

Bruce T. Beesley



Honorable Bruce T. Beesley  
United States Bankruptcy Judge

Entered on Docket  
5 August 14, 2012

KEITH J. SHAPIRO, ESQ.  
Illinois Bar No. 6184374  
NANCY A. PETERMAN, ESQ.  
Illinois Bar No. 6208120  
GREENBERG TRAURIG, LLP  
77 West Wacker Drive, Suite 3100  
Chicago, Illinois 60601  
Telephone: 312-456-8400  
Facsimile: 312-456-8435  
Email: shapirok@gtlaw.com  
Email: petermann@gtlaw.com

BOB L. OLSON, ESQ.  
Nevada Bar No. 3783  
GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway,  
Suite 400 North  
Las Vegas, Nevada 89169  
Telephone: 702-792-3773  
Facsimile: 702-792-9002  
Email: olsonb@gtlaw.com

*Counsel for Debtor  
and Debtor-in-Possession*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re:  
  
SHENGDATECH, INC.,  
  
Debtor.

Case No. BK-11-52649

Chapter 11

**ORDER PURSUANT TO  
BANKRUPTCY RULE 9019  
APPROVING SETTLEMENT  
RELATED TO DEBTOR'S DIRECTORS  
& OFFICERS INSURANCE POLICY**

Upon the motion (the "Motion")<sup>1</sup> of ShengdaTech, Inc., as debtor and debtor-in-possession (the "Debtor" or "ShengdaTech") in the above-captioned chapter 11 case (the "Chapter 11 Case"), for entry of an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") and Rule 9019 of the Local Rules of

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or if not defined in the Motion, the meanings ascribed to such terms in the Agreement.

1 Bankruptcy Procedure for United States Bankruptcy Court for the District of Nevada (the “Local  
2 Rules”), (a) approving the Settlement Agreement and Release (the “Agreement”) by and between  
3 the Debtor, the Independent Directors and Zurich, (b) that certain letter agreement by and  
4 between the Debtor, the Independent Directors and Fulbright & Jaworski L.L.P. (the “Letter  
5 Agreement”) and (c) that certain agreement by and between the Debtor, the Official Committee  
6 of Unsecured Creditors, the Independent Directors and, ultimately, the liquidating trustee for the  
7 post-confirmation liquidating trust upon confirmation of a plan, regarding implementation of the  
8 Settlement Agreement and certain related agreements (the “Implementation Agreement,”  
9 collectively with the Agreement and the Letter Agreement, the “Agreements”), all as more fully  
10 described in the Motion; upon the Declaration of Michael D. Kang filed in support of the  
11 Motion; and the Court having jurisdiction to consider the Motion and grant the requested relief in  
12 accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion being a core  
13 proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to  
14 28 U.S.C. §1408; and the Court having held a hearing to consider the requested relief (the  
15 “Hearing”); and the Debtor having provided good and sufficient notice of the Motion as set forth  
16 therein; and upon the record of the Hearing, and all of the proceedings before the Court, the  
17 Court finds and determines that the requested relief is in the best interests of the Debtor, its  
18 estate, creditors, and all parties in interest; the Debtor has provided due and proper notice of the  
19 Motion and Hearing and no further notice is necessary; and the legal and factual bases set forth  
20 in the Motion establish just and sufficient cause to grant the requested relief herein;

21 **THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

22 A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and over  
23 the persons and property affected hereby.

24 B. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. §  
25 157(b)(2).

26 C. Venue for this Chapter 11 Case and proceedings on the Motion is proper in this  
27 district pursuant to 28 U.S.C. § 1408.  
28

1 D. Under the circumstances, the Court concludes that the notice given by the Debtor  
 2 of the Motion and relief requested in the Motion constitutes due, sufficient and appropriate  
 3 notice and complies with Bankruptcy Rule 2002 and the local rules of the Court, and that no  
 4 further notice of, or hearing on, the relief sought in the Motion and the relief granted herein is  
 5 necessary or required.

6 E. The Debtor has demonstrated that the Agreements, including all releases set forth  
 7 therein, are fair and reasonable under Bankruptcy Rule 9019(a) as requested in the Motion and  
 8 that the relief sought in the Motion is in the best interest of the Debtor, its estate and its creditors.

9 F. Based upon the Agreement, the Zurich Policy is exhausted.

10 Based on the foregoing, and upon the record made before this Court at the Hearing, and  
 11 good and sufficient cause appearing therefore:

12 **IT IS HEREBY ORDERED THAT:**

13 1. The Motion is granted.

14 2. A fully executed copy of the Agreement is attached hereto as **Exhibit A** and is  
 15 hereby approved subject to the terms of this Order. The terms of all Agreements are approved in  
 16 all respects and the parties to such Agreements are authorized and directed to enter into the  
 17 Agreement in substantially the forms attached to the Motion or filed under seal with this Court.

18 3. The parties to each of the Agreements are authorized and directed to carry out all  
 19 of the terms of the Agreements and to take all such other or further actions as are necessary or  
 20 desirable to implement the provisions of the Agreements.

21 4. The releases set forth in paragraphs 3 and 4 of the Agreement are hereby  
 22 approved.

23 5. All of the Debtor's creditors, shareholders, officers, directors or other parties in  
 24 interest, who are not signatories to the Agreement and who appear on the certificate of service to  
 25 the Motion, including those parties served by nominees and/or the nominees' agent(s), are  
 26 enjoined from directly or indirectly bringing, commencing, initiating, instituting, maintaining,  
 27 prosecuting or otherwise aiding in any action or other proceeding of any kind or nature, whether  
 28 for the benefit of the Debtor's Chapter 11 estate, for the benefit of the creditors of the Debtor or

1 for the benefit of any third party, against any of the Debtor, the Liquidating Trust, the  
2 Liquidating Trust Released Parties, the ShengdaTech Released Parties, the Independent  
3 Directors, the Independent Director Released Parties, Zurich or the Zurich Released Parties for  
4 any act committed by such parties with respect to the Zurich Policy, the settlement herein or any  
5 other action or proceeding relating to the conduct of Zurich.

6 6. All of the Debtor's creditors, shareholders, officers, directors or other parties in  
7 interest, who are not a signatory to the Agreement and who appear on the certificate of service  
8 for the Motion, including those parties served by nominees and/or the nominees' agent(s), are  
9 enjoined from directly or indirectly bringing, commencing, initiating, instituting, maintaining,  
10 prosecuting or otherwise aiding any Claim, action or other proceeding against the Debtor, the  
11 ShengdaTech Released Parties, the Liquidating Trust, the Liquidating Trust Released Parties, the  
12 Independent Directors, the Independent Director Released Parties, Zurich or a Zurich Released  
13 Party in connection with the Zurich Policy.

14 7. Nominees and/or their agents shall maintain a record of the service list of the  
15 beneficial holders of the Securities to whom they provide notice of this Motion for a period of at  
16 least one (1) year from the date said notice was provided, and shall produce same for inspection  
17 and copying upon the written request of the Debtor or Zurich, or an authorized agent thereof.

18 8. The Settlement Amount will be disbursed as follows: (a) \$1,000,000 will be  
19 disbursed directly to Fulbright & Jaworski L.L.P., counsel to the Independent Directors, to  
20 satisfy legal fees and expenses incurred by the Independent Directors up to such amount; (b) the  
21 balance of the Settlement Amount will be disbursed to ShengdaTech; and (c) from such  
22 Settlement Amount disbursed to ShengdaTech, ShengdaTech shall disburse \$250,000 to lead  
23 counsel to the Lead Plaintiffs (as defined below) on behalf of the class.

24 9. The Debtor is authorized and empowered to take all actions necessary to  
25 implement the relief granted in this Order.

26 10. Notwithstanding anything to the contrary in this Order or the Agreements, nothing  
27 in this Order or the Agreements (including any other provision that purports to be preemptory or  
28 supervening), shall in any way operate to, or have the effect of, impairing the legal, equitable or

contractual rights, in any respect, of any insurance company who issued an excess directors and officers liability insurance policy to ShengdaTech (the “Excess Insurers”), provided however, that the Excess Insurers shall have no right to pursue any Claims against Zurich or the Zurich Policy. All parties, including the Excess Insurers, ShengdaTech, the Independent Directors and other parties in interest expressly reserve their rights to argue about the extent of the Excess Insurers’ coverage. The rights and duties of the Excess Insurers shall continue to be determined under the respective insurance policies that each Excess Insurer issued to ShengdaTech.

11. Notwithstanding this Order or the Agreements, the SEC expressly retains any and all rights against ShengdaTech, the ShengdaTech Released Parties, the Independent Directors and the Independent Directors Released Parties; provided that the SEC shall have no right to pursue Claims against Zurich or the Zurich Policy.

12. Notwithstanding this Order or the Agreements, lead plaintiffs and the putative class in *In re ShengdaTech, Inc. Securities Litigation*, Case No. 11-CV-1918-TPG (collectively, “Lead Plaintiffs”) expressly retain any and all rights against ShengdaTech, the ShengdaTech Released Parties, the Independent Directors, the Independent Directors Released Parties and any other non-Debtor; provided that Lead Plaintiffs shall have no right to pursue Claims against Zurich or the Zurich Policy.

13. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Respectfully prepared and submitted by:

/s/ Nancy A. Peterman  
 KEITH J. SHAPIRO, ESQ.  
 Illinois Bar No. 6184374  
 NANCY A. PETERMAN, ESQ.  
 Illinois Bar No. 6208120  
 GREENBERG TRAURIG, LLP  
 77 West Wacker Drive, Suite 3100  
 Chicago, Illinois 60601

and

1 BOB L. OLSON, ESQ.  
Nevada Bar No. 3783  
2 GREENBERG TRAURIG, LLP  
3 3773 Howard Hughes Parkway  
Suite 400 North  
4 Las Vegas, Nevada 89169

5 *Counsel for Debtor*  
6 *and Debtor-in-Possession*  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021**

In accordance with Local Rule 9021, counsel submitting this document certifies as follows

**(check one):**

- ☐ The court has waived the requirement of approval under LR 9021.
- ☐ This is a chapter 7 or 13 case, and either with the motion, or at the hearing, I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

- ☒ This is a chapter 9, 11, or 15 case, and I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

CHRIS DONOHO and CATHERINE YU, on behalf of the COMMITTEE --  
APPROVED

STEVE DOLLAR, on behalf of the INDEPENDENT MEMBERS OF THE  
BOARD -- APPROVED

R. STACY LANE, on behalf of ZURICH AMERICAN INSURANCE  
COMPANY -- APPROVED

MICHAEL ETKIN, on behalf of the BANKRUPTCY COUNSEL FOR THE  
LEAD PLAINTIFFS AND THE PUTATIVE CLASS -- APPROVED

- ☐ I certify that I have served a copy of this order with the motion, and no parties appeared or filed written objections.

###

# **EXHIBIT A**



**SETTLEMENT AGREEMENT AND RELEASE**

ShengdaTech, Inc., A. Carl Mudd, Sheldon B. Saidman and Zurich American Insurance Company make and enter into this Settlement Agreement and Release on this 10th day of July, 2012. All capitalized terms used herein will have the meanings set forth in Section 1 of this Agreement.

**WHEREAS**, Zurich issued to ShengdaTech Directors & Officers Liability Insurance Policy – Zurich D&O Select Policy No. DOC 5965716-02 for the period March 13, 2010 through March 13, 2012 (the “Zurich Policy”);

**WHEREAS**, beginning in February 2011 and continuing thereafter, the following claims were made against ShengdaTech, one or more directors or officers of ShengdaTech or one or more of the former directors or officers of ShengdaTech: (1) a February 1, 2011 demand letter from PINRA to Ms. Anhui Guo involving a December 2010 private placement offering; (2) securities fraud lawsuits including those styled as Tom McDermott v. ShengdaTech, Inc., et al., Civil Action No. 11-CV-2557, United States District Court, Central District of California, Erik S. Mathes v. ShengdaTech, Inc., et al., Civil Action No. 11-CV-2064, United States District Court, Southern District of New York, Donald D. Yaw, et al. v. ShengdaTech, Inc., et al., Civil Action No. 11-CV-3325, United States District Court, Southern District of New York (the “Yaw Action”), James Thomas Turner v. ShengdaTech, Inc., et al., Civil Action No. 11-CV-1918, United States District Court, Southern District of New York and Marlon Fund Sicav plc v. ShengdaTech, Inc., et al., Civil Action No. 11-CV-1996, United States District Court, Southern District of New York; (3) shareholder derivative lawsuits including those styled as Robert Johnson v. Xiangzhi Chen, et al., Case No. 2:11-CV-01250, United States District Court, District of Nevada, Robert Corwin v. Xiangzhi Chen, et al., Civil Action No. 11-CV-2457, United States

District Court, Southern District of New York, Michael Komsky on behalf of Bamboo Trust dated January 8, 2007 v. Xiangzhi Chen, et al., Case No. A-11-640249-B, District Court of Clark County, Nevada, Matthew Schweiger v. Xiangzhi Chen, et al., Case No. A-11-639644-B, District Court of Clark County, Nevada; (4) subpoenas issued to ShengdaTech and one or more former directors or officers of ShengdaTech by the United States Securities and Exchange Commission in The Matter of ShengdaTech, Inc., (LA-3997); (5) a March 6, 2012 demand letter for monetary damages from the Official Committee of Unsecured Creditors to former directors and officers of ShengdaTech; (6) a proof of claim in the amount of \$2,262,701.62 filed by lead plaintiffs in the consolidated securities litigation dated December 16, 2011; (7) a March 12, 2012 demand letter from counsel for purchasers of more than \$80 million of 6.0% Convertible Senior Notes and 6.5% Senior Convertible Notes issued by ShengdaTech; (8) proofs of claim filed by five noteholders (9) a stipulation dated December 19, 2011 between ShengdaTech and the Official Committee of Unsecured Creditors concerning the filing of proofs of claim in the Bankruptcy Case by the holders and purchasers of certain notes issued by ShengdaTech and (10) proofs of claim filed by certain holders of alleged securities claims, including Donald D. Yaw, Edward J. Schaul and the class, which is not yet certified, as described in the Yaw Action;

**WHEREAS**, ShengdaTech filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on August 19, 2011 in the Bankruptcy Court, Case No. 11-52649 (BTB);

**WHEREAS**, notice of the Claims was provided to Zurich by ShengdaTech and/or one or more of the current or former directors and officers of ShengdaTech, and ShengdaTech and the Independent Directors sought coverage under the Zurich Policy for the Claims, including, without limitation, the reasonable and necessary defense costs incurred in connection with the investigation and defense of the Claims (the "Defense Costs");

**WHEREAS**, when Zurich communicated its preliminary coverage position with respect to the Claims, Zurich denied coverage for one or more of the Claims and fully reserved all of its rights and defenses available under the Zurich Policy and at law with respect to all of the Claims;

**WHEREAS**, ShengdaTech and the Independent Directors have disputed Zurich's denial of coverage and continue to assert that they are entitled to coverage for the Claims under the Zurich Policy;

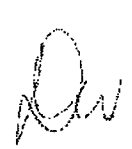
**WHEREAS**, Zurich has paid a portion of the Defense Costs incurred by the Independent Directors for the Claims, and recognizes that additional reimbursement is owed under the Policy for Defense Costs;

**WHEREAS**, on May 16, 2012, ShengdaTech filed the Plan with the Bankruptcy Court whereby, among other things, the Liquidating Trust will be established to liquidate the remaining assets of ShengdaTech;

**WHEREAS**, ShengdaTech and the Independent Directors have requested that Zurich pay all of their outstanding Defense Costs and pay the remaining limits of liability of the Zurich Policy to defend and resolve one or more of the Claims asserted against them;

**WHEREAS**, Zurich is willing to resolve the disputed issues and pay the amount set forth herein under the Zurich Policy as Loss (as defined in the Zurich Policy) incurred by ShengdaTech and the Independent Directors as a result of the Claims in exchange for the releases and other protections and conditions set forth in this Agreement;

**WHEREAS**, ShengdaTech, the Independent Directors and Zurich desire to amicably resolve their disputes with respect to past, present, and future Claims as set forth in this



Agreement and avoid the costs, risks and uncertainty of coverage litigation by entering into this Agreement;

**WHEREAS**, this Agreement affords significant benefits to all Parties;

**WHEREAS**, in addition to ShengdaTech and the Independent Directors, there are other current or former directors or officers who may fall within the definition of Insured Persons under the Zurich Policy and whose coverage may be affected by this Agreement;

**WHEREAS**, achieving a resolution expressly depends upon obtaining appropriate orders from the Bankruptcy Court to carry out the purposes of, and approving all of the terms contained in, this Agreement;

**WHEREAS**, the Parties acknowledge that the amounts paid pursuant to this Agreement and its terms and conditions, including, without limitation, the releases incorporated into this Agreement, are part of a global resolution of complex legal and factual issues, the outcome of which are uncertain, and constitute good and valuable consideration for this Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Zurich, ShengdaTech and the Independent Directors agree as follows:

1. **Defined Terms**

For the purposes of this Agreement, the following terms have the following meanings:

- (a) **"Agreement"** means this Settlement Agreement and Release by and between ShengdaTech, each of the Independent Directors and Zurich.
- (b) **"Approval Order"** means that certain final order approving, among other things, this Agreement and entered by the Bankruptcy Court.



- (c) "Bankruptcy Case" means that certain voluntary Chapter 11 case commenced by ShengdaTech on August 19, 2011 in the Bankruptcy Court and captioned Case No. 11-52649 (BTB).
- (d) Bankruptcy Court means the United States Bankruptcy Court for the District of Nevada presiding over the Chapter 11 case of ShengdaTech.
- (e) "Claim(s)" means any past, present or future, known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, direct or indirect, fixed or contingent, matured or inchoate, in law or equity, civil or criminal, claims, liabilities, obligations, damages, debts, cross-claims, counterclaims, complaints, rights, demands, lawsuits, actions, causes of action, directives, orders, administrative proceedings, arbitrations, requests for information, notice of partial or total responsibility or governmental actions made, asserted or filed, which seek compensatory damages, punitive damages, interest, statutory damages, fines, injunctive or other equitable relief, including those claims specifically identified in the second recital of this Agreement.
- (f) "Defense Costs" has the meaning set forth in the fourth recital of this Agreement.
- (g) "Effective Date" means that date on which all of the conditions set forth in Section 11(k) of this Agreement have been satisfied or waived and this Agreement becomes effective.
- (h) "Independent Directors" means A. Carl Mudd and Sheldon B. Saidman.

A handwritten signature in dark ink, appearing to be 'Der', located in the bottom right corner of the page.

- (i) "Independent Director Released Parties" means A. Carl Mudd, Sheldon B. Saidman and their respective agents, assigns, attorneys, estates, heirs, assigns and representatives.
- (j) "Insured Claim(s)" has the meaning of the defined term Claim(s) under the Zurich Policy.
- (k) "Liquidating Trust" means that certain liquidating trust to be established under the Plan.
- (l) "Liquidating Trust Released Parties" means the Liquidating Trust, any trustee of the Liquidating Trust, any advisory board of the Liquidating Trust, and their respective members, affiliates, employees, directors, officers, representatives, agents, attorneys, successors, assigns and heirs.
- (m) "Party" or "Parties" means ShengdaTech, the Independent Directors and/or Zurich, individually or collectively, as applicable.
- (n) "Person" means any natural person, class or group of natural persons, corporation, partnership, association, trust, or any other entity or organization, including, without limitation, any federal, provincial, state, county, city or municipal governmental or quasi-governmental body or political subdivision, department, agency or instrumentality thereof.
- (o) "Plan" means that certain plan of reorganization filed by ShengdaTech with the Bankruptcy Court on May 16, 2012, including any amendments or modifications thereto.
- (p) "Settlement Amount" has the meaning set forth in Section 2 of this Agreement.
- (q) "ShengdaTech" means ShengdaTech, Inc.

A handwritten signature in dark ink, appearing to be 'AW' or similar, located in the bottom right corner of the page.

- (r) "ShengdaTech Released Parties" means ShengdaTech, Inc., its past, present and future parents, affiliates, subsidiaries, departments, divisions, predecessors, successors, assigns, employees, directors, officers, stockholders, principals, agents, attorneys and representatives. The term "ShengdaTech Released Parties" does not include, and is not intended to include, any of ShengdaTech's outside auditors or any underwriter of any ShengdaTech security.
- (s) "ShengdaTech Released Claims" means those Claims and Insured Claims released by ShengdaTech in Section 3 of this Agreement.
- (t) "Yaw Action" has the meaning set forth in the second recital of this Agreement.
- (u) "Zurich" means Zurich American Insurance Company.
- (v) "Zurich Policy" has the meaning set forth in the first recital of this Agreement.
- (w) "Zurich Released Claims" means those Claims released by Zurich in Section 4 of this Agreement.
- (x) "Zurich Released Parties" means Zurich American Insurance Company, its past, present and future parents, affiliates, subsidiaries, departments, divisions, predecessors, successors, assigns, employees, directors, officers, stockholders, underwriters, insurers, reinsurers, claims managers, principals, agents, attorneys and representatives.

2. Payment of Settlement Amount.

Within three (3) business days after (a) the Approval Order has become a final, binding and non-appealable order, (b) written notice of the Approval Order is provided by ShengdaTech to Zurich in accordance with Section 10 of this Agreement and (c) payment instructions are provided by ShengdaTech to Zurich, Zurich will pay to ShengdaTech and/or its designee three million, seven hundred thirty-three thousand, one hundred twenty-one dollars

and forty-five cents (\$3,733,121.45) (the "Settlement Amount"). ShengdaTech, the Independent Directors and Zurich specifically acknowledge that the Settlement Amount constitutes payment of Loss for the Claims and constitutes fair and adequate consideration for undertaking to perform the obligations provided for by this Agreement. Upon paying the Settlement Amount, the Parties stipulate and agree that the Zurich Policy has been exhausted in full. Zurich further acknowledges that ShengdaTech has satisfied any and all retention obligations under the Zurich Policy. The Settlement Amount will be wire transferred pursuant to wire instructions provided by ShengdaTech to Zurich as required by this Section 2.

**3. Full Release by ShengdaTech and the Independent Directors of Zurich.**

For and in consideration of Zurich's payment of the Settlement Amount, the agreements and covenants contained in this Agreement, and for other good and valuable consideration, the adequacy of which is expressly acknowledged, upon the Effective Date, ShengdaTech, on behalf of itself and, to the fullest extent legally permissible, the ShengdaTech Released Parties, and the Independent Director Released Parties fully and forever release and discharge the Zurich Released Parties from any and all actual or potential actions, causes of action, suits, claims for sums of money, contracts, controversies, agreements, costs, attorneys' fees, expenses, damages, judgments and demands whatsoever in law or in equity, known or unknown, now existing or hereafter arising, whether contractual, extra-contractual, in tort or otherwise, which the ShengdaTech Released Parties and the Independent Director Released Parties had, have, or may have in the future against the Zurich Released Parties with respect to (i) the Claims, (ii) any of the allegations alleged in the Claims; (iii) the Policy; and (iv) the legal fees and expenses incurred in connection with the Claims, including but not limited to any action, proceeding or claim arising from the Insurer Parties' investigation, evaluation or



handling of the Claims or alleging any "bad faith" or breach of any promise, oral or written, or breach of any duty grounded in law or in contract relating thereto.

Furthermore, in exchange for the payment of the Settlement Amount and disbursement of the monies as set forth in Section 2 of this Agreement, upon the Effective Date, ShengdaTech, on behalf of itself and to the fullest extent legally permissible, the ShengdaTech Released Parties, and each of the Independent Directors, on behalf of themselves and the Independent Director Released Parties, will be deemed to have waived any Claim or Insured Claim for insurance coverage under the Zurich Policy. ShengdaTech and the Independent Directors recognize and acknowledge that on the Effective Date, neither Zurich nor any of the Zurich Released Parties will have any further obligations to ShengdaTech or the Independent Directors under the Zurich Policy or for ShengdaTech's or the Independent Directors' Claims or Insured Claims against the Zurich Policy.

Nothing in this Agreement, including the foregoing release, will, in any way, impact or release the obligations of any other insurance carriers who have issued policies in favor of ShengdaTech or the Independent Directors, including, without limitation any excess or additional D&O insurance policies.

**4. Full Release by Zurich of ShengdaTech and the Independent Directors.**

For and in consideration of the agreements and covenants contained in this Agreement, and for other good and valuable consideration, the adequacy of which is expressly acknowledged, on the Effective Date, Zurich, on behalf of itself and to the fullest extent legally permissible, the Zurich Released Parties, will fully and forever release and discharge ShengdaTech, the ShengdaTech Released Parties, each of the Independent Directors and the Independent Director Released Parties from any and all actual or potential actions, causes of action, suits, claims for sums of money, contracts, controversies, agreements, costs, attorneys'

fees, expenses, damages, judgments and demands whatsoever in law or in equity, known or unknown, now existing or hereafter arising, whether contractual, extra-contractual, in tort or otherwise, which the Zurich Released Parties had, have, or may have in the future against the ShengdaTech Released Parties or the Independent Director Released Parties with respect to (i) the Claims, (ii) any of the allegations alleged in the Claims; (iii) the Policy; and (iv) the legal fees and expenses incurred in connection with the Claims.

5. **Withdrawal of Claims.**

After payment of the Settlement Amount and entry of the Approval Order, ShengdaTech and the Independent Directors will withdraw any Claims against Zurich and further agree that they will not institute any actions, litigation or claim in connection with the Zurich Policy.

6. **California Civil Code Section 1542.**

The Parties acknowledge that they have been advised by their respective attorneys concerning, and are familiar with the provisions of California Civil Code Section 1542, which reads as follows:

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 settlement with the debtor.

Each of the Parties expressly waives any and all rights under California Civil Code Section 1542 and under any other federal or state statute or law of similar effect with respect to the ShengdaTech Released Claims and the Zurich Released Claims.

7. **Bar Order.**

ShengdaTech will file a motion for entry of an order by the Bankruptcy Court (a) approving this Agreement and (b) precluding any and all of ShengdaTech's creditors,

shareholders, officers, directors, insurers or other parties in interest, who are not signatories to this Agreement and who appear on the certificate of service to the motion to approve this Agreement, from directly or indirectly bringing, commencing, initiating, instituting, maintaining, prosecuting or otherwise aiding in any action or other proceeding of any kind or nature, whether for the benefit of the ShengdaTech Chapter 11 estate, for the benefit of the creditors of ShengdaTech or for the benefit of any third party, against any of ShengdaTech, the Liquidating Trust, the Liquidating Trust Released Parties, the ShengdaTech Released Parties, the Independent Directors, the Independent Director Released Parties, Zurich or the Zurich Released Parties for any act committed by such parties with respect to the Zurich Policy, the settlement herein or any other action or proceeding relating to the conduct of Zurich. The motion will further seek an order by the Bankruptcy Court precluding any interested party, who is not a signatory to this Agreement and who appears on the certificate of service for the motion to approve the Agreement, from directly or indirectly bringing, commencing, initiating, instituting, maintaining, prosecuting or otherwise aiding any Claim, action or other proceeding against ShengdaTech, the ShengdaTech Released Parties, the Liquidating Trust, the Liquidating Trust Released Parties, the Independent Directors, the Independent Director Released Parties, Zurich or a Zurich Released Party in connection with the Zurich Policy.

**8. Court Approval.**

As soon as practicable after the execution of this Agreement by all Parties, ShengdaTech will file a motion with the Bankruptcy Court seeking approval of this Agreement in its entirety and will serve the motion and schedule a hearing in accordance with the Federal Rules of Bankruptcy Procedure. The certificate of service shall include any insurance company who issued a primary or excess D&O insurance policy to ShengdaTech in the last

three years. Any order obtained from the Bankruptcy Court approving this Agreement will be in a form acceptable to all Parties.

9. Agreement Not an Admission.

This Agreement and the payments referred to in it are for the negotiated compromise of disputed Claims and will not be construed as an admission of coverage by Zurich, or an admission of liability by ShengdaTech or the Independent Directors. Neither this Agreement nor the allocation of the Settlement Amount will constitute a determination or evidence that the Zurich Policy does or does not provide coverage for Claims against ShengdaTech or the Independent Directors. The definitions or terms used in this Agreement will not be construed as an admission of any kind by any of the Parties.

10. Notices.

Any notice which the Parties wish to give, or are required to give, under this Agreement will be given in writing, unless the urgency of a situation would render written notice impracticable, in which case oral notice will be given. Any oral notice or communication will be confirmed in writing as soon as reasonably possible after such oral notice or communication is given. All written notices or communications, including confirmations of oral notices or communications, will be made by hand, by overnight courier, by email (with hard copy sent by hand, overnight delivery or facsimile) or by facsimile (with a confirmation original sent by U.S. Mail), to the Parties, as set forth below, or to such other representative(s) or addresses as each of the Parties, respectively, may designate in writing in accordance with the notice provisions of this Section 10. Notice to fewer than the following representatives of the Parties, or as subsequently designated, will not constitute notice under this Agreement.

For ShengdaTech:

Michael D. Kang  
Alvarez & Marsal North America LLC  
100 Pine Street, Suite 900  
San Francisco, CA 94111  
Telephone: (415) 490-2308  
Facsimile: (415) 358-5835  
Email: mkang@alvarezandmarsal.com

and

Nancy A. Peterman, Esq.  
Greenberg Traurig, LLP  
77 West Wacker Drive, Suite 3100  
Chicago, IL 60601  
Telephone: (312) 456-8410  
Facsimile: (312) 456-8435  
Email: petermann@gtlaw.com

For Zurich:

David Wilson, Esq. ✓  
P.O. Box 968041  
Schaumburg, IL 60196-8041  
Telephone: (212) 859-2639  
Facsimile: (212) 225-7035  
Email: david.wilson@zurichna.com

and

R. Stacy Lane, Esq.  
Bailey Cavalieri LLC  
10 West Broad Street, Suite 2100  
Columbus, OH 43215-3422  
Telephone: (614) 229-3203  
Facsimile: (614) 221-0479  
Email: stacy.lane@baileycavalieri.com

For the Independent Directors:

A. Carl Mudd  
5318 Royal Crest Dr.  
Dallas, TX 75229  
Telephone: (214) 361-1721  
Facsimile: (509) 757-9211

A handwritten signature in dark ink, appearing to be 'Dw' or similar, located in the bottom right corner of the page.

Email: acmudd@aol.com

Sheldon B. Saidman  
Saidman & Associates, Inc.  
5912 Via Verona View  
Colorado Springs, CO 80919  
Telephone: (719) 548-9963  
Facsimile:  
Email: Saidmaninc@aol.com

and

Stephen Mark Dollar, Esq.  
Fulbright & Jaworski L.L.P.  
2200 Ross Avenue, Suite 2800  
Dallas, Texas 75201-2784  
Telephone: (214) 855-7467  
Facsimile: (214) 855-8200  
Email: sdollar@fulbright.com

11. **Miscellaneous Provisions.**

(a) **Entire Agreement.** This Agreement comprises the entire understanding of the Parties with respect to the subject matter of the Agreement. All prior communications, including correspondence and drafts of this Agreement, are merged into this Agreement, and only this Agreement contains the actual and final agreement of the Parties.

(b) **Agreement is Freely Entered.** This Agreement is the product of informed, arm's-length negotiations with each Party having the advice of counsel, and involves compromises of the Parties' previously-stated legal positions. Each of the Parties acknowledge that they know all of their rights in connection with this Agreement, and that they have not been improperly influenced, coerced, or induced to make this compromise settlement by any action on the part of any employee, agent, attorney, or representative of any Party to this Agreement.



(c) **Representations and Warranties.**

(1) Subject to entry of the Approval Order, each Party to this Agreement represents and warrants that it (or he) has the authority to enter into this Agreement and to perform the duties and obligations to which they have agreed herein.

(2) ShengdaTech and the Independent Directors warrant that they have neither sold, assigned, nor otherwise transferred any interest in the Insured Claims, Claims, demands, rights, or insurance policies that are the subject of the releases herein, and that they are the only Persons entitled to recover under the Zurich Policy for such released Insured Claims and Claims.

(3) Each of ShengdaTech and Zurich further represents and warrants that to the extent necessary, they have taken all necessary corporate and internal legal actions to duly approve of the making and performance of this Agreement and that no further corporate or other internal approval is necessary.

(d) **Rules of Interpretation.** This Agreement is the product of arm's-length negotiation between the Parties, and the Parties have entered into this Agreement freely and voluntarily and with the advice of legal counsel. This Agreement is not a contract of insurance and no special rules of construction or interpretation of insurance policies will apply. Instead, only the rules of interpretation or construction of contracts in general will apply. None of the Parties will be deemed the drafter of this Agreement. In the event that a dispute arises over the meaning or application of any term of this Agreement, such term will not be construed by reference to any doctrine calling for ambiguities to be construed against an insurer or against the drafter of a document.



(c) **Agreement Not to Confer Rights on Third Parties.** This Agreement is intended to confer rights and benefits only on the Parties to it and only with respect to the matters described in it. No Person other than ShengdaTech, Zurich or the Independent Directors will have any legally enforceable rights under this Agreement. This Agreement will not be assigned without the written consent of the other Parties. Notwithstanding the foregoing, upon the effective date of the Plan, this Agreement will be deemed binding on the Liquidating Trust and will be deemed assigned by ShengdaTech to the Liquidating Trust without the need for any further approval from Zurich or the Independent Directors or any further order of the Bankruptcy Court.

(f) **Execution in Counterparts.** To facilitate execution, this Agreement may be executed in several counterparts by one or more of the undersigned Parties and all such counterparts when so executed will together be deemed to constitute a single agreement as if one document had been signed by all Parties. Facsimile or electronic (pdf) signatures will be deemed original, valid and binding signatures to this Agreement.

(g) **Governing Law.** This Agreement will be governed by the laws of the State of Nevada, and will be construed and interpreted in accordance with its laws, notwithstanding its conflict of law principles or any other rule, regulation or principle that would result in the application of any other state's law.

(h) **Bankruptcy Court Jurisdiction.** The Bankruptcy Court will retain jurisdiction to resolve any disputes or controversies arising from or related to this Agreement. All Parties agree and consent to the jurisdiction of the Bankruptcy Court to resolve any disputes or controversies between the Parties hereto arising from or related to this Agreement. Any motion, application or other action or proceeding brought before the Bankruptcy Court to





resolve a dispute arising from or related to this Agreement will be brought on proper notice in accordance with the relevant Rules of the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court. In the event the Bankruptcy Court is deemed to lack jurisdiction over this matter, jurisdiction will rest in the United States District Court for the District of Nevada.

(i) **Attorneys' Fees.** Each Party will bear its/his own attorneys' fees, costs and expenses incurred in connection with this Agreement.

(j) **Severability.** To the extent that any provision of this Agreement may be held to be invalid or legally unenforceable by a court of competent jurisdiction, such provision shall be severed from the remainder of this Agreement only if and to the extent agreed upon by the Parties.

(k) **Effective Date of Agreement.** The effectiveness of this Agreement is subject to the following conditions precedent, which if not satisfied, will render this Agreement null and void; *provided, however,* that (a) the negotiations among the Parties will remain confidential and (b) this Agreement, the terms of this Agreement and the negotiations among the Parties with respect thereto will not be admissible in any case or proceeding:

(i) This Agreement will have been executed and delivered by all Parties;

(ii) The Bankruptcy Court will have entered the Approval Order in a form acceptable to all Parties and such Approval Order will have become a final, binding and non-appealable order that has not been stayed, reversed or modified in any respect; and

(iii) ShengdaTech and the Independent Directors will have received the Settlement Sum as set forth in Section 2 of this Agreement.



(l) **Waiver of Conditions.** To the extent that they are not otherwise required by law, any or all of the conditions for making this Agreement effective may be waived by written agreement of each of the Parties to this Agreement. However, the agreement to waive any condition or to waive a condition in any particular instance will not be construed as an agreement to waive any other condition in any other instance.

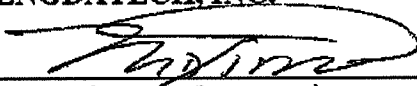
(m) **Amendments.** This Agreement may not be amended, modified or otherwise altered in any respect other than in a writing signed by all Parties.

(n) **Divisions and Headings.** The divisions of this Agreement into sections and subsections and the use of captions or headings in connection therewith are solely for convenience and will have no legal effect in construing this Agreement.

A handwritten signature in dark ink, appearing to be 'Dee' or similar, located in the bottom right corner of the page.

IN WITNESS WHEREOF, the undersigned, by their respective duly authorized representatives, affix their signatures hereto.

**SHENGDATECH, INC.**

By:   
Name: MICHAEL KANG  
Title: CRO

**ZURICH AMERICAN INSURANCE COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**A. CARL MUDD**

\_\_\_\_\_

**SHELDON SAIDMAN**

\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned, by their respective duly authorized representatives, affix their signatures hereto.

**SHENGDATECH, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ZURICH AMERICAN INSURANCE COMPANY**

By: David Wilson  
Name: David Wilson  
Title: Claims Counsel

**A. CARL MUDD**

\_\_\_\_\_

**SHELDON SAIDMAN**

\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned, by their respective duly authorized representatives, affix their signatures hereto.

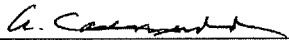
**SHENGDATECH, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ZURICH AMERICAN INSURANCE COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**A. CARL MUDD**

 \_\_\_\_\_

**SHELDON SAIDMAN**

\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned, by their respective duly authorized representatives, affix their signatures hereto.

**SHENGDATECH, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

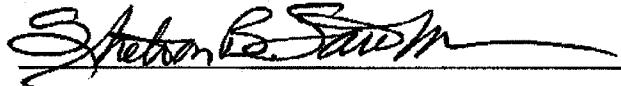
**ZURICH AMERICAN INSURANCE COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**A. CARL MUDD**

\_\_\_\_\_

**SHELDON SAIDMAN**

\_\_\_\_\_