

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE *Mr. J. R.*  
JUSTICE *PEONY*

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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: MAR

## 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

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(Signature of Judge)

## SCHEDULE "A"

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

In re:

XINERGY LTD., *et al.*,<sup>1</sup>

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”)<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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”).

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*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)  
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SEEN AND NO OBJECTION:

/s/ Brandy M. Rapp (with permission via email dated 8/27/2015)

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Creditors of Xinergy Ltd., et al.*

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/s/ Margaret K. Garber (with permission via email dated 8/27/2015)

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/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.<sup>1</sup>**

**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”)<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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, 23<sup>rd</sup> 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  
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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*

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.  
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Richmond, Virginia 23218-0500  
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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  
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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 E. 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

Fax: (540) 343-3569  
[mhastings@wtplaw.com](mailto:mhastings@wtplaw.com)  
[brapp@wtplaw.com](mailto:brapp@wtplaw.com)

-and-

Michael J. Roeschenthaler (PA 87647)  
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EQT Plaza  
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Telephone: (412) 667-6000  
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[mroeschenthaler@mcguirewoods.com](mailto: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.<sup>1</sup>

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.

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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 Ballots<sup>2</sup> 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

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<sup>2</sup> 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, 23<sup>rd</sup> 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  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219  
Telephone: (804) 788-8200  
Facsimile: (804) 788-8218  
Email: [tpbrown@hunton.com](mailto:tpbrown@hunton.com)  
[hlong@hunton.com](mailto:hlong@hunton.com)  
[jpaget@hunton.com](mailto: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.<sup>1</sup>

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

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<sup>1</sup> 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*

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:<sup>2</sup>

##### **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

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<sup>2</sup> 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 Xinerger 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, 23<sup>rd</sup> 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

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[jpaget@hunton.com](mailto: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.<sup>1</sup>

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 Nominee<sup>2</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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.		\$	\$	
<b>TOTALS</b>		\$	\$	

[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.<sup>9</sup>

**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 Claims<sup>10</sup> 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*

<sup>9</sup> 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.

<sup>10</sup> 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.<sup>1</sup>

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.

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<sup>1</sup> 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 Nominee<sup>2</sup> 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;

---

<sup>2</sup> 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.		\$	\$	
<b>TOTALS</b>		\$	\$	

[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 Xinerdy 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.<sup>1</sup>**

**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").**

<sup>1</sup> 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 Claims<sup>2</sup> 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:**

\$ \_\_\_\_\_

---

<sup>2</sup> 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.<sup>1</sup>**

**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 Claims<sup>2</sup> 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*

<sup>1</sup> 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.

<sup>2</sup> 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.**<sup>17</sup>

**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”),<sup>18</sup> 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”).<sup>19</sup>

<sup>17</sup> 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.

<sup>18</sup> Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Plan.

<sup>19</sup> 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, 23<sup>rd</sup> 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  
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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**

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