

**EXECUTION VERSION**

**Exhibit 1**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

IN RE COBALT INTERNATIONAL  
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 4:14-cv-3428 (NFA)

**STIPULATION AND AGREEMENT OF SETTLEMENT AMONG THE  
PLAINTIFFS, COBALT INDIVIDUAL DEFENDANTS, AND NADER  
TAVAKOLI, SOLELY ACTING AS PLAN ADMINISTRATOR ON  
BEHALF OF THE COBALT DEBTORS**

This Stipulation and Agreement of Settlement, dated as of October 11, 2018 (the “Settlement Agreement”) is entered into between and among: (a) lead plaintiffs GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust (together, the “GAMCO Funds” or “Lead Plaintiffs”), St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, with Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the Settlement Class; (b) defendant Cobalt International Energy, Inc. (“Cobalt”) and its Debtor Affiliates<sup>1</sup> (collectively, the “Debtors”) in the Debtors’ Chapter 11 cases (the “Chapter 11 Cases” as more fully described below), by and through Nader Tavakoli, solely in his capacity as Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc., *et al.* (the “Plan Administrator”); and (c)

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<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 herein.

*EXECUTION VERSION*

defendants Joseph H. Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P. Wilkirson, and Martin H. Young, Jr., and embodies the terms and conditions of the settlement of all claims by Plaintiffs against the Cobalt Settling Defendants (the “Settlement”) in the above-captioned action (the “Action”). Subject to the approval of the District Court and Bankruptcy Court and the terms and conditions expressly provided herein, this Settlement Agreement is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice all claims asserted in the Action against the Cobalt Settling Defendants upon the completion of the Settling Parties’ respective obligations set forth herein.

WHEREAS:

A. Beginning on or about November 30, 2014, multiple putative securities class action complaints were filed in the United States District Court for the Southern District of Texas (the “District Court”) by purchasers of Cobalt Securities. Pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§77z-1 and 78u-4, as amended, notice to the public was issued setting forth the deadline by which putative class members could move the District Court to be appointed to act as lead plaintiff.

B. On March 3, 2015, the District Court consolidated all similar putative class actions into the Action, appointed the GAMCO Funds as Lead Plaintiffs in the Action, and approved Lead Plaintiffs’ selection of the law firms of Entwistle & Cappucci LLP and Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel and Ajamie LLP as Liaison Counsel for the putative class.

*EXECUTION VERSION*

C. On May 1, 2015, Plaintiffs filed the Consolidated Amended Class Action Complaint. The Amended Complaint asserted (a) claims under Section 11 of the Securities Act of 1933 (the “Securities Act”) against Cobalt, certain of the Cobalt Individual Defendants, and the Underwriter Defendants; (b) claims under Section 12(a)(2) of the Securities Act against the Underwriter Defendants; (c) claims under Section 15 of the Securities Act against the Cobalt Individual Defendants, the Sponsor Defendants, the Sponsor Designee Defendants, and Underwriter Defendant Goldman Sachs & Co. LLC (“GS&Co.”); (d) claims under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Securities and Exchange Commission (“SEC”) Rule 10b–5 promulgated thereunder, against Cobalt and certain of the Cobalt Individual Defendants; and (e) claims under Section 20(a) of the Exchange Act against certain of the Cobalt Individual Defendants. The Amended Complaint sought damages on behalf of a putative class of investors in Cobalt Securities during the Class Period from March 1, 2011 through November 3, 2014.

D. On June 30, 2015, the Cobalt Settling Defendants, Sponsor Defendants, Sponsor Designee Defendants and Underwriter Defendants (collectively, the “Defendants”) filed motions to dismiss the Amended Complaint. On August 31, 2015, Plaintiffs filed papers in opposition to the motions to dismiss; and on September 29, 2015, Defendants filed reply papers on those motions. On January 19, 2016, the District Court entered a Memorandum and Order denying in part and granting in part Defendants’ motions to dismiss the Amended Complaint. The District Court further denied

*EXECUTION VERSION*

Defendants' interlocutory appeal motions on March 14, 2016, and Defendants answered the Amended Complaint on March 25, 2016, denying liability and the essential factual allegations therein.

E. On November 2, 2016, Plaintiffs moved to certify the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. On March 22, 2017, Defendants filed their papers in opposition to the motion for class certification; and on May 26, 2017, Plaintiffs filed their reply papers on that motion. On June 15, 2017, the District Court entered its Memorandum and Order granting Plaintiffs' motion for class certification, in which the District Court certified the Action to proceed as a class action (on behalf of a class of purchasers of Cobalt Securities during the Class Period as defined therein (the "Certified Class")), appointed Plaintiffs as class representatives for that class, and appointed Lead Counsel as class counsel.

F. On March 15, 2017, Plaintiffs filed the Operative Complaint adding a claim under Section 20A of the Exchange Act against the Sponsor Defendants. On June 15, 2017, the District Court entered its Memorandum and Order granting the motion to dismiss the new Section 20A claim by The Carlyle Group, L.P. and denying the motion to dismiss of the other Sponsor Defendants.

G. On June 30, 2017, Defendants filed a petition in the United States Court of Appeals for the Fifth Circuit (the "Court of Appeals") pursuant to Federal Rule of Civil Procedure 23(f), seeking permission to take an interlocutory appeal of the District Court's Class Certification Order. On August 4, 2017, the Court of Appeals granted Defendants'

***EXECUTION VERSION***

petition. On October 10, 2017, Defendants filed their opening briefs on the appeal; on November 22, 2017, Plaintiffs filed their answering briefs on appeal; and on December 2017, Defendants filed their reply briefs. On July 19, 2018, the Court of Appeals issued a notice stating that oral argument on the appeal would take place on October 1, 2018. By virtue of agreements in principle to this Settlement and the Sponsor Settlement, on September 18, 2018, the Court of Appeals granted in part and denied in part Plaintiffs' September 13, 2018 motion to stay further proceedings in Defendants' appeal, and ruled that the appeal is stayed and held in abeyance as to all Defendants except the Underwriter Defendants other than GS&Co. and oral argument as to the appeal by the Underwriter Defendants occurred as scheduled on October 1, 2018.

H. On December 14, 2017, Cobalt and the other Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532, in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). Debtors' jointly-administered Chapter 11 cases are captioned *In re Cobalt International Energy, Inc.*, Case No. 4:17–bk–36709 (Bankr. S.D. Tex.).

I. On January 4, 2018, Plaintiffs and Defendants agreed to stay all proceedings in the Action until April 21, 2018 in light of Cobalt's bankruptcy, and an order to that effect was entered in the Bankruptcy Court on that date.

J. On April 4, 2018, the Bankruptcy Court entered an order in the Chapter 11 Cases (ECF No. 784) confirming the Debtors' plan of reorganization (the “Plan”) in the

*EXECUTION VERSION*

Chapter 11 Cases, which became effective by its terms on April 10, 2018 (the “Confirmation Order”).

K. Pursuant to the Plan and paragraph 106 of the Confirmation Order, the Plaintiffs’ claims against Cobalt were “preserved, provided that any recovery on such Claims shall be limited to available insurance and subject to Articles VI.I.2 and VI.I.3 of the Plan, as applicable.” The Confirmation Order did not affect Plaintiffs’ claims against the Cobalt Individual Defendants.

L. Pursuant to the Plan, the Plan Administrator was appointed to act in the capacity of a board of directors and officers of the Debtors to wind down the business and affairs of the Debtors.

M. On May 22, 2018, after the expiration of the bankruptcy stay, the District Court entered a revised Docket Control Order, establishing forthcoming deadlines in the case.

N. On August 31, 2018, fact discovery closed in the Action. In total, during more than two years of discovery, the parties to the Action exchanged dozens of written requests for discovery, produced more than a million of pages of documents, and conducted more than twenty depositions.

O. On October 9, 2018, following months of arm’s-length negotiations directly and through a mediator, Plaintiffs, the Sponsor Defendants, the Sponsor Designee Defendants and GS&Co. executed a settlement agreement setting forth the terms of a settlement of all claims in the Action asserted by Plaintiffs, on their own behalf and on

*EXECUTION VERSION*

behalf of members of the Certified Class, against the Sponsor Defendants, the Sponsor Designee Defendants, and GS&Co. (the “Sponsor Settlement”). The Sponsor Settlement was filed with the District Court on or about October 12, 2018, and remains subject to preliminary and final approval by the District Court.

P. On September 14, 2018, following months of arm’s-length negotiations, counsel for Lead Plaintiffs, the Plan Administrator and the Cobalt Individual Defendants executed a Settlement Term Sheet describing the principal terms of the proposed Settlement to resolve all claims asserted by the Plaintiffs, on their own behalf and on behalf of members of the Certified Class, against Cobalt and the Cobalt Individual Defendants, and any potential claims against the other Debtors.

Q. This Settlement Agreement (together with the exhibits hereto) reflects the final and binding agreement between the Settling Parties with respect to the Settlement.

R. Based upon their investigation and prosecution of the case, Plaintiffs and Lead Counsel have concluded that the terms and conditions of this Settlement Agreement and Settlement are fair, reasonable, and adequate to Plaintiffs and the other members of the Settlement Class, and in their best interests. Based on Plaintiffs’ direct oversight of the prosecution of this matter and with the advice of their counsel, Plaintiffs have agreed to settle and release the claims raised in the Action against the Cobalt Settling Defendants (and any potential claims) pursuant to the terms and provisions of this Settlement Agreement, after considering, among other things: (a) the substantial financial benefit that Plaintiffs and the other members of the Settlement Class may receive under the

*EXECUTION VERSION*

proposed Settlement; and (b) the significant risks and costs of continued litigation and trial against the Cobalt Settling Defendants, particularly in light of Cobalt's bankruptcy.

S. This Settlement Agreement constitutes a compromise of all matters that are in dispute between the Settling Parties. The Cobalt Settling Defendants are entering into this Settlement Agreement solely to eliminate the uncertainty, burden and expense of further protracted litigation. Each of the Cobalt Settling Defendants denies any wrongdoing, and this Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Cobalt Settling Defendants with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Cobalt Settling Defendants have, or could have, asserted. The Cobalt Settling Defendants expressly deny that Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing or damages whatsoever.

T. Similarly, this Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiffs of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Cobalt Settling Defendants' defenses to liability had any merit. Each of the Settling Parties recognizes and acknowledges, however, that the Action has been initiated, filed, and prosecuted by Plaintiffs in good faith and defended by the Cobalt Settling Defendants in good faith, and that the Action as to the Cobalt Settling Defendants is being voluntarily settled with the advice of counsel.



***EXECUTION VERSION***

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Plaintiffs (individually and on behalf of the Settlement Class) and the Cobalt Settling Defendants, by and through their respective undersigned attorneys and subject to approval by the District Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, that, in consideration of the benefits flowing to the Settling Parties from the Settlement, all Released Plaintiffs' Claims as against the Settling Defendants' Releasees and all Released Settling Defendants' Claims as against the Plaintiffs' Releasees shall be settled and released, upon and subject to the terms and conditions set forth below.

**DEFINITIONS**

1. As used in this Settlement Agreement and any exhibits attached hereto and made a part hereof, the following capitalized terms shall have the following meanings:

(a) "Action" means the consolidated securities class action in the matter styled *In re Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 4:14-cv-3428 (NFA) (S.D. Tex.), and includes all actions consolidated therein.

(b) "AIG Litigation" means the claims against Illinois National Insurance Company in *Cobalt International Energy, Inc. v. Illinois National Insurance Company, an AIG Subsidiary*, Cause No. 2016-31648, in the District Court of Harris County, Texas, 125th Judicial District.

(c) "AIG Litigation Counsel" means counsel selected by the Plan Administrator to pursue and prosecute the AIG Litigation.

*EXECUTION VERSION*

(d) “Alternate Judgment” means a form of final judgment that may be entered by the District Court herein but in a form other than the form of Judgment provided for in this Settlement Agreement and that the Settling Parties have confirmed in writing is acceptable.

(e) “Amended Complaint” means the Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws filed by Plaintiffs in the Action on May 1, 2015.

(f) “Authorized Claimant” means a Settlement Class Member who submits a Claim to the Claims Administrator that is approved by the District Court for payment from the Net Settlement Fund.

(g) “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas.

(h) “Certified Class” means the class of investors as defined in the District Court’s June 15, 2017 Memorandum and Order granting Plaintiffs’ motion for class certification.

(i) “Claim” means a paper claim submitted on a Proof of Claim Form to the Claims Administrator or an electronic claim that is submitted to the Claims Administrator.

(j) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant must

*EXECUTION VERSION*

complete and submit should that Claimant seek to share in a distribution of the Net Settlement Fund.

(k) “Claimant” means a person or entity who or which submits a Claim to the Claims Administrator seeking to be eligible to share in the proceeds of the Net Settlement Fund.

(l) “Claims Administrator” means the firm retained by Lead Plaintiffs and Lead Counsel, subject to approval of the District Court, to provide all notices approved by the District Court to potential Settlement Class Members and to administer the Settlement.

(m) “Class Distribution Order” means an order entered by the District Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(n) “Class Period” means the period from March 1, 2011 through November 3, 2014, inclusive.

(o) “Cobalt” means Cobalt International Energy, Inc., its estate in bankruptcy.

(p) “Cobalt Creditors’ Share” means up to \$28,500,000 to be paid from Existing Proceeds and any future recoveries from the AIG Litigation and D&O Coverage Litigation.

*EXECUTION VERSION*

(q) “Cobalt Individual Defendants” means Joseph H. Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P. Wilkirson, and Martin H. Young, Jr.

(r) “Cobalt Securities” means Cobalt common stock, Cobalt 2.625% Convertible Senior Notes due 2019, and Cobalt 3.125% Convertible Senior Notes due 2024.

(s) “Cobalt Settling Defendants” means (i) Debtors; (ii) the Cobalt Individual Defendants; and (iii) any Sponsor Designee Defendant that has provided written notice to Lead Counsel prior to the Effective Date that he elects to join the Settlement Agreement, in which case he will be deemed a Cobalt Individual Defendant for the purposes of this Settlement.

(t) “Coverage Counsel” means counsel designated to prosecute the D&O Coverage Litigation.

(u) “Court of Appeals” means the United States Court of Appeals for the Fifth Circuit.

(v) “D&O Coverage Litigation” means the coverage litigation on behalf of Cobalt and the Cobalt Individual Defendants seeking recovery on the D&O Liability Insurance Policies to fund some or all of the Settlement Amount.

(w) “D&O Liability Insurance Policies” means those various insurance policies listed in Exhibit C that were issued in favor of the Debtors and the Cobalt Individual Defendants.

*EXECUTION VERSION*

(x) “D&O Prosecution and Payment Obligation” means the prosecution of the D&O Coverage Litigation and deposit into the Settlement Escrow Account for the benefit of the Settlement Class and/or payment to the Plan Administrator of the net proceeds, if any, after litigation expenses and attorneys’ fees for Coverage Counsel, of such litigation pursuant to the agreed-upon allocation provided herein.

(y) “Debtors” means Cobalt International Energy, Inc.; Cobalt International Energy GP, LLC; Cobalt International Energy, L.P.; Cobalt GOM LLC; Cobalt GOM # 1 LLC; and Cobalt GOM # 2 LLC.

(z) “Defendants” means Cobalt, the Cobalt Individual Defendants, the Underwriter Defendants, the Sponsor Defendants, and the Sponsor Designee Defendants.

(aa) “Defense Cost Reserve” means \$1,750,000 of the Existing Proceeds to be reserved for the Cobalt Individual Defendants to use for the limited purposes provided herein.

(bb) “District Court” means the United States District Court for the Southern District of Texas.

(cc) “Effective Date” with respect to the Settlement means the first date by which all of the events and conditions specified in ¶49 of this Settlement Agreement have been met and have occurred or have been waived in writing pursuant to the notice provision provided herein.

(dd) “Escrow Agent” means City National Bank.

*EXECUTION VERSION*

(ee) “Escrow Agreement” means the agreement between Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Settlement Escrow Account.

(ff) “Existing Escrow Accounts” means the two escrow accounts maintained at Citibank, N.A., which holds the Existing Proceeds.

(gg) “Existing Proceeds” means \$10,173,832.13, the proceeds existing as of October 3, 2018 from prior settlements of claims under certain D&O Liability Insurance Policies that are maintained in the Existing Escrow Accounts, and any proceeds of additional such settlements prior to the Effective Date of this Settlement.

(hh) “Final,” with respect to the Judgment or, if applicable, the Alternate Judgment, or any other court order, means: (i) if no appeal is filed, the expiration date of the time provided for filing or noticing any appeal under the Federal Rules of Appellate Procedure or other applicable rules of procedure; or (ii) if there is an appeal from the judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant. Any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys’ fees, costs or expenses, or (ii) the plan of allocation of Settlement proceeds among Plaintiffs

*EXECUTION VERSION*

and the Settlement Class (as submitted or subsequently modified), shall not in any way delay or preclude the Judgment or Alternate Judgment if applicable, from becoming Final.

(ii) “GS&Co.” means Goldman Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.).

(jj) “Immediate Family” or “Immediate Family Members” means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this definition, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

(kk) “Insureds” means the Debtors and the Cobalt Individual Defendants.

(ll) “Insurer” means any insurer that issued any of the D&O Liability Insurance Policies.

(mm) “Judgment” means the final judgment, substantially in the form attached hereto as Exhibit B, to be entered by the District Court approving the Settlement.

(nn) “Lead Counsel” means the law firms of Entwistle & Cappucci, LLP and Bernstein Litowitz Berger & Grossmann LLP.

(oo) “Lead Plaintiffs” means GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust.

(pp) “Liaison Counsel” means Ajamie LLP.

*EXECUTION VERSION*

(qq) “Litigation Expenses” means reasonable costs and expenses incurred in connection with commencing, prosecuting and settling the Action (which may include the costs and expenses of Plaintiffs directly related to their representation of the Settlement Class), for which Lead Counsel intend to apply to the District Court for reimbursement from the Settlement Fund. Litigation Expenses does not include attorneys’ fees incurred in connection with commencing, prosecuting and settling the Action.

(rr) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs (to be paid in accordance with ¶ [ ] below); (iii) any Litigation Expenses awarded by the District Court; and (iv) any attorneys’ fees awarded by the District Court.

(ss) “Non-Settling Defendants” means the Underwriter Defendants other than GS&Co.

(tt) “Notice” means the Notice of (I) Pendency of Class Action and Proposed Settlement with the Cobalt Settling Defendants; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 1 to Exhibit A, which is to be mailed to Settlement Class Members.

(uu) “Notice and Administration Costs” means the reasonable costs, fees, and expenses that are incurred by the Claims Administrator and Lead Counsel, to be paid in accordance with ¶ 29 below, in connection with: (i) providing notices to the Settlement



*EXECUTION VERSION*

Class concerning the Settlement as set forth herein (including, without limitation, mailing of the Notice to Settlement Class Members and publication of the Summary Notice); and (ii) administering the Settlement, including but not limited to the Claims process, as well as the reasonable costs, fees, and expenses incurred in connection with the Settlement Escrow Account.

(vv) “Operative Complaint” means the Second Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws filed by Plaintiffs in the Action on March 15, 2017.

(ww) “Opt-Out Securities Litigation” means any securities litigation commenced by any member of the Certified Class no later than forty-five (45) days following Final Approval by the District Court.

(xx) “Plaintiffs” means the GAMCO Funds, St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H.

(yy) “Plaintiffs’ Counsel” means Lead Counsel, Liaison Counsel, and all other legal counsel who, at the direction and under the supervision of Lead Counsel, performed services on behalf of the Settlement Class in the Action.

(zz) “Plaintiffs’ Releasees” means (i) Plaintiffs, their respective attorneys, and all other Settlement Class Members; (ii) the current and former parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees of each of the foregoing in

***EXECUTION VERSION***

(i); and (iii) the current and former officers, directors, agents, employees, attorneys, and advisors of each of the foregoing in (i) and (ii), in their capacities as such.

(aaa) “Plan Administrator” means Nader Tavakoli, solely in his capacity as Lead Member and Chairman of the Plan Administrator Committee of Debtors.

(bbb) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund among Plaintiffs and the Settlement Class as set forth in the Notice.

(ccc) “Preliminary Approval Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the District Court preliminarily approving the Settlement and directing that notice of the Settlement be provided to the Settlement Class.

(ddd) “Prior Complaints” means any complaint, other than the Operative Complaint, filed in the Action or in any action consolidated into the Action, including: (1) Complaint, *St. Lucie County Fire District Firefighters’ Pension Trust Fund et al. v. Bryant et al.*, No. 4:14-cv-03428 (S.D. Tex.) (filed on November 30, 2014); (2) Complaint, *Newman v. Cobalt International Energy, Inc. et al.*, No. 4:14-cv-03488 (S.D. Tex.) (filed on December 5, 2014); (3) Complaint, *Ogden v. Bryant et al.*, No. 4:15-cv-00139 (S.D. Tex.) (filed on January 16, 2015); and (4) the Amended Complaint.

(eee) “PSLRA” means the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended.

(fff) “Released Claims” means all Released Plaintiffs’ Claims and all Released Settling Defendants’ Claims.

*EXECUTION VERSION*

(ggg)“Released Plaintiffs’ Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that were or could have been asserted in any forum that relate to, arise out of, or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Operative Complaint or in any of the Prior Complaints and that relate to the purchase, acquisition, sale, or holding of Cobalt Securities during the Class Period. Released Plaintiffs’ Claims do not include: (i) any claims asserted, or that may be asserted, against any of the Sponsor Defendants, any Sponsor Designee Defendant who has not opted in to this Settlement Agreement prior to the Effective Date, GS&Co. and/or any Non-Settling Defendants; (ii) any claims of any person or entity who or that submits a request for exclusion from the Settlement Class that is accepted by the District Court; and (iii) any claims relating to the enforcement of the Settlement.

(hhh)“Released Settling Defendants’ Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against the Cobalt Settling Defendants. Released Settling Defendants’ Claims do not include: (i) any claims against any person or entity who or that submits a request for exclusion from the Settlement Class that is accepted by the District Court; (ii) any claims against any Insurer; and (iii) any claims relating to the enforcement of the Settlement.

*EXECUTION VERSION*

(iii) “Releasee(s)” means each and any of the Settling Defendants’ Releasees and each and any of the Plaintiffs’ Releasees.

(jjj) “Releases” means the releases set forth in ¶¶ 19-22 of this Settlement Agreement.

(kkk) “Settlement” means the settlement between Plaintiffs and the Cobalt Settling Defendants and the resolution of this Action as against the Cobalt Settling Defendants on the terms and conditions set forth in this Settlement Agreement.

(lll) “Settlement Agreement” means this Stipulation and Agreement of Settlement Among the Plaintiffs, Cobalt Individual Defendants, and Plan Administrator on Behalf of the Cobalt Defendants.

(mmm) “Settlement Amount” means \$220,000,000, that is payable exclusively from the Existing Proceeds and future proceeds from the D&O Prosecution and Payment Obligation.

(nnn) “Settlement Class” means all persons and entities who or which purchased or otherwise acquired Cobalt Securities between March 1, 2011 and November 3, 2014, inclusive, and were damaged thereby. Included within the Settlement Class are all persons and entities who or which purchased or otherwise acquired shares of Cobalt common stock on the open market and/or pursuant or traceable to the registered public offerings on or about (i) February 23, 2012; (ii) January 16, 2013; and (iii) May 8, 2013. Also included within the Settlement Class are all persons and entities who or which purchased or otherwise acquired Cobalt convertible senior notes on the open market

*EXECUTION VERSION*

and/or pursuant or traceable to registered public offerings on or about (i) December 12, 2012; and (ii) May 8, 2014. Excluded from the Settlement Class are Defendants; the officers and directors of Defendants during the Class Period (the “Excluded Officers and Directors”); members of the Immediate Family of the Individual Defendants and of the Excluded Officers and Directors; any entity in which any Defendant, any Excluded Officer or Director, or any of their respective Immediate Family Members has, and/or had during the Class Period, a controlling interest; Defendants’ liability insurance carriers; any affiliates, parents, or subsidiaries of the corporate Defendants; all corporate Defendants’ plans that are covered by ERISA; and the legal representatives, heirs, agents, affiliates, successors-in-interest or assigns of any excluded person or entity, in their respective capacity as such. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the District Court.

(ooo) “Settlement Class Member” means each person and entity who or which is a member of the Settlement Class.

(ppp) “Settlement Escrow Account” means an account maintained at City National Bank wherein the Settlement Fund shall be deposited and held in escrow under the control of Lead Counsel.

(qqq) “Settlement Fund” means the portion of the Existing Proceeds to be allocated to Plaintiffs and the Settlement Class, plus any future recoveries to be allocated to Plaintiffs and the Settlement Class from the D&O Coverage Litigation (including the

*EXECUTION VERSION*

AIG Litigation) pursuant to the D&O Prosecution and Payment Obligation, plus any and all interest earned thereon.

(rrr) “Settlement Hearing” means the hearing set by the District Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(sss) “Settlement Release” means a full and absolute Settlement Release of the Cobalt Individual Defendants from the unpaid balance, if any, of the Settlement Amount, as well as a full and absolute release of the Debtors, in the form attached as Exhibit D to this Settlement Agreement, to be executed by Plaintiffs and provided to the Cobalt Settling Defendants and the Debtors following the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies, or, pursuant to ¶ 22, executed in advance and held in escrow by counsel for the Plan Administrator and Cobalt Individual Defendants.

(ttt) “Settling Defendants’ Counsel” means the law firms of Greenberg Traurig, LLP, Baker Botts LLP and Quinn Emanuel Urquhart & Sullivan, LLP.

(uuu) “Settling Defendants’ Releasees” means (i) the Cobalt Settling Defendants; (ii) the current and former parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees of each of the Cobalt Settling Defendants; (iii) the current and former officers, directors, agents, employees, attorneys, and advisors of each of the foregoing in (i) and (ii), in their capacities as such; and (iv) the members of the Immediate Family of the Cobalt Individual Defendants. Notwithstanding the foregoing,

*EXECUTION VERSION*

the Settling Defendants' Releasees do not include any of the Sponsor Defendants, any Sponsor Designee Defendant who has not opted in to this Settlement Agreement prior to the Effective Date, GS&Co., or the Non-Settling Defendants or Cobalt's liability insurance carriers, in their capacities as such.

(vvv) "Settling Parties" means the Cobalt Settling Defendants and Plaintiffs, on behalf of themselves and the Settlement Class.

(www) "Sponsor Defendants" means defendants The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation (f/k/a First Reserve Corporation), ACM Ltd. (f/k/a KERN Partners Ltd.), and The Carlyle Group, L.P.

(xxx) "Sponsor Designee Defendants" means defendants Peter R. Coneway, Henry Cornell, N. John Lancaster, Kenneth W. Moore, J. Hardy Murchison, Kenneth A. Pontarelli, D. Jeff van Steenberg, Scott L. Lebovitz, and Michael G. France.

(a) "Sponsor Settlement" means the settlement between Plaintiffs and the Sponsor Defendants, Sponsor Designee Defendants, and GS&Co and the resolution of this Action as against the Sponsor Defendants, Sponsor Designee Defendants, and GS&Co on the terms and conditions set forth in Stipulation and Agreement of Settlement with the Sponsor Defendants, the Sponsor Designee Defendants and Goldman Sachs & Co. LLC dated October 9, 2018.

*EXECUTION VERSION*

(b) “Summary Notice” means the Summary Notice of (I) Pendency of Class Action and Proposed Settlement with the Cobalt Settling Defendants; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 2 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(c) “Taxes” means: (i) all federal, state, and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; (ii) the expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants); and all taxes imposed on payments by the Settlement Fund, including withholding taxes.

(d) “Underwriter Defendants” means defendants GS&Co., Morgan Stanley & Co. LLC, Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Tudor, Pickering, Holt & Co. Securities, Inc., Deutsche Bank Securities Inc., RBC Capital Markets, LLC, UBS Securities LLC, Howard Weil Incorporated, Stifel, Nicolaus & Company, Incorporated, Capital One Southcoast, Inc., and Lazard Capital Markets LLC.

(e) “Unknown Claims” means any Released Plaintiffs’ Claims which Plaintiffs or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Settling Defendants’ Claims which any Cobalt Settling Defendant does not know or suspect to



***EXECUTION VERSION***

exist in his or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision as to this Settlement. As to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs and the Cobalt Settling Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs and the Cobalt Settling Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

**CLASS CERTIFICATION**

2. Solely for purposes of the Settlement and for no other purpose, the Cobalt Settling Defendants do not contest: (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class; (b) certification of Plaintiffs as class representatives for the Settlement Class; and (c) appointment of Lead Counsel as class counsel for the

***EXECUTION VERSION***

Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. In the event that the Settlement is terminated pursuant to the terms of this Settlement Agreement, the certification of the Settlement Class in connection with the Settlement shall become null and void. In such case, the Cobalt Settling Defendants shall have the right to continue to prosecute their appeal in the Court of Appeals of the District Court's June 15, 2017 Memorandum and Order certifying the Class, and shall have the right to otherwise seek decertification of the Class.

**PRELIMINARY APPROVAL OF SETTLEMENT**

3. Promptly upon execution of this Settlement Agreement, but in no event later than ten (10) calendar days following such execution, Plaintiffs shall move for preliminary approval of the Settlement, certification of the Settlement Class for settlement purposes only, and the scheduling of a hearing for consideration of final approval of the Settlement, before the District Court, and the Cobalt Settling Defendants shall not oppose that motion. Concurrently with the motion for preliminary approval, Plaintiffs shall apply to the District Court for, and the Cobalt Settling Defendants shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

4. Where practicable and with consent of the Cobalt Settling Defendants, which is not to be unreasonably withheld, but in no event later than ten (10) calendar days following execution of this Settlement Agreement, Plaintiffs are permitted to seek preliminary approval of the Settlement in conjunction with preliminary approval of the

***EXECUTION VERSION***

Sponsor Settlement, including by filing combined motions and related filings with the District Court and providing combined notice to Settlement Class Members concerning both this Settlement and the Sponsor Settlement.

5. Promptly upon execution of this Settlement Agreement, but in no event later than ten (10) calendar days following such execution, the Plan Administrator and the Cobalt Individual Defendants shall move for approval of the Settlement before the Bankruptcy Court, and Plaintiffs shall not oppose that motion.

6. If either the District Court denies Plaintiffs' motion for preliminary approval or the Bankruptcy Court denies the Cobalt Settling Defendants' motion for approval, the Settling Parties shall have the respective rights set forth in ¶¶ 51-52 herein.

**THE SETTLEMENT CONSIDERATION**

7. In full and final satisfaction, compromise, settlement, and discharge of the Cobalt Settling Defendants' obligation to satisfy the Settlement Amount, as set forth herein, the Settling Parties agree:

(a) That the Plaintiffs shall pursue and prosecute on the Insureds' behalf all rights to, interests in, claims and/or coverage under D&O Liability Insurance Policies (including claims of bad faith) in the D&O Coverage Litigation, except the AIG Litigation, which shall continue to be pursued and prosecuted by the Insureds through AIG Litigation Counsel. Lead Counsel and the Plan Administrator shall mutually agree on Coverage Counsel other than AIG Litigation Counsel until such time as the Plan

***EXECUTION VERSION***

Administrator is paid-in-full the Cobalt Creditors' Share, after which time Lead Counsel for Plaintiffs are permitted to replace Coverage Counsel with counsel of their choice;

(b) To fully cooperate with each other in the conduct of the D&O Coverage Litigation; and

(c) To immediately deposit into the Settlement Escrow Account any future recoveries by the Insureds pursuant to the D&O Prosecution and Payment Obligation against any D&O Liability Insurance Policy, except that (i) any attorneys' fees and expenses, including the fees and expenses of non-testifying and testifying experts, of AIG Litigation Counsel and Coverage Counsel selected to pursue or prosecute the AIG Litigation and D&O Coverage Litigation shall be paid first from any recoveries before any other allocations pursuant to this ¶ 7; (ii) the first \$2,000,000 of any future recoveries in the AIG Litigation shall be paid to the Plan Administrator to be administered in accordance with the Plan; (iii) 50 percent of any other future recoveries in the AIG Litigation shall be paid to the Plan Administrator to be administered in accordance with the Plan; and (iv) 50 percent of any other future recoveries in the D&O Coverage Litigation shall be paid to the Plan Administrator to be administered in accordance with the Plan, until the total amount the Plan Administrator has received from the Existing Proceeds, the AIG Litigation and the D&O Coverage Litigation equals the Cobalt Creditors' Share, after which any additional recoveries shall be deposited in full into the Settlement Escrow Account; *provided*, however, that the Cobalt Creditors' Share shall be discounted based on the timing of recoveries paid to the Plan Administrator as follows:

*EXECUTION VERSION*

(i) If the Cobalt Creditors' Share received by the Plan Administrator within 6 months of the date of execution of the Settlement Agreement totals \$12,000,000 or more, the Cobalt Creditors' Share shall be discounted by \$500,000;

(ii) If the Cobalt Creditors' Share received by the Plan Administrator within 12 months of the date of execution of the Settlement Agreement totals \$17,000,000 or more, the Cobalt Creditors' Share shall be discounted by \$1,000,000 (which shall be in addition to any discount attained under (i) above);

(iii) If the Cobalt Creditors' Share received by the Plan Administrator within 18 months of the date of execution of the Settlement Agreement totals \$22,000,000 or more, the Cobalt Creditors' Share shall be discounted by \$1,000,000 (which shall be in addition to any discount(s) attained under (i) or (ii) above); and

(iv) if the Cobalt Creditors' Share received by the Plan Administrator within 24 months of the date of the execution of the Settlement Agreement totals \$28,500,000, less any discount(s) attained under (i), (ii), or (iii) above, the Cobalt Creditors' Share shall be discounted by \$1,000,000 (which shall be in addition to any discount(s) attained under (i), (ii), or (iii) above).

8. Any settlement of a claim with an Insurer under the D&O Coverage Litigation or AIG Litigation is subject to the written consent of Lead Counsel and the Plan Administrator, which will not be unreasonably withheld, until such time as the Cobalt Creditors' Share is paid-in-full, after which any such settlement is solely at the discretion of Lead Counsel.

*EXECUTION VERSION*

9. The Existing Proceeds from prior settlements or other prior resolution of claims under the D&O Liability Insurance Policies that are maintained in the Existing Escrow Accounts, after subtracting the Defense Cost Reserve, shall be allocated 50 percent to the Plaintiffs and 50 percent to the Plan Administrator to be administered in accordance with the Plan. The 50 percent of the Existing Proceeds allocable to the Plaintiffs shall be deposited into the Settlement Escrow Account to be administered by the Plaintiffs. The 50 percent of the Existing Proceeds allocable to the Plan Administrator shall be sent via wire transfer to the Plan Administrator. The Cobalt Individual Defendants and/or the Plan Administrator or Debtors, as required to facilitate the deposit, shall give instructions to the Escrow Agent for the Existing Escrow Accounts to release the Existing Proceeds in accordance with the Settlement.

10. Notwithstanding any other provision of this Settlement Agreement, the Defense Cost Reserve will remain in the Existing Escrow Accounts for the use by one or more of the Cobalt Individual Defendants solely to (a) pay accrued defense fees and costs prior to Final Approval, (b) respond to any challenges or objections to the Settlement Agreement, and (c) defend Opt-Out Securities Litigation, if any, commenced by any member of the Certified Class of Plaintiffs no later than forty-five (45) days following Final Approval by the District Court, at which time, if no Opt-Out Securities Litigation has been commenced, the remaining Defense Cost Reserve will be allocated 50 percent to the Plaintiffs and 50 percent to the Plan Administrator on behalf of the creditors of Cobalt. The 50 percent of any remaining Defense Cost Reserve allocable to the Plaintiffs

***EXECUTION VERSION***

shall be deposited into the Settlement Escrow Account and the 50 percent of any remaining Defense Cost Reserve allocable to the Plan Administrator shall be sent via wire transfer to the Plan Administrator. Notwithstanding the foregoing, no more than \$400,000 of the Defense Costs Reserve may be used by the Cobalt Individual Defendants for the purposes set forth in (a) and (b) above.

11. The Parties agree that the D&O Prosecution and Payment Obligation is accepted in full settlement of the Released Plaintiffs' Claims except as to the claims the Debtors and/or the Cobalt Individual Defendants may have under and against the D&O Liability Insurance Policies and Insurers, subject to execution and delivery of the Settlement Release and provided in ¶¶ 1(sss) and 19.

12. For the avoidance of doubt, the D&O Prosecution and Payment Obligation is not an assignment of the D&O Liability Insurance Policies themselves, which continue to be owned by the Debtors, or of rights or coverage under such policies, which will continue to be held by the Insureds.

13. Subject to the allocation set forth herein, the Debtors and the Cobalt Individual Defendants also agree to pay over to the Settlement Escrow Account all future recoveries (if any) they receive from any insurance policy or policies other than the D&O Liability Insurance Policies in connection with any claim asserted against the Debtors or the Cobalt Individual Defendants in the Securities Litigation. For the avoidance of doubt, no Debtor or Cobalt Individual Defendant shall have any obligation to pursue any

***EXECUTION VERSION***

recovery from any insurance policy or policies other than the D&O Liability Insurance Policies.

14. Following the Effective Date of this Settlement Agreement, reasonable costs or expenses of the Insureds necessary to enable the Insureds to meet their cooperation obligations under this Agreement related to the Action and D&O Coverage Litigation shall be borne by the Plaintiffs, with the exception of outstanding and yet-to-be completed discovery obligations (if any) in the Action.

15. The Plan Administrator and the Cobalt Individual Defendants agree that, following payment in full of the Cobalt Creditors' Share, decisions in respect of the recovery of insurance proceeds on behalf of the Insureds, including but not limited to selection of counsel and prosecution of any D&O Coverage Litigation in the name of the Insureds, will be made on behalf of the Debtors and the Cobalt Individual Defendants by Lead Counsel for the Plaintiffs, who shall have sole authority to decide such issues. Decisions in respect of the claims in the AIG Litigation, including the selection of counsel to pursue and prosecute such claims and the settlement of such claims, shall remain with the Plan Administrator until the AIG Litigation is fully and finally resolved; *provided*, however, that any settlement of the AIG Litigation is subject to the consent of Lead Counsel and the Plan Administrator, which will not be unreasonably withheld.

16. Where applicable under this Settlement Agreement, the Plan Administrator and the Cobalt Individual Defendants shall cause the immediate payment of all recoveries from D&O Liability Insurance Policies and the D&O Prosecution and Payment



***EXECUTION VERSION***

Obligation into the Settlement Escrow Account, and by operation of the Settlement Agreement no additional consent by the Plan Administrator and/or the Cobalt Individual Defendants to such payment shall be required.

17. The Plan Administrator and the Cobalt Individual Defendants waive any and all right to object to payment of proceeds into the Settlement Escrow Account in satisfaction of the D&O Prosecution and Payment Obligation, except that the Plan Administrator retains its right to maintain possession of or require the transfer of those amounts due to it pursuant to this Settlement Agreement.

18. The Plaintiffs and Lead Counsel covenant not to collect, execute, or take any steps or actions to record, enforce, or execute against the Debtors or the Cobalt Individual Defendants with respect to the unpaid Settlement Amount and agree to look solely to the D&O Insurance Policies and Insurers for the remaining balance of the Settlement Amount. This covenant is binding on all successors and assigns of the Plaintiffs and, upon Final Judgment (or the Alternate Judgment, if applicable) in this Action and the Final approval of this Settlement by the Bankruptcy Court, shall survive in all respects the termination of the Settlement Agreement.

**RELEASE OF CLAIMS**

19. Upon the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies, the Plaintiffs shall execute the Settlement Release.

*EXECUTION VERSION*

20. The Judgment, or the Alternate Judgment, if applicable, and the Settlement Release shall provide that, upon the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies, Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment, or the Alternate Judgment, if applicable, shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against the Settling Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Settling Defendants' Releasees.

21. The Judgment, or the Alternate Judgment, if applicable, and the Cobalt Settling Defendants' release of the Plaintiffs' Releasees shall provide that, upon the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies, the Cobalt Settling Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment, or the Alternate Judgment, if applicable, shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Settling Defendants' Claim against Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the

***EXECUTION VERSION***

Released Settling Defendants' Claims against any of the Plaintiffs' Releasees. This release shall not apply to any person or entity who or that submits a request for exclusion from the Settlement Class that is accepted by the District Court.

22. At the election of either the Plan Administrator or the Cobalt Individual Defendants, the Settlement Release may be executed in advance and held in escrow by counsel for the Plan Administrator and the Cobalt Individual Defendants, which conditions and obligations will be memorialized in a separate escrow agreement.

**USE OF SETTLEMENT FUND**

23. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs, to be paid in accordance with ¶ 29; (c) any Litigation Expenses awarded by the District Court; and (d) any attorneys' fees awarded by the District Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 37-44 below.

24. Except as provided herein or pursuant to orders of the District Court, the Net Settlement Fund shall remain in the Settlement Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the District Court and shall remain subject to the jurisdiction of the District Court until such time as the funds shall be distributed or returned pursuant to the terms of this Settlement Agreement and/or further order of the District Court. The Escrow Agent shall invest any funds in the Settlement Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest

*EXECUTION VERSION*

accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

25. The Settling Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Settling Defendants' Releasees shall not have any liability or responsibility for any such Taxes.

26. Upon written request, the Cobalt Settling Defendants will provide to Lead Counsel a combined statement described in Treasury Regulation § 1.468B-3(e). Lead

*EXECUTION VERSION*

Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

27. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without further order of the District Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Settling Defendants’ Releasees shall have no responsibility or liability for the acts or omissions of Lead Counsel or their agents with respect to the payment of Taxes, as described herein.

28. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, no Settling Defendant, Settling Defendants’ Releasee, or any other person or entity who or which paid any portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, including without limitation, the number of Claims submitted, the collective amount of Recognized Claims (as set forth in the Plan of Allocation set forth in the

*EXECUTION VERSION*

Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the District Court approves) of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

29. Before the Effective Date of the Settlement, Lead Counsel may pay up to \$100,000 from the Settlement Fund, without further approval from Cobalt Settling Defendants or further order of the District Court, for Notice and Administration Costs actually incurred and paid or payable. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Notice, publishing the Summary Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice, and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Settlement Agreement, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to any Cobalt Settling Defendants, any of the other Settling Defendants' Releasees, or any other person or entity who or which paid any portion of the Settlement Amount.

30. In the event that Plaintiffs reach any settlement with any of the Non-Settling Defendants and notice of any other such settlement, including the Sponsor Settlement, is disseminated simultaneously with notice of this Settlement, or administration of any other such settlement is conducted in conjunction with administration of this Settlement, Lead Counsel shall have the discretion to allocate

***EXECUTION VERSION***

reasonably all Notice and Administration Costs paid or incurred, including any related fees, among the Settlement Fund and any settlement funds for any other such settlements involving the Non-Settling Defendants.

**ATTORNEYS' FEES AND LITIGATION EXPENSES**

31. Lead Counsel may apply to the District Court for a collective award of attorneys' fees to Plaintiffs' Counsel to be paid from (and out of) the Settlement Fund. Lead Counsel also may apply to the District Court for reimbursement of Litigation Expenses, which may include a request for reimbursement of Plaintiffs' reasonable costs and expenses directly related to their representation of the Settlement Class, to be paid from (and out of) the Settlement Fund. Lead Counsel's application for an award of attorneys' fees and Litigation Expenses is not the subject of any agreement between the Settling Parties other than what is set forth in this Settlement Agreement. The Cobalt Settling Defendants shall have no responsibility for or liability whatsoever for any notice sent to members of the Settlement Class concerning Lead Counsel's application for an award of attorneys' fees and Litigation Expenses.

32. Subject to the terms and requirements of Paragraphs 9 and 10 of this Settlement Agreement, any attorneys' fees and Litigation Expenses that are awarded by the District Court from Existing Proceeds shall be paid to Lead Counsel immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs' Counsel's obligation to make appropriate refunds or repayments to

*EXECUTION VERSION*

the Existing Escrow Accounts, plus accrued interest at the same net rate as is earned by the Existing Escrow Accounts, if the Settlement is terminated pursuant to the terms of this Settlement Agreement or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed and such order reducing or reversing the award has become Final. Plaintiffs' Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after: (a) receiving from the Settling Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the award of attorneys' fees and/or Litigation Expenses has become Final. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Settlement Agreement and is not a condition of the Settlement embodied herein. Neither Plaintiffs nor Lead Counsel may cancel or terminate the Settlement based on the District Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

33. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution and settlement of the Action against the Cobalt Settling Defendants. The Settling Defendants' Releasees shall have no responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees or Litigation Expenses. The attorneys' fees and Litigation Expenses that are awarded to Plaintiffs' Counsel shall be payable solely from the Settlement Escrow Account.



*EXECUTION VERSION*

**NOTICE AND SETTLEMENT ADMINISTRATION**

34. As part of the Preliminary Approval Order, Plaintiffs shall seek appointment of a Claims Administrator. The Claims Administrator shall administer the Settlement, including but not limited to the process of receiving, reviewing, and approving or denying Claims, under Lead Counsel's supervision and subject to the jurisdiction of the District Court. None of the Cobalt Settling Defendants, nor any other Settling Defendants' Releasees, shall have any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Claims Administrator, the Plan of Allocation, the administration of the Settlement, the Claims process, or disbursement of the Net Settlement Fund, and shall have no liability whatsoever to any person or entity, including, but not limited to, Plaintiffs, any other Settlement Class Members, or Lead Counsel in connection with the foregoing. Settling Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

35. In accordance with the terms of the Preliminary Approval Order to be entered by the District Court, Lead Counsel shall cause the Claims Administrator to mail the Notice and Claim Form to those members of the Settlement Class as may be identified through reasonable effort. Lead Counsel shall also cause the Claims Administrator to have the Summary Notice published in accordance with the terms of the Preliminary Approval Order to be entered by the District Court. For the purposes of identifying and providing notice to the Settlement Class, within ten (10) business days of

***EXECUTION VERSION***

the date of entry of the Preliminary Approval Order, the Debtors shall provide or cause to be provided to the Claims Administrator in electronic format (at no cost to the Settlement Fund, Lead Counsel or the Claims Administrator) a list (consisting of names and addresses) of the holders of Cobalt Securities during the Class Period.

36. No later than ten (10) calendar days following the filing of this Settlement Agreement with the District Court, the Cobalt Settling Defendants shall serve the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 *et seq.* (“CAFA”). The Cobalt Settling Defendants are solely responsible for the costs of the CAFA notice and administering the CAFA notice. At least seven (7) calendar days before the Settlement Hearing, the Cobalt Settling Defendants shall cause to be served on Lead Counsel and filed with the District Court proof, by affidavit or declaration, regarding compliance with CAFA § 1715(b).

37. The Claims Administrator shall receive Claims and determine first, whether the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant’s *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant’s Recognized Claim compared to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the District Court approves).

38. The Plan of Allocation proposed in the Notice is not a necessary term of the Settlement or of this Settlement Agreement and it is not a condition of the Settlement or of this Settlement Agreement that any particular plan of allocation be approved by the

*EXECUTION VERSION*

District Court. Plaintiffs and Lead Counsel may not cancel or terminate the Settlement (or this Settlement Agreement) based on the District Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. The Cobalt Settling Defendants and the other Settling Defendants' Releasees shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action. No Cobalt Settling Defendant, nor any other Settling Defendants' Releasee, shall have any involvement with or liability, obligation or responsibility whatsoever for the application of the District Court-approved plan of allocation.

39. Any Settlement Class Member who or that does not submit a valid Claim will not be entitled to receive any distribution from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Judgment or the Alternate Judgment, if applicable, to be entered in the Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against the Settling Defendants' Releasees with respect to the Released Plaintiffs' Claims in the event that the Effective Date occurs with respect to the Settlement.

40. Any Settlement Class Member who or that does not timely and validly request exclusion from the Settlement Class in the manner stated in the Preliminary Approval Order: (a) shall be deemed to have waived his, her, or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the

*EXECUTION VERSION*

Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of this Settlement Agreement, the Settlement, and all proceedings, determinations, orders, and judgments in the Action relating to the Settlement, including, but limited to, the Judgment or the Alternate Judgment, if applicable, and the Releases provided for herein and therein whether favorable or unfavorable to the Settlement Class; and (d) shall be barred and enjoined from commencing, maintaining, or prosecuting any of the Released Plaintiffs' Claims against any of the Settling Defendants' Releasees.

41. Lead Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund subject to District Court approval. No Settling Defendant or any other Settling Defendants' Releasee shall be permitted to review, contest, or object to any Claim, or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim for payment. Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Claims submitted in the interests of achieving substantial justice. The extent, if any, to which a Settlement Class Member shall be entitled to be treated as an Authorized Claimant shall be as set forth in the Preliminary Approval Order attached hereto as Exhibit A and in the Notice attached hereto as Exhibit 1 to Exhibit A.

42. Each Claimant shall be deemed to have submitted to the jurisdiction of the District Court with respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided,

*EXECUTION VERSION*

however, that such investigation and discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action or of the Settlement in connection with the processing of Claims.

43. Lead Counsel will apply to the District Court, on notice to Settling Defendants' Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted, by or on behalf of persons and entities seeking to share in the distribution of the Net Settlement Fund; (b) approving payment of any administration fees and expenses associated with the administration of the Settlement from the Settlement Escrow Account; and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Settlement Escrow Account.

44. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Claimants. All Settlement Class Members whose Claims are not approved by the District Court for payment shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, to be entered in this Action and the Releases provided for herein and therein, and will be permanently barred and enjoined

*EXECUTION VERSION*

from bringing any action against any and all Settling Defendants' Releasees with respect to any and all of the Released Plaintiffs' Claims.

45. No person or entity shall have any claim against Plaintiffs, Plaintiffs' Counsel, the Claims Administrator, or any other agent designated by Lead Counsel, or the Settling Defendants' Releasees and/or their respective counsel, arising from distributions made substantially in accordance with the Settlement Agreement, the plan of allocation approved by the District Court, or any order of the District Court. The Settling Parties, their respective counsel, and all other Releasees shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

46. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the District Court. All Settlement Class Members, other Claimants, and the Settling Parties expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

**TERMS OF THE JUDGMENT**

47. If the Settlement contemplated by this Settlement Agreement is approved by the District Court, Lead Counsel and the Settling Defendants' Counsel shall request that the District Court enter a Judgment, substantially in the form attached hereto as Exhibit B, providing that the District Court may immediately enter final judgment as against the Cobalt Settling Defendants pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

48. The Judgment shall contain a bar order ("Bar Order") substantially in the form set forth in Exhibit B that shall, pursuant to the PSLRA and common law, bar all future claims and claims over by any individual or entity against any of the Settling Defendants' Releasees, and by the Settling Defendants' Releasees against any individual or entity, for (a) contribution or indemnity (or any other claim or claim over, however denominated on whatsoever theory) arising out of or related to the claims or allegations asserted by Plaintiffs in the Action, or (b) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person's or entity's actual or threatened liability to Plaintiffs and/or members of the Settlement Class arising out of or related to the claims or allegations asserted by Plaintiffs in the Action. The Bar Order shall also provide that any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a Settlement Class Member against any individual or entity subject to the Bar Order shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the Cobalt Settling

***EXECUTION VERSION***

Defendants for common damages; or (b) the amount paid by or on behalf of the Cobalt Settling Defendants to the Settlement Class or Settlement Class Members for common damages. Nothing in the Bar Order or this Settlement Agreement shall release any proofs of claim that any of the Cobalt Settling Defendants has filed in the Cobalt bankruptcy. Nothing in the Bar Order or this Settlement Agreement shall be construed to impair, negate, diminish, or adversely affect any rights of the Cobalt Settling Defendants or their successors or assigns under or with respect to any insurance policies, including, but without limitation, any rights to seek to recover or to recover insurance proceeds or payments under any insurance policies with respect to amounts paid pursuant to this Settlement Agreement or incurred in connection with the Action, or any other actual or alleged loss or liability, and the Cobalt Settling Defendants expressly reserve all rights, claims, positions, arguments, contentions, and defenses with respect to such matters.

**CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

49. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver in writing of all of the following events:

(a) the District Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit A attached hereto, as required by ¶ 3 above;

(b) the applicable portions of the Existing Proceeds have been deposited into the Settlement Escrow Account and sent to the Plan Administrator in accordance with the provisions of ¶ 9 above;



*EXECUTION VERSION*

(c) the Cobalt Settling Defendants have not exercised their option to terminate the Settlement pursuant to the provisions of this Settlement Agreement;

(d) Plaintiffs have not exercised their option to terminate the Settlement pursuant to the provisions of this Settlement Agreement; and

(e) the District Court has approved the Settlement as described herein, following notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment and the Judgment has become Final, or the District Court has entered an Alternate Judgment and none of the Settling Parties seek to terminate the Settlement and the Alternate Judgment has become Final.

50. The occurrence of the Effective Date is not conditioned on the District Court having approved a plan of allocation for the Settlement proceeds or a claims process having begun. It is expressly understood and agreed that the determination of when the Plan of Allocation for the proceeds of the Settlement should be presented to the District Court for approval is to be made solely by Plaintiffs. Upon the occurrence of all of the events referenced in ¶ 49 above, any and all remaining interest or right of the Cobalt Settling Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished.

51. If (i) the Cobalt Settling Defendants exercise their right to terminate the Settlement as provided in this Settlement Agreement; (ii) Plaintiffs exercise their right to terminate the Settlement as provided in this Settlement Agreement; (iii) the District Court

***EXECUTION VERSION***

disapproves the Settlement; (iv) the Bankruptcy Court disapproves the Settlement; or (v) the Effective Date as to the Settlement otherwise fails to occur, then:

(a) the Settlement and the relevant portions of this Settlement Agreement shall be canceled and terminated; and

(b) Plaintiffs and the Cobalt Settling Defendants shall revert to their respective positions in the Action as of immediately prior to the date of execution of this Settlement Agreement.

(c) The terms and provisions of this Settlement Agreement, with the exception of this ¶ 51 and ¶¶ 29, 32, 53, and 76 of this Settlement Agreement, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment, or Alternate Judgment, if applicable, or order entered by the District Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

(d) Within five (5) business days after joint written notification of termination is sent by the Settling Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon, and change in value as a result of the investment of the Settlement Fund, and any funds received by Lead Counsel consistent with ¶ 32 above), less any Notice and Administration Costs actually incurred, paid or payable and less any Taxes paid, due or owing shall be refunded by the Escrow Agent to the Cobalt Settling Defendants. In the event that the funds received by Lead Counsel consistent with the above have not been refunded to the Settlement Fund within

*EXECUTION VERSION*

the five (5) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to the Cobalt Settling Defendants in proportion to the amounts that each contributed to the Settlement Fund immediately upon their deposit into the Settlement Escrow Account.

52. It is further stipulated and agreed that each of the Settling Parties shall have the right to terminate the Settlement and this Settlement Agreement, by providing written notice of their election to do so (“Termination Notice”) to the other parties to this Settlement Agreement within thirty (30) days of: (a) the District Court’s final refusal to enter the Preliminary Approval Order in any material respect; (b) the District Court’s final refusal to approve the Settlement or any material part thereof; (c) the District Court’s final refusal to enter the Judgment or Alternate Judgment, if applicable, in any material respect as to the Settlement; (d) the Bankruptcy Court’s refusal to approve the Settlement or any material part of thereof; or (e) the date upon which the Judgment or Alternate Judgment, if applicable, in this Action or the Bankruptcy Court’s order approving the settlement is modified or reversed in any material respect, and the provisions of ¶ 51 above shall apply. Any decision or proceeding, however, whether in the District Court or any appellate court, with respect to an application for attorneys’ fees or reimbursement of Litigation Expenses or with respect to any plan of allocation shall not be considered material to the Settlement, shall not affect the finality of any Judgment or Alternate Judgment, if applicable, and shall not be grounds for termination of the Settlement.

*EXECUTION VERSION*

**NO ADMISSION OF WRONGDOING**

53. Neither this Settlement Agreement (whether or not consummated), including the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the District Court), the negotiations leading to the execution of this Settlement Agreement, nor any proceedings taken pursuant to or in connection with this Settlement Agreement and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Settling Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Settling Defendants' Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Settling Defendants' Releasees or in any way referred to for any other reason as against any of the Settling Defendants' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement;

(b) shall be offered against any of the Plaintiffs' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without

***EXECUTION VERSION***

merit, that any of the Settling Defendants' Releasees had meritorious defenses, or that damages recoverable from the Cobalt Settling Defendants under the Operative Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial against the Cobalt Settling Defendants;

*provided, however*, that if this Settlement Agreement is approved by the District Court and the Bankruptcy Court, the Settling Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement, or in connection with the AIG Litigation or D&O Coverage Litigation.

**MISCELLANEOUS PROVISIONS**

54. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists

*EXECUTION VERSION*

a conflict or inconsistency between the terms of this Settlement Agreement and the terms of any exhibit attached hereto, the terms of the Settlement Agreement shall prevail.

55. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of any Settling Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Plaintiffs, Plaintiffs and the Cobalt Settling Defendants shall jointly move the District Court to vacate and set aside the Releases given and the Judgment or Alternate Judgment, if applicable, entered in favor of the Cobalt Settling Defendants and the other Releasees pursuant to this Settlement Agreement, in which event the releases and Judgment, or Alternate Judgment, if applicable, shall be null and void, and the Settling Parties shall be restored to their respective positions in the litigation as provided in ¶ 51 above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid or payable) shall be returned as provided in ¶ 51.

56. The Parties acknowledge that the Insurers have disputed or denied coverage under the D&O Liability Policies, and the Plaintiffs proceed with this Settlement at their own risk. The Insureds make no representation or warranty (and expressly disclaim any representations or warranties) as to the availability of coverage or the collectability of any

*EXECUTION VERSION*

monies under the D&O Liability Insurance Policies, including the effect, if any, of this settlement or the D&O Prosecution and Payment Obligation thereon.

57. Nothing in this Settlement Agreement is intended to or shall affect the releases provided for in the Plan. The claims being resolved by the Plaintiffs in this Settlement are only those asserted against the Debtors and the Cobalt Individual Defendants and not against any other existing or potential defendant in the Action; provided that the Plaintiffs shall not add any current or former officer, director, or employee of the Debtors, the Plan Administrator, or any Member of the Plan Administrator Committee, as a defendant in the Action.

58. The Cobalt Settling Defendants will take reasonable steps to retain and preserve any documents, information (including electronically stored information), and other evidence potentially relevant to continuing litigation, if any, against the Non-Settling Defendants, or against the insurance carriers for Cobalt and the Cobalt Individual Defendants. For the avoidance of doubt, no Settling Defendant shall have any obligation to provide any documents, information, or other evidence: (a) protected by the attorney-client privilege, joint defense privilege, or work product doctrine in the Action, or (b) reflecting legal advice provided to the Cobalt Settling Defendants by defense counsel concerning the allegations in the Action.

59. The Settling Parties intend this Settlement Agreement and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs and any other Settlement Class Members against the Settling Defendants'

*EXECUTION VERSION*

Releasees with respect to the Released Plaintiffs' Claims. Accordingly, Plaintiffs and their counsel and the Cobalt Settling Defendants and their counsel agree not to assert in any forum that this Action was brought by Plaintiffs or defended by the Cobalt Settling Defendants in bad faith or without a reasonable basis. No Settling Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense, or settlement of this Action. The Settling Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Settling Parties, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

60. While retaining their right to deny that the claims asserted in the Action were meritorious, the Cobalt Settling Defendants and their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, Plaintiffs and their counsel and Cobalt Settling Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by any Settling Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.



*EXECUTION VERSION*

61. The terms of the Settlement, as reflected in this Settlement Agreement, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of both Plaintiffs and the Cobalt Settling Defendants (or their successors-in-interest).

62. The obligations and duties in this Settlement Agreement may not be assigned or transferred absent written consent of the Parties.

63. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

64. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the District Court, and the District Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Plaintiffs' Counsel and enforcing the terms of this Settlement Agreement, including the Plan of Allocation (or such other plan of allocation as may be approved by the District Court) and the distribution of the Net Settlement Fund to Settlement Class Members.

65. The waiver by one Settling Party of any breach of this Settlement Agreement by any other Settling Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

66. This Settlement Agreement may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf or .tif image of the signature

*EXECUTION VERSION*

transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

67. This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties and their respective affiliates, successors, heirs, executors, trustees, administrators, agents, and assigns, including any and all Releasees and any corporation, partnership, or other entity into or with which any Settling Party may merge, consolidate or reorganize.

68. The construction, interpretation, operation, effect and validity of this Settlement Agreement and all documents necessary to effectuate it shall be governed by the internal laws of the State of Texas without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

69. Any action arising under or to enforce this Settlement Agreement or any portion thereof, shall be commenced and maintained only in the District Court.

70. This Settlement Agreement shall not be construed more strictly against one Settling Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties and all Settling Parties have contributed substantially and materially to the preparation of this Settlement Agreement.

71. All counsel and any other person executing this Settlement Agreement and any of the exhibits hereto, or any related Settlement documents, warrant and represent

*EXECUTION VERSION*

that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

72. Lead Counsel and Settling Defendants' Counsel agree to cooperate with one another in seeking District Court approval of the Preliminary Approval Order and the Settlement, as embodied in this Settlement Agreement, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the District Court of the Settlement. Lead Counsel and Settling Defendants' Counsel also agree to cooperate in seeking Bankruptcy Court approval of the Settlement.

73. In the event that any dispute arises among the Settling Parties over the interpretation of this Settlement Agreement or the actual or alleged failure of any Settling Party to comply with the terms of this Settlement Agreement, the Settling Parties shall endeavor to engage former United States District Judge Layn Phillips, or another mediator mutually acceptable to the Settling Parties in the event that Judge Phillips cannot be engaged, to mediate the issue.

74. If any Settling Party is required to give notice to another Settling Party under this Settlement Agreement, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

*EXECUTION VERSION*

If to Plaintiffs or Lead Counsel: Entwistle & Cappucci LLP  
Attn: Andrew J. Entwistle, Esq.  
299 Park Avenue, 20th Floor  
New York, NY 10171  
Telephone: (212) 894-7200  
Facsimile: (212) 894-7272  
Email: aentwistle@entwistle-law.com

-and-

Bernstein Litowitz Berger & Grossmann  
LLP  
Attn: David R. Stickney, Esq.  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130-3582  
Telephone: (858) 793-0070  
Facsimile: (858) 793-0323  
Email: davids@blbglaw.com

If to the Plan Administrator Nader Tavakoli  
c/o EagleRock Capital Management, LLC  
505 Park Avenue, 2nd Floor  
New York, NY 10022  
Email: ntavakoli@eaglerockcapital.com

and

Greenberg Traurig, LLP  
Attn: Shari L. Heyen, Esq.  
1000 Louisiana, Suite 1700  
Houston, TX 77002  
Telephone: (713) 374-3500  
Facsimile: (713) 374-3505  
Email: Heyens@gtlaw.com

***EXECUTION VERSION***

If to the Cobalt Individual  
Defendants

Baker Botts LLP  
Attn: David D. Sterling, Esq.  
910 Louisiana Street  
Houston, TX 77002  
Telephone: (713) 229-1234  
Facsimile: (713) 229-1522  
Email: david.sterling@bakerbotts.com

If to Joseph H. Bryant

Quinn Emanuel Urquhart & Sullivan, LLP  
Attn: Karl Stern, Esq.  
Pennzoil Place  
711 Louisiana St., Suite 500  
Houston, TX 77002  
Telephone: (713) 221-7000  
Facsimile: (713) 221-7100  
Email: karlstern@quinnemanuel.com

75. Except as otherwise provided herein, each Settling Party shall bear its own costs.

76. Whether or not the Settlement Agreement is approved by the District Court and whether or not the Settlement Agreement is consummated, or the Effective Date occurs, the Settling Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, drafts, documents signed (other than this Settlement Agreement), and previous proceedings in connection with the Settlement Agreement confidential; *provided*, however, that nothing herein shall prohibit disclosure of the foregoing to the Cobalt Settling Defendants' respective (i) limited partners; (ii) liability insurance carriers; (iii) reinsurers or (iv) other parties who serve a valid subpoena requesting such documents.


**EXECUTION VERSION**

77. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

78. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Settling Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

**IN WITNESS WHEREOF**, the Settling Parties have caused this Settlement Agreement to be executed, by their duly authorized attorneys, as of October 11, 2018.

**ENTWISTLE & CAPPUCCI LLP**

By:  \_\_\_\_\_  
Andrew J. Entwistle  
Vincent R. Cappucci  
299 Park Avenue, 20th Floor  
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Telephone: (212) 894-7200  
Facsimile: (212) 894-7272

***Lead Counsel for Plaintiffs and the Certified Class***

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

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San Diego, CA 92130-3582  
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***Lead Counsel for Plaintiffs and the Certified Class***

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*Lead Counsel for Plaintiffs and the  
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*Counsel for Nader Tavakoli, solely in his capacity as Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc., et al.*

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*Counsel for Joseph H. Bryant*

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*Counsel for the Former Directors and Officers of the Debtors and the Debtors*



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