actions as any appropriate officer may determine to be necessary, appropriate or desirable to effectuate the Restructuring Transactions. Each appropriate officer of each Debtor or Reorganized Debtor is authorized to execute, deliver, file and have recorded any of the aforementioned documents and to take such other actions on behalf of such Debtor or Reorganized Debtor as such person may determine to be required, appropriate or desirable under applicable law in connection with the Restructuring Transactions, and the appropriate officers of each Debtor or Reorganized Debtor are authorized to certify or attest to any of the foregoing actions. The execution and delivery or filing of any of the aforementioned documents, or the taking of any such action shall be deemed conclusive evidence of the authority of such person to so act. Each federal, state, provincial and local governmental agency or department is authorized and directed to accept the filing of any of the aforementioned documents. This Confirmation Order is declared to be in recordable form and shall be accepted by any filing or recording officer or authority of any applicable governmental authority or department without any further orders, certificates or other supporting documents.

23. Exemption from Securities Laws. The offering, issuance, or distribution of the New Common Stock in accordance with the Plan is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended, and any state or local law requiring registration for the offer, issuance, or distribution of a security by reason of section 1145(a) of the Bankruptcy Code.

24. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other

interest in the Debtors or the Reorganized Debtors; (b) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; (d) the grant of collateral as security for any or all of the Exit Facility; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax to which the exemption under section 1146 of the Bankruptcy Code applies.

B. The Release, Injunction, Exculpation, and Related Provisions

25. The Debtor Release. The Debtor Release set forth in Section 8.3 of the Plan is hereby approved.

26. The Consensual Third Party Releases. The Consensual Third Party Releases set forth in Section 8.4 of the Plan are hereby approved.

27. Exculpation. The Exculpation provisions set forth in Section 8.5 of the Plan are hereby approved.

28. The Injunction. Except as otherwise provided in the Plan or the Confirmation Order, and in addition to the injunction provided under sections 524(a) and 1141 of the Bankruptcy Code, the Confirmation Order shall permanently enjoin the commencement, continuation, or prosecution by any Person or Entity, directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released or exculpated pursuant to the Plan, including without limitation the Claims

and Causes of Action released in Article VIII of the Plan. Any Person or Entity injured by any willful violation of such injunction may recover actual damages, including attorneys' fees and costs, and, in appropriate circumstances, may recover punitive damages from the willful violator. All injunctions or stays contained in the Plan or this Confirmation Order shall remain in full force and effect in accordance with their terms, or as provided in the Bankruptcy Code. The injunction provision in Section 8.6 of the Plan is necessary to implement the Plan and to preserve and enforce, among other things, the Debtor Release, the Consensual Third Party Release, and the Exculpation.

C. Effects of Plan Confirmation

29. Administrative Claims Bar Date. All requests for payment of Administrative Claims must be filed with the Bankruptcy Court and served on counsel for the Debtors no later than the first Business Day that is **thirty (30) calendar days after the Effective Date**. Any Person or Entity that is required to file and serve a request for payment of an Administrative Claim and fails to timely file and serve such a request shall be forever barred, estopped and enjoined from asserting such Administrative Claim against the Debtors or participating in distributions under the Plan on account thereof. The Debtors, in their sole and absolute discretion, may settle Administrative Claims in the ordinary course of business without further Bankruptcy Court approval. The Debtors and any other party with standing shall have the right to object to any Administrative Claim by filing and serving on the appropriate parties, including the claimant, an objection to such an Administrative Claim on or before the Administrative Claims Objection Deadline. Unless the Debtors or another party with standing objects to an Administrative Claim on or before the first day that is **one hundred twenty (120) calendar days after the Effective Date** (unless extended by a Final Order of the Bankruptcy Court) such an

Administrative Claim shall be deemed an Allowed Administrative Claim in the amount requested.

30. Rejection Damages Claims Bar Date. Pursuant to Section 5.1 of the Plan, if the rejection of an executory contract or unexpired lease by any of the Debtors as part of the Plan results in a rejection damages Claim by the other party or parties to such executory contract or unexpired lease, such a rejection damages Claim shall be disallowed and expunged in its entirety without further order of or process before the Bankruptcy Court unless a proof of claim asserting such Claim is filed with the Bankruptcy Court or the Solicitation Agent and served upon the Debtors within thirty (30) days after the Effective Date. Any such rejection damages Claims shall be treated as General Unsecured Claims under the Plan.

31. Insurance Policies. Pursuant to Section 5.4 of the Plan, as of the Effective Date, the Debtors shall assume (and assign to the Reorganized Debtor if necessary to continue the insurance policies in full force) all of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto. Nothing in this Confirmation Order shall constitute or be deemed a waiver of any Claims, or Causes of Action that the Debtors may hold against any Entity or Person, including without limitation, under any of the Debtors' insurance policies.

32. Plan Classification Controlling. The classification of Claims and Interests in the Debtors for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications and amounts of Claims, if any, set forth on the Ballots returned by Holders of Claims in Classes 3 and 4 in connection with voting on the Plan: (i) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (ii) do not necessarily represent, and in no event, shall be deemed to modify or otherwise affect the actual

amount or classification of such Claims under the Plan for distribution purposes; and (iii) shall not be binding on the Debtors.

33. Setoffs. The Debtors may, to the extent permitted under applicable law, setoff against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim, the claims, rights and Causes of Action of any nature that the Debtors may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with the Plan; provided, however, that neither such a setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors of any such claims, rights and Causes of Action that the Debtors possess against such Holder.

34. Notice of Entry of the Confirmation Order. Pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c), the Debtors (or their agents), shall be, and hereby are, directed to file and serve a notice of entry of this Confirmation Order in substantially the form annexed hereto as **Exhibit B** (the “Confirmation Notice”) on all Holders of Claims and Interests as of the Voting Record Date, all Persons and Entities listed on the Debtors’ consolidated creditors matrix, the United States Trustee and all parties that filed notices of appearance or requests for notices pursuant to Bankruptcy Rule 2002 in the Chapter 11 Cases. The Confirmation Notice shall also be published in the *Globe and Mail* and the *Charleston Gazette-Mail* and posted electronically at <https://www.americanlegal.com/xinergy>. Such notice is adequate under the particular circumstances and no other or further notice is necessary.

35. Notice of Effective Date. The Debtors, shall be, and hereby are, directed to file and serve a notice of the occurrence of Effective Date in substantially the form annexed hereto as **Exhibit C** (the “Notice of Effective Date”) on all Holders of Claims and Interests as of the Voting Record Date, all Persons and Entities listed on the Debtors’ consolidated creditors matrix,

the United States Trustee and all parties that filed notices of appearance or requests for notices pursuant to Bankruptcy Rule 2002 in the Chapter 11 Cases [within two business days of the occurrence of the Effective Date]. The Notice of the Effective Date shall also be published in the *Globe and Mail* and the *Charleston Gazette-Mail* and posted electronically at <https://www.americanlegal.com/xinergy>. Such notice is adequate under the particular circumstances and no other or further notice is necessary. The Notice of Effective Date shall also serve as the notice setting forth the Administrative Claims Bar Date. Such notice of the Administrative Claims Bar Date is adequate under the particular circumstances and no other or further notice is necessary.

D. Resolution of Claims

36. Except as expressly provided for in the Plan or ordered by the Bankruptcy Court prior to the Effective Date, no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or by the Bankruptcy Code or the Bankruptcy Court has entered a Final Order allowing such Claim. Any Claim that is not an Allowed Claim shall be determined, resolved or adjudicated in accordance with the terms of the Plan.

E. Resolutions of Objections

37. Resolution of the Objection of the United States of America [Doc. No. 518]. The following modifications resolve the objection filed by the United States of America.

- (a) The Allowed Priority Tax Claim of the Internal Revenue Service shall be paid within 5 years of the order of relief, with interest from the Confirmation Date at the rate set forth in 26 U.S.C. § 6621(a)(2).
- (b) Upon the failure of the Debtors or Reorganized Debtors to pay any Allowed Priority Tax Claim of the Internal Revenue Service, the Internal

Revenue Service may, with written notice and following an opportunity by the Debtors or Reorganized Debtors, as applicable, to cure such failure within 30 days of such notice, exercise any and all rights and remedies under applicable nonbankruptcy law and seek such relief as may be appropriate in this Court.

- (c) With respect to the Internal Revenue Service or federal taxes, nothing in the Plan is intended to expand, nor shall it be construed as expanding, the jurisdiction of the Bankruptcy Court beyond what is provided in 28 U.S.C. § 1334, nor shall it limit the right of other courts to hear matters otherwise properly within their jurisdiction.
- (d) Notwithstanding anything to the contrary contained in the Plan or the Confirmation Order, the Debtors' discharge is limited to applicable provisions contained in Title 11 and non-Title 11 statutes.
- (e) There shall be no requirement that the Internal Revenue Service file any request for payment of administrative expenses, nor any deadline for the filing of such requests. Nor shall the failure to pay such liabilities result in a discharge, injunction, exculpation, release, or in any other manner defeat the Internal Revenue Service's right or ability to collect such liability pursuant to the requirements of Title 26.
- (f) Nothing in the Plan or this Confirmation Order releases, discharges, precludes, exculpates, or enjoins any non-debtor from the enforcement of any liability or obligation to the Internal Revenue Service under the Internal Revenue Code.

38. Resolution of the Objection of Lexon Insurance Company and Bond Safeguard Insurance Company [Doc. No. 642]. The following modifications resolve the objections filed by Lexon Insurance Company and Bond Safeguard Insurance Company (collectively, “Lexon”):

- (a) On or prior to the Effective Date, or soon as reasonably practicable thereafter, the Debtors shall pay Lexon any unpaid premium or loss adjustment expenses then due and owing under the applicable agreements between the parties.
- (b) Notwithstanding any provision in the Plan or this Confirmation Order to the contrary, in the event any Governmental Unit determines that any mining or environmental permit is not transferrable from the Debtors to any Reorganized Debtors, to the extent any such transfer is required to effectuate the Restructuring Transactions, any Surety Bond issued as a financial accommodation for such permit shall likewise not be transferred.
- (c) On or within a reasonable period of time following the Effective Date, New Holdco shall execute a General Agreement of Indemnity with Lexon Insurance Co. that reflects the continuing indemnification obligations assumed through the Plan.
- (d) The reference to “Section 8.5” in line 3 of the Section 5.3 of the Plan is hereby modified to read “Section 8.6.”

39. Resolution of the Objection of Penn Virginia Operating Co., LLC [Doc. No. 637]. The following modifications resolve the objection filed by Penn Virginia Operating Company, LLC:

- (a) The first sentence of Section 5.5 of the Plan is hereby modified to read as follows: “The Debtors or the Reorganized Debtors, as applicable, shall pay Cures, if any, on the Effective Date or as soon as reasonably practicable thereafter or on such other terms as the Debtors or Reorganized Debtors and the counterparty to such Executory Contract or Unexpired Lease may agree.”
- (b) The third paragraph of Section 5.5 of the Plan is hereby modified by adding the clause “Subject to the payment of any Cure” to the beginning of the first sentence of such paragraph.
- (c) The Debtors shall not assign any Unexpired Leases with Penn Virginia Operating Co., LLC, or Loadout, LLC, to any Affiliates pursuant to Section 5.1 of the Plan without first providing notice to such counterparty, as applicable, of the financial wherewithal and identify of such Affiliate and its management.

F. Miscellaneous

40. Confirmation Recognition Order. The Court requests the aid and recognition of the Canadian Court to give effect to this Confirmation Order through entry of the Confirmation Recognition Order.

41. Dissolution of the Committee. On the Effective Date, the Committee shall dissolve and its respective members shall be released from all further authority, duties, responsibilities and obligations relating to this Chapter 11 Case; provided, however, that the Committee shall continue to have a right to be heard with respect to any and all applications for

Professional Fee Claims and requests for compensation and reimbursement of expenses pursuant to section 503(b) of the Bankruptcy Code, if applicable.

42. Finality of Confirmation Order. This Confirmation Order is intended to be a final order and the period in which a notice of appeal must be filed shall commence upon the entry of this Confirmation Order on the docket of the Chapter 11 Cases.

43. Validity of Actions. If any provisions of this Confirmation Order are reversed, modified, vacated, or otherwise altered, such reversal, modification, vacatur, or alteration shall not impact the validity of any actions or obligations taken or incurred under or in connection with the Plan prior to the receipt of such an order.

44. Substantial Consummation. The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to the Effective Date set forth in Article IX of the Plan. The substantial consummation of the Plan, within the meaning of section 1101 of the Bankruptcy Code, is deemed to occur on the Effective Date.

45. Effectiveness of Confirmation Order. This Confirmation Order shall be effective upon the date of its entry, and the requirement that this Confirmation Order be stayed for a period of fourteen (14) days under Bankruptcy Rule 3020(e) shall not apply.

46. Applicable Non-Bankruptcy Law. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order, the Plan and any amendments or modifications thereto, duly made in accordance with the terms hereof, shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

47. Retention of Jurisdiction. Notwithstanding the entry of this Order and the occurrence of the Effective Date, on and after the Effective Date, this Court shall retain exclusive

jurisdiction over all matters arising out of, or related to, this Chapter 11 Case and the Plan pursuant to Article XI of the Plan.

Dated: _____, 2016
Roanoke, Virginia

Judge Paul M. Black
United States Bankruptcy Judge

WE ASK FOR THIS:

/s/ DRAFT

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*Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1

Debtor Entities

- | | |
|--|---|
| 1. Xinergy Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinergy Ltd. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinergy Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinergy of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
| 6. Xinergy Straight Creek, Inc. (0071) | 19. Strata Fuels, LLC (1559) |
| 7. Xinergy Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinergy Land, Inc. (8121) | 21. Raven Crest Mining, LLC (0122) |
| 9. Middle Fork Mining, Inc. (1593) | 22. Brier Creek Coal Company, LLC (9999) |
| 10. Big Run Mining, Inc. (1585) | 23. Bull Creek Processing Company, LLC (0894) |
| 11. Xinergy of Virginia, Inc. (8046) | 24. Raven Crest Minerals, LLC (7746) |
| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

EXHIBIT A

DEBTORS' AMENDED JOINT CHAPTER 11 PLAN

EXHIBIT B

CONFIRMATION NOTICE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**NOTICE OF ENTRY OF AN ORDER CONFIRMING THE DEBTORS' AMENDED
JOINT CHAPTER 11 PLAN**

PLEASE TAKE NOTICE THAT:

1. **Confirmation of the Plan.** On _____, the United States Bankruptcy Court for the Western District of Virginia (the "Bankruptcy Court") entered an Order confirming the *Amended Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors In Possession* [Doc. No. 453] (as modified and amended in accordance with the terms of the Confirmation Order, the "Plan"). Copies of the Confirmation Order and the Plan are available, for free, at American Legal Claim Services LLC's website <https://www.americanlegal.com/xinergy>. You may also obtain copies of the Confirmation Order and Plan, for a fee, through the Bankruptcy Court's website via PACER at www.vawb.uscourts.gov. Unless otherwise defined in this notice, capitalized terms used herein shall have the meanings ascribed to them in the Plan or the Confirmation Order.

2. **Effect of Plan.** Pursuant to section 1141 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), except as otherwise provided in the Plan or in the Confirmation Order, and subject to the occurrence of the Effective Date, the provisions of the Plan shall bind any Holder of a Claim against, or Interests in, the Debtors and their respective successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under the Plan, whether or not such Holder has voted to accept the Plan, and whether or not such Holder will receive a distribution. Accordingly, the Debtor is authorized to implement the Plan on the Effective Date.

3. **Releases by the Debtors.** In consideration of the contributions of the Released Parties to the Debtors' Chapter 11 Cases, section 8.3 of the Plan provides for the following releases:

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, and Claims, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, the Debtors, on behalf of themselves and their Estates, and the Reorganized Debtors shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (and covenant with such Released Party not to sue or otherwise seek recovery from such Released Party on account of) any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Estates, the Reorganized Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, any act or omission, transaction, agreement or occurrence taking place on or before the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; *provided, however*, that the foregoing provisions of this Section 8.3 shall not waive, release, or otherwise affect (i) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order, (ii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan, including the Exit Facility, (iii) except as otherwise expressly set forth in the Plan, any objections by the Debtors or the Reorganized Debtors to Claims filed by any Person against any Debtor and/or the Estates, including rights of setoff, refund, recoupment or other adjustments, and (iv) the rights of the Debtors or the Reorganized Debtors to assert any applicable defenses in litigation or other proceedings, including with their employees, or any claim of the Debtors or the Reorganized Debtors, including (but not limited to) cross-claims or counterclaims or other Causes of Action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized

Debtors are a party. The releases in this Section 8.3 apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of this Section 8.3, which includes by reference each of the related provisions and definitions contained in the Plan, *and further*, shall constitute the Bankruptcy Court's finding that this Section 8.3 is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released by the Debtor Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates asserting any claim or Cause of Action released pursuant to this Section 8.3.

4. *Consensual Third Party Releases.* Section 8.4 of the Plan provides for the following Consensual Third Party Releases:

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, Claims, and Interests, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, (a) each holder of an Impaired Claim, except those holders that elect to opt-out of the Releases set forth in this Section 8.4, and (b) each Released Party shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (regardless of whether a Released Party is also giving a release under this Section 8.4), and covenant with each Released Party not to sue or otherwise seek recovery from such Released Party on account of, any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such party would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, any action, omission, transaction, agreement or event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the

Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; *provided, however*, that the foregoing provisions of this Section 8.4 shall not waive, release, or otherwise affect (i) any claims, obligations, debts, rights, suits, damages remedies, Causes of Action, and liabilities of such Persons solely to the extent of their right to receive Distributions or other treatment under the Plan; (ii) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order and (iii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan. The releases in this Section 8.4 apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of this Section 8.4, which includes by reference each of the related provisions and definitions contained in the Plan, *and further*, shall constitute the Bankruptcy Court's finding that this Section 8.4 is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released in this Section 8.4; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Persons from asserting any Claim or Cause of Action released pursuant to this Section 8.4.

5. **Exculpation.** Section 8.5 of the Plan contains the following exculpation provision:

Notwithstanding anything contained herein to the contrary, the Released Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, administering or implementing the Plan, or consummating the Plan, the Disclosure Statement, the Plan Supplement, the New Holdco Governance Documents, the Exit Facility Documents, the Restructuring, the Chapter 11 Cases, the issuance, distribution, and/or sale of any shares of New Common Stock or any other security offered, issued, or distributed in connection with the Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the Chapter 11 Cases, the Recognition Proceeding, or the Restructuring; *provided, however*, that each Released Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Person solely to the extent resulting from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Person for acts or omissions occurring after the Confirmation Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Released Parties from liability. Without

limiting the generality of the foregoing, the Released Parties shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code. Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim, or Interest shall be permitted to commence or continue any Cause of Action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or before the Effective Date and that has been released or waived pursuant to this Plan.

6. **Injunction.** Section 8.6 of the Plan provides for the following injunction related to the Debtor Releases, Consensual Third Party Releases, and Exculpation:

Except as otherwise provided herein or for obligations issued pursuant hereto, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to **Section 8.3** or **Section 8.4**, discharged pursuant to **Section 8.1**, or are subject to exculpation pursuant to **Section 8.5** are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and the Released Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Persons on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Persons or the property or Estates of such Persons on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Persons or against the property or Estates of such Persons on account of or in connection with or with respect to any such Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.

Nothing in the Plan or the Confirmation Order releases, discharges, precludes, exculpates, or enjoins the enforcement of: (i) any liability or obligation to, or any Claim or cause of action by, a Governmental Unit under any applicable Environmental Law to which any Debtor is subject as and to the extent that it is the owner, lessee, controller, or operator of real property or a mining operation after the Effective Date (whether or not such liability, obligation, Claim or cause of action is based in whole or part on acts or omission prior to the Confirmation Date); (ii) any liability to a Governmental Unit under any applicable Police or Regulatory Law that is not a Claim; (iii) any Claim of a Governmental Unit under any applicable Police or Regulatory Law arising on or after the Effective Date; (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or Reorganized Debtors; (v) any liability to a Governmental Unit under the Federal Mine Safety & Health Act, any state mine safety law or the BLBA; or (vi) any valid right of setoff or recoupment by any Governmental Unit. Nothing in this Plan or any Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.

Dated: _____

BY ORDER OF THE COURT

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

*Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1

Debtor Entities

- | | |
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| 3. Xinergy Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinergy of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
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| 7. Xinergy Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinergy Land, Inc. (8121) | 21. Raven Crest Mining, LLC (0122) |
| 9. Middle Fork Mining, Inc. (1593) | 22. Brier Creek Coal Company, LLC (9999) |
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| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

EXHIBIT C

NOTICE OF EFFECTIVE DATE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**NOTICE OF (I) OCCURRENCE OF EFFECTIVE DATE OF THE DEBTORS'
AMENDED JOINT CHAPTER 11 PLAN AND (II) ADMINISTRATIVE CLAIMS BAR
DATE**

PLEASE TAKE NOTICE THAT:

1. **Confirmation of the Plan.** On _____, the United States Bankruptcy Court for the Western District of Virginia (the "Bankruptcy Court") entered an order (the "Confirmation Order") confirming the *Amended Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors In Possession* [Doc. No. 453] (as modified and amended in accordance with the terms of the Confirmation Order, the "Plan"). Copies of the Confirmation Order and the Plan are available, for free, at American Legal Claim Services LLC's website <https://www.americanlegal.com/xinergy>. You may also obtain copies of the Confirmation Order and Plan, for a fee, through the Bankruptcy Court's website via PACER at www.vawb.uscourts.gov. Unless otherwise defined in this notice, capitalized terms used herein shall have the meanings ascribed to them in the Plan and the Confirmation Order.

2. **Effective Date.** The Effective Date of the Plan occurred on _____.

3. **Administrative Claims Bar Date.** The Administrative Claims Bar Date for applications or requests for payment of Administrative Claims (including but not limited to Professional Fee Claims) shall be the date that is the first Business Day that is thirty (30) calendar days after the Effective Date. Any Person or Entity that is required to file and serve a request for payment of an Administrative Claim and fails to timely file with the Bankruptcy Court and serve such a request on counsel for the Debtors shall be forever barred, estopped and enjoined from asserting such Administrative Claim against the Debtors or participating in distributions under the Plan on account thereof. Any such request for payment of an Administrative Claim must be served on counsel to the Debtors at Hunton & Williams LLP,

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

Attn: Tyler P. Brown, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219.

Dated: _____

BY ORDER OF THE COURT

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
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Fax: (804) 788-8218

*Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1

Debtor Entities

- | | |
|--|---|
| 1. Xinergy Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinergy Ltd. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinergy Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinergy of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
| 6. Xinergy Straight Creek, Inc. (0071) | 19. Strata Fuels, LLC (1559) |
| 7. Xinergy Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinergy Land, Inc. (8121) | 21. Raven Crest Mining, LLC (0122) |
| 9. Middle Fork Mining, Inc. (1593) | 22. Brier Creek Coal Company, LLC (9999) |
| 10. Big Run Mining, Inc. (1585) | 23. Bull Creek Processing Company, LLC (0894) |
| 11. Xinergy of Virginia, Inc. (8046) | 24. Raven Crest Minerals, LLC (7746) |
| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.
APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF MICHAEL R. CASTLE
(SWORN JANUARY 26, 2016)**

CASSELS BROCK & BLACKWELL LLP

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Lawyers for Xinergy Ltd.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.
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**MOTION RECORD
(RETURNABLE JANUARY 29, 2016)**

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