

## SECTION 4. MEANS FOR IMPLEMENTATION

### 4.1. *Deemed Substantive Consolidation of Debtors for Plan Purposes Only*

Subject to the occurrence of the Effective Date, the Debtors shall be deemed consolidated for purposes of voting and determining distributions under the Plan. Any obligation of any Debtor and all guarantees thereof executed by one or more of the Debtors will be deemed to be one obligation of the deemed consolidated Debtors, any Claims filed or to be filed in connection with any such obligation and such guarantees will be deemed one Claim against the deemed consolidated Debtors and each and every Claim filed in the individual Reorganization Cases of any of the Debtors will be deemed filed against the deemed consolidated Debtors.

Such deemed consolidation, however, shall not (other than for purposes related to funding distributions under the Plan and as set forth above in this section) affect: (i) the legal and organizational structure of the Debtors; (ii) pre- and post-chapter 11 guaranties, liens, and security interests that are required to be maintained (A) in connection with executory contracts or unexpired leases that were entered into during the Reorganization Cases or that have been or will be assumed, (B) pursuant to the Plan, or (C) in connection with any financing entered into by the Debtors on (or after) the Effective Date; and (iii) distributions to holders of claims paid from insurance policies or proceeds of such policies.

Notwithstanding anything contained in the Plan to the contrary, the deemed consolidation of the Debtors shall not have any effect on any Claims being reinstated and unimpaired, and the legal, equitable, and contractual rights to which the holders of any such Claims are entitled shall be left unaltered by the Plan.

### 4.2. *New Corporate Structure for Reorganized ABIZ.*

Except as otherwise set forth in the Plan, prior to or as of the Effective Date, and only with each of the ABIZ Committee's prior written consent, ABIZ may cause any or all of the Debtors to engage in any restructuring transactions deemed necessary or appropriate (including, without limitation, merging, dissolving, or transferring assets between or among the Debtors)

### 4.3 *Authorization of Plan Securities.*

Reorganized ABIZ is authorized to issue (i) the New Common Stock, (ii) the New Warrants, and (iii) the New Management Warrants. Such securities shall have the various associated rights described in Section 4.2 of the Disclosure Statement.

### 4.4 *Exit Facility*

On the Effective Date, to the extent necessary, Reorganized ABIZ shall obtain exit financing from a source and in an amount and upon terms and conditions reasonably acceptable to the Creditors' Committee and the Secured Noteholder Committee.

### 4.5 *Cancellation of Existing Securities and Agreements and Related Indentures/Discharge of Indenture Trustee.*

(a) On the Effective Date, the 12¼% Secured Notes, the 13% Notes and the 12% Notes shall be cancelled and the holders thereof shall have no further rights or entitlements in respect thereof except the rights to receive the distributions to be made to such holders under the Plan. To the extent possible, distributions to be made under the Plan to the beneficial owners of the 12% Notes, the

12¼% Secured Notes, and the 13% Notes shall be made through the Depository Trust Company and its participants. The Confirmation Order shall authorize the Disbursing Agent to take whatever action may be necessary to deliver the distributions, including, without limitation obtaining an order of the Bankruptcy Court

(b) On the Effective Date, the indenture trustee(s) and its(their) agents shall be discharged of all their obligations associated (i) with the 12¼% Secured Notes, the 13% Notes, and the 12% Notes, (ii) the indentures governing the 12¼% Secured Notes, the 13% Notes, and the 12% Notes, and (iii) any related documents, and released from all Claims arising in the Reorganization Cases. As of the Effective Date, the indentures with respect to the 12¼% Secured Notes, the 13% Notes, and the 12% Notes shall be deemed cancelled, except that such cancellation shall not impair the rights of the holders of the 12¼% Secured Notes, the 13% Notes, and the 12% Notes to receive distributions under the Plan, or the rights of the indenture trustees under its (their) charging liens pursuant to the indentures, to the extent that the indenture trustees have not received payment as provided for in section 12.7 of the Plan.

#### 4.6 *Board of Directors*

The initial Board of Directors of Reorganized ABIZ shall consist of 7 members whose names shall be disclosed at or prior to the Confirmation Hearing. The Secured Noteholder Committee shall appoint four members to the Board of Directors. In addition, the Creditors' Committee shall appoint three members to the Board of Directors, *provided, however*, that one of the Creditor Committee's designees shall be Robert Guth, the Debtors' Chief Executive Officer, provided that he is employed by Reorganized ABIZ; otherwise the other members of the Board of Directors shall designate another member. Initial appointments will be for a term of two years, and the chairman of the Board of Directors shall not be an executive of the Debtors.

#### 4.7. *Corporate Action.*

On the Effective Date, Reorganized ABIZ shall file the Amended Certificate of Incorporation with the Secretary of State of the State of Delaware. The Amended Certificate of Incorporation shall prohibit the issuance of nonvoting equity securities, subject to further amendment of such Amended Certificate of Incorporation as permitted by applicable law. The Board of Directors shall adopt Amended By-Laws and revise Reorganized ABIZ's charter to be consistent with best corporate practices.

### SECTION 5. DISTRIBUTIONS

#### 5.1 *Record Date for Distributions*

By Order dated \_\_\_\_\_, 2003, the Bankruptcy Court established \_\_\_\_\_, 2003 as the Record Date for voting purposes for the holders of Allowed Claims. As of the Record Date, the various transfer registers for each of the Classes of Claims or Equity Interests as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes made to reflect any new record holders of any Claims or Equity Interests. The Debtors shall have no obligation to recognize any transfer of Claims or Equity Interests occurring on or after such date.

#### 5.2 *Date of Distributions*

Unless otherwise provided herein, any distributions and deliveries to be made hereunder to the holders of Allowed Claims shall be made on the Effective Date or as soon thereafter as is practicable, but in no event later than 90 days following the Effective Date

### 5.3 *Subsequent Distributions*

Unless otherwise provided in the Plan, to the extent Cash, New Common Stock or New Warrants are available subsequent to the Effective Date from (i) the release of Cash, New Common Stock or New Warrants from the Disputed Claims Reserve or (ii) undeliverable, time-barred or unclaimed distributions to holders of Allowed Claims, the Disbursing Agent shall, on the First Subsequent Distribution Date and each Subsequent Distribution Date thereafter, allocate such Cash, New Common Stock or New Warrants in accordance with the elections made pursuant to Sections 3.6 and 3.7 hereof, and between (x) the holders of Allowed General Unsecured Claims that were Allowed Claims on the Effective Date or subsequently have become Allowed on or before the Subsequent Distribution Date and (y) the holders of any still pending Disputed Claims; with the amount allocated to the former then distributed to such holders, the amount allocated to the latter retained in the Disputed Claims Reserve (and administered in accordance with Section 6 of this Plan); *provided, however*, that any distributions from the Disputed Claims Reserve shall be net of certain costs and expenses as may be provided in the Plan; *and provided, further*, that in no event shall the Disbursing Agent be obligated to make a distribution of such Cash, New Common Stock or New Warrants if, in the reasonable business judgment of the Disbursing Agent, the amount then on hand and the ultimate distribution to be made would not be justified, taking into account all of the attendant costs of such distribution. In such case, any undistributed amount may be held over to the next Subsequent Distribution Date, provided that undistributed amounts for each period will not be held longer than 180 days without approval of the Board of Directors of Reorganized ABIZ in consultation with the Special Board Committee.

### 5.4. *Surrender of Instruments.*

As a condition to receiving any distribution under the Plan (other than with respect to book entry securities), each holder of 12% Notes, 12¼% Secured Notes, or 13% Notes must surrender such Notes to Reorganized ABIZ or its designee. Any holder of 12% Notes, 12¼% Secured Notes, or 13% Notes that fails to (a) surrender such instrument or (b) submit evidence satisfactory to the appropriate indenture trustee of the loss, theft, mutilation, or destruction of such note before the second anniversary of the Effective Date shall be deemed to have forfeited all rights and Claims and may not participate in any distribution under the Plan. All shares of New Common Stock and New Warrants not distributed as a result of any such forfeiture shall be redistributed in accordance with Section 5.3 -- "Subsequent Distributions" -- of the Plan.

### 5.5. *Setoffs.*

Except with respect to the Intercompany Claims, the Debtors may, but shall not be required to, setoff against any Claim (for purposes of determining the Allowed amount of such Claim in respect of which distribution shall be made), any claims of any nature whatsoever that the Debtors may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such claim the Debtors may have against the holder of such Claim, *provided*, that in the event the Debtors seek to exercise such setoff rights against the holder of a Claim that is a debtor in a case under the Bankruptcy Code, the Debtors shall comply with the requirements of the Bankruptcy Code, including seeking relief from the automatic stay.

### 5.6 *Delivery of Distributions*

Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed Claim shall be made at the address of such holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or their agents, unless the Debtors have been notified in writing of a change of address, including, without limitation, by the filing of a proof of claim or interest

by such holder that contains an address for such holder different from the address reflected on such Schedules for such holder. In the event that any distribution to any holder is returned as undeliverable, the Disbursing Agent shall use reasonable efforts to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Disbursing Agent has determined the then current address of such holder, at which time such distribution shall be made to such holder; provided that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of the second anniversary from the date of distribution. After such date, Reorganized ABIZ shall deliver all unclaimed property to the Disbursing Agent for disbursement in accordance with the applicable provisions of the Plan, and the claim of any other holder to such property or interest in property shall be discharged and forever barred.

**5.7. *Manner of Payment Under the Plan.***

(a) All distributions of Cash and Plan Securities to the creditors of each of the Debtors under the Plan of Reorganization shall be made by or on behalf of the applicable Reorganized Debtor. Where the applicable Reorganized Debtor is a subsidiary of Reorganized ABIZ, Reorganized ABIZ shall be treated as if it were making a capital contribution, either directly or indirectly, to the applicable Reorganized Debtor equal to the amount distributed (other than the Cash distributed from such Reorganized Debtor's own funds), but only at such time as, and to the extent that, the amounts are actually distributed to holders of Allowed Claims, whether directly from the Reorganized Debtor or the Disputed Claims Reserve.

(b) At the option of the Debtors, any Cash payment to be made hereunder may be made by a check or wire transfer from a domestic bank or as otherwise required or provided in applicable agreements.

**5.8. *No Fractional Distributions***

No fractional shares of New Common Stock, no fractional New Warrants, no fractional New Management Warrants, nor fractional dollars shall be distributed. For purposes of distribution, fractional shares of New Common Stock, fractional New Warrants, and fractional New Management Warrants shall be rounded up or down, as applicable, to the nearest whole number, or, in the event of a Cash payment, up or down, to the nearest whole dollar.

**5.9. *Distributions After Effective Date***

Distributions made after the Effective Date to the Disputed Claims Reserve for the benefit of the holders of Disputed Claims that later become Allowed Claims shall be deemed to have been made on the Effective Date.

**5.10. *ACC.***

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**5.11. *Withholding and Reporting Requirements***

In connection with the Plan and all instruments issued in connection therewith and distributed thereon, the Disbursing Agent shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements.

5.12 *Time Bar to Cash Payments.*

Checks issued by the Disbursing Agent in respect of Allowed Claims shall be null and void if not negotiated within one hundred and twenty (120) days after the date of issuance thereof. Any party that is entitled to receive a check under this Plan but that fails to cash such check within 120 days of its issuance shall be entitled to receive a reissued check from Reorganized ABIZ for the amount of the original check if the party requests that the Disbursing Agent reissue such check and provides the Disbursing Agent, with such documentation as the Disbursing Agent requests to verify that such party is entitled to such check, prior to the later of (a) the second anniversary of the Effective Date or (b) six (6) months after any such Claim becomes an Allowed Claim. If a party fails to cash a check within 120 days of its issuance and fails to request reissuance of such check prior to the later to occur of (a) the second anniversary of the Effective Date or (b) six (6) months following the date such party's Claim becomes an Allowed Claim, such party shall not be entitled to receive any Distribution under this Plan with respect to the amount of such check.

5.13 *Transactions on Business Days.*

If the Effective Date or any other date on which a transaction may occur under the Plan shall occur on a day that is not a Business Day, the transactions contemplated by the Plan to occur on such day shall instead occur on the next succeeding Business Day.

5.14. *Minimum Distributions.*

There shall be no distribution to any holder of a Claim in an aggregate face amount of \$500 or less unless a request therefor is made in writing to the Disbursing Agent (at the addresses provided in the Plan). Any undistributed amount shall be held over to the next Subsequent Distribution Date.

5.15. *Allocation of Distributions.*

Distributions to any holder of an Allowed Claim shall be allocated first to the principal portion of any such Allowed Claim (as determined for federal income tax purposes), and, only after the principal portion of any such Allowed Claim is satisfied in full, to any portion of such Allowed Claim comprising prepetition interest (but solely to the extent that interest is an allowable portion of such Allowed Claim).

5.16. *Rights and Powers of Disbursing Agent.*

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

(b) The Disbursing Agent shall be empowered to (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan, (ii) make all distributions contemplated hereby, (iii) employ professionals to represent it with respect to its responsibilities, and (iv) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

(c) Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including, without limitation, taxes) and any reasonable compensation and expense reimbursement claims (including, without limitation, reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by Reorganized ABIZ

## SECTION 6. PROCEDURES FOR TREATING DISPUTED CLAIMS

### 6.1. *No Distribution Pending Allowance.*

Notwithstanding any other provision of the Plan, no Cash, New Common Stock, nor New Warrants shall be distributed under the Plan on account of any Disputed Claim, unless and until such Claim becomes an Allowed Claim.

### 6.2. *Reserve Account for Disputed Claims.*

On and after the Effective Date, the Disbursing Agent shall hold in the Disputed Claims Reserve, Cash, New Common Stock, and New Warrants in an aggregate amount sufficient to compensate each holder of a Disputed Claim with the amount that such holder would have been entitled to receive under the Plan if such Claim had been an Allowed Claim on the Effective Date or any Subsequent Distribution Date.

### 6.3. *Resolution of Disputed Claims.*

Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the Debtors (in consultation with the ABIZ Committees) and, after the Effective Date, Reorganized ABIZ, in consultation with the Special Board Committee, shall have the right to the exclusion of all others (except (i) as to applications for allowances of compensation and reimbursement of expenses under sections 330 and 503 of the Bankruptcy Code and (ii) certain Claims that the Plan Proponents have agreed will be objected to by the Creditors' Committee and/or the Secured Noteholder Committee), to make and file objections to Claims and shall serve a copy of each objection upon the holder of the Claim to which the objection is made as soon as practicable, but in no event later than 120 days after the Confirmation Date. From and after the Effective Date, all objections shall be litigated to a Final Order except to the extent Reorganized ABIZ elects to withdraw any such objection or Reorganized ABIZ and the claimant elect to compromise, settle, or otherwise resolve any such objection, in which event they may settle, compromise, or otherwise resolve any Disputed Claim without the necessity of Bankruptcy Court approval.

### 6.4. *Estimation of Claims*

The Debtors and/or either of the ABIZ Committees may request that the Bankruptcy Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors have previously objected to such Claim, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time. In the event that the Bankruptcy Court estimates any Disputed Claim, that estimated amount may constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors may elect to pursue any supplemental proceedings to object to any ultimate payment of such Claim. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and not necessarily exclusive of one another. On and after the Confirmation Date, Claims that have been estimated may be compromised, settled, withdrawn, or otherwise resolved subsequently, without further order of the Bankruptcy Court.

6.5. *Allowance of Disputed Claims.*

If, on or after the Effective Date, any Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall, on the fifteenth Business Day of the first month following the month in which the Claim becomes an Allowed Claim, distribute from the Disputed Claims Reserve to the holder of such Allowed Claim, Cash, New Common Stock, and/or New Warrants, as applicable, in an aggregate amount sufficient to provide each holder of a Disputed Claim with the amount that such holder would have been entitled to receive under the Plan if such Claim had been an Allowed Claim on the Effective Date or any Subsequent Distribution Date.

6.6. *Release of Funds from Disputed Claims Reserve.*

To the extent a Disputed Claim is disallowed, the Cash, New Common Stock or New Warrants that would otherwise be distributed pursuant to section 6.5 hereof will instead be re-distributed in the manner described in Section 5.3 of the Plan, to the holders of Allowed Claims and to the Disputed Claims Reserve, on behalf of holders of Disputed Claims, such that each such holder receives its Ratable Proportion of such subsequent distribution

6.7. *Investment of Disputed Claims Reserve; Expenses.*

The Disbursing Agent shall be permitted, from time to time, in consultation with Reorganized ABIZ, to invest all or a portion of the Cash in the Disputed Claims Reserve in United States Treasury Bills, interest-bearing certificates of deposit, tax exempt securities or investments permitted by section 345 of the Bankruptcy Code or otherwise authorized by the Bankruptcy Court, using prudent efforts to enhance the rates of interest earned on such Cash without inordinate credit risk or interest rate risk. Reorganized ABIZ shall be entitled to all interest and other accretions earned on any Cash held for distribution on account of Disputed Claims, and any such interest and other accretions shall be payable, at least annually, to Reorganized ABIZ. Reorganized ABIZ shall report any such interest and other accretions in its income on a current basis. Reorganized ABIZ shall be responsible for all costs and expenses of the Disputed Claims Reserve

6.8. *Expedited Determination of Taxes*

The Disbursing Agent may request an expedited determination of taxes of the Disputed Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of the Disputed Claims Reserve for all taxable periods through the dissolution of the Disputed Claims Reserve.

**SECTION 7 EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

7.1 *General Treatment*

All executory contracts (including any option or warrant to purchase common stock of any of the Debtors to the extent such option or warrant is determined not to be an Equity Interest) and unexpired leases to which any of the Debtors are parties are hereby rejected, except for an executory contract or unexpired lease that (a) has been assumed or rejected pursuant to Final Order of the Bankruptcy Court, (b) is specifically designated or generally described on Schedule 7.1 hereto as a contract or lease to be assumed, or (c) is the subject of a separate motion filed under section 365 of the Bankruptcy Code by the Debtors prior to the Effective Date. For purposes hereof, each executory contract and unexpired lease listed or generally described on Schedule 7.1 hereto that relates to the use or occupancy of real property shall include (a) modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any

manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument, or other document is listed on Schedule 7.1 hereto and (b) executory contracts or unexpired leases appurtenant to the premises listed on Schedule 7.1 hereto including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement agreements, vault, tunnel or bridge agreements, or franchises, and any other interests in real estate or rights *in rem* relating to such premises to the extent any of the foregoing are executory contracts or unexpired leases, unless any of the foregoing agreements are specifically rejected. A non-Debtor party to an executory contract or unexpired lease that is being rejected hereunder may request that the Debtors assume such contract or lease by sending written notice to the Debtors, which notice shall include a waiver of any defaults (including any payment defaults) and any right to any cure payment under such contract or lease. The Debtors may assume such contract or lease without further action of the Bankruptcy Court. The Debtors reserve their right to add or remove any executory contract or unexpired lease from Schedule 7.1 prior to the Effective Date.

### 7.2. *Cure of Defaults.*

Except to the extent that different treatment has been agreed to by the nondebtor party or parties to any executory contract or unexpired lease to be assumed pursuant to section 7.1 hereof, the Debtors shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of section 365 of the Bankruptcy Code, on or before the Confirmation Date, file a pleading with the Bankruptcy Court listing the cure amounts of all executory contracts to be assumed, with such cure amounts to be determined in consultation with the ABIZ Committees. The parties to such executory contracts to be assumed by the Debtors shall have 30 days to object to the cure amounts listed by the Debtors. If there are any objections filed, the Bankruptcy Court shall hold a hearing. In the event the Bankruptcy Court determines that the cure amount is greater than the cure amount listed by the Debtors, the Debtors may reject the contract at such time rather than paying such greater amount. In addition, at all times prior to the Effective Date, the Debtors shall retain their right to reject any of the executory contracts identified on the schedule of contracts and leases to be assumed.

### 7.3. *Rejection Claims.*

In the event that the rejection of an executory contract or unexpired lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not heretofore evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Debtors, or their respective properties or interests in property as agents, successors, or assigns, unless a proof of claim is filed with the Bankruptcy Court and served upon counsel for the Debtors on or before the date that is 30 days after the later of the Effective Date or the date of such rejection.

## SECTION 8. ACCEPTANCE OR REJECTION OF THE PLAN

### 8.1. *Voting of Claims*

Each holder of an Allowed Claim in an impaired Class of Claims shall be entitled to vote to accept or reject the Plan as provided for in the order entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan (a copy of which will be distributed together with the Disclosure Statement). Each holder of an Allowed Claim in Classes 6 and 7, as described more fully in Sections 3.6 and 3.7 above, may elect on its Ballot to receive either (a) a Stock and/or Warrant Recovery, except to the extent that a holder of an Allowed General Unsecured Claim against any of the Debtors has agreed to a less favorable treatment of such

Claim, or (b) a Cash Recovery in full satisfaction of such Allowed Claim, *provided, however*, that (i) the failure by a holder of an Allowed Claim in Classes 6, 7A, 7B, 7C, or 7D to either (a) submit a Ballot, or (b) specify on the Ballot such holder's elected treatment shall result in such holder receiving a Cash Recovery, as described in sections 3.6 and 3.7, as applicable, and (ii) a holder that submits a Ballot and elects their desired treatment, but fails to indicate whether they accept or reject the Plan, will still receive its desired treatment. For purposes of calculating the number of Allowed Claims in a Class of Claims that have voted to accept or reject the Plan under section 1126(c) of the Bankruptcy Code, all Allowed Claims in such Class held by one entity or any affiliate thereof (as defined in the Securities Act of 1933 and the rules and regulations promulgated thereunder) shall be aggregated and treated as one Allowed Claim in such Class.

#### **8.2. *Acceptance by a Class of Creditors***

Consistent with section 1126(c) of the Bankruptcy Code and except as provided for in section 1126(e) of the Bankruptcy Code, a Class of creditors shall have accepted the Plan if it is accepted by at least two-thirds in dollar amount and more than one-half in number of the holders of Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.

#### **8.3. *Presumed Rejections of Plan and Cram Down.***

For purposes of voting on the Plan, each holder of an Allowed Century Facility Claim in Class 8, an Allowed Securities Claim in Class 9, an Allowed Equity Interest in Class 11, and an Allowed Subordinated Claim in Class 13 is conclusively presumed to have rejected the Plan. The Debtors shall utilize the provisions of section 1129(b) of the Bankruptcy Code to satisfy the requirements for confirmation of the Plan over the presumed rejections of such Class and the rejection, if any, of any other Class entitled to vote to accept or reject the Plan.

### **SECTION 9. *CONDITION PRECEDENT TO THE EFFECTIVE DATE***

#### **9.1 *Conditions to Confirmation.***

(a) This Plan may not be confirmed unless each of the conditions set forth below is satisfied. Except as provided in Section 9.3 below, any one or more of the following conditions may be waived at any time by the Debtors with the consent of the Creditors' Committee and the Secured Noteholder Committee.

(b) An Order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been issued by the Bankruptcy Court

(c) The Confirmation Order shall be in a form reasonably acceptable to the Plan Proponents.

(d) Confirmation of this Plan is contingent upon a maximum \$150 million in Allowed Trade Claims and Allowed Convenience Class Claims.

#### **9.2 *Conditions to Occurrence of Effective Date.***

(a) The Effective Date for this Plan may not occur unless each of the conditions set forth below is satisfied. Except as provided in Section 9.3 below, any one or more of the following

conditions may be waived at any time by the Debtors with the consent of the Creditors' Committee and the Secured Noteholder Committee.

(b) A Confirmation Order, in form and substance reasonably satisfactory to the Plan Proponents, shall have been entered by the Bankruptcy Court and no stay of the Confirmation Order shall then be in effect.

(c) All Plan Documents shall be in form and substance satisfactory to the Plan Proponents and, where applicable, shall fully incorporate the terms of the Private Company Term Sheet.

(d) All actions, other documents, and agreements necessary to implement the Plan shall be executed and delivered on the Effective Date.

(e) Plan Securities being issued to fewer than 300 holders of record pursuant to the Plan.

(f) The Debtors shall have obtained exit financing, to the extent necessary, in an amount and on terms satisfactory to each of the ABIZ Committees.

(g) Any settlements reached with any holder of a Claim prior to the Effective Date that provides for special treatment of such holder's Claim in lieu of the treatment otherwise accorded to such Claim under the Plan shall be in form and substance satisfactory to each of the ABIZ Committees.

(h) An order, which may be the Confirmation Order, substantively consolidating the Reorganization Cases shall have been entered.

(i) All amounts required to be paid to Beal Bank pursuant to sections 3.4 and 2.1 shall have been paid in full in cash.

### 9.3 *Waiver of Conditions.*

The Debtors may, at their option, but only with the written consent of the Creditors' Committee and the Secured Noteholder Committee, waive the conditions set forth in Sections 9.1 and 9.2, *provided, however*, that the Debtors may not waive entry of the Order approving the Disclosure Statement, entry of the Confirmation Order, or any condition the waiver of which is proscribed by law. Any such waivers shall be evidenced by a writing, signed by the waiving parties, and served upon counsel for the Creditors' Committee, the Secured Noteholder Committee, and the United States Trustee and filed with the Bankruptcy Court. The waiver may be a conditional one, such as to extend the time under which a condition may be satisfied.

### 9.4. *Effect of Failure of Conditions.*

In the event that the conditions specified in Section 9.2 have not been satisfied or waived in the manner provided in Section 9.3 on or before \_\_\_\_\_, 2003, then upon written notification filed by the Debtors with the Bankruptcy Court and served upon counsel for the Creditors' Committee, the Secured Noteholder Committee, and the United States Trustee, (a) the Confirmation Order shall be vacated, (b) no distributions under the Plan shall be made, (c) the Debtors and all holders of Claims and Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (d) all the Debtors' obligations with respect to the Claims and Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors or any other person or to

prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the Debtors.

## SECTION 10. EFFECT OF CONFIRMATION

### 10.1. *Vesting of Assets*

Upon the Effective Date, except as otherwise provided herein, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the Debtors' bankruptcy estates shall vest in the Reorganized Debtors free and clear of all Claims, liens, encumbrances, charges, and other interests, except as provided herein or in the Confirmation Order. The Debtors may operate their businesses and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code, except as provided herein.

### 10.2. *Discharge of Claims and Termination of Equity Interests*

Except as otherwise provided herein or in the Confirmation Order, the rights afforded in the Plan and the payments and distributions to be made hereunder shall discharge all existing debts and Claims, and terminate all Equity Interests, of any kind, nature, or description whatsoever against or in the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, upon the Effective Date, all existing Claims against the Debtors and Equity Interests in ABIZ, shall be, and shall be deemed to be, discharged and terminated, and all holders of Claims and Equity Interests shall be precluded and enjoined from asserting against the Debtors, or any of their assets or properties, any other or further Claim or Equity Interest based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of claim or proof of equity interest.

### 10.3. *Discharge of Debtors.*

Upon the Effective Date and in consideration of the distributions to be made hereunder, except as otherwise expressly provided herein, each holder (as well as any trustees and agents on behalf of each holder) of a Claim or Equity Interest and any affiliate of such holder shall be deemed to have forever waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, rights and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Equity Interest in the Debtors.

### 10.4. *Term of Injunctions or Stays.*

Unless otherwise provided, all injunctions or stays arising under or entered during the Reorganization Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

### 10.5. *Injunction Against Interference with Plan.*

Upon the entry of a Confirmation Order with respect to the Plan and, except as otherwise provided herein or with respect to an appeal of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former employees, agents,

officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan

**10.6. Exculpation**

On the Effective Date, the respective current officers, current directors, current employees, current members, current financial advisors, current professionals, current accountants, and current attorneys, as applicable, of the Debtors, the Creditors' Committee, the Secured Noteholder Committee, Beal Bank, and any disbursing agent selected by the Debtors shall be exculpated by the Debtors and any holder of any Claim or Interest for any act or omission in connection with, or arising out of, the Reorganization Cases, the confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or property to be distributed under the Plan, except for willful misconduct or gross negligence.

**10.7. Releases**

On the Effective Date, any and all Claims of the Debtors against the current officers and current directors of the Debtors and any of their non-Debtor subsidiaries, the Creditors' Committee, the Secured Noteholder Committee, the indenture trustees for the 12% Notes, 13% Notes, and 12¼% Secured Notes, Beal Bank, and each of their respective current agents, current employees, current advisors (including any attorneys, financial advisors, investment bankers and other professionals retained by such persons or entities), affiliates, and current representatives shall be released by the Debtors.

**10.8. Avoidance Actions.**

Reorganized ABIZ or one or both of the ABIZ Committees, as may be agreed to by the Plan Proponents shall have the right to prosecute any avoidance or recovery actions under sections 542 through 551, and 553 of the Bankruptcy Code that belong to the Debtors or debtors in possession.

**10.9. Injunction Regarding Worthless Stock Deduction.**

Unless otherwise ordered by the Bankruptcy Court, on and after the Confirmation Date, any "fifty percent shareholder" within the meaning of section 382(g)(4)(D) of the Internal Revenue Code of 1986, as amended, shall be enjoined from claiming a worthless stock deduction with respect to any Equity Interests held by such entity for any taxable year of such shareholder ending prior to the Effective Date

**SECTION 11 RETENTION OF JURISDICTION**

**11.1. Jurisdiction of the Bankruptcy Court.**

On and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, and related to the Reorganization Cases for, among other things, the following purposes

(a) To hear and determine pending applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom.

(b) To determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on the Confirmation Date

(c) To ensure that distributions to holders of Allowed Claims are accomplished as provided herein.

(d) To consider Claims or the allowance, classification, priority, compromise, estimation, objection to, or payment of any Claim, Administrative Expense Claim, or Equity Interest.

(e) To hear and determine all actions pursuant to sections 505, 542, 543, 544, 545, 547, 548, and 549 of the Bankruptcy Code, collection matters related thereto, and settlements thereof.

(f) To hear and determine any disputes or issues arising under the settlement agreements referred to in this Plan or any other settlements of claims approved by the Bankruptcy Court.

(g) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated.

(h) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court.

(i) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof.

(j) To hear and determine all applications of retained professionals under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date.

(k) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, any transactions or payments contemplated hereby or any agreement, instrument, or other document governing or relating to any of the foregoing

(l) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan or to maintain the integrity of the Plan following consummation.

(m) To determine such other matters and for such other purposes as may be provided in the Confirmation Order.

(n) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.

(o) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code.

(p) To enter a final decree closing the Reorganization Cases.

(q) To recover all assets of the Debtors and property of the Debtors' estates, wherever located

## SECTION 12. MISCELLANEOUS PROVISIONS

### 12.1. *Payment of Statutory Fees*

On the Effective Date, and thereafter as may be required, the Debtors shall pay in Cash all fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

### 12.2. *Compensation and Reimbursement Claims.*

All entities seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code (a) shall file their respective final applications for allowances of compensation for services rendered and reimbursement of expenses incurred on or before the date that is 60 days after the Effective Date and (b) shall be paid in full in such amounts as are allowed by the Bankruptcy Court (i) on the date upon which the order relating to any such Administrative Expense Claim becomes a Final Order or (ii) upon such other terms as may be mutually agreed upon between such holder of an Administrative Expense Claim and the Debtors or, on and after the Effective Date, Reorganized ABIZ. The Debtors are authorized to pay compensation for services rendered and reimbursement of expenses incurred after the Confirmation Date and until the Effective Date in the ordinary course and without the need for Bankruptcy Court approval. Without limiting the foregoing, the Reorganized Debtors shall pay the charges they may incur for reasonable professional fees, disbursements, expenses, or related support services after the Effective Date without any application to the Court.

### 12.3 *Dissolution of Creditors' Committee.*

On the Effective Date, the Creditors' Committee will dissolve and the members of the Creditors' Committee will be released and discharged from all duties and obligations arising from or related to the Reorganization Cases. The professionals retained by the Creditors' Committee and the members of the Creditors' Committee thereof and the professionals retained by the Secured Noteholder Committee will not be entitled to compensation or reimbursement of expenses for any services rendered after the Effective Date, except for services rendered and expenses incurred in connection with any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or filed and served after the Effective Date, or for any services requested by Reorganized ABIZ.

### 12.4. *Creation of Special Board Committee*

On the Effective Date, a member of the Board of Directors, selected by the Secured Noteholder Committee, and a member of the Board of Directors, selected by the Creditors' Committee, and Robert Guth, the Debtors' Chief Executive Officer, shall be appointed as a Special Board Committee. The Special Board Committee's responsibilities shall consist of overseeing and reporting to the Board of Directors with respect to matters affecting distributions to holders of Claims under the Plan.

### 12.5 *Recognition of Guaranty Rights*

The classification of and manner of satisfying all Claims and Equity Interests under the Plan takes into consideration (i) the existence of guaranties by the Debtors, and (ii) the fact that the Debtors may be joint obligors with each other or other entities, with respect to an obligation. All Claims

against any of the Debtors based upon any such guaranties or joint obligations shall be discharged in the manner provided in the Plan.

**12.6. *No Deemed Waiver of Causes of Action.***

Notwithstanding any payment on account of an Allowed Claim to a creditor or a settlement with a creditor with respect to a Disputed Claim, unless expressly provided, there shall be no deemed waiver of any rights of any Debtor or any other party in interest to bring a cause of action, including, without limitation, a subsequent avoidance action, against such creditor.

**12.7. *Certain Indenture Trustee Fees and Expenses.***

The Debtors shall satisfy in Cash, and to the extent contingent, disputed, or unliquidated on the Effective Date, shall include in the Disputed Claims Reserve, Cash in an amount sufficient to satisfy the reasonable fees and expenses of each of the indenture trustees prior to the Effective Date, including the reasonable fees and expenses of their professionals. Each indenture trustee shall submit its actual and estimated fees (through the Effective Date) to the Debtors and the ABIZ Committees at least twenty-five (25) days prior to the Confirmation Hearing, and the reasonableness of such fees and expenses shall be determined first by the Debtors and the ABIZ Committees. To the extent there are any disputes regarding the reasonableness of payment of such fees and expenses under this section, such dispute shall be submitted to the Bankruptcy Court for resolution. Nothing herein shall be deemed to impair, waive, or discharge the indenture trustees' respective rights, liens, and priorities or any other rights of the indenture trustees under their respective indentures against the distributions to the holders of the 12¼% Secured Notes, 13% Notes, and 12% Notes.

**12.8. *Substantial Consummation.***

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

**12.9 *Amendments.***

(a) ***Plan Modifications.*** The Plan may be amended, modified, or supplemented by the Debtors, with the prior written consent of each of the ABIZ Committees, in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as the Bankruptcy Court may otherwise direct. In addition, after the Confirmation Date, so long as such action does not materially adversely affect the treatment of holders of Claims or Equity Interests under the Plan, the Debtors may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan.

(b) ***Other Amendments.*** Prior to the Effective Date and with the consent of the Creditors' Committee and the Secured Noteholder Committee, which consent shall not be unreasonably withheld, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Equity Interests

12.10. *Governing Law.*

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an Exhibit hereto provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof.

12.11. *Severability.*

In the event that the Bankruptcy Court determines, prior to the Confirmation Date, that any provision of the Plan is invalid, void or unenforceable, the Bankruptcy Court shall, with the consent of the Plan Proponents, have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The confirmation order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

12.12. *Headings.*

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

12.13. *Exhibits.*

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

12.14. *Time.*

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

12.15. *Notices.*

All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

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- and -

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Dated New York, New York  
August 22, 2003

Respectfully submitted,

ADELPHIA BUSINESS SOLUTIONS, INC  
(for itself and on behalf of each of the Debtors)

By /s/ Ed Babcock  
Name: Ed Babcock  
Title: Chief Financial Officer