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10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

13

14 In re
15 GALILEO LEARNING, LLC,
16 Debtor.¹

Case Nos. 20-40857 (RLE)
20-40858 (RLE)
Chapter 11
(Jointly Administered)

17

18 In re
19 GALILEO LEARNING FRANCHISING
LLC,
20 Debtor.

**DEBTOR'S FIRST AMENDED
PLAN OF REORGANIZATION**

22

23 Galileo Learning, LLC, (the "Debtor"), the debtor and debtor-in-possession in the

24

25 ¹ These cases are being jointly administered, and all documents for either case should
26 be filed under lead case number 20-40857 (RLE). The last four digits of the Debtors'
27 federal tax identification numbers are as follows: Galileo Learning, LLC (9453) and
Galileo Learning Franchising LLC (5638). The mailing address for the Debtors is 1021
3rd Street, Oakland, CA 94607.

28

1 above-captioned Chapter 11 case, files the following First Amended Plan of
2 Reorganization ("Plan") pursuant to Chapter 11 of the United States Bankruptcy Code.

3 **ARTICLE I**
4 **DISCLOSURE STATEMENT**

5 The Debtor has filed a Disclosure Statement pursuant to 11 U.S.C. § 1125 and
6 Bankruptcy Rule 3016(c) (the "Disclosure Statement") in support of this Plan. The
7 Disclosure Statement was approved by the Bankruptcy Court on [TBD]. The Disclosure
8 Statement provides information that the Bankruptcy Court has determined to be adequate
9 to enable Holders of Claims and/or Interests to make informed judgments about the Plan
10 including, among other things: (a) a discussion of the Debtor's history, business, results
11 of past operations, and projections regarding future operations; (b) a summary of
12 significant events that have occurred to date in the Bankruptcy Case; (c) a description of
13 the means for implementation of the Plan; (d) a "liquidation analysis" which provides the
14 Debtor's realistic projection regarding what creditors and interest holders might receive if
15 the case were converted to a liquidating, Chapter 7 case, and (e), a summary of the
16 procedures for voting on the Plan.

17 PLEASE READ THE DISCLOSURE STATEMENT WITH CARE. UNLESS
18 OTHERWISE PROVIDED, ALL STATEMENTS IN THE PLAN AND DISCLOSURE
19 STATEMENT CONCERNING THE HISTORY OF THE DEBTOR'S BUSINESS, THE
20 PAST OR PRESENT FINANCIAL CONDITION OF THE DEBTOR, THE EXPECTED
21 RESULTS OF FUTURE OPERATIONS, THE PROJECTED RESULTS OF A CHAPTER
22 7 LIQUIDATION, TRANSACTIONS TO WHICH THE DEBTOR WAS OR IS A PARTY,
23 OR THE EFFECT OF CONFIRMATION OF THE PLAN UPON HOLDERS OF CLAIMS
24 AGAINST OR INTERESTS IN THE ESTATE ARE ATTRIBUTABLE EXCLUSIVELY TO
25 THE DEBTOR AND NOT TO ANY OTHER PARTY.

26 PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE, NOTHING
27 CONTAINED IN THE PLAN SHALL BE CONSTRUED AS CONSTITUTING A
28 SOLICITATION OF ACCEPTANCES OF THE PLAN UNTIL SUCH TIME AS THE
DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE UNITED STATES
BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

ARTICLE II
DEFINITION OF TERMS

A. Definitions

For purposes of this Plan, and except as expressly provided herein or unless the
context otherwise requires, all capitalized terms that are not otherwise defined herein
shall have the meanings ascribed to them in this Article II and in Exhibit A to the attached
Settlement Agreement. Any term used in this Plan that is not defined herein, but is
defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning
ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules. When used in this
Plan, the following terms, when they are capitalized as set forth below, shall have the

1 meanings that are specified below, unless the Plan or the Settlement Agreement
2 otherwise indicates or unless the context otherwise requires.

3 1. Administrative Expense Claims Bar Date. The deadline for the filing by any
4 Creditor, professional person that has been employed pursuant to an order of the
5 Bankruptcy Court, or other party in interest of an application, motion or other request for
6 allowance of an Administrative Expense Claim.

7 2. Administrative Expense Claim. A Claim that, if allowed, would be entitled to
8 priority under section 503(b) of the Bankruptcy Code, including but not necessarily limited
9 to (a) a claim that is incurred by the Debtor on or after the Petition Date; (b) a Claim of a
10 Professional Person that arises under sections 330 and 331 of the Bankruptcy Code and
11 Bankruptcy Rule 2016; and (c) any and all fees and charges that are assessed against
12 the Estate under 28 U.S.C. § 1930.

13 3. Allowed Administrative Expense Claim. An Administrative Expense Claim
14 as to which no objection has been filed or, if an objection has been filed, has been
15 resolved by the allowance of such Administrative Expense Claim in a specified amount
16 by a Final Order of the Bankruptcy Court.

17 4. Allowed Claim. A Claim

18 (a) for which a proof of claim has been timely filed and as to which no
19 objection has been made in a timely fashion;

20 (b) that has been listed by the Debtor in its Schedules and that has not
21 been described as disputed, contingent, or unliquidated;

22 (c) has been listed and described in the Schedules as disputed,
23 contingent, or unliquidated, but only to the extent that the validity, amount, and
24 classification of the Claim has been approved by Final Order of the Bankruptcy Court; or

25 (d) that is presently or later becomes subject to an objection, and is
26 subsequently allowed, but only in such amount and subject to such properties and/or
27 characteristics as are determined and allowed by a Final Order of the Bankruptcy Court.

28 5. Bankruptcy Code. Title 11 of the United States Code, 11 U.S.C. § 101, *et*
29 *seq.*, as it is in effect upon the Petition Date, together with all amendments thereto that
30 are applicable to this Chapter 11 Case.

31 6. Bankruptcy Court or Court. The United States Bankruptcy Court for the
32 Northern District of California (Oakland Division), having jurisdiction over this Chapter 11
33 Case and, if the reference of this case is withdrawn or if the venue of this case is
34 transferred, the United States District Court for the Northern District of California
35 (Oakland Division) or such other court of competent jurisdiction that subsequently
36 exercises jurisdiction over this Chapter 11 Case.

1 7. Bankruptcy Rules. The Federal Rules of Bankruptcy Procedure and the
2 local rules of the Bankruptcy Court that are in effect on the Petition Date, together with all
3 amendments thereto that are applicable to the Chapter 11 Case.

4 8. Bar Date. The deadline established by the Bankruptcy Court for the filing of
5 Proofs of Claim, but not any other deadline or deadlines established by a Bankruptcy
6 Court order for the filing of Administrative Expense Claims, Claims asserted by
7 governmental units, and/or Claims arising from the rejection of executory contracts or
8 unexpired leases.

9 9. Business Day. Any day, except a Saturday, a Sunday, or a "legal holiday,"
10 as defined in Bankruptcy Rule 9006(a).

11 10. CARES Act. The Coronavirus Aid, Relief, and Economic Security Act of
12 2020.

13 11. CBC. The California Bank of Commerce, which funded and administers the
14 PPP Loan.

15 12. Chapter 11 Case. The Chapter 11 Case that is presently pending in the
16 Bankruptcy Court that was commenced by the Debtor on the Petition Date and is
17 designated as Case No. 20 - 40857.

18 13. Claim(s). Any claim, as defined in section 101(5) of the Bankruptcy Code.

19 14. Claim Objection Deadline. The deadline by which the Debtor or
20 Reorganized Debtor must file objections to Claims, as established by Article VI.A. of the
21 Plan.

22 15. Class. A class of Claims or Equity Interests.

23 16. Class Action Litigation. The meaning ascribed to "Civil Case" in the
24 Settlement Agreement.

25 17. Class Action Settlement Agreement or Settlement Agreement. The formal
26 written settlement agreement, which is attached hereto as **Exhibit A** and is incorporated
27 into this Plan, that was entered into by and between the Debtor and the Class
28 Representatives, on behalf of themselves and in their capacity as representatives of the
Customer Class. The Settlement Agreement sets forth the terms and conditions of the
settlement described therein, as preliminarily approved by the Bankruptcy Court.

 18. Class Claim. The meaning ascribed the Customer Class Representative
Claim in the Settlement Agreement.

 19. Class Representatives. Nanette Kearney, Krister Johnson, and Sandra
Shorago, the designated representatives of the Customer Class.

1 20. Committee. The Official Committee of Unsecured Creditors in this Chapter
2 11 Case as appointed by the United States Trustee.

3 21. Confirmation. The entry of the Confirmation Order by the Bankruptcy Court.

4 22. Confirmation Hearing. The duly noticed hearing that is conducted by the
5 Bankruptcy Court to consider the entry of an order confirming this Plan pursuant to
6 section 1128 of the Bankruptcy Code.

7 23. Confirmation Order. The Order that is entered by the Bankruptcy Court
8 confirming the Plan.

9 24. Credit Card Charge Backs. Transactions under which Customer/Creditors
10 fully recovered their deposits through the credit card system.

11 25. Creditor. The Holder of a Claim, within the meaning of section 101(10) of
12 the Bankruptcy Code.

13 26. Critical Vendors. No more than twelve (12) Creditors, having claims
14 aggregating \$100,000.00 or less, whom the Debtor has designated as "critical" at or prior
15 to the time of hearing on the adequacy of Disclosure Statement.

16 27. Customer/Creditors. The meaning ascribed to "Customer" in the
17 Settlement Agreement.

18 28. Customer/Creditor Class. The meaning ascribed to "Customer Class" in
19 the Settlement Agreement.

20 29. Debtor. Galileo Learning, LLC, a California limited liability company,
21 whether acting as the debtor-in-possession or as the Reorganized Debtor.

22 30. Disputed Claim. A Claim that is represented by a proof of claim as to which
23 an objection has been filed by any party in interest, or a Claim that is described in the
24 Schedules as disputed, unliquidated, and/or contingent.

25 31. Effective Date. The meaning ascribed to "Effective Date" in the Settlement
26 Agreement.

27 32. Equity Interests. The ownership interests (or membership interests) in the
28 Debtor.

 33. Estate. The estate that was created upon the commencement of the
Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

 34. Estate Property. All property interests of the Estate, real or personal,
tangible or intangible, wherever held.

1 35. Final Order. The meaning ascribed to "Final Order" in the Settlement
2 Agreement.

3 36. Galileo. Galileo Learning, LLC.

4 37. General Unsecured Claim. Any Claim against the Debtor that is not an
5 Administrative Expense Claim, a Secured Claim, the Class Claim, or any claim that is
entitled to priority under section 507 of the Bankruptcy Code.

6 38. General Unsecured Creditor. Any Person that holds a General Unsecured
7 Claim against the Estate.

8 39. Holder. A Person that holds a Claim against or Equity Interest in the
Debtor.

9 40. Impaired. Impaired, within the meaning of section 1124 of the Bankruptcy
10 Code.

11 41. Majority Equity Interest Holder. The Glen E. Tripp and Lauren S. Dutton
12 Year 2003 Revocable Trust, UTD November 20, 2003, which owns 88.127% of the
membership interests in Galileo.

13 42. Official Mailing List. The official listing of creditor identities and mailing
14 addresses.

15 43. Person. An individual, corporation, limited liability company, partnership,
16 association, joint venture, estate, trust, unincorporated organization, governmental unit or
any subdivision thereof or any other entity.

17 44. Petition Date. May 6, 2020, the date upon which the Debtor commenced
18 the Chapter 11 Case.

19 45. Plan. This plan of reorganization, as it may be further amended,
20 supplemented or modified from time to time, including all exhibits and schedules annexed
hereto or referenced herein, through the filing of an amended plan by the Debtor or
21 pursuant to an order of the Bankruptcy Court.

22 46. PPP Loan. A \$2,539,805 Paycheck Protection Plan unsecured loan
23 administered by the SBA pursuant to the CARES Act and made to Galileo by the CBC on
or about April 13, 2020.

24 47. Priority Tax Claim. Any Claim of a governmental unit which is entitled to
priority under section 507(a)(8) of the Bankruptcy Code.

25 48. Professional Person. Any and all Persons that have been employed in the
26 Chapter 11 Case and/or that are to be compensated or reimbursed pursuant to any of
sections 326, 327, 328, 330 or 1103 of the Bankruptcy Code.
27

1 49. Qualifying Financing Event or QFE. An equity capital financing resulting in
2 net proceeds to the Reorganized Debtor of \$3,000,000 or more in one or more closings
3 from one or more third parties, all of which closings take place within a twelve (12) month
4 period.

5 50. Reorganized Debtor. Following the Effective Date, the Debtor as
6 reorganized pursuant to the Plan.

7 51. Reorganized Debtor's Property: All property of the Reorganized Debtor.

8 52. Schedules. The schedules, statement of financial affairs and any
9 amendments thereto filed by the Debtor on and after the Petition Date pursuant to section
10 521 of the Bankruptcy Code.

11 53. Secured Claim. A Claim that is secured by a duly-perfected mortgage,
12 security interest, or lien in or against property of the Debtor and that is quantified in
13 accordance with section 506(a) of the Bankruptcy Code.

14 54. Secured Lender or SBA. The United States Small Business Administration.

15 55. SDL. The \$509,900 "Secured Disaster Loan" obtained by Galileo from the
16 SBA (as defined herein) on April 21, 2020.

17 56. Summer 2020 Settlement Offer. The meaning ascribed to "Summer 2020
18 Settlement Offer" in the Settlement Agreement.

19 57. Tripp. Glen E. Tripp, the founder, chief executive officer, and sole manager
20 of the Debtor.

21 **B. Rules of Interpretation**

22 The rules of construction and definitions set forth in sections 101 and 102 of the
23 Bankruptcy Code shall apply to the Plan unless otherwise expressly provided herein.

24 **ARTICLE III**

25 **COMPROMISE AND SETTLEMENT OF CLASS ACTION LITIGATION**

26 Pursuant to sections 1123(a)(5) and 1123(b)(3) of the Bankruptcy Code and
27 Bankruptcy Rule 9019, the Plan also constitutes a motion seeking the approval of the
28 Class Action Settlement Agreement, dated December 2, 2020, a copy of which is
attached hereto as **Exhibit A**, and incorporated herein.

29 **ARTICLE IV**

30 **CLASSIFICATION OF CLAIMS AND INTERESTS**

31 Pursuant to this Plan and in accordance with section 1123(a)(1) of the Bankruptcy
32 Code, all Claims of Creditors and Equity Interests are placed in the following Classes:

1 **B. Classified Claims and Equity Interests**

2 1. Class 1. The Section 507(a)(4)(A) claims of individuals for wages and
3 salaries.

4 All Holders of Allowed Class 1 Claims will be paid in full on the Effective Date.
5 Their claims are not impaired under the Plan.

6 2. Class 2. The Secured Claim of the SBA.

7 The Class 2 Secured Claim of the SBA is not impaired under the Plan.

8 3. Class 3. The Unsecured Claims of Critical Vendors.

9 The Class 3 Unsecured Claims of Critical Vendors will be impaired under the Plan.
10 The Holders of Allowed Unsecured Claims of Critical Vendors will be paid in full not later
11 than 120 days after the Effective Date.

12 4. Class 4. The Claim of CBC related to the PPP Loan.

13 The Class 4 Claim of CBC related to the PPP Loan is impaired under the Plan.
14 The PPP Loan, which was to be largely forgiven in accordance with the CARES Act, as it
15 may be amended, and any governing regulations, will be forgiven in its entirety as of the
16 Effective Date.

17 5. Class 5. The Claims of Customer Class Members and Customer/Creditor
18 Class.

19 A. The Class 5 Claims are impaired under the Plan.

20 B. These Claims will be satisfied in full under the Plan.

21 C. The treatment of the Claims held by Customer/Creditors Members is
22 provided in the Class Action Settlement Agreement that is attached hereto as **Exhibit A**,
23 and incorporated herein as though fully set forth herein. To the extent that there is any
24 conflict or inconsistency between the provisions of the Settlement Agreement and the
25 provisions of the Plan Document (i.e., the Plan, without incorporating the Settlement
26 Agreement or any provision thereof), the provisions of the Settlement Agreement shall
27 control.

28 D. Except as otherwise expressly provided in the Plan, no Class or
Creditor holding a Claim or Claims junior in priority to the Claims of Class 5 Creditors
shall be paid prior to the satisfaction in full of such Class 5 Claims.

1 6. Class 6. The Claims of Promissory Note Holders other than Tripp.

2 The Claims of Promissory Note Holders other than Tripp are impaired under the
3 Plan. These Claims will be paid in full under the Plan, but the Promissory Notes will be

1 modified as follows: (a) post-petition, pre-Effective Date interest shall accrue on these
2 Claims at the federal judgment rate; (b) commencing upon the Effective Date, interest will
3 accrue on such Claims at the rate of five percent (5%) *per annum*; (c) Fifty percent (50%)
4 of the principal balance will be paid on October 1, 2025 and the remaining principal
5 balance, together with all accrued interest, will be paid on October 1, 2026.

6 7. Class 7. The Tripp Promissory Note Claim.

7 The Tripp Promissory Note Claim is impaired under the Plan. This Claim will be
8 paid in full under the Plan, but the Tripp Promissory Note will be modified as follows: (a)
9 post-petition, pre-Effective Date interest shall accrue on these Claims at the federal
10 judgment rate; (b) commencing upon the Effective Date, interest will accrue on such Note
11 at the rate of four and one-half percent (4.5%) *per annum*; (c) Fifty percent (50%) of the
12 principal balance will be paid on October 1, 2026 and the remaining principal balance,
13 plus all accrued interest, will be paid on October 1, 2027.

14 8. Class 8. General Unsecured Claims other than claims falling within other
15 Classes.

16 General Unsecured Claims other than claims falling within other Classes are
17 impaired under the Plan. These Claims will be paid in full under the Plan as follows: (a)
18 post-petition, pre-Effective Date interest shall accrue on these Claims at the federal
19 judgment rate; (b) interest on these Claims will accrue at the rate of five percent (5%) *per*
20 *annum* commencing upon the Effective Date; (c) Holders of Allowed General Unsecured
21 Claims in this class will receive payment in full in two annual installments; (d) the first
22 installment payment, equal to fifty percent (50%) of the Allowed Amount of such Claims,
23 will be made on May 1, 2025; and (e) the second installment payment, equal to fifty
24 percent (50%) of the Allowed Amount of such Claims, plus all accrued interest, will be
25 made on May 1, 2026. If, on May 1, 2024, those Holders of Class 5 Claims that have
26 elected the Deferred Cash Payment Option have received seventy-five percent (75%) or
27 more of the full amount to which they are entitled under the Plan, the Debtor may, in its
28 sole discretion, advance each of the two installment payments to Class 8 Creditors by
one year.

9. Class 9. Preferred Shareholders.

The rights of Preferred Shareholders are impaired under the Plan. Prior to, or at
the time of, a Qualifying Financing Event, the Reorganized Debtor shall have the right, in
its sole discretion, to eliminate, terminate or cancel any redemption rights the Preferred
Shareholders may have under Article 8.12 of the Operating Agreement. The
Reorganized Debtor shall, in its sole discretion, within ninety (90) days after such
Qualifying Financing Event, have the right to redeem such preferred shares.

10. Class 10. The Equity Interests of the Equity Interest Holders.

The interests are not impaired under the Plan.

1 **C. Impairment of Classes**

2 Pursuant to section 1129(a)(10) of the Bankruptcy Code, if a class of claims is
3 impaired under the plan, at least one class of claims that is impaired under the plan must
4 accept the plan, without considering the votes of “Insiders” within the meaning of the
5 Bankruptcy Code. A claim or interest is “impaired” under a plan of reorganization if the
6 legal, equitable, or contractual rights of the holder of such claim or interest is altered
7 under the plan. The term “unimpaired” refers to classes of creditors or interest holders
8 whose legal, equitable, and contractual rights remain unaltered by the Plan. Because of
9 the treatment afforded to such classes, they are deemed to have accepted the Plan. It is
10 not necessary to solicit acceptances from the holders of Claims or Equity Interests in
11 unimpaired classes.

12 Classes 3, 4, 5, 6, 7, 8, and 9 are impaired under the Plan (each, an “Impaired
13 Class”). The Holders of Claims in each Impaired Class shall be entitled to vote
14 separately to accept or reject the Plan. An impaired Class of Claims shall have accepted
15 the Plan if (a) the Holders of at least two-thirds in dollar amount of the Allowed Claims
16 actually voting in such Class have voted to accept the Plan and (b) the Holders of more
17 than one-half in number of the Allowed Claims actually voting in such Class have voted to
18 accept the Plan. Pursuant to the provisions of section 1129(b) of the Bankruptcy Code,
19 in the event an impaired Class does not vote to accept the Plan, the Debtor requests that
20 the Court enter an order confirming the Plan without the acceptance of such Impaired
21 Class.

22 **ARTICLE VI**
23 **CLAIMS OBJECTIONS AND TREATMENT OF DISPUTED CLAIMS**

24 **A. Administration of Claims**

25 The Reorganized Debtor shall object to, and shall assume any pending objection
26 filed by the Debtor to, the allowance of Claims filed with the Bankruptcy Court with
27 respect to which the Reorganized Debtor disputes liability, priority or amount. All
28 objections, affirmative defenses and counterclaims shall be litigated to Final Order;
provided, however, the Debtor or Reorganized Debtor may settle or compromise any
controversies regarding any Claim without notice or further order of the Court so long as
the Reorganized Debtor complies with the provisions of Article V.5.D. Pursuant to
section 502(d) of the Bankruptcy Code, any Claims held by any entities from which
property is recoverable under sections 542, 543, 550 or 553 of the Bankruptcy Code, or
that are transferees of transfers that are avoidable under sections 544, 545, 547, 548 or
549 of the Bankruptcy Code, are deemed disallowed and the holders thereof may not
vote to accept or to reject the Plan unless such entities or transferees have paid the
amount, or turned over any such property, for which such entities or transferees are liable
under section 542, 550 or 553 of the Bankruptcy Code. Unless otherwise ordered by the
Bankruptcy Court, to the extent not already objected to by the Debtor, the Reorganized
Debtor shall file and serve all objections to Claims as soon as practicable, but, in each
instance, not later than one hundred eighty (180) days following the Effective Date or

1 such later date as may be approved by the Bankruptcy Court.

2 **B. Claims Assigned to Reorganized Debtor**

3 On the Effective Date, the Debtor shall be deemed to have assigned to the
4 Reorganized Debtor, and the Reorganized Debtor shall be deemed to have acquired and
5 become the successor to, all causes of action, claims, lawsuits, defenses, counterclaims
6 and setoffs, whether equitable or legal, available to the Debtor as of the Effective Date,
7 including all claims of the Debtor for relief against any other person existing as of the
8 Effective Date. Any objection to Claims must be filed and served in accordance with
9 Bankruptcy Rule 3007.

8 **C. Estimation of Claims**

9 On and after the Effective Date, and unless otherwise limited by an order of the
10 Bankruptcy Court, the Reorganized Debtor may at any time request the Bankruptcy Court
11 to estimate for final distribution purposes any contingent, unliquidated or Disputed Claim
12 pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor
13 previously objected to or sought to estimate such Claim, and the Bankruptcy Court will
14 retain jurisdiction to consider any request to estimate any Claim at any time during
15 litigation concerning any objection to any Claim, including, without limitation, during the
16 pendency of any appeal relating to any such objection. This paragraph does not apply to
17 Class 5 Claims.

14 **D. No Distribution on Disputed Claims**

15 Notwithstanding any provision of the Plan specifying the time for payment of
16 distributions to Holders of Allowed Claims, no payment, dividend, or distribution shall be
17 made to the Holder of any Disputed Claim until the time such Claim has been determined
18 to be an Allowed Claim. Notwithstanding the existence of a Disputed Claim in a Class to
19 which a distribution under this Plan is due, the distribution to holders of Allowed Claims in
20 such Class shall not be affected by any delay in the resolution of the Disputed Claim.
21 Upon the allowance of any Disputed Claim, the Holder shall be paid the amount that such
22 Holder would have received had its Claim been an Allowed Claim on the Effective Date.

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

22 **A. Assumption of Executory Contracts and Unexpired Leases**

23 Except for any unexpired leases or executory contracts that the Debtor rejects or
24 designates as being subject to rejection, pursuant to sections 365 and 1123(b) of the
25 Bankruptcy Code, all executory contracts and unexpired leases that existed between the
26 Debtor and another person or entity as of the Petition Date, including any that are the
27 subject of one or more pending, unresolved motions to assume, *and not including any
28 executory contracts and/or unexpired leases that have previously been assumed or
rejected pursuant to a Final Order of the Bankruptcy Court*, shall be deemed assumed by

1 the Debtor upon entry of the Confirmation Order. The Plan shall constitute a motion to
2 assume such executory contracts and unexpired leases, and the Debtor shall not be
3 subject to any liabilities under such contracts or leases except as provided in the Plan.
4 Subject to the occurrence of the Effective Date, entry of the Confirmation Order by the
5 Bankruptcy Court shall constitute approval of such assumptions pursuant to section
6 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such
7 assumption is in the best interests of the Debtor and the Estate. With respect to each
8 such executory contract or unexpired lease assumed by the Debtor, unless otherwise
9 determined by the Bankruptcy Court pursuant to a Final Order or agreed to by the parties
10 thereto on or before the Effective Date, any defaults of the Debtor with respect to such
11 assumed executory contracts or leases existing as of the Effective Date shall be cured in
12 the ordinary course of the Reorganized Debtor's business promptly after any such default
13 becomes known to the Reorganized Debtor and, if disputed, established pursuant to
14 applicable law by the Bankruptcy Court, and the assumed executory contracts or leases
15 shall be binding upon and enforceable upon the parties thereto. Subject to the
16 occurrence of the Effective Date, upon payment of such cure amount, all defaults of the
17 Debtor existing as of the Confirmation Date with respect to such executory contract or
18 unexpired lease shall be deemed cured.

12 **B. Rejection**

13 No later than ten (10) days prior to the commencement of the Confirmation
14 Hearing, the Debtor shall file a notice (the "Rejection Notice") with the Bankruptcy Court
15 of any executory contracts or unexpired leases that the Debtor seeks to reject. The Plan
16 shall constitute a motion to reject such executory contracts and unexpired leases that are
17 listed on the Rejection Notice, and entry of the Confirmation Order by the Bankruptcy
18 Court shall constitute approval of such rejection pursuant to section 365 of the
19 Bankruptcy Code and a finding by the Bankruptcy Court that each such rejection is in the
20 best interests of the Debtor, the Estate and all parties in interest in the Chapter 11 Case.

18 **C. Damages Upon Rejection**

19 The Bankruptcy Court shall determine the dollar amount, if any, of the Claim of
20 any entity seeking damages by reason of the rejection of any executory contract or
21 unexpired lease; provided, however, that such entity must file a proof of claim with the
22 Bankruptcy Court on or before thirty (30) calendar days following the date of entry of the
23 Confirmation Order. To the extent that any such Claim is Allowed by the Bankruptcy
24 Court by a Final Order, such Claim shall become, and shall be treated for all purposes
25 under the Plan as a Class 8 General Unsecured Claim, and the holder thereof shall
26 receive distributions as a holder of an Allowed Claim in such Class pursuant to the Plan.

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**ARTICLE VIII
MEANS FOR IMPLEMENTATION OF PLAN**

A. Reorganized Debtor and Distributions

Except as otherwise set forth in and not otherwise inconsistent with the Plan and the Settlement Agreement, from and after the Effective Date, the Reorganized Debtor shall maintain and continue the Debtor's operations in the ordinary course of business and implement the terms and conditions of this Plan. On the Effective Date, as on the Petition Date, the Equity Interest Holders shall own 100% of the equity interests in the Reorganized Debtor. All matters provided for under the Plan involving the corporate structure of the Debtor or the Reorganized Debtor, or any corporate action to be taken by, or required of the Debtor or the Reorganized Debtor shall be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement for further action by the Equity Interest Holders; provided, however, nothing herein shall preclude the Reorganized Debtor from taking such lawful actions as it deems necessary and/or appropriate or desirable to modify its corporate organization and structure and/or provisions or documents relating to corporate governance. On the Effective Date, the Reorganized Debtor will continue to be managed by the existing managers, officers and directors of the Debtor; provided, however, nothing herein shall be deemed to delay or impair the Reorganized Debtor from making such management and board changes as it deems prudent.

The Reorganized Debtor shall be responsible for any and all payments and distributions made under the Plan from its ordinary course business operations. On and after the Effective Date, the Reorganized Debtor shall take all reasonable actions necessary to consummate and implement the transactions provided for in this Plan and the appropriate officers of the Reorganized Debtor are authorized to execute, deliver and consummate the transactions contemplated in this Plan without further notice to or order of the Bankruptcy Court.

Until all payments due to Class 5 have been made under this Plan, the Reorganized Debtor shall provide monthly operating reports directly to counsel for the Customer Class Representatives. Said reports shall be in the same format and adhere to the same requirements as pre-confirmation operating reports, or such other format as agreed between the Debtor and such counsel, but shall not be filed with the Court.

B. Conditions Precedent, Concurrent, and Subsequent to Confirmation of the Plan

Prior to, or concurrently with, the Confirmation of the Plan, the Bankruptcy Court shall have made such findings and determinations regarding the Plan as shall enable the entry of the Confirmation Order in a manner consistent with the provisions of the Plan.

No later than 28 days after the Effective Date, the Customer Class Representatives shall take such actions as are reasonably required to cause the dismissal with prejudice of the Class Action Litigation as to all defendants, including

1 Tripp.

2 **ARTICLE IX**
3 **MODIFICATION OF THE PLAN**

4 Pursuant to the provisions of section 1127 of the Bankruptcy Code and Bankruptcy
5 Rule 3019, the Debtor reserves the right to modify or alter the provisions of the Plan at
6 any time prior to or subsequent to Confirmation, subject to the provisions of Bankruptcy
7 Code and the Bankruptcy Rules, provided however, such modification or alteration is not
8 inconsistent with the Settlement Agreement. If the Debtor revokes or withdraws the Plan,
9 or if Confirmation of the Plan does not occur, then the Plan shall be deemed null and void
10 in all respects and nothing contained in the Plan shall be deemed to prejudice in any
11 manner the rights of the Debtor in any further case and/or proceeding involving the
12 Debtor.

9 **ARTICLE X**
10 **RETENTION OF JURISDICTION BY THE BANKRUPTCY COURT**

11 Notwithstanding Confirmation, until the entry of a final decree, the Bankruptcy
12 Court shall retain jurisdiction to ensure that the purposes and intent of the Plan are
13 carried out. Without limiting the generality of the foregoing, the Bankruptcy Court shall
14 retain jurisdiction for the following purposes:

14 (i) fixing and allowing any Claim, including Administrative Expense
15 Claim, as a cost and expense of the administration of the Case, reconsidering any Claim
16 that has been Allowed, and hearing and determining any objection to a Claim (the failure
17 of the Debtor to object to, or to examine any claim for the purpose of voting, shall not be
18 deemed to be a waiver of the Debtor's right to object to, or re-examine any claim in whole
19 or in part);

18 (ii) hearing and determining any action brought by the Debtor with
19 respect to a transfer that is avoidable pursuant to applicable law;

19 (iii) hearing and determining all causes of action, controversies,
20 disputes, or conflicts between or among the Debtor and any other party, including those
21 that were pending prior to Confirmation;

22 (iv) correcting any defect, curing any omission, or reconciling any
23 inconsistency in the Plan or Confirmation Order as may be necessary to carry out the
24 purpose and intent of the Plan and the Settlement Agreement;

24 (v) hearing and determining any action brought by the Debtor to protect
25 the Debtor from actions of Creditors, or other parties in interest;

25 (vi) issuing any order necessary to enforce and implement the Plan or
26 Confirmation Order, including without limitation, such declaratory and injunctive orders as
27 are appropriate to protect the Debtor or Reorganized Debtor from actions of Creditors or
28

1 other parties in interest;

2 (vii) hearing and determining any dispute relating to the terms or
3 implementation of the Plan or Confirmation Order, or to the rights or obligations of any
4 parties in interest with respect thereto;

5 (viii) the modification of the Plan after Confirmation pursuant to the
6 Bankruptcy Rules and the Bankruptcy Code provided however, that such modification is
7 not inconsistent with the Settlement Agreement;

8 (ix) hearing and determining all applications for compensation of
9 Professional Persons and reimbursement of expenses under sections 330, 331, or 503(b)
10 of the Bankruptcy Code;

11 (x) to hear and determine any and all disputes pending as of
12 Confirmation for the rejection, assumption, or assignment of executory contracts or
13 unexpired leases and the allowance of any Claim resulting therefrom; and

14 (xi) hearing and determining such other matters and for such other
15 purposes as may be provided in the Confirmation Order.

16 **ARTICLE XI**
17 **MISCELLANEOUS PROVISIONS**

18 **A. Vesting of Assets**

19 Upon the Effective Date, all assets of the Debtor shall be vested in the
20 Reorganized Debtor in accordance with section 1141 of the Bankruptcy Code, and no
21 further order of the Court shall be necessary for the Reorganized Debtor to perform such
22 acts as are within the ordinary scope of its business and/or necessary to carry out the
23 purposes or intent of this Plan.

24 **B. Unmarked Ballots**

25 Executed ballots respecting the Plan returned by Creditors to the Debtor that do
26 not indicate acceptance or rejection of the Plan shall not be deemed and counted as
27 acceptance of the Plan.

28 **C. Mailing List; Returned Distribution Checks**

After the Effective Date, the Official Mailing List shall be maintained by the
Reorganized Debtor. It shall be the obligation of each Creditor and/or party in interest to
assure that the Official Mailing List is current and accurate as to each such person or
entity by notifying the Reorganized Debtor promptly of any change of address. In the
event that a distribution check, that has been properly posted to the Creditor's address as
set forth in the Official Mailing List, is returned as undeliverable by the United States
Postal Service, or is not cashed within six months following the date of issuance, the

1 Reorganized Debtor shall be authorized, but not required, to avoid such check with the
2 applicable funds becoming subject to further distribution pursuant to this Plan, and the
Claim of such creditor being deemed satisfied in full.

3 **D. Preservation of Claims and Defenses**

4 Unless otherwise expressly set forth in the Plan or Confirmation Order, the
5 Reorganized Debtor shall retain all rights to commence, pursue, or assert, as
6 appropriate, any and all Claims, rights, demands, causes of action, or defenses by or on
7 behalf of the Estate, whether arising before or after the Petition Date, in any court or
8 other tribunal including, without limitation, in any adversary proceeding filed in the
9 Chapter 11 Case. Except as settled and released herein, from and after the Effective
10 Date, the Reorganized Debtor shall have the exclusive right and power to litigate any
11 Claim or cause of action that constituted an asset of the Debtor, including, without
12 limitation, any avoidance or recovery action under section 541, 542, 544, 545, 547, 548,
13 549, 550, 551, or 553 of the Bankruptcy Code and any other cause of action, right to
14 payment, or claim that may be pending on the Effective Date or instituted by the Debtor
15 or Reorganized Debtor thereafter, to a Final Order.

16 Subject to the limitations provided in section 553 of the Bankruptcy Code, the
17 Debtor or the Reorganized Debtor, as applicable, may, but will not be required to, setoff
18 against any Claim and the payments or other distributions to be made pursuant to the
19 Plan in respect of such Claim, claims of any nature whatsoever the Debtor may have
20 against the holder of such Claim, but neither the failure to do so nor the allowance of any
21 Claim will constitute a waiver or release by the Debtor or the Reorganized Debtor, as
22 applicable, of any such Claim, right, or defense that the Debtor may have against such
23 Holder.

24 **E. Administrative Expense Claims**

25 The Administrative Expense Claims Bar Date, which shall not apply to applications
26 for the allowance of compensation and reimbursement of expenses under the following
27 section of this Article, shall be forty-two (42) days after the Effective Date, unless the
28 Bankruptcy Court enters an order establishing a different date. Objections to any request
for allowance of an Administrative Expense Claim shall be filed and served on the
respective applicant and its counsel no later than thirty (30) days after the Administrative
Expense Claims Bar Date.

F. Applications for Allowance of Compensation and Reimbursement of Expenses

All final applications for allowance of compensation and reimbursement of
expenses pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy
Code for services rendered to the Debtor, and for services to or by the Committee prior to
the Effective Date must be filed and served on the Reorganized Debtor, their counsel,
and Office of the United States Trustee within forty-five (45) days following the Effective
Date, unless otherwise ordered by the Bankruptcy Court. Objections to any applications

1 of such Professional Persons or other entities for allowance of compensation and/or
2 reimbursement of expenses must be filed and served on the respective applicant and its
3 counsel no later than the first Business Day following twenty-one (21) days (or such other
4 period as may be allowed by order of the Bankruptcy Court) after the date on which the
5 applicable application for compensation or reimbursement was received. The
6 Reorganized Debtor may pay charges that they incur on and after the Effective Date for
7 Professional Persons' fees, disbursements, expenses or related support services without
8 application to the Bankruptcy Court.

6 **G. Employment of Professional Persons**

7 The Reorganized Debtor shall be authorized to employ and compensate
8 Professional Persons following Confirmation upon such terms as the Reorganized Debtor
9 deems reasonable and appropriate without further notice or order of the Court.

9 **H. Timely Payments**

10 The Reorganized Debtor shall make all payments required under the Plan and
11 applicable law on a timely basis.

12 **I. Stay of Confirmation Order Shall Not Apply**

13 The stay of enforceability of Confirmation Order pursuant to Bankruptcy Rule
14 3020(e) shall not apply, and the order of Confirmation shall be enforceable according to
15 its terms absent further order of the Court.

15 **J. Discharge and Injunction**

16 Except as specifically provided in the Plan and/or the Confirmation Order, as of the
17 Effective Date, Confirmation shall discharge the Debtor and the Reorganized Debtor
18 pursuant to section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims of any
19 nature whatsoever, including any Claims and liabilities that arose prior to Confirmation,
20 and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy
21 Code, whether or not (a) a Proof of Claim based on such Claim was filed or deemed filed
22 under section 501 of the Bankruptcy Code, or such Claim was listed on the Schedules of
23 the Debtors, (b) such Claim is or was Allowed under section 502 of the Bankruptcy Code,
24 or (c) the holder of such Claim has voted on or accepted the Plan. Except as provided for
25 in the Plan and/or the Confirmation Order, the rights that are provided in the Plan as of
26 the Effective Date shall be in exchange for and in complete satisfaction, settlement and
27 discharge of all Claims against, liens on, and interests in the Debtor or the Reorganized
28 Debtor or any Estate Property.

From and after the Effective Date, and except as otherwise provided for in the
Plan, all Persons who have held, hold or may hold Claims, liens or interests against or in
the Debtor are (i) permanently enjoined from commencing, conducting or continuing in
any manner, directly or indirectly, any lawsuit, action or other proceeding of any kind
against or affecting the Debtor; (ii) enforcing, attaching, collecting or recovering in any

1 manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any
2 lien or encumbrance against the Debtor or any property of the Debtor; (iv) asserting,
3 maintaining or failing to withdraw any right of setoff, subordination, or recoupment of any
4 kind, directly or indirectly, against any obligation due the Debtor, or any of the Debtor's
5 property; and (v) taking any action in any place and in any manner whatsoever that does
not conform to or comply with the provisions of the Plan. By accepting distributions
pursuant to this Plan, each Holder of an Allowed Claim will be deemed to have
specifically consented to the injunctions provide for herein.

6 **K. Exculpation and Release**

7 As of the Effective Date, the Debtor and its respective present or former
8 shareholders, officers, directors, affiliates, employees, accountants, advisors, attorneys,
9 consultants, experts or other agents, and the Committee and each of its members in their
10 capacity as members of the Committee and Committee counsel shall not have or incur
11 any liability to any entity for any act or omission taken on or after the Petition Date in
12 connection with or arising out of the Chapter 11 Case, negotiation of the Plan or other
13 related document, the attempt to obtain a Confirmation Order, the consummation of the
14 Plan, the administration of the Plan or the property to be distributed under the Plan. The
Debtor shall be entitled to rely upon the advice of counsel with respect to its duties and
responsibilities under the Plan and any related document. In no event shall any party
exculpated from liability under this section be exculpated from liability in the case of gross
negligence, fraud or willful misconduct.

15 Pursuant to section 1125(e) of the Bankruptcy Code, the Confirmation Order will
16 provide that all of the persons who have solicited acceptances or rejections of the Plan
17 (including, the Debtor, its respective present or former officers, employees, accountants,
18 advisors, attorneys, consultants, experts or other agents) have acted in good faith and in
compliance with the applicable provisions of the Bankruptcy Code, and are not liable on
account of such solicitation or participation or for violations of any applicable law, rule or
regulation governing the solicitation of acceptances or rejections of the Plan.

19 **L. Modification of Payment Terms**

20 The Debtor reserves the right to modify the treatment of any Allowed Claim, as
21 provided in section 1123(a)(4) of the Bankruptcy Code, at any time after the Effective
Date, upon the consent of the Holder of such Allowed Claim.

22 **M. Notices**

23 An event of default shall occur if the Debtor shall fail to comply with a material
24 provision of this Plan. In such an event, the party alleging such default shall provide
25 written notice of the alleged default to the Debtor and the attorneys for the Debtor served
26 either: (a) certified mail, return receipt requested, (b) hand delivery, or (c) reputable
overnight courier service, to the following addresses:

27
28

1 Reorganized Debtor
2 c/o Glenn E. Tripp
3 Galileo Learning, LLC
4 1021 3rd Street
5 Oakland, CA 94607

6 With a copy to:

7 Neal L. Wolf, Esq.
8 HANSON BRIDGETT LLP
9 425 Market Street, 26th Floor
10 San Francisco, CA 94105

11 If, after thirty (30) days following the Debtor's and its counsel's receipt of the
12 written notice of default, the Debtor and such party have been unable to resolve, or the
13 Debtor has been unable to cure, the asserted default, such party may proceed with any
14 remedies available to it under applicable law, provided that nothing herein shall limit or
15 affect the Debtor's right to seek appropriate relief from any court of competent
16 jurisdiction, including the Bankruptcy Court.

17 **N. Binding Effect**

18 This Plan shall be binding upon, and shall inure to the benefit of the Debtor, the
19 Reorganized Debtor and the Holders of all Claims and their respective heirs, successors
20 and assigns

21 **O. Governing Law**

22 Except to the extent that the Bankruptcy Code or other federal law is applicable or
23 as provided in any contract, instrument, release or other agreement entered into in
24 connection with this Plan, the rights, duties and obligations of the Debtor and any other
25 Person arising under this Plan shall be governed by, and construed and enforced in
26 accordance with, the internal laws of the State of California without giving effect to
27 California choice of law provisions.

28 **P. Severability**

If, prior to Confirmation of the Plan, any term or provision of the Plan is held by the
Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the
Debtor's request, shall have the power to alter or 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
will remain in full force and effect; provided, however, that nothing contained in this
paragraph shall adversely affect the rights of the holders of Class 5 Claims.

1 **Q. Quarterly Fess to the United States Trustee**

2 After the Effective Date, the Reorganized Debtor shall pay all quarterly fees
3 payable to the Office of the United States Trustee, consistent with applicable provisions
4 of the Bankruptcy Code and Bankruptcy Rules.

4 **R. No Admissions**

5 The Plan provides for the resolution, settlement and compromise of Claims against
6 the Debtor and nothing contained herein shall be construed to be an admission of any
7 fact or otherwise binding upon the Debtor in any manner prior to the Effective Date.

8 **S. Headings**

9 The headings used in the Plan are for convenience and reference only and shall
10 not constitute a part of the Plan for any other purpose or in any manner affect the
11 construction of the provisions of the Plan.

11 **T. Post-Confirmation Committee**

12 Upon confirmation of this Plan, all members of the Unsecured Creditors
13 Committee shall be appointed to a Post-Confirmation Committee (the "PCC"). The
14 professionals for the PCC shall be the same as for the Committee.

14 1. Reporting. Until all payments due to unsecured creditors have been made
15 under this Plan, the Reorganized Debtor shall provide monthly operating reports directly
16 to counsel for the PCC. Said reports shall be in the same format and adhere to the same
17 requirements as pre-confirmation operating reports, or such other format as agreed
18 between the Debtor and the PCC, but shall not be filed with the Court.

18 2. Inspection. For cause and upon reasonable notice, counsel for the PCC
19 shall have access to the Reorganized Debtor's books and records for monitoring and
20 enforcement of this Plan.

20 3. Default. In the event of a default under this Plan with respect to any
21 creditor class, the PCC will have standing to pursue all remedies available at law to
22 enforce the Plan. The Reorganized Debtor shall pay all reasonable attorneys' fees and
23 costs of the PCC relating to said default.

23 4. Dissolution of the Committee. The PCC shall be dissolved upon payment in
24 full of all amounts to holders of allowed Class 6 and Class 8 claims.

24 5. Attorney's Fees. The Reorganized Debtor shall be obligated to pay the
25 monthly fees and expenses of counsel for the Post-Confirmation Committee, however
26 these fees and expenses are capped at \$610.00 per month. This cap shall not apply in
27 the event of a default under this Plan. Counsel for the Post-Confirmation Committee
28 shall send its monthly billing statements to counsel for the Debtor in the ordinary course

